

MUSIC BUSINESS HANDBOOK

PAST, PRESENT, & FUTURE



BERKLEEMUSIC.COM

These are exciting times for musicians, managers, and music business entrepreneurs.

It's a new era for the music business. The industry is rapidly changing, the traditional gatekeepers are evolving (or disappearing), and new distribution outlets, marketing techniques, and business models are popping up all the time. For those that are educated on these changes, there is more opportunity in the “new” music business than ever.

Berkleemusic has been guiding students through this evolving music industry landscape since 2002. Our most robust information is found in our 12-week online courses, written and taught by Berklee's faculty and industry experts. We also provide resources for music business entrepreneurs and musicians in the forms our instructor blog network at Berkleemusicblogs.com, our Berkleeshares.com free lesson initiative, and through our publishing division, Berklee Press.

The Berkleemusic Music Business Handbook collects a small sample of some of the essential knowledge found in these areas into one easy to navigate guide. The music industry of the future will be driven by educated, focused entrepreneurship-minded individuals, and it's our goal that this handbook will prove to be a starting point in your lifelong music business education.

PAGE	TOPIC
3	Cycles in Music: Past, Present, and Future by Dave Kusek
10	Direct-to-Fan Music Marketing by Mike King
15	Music Publishing: New Rules for the New Game by Eric Beall
19	How to Get Your Music in TV and Film by Mike King
23	Mechanical Royalties on Digital Services by Eric Beall
28	The Challenge for the Music Business by Dave Kusek



Cycles in Music

By **Dave Kusek**

This is a story about the past, present, and future of music.

There is a lot of discussion these days about free music and the decline of the power and influence of the major record labels. However, I would argue that music has always been free in one form or another, throughout history, and that the relationship between the artists and their fans—the artists and their patrons is what really matters.

Record labels are a relatively recent phenomenon in the history of music. Perhaps they have seen their useful life as a component of the music business, perhaps not. They have been helpful in injecting capital into the marketplace and promoting artists on a scale never before seen. They have provided a vehicle for artists to go to market that was quite effective in its day.

But music at its core is entertainment and a form of creative expression that transcends language and cultural barriers—and it always will. If we focus on music as a cultural phenomenon, perhaps we can find some answers to the questions about the future.



Dave Kusek is Vice President at Berklee College of Music, responsible for managing the online music school, Berkleemusic.com. Kusek was a co-developer of the revolutionary Musical Instrument Digital Interface (MIDI), co-inventor of the first electronic drums at Synare, and founder of Passport Designs, the first music software company. In 2005, he co-authored the book *The Future of Music: Manifesto for the Digital Music Revolution*. Kusek is also the founder of musicpowernetwork.com

The Artists



The music business essentially began with the live performance of music at the symphony, opera, or chamber ensembles for wealthy patrons of the arts. People experienced music directly with the artists in the room with them.

Music is a social art form, and artists were driven by their passion to make music and connect with people who would enjoy it. It's a lot of fun to make music, but the greatest joy comes from delivering it to other people who appreciate what you have created.

For many artists, making music is all they know how to do.

But like many aspects of modern life, music has been profoundly impacted by changes in society and by the rise of technology—indeed music has been driven by technology.

Radio



The music industry began back in the early 1900's with the invention of amplification and radio. With radio people could listen to and enjoy music together in the comfort of their homes. It transformed time and space and made it possible for huge numbers of people to enjoy music that they might never have heard otherwise. Huddled together were our grandparents and parents, listening to music over the airwaves—together, enjoying it all.

And the greatest part about it—*it was free*.

Vinyl

In the 1950's, Vinyl LPs were introduced into the marketplace and—along with radio—crystallized an industry. Vinyl records changed the very nature of how music was enjoyed. Recordings fixed a musical performance in time and stamped it onto a piece of plastic. They made it possible to shift both time and space for people, so we could now enjoy music anytime and anywhere.

They also fundamentally changed the way music was delivered—no longer was a piece of music played live, with different players and interpretations every night making the music more dynamic. Instead, the songs were played exactly the same—over and over again—turning music into a product instead of an experience.

This was a profound shift in the way people experienced music.

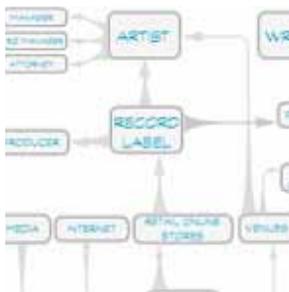
Elvis

Television was the next technology to impact the music scene in the mid 1950's. In 1956, Elvis appeared on the Dorsey Brothers' "Stage Show" and became a nationwide sensation. This was the beginning of music marketing to the masses.



The Beatles

In 1964, a new band called the Beatles appeared on the “Ed Sullivan” show—and from then on, the music business would never be the same. Like many kids my age, when I saw the Beatles on TV, I knew that I wanted to be a Rock Star.



The Music Industry

Business structures were formed and expanded to address the booming opportunities in the music industry.

- Record labels brought recorded music to market and became the engine that drove the entire music industry.
- Publishing companies found ways to exploit the “song” through licensing.
- Radio stations were finally forced by congress to pay a Performance royalty to the publishers for playing the songs over the airwaves.
- The songwriters got paid, but not the labels. The legislature argued that radio airplay was in effect massive free promotion for the record.
- Music started to become a very big business for the companies involved. Music was marketed to young people and the growth was fueled by new artists and new songs.
- Technology continued to march on.
- The audio cassette made music more portable. The Sony Walkman became the best selling consumer electronics products of its time.
- Synthesizers changed the way music was produced, adding a lot of new sounds to the palette. At the same time, synthesizers put a lot of traditional orchestral instrument players out of work.
- And then the personal computer raged into the marketplace.

I can tell you that Apple had its eyes on the music industry from the very start because I was there. They were actually forced to stay out of the music business for a while, by the Beatles record label “Apple Records”—over a conflict with the name “Apple.” This was a healthy foreshadowing of things to come.

Compact Disc

In 1982, Sony and Phillips introduced the Compact Disc. The CD was the first digital format to hit the marketplace. CDs were intended to deliver pure digital sound quality. CDs were originally marketed as “Perfect Sound Forever.” The labels wanted the public to go out and repurchase their vinyl music collections all over again on CDs and make billions more dollars in the process. It worked. Sales soared for over a decade.

However the record companies failed to realize that they had digitized their entire catalog and put perfect digital copies into the hands of the public—at \$18.95 a disc. Before long the computer companies were offering devices that could copy CDs in seconds. This failure to understand technology would come back to haunt the labels in a big way.

MIDI

In the early 80's, I got involved in a project with Dave Smith and others to encode music in a compact digital form. The idea was to make music easier to store and edit, and network instruments together. We worked with a bunch of different companies including Sequential Circuits, Yamaha, Roland, Korg, Casio, and Passport Designs to create something called MIDI—the Musical Instrument Digital Interface. We created an open and free standard that anyone could use—royalty free.

As a result of MIDI many new music companies were formed, thrived, and exploded in the 1980's. There was a profound transformation in the way music was produced, mixed, and distributed—and millions of people got involved in recording and creating music at a very high level. MIDI was a revolution in music making.

Ironically, MIDI is in every cell phone you have—and the reason we have ringtones.

World Wide Web

Here is something that I want you to think about for a minute.

The World Wide Web came to market in 1990—just two decades ago. The Web made it possible for anyone to create a home page for whatever they wanted to say or market. If you are under 25 years old in the US, it is hard to imagine life without a digital network. And this just happens to be the target age group of the record companies.

In 1998, MP3 files were developed to send music over a telephone line. MP3s made it possible to compress the digital music files on a CD into a small file that could be easily copied. The Internet made it possible to transmit these files around the world in seconds.

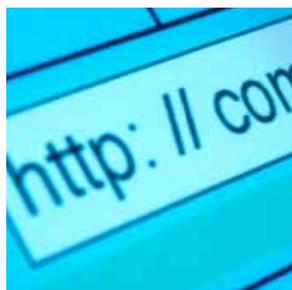
Technology made taking music even easier than making music.

Napster & the iPod

It was the combination of the Internet and the MP3 file that sparked a young college student named Shawn Fanning to invent the first Napster software that allowed people to trade and share song files. Almost overnight, kids around the world were tapping into Napster and trading songs and discovering new music using the Net. A huge community formed.

This was followed shortly by the invention of the MP3 player and the iPod in 2001 by Apple—which would soon dwarf the sales of the Sony Walkman and become a multi-billion dollar business.

Trading files online became an instant success and the MP3 became the new format for music delivery—mandated by the consumer.



Something very different began to happen to the music industry. The power began to shift from the record companies to the tech companies and the music fans.

Record Companies – “Orgy of Success”

The record labels enjoyed an orgy of success with the CD.

But they really missed the ball in identifying their customers. They thought their customers were Wal-Mart, Target, and other record retailers. Instead, their customers were people like you and me who actually buy music.

When the labels realized people were trading MP3 files online, actual customers interested in music—they decided to sue them. This was not and is not a great business strategy, to sue your own customers. What were they thinking? Or maybe they weren't thinking at all.



Future of Music Book

In 2004, I wrote a book on *The Future of Music* with my friend Gerd Leonhard. Unfortunately, a lot of what we predicted to occur has become true. Sales of recorded music have fallen some 50% already from their peak in 2000. Thousands of bands have been dumped from their recording contracts by the labels. New artist signings have fallen to an all time low and labels are no longer investing in artist development.

And Apple has become one of the most powerful companies in the music business.

New Artist Model

The record business has never really been good for the vast majority of musicians. A dirty little secret of the music business is that 95% of artists never recouped their royalty advances. Labels have been notoriously unfair to their artists.

Artists have always had to make their money some other way—through touring and performing, from songwriting, or selling t-shirts, hats, and merchandise—to make a living in music. Or working at Mickey D's.

But everything is changing. Today artists and their managers sit in the middle of a musician enterprise and can make things happen on their own. This is redefining the music business.

Technology has shifted the power base from the record labels to the artists and managers—and to the music fans. Performer and patron are meeting again with direct relationships between artists and their fans enabled by technology.





Mobile Music

The Universal Mobile Device (UMD) that we wrote about in the *Future of Music* book has already hit the market. It is called the iPhone—providing communication, sharing, maps, music, pix, video, games, phone, text, email, web, the internet, hundreds of other applications, and connectivity. Nokia has similar devices and there are lots more coming. Digital media is invading our lives. Imagine what these devices will be like a few years from now.

Soon you are going to be wearing eyeglasses and jewelry that provide digital media to you anytime and anywhere.

Artists as Brands

Artists today are more likely to get promoted by major brands than record companies. Their managers are setting this up for them.

Brands like Pepsi, Red Bull, Tag, Bacardi, and Nike are breaking new bands, and TV shows like *Grey's Anatomy*, *CSI*, and *House* showcase new artists each episode. Getting on a show like this can be like winning the lottery for new artists, not unlike the old record deal.

Many new structures are forming that will help artists develop their fan bases and enable a career in music for smart people.

The New Music Business

At the center of the future of music are the creative people—the artists and songwriters—along with their business managers. A middle class of musicians is forming where people can make a living or part of a living in music more predictably. They are pursuing a business model that puts them in the center of the equation and gives them more choice about their career path.

And as in the past, it is the new music that will fuel growth in the future. And it is the direct connection between artist and patron, that once again comes around into play in the music equation.



Music Like Water

Music is starting to flow all around us. It is available on the internet, on mobile networks, Wi-Fi, 3G, and your home. Here are some examples of new ideas in music that are helping to redefine what the future will hold.

Music is going mobile

- Hear a song anywhere and get it—can already do this on iPhone
- Personalized digital radio—just for you—like Pandora



- Social filtering—what’s everyone else listening to?

You will have more chances to interact with artists and writers

- Audience picks the set list collectively
- Lyrics and songs streamed to your phone during the song
- The entire concert recording available to you after the show

Personalized Interactions

- Digital Living Room—intimate shows beamed into your home
- Interact with the artists and writers, help write a song
- Watch rehearsals and develop your relationship (MTV)

Conclusion

It has never been a better time to be a musician or songwriter than it is today. You have a lot more control over your career than you ever did. The future is extremely bright and capital is starting to flow to the creative tech and new artist management companies.

So I am very positive about what is going to happen in music in the future. We are coming full circle with free music and more intimate fan connection and participation. The patrons are coming back into play.

About the Author



Dave Kusek is Vice President at Berklee College of Music, responsible for managing the online music school, Berkleemusic.com. Kusek was a co-developer of the revolutionary Musical Instrument Digital Interface (MIDI), co-inventor of the first electronic drums at Synare, and founder of Passport Designs, the first music software company. In 2005, he co-authored the book *The Future of Music: Manifesto for the Digital Music Revolution*. Kusek is also the founder of musicpowernetwork.com



Related Online Courses:

The Future of Music and the Music Business

Examine alternatives to the traditional means of distributing and marketing music, and explore scenarios and uncover opportunities that the new digital reality offers. Explore challenging aspects of the music business and discover the changes, technologies, innovation and powerful trends that are affecting its future. This course is essential for all artists, songwriters and music business people seeking success in the future. [View Course](#)



Direct To Fan

Creating an Effective Offer Page and Fan Acquisition Techniques

By Mike King

Anyone that has been following music business trends for the past few years is likely familiar with the high profile direct-to-fan campaigns (campaigns that focus on the monetization of an artist's fan base directly) that Nine Inch Nails, Radiohead, Imogen Heap, and others have been involved with recently. As Mike Masnick put it in his 2009 NARM Keynote, the recipe for effective direct-to-fan campaigns can be boiled down to: Connecting with Fans (CwF) + Providing a Reason to Buy (RtB) = \$\$\$\$. Makes sense, right? The difficulties arise when you consider that there are 5 million bands on MySpace, all of which are vying for the consumer's attention. It's easy for NIN and Radiohead to connect with fans, the skeptics' note, as they have had years of major label support and hundreds of thousands of existing followers to work with. How can a developing artist in this climate differentiate themselves from all the other bands out there?

The answer can be slightly more nuanced than Masnick's formula above, and to me, is based on four key elements:

1. Setting up an effective offer page on your site that is tailored to your marketing goals and where you are in your marketing cycle
2. Expanding your digital touch points through creative fan acquisition techniques
3. Integrating your online and offline marketing towards the same goal
4. Once you've created your groundswell of support and fans, integrating effective 3rd party digital and physical marketing, sales, and distribution (such as Tunecore) outlets into the mix



Mike King is the author of the book *Music Marketing: Press, Promotion, Distribution, and Retail* on Berklee Press. He's written three courses for Berkleemusic, including *Online Music Marketing with Topspin*. Prior to working at Berklee, Mike was the Marketing/Product Manager at Rykodisc, where he oversaw marketing efforts for label artists.

Example 1: Fanfarlo

Creating an Effective Offer Page Tailored to Acquisition

Although they were supported by NME in their hometown of London (who have called their release “a carefully orchestrated treat”), and have some high profile fans in the members of Sigur Rós, Fanfarlo found that they were having a tough time breaking into the US market. Fanfarlo’s music is undeniably great (aside: the first step, of course, in any marketing campaign is to have great music. Without this, any DTF marketing campaign will fail), and as such, the plan for breaking Fanfarlo relied a lot on getting as many folks to experience their music as possible, with the end goal of gaining enough interest to pack the Mercury Lounge in NYC (300 capacity).

Working with tools provided by the direct-to-fan software Topspin, the band initiated their acquisition-based campaign by looking at what assets and connections they could leverage. Fanfarlo developed a low-cost video, dug up some unreleased tracks and recorded new acoustic versions, and of particular note, the band’s management reached out to Sigur Rós, who agreed to mention Fanfarlo in one of their emails to their fans.

Prior to any outreach from Sigur Rós, the band knew it was crucial for them to create an offer on their site that would make their music as accessible as possible, while at the same time create a degree of urgency. Again, as monetization was not the driving force behind their campaign at this stage in their marketing process, Fanfarlo decided the best course of action for building up their base was to provide curious potential fans with the opportunity to purchase their record for \$1.00 (for a limited time), in exchange for an email address (which provided the band with permission to engage with these fans directly at a later date). They band adjusted their site accordingly, employing best practices with SEO and Web IA, and created an offer page dedicated to highlighting their music and making it easy to purchase via one click off the offer page. This was the result:

**FANFARLO
RESERVOIR**

DOWNLOAD OUR ALBUM "RESERVOIR", FOR ONE DOLLAR UNTIL JULY 4TH

Hello. Because we want everyone to hear our album, and in the spirit of "why not", we are now letting you download it, along with 4 exclusive bonus tracks, for a mere one dollar until July 4th (or, if you like, Independence Day.) After that, the madness will end and you will be able to get the CD, the vinyl and a beautiful new special edition at normal prices.

DOWNLOAD "RESERVOIR" + BONUS TRACKS FOR \$1

"The best English album we've heard in years" - Rough Trade Shops

Support the cause and tell the world. [Click here to share on Twitter](#) and [here to share on Facebook](#). Thanks!

Along with the redesigned offer page on their site, the band adjusted all of their social media pages (visibility on MySpace, Wikipedia, Facebook, Last.fm, iLike, YouTube) with appropriate offer copy/images, and links to the offer on their proper site. Once all the backend was done and Fanfarlo was ready for the traffic, Sigur Rós hyped the band in an email to their fans and Fanfarlo essentially had an “offer you can’t refuse” waiting for them. In exchange, the band built up their email list, created a viral buzz on their new record, and not only had enough interest to pack the Mercury Lounge in NYC, they had to upgrade to the larger Bowery Ballroom!

Example 2: The Lights Out

Expanding Your Digital Touch Points through Social Media & Integrating Your Online and Offline Marketing

All marketing campaigns are different, and not everyone has the luxury of having support from major bands like Sigur Rós. But no matter where you are at in your career, core marketing principals hold true, particularly when it comes to effectively using social media to engage your fans and building up your base. The best example of social media campaigns are creative ideas that leverage the viral nature of social media to engage fans and effect change in not only the digital world, but in a band’s physical campaign as well (which of course is still incredibly important to any overall marketing campaign).

The Lights Out is a Boston-based band working to raise their hometown visibility and acquire new fans to positively impact their touring base throughout the Northeast. On the heels of an oppressive heat wave in Boston in mid August, the band initiated a Slush Puppie “flash mob” online marketing campaign. The band found the appropriate location for the event via polling their Twitter followers:

Once the location was chosen, the band set up a Facebook event, which allowed them to update the status of the Slush Mob, get an idea on who was coming, and communicate directly with those that expressed interest.





The band then set up a Twitter hashtag (#), which organized all messaging around the event into a single live channel on Twitter search. The hashtag use also had the all-important added benefit of becoming a “viral generator” for the event, piquing the interest of the band’s follower’s fans, and influencing activity at a level outside of what the band could do with their fanbase directly.

Once the existing fans were engaged in the event, Boston-based bloggers picked up on it, the market’s alternative weekly featured info on the event, and popular Boston-based event and social media Twitterers did the same.

The band continued Tweeting from the event and after, and shared photos of the turnout using Twitpic:



So, what did all this mean to the band's stated goal of raising their visibility and acquiring new fans?

- 20% increase in unique web site visitors
- 24 times increase in daily twitter followers
- 3,352 impressions from media coverage
- 66,160 impressions from Tweets and Retweets
- 195 impressions from Twitpics
- Approximate Total: 70,000 impressions

New fans also direct-messaged the band, telling them how much they enjoyed the idea and their music, and expressing interest in attending future gigs. And because this social media campaign included an offline component, new fans were able to bond with the band in a more personal way.

Again, all marketing campaigns are different, and should be employed in a way that focuses on the strengths and opportunities of the respective band. The specific tools will certainly continue to change as we move forward, but the principle of determining your core goal—and engaging and developing your fan base to reach this goal—will not. What's particularly exciting to me is that artists have the option to market and distribute their music directly, with less gatekeeper involvement, than ever before. We're in the early stages of direct-to-fan campaigns, but I think it is undeniable that there is a tremendous amount of growth potential in the segment—and is an area that artists, managers and others (forward thinking, artist-serviced based companies, for example) have to look at very closely.

About the Author



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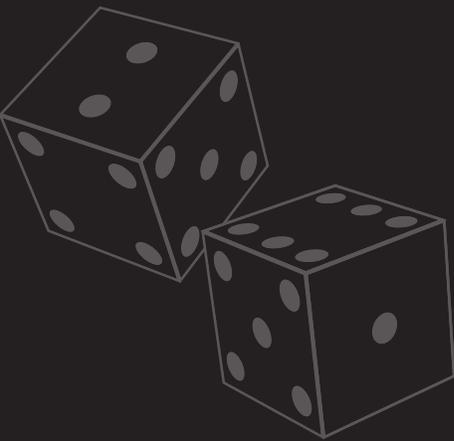


New Rules for the New Game

By **Eric Beall**

All of the “track writers” among us have been hit with the newfound knowledge that by sending out their tracks to every lyric and melody writer with whom they’ve traded business cards, they may have unwittingly given away 50% of the final song to a dozen different writers. Lyric and melody writers or “top liners” were shocked to find out that they might not be the only ones writing to that track they received from their MySpace friend. They were also rather dismayed to know that their brilliant lyric idea was no longer their own, but now belonged to the track writer as well. Tension ensued. Nervous glances between once friendly writing partners were exchanged. Lawyers were consulted. What do we do now?

This now familiar method of co-writing between “track” writers, who compose an instrumental “track”, and “top line” writers, who usually write the melody and lyric of the song, has its own set of issues. This style of collaboration has become the most common approach to songwriting, particularly in the pop, dance, and urban worlds—whether it’s Lady Gaga and RedOne, Justin Timberlake and Timbaland, or Ne-Yo and Stargate. The difficulty is that track writers are frequently sending their instrumental tracks out to several different top line writers (often without the knowledge of the top liners), and essentially auditioning the various writers, to see who comes back with the most commercial melody and lyric. At the same time, many melody and lyric writers are laboring under the idea that if for some reason their melody and lyric isn’t the grand prize winner over this particular track, they can simply take back that lyric and put it over a different, and hopefully, more successful track somewhere down the line.



Eric Beall is the author of *Making Music Make Money (An Insider’s Guide To Becoming Your Own Music Publisher)* and a respected music industry veteran, having held senior Creative posts at Zomba Music, Jive Records, and Sony/ATV Music. Currently, he handles A&R for Shapiro Bernstein, one of the industry’s most venerable and respected independent music publishers.

First, let me say, despite my advanced years and traditional mindset, I do “get it.” In the early years of my songwriting career, I was primarily a composer, and “track” writer/producer. In the later years of my songwriting stint, I shifted roles and became primarily a top line writer. So I do actually know the realities at play here.

First, let it be said that there is nothing more difficult than writing a hit melody and lyric. Most track writers can deliver consistently at a B-level, and can probably nail an A-level track at least 20 or 30% of the time. The success rate for even the best lyric writers is far lower— it’s probably one in twenty ideas that really have “hit” potential. Therefore, it’s not surprising that most track writers like to have at least a couple of different writers take alternate approaches to any one track. Who wants to burn a good, commercial track just because one writer came up with a mediocre melody and lyric? Like I said, I get it.

In the same way, why would a top line writer, upon finding out that the song they’ve written is only one of fifty that share the same musical composition (and that their lyric is not the “chosen” one for that track) not take back at least a few of the best melodic and lyric ideas, and put them into a different song that might actually see the light of day? After all, great hooks or lyric concepts don’t come along every day. It all makes perfect sense.

Except that this is not the way that copyrights work. Copyright law, which is the law that defines ownership of songs, stipulates that once a copyright is created, each one of the creator’s shares in the full copyright. This means that once a new song is created, the track writer owns 50% of the lyric, in the same way that the lyric writer owns 50% of the track. No writer owns just the part that he or she wrote. They own a share in the total, complete song. You can’t remove one lyric writer from a song and substitute another, any more than you can take one lyric idea and separate it out from the track that lies underneath it. It’s all one thing.

So what do you do? How can a track writer find the best melody or lyric for his or her track, without giving ten different writers a 50% share of the same song (shades of “The Producers”)? How can top line writers avoid finding all their best work wasted on songs, which don’t even wind up using a note or a word of their writing? This is a very complex question, in an area where the lawyers, so far, have feared to tread. But here are three quick suggestions for protecting yourself as best you can, at least until this legal grey area is finally clarified:

1. Communicate

Believe it or not, there are a few areas in the music business where honesty really is the best policy. This is one of those. If you are sending out tracks to several different top line writers, simply let them know that. A few may be offended. A few might refuse to write to the track if others are already working on it. But those are exactly the misunderstandings and bruised egos that you’re looking to avoid. Better to spot them sooner, rather than later. Likewise, if



you've decided that the lyric and melody you've written is being wasted on a track that's going nowhere, a simple phone call may be enough to gain permission to take that lyric back, and put it over a more viable composition. Don't let track writers hear for the first time the hook they thought was theirs, at the moment when it comes on the radio. That makes co-writers angry, it makes publishers angry, it makes other artists—who may have thought they were cutting the song—angry. That much anger can't be good. Simple, clear communication can save a lot of headaches.

2. Clarify

It never hurts to have things in writing. Send a simple email or letter with your track that explains very frankly:

(a) This track is solely created by “Hot Track Writer” and no ownership in this track is being offered to the “Top line Writer” simply as a result of composing a melody or lyric to the track. Likewise, no ownership in the melody and lyric written by “Top line Writer” is claimed by “Hot Track Writer.”

(b) This track may be submitted to multiple writers, in an effort to solicit different melody and lyric ideas. None of these melody and lyric ideas, or the demo recordings that embody these melody and lyric ideas in combination with the track will, in and of themselves, constitute a new composition.

(c) Only upon the mutual agreement of “Hot Track Writer” and “Top line Writer” will the combination of this track and “Top line Writer's” melody and lyric actually constitute a new composition. Should the existence of such a new composition be agreed upon by both parties, ownership of the new song will be shared equally between the two parties.

(d) Should one or both parties decline to create a new composition from their joint efforts, this track will remain solely owned and controlled by “Hot Track Writer”. Similarly, all melodic and lyric ideas will remain in the ownership of “Top line Writer.” Neither party shall have any claim on the work of the other.

You can attach a brief outline like that to an email, along with an mp3, or in an actual letter. But at least everyone knows what they're getting into.

3. Keep things separate, but equal

If you really want to play it safe, you could actually register your “tracks” or your “top line” as a separate composition with ASCAP, BMI, SESAC, HFA, or the Copyright Office. At that point, you could take the position that whatever track you decide to put your lyric over is a “derivative” composition of your original lyric—which means you own the lyric in its entirety, and you own 50% of the new song that was derived from the original composition. In the same way, a track writer could claim that the track was a separate composition, which he or



she owned 100%—any song created with a lyric over the top of that instrumental track would be deemed a derivative composition. This method is probably the most thorough approach to the issue, however it generates a great deal of paperwork and is unlikely to be a favorite approach of most publishers (or most licensing organizations). Does ASCAP really want to register a track and a derivative composition for every different song? Does your publisher find that registration process to be a worthwhile investment of time? In the real world, it's highly costly to treat every song as three different copyrights—the original track, the original lyric, and the combination of the two. Multiply that by every song submitted to ASCAP, BMI, SESAC, or HFA and you start to get some idea of the scope of the problem.

Needless to say, our efforts in this blog have been to shine some light on what is a dark secret, and a grey legal area, in the music business. There are no clear-cut standards here—only “customary ways of doing business.” What I can tell you is that silence is not golden (lack of communication leads to problems in this area), “don't ask, don't tell” will inevitably result in “don't own what you thought you owned,” and playing a new game without understanding the old rules that still apply is a very dangerous venture. If you ask someone, or someone asks you, “do you wanna write to my track?”—it's not just collaboration that's being discussed. It's co-ownership of a copyright, and that's a much more serious thing. Keep an eye out for this one—this subject is going to wind up in the news in a big way, sooner or later. It's a legal quagmire just waiting for someone to step in it. Don't say I didn't warn you.

About the Author



Eric Beall is the author of *Making Music Make Money (An Insider's Guide To Becoming Your Own Music Publisher)* and a respected music industry veteran, having held senior Creative posts at Zomba Music, Jive Records, and Sony/ATV Music. Currently, he handles A&R for Shapiro Bernstein, one of the industry's most venerable and respected independent music publishers.



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How to Get Your Music in TV and Film

By **Mike King**

The live events at SXSW are amazing. Because of the limited time allotted to most bands (which I think encourages bands to “pull out all the stops”), and the fact that the barrier of entry is pretty high, you’d be hard pressed to find another convention anywhere in the world with as much concentrated talent in one location.

Complementing the live music scene at SXSW are panels held throughout the week at the convention center. From Jim Griffin talking about his Choruss idea to Ian Rogers moderating a panel on “Making a 360 Deal with Yourself,” the overall theme of the panels I attended this year revolved around the ways that artists and music business companies can identify and optimize alternative revenue models as the music business shifts away from traditional record sales. Music licensing, while nothing new, is a hot topic right now among content owners (songwriters, labels), managers, and artists. Licensing offers the possibility of incredible visibility to artists, and depending on usage, it could also provide a fairly solid revenue stream.

Here are my takeaways from the “Placing Your Music in Film and TV” panel with Jennifer Czeisler (VP Licensing, Sub Pop Records), Marianne Goode (VP Music, Lifetime Networks), Season Kent (Music Supervisor, Relativity Media LLC) Alexandra Patsavas (Owner, Chop Shop Music), Alicen Schneider (VP Music Creative Svcs, NBC Universal TV Music), and Madonna Wade-Reed (Music Supervisor, Whoopsie Daisy).



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It's a Good Time to License Your Music

The panelists all agreed that it was a fantastic time for independent artists to look for licensing deals, simply because of economics. Producers are more open to indie music, as A) indie music is typically cheaper to license, and B) many producers consider themselves tastemakers, and want to be known for breaking bands. Alicen Schneider spoke about the fact that 75% of the music used by NBC is now independent music.

How Much Can Artists Expect to Get Paid?

There is a wide range in the amount of money artists can expect to get paid from a licensed track, much of which depends on usage. Variables include the length of the use, the thematic placement (is the song in the credits or in the background of a scene?), the budget of the production, if the song is for a one-time use or used as a recurring part of the promo for the production, and more. The more that is requested of the song, the more the song will be worth. It's important to also note that when a song is used in TV or film, two licenses are needed: a synchronization license from the copyright owner of the music, as well as master recording license from the copyright owner of the sound recording. These are two separate agreements, and typically, artists that control both their master rights as well as their publishing will do "All in" deals that cover both "sides" of the composition. According to Jennifer from SubPop, artists can expect to receive anywhere from \$1,500 to \$15,000 for the master rights alone for one-time placements.

Rules for Submissions

Similar to traditional press, blog, or radio outreach, there are specific rules that artists should follow when pitching supervisors. Once you find the name of a specific supervisor that you want to target (the Music Business Registry is a good option for finding contact info), your package should follow these guidelines:

- 1) Although they take mp3 files in emails, supervisors still primarily work with full art CDs. They prefer their music in proper jewel cases with a spine that lists the artists name and title. Madonna Wade-Reed from Whoopsie Daisy—who has worked on *Smallville*, *One Tree Hill*, *Alias*, *Felicity*, and others—said that she receives upwards of 150 submissions a week, many of which she files away. Artists have to make it as easy as possible for them to file music—and find it later.
- 2) If you are burning a CD, be sure you have added all the track info to the individual songs (particularly artist and song names). If a supervisor burns your music into iTunes, you don't want to be in their library as "Track 2."
- 3) Clearance problems are always an issue. Make the publishing and master info as prominent as possible, especially if you control both.
- 4) Be sure you are targeting the right show. Supervisors hate emails that ask: "What are you



looking for?” Know your show’s demo, and send them appropriate music.

5) Do not call. Supervisors have no time to spend on the phone. Quick email reminders are appropriate. Successful pitches are those that do not expect anything, and do not put too much pressure on the supervisor. Keeping in front of them is great; stalking them is not.

6) Do not ask them for opinions on your music. Supervisors are not A&R reps. Good music will stand out and get placed at some point.

Use Songpluggers

All supervisors have a trusted stable of songpluggers that they can go to in a pinch. Songpluggers (or independent licensing companies) have relationships with all the supervisors in LA, know what their taste is in music, and can provide cleared music to them, which they can run with immediately. Indie artists should look into building a relationship with licensing companies that have these direct connections with the supervisors. However—do your homework on them. Like any promo area in the industry, there tends to be some false claims and embellishments. Learn more about songpluggers [here](#).

Music Licensing is Insanely Competitive

The labels are keenly aware of the importance of music licensing. Alicen Schneider related a story about Dave Matthews’ label sending Dave himself to play a one-on-one concert for her to showcase some of his new license-friendly music. But the bottom line is that if artists can find fans of their music in the supervisor, (or sometimes even a key actor, as was the situation with Death Cab for Cutie and their placements in *The O.C.*), indie bands have as much of a chance as a major label artist (if not more, with the smaller budgets) with success in music licensing.

About the Author



Mike King is the author of the book *Music Marketing: Press, Promotion, Distribution, and Retail* on Berklee Press. He’s written three courses for Berkleemusic, including *Online Music Marketing with Topspin*. Prior to working at Berklee, Mike was the Marketing/Product Manager at Rykodisc, where he oversaw marketing efforts for label artists.



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Mechanical Royalties on Digital Services

By **Eric Beall**

If you've been following the ever-raging war between the Israel and Palestine of show business, that is the digital media community (which includes large companies like Yahoo and AOL, relatively established ventures like Pandora and Rhapsody, and new companies like Spotify) and the music industry (including labels, publishers, performing rights organizations, artists, and writers), it seems worth taking a minute to try to put some perspective on what has been achieved with the latest peace treaty.

The treaty in question is the voluntary agreement crafted by the Digital Media Association (DiMA), the National Music Publishers' Association (NMPA), the RIAA, the Nashville Songwriters Association International (NSAI) and the Songwriters Guild of America (SGA) on September 23, 2009, which ended a longstanding dispute about mechanical royalties for interactive streaming and limited downloads.

As always when entering a war zone, it's probably best to dredge up a little history, just to understand what's been achieved, and why everyone was so mad in the first place.



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The conflict is rooted, as is all evil, in money, and who gets how much of it. When the digital world first emerged as a place to both purchase and/or stream music, the music community was forced to redefine the idea of a “mechanical royalty,” which is the royalty that is paid to songwriters and publishers each time a “mechanical reproduction” of their song is purchased. In the old world, this translates to .091 cents for each song on each CD that is bought by a consumer. This “per-penny”, “per-song” system is at the core of the music publishing business, and it’s something that publishers were desperate to preserve even within the new digital environment.

In part the attachment to this system is rooted in accounting realities: each songwriter needs to be paid each time his or her specific song is used, not just given a random portion of a lump sum paid out to songwriters in general. But more importantly, publishers wanted to establish with finality that each digital use, whether a digital download (as on iTunes, which has been paying the 9 cent mechanical royalty from the beginning) or a stream (in which the music is not actually owned by the consumer, but is constantly accessible to the consumer) constituted a “mechanical reproduction” of the song, and therefore was subject to a mechanical royalty.

Not too surprisingly, the digital media community saw things quite differently. While generally willing to acknowledge that an actual digital download constituted a “purchase” of the song and therefore required a mechanical royalty (unless of course one were to do like the vast majority of music listeners and simply download it illegally), services that offered “streaming,” as opposed to downloads, felt that they should be treated more like a radio station, and that their music uses should be subject only to “performance royalties” (the money collected by ASCAP, BMI, and SESAC for public uses of music on the radio and television). The music industry was quite happy to acknowledge that “streaming” should be licensed by ASCAP, BMI and SESAC, and indeed, most of the prominent streaming services are licensed by those performing rights organizations. However, the music weasels also wanted the mechanical royalty, in addition to the performance monies. They were fightin’ words.

That’s where the war began, and we’ve been following it on this blog ever since. Having reached this impasse in the early days of the digital music revolution, the two parties agreed to fight it out... later. The publishers, not wanting to miss the boat entirely on a new way of marketing music, but also not wanting to lock in an unfair compensation system for a pivotal new technology, agreed to make their catalogs available for a one or two cent royalty, under the proviso that some kind of more reasonable “per-song, per-play” mechanical rate would be negotiated in the not-too-distant future.

It’s worth keeping in mind that much of the publisher’s wariness came from their prior experience with licensing music to DVD’s. In that instance, publishers agreed to very unfavorable terms for the use of music in “DVDs,” after receiving promises from the film studios that once the new technology took hold, there would be plenty of money to go



around. Of course, the new technology did take hold, there was plenty of money, and none of it found its way into the pockets of the publishers, who were stuck with that first, precedent-setting agreement. This resulted in much gnashing of teeth, and vows of “never again”.

On the flip side, the digital media, filled with myriads of start-up ventures, felt that if they could buy some time to get their new companies off the ground and into a profitable position, the music industry would view them as valuable partners, and be willing to agree to a more equitable royalty situation. Or maybe they just figured they could get the music really cheap for now, and then later use their increased bargaining power and hopefully some favorable court decisions to really put the screws to the copyright holders. Hard to say exactly.

Unfortunately, the war didn't quite go according to plan for either party. The music industry quickly found that the new “mechanical” royalties from digital downloads were draining off their old “mechanical” royalties from CD album sales, and actual overall income was plummeting. The digital music services found that consumers were not that eager to actually fork up money for something that they were now used to getting for free. On top of all that, the music industry sensed that they'd once again been out-weaseled, as the DMA (Digital Media Association) backed away from negotiations, and focused instead on legal efforts to re-define which uses required a mechanical royalty in the first place.

And yet, out of this ugly little tale of self-interest, deception, suspicion and greed, springs a small blessing—which leads me back to the whole idea of what we can be thankful for this year. After years of arguing, the two beaten-down, weary factions finally reached an agreement, and here's what it amounts to:

Limited download and interactive streaming services will pay a mechanical royalty rate of 10.5% on the revenue they generate, MINUS any amounts for performance royalties.

In other words, services like Rhapsody and Napster are indeed subject to both a mechanical and performance royalty, but the entire compensation for songwriters and publishers from any limited download or interactive streaming site is “capped” at 10.5% of the site's revenue. For the record, an interactive stream is one that's selected by the user (that is, music on demand), and a limited download is one that's based on a subscription (and which disappears when that subscription ends). The mechanical royalty does not apply to “jukebox” type streaming, which is not selected specifically by the user (like Pandora).

Like most blessings, this one is decidedly mixed. It does give the DMA what they needed most, which is some ability to gauge what their overall music costs will be, and some flexibility in their price-setting to the consumer. Obviously, if you're in the business of selling a product, you like to know what it's going to cost you to provide it. By assuring the digital services that the combined PRO royalty and “mechanical” royalty will not exceed 10.5% of their revenue, the new agreement should help the digital music services build a more stable financial model in the future.

The new deal also gives publishers part of what they wanted, which is the legitimate claim



to something more than a performance royalty from services that offer a consumer direct access to specific music. It opens a Pandora's box (yes, that's a pun) of accounting problems, as publishers will now have to somehow negotiate, audit, and continually adjust rates for each of the thousands of services that exist or are in the launching stages, not to mention figure out how to collect and properly apportion the new money to the appropriate songwriters. But in a barren land of nothing, at least this is something, so let's raise our cups in thanksgiving, especially to the powers that negotiated the agreement on behalf of the publishers, labels and others: the National Music Publishers Association (NMPA), the Nashville Songwriters Association International (NSAI), the RIAA, and the Songwriters Guild (SGA).

Now that we've laid our weapons down (temporarily at least) it's time to turn our attention to something a bit more productive:

Let's make some money.

Most publishers haven't exactly been on the edge of their chairs, waiting to see how this war turned out. A growing number of us increasingly suspect that we're fighting over a useless piece of land in the desert.

The fundamental problem with this agreement is that none of these services are generating much in terms of real revenue. The subscription model is growing less and less attractive, as consumers have quite literally not bought into it. The "free" streaming services are generating plenty of activity, but very little in the way of advertising revenue, which is where the money is supposed to come from. In the end, receiving ten percent of the total revenue of these services may wind up being less than the one or two penny rate that we were getting as part of the temporary agreement.

Worse than that, many of us suspect that these services may not actually be intended to make money. Looking at the YouTube model, it's clearly quite possible to use "free" music as a "carrot" to attract loads of visitors or viewers to a site. A buzz-savvy entrepreneur can then use that high level of traffic to foist the new start-up venture off to a giant corporate media company like Google (YouTube) or News Corp (MySpace)—all without ever having generated any real profits. In that scenario, the founder of the site gets rich, and the publishers and songwriters who provided the music that brought all that traffic are left with, yep, ten percent of nothing. Sound familiar?

I suspect that somewhere towards the end of the first Thanksgiving feast, after the pie had been consumed and the last bit of wine drained from the bottle, someone on the side of either the pilgrims or the American Indians probably mentioned that there was still some work to be done in the harvesting, and that they should all probably get back to work. Judging from current music sales, publishers and record labels and songwriters all need to get



back to trying to make music that the public is truly compelled to purchase. Across the table, digital media services need to start figuring out how to sell that music in a way that actually generates profits, rather than simply giving it away. If both parties do their jobs, maybe next year we'll all have more to be thankful for...

About the Author



Eric Beall is the author of *Making Music Make Money (An Insider's Guide To Becoming Your Own Music Publisher)* and a respected music industry veteran, having held senior Creative posts at Zomba Music, Jive Records, and Sony/ATV Music. Currently, he handles A&R for Shapiro Bernstein, one of the industry's most venerable and respected independent music publishers.



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The Challenge for the Music Business

By **Dave Kusek**

The tried and true methods of creating success in the music industry are over and are never coming back. The economics just don't work for most acts anymore. The greatest risk in the next 5-10 years for music is that no one will want to fund the development and promotion of new musical acts the way the major labels did in the past, until we see a new financial model.

To survive, musicians and their managers need to innovate and break out of the old ways of thinking about the business. The oft quoted conventional wisdom that artists can survive on touring and merchandise income is simply not going to work for most bands. Instead, real blockbuster success in the future belongs to those ready to break the rules and create new engaging musical experiences, and unique products and services that cannot be duplicated.

Music is an inherently social phenomenon and we are already seeing the impact of social media on the way that music is marketed and consumed. We are connecting fans and artists enabling a broad spectrum of musical search (Pandora), concert (Songkick) and ticketing innovations and direct to fan engagement (Topspin and Nimbit). But most of what has been developed thus far is in support of the way it used to be, instead of the way it needs to be.

Perhaps the next musical breakthrough will come from some sort of interaction between creators and consumers fueling a unique experience that you just have to be there to enjoy. Nothing to download, just an experience with a limited audience. A creation of value that appeals to the thumb twiddling electronic generation in ways their parents never even



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dreamed of. A way of engaging with artists that true fans will fight to get access to.

How do we get there? Where is the strategic thinking that will propel the music business forward? I believe innovation will come from outside the mainstream music companies, the way it has over and over again across so many different industries. The automobile did not come from the Horse and Buggy makers and refrigeration did not come from the Ice Kings, so why would the next musical innovation come from Warner or Universal Music, or any other indie label for that matter? Just as theatre evolved into motion pictures, then broadcast television, then video tape and DVDs to IMAX 3D emersive experiences, so will music continue it's transformation, propelled by technology and new nimble entrepreneurs.

Musicians of the future need to face the fact that living a life in music is a privilege that they will have to earn through hard work, preparation, innovation and collaboration. Young artists need to be willing to take risks and push the edges of creative expression by embracing the reality that nothing about music is normal anymore.

The team that may be most compelling for creative artists to form is a strategic business manager, a social marketing manager, and a technologist.

We need fresh thinking and risk capital to fund the next wave of musical innovators. The challenge for the music business is to create value in the place of falling revenue and to energize the new generation of music fans to really support music. Do you have what it takes to reinvent the business? What ideas do you have that could light the way into the future?

About the Author



Dave Kusek is Vice President at Berklee College of Music, responsible for managing the online music school, Berkleemusic.com. Kusek was a co-developer of the revolutionary Musical Instrument Digital Interface (MIDI), co-inventor of the first electronic drums at Synare, and founder of Passport Designs, the first music software company. In 2005, he co-authored the book *The Future of Music: Manifesto for the Digital Music Revolution*. Kusek is also the founder of musicpowernetwork.com



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