

# USC Journal of Music Industry

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# *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.



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# *Letter From the Editor*

Dear Reader,

After a brief hiatus, the USC Journal of Music Industry is excited to return with its second issue. As a co-founder of the JMI, I am particularly excited our publication has continued to thrive, reinvigorated by a cohort of authors, editors, and leaders.

The USC JMI remains an entirely student-run organization, comprehensively elevating the robust interdisciplinary scholarship of students and alumni from the University of Southern California's Thornton School of Music.

The USC JMI's second issue includes pieces from alumna of the Music Industry program Maylane Gerber, alumna of the Cinema and Media Studies program Emma Taulli, Composition Master's alumnus Adam Karelin with current Music Industry senior Madi Ingrassia, and alumna of the Music Industry program Lanie Brice. This issue touches on pressing topics in the modern music industry, including the exploitation of artists, the challenges of navigating social media platforms within the ever-changing music industry, and the complexities of copyright law. All works featured in this issue were subject to rigorous review and periodic modernization throughout the writing process.

Our team has been working tirelessly to present the articles in this issue to you, our reader. Our staff of USC students and alumni selflessly dedicated their time to perfecting our second offering, amidst busy lives, new endeavors, burgeoning careers, and new adventures. The USC JMI is alive and well, and will continue to prosper under the new USC Thornton student leadership. This project has been a passion of mine since its inception, and I am elated to leave its future in the calm and capable hands of its future editors.

Please enjoy the following article from the second issue of the USC Journal of Music Industry. We hope our work leaves you galvanized, inspired, and excited about the future of our industry.

Sincerely,

Aidan McIntyre '23  
Editor-in-Chief, Co-Founder



# *Soundproof Ceiling*

Maylane Gerber

I am a woman. Not only is this a matter of anatomy, but it is also an identity that I consciously wear with pride while it is perceived by those around me. I am a woman, yes, but I am also a sister, a student, a singer, a baker, a pianist, a reader, a European citizen, a math enthusiast, a storyteller, and a daughter. Despite my array of diverse and fluid identities, that of being a woman is the one that is hyper-fixated on in society, and more specifically within my chosen industry. This is true not just for myself, but for every woman pursuing a career in the music business.

The male-dominated music industry has set the precedent that women are inferior, that, because of our sex, we should be paid less for the same job, that we are less capable or smart than our male counterparts, and that our only value lies in our physical appearance. Women confront this manufactured inferiority across society, but its pervasiveness in the music industry is particularly grim. Because of our identity as women, we are deemed less capable than the men in our surroundings. We are walked on, talked over, harassed, oversexualized, and dehumanized.

Music serves as a means of conveying the cultural zeitgeist of the world, so when women are referred to as "sluts," "whores," and "bitches" through lyrics or music videos, they are being told that their only value lies in their sex appeal. In about 50% of music videos released in the US, the only women represented are extremely thin, wearing revealing clothing, and overtly sexualized – a stark contrast to how their male counterparts are presented (Gotz 2017). In addition to clothing, the distinction in gender-based choreography is particularly evident in gestures. In roughly one-third of music videos, women display sexually suggestive self-touching, while men rarely do. The camera perspectives further reinforce the disparity, with half of the videos depicting women without showing their heads and nearly one-third focusing on the female chest (ibid). The hyper-sexualization of women is no accident - it is a direct byproduct of the systemic issues created by an industry plagued by substance abuse, greed, and the habitual degradation of women.

## Pay & Role Disparity in Corporate Music Business

Another striking example of blatant inequality in the music industry – one that is already broadly notorious for job instability and low pay – is the wage gap between men and women. Any individual who wishes to pursue a career in music is taking a risk, as it is an unconventional and highly competitive industry. In 2017, the United Kingdom passed a law that required all companies with over 250 employees to disclose the gender pay gap (Stassen 2019). The figures that were publicized as a result of this law revealed serious inequality within the record label side of the music industry, and the numbers proved to be distressing. At the UK-based subsidiaries of the three most powerful labels in the music industry – Universal Music Group, Sony Music Entertainment, and Warner Music Group (commonly known as the "Majors") – the average pay gap between men and women performing the same tasks is 29.6%; for every dollar a man makes, a woman makes 70 cents. The pay gap at each company is 29.1% for Universal, 20.9% for Sony, and 38.7% for Warner (ibid). Not only are women underpaid, but they are also excluded from the top positions within labels. Universal UK's top-earning quartile is dominated by men who make up 73% of the employee population, while women only account for 27%. At Warner, the numbers are almost identical: 69.8% of top employees are men while 30.2% are women. Finally, at Sony, the numbers are a bit more evenly distributed with 60.2% of top employees being men and 39.8% female (ibid). Women comprise around 30% of the top



positions in the industry and as such, one would assume that approximately 30% of the publicly awarded top executives would be female. In reality, however, women only account for a feeble 13% of Billboard's 2022 Power List of influential music industry executives. Of the three women nominated, only one was mentioned individually, while two others were listed alongside their male partners (ibid). This suggests that the achievements of women are overlooked and are only viewed as deserving when they are mentioned in conjunction with a male. It is clear that within all of these companies, creating an environment where women feel valued and included is not a priority, or even a second thought.

The lack of female nominations for this list is a further indicator that women are excluded from opportunities that would allow them to be nominated in the first place. A female music business executive surveyed by the Berklee Institute of Entrepreneurship further emphasized this point, stating:

As a young female next to a powerful male CEO, even though I'm 30-plus, I still get treated as an 'assistant.' When individuals walk into our office and see a group of females, they assume everyone is 'lower level' or do not acknowledge or say hello; [they] only say hello to the men in the room. In the studio [it's] the same; men walk in and assume you are a girlfriend and do not include you (Prior 2019).

An additional example of this overt sexism is women not being paid bonuses of the same magnitude as their male counterparts. Female executives at Warner are paid 67.5% less in bonuses than men in equal positions (Stassen 2019). This disparity in bonuses clearly demonstrates women are valued less than their male counterparts at the music companies they work at. Lower pay and poor representation of women in executive positions are byproducts of the systemic issue deeply rooted within society —that many men objectify women to feel superior, which ultimately can serve to undermine women's accomplishments. By excluding women from top-earning positions, paying them less, and not awarding them bonuses, many men in executive positions perpetuate this systemic inequality and continue to demonstrate that women are not valued.

The objectification and ultimate over-sexualization of women in the music industry throughout time has set the precedent that women inherently have less value than their male counterparts simply due to an innate aspect of their identity. This corporate devaluation results in lower compensation, less bonuses, less representation within top industry positions, and almost no recognition for the work that women do.

## Pay & Role Disparity in Artist Devaluation

In addition to behind the scenes of the spotlight, the pay discrepancy finds its way onstage as well: female artists receive unfair deals compared to male artists of the same level. In 2018, the Haim sisters fired their agent due to instances of unfair treatment that were the result of sexism (Papisova 2018). Their agent had knowledge that an all-male band with a similar-sized fanbase played the same festival they had for ten times the payout, and he accepted a lower payout for Haim than was negotiated for the boy band (ibid). Despite the fact that Haim's agent's own income is directly linked to the group's, he failed to negotiate for a payout equal to what the male group received. Even though he had more to gain by advocating for Haim, internal bias may have prevented him from



viewing them as worthy of higher pay. This is a testimony to how discriminating against and suppressing women in the music industry hurts everyone involved, including the men. Even Beyoncé, the most nominated woman in the history of the Grammy Awards, receiving 32 awards and 88 nominations, was paid less than her fellow male headliners at Coachella in 2018 (“Beyoncé” 2024). Beyoncé was paid \$4 million, while The Weeknd earned \$8 million for their respective headlining acts (Winters 2022). The pay gap between male and female artists persists at every stage of their career, regardless of how successful they ultimately become.

## Demographic Restriction in Business and Creative Spaces

Female representation within the creative side of the modern music industry is seriously lacking. In all artist categories, including musicians, producers, and songwriters, women represent less than 30% of the artists in the world (Trajkovikj 2022). Some artist categories have even less female representation; specifically only 12.6% of songwriters and 2.6% of producers are women (Smith 2021). From a sample of the top 900 most popular songs in a study by USC Annenberg, less than 1% of songs have only female writers. From 2013 to 2021, only 13.4% of all Grammy nominees were women (ibid). It is hard to compete in a field that is dominated by the opposite gender, especially when that group trivializes your success and sexualizes you. One anonymous respondent to a study by the Berklee Institute of Entrepreneurship stated that she faced “male bias at every turn;” she further said, “I wanted to be taken seriously and recognized for my talent and hard work and not because I could look hot. Agents and musicians propositioned me relentlessly” (Prior 2019). Far too often, the success of women is attributed to their physical appearance or sex appeal as opposed to their talent and hard work. In many cases, women are not taken seriously because they encounter men who are seemingly thinking about whether they can take them home after the studio session has ended.

Despite the pattern of excluding women that has pervaded throughout time, there has been a steady increase in female Grammy nominees over time, starting at just 7.9% in 2013 and reaching a historical high in 2021 with 28.1% (Smith 2021). This shift in nominated females comes at a time when the Recording Academy is making a conscious effort to increase gender and race equality among its voting members after criticism for lacking diversity (Flanagan 2018). The awareness of a need for reform within the Recording Academy was largely triggered in 2018 when then-president Neil Portnow stepped down from his position. He had received criticism from the press and social media after he was asked about the gender imbalance in that year’s winners, which only awarded one female artist, and had responded that women needed “to step up” (ibid). He attributed the lack of representation to be the fault of women, refusing to recognize the part he and his organization play in perpetuating the systemic barriers that prevent female artists from reaching the same level of success as male artists.

Portnow is not the first CEO of the Recording Academy to offend and demean women. In fact, his predecessor, C. Michael Greene, was forced to step down from his position as well after he was accused of sexually harassing female employees (Weinraub 2002). The backlash that the Recording Academy had received due to the conduct of some of its most important members resulted in quick actions within the company to appease the critics. These changes more resemble short-term solutions to improve optics rather than actual, sustainable efforts towards equality.

## Sexual Harassment, Discrimination, and Abuse: Normalcies Within the Industry

The conclusions one can infer based on statistical data regarding monetary discrepancies and lack of representation are dire, but the lived experiences of women who have been mistreated are darker. The Berklee Institute of Entrepreneurship (BIE) has also examined the bleak socioeconomic condition that 2,000 women working in the music industry across the United States experience. From this sample, 78% of female respondents felt that their gender was the reason they had been treated differently in the workplace, which negatively affected their employment opportunities (Prior 2019). Furthermore, 45% of women shared that the biggest challenges they had faced in the music industry were gender discrimination, harassment, and abuse. An industry professional surveyed by the BIE stated that she was “assumed by men as less qualified, less technically knowledgeable, less capable because [she is] a woman. Not feeling safe and therefore not taking certain risks by networking opportunities that were in less safe places, i.e., bars” (ibid). Too often, women are simply not viewed as equal colleagues by their male counterparts.

The ‘singular identity’ that is forced onto women makes it impossible for them to be taken seriously and grow their careers. It is not usually expected that a woman will speak her mind in the studio or give her opinion. The expectation that is set on women discredits their work and results in a vicious cycle of silencing them. When trying to grow a career, the biggest challenges should be linked directly to the work itself, yet for women the biggest hurdle is their surroundings and the restrictions imposed upon them by the industry.

The findings from the Berklee Institute study demonstrate how the sexist culture in the workplace allows sexual harassment toward women to persist. A study by the Princeton University Survey Research Center, using data gathered from a survey of 1,227 U.S. musicians, calls attention to some of the challenges working U.S. musicians face, including sex-based discrimination, and sexual harassment (Krueger 2018). The survey uncovered that women working in the music industry experience sexual harassment from men at higher rates than average women in the U.S. Of the women surveyed, 67% had experienced sexual harassment and 72% of them had experienced discrimination on the basis of gender. Comparatively, across all industries in the U.S., 42% of women have experienced sexual harassment and 27% have experienced discrimination on the basis of gender (ibid). The rates of sexual harassment and discrimination based on gender are much higher for the women working within the music industry, which illustrates how the unique culture of this industry has contributed to unsafe and detrimental conditions for women.

## The Silence Surrounding Abuse

Relative to the number of women experiencing harassment, the number that have actually come forward is minimal. Accusing men with more money, success, and power can destroy a woman’s career. Even comparatively powerful women within the music industry can be reticent to share their experiences, but there are a few exceptions. Taylor Swift, for example, took to social media to call out the manipulative behavior of Scott Borchetta – Big Machine’s CEO and founder – for selling her work to manager Scooter Braun, who tormented and verbally abused her throughout her career (Arnold 2019).

According to Swift, “When I left my masters in Scott’s hands, I made peace with the fact that eventually, he would sell them. Never in my worst nightmares did I imagine the buyer would be Scooter” (ibid). Swift also mentioned that both men knew how she would feel about the situation and chose to proceed regardless in an effort to control her.

Other superstars have spoken out about the unfair sexualized perception of women within the industry, including Dua Lipa, who says “For a female artist, it takes a lot more to be taken seriously if you’re not sat down at a piano or with a guitar, you know? For a male artist, people instantly assume they write their own music, but for women, they assume it’s all manufactured” (Savage 2018, “Dua Lipa”). Perpetuating the notion that artist teams are male and that women artists are in fact just puppets of the men who do the actual work discourages women from entering the field and discredits the work that they do themselves. Bjork echoed that thought and stated, “Everything that a guy says once, you have to say five times [as a woman]” (Mokoena 2015). It is important to consider that many women who successfully come forward with allegations and statements about inequality are, for the most part, already famous. Their fame, wealth, and connections give them more credibility and leverage than most other women in the industry who do not have that luxury and are forced to stay silent when mistreated and abused in order to safeguard their careers.

Many female artists who have found fame are finally speaking up about the abuse they experienced at the beginning of their careers, before they had the support and success they later achieved. In her 2021 documentary *Music Box: Jagged*, Alanis Morissette delivers a distressing account of her beginnings in the industry when, at the age of fifteen, she was raped by “many older men.” When she told those around her in the industry, she said her words “fell on deaf ears” and that those she told would consciously choose to ignore her allegations and deny her truth (ibid). Lady Gaga has also come forward about her abuse, detailing how, at the age of nineteen, her record producer told her to take her clothes off or he would burn all her music (Savage 2021, “Lady Gaga”). Another powerful male executive who took advantage of his female client was record producer Dr. Luke, whom Kesha sued for “sexually, physically, verbally, and emotionally [abusing her] to the point where [she] nearly lost her life” (Johnston 2018). After nearly a decade of legal battles involving her accusation of drugging and rape, and his counterclaim of defamation, they announced a resolution without disclosing the details, but Dr. Luke still firmly denied any wrongdoing, asserting his absolute certainty of innocence (Associated Press, 2023). Women without that leverage stay silent due to the fear that their careers would be threatened by their abusers, and often the repercussions these men face are minimal if not non-existent.

For newer artists, it is almost impossible to speak up in a situation where they are made to feel uncomfortable out of fear that it could destroy their future career. Artist Lauren Aquilina, a newer artist who has gained popularity in the UK over the past couple of years, said in a 2019 interview that “a music industry boss will suddenly start groping [an artist] and she’s expected not to mind” (“A Look Inside...” 2019). The sexualization of women occurs to artists and executives alike, which is indicative of the pervasive power imbalance between women and their male counterparts. Lara Baker, Events Manager for the Association of Independent Music (AIM) stated:

The music industry involves a lot of late nights and drinking, and in those situations, it's common for people's sense of what's appropriate to go out the window. A woman will be in a taxi with her boss or a client after a gig and he'll suddenly start kissing or groping her and she's expected not to mind. It's not easy for her to speak out when it involves a colleague or client, and her reputation is at stake (ibid).

The music industry is intricately intertwined with the party and club scene, blurring the line between professional and social expectations, which ultimately puts many women in dangerous and compromising situations.

Despite the potential backlash associated with speaking out on sexism and inequality in the music industry, many female artists are using their music to amplify their voices. Kesha released the song "Praying" to publicize her tumultuous and abusive relationship with her producer (Santiago 2017). Lady Gaga has also used her musical platform to ignite conversations about sexual assault in her songs "Swine" and "Til It Happens To You" (Galuppo 2016). Most recently, Jessie Reyez released a song in 2017 titled "Gate Keepers," in which she alludes to men who demand sexual favors from women, and subsequently threaten to sink their careers if they don't comply (Reyez 2017). Her song was inspired by two women who accused producer Noel 'Detail' Fisher of sexual assault, something Reyez also experienced firsthand (Penrose 2018). Speaking out against injustice has a ripple effect, as the number of artists who speak up about their mistreatment is increasing, shedding more light on their journeys.

## The Power Dynamics Gatekeeping the Industry

There are many risks to a woman's career in the industry if they speak out, so it is important for men to openly support change to create a safer environment for whistleblowing. The music industry is dominated by men, and this "boy's club" culture is the root of many of the systemic issues that plague the business. Unfortunately, these men also happen to be the same individuals who run the most prominent and influential companies in the industry. These companies shape the present and future of music and effectively serve as gatekeepers toward equality for women. Those at the forefront of these companies decide who will be hired and who will be taken seriously.

A study conducted by Denise D. Bielby and William T. Bielby analyzed the hiring trends within the entertainment industry and stated that "usually, the 'best' hire matches the gender, race, and age of those already doing the job." Another study done by Forbes discovered that people hire those that are like themselves (Giles 2018). This naturally results in the institutionalization of male dominance – if all the top CEOs in the music industry are men who exhibit "in-group" favoritism, they will keep hiring men and perpetuating injustice towards women even though they are equally qualified. Furthermore, a study conducted by the Society for Personality and Social Psychology found that men feel more threatened (relative to women) by women in superior roles (relative to men in superior roles) and, as a result, engage in more forceful behaviors toward these women (Netchaeva 2015). Not only do men refrain from hiring women for high positions because they are predisposed to hiring people like themselves, but some also feel threatened by women having more powerful positions than they do, making them less likely to respect those women or work with them well.



## The Battle for Equality Has Only Just Begun

The substance abuse, power hunger, and social pressure that imbues the Music Industry fosters an environment in which the objectification and sexualization of women has become normalized. Men are comfortable at the top and see no incentive to invite more women – especially given that more women in the industry necessarily means fewer men. Generalizations and snide remarks can easily become the norm, and this leads to women becoming isolated and discriminated against in the workplace. The truth that women do belong is being suppressed by men who are afraid and unwilling to cede their power.

The current culture in the music industry has reduced women to one aspect of their identity, placing excessive emphasis on their sexuality and disregarding how multifaceted a woman truly is. Our identities are infinite and complex; they are fluid and constantly evolving through our experiences and the challenges we have had to overcome. As women, we have had to fight and prove ourselves at every turn. We have had to outperform the men in the same positions just to retain our jobs. It is undeniable that this is unfair, yet we have persevered and are stronger because of it. Women are speaking up for themselves more than ever before– we are demanding change, and it is shaking the foundations of the industry. The tables are starting to turn, but change can only happen if society learns to see all the identities of women equally.

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# *Problems and Solutions in Music Copyright Law*

Adam Karelin + Madi Ingrassia

## The Copyright Infringement Industry

Article I, Section 8 of the U.S. Constitution, “The Copyright Clause,” notes that the purpose of U.S. copyright law is “to promote the Progress of Science and useful Arts.” With the Copyright Act of 1976, the United States Congress pursued this goal by affording music artists a so-called bundle of rights for their “original works of authorship” (Copyright Act of 1976, 17 U.S.C. §102(a)). The importance of these protections for the arts is clear – if an individual were able to claim the right to financially exploit a work they did not own, anybody could arbitrarily claim ownership over the works of artists. This would siphon potential income and deny artists the ability to exclusively monetize, and thereby sustain, their creativity. But while the obvious case that an average Joe ought not to be able to claim he wrote Beyoncé’s “Single Ladies” sparks little controversy, the convoluted application of U.S. copyright law to music has spurred a multi-billion dollar industry, according to *Information Week*, that nourishes copyright infringement attorneys, infringement insurance companies, and forensic musicologists (Wang 2019). This convolution overextends copyright protection to frivolous cases where so-called ‘experts’ unravel “original works of authorship” (Copyright Act of 1976, 17 U.S.C. §102(a)).

From the micro to the macro, the three central issues in copyright infringement law are: 1) subjective misanalysis of compositions by forensic musicologists; 2) loose judicial application of the evidentiary standards by which courts admit such “expert testimony;” and 3) the vagueness of “substantial similarity” as the legal standard for copyright infringement (*Arnstein v. Porter*, 154 F.2d 464 (2d Cir. 1946)). In the aggregate, these issues enable armies of lawyers and musicologists to stifle artistic innovation by raising the specter of ruinous lawsuits against music creators. It is thus incumbent on musicologists, judges, and the entire music industry to reject the status quo, and overhaul their approach to copyright infringement.

## Forensic Musicology

The analyses carried out by forensic musicologists often warp analytical frameworks from ‘Western Classical Music’ to apply them to the pop and rock music at the center of most major copyright infringement lawsuits. The seminal case of *Pharrell Williams v. Bridgeport Music*, in which the court held that the song “Blurred Lines” infringed on Marvin Gaye’s “Got to Give It Up,” is a striking example of the extent to which poor musicological practices have influenced copyright litigation (*Williams v. Gaye*, 895 F.3d 1106 (9th Cir. 2018)). In this case, Bridgeport Music and the Marvin Gaye estate claimed that Pharrell Williams and Robin Thicke’s song, “Blurred Lines,” had “ripped off” the Marvin Gaye song. The judge in the case ultimately reviewed the analyses presented by the musicologists that each side of the case had hired and ruled in favor of the Gaye estate (*ibid*). In a symposium at the NYU School of Law in 2019, the two musicologists who testified in the “Blurred Lines” case presented their respective arguments (“Proving Similarity” 2020).

The defense (Williams and Thicke) hired Sandy Wilbur of Musiodata, while the plaintiff (Bridgeport Music) hired Judith Finell of Judith Finell Music Services. Both of these expert witnesses have built robust careers testifying as forensic musicologists. At the very least, the outcome of the “Blurred Lines” case indicates that there may be substantial flaws in this.

Instead of distorting analytical models from classical music to apply them to pop and rock, forensic musicologists should center their analyses on the relevant conventions of these genres. Fixating on elements like pitch, rhythm, and form, which are bound by common semantic constraints within pop and rock, will statistically produce songs that use those parameters similarly (“Will We Ever...” 2012). The elements of lyrics, timbre, instrumentation, and mixing—specific to recorded media—should receive far greater priority. Moreover, while the data analysis tools for objectively studying and quantifying music are still in their infancy, using a comparative analysis of copyright-infringement Artificial Intelligence (A.I.) algorithms may provide a more precise measurement for compositional infringement. In the “Blurred Lines” case, for example, an expert witness in musical data analysis could have employed twenty different copyright infringement algorithms in comparing the two works, and the average result could have supplemented the defense’s argument against infringement. While it is true that these algorithms themselves contain biases, their usefulness is becoming apparent in copyright disputes between recordings of the same composition (Perel and Elkin-Koren 2017). Professor Shine Tu’s paper (2021) from West Virginia University’s College of Law proposes that using A.I. algorithms trained by a huge number of representative listeners could set a new objective methodology for copyright disputes. While it is possible to introduce bias into the algorithm if the listeners are not truly representative of the larger population or if they are asked leading questions about similarities, a collaborative effort from the entire music industry could result in the construction of a single standard algorithm for resolving disputes. As Tu notes, “once a standard algorithm is created, legislators could set a specific amount of copying that would impart liability.” Asking a computer to decide the copyright disputes of a deeply human art form—music—might seem counterintuitive; however, in reality, a copyright infringement algorithm trained by a large number of humans would finally be able to do the very thing we’ve been asking juries to do: to determine if the true ‘average layperson’ finds two works to be ‘substantially similar.’ This would have a huge impact on the lives of artists, since rather than relying on guesswork, luck, and copyright infringement insurance, “musicians and producers could determine their risk of copyright infringement before going to market.”

## Evidentiary Standards for Expert Witnesses

The federal court system has exclusive jurisdiction over copyright infringement cases. Considering this, examining the Federal Rules of Evidence reveals both how forensic musicologists have pervaded copyright litigation, as well as the path to oust them. The experts who testify in these cases must be experts in the field. Otherwise, the legal proceedings create the conditions for musicologists to continue to stifle the creative lives of artists and their ability to lead financially solvent careers free from exorbitant legal fees. In setting the standards for expert witnesses to testify at trial, Rule 702 states that “A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if...” This sentence notably indicates that a potential expert witness must only satisfy any one of these categories; a Ph.D. in musicology is therefore not necessary.

Rule 702 provides four conditions for admission. Condition (a) states that “the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to

understand the evidence or to determine a fact in issue,” indicating that the function of an expert witness is to clarify and illuminate the objective facts contained within the evidence, not manipulate evidence through analytical obfuscation and reconstruction (28 U.S.C. 702(a)).

Condition (b) states that “the testimony is based on sufficient facts or data,” which should disqualify any testimony that does not directly involve the primary medium of the disputed artwork; ignoring or deemphasizing musical data from the primary medium would render the collected data “insufficient” (28 U.S.C. 702(b)). When considering the primary mediums of songs, there are only two categories available: compositions, i.e. the written music, and sound recordings. Prior to 1972, federal copyright law did not protect sound recordings, although common law and certain state statutes generally did; Congress’ 1971 amendment to copyright law officially provided federal copyright protection “for sound recordings fixed and first published with a statutory copyright notice on or after February 15, 1972,” and stated that “all sound recordings created after January 1, 1978 are automatically protected by copyright” (U.S. Copyright Office, 2021). Previously, this meant that for copyright litigation involving songs recorded prior to February 15, 1972, legal discourse was limited to only the sheet music copies of said songs. However, with the Music Modernization Act of 2018, those pre-1972 recordings are now protected by copyright (Music Modernization Act, 132 STAT. 3728, SEC. 202 (2018)). Thus, in disputes where the primary medium is sound recordings (i.e. virtually all major copyright disputes in Pop and Rock music), testimony based on anything other than or unrelated to sound recordings should be deemed inconsistent with condition (b) of Rule 702. In the “Blurred Lines” case, both musicologists analyzed a ‘compositional copyright’ that excluded the various compositional elements Marvin Gaye’s deposit copy could not and did not capture. And while it may not be possible to go back in time and reverse that decision, the MMA should, at the very least, dissuade anyone from applying the case as precedent. While the statute does not prevent the issue of forensic musicologists using conclusory methodologies to convince juries that one song infringes on another, it does prevent the kind of abstract sheet music discussion that took place at pre-2018 trials.

Condition (c) of Rule 702 says that “the testimony is the product of reliable principles and methods,” – which indicates that all four conditions must be satisfied in order for an expert witness to be permitted to testify at trial (28 U.S.C. 702(c)). As misapplying elements of one genre of music to another is a faulty method of analysis, any expert witness that applies analytical techniques and priorities from classical music to a copyright infringement dispute in a popular music idiom should therefore be precluded from testifying.

Condition (d) states that “the expert has reliably applied the principles and methods to the facts of the case,” meaning that extrapolations, reconstructions, and rearrangements of musical materials should not be considered reliable applications to facts, especially when those applications are to a secondary artistic medium; i.e., sheet music for a pop song (28 U.S.C. 702(d)).

The prevalence of forensic musicologists in copyright litigation indicates that these evidentiary standards are sufficiently vague to permit a gamut of ‘expert’ witnesses to testify at trial. But a stricter reading and application of the existing evidentiary rules could cleanse these disputes of methodological imprecision and ambiguity. The legal mechanism for excluding these inappropriately qualified expert witnesses exists; judges simply have to apply it. And after they do apply it, plaintiffs with illegitimate cases will lose and plaintiffs with legitimate cases will win on objective grounds that are in line with the legal standards of civil procedure. Moreover,



musicians will have the peace of mind to create music knowing that if someone sues them, their work will not be arbitrarily and inappropriately analyzed in court.

As a result of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, a case which itself was completely outside of the music industry, the “gatekeeping” of expert testimony falls to the trial judge, who must apply several standards in determining the eligibility of a potential expert witness (*Daubert v. Merrell Dow Pharmaceuticals, Inc.* 43 F.3d 1311 (9th Cir. 1995)). This includes expert witnesses in music copyright litigation. The very first of these standards predicates eligibility on “whether the expert’s technique or theory can be or has been tested—that is, whether the expert’s theory can be challenged in some objective sense, or whether it is instead simply a subjective, conclusory approach that cannot reasonably be assessed for reliability” (*ibid.*). This legal standard in federal court, in place well before the “Blurred Lines” case, should have precluded two musicologists who openly admitted to using different prioritizations of musical components and acknowledged that such prioritizations were their own. If a trial judge admits two expert witnesses who use two different prioritizations of the same elements, then clearly the approaches are “subjective” and “conclusory” and moreover, violate the rule that these methodologies must be subject to “the existence and maintenance of standards and controls.” Trial judges have the procedural mechanism as well as both a legal and moral responsibility to dismiss “expert” testimony that violates Rule 702 and the evidentiary standards from *Daubert*.

Throwing out expert testimony that is not only formed subjectively, but which directly applies analytical tools for analyzing music by Europeans from the eighteenth century to pop and rock music largely innovated by black Americans would be an important step in addressing structural racism in the music industry. The ramifications of the “Blurred Lines” extended far beyond Pharrell Williams. It has inspired an era of fear that is stifling the continued evolution and creation of music in America and perpetuates the ideology that the only music worthy of elevated academic study and application is European classical music.

## The Legal Standard for Copyright Infringement

Presently, the legal standard for proving copyright infringement requires a two-part test, as stipulated in *Arnstein v. Porter*, a case involving a copyright dispute between two songwriters (*Arnstein v. Porter*, 154 F.2d 464 (2d Cir. 1946)). This case established the framework upon which all copyright infringement litigation is based: in order to be successful, the infringer must both have had “access” to the original work and have produced a work that is “substantially similar” (*ibid.* at 468). In the event that there is no evidence of access, “the similarities must be so striking as to preclude the possibility that plaintiff and defendant independently arrived at the same result” (*ibid.*). The first part of the two-part test is often a non-issue for the music industry in the digital age, since most music can be accessed through the internet, and proving that there is no way an accused infringer never came across an original song can often be impossible. It is the second-part of the test that presents the real issue: the meaning of the qualifier “substantial” remains notoriously ambiguous. The jury ultimately determines the substantiality of similarity, and in the many cases where juries are not even permitted to hear the songs, being able to claim that this legal standard is objective becomes difficult. A jury that cannot read music

likely cannot objectively determine the substantiality of the similarity between two pieces of sheet music. But with improvements to the application of evidentiary standards for admitting expert witnesses and the methodologies of forensic musicologists, it might be possible to create a more consistent, objectively grounded standard for “substantial similarity.” The question here, however, is one of legal jurisprudence: whether that standard, even if evidence can rationally support it, should determine the basis for copyright infringement protection, and if artists should even be held to such a standard in the first place.

As noted previously, the Copyright Clause of the U.S. Constitution notes that the purpose of U.S. copyright law is “to promote the Progress of Science and useful Arts” (Copyright Act of 1976, 17 U.S.C. §102(a)). The notion of artistic discourse is important when evaluating the promotion of artistic progress. Art does not develop in a vacuum. The progress of art occurs through artists studying, examining, engaging with, and reacting to each other’s work. It is no coincidence that formal training for virtually every art form involves some kind of interface with that art form’s history and development. But engagement in a discourse means that “substantial similarity” is not only likely, but essential in dialectical works that wish to subtly comment on each other. The common aphorism that “all art is derivative” holds true and should not be seen as derogatory. Thus, in the pursuit of a legal standard that adheres to the constitutional mandate for promoting progress in the arts, “substantial similarity” could be abandoned in favor of the legal standard of “likelihood of confusion” from trademark law (Pachalian). This standard was determined by *Polaroid v. Polarad*, which was a case between two companies in the electronics field (*Polaroid v. Polarad*, 287 F.2d 492 (2nd Cir. 1961)). In its opinion, the court did write that although the Polaroid mark was a strong one, actual evidence of confusion was not sufficiently impressive.

The multi-variable “likelihood of confusion” test contains a list of several enumerated factors that the court acknowledged “does not exhaust the possibilities,” noting that “the court may have to take still other variables into account.” Some of the factors are quite subjective, such as the “strength of the plaintiff’s trademark.” This can be determined by how ‘novel’ a trademark is or how distinct it is from other marks in the same industry. But the “evidence of actual confusion” factor provides the opportunity for setting legal standards around scientific processes (*ibid*). Evidentiary guidelines for admitting surveys that prove the “likelihood of confusion” already exist, and while many of the difficulties surrounding trademark disputes involve proving confusion between products in consumer settings, any survey that demonstrated that participants could reliably differentiate between two songs would be able to bring a relatively methodologically objective piece of evidence to trial (“Trademarks...” 2010).

Certainly, there are procedural challenges to obtaining accurate surveys of average listener behavior with minimal bias. Surveying a statistically significant and representative sample requires a substantial investment of resources. But conducting surveys is not a radical idea; people conduct surveys all the time. Furthermore, making this investment will support the spirit of submitting defendants to a ‘jury of their peers.’ And if prospective plaintiffs know that the evidentiary standards ahead of them are strict, they will be less prone to file frivolous lawsuits. These survey approaches, challenging as they may be, would be palpably more precise than existing “forensic musicology,” and would pursue a more objective legal standard. While it is essential to protect “original works of authorship” by prosecuting works that are so similar to an original composition that they might siphon away potential market share from the initial author, overextending this protection to any work that meaningfully engages in artistic



discourse actively stifles artistic creativity and hampers, rather than promotes, the progress of the arts.

## Conclusion

The blurred chaos of copyright infringement law has spawned a multi-billion dollar, brutally litigious copyright infringement industry, in which frivolous lawsuits capitalize on legal precedents that overextend copyright protection to a semantically gaping definition of “substantial similarity,” aided and abetted by “forensic musicologists.” Authorship, money, and reputations go to the artist who has the most money to retain the most savvy attorneys and the most persuasive expert witnesses.

Consequently, three nested afflictions beset the music industry, each demanding increasingly seismic changes to the legal system. The first issue is that of forensic musicologists misapplying analytical priorities from notated classical music when analyzing popular music idioms. This can be resolved by reprioritizing analytical frameworks to reflect the primary medium in which the artist tangibly fixed the work—most often audio recording—and applying more data-driven approaches and A.I. algorithms to assess similarity, with considerations for the potential biases couched in those technologies. The second issue is that of how loosely trial judges apply the evidentiary standards from Rule 702 and Daubert, permitting expert witnesses whose methodologies are subjective and imprecise to testify in court. This can be resolved by applying a closer reading of existing evidentiary standards for expert witnesses to the music industry’s copyright infringement lawsuits. The third and broadest issue is that even if improvements in evidentiary methodology reduce the ambiguity surrounding “substantial similarity” as a legal standard, it still contradicts the Copyright Clause of the U.S. Constitution, as it precludes the promotion of the arts, and instead stifles artistic discourse. This can be resolved by applying the “likelihood of confusion test” from trademark law and developing survey methodologies that reliably demonstrate evidence of confusion, thus protecting the authors of original works without constraining dialectical musical culture. While such a complete overhaul of U.S. Copyright Law would resolve many of the smaller issues nested within the larger system, any of the aforementioned solutions would constitute an improvement to the status quo of infringement litigation, and promote a legally protected and creatively liberated music industry. Artists will be able to engage in musical discourse, innovate existing genres, and engage in the gloriously human activity of self-expression. They will be able to do so while making a living, and with the peace of mind that their earnings and reputation will not be taken from them by the very system that claims to promote their progress.

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# *“He Has Stripped Me of My Life’s Work”:*

## *Profit Over Personhood in the Music Industry*

Emma Taulli

## Introduction: The Erasure of Accessibility

Music is arguably the most influential and impactful form of expression that human beings are capable of. With its ability to marry tone and voice, encapsulate emotion, and manipulate sound, music is uniquely and universally affective in ways that transcend other forms of communication. It is a form of identity for individuals and cultures alike, yet modern societies reliant on profit for progress have created structures designed to maximize earnings, resulting in the detachment of art from its humanity.

With globalization and industrialization came the rise of capitalism, a system that requires a monetary value to be placed on many aspects of a person's life. This has forced people to live to work rather than work to live, necessitating a financial return from art, and music is no exception. By shoehorning art into industrial practices, expressive pieces must act as a currency with monetary value, inevitably creating not only competition amongst artists but hierarchies of ownership. To be a musician is not to be a creator but rather an employee in order to make any money, and the art form has become less accessible than ever due to the rising influence of large corporations on the financial patterns of the industry.

The artist has become almost an afterthought, estranged from their own work in favor of profit. They are not the product; the products they generate are, and despite the increased accessibility to create and publish one's music, the increase and saturation of the market makes artists replaceable. Unless you can make money for a label, you are not valuable, and if you can make money for a label, your humanity comes second to the works you provide. The more labels detach artists from their work, the more control they retain, and the more profit they can make without having to answer to the source of their currency – the artist themselves.

This leaves artists vulnerable to two elemental forms of contractual obligations: what they must do and what they must relinquish. In such a competitive environment, sometimes the most jeopardous costs seem opportune, as the promised benefit of significant financial return seems exclusive to signed artists (at least in popular rhetoric.) Yet many of these promises even beyond profit – financial support, visibility, connections, and even creative control – are fragile and at the mercy of fine print that makes forefronted, alluring advantages merely empty assurances.

So, how much control does an artist really have over their work? Labels promise autonomy, yet larger powers beyond those who directly work with the artist have influence that the artist may not know about until it is too late. The value of their music is not up to them, and they often have to give up their copyrights without knowing an outcome. The nature of predatory contracts comes from the dehumanization of artists as the conduit for maximizing the exchange value of their work – currency for a larger corporation to maximize profits. Contractual obligations, acquisitions, and post-term deals obligate artists to create and behave in meretricious ways conducive to the wishes of institutional figures – not of their own desires – to survive.

## Part I: The Creative as Currency

Being an artist is a comprehensive experience; beyond the personal aspects that drive a person to create music, the current industry requires one to dedicate themselves fully to their craft. Thus, artists must be able to make money via their work. If their copyrights are currency, their monetary value must be calculated in order to provide investors with

both a price tag for their investment and the possible financial outcome as a result of their acquisition. Three common practices go into determining the value of an artist's catalog: the market approach, income approach, and internal rate of return (IRR) approach ("Private Equity and The Music Industry" 2021).

The market approach looks at the net profits for both the label's and publisher's shares in relation to industrial averages. This system is especially useful if an artist's catalog brings in steady royalties on an annual basis or if it has consistent popularity for an extended history, proving to be a solid investment minimally influenced by changes in the market. However, other factors such as remaining time in a catalog's copyright term or the semantics of exclusivity versus non-exclusivity can affect the numerical outcomes (ibid).

Secondly, the income approach uses predictions of future royalties by looking at former trends in an artist's popularity and royalties. ANoteMusic, a company marrying artist and investor strategies in catalog sales, describes the income approach as based on the Discounted Cash Flow models used in other investment opportunities outside of the industry. This examines "an appropriate discount rate" that determines the current value of a body of work as a life cycle rather than a steadier royalty rate that the market approach relies on ("3 Common Ways..." 2020). Additionally, the model considers that "the popularity or royalties of a catalog decline at an exponentially changing rate," creating a need to adopt the "Regression Model, provided that we can also assume that the peak is reached during the first or first two years" (ibid). Regression models look at the statistical value of an asset as influenced by external factors; in this case, these factors include those excluded from the market approach – copyright terms and exclusivities.

Finally, the internal rate of return (IRR) considers how an investment will pay itself off over time. This rate is determined by similar factors as other approaches: royalty rates and popularity (Gallo 2016). It is comparable to a discounted cash flow model in its cost-projection analysis. The rate of return cannot calculate a numerical value for a catalog, but it provides a solid base to boost the confidence of interested parties that their investments will be lucrative (ibid).

As with most valuation models, these numbers are uncertain and subject to unexpected factors such as financial landscape changes, new legislation, and even global events such as a pandemic affecting the catalog's value beyond those incorporated into each calculation.

Additionally, sociocultural factors are entirely excluded from these estimates. Artist likability is more volatile in the age of social media, making the "popularity" factor of each equation extremely difficult to predict. None of these valuation tactics account for the personality of an artist, which in itself reduces a person into a statistic, nor does it allow the artist to exercise control over how their work is assessed. The exclusion of any humanity in these valuations is not only harmful to the artist in terms of the inevitable psychological and artistic impact that assigning a monetary value to their art without their voice has, but the value itself has become increasingly unstable – harder to ensure or predict.

## Part II: The Not-So-Silent Investor

### Private Equity and the Catalog Purchase

For companies within the modern capitalist system, part of their survival is the maximization of profit; any opportunity that comes to increase it, such as a buyout or investment, is attractive in the eyes of those who can afford it. The music industry is no



exception, and since the advent of record labels, buyouts, and acquisitions have become commonplace, leaving a few large conglomerates with different subsidiaries of smaller labels and publishing companies. Due to this, artists can get tied up in a single company's workings if that company obtains both recording and publishing royalties, which may be promised in a contract in an exchange for a larger cut of the profits for the artist.

Unfortunately, the behind-the-scenes work of these labels involves many non-creative parties that have minimal emotional stake in the work – specifically private equity (PE) firms and other institutions with investments in multiple industries beyond music. Looking at an artist's catalog as something to invest in reduces it to its monetary value as dictated by the aforementioned methods – often elusive to the public and even to the artists themselves – with little regard for the artist's best interests.

In "Private Equity: Capitalism's Misunderstood Entrepreneurs and Catalysts for Value Creation," business executive and writer David Haarmeyer (2008) details the dangers of private equity as ownership entities due to their lack of transparency and consolidated control. Private equity firms, he states, "succeed in large part because they solve the age-old corporate-governance problem: separation of ownership and control. Public companies tend to be owned by a large number of small, dispersed shareholders and managed or controlled by executive teams who often have little ownership". Buyout organizations are able to consolidate their ownership, thus their control, which are "important ingredients in solving the governance problem and creating wealth...holding managers accountable and getting them focused on creating value" (ibid). While the corporations that own various labels and publishing companies can range from private to public, catalogs are frequently sold to private entities, keeping details of these purchases away from public knowledge and often without the consent of the artist creating the product.

In recent years, countless music industry players have engaged in buyouts, partnerships, and various financial transactions with both private and public investment entities. In 2016, Primary Wave, a company managing a number of independent labels, announced a "partnership" with Blackrock, a public investment management firm. Their official press release quotes Patrick Riordan, then-managing director of Blackrock, who confirmed its role in the partnership as "investing in [Primary Wave's] proven strategy of acquiring, building and managing portfolios of royalty streams and publishing rights of iconic popular music," giving "our clients access to a unique alternative asset class." (Primary Wave Music... 2016) This "unique alternative asset class," while incredibly vague, seems to allude to increased attention and promotion of older catalogs, with Primary Wave CEO Larry Mestel lamenting the back burner of the "special markets division or catalog division." (Gensler 2023) This refers to labels and publishers failing to promote or engage with older artists' works in favor of new artists, which minimizes profits promised to the old artist but maximizes profits for a company with a hot, new star.

Other major industry players, however, have multiple private equity entities involved in investment and sales – both internally and externally. Round Hill Music, which primarily focuses on music publishing, has a private equity division dedicated to catalog acquisitions, finalizing their first fund in 2014 with a variety of private investors, including "two university endowments, two large hospital pension plans, a NYSE-listed insurance company, smaller endowments and foundations and several family offices" ("Round Hill Music Royalty Partners... 2014). Additionally, Forbes Private Capital Group, which is dedicated to raising

funds primarily for private equity entities, “acted as the exclusive placement agent” (ibid). Round Hill also has a publishing arm and multiple labels (conceived via internal establishments and buyouts), creating possible conflicts of interest and complicating contracts due to the allure of the all-inclusive status of managing both publishing and writer’s shares.<sup>1</sup>

David Haarmeyer’s paper distinguishes private equity as having a high-risk, high-reward environment driven by a greater personal interest in returns than a public company with a higher number of shareholders. Private equity, he states, is “ownership centered: putting personal capital at risk aligns the key parties’ interests. Private-equity partners put significant amounts of their personal wealth into the funds they manage, and the managers of companies taken private are generally required to put significant ‘skin’ into the game” (Haarmeyer 2008). Essentially, the interests of private equity partners will mold company movement in order to prevent the loss of that investment; public companies have a diverse range of investors, so they are less beholden to shareholder interests. While Primary Wave’s deal with Blackrock is noteworthy due to its initial \$300 million valuation and high-profile catalog acquisition, Round Hill’s establishment of its private equity arm set a modern precedent for private equity investments (Gensler 2023). The high stakes that come with investing raises the value of the “currency” of catalogs, and greater pressure is put on any copyright holder to sell – especially when facing a large amount of upfront capital in the streaming age where artists are earning fewer royalties (Mayfield 2021). Despite the possible advantages for heritage artists and global superstars who are already well compensated, this increased corporate influence harms those without that financial position. The company must profit, and if it has a small number of people holding a significant amount of their financial success in their hands, they can leverage that power and maybe even promise large sums of money for copyright holders to give up their assets in order to promote growth.

### Marketing the Catalog Sale

Investors and buyout corporations work with copyright owners, and as many artists have sold their copyrights to labels in lieu of a larger royalty cut, labels act as a proxy for these powerful parties with a strong hold over the sale of the artist’s work. In the age of streaming – of low royalties and paltry artist compensation – a label’s promise of larger royalties as specified in many contracts for a catalog buyout is extremely attractive. Even if an artist retains control over their copyrights, public and private equity investment firms continue to work hard to market catalog sales as a smart business decision for artists – an often-empty promise in a high-stakes situation.

City National Bank, a subsidiary of the Royal Bank of Canada, advises artists in a piece on their newsroom website to sell their masters with intentional exclusion of any alternative. The unknown author chooses to highlight the opinions of different executives at the company who weigh options for smaller and larger artists, promising a steadier income and greater visibility while failing to mention the long-term implications of an artist releasing control of their copyrights (“Private Equity Firms...” 2021). Instead of stating outright that a catalog sale is harmful to smaller artists, the piece advises them to wait: “Less established artists may fare better by earning royalty income for several more years and then looking to cash in on their catalogs’ success.” Referencing a Vice article quoting former label executive Guillermo Page, the piece notes that “even if selling a catalog seems lucrative, it may not be the right choice for every artist. For example, classic songs by Bob Dylan and Fleetwood Mac have been around long enough to prove they have staying power—and therefore, they have been able to command high prices.



However, younger artists whose catalogs have not been around long enough to prove they will be long-term money-makers cannot command the same price” (Schwartz 2021). This rhetoric is dangerous as it promotes catalog sales as an endgame goal for smaller artists, implying an inevitable sale of their masters as the ultimate moneymaker to aim towards.

In 2011, a new platform arose promising lucrative results to artists if they sold their royalties – Royalty Exchange. The company labels itself as an “open market” with a mission to “unlock the financial power of ideas through a transparent market that reduces the friction between ideas and their value” (“About Royalty Exchange”). In 2015, Royalty Exchange was sold to a number of private investors, and former director Sean Peace remained cryptic about the details of the acquisition (Ohnesorge 2015). The platform assures artists that they do not need to give up their copyrights in order to earn greater income: “most of the artists working with Royalty Exchange don’t sell their copyright. They just sell a passive interest in their royalty revenue stream, while keeping all control. You also will remain credited as the songwriter on the composition” (“Royalty Exchange FAQ”). Artists are additionally allowed to sell as much of their share as they desire. Beyond music, Royalty Exchange handles “book publishing, television, film, pharmacy, intellectual property and energy” assets, providing a large catalog for investors to choose from. Sales are conducted through auctions, with the seller setting the starting bid (ibid).

A major issue with Royalty Exchange is that its definition of “artist” has not always been exclusive to real people; rather, many “sellers” are not artists themselves but the entities under which they are signed. In 2017, songwriter Ryan Stotland used Royalty Exchange to invest \$420,000 into rapper King Lil G’s catalog, which was listed on the site by MIH – the artist’s label, publisher, and management company. The listing promised the term of “life of rights,” defined by Royalty Exchange as “the right to collect royalty income from the asset for the life of the seller’s interest in the copyright” (“King Lil G...” 2017). Unbeknownst to Stotland, however, King Lil G had recently sued MIH for “misappropriating his royalty revenue, sabotaging his catalog rights and failing to respond to his requests for accounting” four days after his catalog was listed on the platform (Hu 2018). Royalty Exchange’s policy regarding auction legitimacy allows the winning bidder three days for “listing inspection” before the asset is officially transferred to them (“King Lil G...” 2017).

Stotland and his royalty investment company Otimo Music sued Royalty Exchange along with MIH and Michael Conner – MIH’s Senior Vice President of A&R – in early 2018 for “breach of contract.” Royalty Exchange submitted a request to dismiss the case, but Stotland’s argument that the platform “did not perform the due diligence it was obligated to undertake and that it misrepresented its level of due diligence” kept the case open, with its first court date set for 2019 (Hu 2018).

The main factor in both lawsuits was MIH’s dubious documentation and history of tax evasion, as it created a plausible basis for MIH’s desperation to sell the catalog and Royalty Exchange’s negligence to recognize the company’s negative status as an LLC. King Lil G had no knowledge of MIH listing his catalog, and Royalty Exchange made no effort to consult the artist despite the ongoing lawsuit regarding copyright control and illegitimate sales. Additionally, MIH has no ability to provide an objective standard on how royalty payments were distributed nor any value assessment for a starting bid as King Lil G’s publisher, label, and management company, and Royalty Exchange failed to account for this conflict of interest despite its promise of “due diligence.” The assets that Stotland paid nearly half a million dollars for were listed

without the artist's knowledge or permission, with questionable ownership status, and monetarily-valued by a company rife with conflict of interest and financial troubles – all of which Royalty Exchange was aware of, and none of which was communicated to Stotland (ibid). On top of this, Royalty Exchange's terms placed total responsibility on Scotland to investigate the assets' legitimacy in the three-day window before their transfer despite the platform's promises of "due diligence" to vet listings for their legality and honor the artist's desires ("About Royalty Exchange"). Technically, Royalty Exchange cannot be held fully responsible for corrupt practices that rob artists of their control; the influence of larger entities such as MIH cannot be avoided and have clearly infiltrated smaller platforms as part of the opportunistic economy driving the music industry that results in power for the few at the expense of artistic autonomy.

This structure is not exclusive to the music industry and has led to the downfall of industries before. In the 2007-2008 financial crisis, "subprime lending" saw lending entities who gave loans to those who traditionally did not qualify for them ("The Great Recession" 2013). These entities were then purchased by larger companies without the borrower's consent to secure the financial success of those smaller entities. These mortgage-backed securities were then sold to investors, leading to a second tier of removal between the lender and the borrower, which breaks the original financial promise between the two and jeopardizes the borrower's ability to properly pay back their loan. Mortgage-backed securities also incentivized subprime lenders to dole out as many loans as possible, leading to more and more defaulted loans – an unsustainable business model that led to the financial crisis (ibid). While not perfectly comparable to catalog sales, as a musician must consent to the reassignment of their work to a third party, it provides relevant historical context. There are sincere similarities to the state of the music industry today, and the financial crisis provides a model for a dark path music may already be headed down. Student loans provide another example, as the qualification standards to take out these loans rely on shaky models that assess and predict a student's success, leading to loaning practices that prey on young people and set them up for long-term financial harm (Arnold 2019). Both examples of subprime lending by nature, take into account the risk of loaning to a person who is more likely to default on said loan, which gives lenders more room for predatory financial behavior.

This mirrors Royalty Exchange's business model – both the promises it makes to small artists and the behind-the-scenes nature of its sales. Despite promoting a new level of autonomy and the promise of financial success to artists in the short-term, the financial risks that Royalty Exchange takes in acquiring small artists' catalogs requires larger parties to invest in order to remain secure as a company, leading to not only a broken promise of autonomy between the artist and the company as a condition of the sale of their work but a shaky ground for their financial future that is not disclaimed in their original contract.

Selling any portion of one's rights to their work – from partial royalties to the full copyright – is marketed as profitable and lucrative for artists struggling to earn significant profits for their work. Yet the risks involved with any form of investment or sales lay almost entirely in the question of control; is the industry treating artists so poorly that they are willing to give up both artistic and financial autonomy over their work in order to continue their career? Will they make enough money to survive? False promises and complicated contracts are simplified by the alluring notion of both immediate and consistent profit. With big names invested in an artist's work, the expectation of further funding for later projects creates the illusion of greater autonomy for artists. This also allows an artist to create work without relying on advances or

short-term solutions within the smaller world of their record label that have long-term consequences.

Unfortunately, artists are being somewhat coerced into selling a variable amount of their ownership – not entirely by verbal persuasion, but primarily by the growing consolidation of corporations and the failure of streaming to provide a sustainable living wage for artists. And no matter how many platforms pop up promising a career path independent of contractual obligations to predatory entities, large companies far removed from the artist can find their way to anything they see as lucrative.

## Part III: Autonomy as a Luxury (that Few Artists Can Afford)

### Decreased Income in the Streaming Age

Streaming services are undeniably an integral aspect of the music industry's economic health today. While they have provided a sense of stability for some players, generating reliable and consistent revenue with steadier projection factors, artists have suffered a significant loss of royalties due to the many cuts in royalty payouts that come before they see any profits. Spotify's main company information page states its mission to "unlock the potential of human creativity – by giving a million creative artists to live off of their art and billions of fans the opportunity to enjoy and be inspired by it" ("About Spotify"). The Golden Age of Streaming claims its glory as the caretaker of smaller artists, graciously providing a platform for anyone to publish their work independent of contractual obligations to labels or publishers and be able to reach audiences in ways never seen before, but the costs of individual creation are rarely recouped by royalties alone.

Despite the massive gross revenue each work generates, artists see much bleaker payouts than those in physical sales. Streaming services such as Spotify and Apple Music pay on a streamshare basis ("Royalties"; "Apple Music Insights Royalty"). This involves calculating the percentage of streams a particular artist generates over a period of time and paying a portion of the net revenue to the rightsholder, who then may distribute that profit to artists (depending on the terms of their contract) ("Your Questions, Answered"). While not the determining figure for payouts, Apple Music and Spotify per-play rates can be calculated to be \$0.01 and \$0.004 respectively; this disparity is largely due to Spotify's larger user base and multi-tier subscription model (Sanchez 2018). The important distinction, however, is that rightsholders are being paid – not artists – which leaves companies responsible for payouts. Additionally, due to the streamshare model, certain companies may dominate the total streaming numbers, making it more difficult for small artists to break through. The New York Times's music industry writer Ben Sisario claims that the streaming payout model itself "has exacerbated the divide between superstars and everybody else," pointing out that while Spotify has over 7 million artists on the platform, "only about 13,000 of them generated \$50,000 or more in payments [in 2020]" (Ovide 2021.) On November 5, 2023, Music Business Worldwide published an article confirming changes to Spotify's payouts to artists, including a threshold of 1000 streams in order to receive royalties for that song (Ingham 2023, "Confirmed..."). While this seems to be an anti-fraud tactic, it will inevitably cut out smaller artists from receiving

proper compensation for their work.

Thus, anyone locked into a contract with an industry entity may be working for the same percentage of royalties as in their initial contract. Since the switch from primarily physical sales to primarily stream counts as the central moneymaker, those percentages are now worth less and less due to the paltry amounts paid out by streaming services. With royalty cuts from both the streaming service and their advertisers coming before any other company even sees profits, these numbers are minimal. Thus, the investment into and sales of catalogs become attractive options for an artist aiming to make a living wage in the streaming age.

In response to a X (formerly known as Twitter), user questioning the sale of Bob Dylan's entire catalog, artist David Crosby defended his choice, posting "I am selling mine also ...I can't work ...and streaming stole my record money ...I have a family and a mortgage and I have to take care of them so it's my only option...I'm sure the others feel the same" (Crosby 2020). Crosby is by no means a "small artist," and this statement is emblematic of how deeply affected artists are by this decrease in income. Moreover, it indicates just how attractive catalog sales and investments are to those looking to make money, and those who control the currency of copyrighted works see great value and promise in investment. However, this is another illusion of possible freedom, as these sales often do lead to decreased control for the artist.

However, Crosby is a rare case of choice wherein he claims to be able to dictate the sale; he at least had the option to agree to it. Taylor Swift also infamously pulled her entire catalog from streaming services due to their bleak royalties in 2014; however, she chose to do so in protest of streaming services' devaluation of songs (Tiffany 2017). This consent is sparse and more readily available to larger, established artists with leverage in negotiating their contracts. Legacy artists such as Crosby, who own their catalogs or who have made enough money to purchase their catalogs from entities they were formerly signed, are able to make a significant profit. With the streaming age producing disappointing profits for artists, those who can sell their catalogs see that as a viable option to generate income that modern music consumption does not provide. While advantageous for established musicians with extensive catalogs who will make a significant amount from a sale, it once again legitimizes and strengthens corporate influence on who owns a work and thus who profits from it.

Profit does not qualify as consent, though. In 2021, Neil Young sold 50% of his songwriting catalog to Hipgnosis Songs Fund, a British song management company with focus on protecting control over intellectual property rights of all aspects of a song in order to maximize its value as an asset ("About Hipgnosis") A few months later, investment management company Blackstone acquired an ownership stake in Hipgnosis, strengthening its purchasing and distribution power for catalog sales and licensing (Shaw and Baker 2021). On September 25, 2022, an advertisement for NBC's Sunday Night Football lineup featured a cover of Neil Young's "Old Man" performed by the artist Beck (Monroe 2022). Hours later, the song was released as a single. Neil Young posted a still of his 1988 music video for "This Note's For You" on Instagram shortly after, which features him holding a glass bottle with a label reading "Sponsored By Nobody" (ibid). This clear act of protest points to Young's inability to give consent for his song to be used in an advertisement, something Young reminded the public that he disagrees with. While the exact terms of the sale of "Old Man" and the other 50% of his catalog are not public, it seemingly barred Young from having any input over how his work is used from now until they change hands again. When announcing the sale, Merck Mercuriadis, the founder of Hipgnosis, stated publicly that not only would Young have a say in how his



music was used but anecdotally promised that it would not be used in an advertisement (Greene 2021). Even if Young made a significant amount from the sale, it seems the terms – both legal fine print and ethical agreements – were stacked against him, cutting him off from his own work and going back on public promises in favor of a quick buck from NBC.

This conversation, however, inherently excludes new and smaller artists who rarely have total ownership over their work due to contractual obligations. Catalog sales are not an option for many artists, and even taking smaller avenues to significant profit, such as licensing, is out of their control. For smaller artists, their voice rarely matters, sacrificed in favor of the financial support that industry entities have promised them to pursue their artistic goals.

### Contractual Limitations on the Artist's Autonomy

One of the major consequences of consolidation and investment within the music industry comes at the cost of freedom of choice for the artist – the marriage of labels and publishers with PE firms. In a 2009 paper, author Matthew Crain states that “two of the ‘big four’ music publishing groups, which together account for nearly 90% of recorded music sales in the U.S., are now controlled by private equity firms. The remaining two, Sony/BMG and Universal, are subsidiaries of larger publicly traded media conglomerates” (Crain 2009, 208-239). In the 15 years since then, the “big four” groups have become the “big three” – Sony Music Entertainment, Warner Music Group, and Universal Music Group – and billions of dollars have been invested into the industry by private equity firms. These large firms have voting power; as of May 2023, Warner Music Group’s largest minority shareholder was Fidelity Investments, with Sands Capital, Caledonia Private Investments, and Vanguard Group also holding significant stake in the company (Tencer 2023). Publishing companies also work with firms on large deals including direct asset purchases. In 2022, Sony Music Publishing and Domain Capital made a joint purchase of 50% of country songwriter Ashley Gorley’s catalog – including future works. The other 50% was purchased in 2018 by none other than Round Hill Music (Ingham 2022, “Sony Music...”). Since Crain’s paper was published, not only has horizontal integration decreased the number of major players in the field, but PE firms have become a key part of the financial framework that keeps those players going.

According to international law firm White & Case, the boom in streaming services has proven attractive to investors – particularly during the COVID-19 pandemic, where live touring income and its implications were eliminated as factors in a catalog’s value. In January of 2021, private equity firm KKR acquired the majority stake in Ryan Tedder’s catalog, gaining ownership of the publishing and recorded music rights. The following April, private equity firm Blackstone Group bought eOne Music from Hasbro for \$385 million. Even before the pandemic, private equity firms took streaming as a sign of a healthy investment; Warner Music Group and Providence Equity Partners established Tempo Music Investments in 2019, which has “a reported US\$1 billion in dry powder,” or money that has not been promised to a specific area, “at its disposal” (Gong 2021). With such a dominance over the industry and so much capital unbound to existing investments, private equity firms – directly or indirectly – control asset management. An industry entity’s need to please investors will inevitably win over an artist’s goals for their music – especially smaller artists with little-to-no leverage to renegotiate any contractual obligations or royalty distributions.

Why do these massive investments matter? In most cases, an entity does not owe an artist any voice in the decision to add a third party to their agreement. Said entity can often act in its own best interest without consulting the creator of the product because the artist either signed away

the rights to a voice in the decision or was made unaware of future exchanges in their initial, often long-term contract defining the relationship they have with these entities. An entity may not be obligated to consult the artist, so it often won't, as the desire for profit takes precedence over an artist's wishes; the risk of losing the investment opportunity due to an artist's objection is greater than the possibility of financial growth. This is deeply unethical, as the buying and selling of art without the consent of an artist still employed by the seller is an act of exploitation.

## Part IV: Institutionalized Dehumanization of Artists

By eliminating the voice of an artist, industry entities can more easily profit, since they have full control over the works the artist produces. This, however, comes at the very real cost of the artist's well-being, which can endanger the entity's future successes, but this risk is often eliminated by a contract's terms dictating both conduct and the length of the partnership. Thus artist exploitation is common, and the effects of a utilitarian mindset are coming further into the public eye with the rising popularity and opportunity for independent creation and distribution.

### Kesha v. Dr. Luke: A Case Study in Legal Dehumanization

One of the most famous examples of this in modern times is the *Kesha v. Dr. Luke* case, a lengthy and dehumanizing battle between an artist and the predatory behavior to which she was subjected (*Gottwald v. Sebert*, 2016 N.Y. Slip Op. 32815 (N.Y. Sup. Ct. 2016)). This case is particularly interesting and cruel as it involves alleged behavior that would be considered criminal independent of contractual obligations – rape, drugging, and abuse. However, these were overshadowed by numerous claims of defamation, and despite Kesha (Kesha Rose Sebert) arguably being more of a household name than Dr. Luke (Lukasz Gottwald) to the general public, the root of Gottwald's argument was the accusation that Kesha not only tarnished his reputation but did so through lies (*ibid*). His power in the industry goes far beyond his reputation; many people behind the scenes have financial stake in the case with the possible fallout involving great loss on their investments. With so much legal and social power, Gottwald exercised his industry leverage as well as his status as a man – historically excused of responsibility in sexual assault cases under the rhetoric of “false accusations” – to undermine Kesha's allegations by claiming himself a victim of her failing career and a desperate attempt to reclaim the spotlight (Bacher 2016).

Disappointingly, the repeated rulings by various judges in favor of Gottwald are indicative of the normalization of artist exploitation. In 2016, Kesha requested an injunction involving the premature breaking of her contract while another case between the two parties was still occurring. Judge Shirley Werner Kornreich denied the request with the justification that, as paraphrased in a Pitchfork overview of the case, “freeing Kesha from her contract before either side has argued its case would undercut the legal system, because a termination of the contract is the outcome Kesha is seeking in her claims” (Hogan 2020). Kornreich also stated that Kesha's claims of discrimination and emotional abuse “are not valid legal causes of action for scrapping a contract in New York” (*ibid*). Gottwald's power lies at the intersection of his social power – his gender – and the institutional logistics of the music industry that create such binding contracts that even criminal behavior cannot be used as justification for breaking them.

unambiguous message that they do not consider it “broke” (Williamson 2011).

Unfortunately, the consequences of a system that allegedly “works” in the eyes of those profiting from it have been severe – and even fatal. K-pop idols regularly joke about the intense effects of the intense industry in passing during interviews, unable to discuss it as fact as to not scare off the fanbase or have their fans speak poorly about the label they are signed to (Hyun-Sun 2019). Additionally, the frequency of idol suicides has risen in recent years, with causes attributed to the loneliness and pressure idols endure at the hands of their agencies as well as due to a lack of protection they provide for artists from their intense fanbases (Tracy 2020). In an interview with People Magazine, former member of the K-pop girl group f(x) Amber Liu reflected on her fellow member Sulli’s 2019 suicide, describing the gruelling nature of their f(x) days. Liu explained that “you’d literally wake up, go to a job, go back to sleep in the car and drive to the next job... We were grinding” and that it took “years for my body to rehabilitate.” Additionally, Sulli’s death has been attributed to a recent influx of online hate, with Liu stating that words can “physically hurt” (ibid). Another high-profile suicide occurred in 2017 – that of Kim Jong-hyun (known colloquially as Jonghyun), the lead singer of the group SHINee, which was one of the first K-Pop groups to rise to international fame. His parting words, along with anecdotes from friends and family, detail the severe depression he was experiencing, stating that he was “broken from the inside” (Wang 2017). In an interview with Esquire months before he died, Jonghyun stressed the importance of growth through the depressive feelings he had carried with him for much of his life: “Unless you want to get trapped within yourself and die, you have to grow no matter how much it hurts (Kijoo 2017). Loneliness seems to be the primary factor in the mental health struggles based on what idols have publicly discussed, and while exact causes cannot be assumed, predatory and lengthy contracts isolating idols at an extremely young age while experiencing instant global fame cannot be productive for idols’ social lives or mental stability. To sign a contract with a K-pop entity is to promise total devotion no matter the fallout, which cannot be predicted until it is experienced, meaning someone can never truly be prepared for it. These agencies take advantage of a trainee’s passion to exploit them to their fullest potential as conduits for currency.

In 2017, the South Korean Fair Trade Commission ordered the “big three” companies in the K-pop world – JYP, SM, and YG Entertainment – to end these “slave contracts,” requiring agencies to give 30-day grace periods to artists with whom they are terminating their contracts, outlawing exclusivity clauses (which had formerly included terms after the idol’s contract ended), and lowering repayment thresholds wherein agencies can only claim the investment amount in damages against artists who breach their contracts (Kil 2017). Although this is promising for artists’ rights, the increasing global attention and financial investment into the K-pop scene comes without greater transparency of the industry’s inner workings, meaning exploitation may continue to occur in favor of continuing the upward trajectory of success.

### #FreeBritney: A Case Study in Formalized Dehumanization

The music industry also has a way of protecting itself from legal action even with public knowledge of ongoing wrongdoing by those in charge. #FreeBritney, a movement started entirely by fans, was the result of active bystanders using their small public platform to spotlight existing information about Britney Spears’s conservatorship (Spanos 2021). Although legal records are available to the public, the occasional listener would likely be unaware of them – especially if the powerful individuals involved had the ability to keep them out of mainstream



media coverage. While these contain some information unbound by NDAs, the lack of awareness regarding the true severity of Spears's limited human rights and abuse of power by those overseeing her career and finances is a direct result of social protection and the leverage that legal obligations hold over even the most infamous artists. It took nearly thirteen years for Spears to be truly "free," and despite her extreme wealth and cultural currency, she was not allowed basic human rights because of legal and contractual rules that dictated how she could operate (ibid). The conservatorship's validity was not evaluated on an ethical basis within court proceedings, and Spears's silence – required by legal agreements – was a powerful example of how much private individuals can manipulate the legal system. Spears continued to work as if nothing were wrong because she had to, and her situation is quite possibly the most extreme example of how contracts and laws withhold control from artists in favor of profits simply because they can.

### “But They Signed the Contract!”

A weak argument can be made that artists know what they are getting into and giving up when they sign a contract. This is extremely problematic from two perspectives: the logistical and the humane. Artists are losing control over both their work and how they are allowed to fundamentally operate as human beings, exemplifying how industry companies see the value in the products they create (recordings) over their well-being. As long as there's a product at the end of the day, entities are happy, and no matter how poorly an artist is doing in terms of their health, they have a legal obligation to create these products. Rulings such as those in the Kesha v. Dr. Luke case are indicative of the value of contracts over human rights, with the institutional protection of “the label” taking precedent over rape, drugging, and assault. The exploitation of K-pop idols cannot even be properly measured due to such strict NDAs dictating secrecy, and information made public comes primarily from throwaway comments or in the aftermath of a suicide. Britney Spears was stripped of all autonomy in both her music and day-to-day life. This does not begin to touch on clauses in artists' contracts that prevent them from taking legal action against the entity they are signing with, as those have been banished to dark corners as privileged information away from public knowledge. In short, the extent to which artists are exploited by companies in favor of financial growth is immeasurable due to leverages of power by these entities within their contracts, but what is known to the public is grotesque and deeply disheartening.

Being a successful artist requires significant financial investment in many different areas. For an artist to independently perform the services that a label provides, including production, distribution, marketing, licensing, publishing, and even legal protection, is a difficult task. An affluent new artist may be able to do all of this with their own financial resources, but they will miss out on one of the most powerful factors in the industry: connections. Thus, signing a contract is often the most promising avenue towards making one's passion into a lucrative career despite the many setbacks to an individual's autonomy.

If a young artist is looking to have a career in music, signing a contract seems like the safest bet. Leaving success up to algorithms or friends-of-friends is risky, and with the legal promise of support and assistance from an entity breaking financial barriers of entry, a contract makes the benefits almost mandatory for any form of success. Consequently for artists, this allows entities to raise the stakes of the costs – overtly or covertly.

## Part V: Returning Control to the Artist

In essence, the primary restrictions on an artist's creative freedom stem from the effort to maximize the financial value of the products they have to offer. If one of the major goals of any company is to attract investors, they will draw up and curate contractual language to properly fit this need, often asking artists to sacrifice creative or financial control over their work for the promise of a more inclusive support system from said entity. This commonly takes the form of an all-encompassing 360 deal, which gives an entity the ability to take a percentage of an artist's income from multiple sources such as merchandise, licensing, publishing, streaming, endorsements, and anything else a contract outlines – especially total control over an artist's copyrights (Wiebe 2020). As streaming royalties are often too meager to provide a living wage for artists, any offer to be able to live even semi-comfortably may appear to have more benefits than costs in the immediate future, which companies understand and exploit, and artists may only realize how compromised their position is when it is too late for them to claim autonomy.

To begin to shift the ideology – and eventually common practices – of the music industry to allow artists to retain control over their work, the 360 deal is a solidly-foundational target, as it is one of the only consistent aspects of the industry that has remained a detrimental player to artistic autonomy for much of its modern history. Three steps may be taken to assure that artists are less easily exploited by larger powers within their initial contract: (1) eliminating any agreements where artists are forbidden from holding any stake in their copyrights; (2) normalizing and emphasizing a strong re-recording clause; and (3) adding an investment involvement clause in accordance with copyright terms. Essentially, the total elimination of the 360 deal would be a hugely positive step towards allowing artists creative, legal, and financial control over their work with minimal setbacks for industry entities, who would likely profit just as much (if not more) if they have a positive relationship built on collective creation and promotion with their artists. Additionally, restoring emotional investment in creative works does not pose a fatal risk for these companies; rather, instilling trust through legal protections of artistic control may further careers, allowing artists to truly do their best work.

### 1. Killing the 360 Deal: Requiring Artist Ownership from the Beginning

The mere existence of contractual obligations that prohibit artists from any ownership of their creative work is its own philosophical and moral dilemma. The most prominent instance of this is in 360 deals, wherein artists are, in vague contractual terminology, promised universal support for their work in exchange for what is essentially an entity's universal control of their copyrights. To force an artist into total dependence on a company to allow them to monetize their work (after royalty percentages) is predatory, and newly-signed artists often bear the brunt of these consequences. As these entities have leverage over the artist's ability to succeed, this power is marketed as positive for artistic growth rather than negative for artistic and individual liberties.

While this support can, in fact, lead to an artist's success, the long-term ramifications of giving up one's copyrights are brutal for artists of any size. Without control over how

royalties are distributed, any voice in how their copyrights are used, bought, or sold, or even how they can continue to create future art, careers can peter out due to a lack of passion, profit, or decreased investment by a company into their successes. With ownership of their copyrights, however, artists have leverage that they can use to not only get proper support but to make individual decisions over how their art is valued by both social and financial standards. Revoking creative and financial control from artists indicates a deep lack of trust for their judgement alongside the desire to make as much profit as possible, and while there may be validity in certain cases, no artist should be subject to vigorous restrictions on control over work they have created because these entities perceive such ownership as a threat.

Copyrights should remain property of the artist throughout their agreement with any and every applicable entity for both ethical and financial reasons. Ethically, taking away ownership of an artist's work is a legitimate jeopardization of their freedom. Financially, maintaining a relationship with an artist requires trust, and artists will be able to trust entities more if they know they can control their work. A positive relationship with an artist means that artist will create better work – thus greater profits. While splits and partial ownership can be negotiated if desired by either party, total ownership by a company valuing profit over people should not be allowed. To eliminate the possibility of entities having total ownership is, however, to eliminate the 360 deal, which deserves dismantling due to its predatory nature of false promises and long-term repercussions on an artist's emotional, financial, and creative well-being.

## 2. Killing the 360 Deal: Eradicating Re-Recording Limitations

Artists have re-recorded their work before the recent spike in public awareness but sparingly so due to strict clauses imposing a set period of time after their contract ends where the artist cannot re-record their masters (thus claim ownership over a near-identical work to that owned by the entity they were signed to.) One of the first prominent artists to re-record and re-release their work was The Everly Brothers in the 1960s, and while their re-records were so successful that they bankrupted their former label, the larger repercussions fell upon many artists that came after them with the introduction of re-recording restrictions into initial contracts for new label signings (Beaumont 2021). After a major dispute with her label that eventually ended in a lawsuit, singer-songwriter JoJo re-recorded her earlier work not only to reclaim ownership but to independently distribute it on streaming platforms – something her former label failed to negotiate and execute (Bell 2019). Both of these cases are directly related to restrictions imposed on each artist by their label and a lack of regard for the creator's wishes when their work was part of a financial transaction. Neither artist was involved in their respective deal; rather, they were manipulated via their contracts into giving in to executive decision-making without any input.

In 2012, Def Leppard released a few re-recordings of their hit songs independently on iTunes. Singer Joe Elliott stated that they were free to do so due to more liberal terms outlined in their contract: “they [Universal Music Group] can’t do anything with our music without our permission... We’re trying to wrestle back our career and ownership of these songs” (Forde 2018). This was all due to a dispute with Universal over the release of their catalog on streaming services, with the label decreasing royalties it paid back to the band due to the financially-meager nature of streaming. While this

relationship remained unstable for a few years, Def Leppard's catalog arrived on all streaming platforms in 2018 (ibid). Both JoJo and Def Leppard's re-recordings highlight the difficult relationship that artists have with streaming platforms – one primarily made negative due to contractual restrictions.

## I. Ethical and Financial Consequences Without a Re-Recording Clause

Perhaps the most infamous re-recording phenomenon in recent times is Taylor Swift's decision to re-record her first six studio albums after the sale of Big Machine, her former record label, to Scooter Braun's company Ithaca Holdings in 2019. The Carlyle Group, a major private equity group in music industry investments, provided financial support for the acquisition, keeping many of the purchase's details private (Grady 2019). Thus Braun, an individual who had historic disputes with Swift, owned all of her work including her image, handwriting, and the private, personal elements Swift is famous for including in her releases, with a private equity group sharing partial control (ibid). As Braun had created serious conflict within her career, public, and personal lives in the time leading up to the purchase, Swift's outcry was not that of financial concern but ethical and moral violations.

In a deeply personal Tumblr post (2019), Swift detailed the strife this caused her. Swift never truly had control over her work in the first place, as the deal she signed handed ownership of her masters during the term "in perpetuity," and when she left Big Machine, she was forced to leave her masters behind. Swift's concerns highlighted the corrupt practices behind industry executive decisions that dehumanized her as an artist, replacing her value as a creative with her value as, well, a Big Machine:

For years I asked, pleaded for a chance to own my work. Instead I was given an opportunity to sign back up to Big Machine Records and 'earn' one album back at a time, one for every new one I turned in. I walked away because I knew once I signed that contract, Scott Borchetta would sell the label, thereby selling me and my future. I had to make the excruciating choice to leave behind my past.

Significant public outcry clashed with significant public defense over the sale, with the largest debate surrounding the ethical considerations of a woman's life's work sold – without her knowledge – to the very person she explicitly asked for them not to be sold to. Eventually, Kelly Clarkson (2019) suggested on X (formerly known as Twitter) that Swift re-record her work, citing her significant fan support and stating she would buy the re-recordings just to "prove a point." As of March 2024, the post has 153,000 likes, and while there is no evidence that Clarkson's post directly sparked this idea, public support from prominent figures and fans alike has paid off tremendously, with Swift's latest release *1989 (Taylor's Version)* breaking both streaming and physical sales records (Sisario 2023).

If an artist is impactful enough to garner support for re-recordings, there is significant precedent that sets them up for success; loyal fans feel an ethical responsibility to properly support their favorite artists, engaging with work they believe



properly supports the artist without giving profits to those whom the artist has publicly condemned or has been otherwise “cancelled.” But for smaller artists trapped in long-term contracts, this option is rarely viable. Swift’s contract allowed her to re-record her work at some point, but if her original contract banned her ability to re-record in perpetuity, she too would be stuck in the impossible situation of continuous exploitation long after she has stepped away from the entity she was signed to. The scale, expenses, and risky payoff without a large financial and social support system (as well as the possible legal ramifications of doing so) complicates the decision in unique ways, with the “risk versus reward” factor highly dependent on whether or not profits can recoup the re-recording costs and a true repossession of the ownership that artist seeks.

## II. Mandatory Re-Recording Permissions Post-Term

In order to provide financial, legal, and emotional security for an artist and allow them to retain control over their work in the long-term, recording contracts must include a clause that provides freedom rather than restrictions on the artist’s ability to re-record – specifically eliminating any post-contractual limitations. Lengthy terms preventing re-recording during and after an artist’s contract not only limit the level of control that they have over their own music – both creatively and legally – but may incentivize artists to keep unreleased works private, never recording them under contract with the label due to a lack of trust. Without the threat of a label’s mandatory ownership on all of their work post-contract, an artist may be more willing to record and release work under their label knowing that they retain the right to do whatever they would like with the composition post-term. Not only does this assurance of control make signing the contract more appealing, but it promotes creative liberties for the artist.

This clause goes hand in hand with the eradication of the 360 deal. With mandatory ownership of their masters, mandatory re-recording rights for an artist post-term seems like a logical next step. This also eliminates the threat of “in perpetuity” terms, which may be a more difficult aspect of traditional contracts for companies to relinquish. Again, this is appealing to artists, who may be more likely to sign under these terms. From the cynical perspective of an entity’s interests, the probability that an artist would get popular enough to be able to fund and succeed in post-term re-recording is small, so there is minimal risk in adding such a clause. With control of their recordings from the beginning, artists are less likely to need to re-record their work post-term, allowing companies to continue receiving royalties from works created under the contractual period.

## 3. Killing the 360 Deal: Mandating Artist Input on Investments

Finally, the rise in investor control over artistic works has created both financial and psychological complications for the artist. Without control over their work, artists are at the mercy of the industry entities that dictate the present and future ownership, distribution, sales, and acquisitions of these recordings. Ideally, artists would have a say in who the company can (and cannot) contract with, as they hold an emotional investment in the work that outsiders or executives may not. The power of this aspect has been underestimated in the past, leading to difficult consequences and setbacks for all parties involved. Thus, a clause must be added to all artist contracts allowing them to



give strong input on future transactions involving their work – including those made post-term.

The sale of Swift's catalog is perhaps the most widely-covered instance of the detriment of erasing an artist's voice in post-term transactions of their work. She explained this in her own words on Tumblr in 2019:

When I left my masters in Scott's hands, I made peace with the fact that eventually he would sell them. Never in my worst nightmares did I imagine the buyer would be Scooter...He knew what he was doing; they both did. Controlling a woman who didn't want to be associated with them. In perpetuity. That means forever.

As Swift had no control over her first six studio albums, she was not given legal input regarding their ownership at any point in time – during or after her contract's term. Yet Swift gave significant personal input both during and after her time with Big Machine, stating that no matter what CEO Scott Borchetta did with her work, her only ask was that Scooter Braun was not the buyer. Her input had no legal weight, yet her alleged continuous pleas against what ended up occurring is indicative of how far industry entities will go to ignore an artist's voice; without legal control or direct relations with Big Machine post-term, Swift's input was the emotional cries of a woman scorned rather than a legitimate attempt to protect her work. Her voice never truly mattered.

Adding a clause ensuring that an artist must consent to sales and investments during and after their contract creates accountability for industry entities and assures the artist that their work is safe in the hands of those they create with. While in a perfect world, this clause would hold weight on its own, but in conjunction with re-recording and ownership allowances, artistic input would be a legal obligation for the industry entity and limit the loopholes it could seek out and jump through.

## Ethical Cost-Benefit Analysis of Dissolving the 360 Deal

While the 360 deal appears to be an attractive arrangement for companies, it seems to be causing more problems than advantages. With the increasing popularity of independent options for music creation, distribution, and ownership, signing with any entity has become a choice rather than a mandate for the release of music. Despite the allure of financial support, promotion, and industry connections, the long-term consequences that stem from the massive cost of autonomy have been brought further into light and become a key disincentive for artists from entering into a contract. This threatens companies who are now working in reverse; despite the increase in profits from streaming and massive catalog sales, the inhumanity of contractual obligations is now turning artists away in favor of independent means for releasing their works. Much of what labels and publishers do under a 360 deal can be done independently, with the short-term costs worth the long-term benefits. By getting rid of the 360 deal, a label or publisher not only becomes more attractive to an artist looking to further their work while retaining control, but it is more likely to sustain a positive relationship with that artist. This lowers the risks of public controversy and financial complications while promoting an environment where artists can create truly personal and impactful music.

Music is a reflection of the artist that creates it, and when that person is thriving, their music does too, leading to positive outcomes for both them and those who benefit financially from them (such as their label or publisher.) When an artist has legal ownership and a sense of control, they can fulfill their creative visions to the fullest extent, often creating some of their best work. And if they can do so under a contract with terms that mandate freedoms of legal ownership, post-term re-recording, and investment input, the eventual benefits for everyone make restrictions seem counterproductive to the success companies believe they can achieve with total control over an artist and their work.

## Conclusion: Restoring the Lost Art of Trust

The fundamental causes and effects of industry entities harnessing total control over an artist's work seem to stem in part, along with profit-driven motives, from a lack of trust on both sides of the situation. For these entities, the implication of the likes of a 360 deal and predatory contract terms is that artists cannot be trusted to make the right decisions in order to make the entity money; if artists had any control over their work, the entity could not do exactly what it wants or believes is the right way to maximize its profits, resulting in the consolidation of funds and legalized exploitation of the artist simply because it can. Companies have made it legal and normal to act upon an artist's distrust, reducing their value as a person to the financial benefits their work can bring those in power.

Logically, artists then have a deep distrust in these entities without any emotional investment in their work. Between the hidden costs of promised support, long contract terms, and obvious dehumanization of them as people, artists are essentially trapped into a system that does not trust them to separate their emotional attachments to their work in favor of greater profits from the label. Every restriction a contract places on an artist aims to prevent them from ever having a voice beyond that they use to create the currency that motivates companies to sign them. Music is deeply personal, and to have it stripped from your hands after the promise of being honored for its creative worth is to violate ethical terms of respect and commitment. Arguably, it also violates basic human rights: to privacy, to liberty, and to freedoms of speech and expression.

The Taylor Swift and Scooter Braun conflict is perhaps the most publicized example of entity-artist dehumanization in the modern music industry, and in Swift's original Tumblr post from 2019, she managed to capture the root of the issue eloquently and concisely:

Scooter [Braun] has stripped me of my life's work, that I wasn't given an opportunity to buy. Essentially, my musical legacy is about to lie in the hands of someone who tried to dismantle it... This is what happens when you sign a deal at fifteen to someone for whom the term 'loyalty' is clearly just a contractual concept. And when that man says 'Music has value', he means its value is beholden to men who had no part in creating it.

It does not matter that Braun or Borchetta have denied allegations of harassment and

claim that Swift was aware of the acquisition. The language laid out in her contract was manipulative, promising her a world of liberation without the execution to back it up. Any autonomy promised to Swift during the acquisition came at the expense of her long-term freedom, forcing her to stay in a contractual relationship that would, no matter what she did, include Braun's powerful voice in every decision about her music ("So, It's Time For Some Truth...." 2019) It was a betrayal of trust and an ethical failure beyond its logistical and financial consequences of the industry's definition of value.

So again, the question must be asked: how much control do artists really have over their work? Under the current system of predatory contracts, this can be measured in the fine print. With every promise of support comes the caveat of endowment, forcing artists to be dependent on entities and cater to their interests in order to survive. Even new opportunities such as independent creation, publishing, and distribution within the streaming age are thwarted by the power of major industry entities. Without legal control, artists cannot have creative control, undermining their work, devaluing their creativity, and erasing the unique identity that an artist has – both internally and externally understood.

In order to remedy this, the 360 deal must be abolished. Mandating that artists have legal control of their copyrights, post-term re-recording allowances, and legitimate input in any financial transaction regarding the future of their work is key to keeping the integrity and success of the industry alive. Determining an artist's value via numbers and equations to maximize corporate profits removes the person that art is fundamentally dependent on. The music industry seems to operate on the dehumanization of artists, which is successful in a capitalist society that prioritizes profit over personhood. The ethical consequences of this, however, destroy the very aspects that define the art of music – creativity, innovation, and the emotional impact on its listeners. To tarnish these is to lead the industry down an inevitable road to collapse, and despite the currency of the system being the song, the heart of the system is the artist, and nothing stays alive if a heart cannot beat to its own rhythm.

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## Endnotes

1. A song's performance royalties are split into the writer's and publisher's shares. The writer's share goes to the songwriter(s), and the publisher's share goes to the publisher. The artist may not fit into either of these categories, leaving compensation at the discretion of the company they're signed to.



# *The Music Industry Misunderstands TikTok*

Lanie Brice

The music industry has morphed constantly over the last fifty years. The age of physical music saw the shift from large vinyl disks to portable cassette tapes to shiny, slim CDs. And then the internet entered the chat, opening up a more compressed and less favorable flow of evolution over the last two decades. Piracy grabbed hold of the industry with the rise of Napster and Limewire, which offered music lovers the chance to download any song they could find on the respective platform for the small price of a potential virus (Brewster 2023). In 2003, Apple came along to make an attempt to stop the bleeding that started with Napster's 1999 rise and offered the chance to download music for ninety-nine cents per song (ibid). Alongside this upheaval in music, social media began to sputter to life with platforms like MySpace and LiveJournal. MySpace offered artists a small preview of the expanded reach the internet would give them, and helped launch careers of many artists including the Arctic Monkeys and Lily Allen (ibid). Even Taylor Swift laid the groundwork for her close bond with her fans on the platform. Today, it is TikTok that has brought a seismic reordering and a great deal of confusion to the music industry.

It is abundantly clear that the industry misunderstands both the opportunities and limitations that TikTok presents, and must re-evaluate its current success metrics if the industry wants to benefit from the platform. This becomes clear when examining five key points of friction between the music industry and TikTok. First, TikTok has a hyper-specific algorithm that makes the cultural ubiquity that launched superstars in the past an unattainable benchmark for today. Second, TikTok has demonstrated clear interest in entering the music industry and innovating within it through releasing unique artists tools, a distribution service, and its own streaming service. The music industry has never encountered a social media platform so interested in carving a niche in the music space and disrupting current systems. Third, TikTok cannot be the sole marketing plan for a song or album to succeed, and artists cannot be expected to run entire TikTok marketing campaigns on their own when they are signed to a label. While the algorithm is powerful and can create seemingly overnight successes, artists still need traditional marketing support to capitalize on any traction gained from TikTok. Fourth, prizing this quick virality puts an emphasis on small snippets of songs reminiscent of the short-lived era of Ringtone Rap and does not encourage creating music that will grow a long-term career. This goes hand in hand with the loss of artist development as new artists are expected to find meteoric success immediately or are at risk of getting dropped from their record deal. Finally, unattainable expectations on the part of labels and the unpredictable and constantly changing TikTok algorithm exacerbates the mental health crisis for artists and those working in the music industry.

## Background

YouTube was the first to merge music and video in the internet age as it bubbled onto the scene in 2005 (Ingham 2022). This early development foreshadowed the importance of creator-led video and the critical nature of the music industry's partnerships with tech giants. To formalize the use of these songs within the videos, YouTube determined that each time a song gets played (currently as found by their automated content ID system) income generated either from the ads played before or within the video or a portion of

the subscriber's YouTube premium fee would go back to the music rights holder as payment for the usage (ibid). This created a symbiotic partnership between the video platform and the major labels. As Tim Ingham, founder of Music Business Worldwide, notes, "... the more money YouTube makes, the more money the music industry makes, and the growth of that money is proportionate" (2022). By creating a feeling of collaboration and mutual gain, YouTube became a platform that offered both increased exposure through label produced music videos as well as what amounted to mini-sync placements in their creators' vlogs. In addition to the free marketing push, YouTube offered another revenue source through their payments to music copyright holders.

Unfortunately, though, YouTube began as a platform as rife with piracy as the rest of the internet in the early 2000s and has maintained that status, to a lesser degree, to this day. This set the tone for how social media and online platforms would interface with the music industry. Early social media companies like YouTube and Facebook originally argued that they did not have a responsibility to mitigate piracy or even fairly compensate music rights holders because these apps were simply "marketing tools,"<sup>1</sup> which is an argument TikTok was all too eager to pick up in the decades afterwards (Solon, et al. 2022). The resentment the music industry harbors towards TikTok began with the feeling that the original Silicon Valley success stories "got rich off [the music industry's] work," and that pattern has carried into the present dynamic (ibid).

Pandora took an early stab at putting a slightly more customizable version of the radio in your pocket, but Spotify's launch in 2008 institutionalized the principles of the piracy movement and formalized and calcified them into the current model of the music industry (Ingham 2022). Streams are worth fractions of pennies, and the internet has not proven nearly as lucrative for recording artists as the physical age. The music industry has consistently struggled to efficiently utilize and monetize social media. Tim Ingham, founder of the publication Music Business Worldwide, likens the current shift in the music industry to watching a movie we have all seen before, and that truth is terrifying the major labels – "In short, that movie is about a tech or media giant – you guessed it – building a business off the backs of artists' without paying those artists what they deserve" (ibid). Despite offering a precious pop culture commodity that many of these platforms either depend on or are enhanced by, the music industry continues to fumble key aspects of fully monetizing their precious resources.

A reframing has taken place, as business and communications professor Andi Coulter observes: "In essence, the music industry has gone from a product to an experience economy, while marketing has gone from a transaction to an attention economy" (2022). Over the last decade, fans' financial interactions with the industry have moved away from purchasing products like CDs and towards investing in experiences, whether that be a live show or a documentary film or an in-person merch pop-up. Similarly, marketers no longer need audiences to invest in a single product; rather, they need these audiences to stay attentive and engaged within a fan community for a sustained period of time for their work to pay off. To illustrate this, 2010's bestselling album of the year, *Progress* by Take That, amassed 1.84 million copies sold (Jones 2022). Ten years later, Lewis Capaldi's *Divinely Uninspired to a Hellish Extent* took the same honor with just 456,000 copies (ibid). Unless Taylor Swift has an album release in any given year, the dip in sales is

staggering, and that is comparing today to a statistic as recent as 2010 when the internet, Spotify, and a number of piracy options were also readily available.

This signals just how forceful these tech upstarts have been at fundamentally shifting music culture in just ten years. Journalist Rhian Jones (2022) argues in *The Guardian* that, in light of this, artists are mismanaging their time putting so much into albums when “... success and revenue span a multitude of areas (including playing live, merchandise sales, writing songs for others, branding deals and licensing music to film and TV).” In essence, the very foundation the music industry is built upon is quickly becoming fiscally irrelevant; although the album still might have strong artistic merit. If the album loses significance, there will be negative implications for moneymaking endeavors that albums typically launch like tours, merch collections, and vinyl variants (ibid). TikTok has rapidly sped up the existing predictions about albums losing their place in the industry to a steady drip of singles, and now clips, that never allow the artist to drop out of the public consciousness.

The Chinese company ByteDance first created TikTok in 2016, an iteration of the Chinese app Douyin (Coulter 2022). Shortly after, ByteDance merged the social media app with Musical.ly when it acquired the platform in 2017, which allowed it to maintain TikTok’s new branding while capturing Musical.ly’s existing international audience (ibid). The merger brought TikTok across the hundred million user mark globally, but it took the start of the pandemic to capture the same number of users within the United States and break TikTok’s reputation as a children’s app. By 2022, the app reached a billion global active users and captured the key music industry demographic with sixty percent of TikTok users being under the age of thirty (ibid).

TikTok is unique in that, growing from Musical.ly, a lip-synching app, sound has always been at the core of its platform. This first manifested in the form of fifteen second music clips that could be danced to, lip-synched with, or memeified. As time has gone on, TikTok’s content has broadened, becoming a siloed host of comedy skits, bad advice from dubious therapists, slime videos, butchered scenes from movies, political ads, bits of gossip, and even quick educational videos (Bhandari, Bimo 2022). With an increase in creators and types of content, TikTok was able to broaden its user base beyond the kids who first made lip-synch videos to capture young adults as well. Still, thirty-two and a half percent of all users are under the age of twenty, which shows their core audience remains children and teens (Coulter 2022). It is clear that in the last few years TikTok has become a hub for reaching media’s coveted eighteen to twenty-four-year-old target demographic.

## TikTok’s Algorithm

The first point of misunderstanding between TikTok and the music industry comes in the clash between the expectations thrust upon the TikTok algorithm against the reality of what it can actually do. The main allure of TikTok for both users and creators is its opaque algorithm that makes accounts with under one hundred followers go viral overnight and produces an eerily accurate For You page. The For You page is TikTok’s homepage offering a highly algorithmically tailored endless stream of videos for the user to scroll through. Instead of relying on who the user chooses to follow, like every other

notable social platform, what users see is entirely determined by “... interact[ing] with the For You algorithm for a certain period of time in order for it to ‘get to know’ their personalities and interests well enough to present them with accurate and entertaining content” (Bhandari, Bimo 2022). Because users often cite the algorithm as what drew them to the app or keeps them there, TikTok has managed to disincentivize following creators, which was once a cornerstone of determining success online. While algorithms are employed across nearly all social media platforms in 2024, TikTok is unique in using the algorithm as the sole driver of the “social” experience implied through the moniker “social media” because it determines which videos users are served, and watching these videos is the main way to use the app (ibid).

This tailored homepage for each user means that there are “deep subcultures” created in the platform, and has even warped the idea of virality because “[o]ften a viral trend will vary considerably from one user to another” (Coulter 2022). Because these niches are a feature of the app, they will only grow deeper with time – “[a]s more users onboard, and the niche algorithm deepens, the narrower content will be per individual user. This benefits small music content creators or those with genre-specific fans” (ibid). While users are brought into niche worlds they might never have discovered without the app, there will also be large swaths of its online world they will never see (Bhandari, Bimo 2022). This fragmented algorithm is a frequent point of misunderstanding in the music industry, and while the hyper-specificity of the algorithm will benefit certain stakeholders, as Coulter recognizes, the algorithm shakes the industry’s conception of success as ubiquity and sky-high follower counts. TikTok will stretch the industry to either re-conceptualize its success metrics or crumble in its severe misunderstanding.

That might mean adapting to the end of the superstar model where labels can no longer rely on a handful of meteorically successful acts to subsidize the rest of their roster (Leight 2022). Similar to the sharp decline of album sales from 2010 to 2020, there has also been a significant drop in new artists able to crack the top ten of the Billboard Hot 100 chart (ibid). While 2001 to 2004 consistently saw over twenty new artists breaking these top ranks each year, the number of new artists breaking into the top ten on the Billboard Hot 100 has fallen in the years since. There were fifteen new artists in 2019 to break into the top ten, and the number reached an all-time low for the 2000s in 2021 with only thirteen new artists crossing the threshold (ibid). Because the internet, and especially TikTok, has made it easier than ever to publish your music to a theoretically infinite audience, the sheer number of songs available makes it difficult for anything to be meaningfully discovered and heard by a wide audience.

The influence of TikTok and the “... attention recession meet[ing] the fragmentation of listenership” means that “universal cultural moments will lessen” which provides another layer of complication in crafting the next superstar (Coulter 2022). Traditional label marketing partners like radio hosts and late-night TV have less impact and a narrower reach as entertainment options have grown as infinite as available music, and Spotify is even losing its influence over people’s listening habits on their major playlists (Leight 2022). Like a billboard in Time Square has simply become a background for a cute social media post, these traditional appearances end up being consumed in greatest numbers once they hit the online avenues, like TikTok, that will funnel them straight to already interested fans (Rys 2022). As both music manager Nick Stern and an unnamed



major label executive vented in a recent *Billboard* article, the ingredients to successfully breaking an artist have grown ten times as long and produce less reliable tangible results than ever (Leight 2022). It is Jonathan Daniel from Crush Management, though, that illuminates the music industry's central problem: while the music industry is still in search of the new iteration of the ubiquitous superstar of the 2010s, there is no "true mainstream" to launch an artist into, even if the industry could crack the code on how to do that again (ibid).

At the moment, despite placing an undue amount of significance on TikTok, the music industry truly struggles to understand the place the app holds in culture and how it functions to the detriment of themselves, their artists, and wider music communities. TikTok is an incredible tool, but it is simply a singular tool in a massive toolbox: it has particular applications as well as clear limitations. It is great at building a "sonic memory" to lay the groundwork for smash hits using snippets as "signposts" that stay with the listener even off platform (Coulter 2022). TikTok is also a fascinating way to encourage a new depth of engagement from fans adapting to its tendency for co-creation and its emphasis on user generated content. TikTok launched careers and songs up the charts, like "Numb Little Bug" by Em Beihold, but it is inherently unpredictable when it comes to marketing and comes with an audience fatigued by star power and an algorithm indifferent to it (ibid). The platform is an ecosystem unlike anything else we conceive of as "social media" and also serves a distinctly different function from streaming services; but presently, the music industry is trying to adapt to TikTok using the same playbook as Instagram or Spotify, which only breeds frustration.

## TikTok's Expansion Into Music

The next point of contention is that TikTok is clearly invested in growing within the music space despite being primarily associated with the social media realm. ByteDance created the music streaming app Resso, which launched in a select few countries like Brazil and Indonesia in 2020 (Chung 2023). Resso garnered a reputation for trying to pay lower licensing fees for labels' catalogues than other streaming platforms, and their tactics eventually led Sony to pull its catalog off the short-lived platform (Solon, et al. 2022). The effort was shuttered and replaced with the more obviously branded TikTok Music service (Chung 2023).

TikTok Music has expanded its reach to Mexico, Australia, and Singapore, received a patent in the US, and seems to be preparing for a launch in the United States and Europe (ibid). TikTok Music is a subscription only platform accessed through the user's existing TikTok account, primed to capture TikTok's young user base by offering a "truly all-inclusive entertainment ecosystem" (ibid). TikTok Music's seamless integration with TikTok could pose a major threat to a streaming landscape that has long ago gone stale with little meaningful evolution within streaming platforms since they first launched. TikTok's latest rollout across the new territories, though, was notably missing the Universal Music catalog, which TikTok had managed to secure for the Brazil and Indonesia pilot, but not for the additional territories (Stassen 2023).

UMG's move is not entirely surprising given that Lucian Grainge recently stated, "We can't settle for a deal with any platform that doesn't fairly recognize [UMG's music

catalog's] value," during Universal Music Group's quarter two earnings call in July of 2023 when discussing the ongoing negotiations with TikTok (Tencer 2023). Grainge's caution in these negotiations is warranted as past major music media upstarts like MTV gained power too quickly for labels to have optimal negotiating power (Ingham 2022). Grainge's intentions were further highlighted by UMG pulling its entire catalog off of TikTok when its existing licensing deal expired after January 31, 2024 (Blair, Ulaby 2024). The contentious path to Universal making an all-inclusive licensing deal with ByteDance for all of its products, like WMG has, poses smaller roadblocks for launching these individual products like TikTok Music as each side looks for bargaining power.

TikTok Music is not the only new music-centered product coming to the TikTok family line-up as ByteDance is in the beta testing phase of Ripple AI, for music creation, and Elevate, which is a platform to aid artist visibility on TikTok (Tencer 2023). TikTok's interest in developing AI tools cleaved a deeper divide in the UMG negotiations as the January 30, 2024 open letter cited TikTok "developing tools to enable, promote and encourage AI music creation on the platform itself" as a contributing factor to not reaching a deal (Murtagh-Hopkins 2024). TikTok's in-house distribution platform SoundOn and the StemDrop tool that allows for virtual creator collaboration have already launched showing a clear investment in music moving forward (TikTok 2022).

SoundOn poses a particularly interesting question for the music industry as it is in competition with other major distribution platforms that also get music to social media and streaming companies (Tencer 2023). Thus far, it seems to be a major label feeder where artists use the advantages of working with TikTok's native distributor to get their songs in front of traditional industry gatekeepers who sign talent off the platform. TikTok's end of year report touts Venbee and Nicky Youre signing to Columbia Records after releasing their tracks through SoundOn (TikTok 2022). While this endeavor could put it at odds with the major labels, it seems that TikTok is trying to angle for something closer to an alliance for now. If SoundOn succeeds, it will signal TikTok's ability to grow beyond its original mandate more successfully than musical tech endeavors in the past, as Spotify's similar program for direct upload artist distribution closed in less than a year (Solon, et al. 2022).<sup>2</sup>

The music industry does have a history of supporting music adjacent tech businesses going further into the music space. Labels encouraged YouTube to launch YouTube Music, imagining that if the platform could convert even a small fraction of its billions of audience members into paying subscribers it would be a sure success; however, despite the industry enthusiasm, YouTube Music remains behind Spotify, Amazon, and Apple (ibid). Only time will tell if TikTok's attempt will gain more traction. Further venturing into music, however, means that it is of even greater importance that TikTok maintain an amicable relationship with the major labels, something that has become increasingly fractious over time.

Some might be surprised to learn that labels and artists do not make more money for the viral TikTok hits that labels place so much emphasis on creating – at least not directly from TikTok. In the labels' original deals with TikTok, they were paid a blanket fee to license their catalogues independent of usage (Ingham 2022). These deals were put in place before TikTok solidified its advertising model, and licensed the music to TikTok

for an undisclosed but low sum without any potential for royalties. It is abundantly clear that TikTok is under-contributing in relation to how much it is making off the music with TikTok contributing 179 million dollars in 2021 to the music industry from their overall four billion dollars of revenue that year, equating to only 0.04% of its total revenue (ibid). This looks even worse compared to the overall 1.38 billion dollars that “emerging platforms,” which include social media apps, paid into the music industry in that same year (ibid).

These statistics are particularly bleak when paired with the fact that TikTok is cannibalizing audiences from platforms like YouTube, who offer the industry more favorable terms (Ingham 2022). Moreover, it seems the situation has only gotten worse as UMG’s open letter states that, “TikTok attempted to bully us into accepting a deal worth less than the previous deal, far less than fair market value and not reflective of their exponential growth” (Murtagh-Hopkins 2024). UMG also shared that TikTok brings in “only about 1% of our total revenue” as the label justified removing their music from the platform (ibid).

While this agreement might have made sense while TikTok was ironing out its advertising business, the current arrangement with both major and independent labels is fraying (Solon, et al. 2022). Since the importance of music to TikTok has become increasingly obvious, major labels are making moves to obtain royalties from TikTok based on usage by creators on the platform, but TikTok argues that this would be unfair because it is not a listening platform but simply an avenue for exposure (Tencer 2023). To try to prove that music is inessential to their app, TikTok blocked some Australian users from utilizing major label music in their videos in early 2023 and even muted it in their existing videos. The experiment was an embarrassing failure, however, because user engagement noticeably fell in correlation with the move (ibid). TikTok’s Australian experiment also fueled UMG’s decision to remove its music from the platform, per its open letter, seeing these actions as an effort to “intimidate” the company during negotiations by hurting rising artists (2024).

TikTok has previously admitted in its end of year report that, “[m]usic is at the heart of the TikTok experience. It’s the glue that connects TikTok’s disparate threads...” (TikTok 2021). This reveals the company’s awareness of the importance of music and highlights how it simply does not want to pay for the value the music creates. Labels also do not receive data from TikTok about the usage of their songs, which will likely change as the format of payments evolves in deals that are presently being negotiated (Tencer 2023). Presently, it is up to the labels to decide how to split up their blanket checks from TikTok to the artists on their roster as the labels do not have data to make objective decisions (Ingham 2022). Unfortunately, while labels will likely gain improved insight, it is unlikely that artists will have more access to “how their songs are being used, how much money they are generating, and how their labels are allocating that money...” which shows the transparency issue runs deeper than just between TikTok and the major labels (Tencer 2023).

In July 2023, Warner Music was able to secure an all-encompassing licensing deal with TikTok that licenses its catalog to TikTok and TikTok Music alongside other Byte Dance products like CapCut and its commercial licensing library that shows that data sharing and licensing deals are possible (Stassen 2023). However, the recent breakdown

of negotiations with UMG demonstrates that TikTok is still not open to a completely fair or equitable compensation structure and is willing to lose, indefinitely, music from some of music's biggest stars like Taylor Swift and Olivia Rodrigo who record with UMG, as well as Harry Styles and SZA who record under different labels but are signed as songwriters to Universal Music Publishing Group (Robinson 2024). While the original licensing deals expired long ago, it seems the series of band-aid-style short term extensions applied to buy more negotiating time have finally deteriorated. With the removal of UMG's massive catalog and muting of old videos that used these songs, the label has increased their leverage as TikTok will struggle to retain its dominance in the social media world unless it can get people's favorite songs back online. This is the first real pushback TikTok has been forced to weather and marks a serious inflection point for the young platform.

## TikTok and Marketing

TikTok's strength in capturing new audiences has grown into a cheap substitute for traditional marketing, but solely relying on TikTok for marketing is untenable long-term. Given TikTok's unique algorithm and skew towards the DIY, labels have leaned on the app as an excuse to push marketing and promotional efforts squarely onto the artists, upending what is expected from a major label deal. By claiming that virality only comes from "organic" campaigns from artists, labels are able to cut marketing budgets as "musicians repla[ce] various jobs that were once part of a marketing team or record label (Coulter 2022). Now, in order to even be considered for marketing or financial support from a label, an artist needs to find traction for the music themselves (Parys 2022).

Even beyond marketing, labels are now reliant on teasing small clips on TikTok to make basic decisions like which songs to give single priority (Robinson 2022). Nina Webb, Atlantic Record's Head of Marketing, told NPR, "I mean, there's a million examples of a lot of very expensive campaigns that had no return. Like, we can't do it. It has to come from fans or the artist because you're talking to Gen Z. They smell everything out" (Verkant 2022). This outlook, paired with comments from the Senior Vice President of Digital Strategy and Business Development at Universal, Kristen Bender, regarding how TikTok is "a critical part of artist storytelling" demonstrates that labels fail to understand TikTok's algorithm and inner workings (Coulter 2022). By viewing success on the platform as artist driven rather than primarily stoked by user-generated content responding to sounds or clips, it is much easier for labels to pass off the marketing responsibility (*ibid*). Labels expect artists to generate consistent video content to support their music while, simultaneously, the labels refuse to provide assistance in this endeavor in the name of "creating organic content."

In fact, there are a number of useful ways that labels could support marketing efforts, even within the new landscape of TikTok. There have been calls from within the industry to have digital teams within labels become more "tailored" in their approach to working with each artist on the roster (MMF 2022). Labels can also facilitate focus groups with influencers and creators to gain advanced insight for which types of content, or even which song, will work best on TikTok before it is introduced to the platform (Whateley 2023). Miley Cyrus was a pioneer of this tactic as her team worked with



TikTok to find fifteen creators to host on a private Zoom call in 2020 ahead of her *Plastic Hearts* roll out (ibid). There are also many new platforms like Pearpop and Preffy that allow labels to invest in engaging users to complete video challenges to seed an artist's TikTok campaign in a way that still feels organic, and TikTok is testing its own version of the product. Creating alternate reality filters for users to interact with offers another label driven way to bring interest to a new release. The tried-and-true Instagram strategy of paying influencers to use songs in their content is, however, more tenuous on TikTok (ibid).

There has been a trend towards using micro influencers who only charge a few hundred dollars per post because of their relatively smaller audience of under 100,000 followers to seed a song. There is also an interesting emerging effort to reach out to “general-interest accounts” that make videos focused on things like making slime, to feature particular songs in the background of the videos that can easily get millions of views and outpace traditional influencers to expose wider audiences to the song (Whateley 2023). Without substantial marketing dollars to boost artists' posts in the algorithm, artist-created videos are unlikely to reach a meaningfully sized audience (Jones 2022). Regardless of the particular tactics, there is a clear call for labels to provide more support to artists in planning and creating the content, and that the digital marketing teams at record labels need to grow instead of contract to keep up with the times (MMF 2022).

“Sometimes I wish the electrical grid would go down so I wouldn't have to do it anymore. But we're in a maze, and I don't know how to get out,” Sara Quinn, of the indie pop duo Tegan and Sara, told the Guardian when asked her feelings on TikTok (Jones 2022). The adverse feelings are a byproduct of TikTok moving from a place for unsigned artists to be discovered to, “... the norm for even household names hoping to break their next hit before committing to a release date on streaming platforms like Spotify and Apple Music” (Robinson 2022). Labels falsely view TikTok as a new kind of insurance policy, allowing them to run small clips of songs before investing in a full release, while ignoring that the TikTok algorithm is known to be unreliable and finicky. Christian Johnson of Hipgnosis told Billboard about the songs he watched get scrapped because the TikTok algorithm failed to make them mega-hits in “48 hours” (ibid).

Contending with the algorithm appears even more bleak when one considers that TikTok's internal music team is also using internal “promo levers” to influence the success of songs on the platform, including adding certain songs to highlighted playlists when creators are choosing a song to pair with their video and using certain keywords to make tracks more discoverable in the app (Whateley 2023). TikTok's internal team has even directly altered the algorithm to draw attention to certain megastars like Taylor Swift and Beyonce when they joined the app (ibid). While the success or failure of music on the platform falls squarely on the artist's shoulders in the labels' eyes, this view seems far from reality. Trevor Daniel, as an independent artist, luckily had more time to wait for his song to break, and his track “Falling” eventually went viral two years after it was released. But ever since he signed his record deal, his music has been left in limbo as he tells Rolling Stone, “It feels like I'm at the DMV,” on the never-ending checklist he receives as excuses for why his new music isn't being released (Roundtree 2022).



Even some of music's biggest stars are not immune. Adele revealed to Zane Lowe that despite having the bestselling album of 2021, her label told her to get on TikTok to expand her teenage audience (Lowe 2021). Halsey created a viral moment through, ironically, complaining that she was not allowed to release her new single until she could "fake a viral moment" (Roundtree 2022). FKA Twigs tweeted and deleted her frustrations at being told she was not "making enough effort" with her videos, Ed Sheeran posted a video of potato chips to meet his obligation, and Florence Welch expressed resentment at being told to post more "low-fi" videos (ibid). The band MisterWives claimed Fueled by Ramen dropped them, "... because we weren't pushing the album through the app... hard work was diminished and didn't measure up to anything because we weren't funneling through TikTok," despite creating DIY music videos, live streaming, and doing promotional interviews in support of the record (ibid).

The problem is not necessarily that artists are being asked to engage with TikTok but rather the "impossibly high target" set for unlocking institutional support. The troubles that established artists are experiencing prove extra disheartening for the independent artists that TikTok is supposed to uplift. Indie artist Bronze Avery told Rolling Stone, "All independent artists hear is 'Put your song on TikTok, do the snippets, do this over and over, and one day you'll be big like Halsey. But if Halsey has to do it too, then what's really the goal and is that cycle ever going to break?'" (ibid).

This arduous promotional problem is difficult to navigate for recording artists, but it is a more devastating reality for songwriters. In a rush to start teasing music and generating buzz, artists will often start to share the song online before producer fees and songwriting splits are worked out, which often leaves these creators' payments for their work at the mercy of the clip's online results (Robinson 2022). The delay in payment can be a boon for negotiating power if the song goes viral, but it also means that many songs get quickly dismissed. The situation for songwriters is even worse when artists share music that is not yet their own from pitches online, rendering it useless to the writer if the artist chooses not to proceed (ibid). Sizzy Rocket very publicly left her publishing deal with Universal, particularly citing complaints around major labels wanting songwriters to write for their "viral artist for free" (Roundtree 2022). Songwriters are paid for their time, energy, and expertise through receiving a percentage of the publishing royalties. Therefore, they are not compensated for time spent in studio sessions to create the song until it is released, so every time a song gets unceremoniously discarded, the songwriters involved do not get paid for their time spent on the project (ibid).

What the labels fail to understand in their approach is that while authentic content is prized on the app, it is rarely the artist that launches a trend or has any control of how it takes shape.

When I left my masters in Scott's hands, I made peace with the fact that eventually he would sell them. Never in my worst nightmares did I imagine the buyer would be Scooter...He knew what he was doing; they both did. Controlling a woman who didn't want to be associated with them. In perpetuity. That means forever.

To TikTok's point that it is not a "listening platform," what goes viral alongside the song is a visual trend – showing a glow-up, a dance, a joke, a piece of nostalgia – that is shaped by the users generating the content. Sometimes, as in the case of "Industry Baby" by Lil Nas X, the trend matches the overall message of the song (Coulter 2022). While both the song and the videos it spawned focused on glow-ups, which features the video creator undergoing a positive transformation (whether physically or emotionally), this match was hardly a given. Viral TikTok trends are created from a single line or small set of lines that create their own context that creators work off of independent of the artist or song's intent (ibid). No amount of videos from the artist will incite the needed tidal wave, and just because a song is not a natural fit for a trend does not mean the song is an unworthy piece of art.

## Virality Overtakes Artist Development

The music industry creates a stark sustainability issue when songs are built around a single catchy or memeable line, and artists are disposed of if they do not produce an immediate hit. The last time fragments of music were prized over an entire song was during the rise of Ringtone Rap.

When I left my masters in Scott's hands, I made peace with the fact that eventually he would sell them. Never in my worst nightmares did I imagine the buyer would be Scooter...He knew what he was doing; they both did. Controlling a woman who didn't want to be associated with them. In perpetuity. That means forever (Ahmed 2010).

Sound familiar? Creating for clips has happened before, and though it gave rise to a few artists who stuck around, most soared up the Top 40 only to be immediately forgotten. What is rewarded when creating quick, attention-grabbing clips does not necessarily indicate an ability to carry a truly thoughtful or innovative full song. USC songwriting professor Andrea Stople found the issue with artists thrust into the spotlight through TikTok as "... confusing the initial ability to imitate and then maybe throw in some words for shock value with artistry" (Sung 2022).

The backlash to creating to please the TikTok algorithm is already sharp. Singer Leah Kate formulated songs off an amalgamation of trends and instantly became a joke with her record "Twinkle Twinkle Little Bitch" (ibid). Gayle, an emerging artist signed to Atlantic Records, received similar backlash when her song, "ABCDEFU," which felt clearly geared toward the platform was found to have been allegedly inspired not by a truly random fan in her comment section but the online suggestion of an employee of the Atlantic Records marketing team (ibid). Instead of citing the controversy that fueled the song on the platform, Nina Webb, former Senior Vice President and Head of Marketing at Atlantic Records, attributed the energy behind the song "100%" to the sign language community making videos with it (Venkat 2022). Even when the stunt failed, the platform found another way to make use of it. Just because a song is getting attention does not mean it is the kind that will contribute to a long career. Both Kate and Gayle's output falls squarely in line with what many TikTok users are identifying as "made to go

viral” music or the “TikTok music formula” that is hallmarked by “nostalgic melodies and rudimentary lyrics” (Sung 2022). Canadian rapper Tiagz played into the algorithm “doing these memes” until he amassed 4.1 million followers that landed him a deal with Epic Records (Whateley 2023). Statistics and the potential to inflame a social media crowd is what catches a label’s eyes, which are now more important than its ears, potentially leading to the Music Managers Forum’s rebuke of “... A&R should go back to listening to music, not looking at stats” (“MMF...” 2022).

## Music Industry Mental Health Challenges

Finally, the music industry has faced increasing mental health challenges among artists and industry professionals in recent years. The weight of conceptualizing TikToks, creating them, and being at the mercy of the algorithm invites burnout and strains relationships within artist teams that worsens overall mental health. Putting such an impetus on artists to unceasingly create content takes time away from their already lengthy list of required tasks. Sara Quin lamented to the Guardian that “Myspace or Facebook posts used to be an add-on but now it feels like making music is about making assets for social media” and that they are simply “... supplying more content for the food chain” (Jones 2022). TikToks require a much higher time investment than sending a Tweet or posting on Instagram. One artist told NPR it takes her six hours to create a TikTok (Verkant 2022). Sizzy Rocket vented her frustration at label expectations and said, “To be exploited by these labels and have someone who has no idea what it’s even like to make a TikTok? ... They don’t know what it’s like to really sit there and have to make these videos” (Roundtree 2022). While the ability to test songs before release to “guarant[ee] a return on a label’s investment” makes it clear why labels’ favor the platform, it comes with a heavy burden to succeed and the requirement of a new skill set for artists (ibid). Jesse Caahan, who runs a social media agency, points out that there is a “talent” to the art of social media and “... to just say that this artist needs to be perfectly well-rounded to create via social media content, that’s a big ask on top of all the other stress that they have with touring, producing music, and trying to have a personal life” (ibid).

Additionally, artists are tasked with making content about topics beyond music, which often become their most popular posts (Roundtree 2022). The interest in videos about an artist’s personal life is unsurprising given that excessive self-promotion is always apt to irritate platform users while non-music content is seen as authentic or relatable. Artists are given the impossible task of corralling their passively scrolling audience into feeding the machine (ibid). To get a trend going, the artist must convince users to pour the same time into making videos that they do. That often requires the formation of a kind of parasocial investment within the fan that gives them “an enhanced desire to support the artist,” which often comes from artists sharing more personal aspects of their lives (Wiemer, Riles, Tewksbury 2022). TikTok’s user interface makes this kind of inspiration especially hard because “It can be difficult to navigate out of [the For You page] to find the relatively small icons that will allow users to comment on videos, follow others, send messages, and so on” (Bhandari, Bimo 2022). In many ways, spending time on social media has created “a new kind of touring” offering up a “direct point of access between

artists and audiences” (Parys 2022).

For some artists, the only way to truly succeed is to stop feeding the insatiable appetite of tech platforms that leech off music and turn to platforms that offer them more control over how they connect with fans and build communities. Darren Hemmings, a Marketing Director at the UK agency Motive Unknown, suggests using “more direct, old-school channels they actually have control over” citing platforms like email, Patreon, or even chat groups (Jones 2022). In reflecting on the future of social media in *The Verge*, Ellis Hamburger (2023), who previously worked at Snapchat muses, “I wonder if we can build social technology brave enough to treat us like customers, not users. Or simply find a better way to monetize the deep engagement you find on today’s newest content platforms, be it Substack, Patreon, or others.”

Some artists like Tegan and Sara are doing just that, choosing the newsletter platform Substack as their internet home where they charge six dollars a month on a platform of their own to give an intimate look at their creative practice that could never be captured in fifteen second clips (Jones 2022). Lorde has taken a similar route avoiding most social media in favor of sending lengthy, detailed email newsletters to her biggest fans every few months. This long-form way of connecting to audiences has a twofold benefit: first, artists own their email lists and have a guarantee that their messages will reach the intended listener, rather than simply having to trust an ever-changing algorithm. Secondly, these dispatches have the room to be more thoughtful, directly tied to art and the artistic process, and created on one’s own terms, which can be liberating for artists in the internet age.

As TikTok demands so much from fans to the point where they “... cannot really consume without working,” it also opens up another layer of expectations for what artists will deliver (Morris 2014). While labels are after a viral moment, fans want interactions with their favorite artists and glimpses into their regular life. A large part of getting fans to participate in “lean-forward activities like creating playlists or listening to full albums on streaming or buying merchandise,” is feeding a parasocial relationship (Venkat 2022; Wiemer, Riles, Tewksbury 2022). One of the few ways artists can hold any sway through the platform is by giving pieces of themselves away, which can be a heavy cost mentally (“MMF...” 2022).

Even TikTok’s own end-of-year press release acknowledges the required artist-fan interactions, noting “Sam Smith comes out second after fans lapped up their behind-the-scenes content and duets with fans using ‘Unholy’” (TikTok 2022). The expectation for artists to be constantly online exposes them to “front line criticism, trolls, and bullying which affects not only creative choice, but creates self-esteem, anxiety, and mental health issues” (“MMF...” 2022). This plays on the long running idea that “Fan culture has long been a part of music marketing” (Coulter 2022). But while, in the past, fans typically contributed in supplementary activities like zine-making or passing cassettes through their networks, there is a higher expectation for fans, too, to return results in 2024 (ibid). As journalist Elias Leight (2023) notes for *Billboard*, so much of manipulating charts in 2023 comes down to labels finding new ways to maximize how the *Billboard* charts will count the money that hardcore fans spend on their favorite artists. The pressure from labels, constant access to data, and the hunger from digital platforms for constant interaction can also strain relationships within artists’ internal teams (“MMF...” 2022).



While this fundamental misunderstanding of TikTok by record labels is harming the industry overall, it is also creating a direct impact on artists as individuals, potentially damaging their capacity to create art.

One of the starkest losses from the desperate devotion to TikTok and social media statistics replacing independent A&R efforts is the abandonment of artist development and the impatience around supporting an artist who takes time to come into themselves. Many of TikTok's actually enduring hitmakers gained mainstream prominence overnight but had been slowly building their foundations within the traditional music industry for years prior to their success. Steve Lacy is held up as one of TikTok's biggest success stories as his song "Bad Habit" took over TikTok and then the Hot 100, but that was seven years in the making, and he had already been Grammy nominated by the time TikTok fully exposed him to the public consciousness (Leight 2022).

Similarly, folk singer Noah Kahan has burst into mainstream conversation in the last few years after a rough draft clip of his breakout song "Stick Season" went viral on TikTok. He finished the song and used the internet attention to successfully release his album *Stick Season*. Two years on and he has further propelled the hype around the original song with two deluxe editions of the album featuring remixes of the songs with prominent pop and folk figures. However, as pointed out on an episode focusing on Kahan on the New York Times Popcast, the now twenty-six-year-old singer-songwriter was signed to Republic Records at the end of high school and was allowed to quietly exist on their roster as he laid the groundwork for this moment going back years (Caramanica 2023). Kahan had maintained a persistent touring and release schedule since his 2019 album *Busyhead*, which included a Julia Michaels feature, and released two albums and an EP preceding the album that got him a Best New Artist Grammy nomination at the 2024 Grammy Awards (ibid).

With labels developing a propensity to drop artists who cannot spawn these immediate hits, they are also sacrificing those that are slowly working up to their sustainable breakout moment that might be years down the line. To mirror Kahan's trajectory, though, artists have to be allowed to release bodies of work and cultivate a core fanbase. Artists like Raye, who vocally spoke out against the music industry's use of TikTok as a success metric online while leaving her label, are denied the ability to release an album even six years into their deals because they have yet to spark a viral fire, holding them captive to unfavorable contractual terms and robbing them of their chance to develop their audience. Labels are losing touch with the importance of supporting artists through their infancy before they are ready to dominate the charts, in favor of the promised "sure thing" of already viral upstarts and will miss massive opportunities if they do not have the foresight to understand that the best things take time and support.

None of this is meant to deny that TikTok is an incredibly powerful amplification tool and does uplift genuinely talented, creative individuals. It has a strong command on the chart as TikTok touts that, in 2022, ten of the twelve songs that hit number one the UK singles chart and thirteen of the fourteen songs that topped Billboard Hot 100 had viral TikTok trends propelling them (TikTok 2022). It has become a vehicle for countless artists to sign major label deals, and it has the ability to catapult songs into the mainstream from disparate cultural sources such as amplifying Kate Bush's "Running Up That Hill" after it was synced on an episode of the Netflix series *Stranger Things*, or boosting a



remix of the journalist Louis Theroux's 2000 song "Jiggle Jiggle" into an iconic meme and one of the most popular songs of the year after his appearance on the YouTube show *Chicken Shop Date* (TikTok 2022; Genius 2022).

According to a 2021 Luminate (formerly MRC Data) study, TikTok users are eager to hear trending songs from the app in their full versions with sixty-seven percent of the app's users looking up songs from the app on traditional streaming platforms (Whateley 2023). Additional data from that study found that seventy-five percent of TikTok users in the United States use the app as a discovery tool (TikTok 2021). Tatiana Cirisano, music journalist and a music analyst for MIDiA, claims that the number of TikTok users paying for a streaming service is nearly double that of the general population and that the same split is reflected in merch sales, showing another financial boost of the app (Venkat 2022). While their statistics speak for themselves, that does not negate that TikTok should merely be one tool used to capture the public's attention rather than the accepted center of the musical universe. In extremely particular and generally random circumstances, TikTok offers life altering exposure for a select group of artists, and that power is undeniable.

As for the future of the app and the larger social media landscape with respect to the music industry, it is hard to make solid predictions. History will caution against pinning entire industries to one particular internet outpost, as even the shiniest sites of their day eventually wither and decay having lost their allure to the next trendiest platform. What TikTok has going for it, as Rob Horning posits, is the internet's prior conditioning, "People want to be the product! Being the product is coded as success in our society" (Hamburger 2023). The problem is that "becoming the product" is eventually exhausting, as seen in the incredible amount of burnout among internet creators who came up on YouTube and Instagram. This desire to be the "product" has created a fascinating shift that turns away from what social platforms conventionally peddle, like news, followers, or friends (ibid).

Distilling TikTok to its most sinister, social media has arrived at its final form – "... highly addictive short form videos that magically appear to numb a chaotic, crowded brain" (Hamburger 2023). As TikTok matures past its initial sugar rush, what it can deliver is likely to shift away from what the record labels desire. TikTok feeds the "attention recession," and it also encourages users and music listeners to become increasingly siloed and removed from the mainstream (Coulter 2022). The insulated nature of users' feeds will spell the end of ubiquitous pop culture moments as it completely shuts out the monoculture that the entertainment industry has thrived on for decades in favor of "micro-viral moments" (ibid).

While this will likely affect traditional music promotion first, it will ultimately fracture even the "shared cultural short-hand" of memes too, instead leaving us with an online culture of "an individual niche footnote," which is something the internet has never seen before (Coulter 2022). There will also be more clutter across platforms that will make it harder for creators to break through. Meta has released Reels for Instagram and Facebook, which mimics TikTok's main features within their flagship apps, but the development of Reels has simply led to "serial cross posting and duplication across apps" instead of increased innovation or spaces for new creators (ibid). Reels does pose more of a threat, though, as it retains UMG's catalog and becomes the new primary way for

UMG's artists to share short form videos featuring their music. It is unsurprising that as social media platforms have blatantly become increasingly bloodthirsty for more time, attention, and devotion from their users with little given in return that some are abandoning apps entirely for more community-based platforms like Substack or Patreon (Hamburger 2023). It is reasonable to suggest that at least a portion of users will tire of the undeniable damage to their attention and depth of connection and abandon places like Instagram and TikTok. There is the additional potential wrinkle for TikTok's future, specifically, in it being a Chinese-based app that embroils it in geopolitical issues and potential bans in significant markets<sup>3</sup> (Solon, et al. 2022).

There is also an undeniable hunger among music fans after the pandemic lockdowns to engage with music, fan communities, and music discovery in-person again that record labels would be remiss to neglect in their marketing plans. There is a growing internet fatigue. As Hamburger (2023) notes for *The Verge*, "I just felt tired of the structures and habits they program into us." And there is a consensus among music marketers that "... digital campaigns, as important as they may be, will never fully replace in-person brand events and other types of real-world marketing – for the best" (Rys 2022). With the full-fledged return of tours, festivals, clubs, and the in-person entertainment scene, avenues to "grow an artist organically and develop the artistry behind them" in front of fans in real time is available once again, which could take significant pressure off of depending on digital platforms (ibid). Just as the booming pandemic livestreaming business took a precipitous tumble when faced with the competition of its in-person counterpart, fans crave a level of personal connection that is impossible through a screen (Marshall 2023).

After going "heavily digital" the tides are turning back towards telling artists' stories in the physical world, with a particular emphasis on pop-up events (Rys 2022). Often, pop-ups take the form of creating temporary merch shops in a handful of major cities that give fans the chance to purchase exclusive items, take photos at specifically designed sets that visualize aspects of a new release, and listen to the artist's music with other fans. The events give the fan a chance to be fully immersed in the "vision," and "... it's more impactful for the long-term growth of the artist and the longevity of a person being a fan" (ibid). While it is important to note that experiences like these are far more expensive to produce than a free social media post, the events create a far more substantial bond between fans and artists that is more lucrative in the long-term. The label invests in the event financially, and fans, in turn, invest their time, effort, and energy, potentially traveling from other cities to attend, creating memories and cementing the fans' devotion (ibid). While TikTok is fast, easy, and free for gaining exposure, that also makes the connections disposable where fidelity to one artist can quickly be abandoned for another more interesting artist that flits onto the fan's For You page. It is hard to use the internet to build the same kind of quality memories, especially in short form. Finding a balance between these label-led investments in marketing and artist-created online efforts can lead to a much stronger marketing plan overall.

There is a sense of panic coming from the music industry – as one major label A&R vet warns *Billboard*, "There's less and less shit working. The front-line label business, signing new artists, is in trouble" (Leight 2022). As labels become less of industry's drivers and more helpless witnesses in the passenger seat of tech companies' wild ride through music, the future does look fairly bleak. Elias Leight (2022), who often covers TikTok

developments for Billboard, perfectly summarizes the crux of the issue: “It has become so fragmented where and how people discover music and become fans of something. The metric needs to change if you’re going to correctly judge success.” Setting the bar at general virality and millions of views on TikTok as the sole metric for whether a release will be successful or worthwhile is extremely limiting; indeed, it misunderstands the very nature of the platform.

Recalibrating an outdated view of the industry is the only viable path forward. TikTok is a revolutionary app because it breaks the mold that Facebook, Instagram, Twitter, and Snapchat coalesced around. It rejects broadcasting, influencers, friends, and tried and tested methods, and labels will continue to dig the music industry into a deeper hole trying to cut artists down to size while under the false impression that conventional social media wisdom will deliver from a one-size-fits-all approach. It will take a broader understanding of the wisdom of Sharon Timure, a Senior Vice President and Head of Marketing at Island Records, to turn the industry around: “I think it’s just gonna roll with whatever that next TikTok is. And not necessarily a digital space, but whatever that next thing is that really shakes up the industry, we’re just going to have to adapt to it” (Rys 2022). There will be more spaces, trends, platforms, and saving graces for the industry to come, as long as the music industry avoids fully destroying the infrastructure the industry depends on in favor of a slapdash band-aid.

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## Endnotes

1. Terrestrial radio in the United States set the original precedent for not paying music recording copyright owners for using their songs. Radio argued, similar to social media companies today, that the airplay promotes the music which generates income for the artist and copyright holder through other avenues like record sales and live music.
2. In September of 2018, Spotify launched a beta program that allowed independent artists to upload their music directly to Spotify. The program was shuttered in July of 2019 before formally launching a direct upload tool.
3. TikTok has come under fire in US politics a number of times. In December of 2022, the Senate passed the No TikTok on Government Devices Act. In 2023, five senators reintroduced a bill looking to block the export of US data to other countries, an indirect aim at TikTok, and though subject to ongoing legal dispute, the state of Montana is attempting to ban TikTok. TikTok has now become a point of policy discussion in the 2024 US presidential race, and the House has passed a 2024 bill to ban TikTok from the US as long as it is held by a Chinese company.

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