

MUSIC AND TECHNOLOGY

VISIONS FOR THE FUTURE:

COPYRIGHT LAW

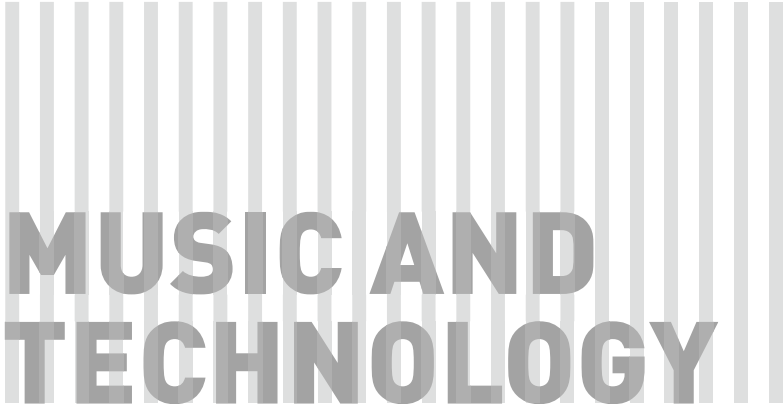
MARKETPLACE

BUSINESS MODELS

ROYALTY COLLECTION

RSA, London, 14-15 January 2004






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WHY MUSIC AND TECHNOLOGY?

Music is the ‘canary in the coal mine’ for internet content issues

The Music and Technology lecture and conference were conceived around a simple question: what will it take to ensure innovation in (and thus global success for) the UK music industry in 10 years’ time?

The question is now particularly pressing for a number of reasons. Always an important source of creativity and pride, music underpins UK trade. It is our third largest export (after whisky and Formula One). In an increasingly global economy where British success now hinges upon value-added creativity rather than lowered cost or increased efficiency, we need visionary thinking. Good ideas for music will also apply to the other Creative Industries. Music is also ‘the canary in the coal mine’ for internet content. Because it requires less bandwidth than video and other media, the industry was taken by surprise at the new ‘rip, mix and burn’ culture – teenagers sharing music without payment in ways the industry never imagined. As broadband becomes more widespread, other industries will also have to reinvent themselves to solve the same problem.

As a result of new technology, the music industry landscape has ‘undergone rapid, irretrievable, fundamental change’, as one conference speaker put it. The internet has rendered the traditional music industry business model ineffective. At the same time there is debate as to whether some long-standing frameworks such the royalty collection system and copyright law are deterring creativity and entrepreneurship – the very things they were designed to stimulate, and which the future economy depends upon.

The wording of the question is also important. We want to ‘ensure innovation’ rather than attempt to shore up the status quo. Change is always painful, but it is inevitable; new ideas and creativity will take the industry forward as they have in the past. We also phrased the question to include ‘10 years’ time’ because we wanted to shift the debate beyond polarised finger-pointing and short-term solutions to the point when real innovation will occur if we don’t stand in its way.

We planned the lecture and conference not with the hope that we would be able to answer the question completely, but with the idea of bringing together experts with different – sometimes diametrically opposed – viewpoints to stimulate new and better thinking. The result is the mosaic of visions presented here.

The RSA

The RSA initiated the Music and Technology project as part of our historic commitment to encouraging enterprise, and we were delighted to be able to offer a platform for the diverse range of views set out in this booklet.

The RSA also has a long-standing interest in ensuring that intellectual property law achieves an appropriate balance between encouraging creativity and rewarding people for their creations. We recently launched a new international project to develop an Intellectual Property Charter, which will seek to list those essential principles that ought to underpin our approach to balancing those outcomes.

Partners

Arts Council England. Arts Council England is the national development agency for the arts. Between 2003 and 2006 we will invest £2 billion of public funds in the arts in England, including funding from the National Lottery. The Arts Council's Interdisciplinary Arts Department focuses on a range of arts practice, including new forms emerging from the interactions of art and technology, art and science, and art and business.

In recent years the Department has been responding to changes in cultural and scientific practice, including the development of new copyright and intellectual property models related to collaborative working, collaborative ownership and new approaches to the public domain. This work has included the groundbreaking CODE Conference in 2001 and the development of IP Toolkits for artists.

BT. Involvement in the music industry is not nearly as new to BT as many people think. In recent years, for example, BT has managed a consumer brand (Dotmusic).

BT's current focus is on the further development of broadband and other technologies that provide exciting innovations and a route to new revenue streams for the industry. With the launch of a trial this year of 'flexible bandwidth', BT is enabling the delivery of DVD-quality video with Dolby surround sound over the internet. BT will continue to work with the industry to provide innovation and break the boundaries of possibility.

NESTA. NESTA is the National Endowment for Science, Technology and the Arts, the organisation that invests in UK creativity and innovation. Set up by Act of Parliament in 1998, NESTA uses the interest on a National Lottery endowment to pioneer ways of supporting and promoting innovation and creativity across science, technology, the arts and learning. NESTA was created to invest at the highest point of risk, and offer individuals, groups and small businesses the time, space, money and support to push at the frontiers of knowledge and practice. For further details, including how to apply, head to www.nesta.org.uk

MATTHEW BANNISTER

INTRODUCTION

Whatever solutions are found, music must not be treated simply as a commodity

Debates like that initiated by the RSA and its partners are vital and timely in an industry undergoing such rapid and fundamental change. As an interested outsider, I offer the following observations: innovation is not only necessary in the artistic activity that underpins the UK music industry, but also in every aspect of its current business model. Given the radical nature of technological change it may not be possible to sustain the industry in its current form, but this does not mean that a highly successful business cannot be built on the foundation of UK musical talent.

The industry's present major players face powerful pressures that may prevent them from adapting swiftly to new business models, so it may be 'outsiders' such as technology companies or talent management organisations that move faster to grasp the opportunities. And it is those who see the change as an opportunity rather than a paralysing threat who will emerge as the strongest players. There is no evidence that consumers have fallen out of love with music. They may be more reluctant to pay for it – at least at previous levels – but they still crave it in an increasing variety of formats and occasions. There is also no evidence that talented people are abandoning music as an expression of creativity.

In theory, the new technologies allow the demand for music to be satisfied far more efficiently and personally than ever before and at the same time allow a much wider range of talent to gain exposure and distribution. What changes is the financial model that has traditionally underpinned the industry. The RSA's debate canvassed a wide range of views on solutions to the problem. In my view, this truly global business will need global solutions – domestic policy makers cannot maintain barriers in the face of technology that knows no frontiers. These solutions should deliver a fair return to the creator of a piece of music and to those who have invested to enable the realisation and distribution of his or her vision – but also a fair price to the consumer. Whatever solutions are found, music must not be treated simply as a commodity. It is a vital part of our culture and society.

The industry has mutually beneficial relationships with publicly funded arts organisations and public service broadcasters. BBC Radio, for example, has played an important part in bringing new music and talent to substantial UK audiences, thus making a significant contribution to the success of the UK music industry. In a future of consolidated commercial media ownership and tightly formatted competing outlets, the BBC's potential to ensure that diverse and innovative talents have a significant platform could play an important part in the industry's continued success.

Matthew Bannister is a broadcaster and journalist. He is a former Chief Executive of BBC Production, Director of BBC Radio and Controller of BBC Radio 1. These are his personal views.

LAWRENCE LESSIG

GETTING BEYOND THE LAW

Never in our history have fewer exercised more control over the production and transformation of culture

In 1839 Louis Daguerre invented a technology called the ‘daguerreotype’, a machine for making photographs. It was expensive and cumbersome and the market for photography was small. Then in 1888 George Eastman invented the ‘Kodak’, an inexpensive technology that consumers could afford, to capture and share images of the world around them, and the market took off. Now just about the time the market took off because of George Eastman’s creation, there was a question being asked in the courts around the world...in particular, in the US. The question was, before you take a picture of someone, do you need to secure permission? The courts answered that question in the negative...you did not. You did not need permission to take someone’s image. You might say you didn’t need permission to *pirate* someone’s image. Images under the law were free and because they were free, this market could take off. But we might ask ourselves, what if the law had gone the other way? What if the law had said that you needed permission before you take or pirate someone’s image? We can imagine this, but we understand precisely what the result would have been. The market for photography would have grown. It would have been prosperous for those who had prospered before, but it would never have produced the impact on the production and sharing of culture that photography did.

The United States Constitution has at the core of its granted powers to Congress a clause, which says, ‘The Congress has the power to promote the Progress of Science and useful Arts.’ It’s a puzzling clause. For example, these words, ‘Science and useful Arts’, mean nothing like what one imagines, using English the way the language is used today. ‘Science’ didn’t mean science. It meant organised knowledge; culture. ‘Useful Arts’ didn’t mean arts. It meant technology. But more interesting is this concept of ‘Progress’. ‘Progress’ here is ambiguous between two meanings. One is the idea of advance...advancing and progressing and improving culture. The second is ‘to spread’...to allow this subject or knowledge to be shared by a wider range of people. Now which conception did the Constitution mean? The answer is, both. It meant to grant Congress the power to promote Progress in both senses of that term. So let’s focus a bit on each.

First, the idea of spreading. If there’s a concept called ‘free culture’, it was born here in Britain in 1710 when Parliament passed the Statute of Anne. The Statute said that existing publishers or booksellers received the term of 21 years for the works they’ve already produced and future publishers or booksellers or authors received a term of 14 years for works that they would produce. Now this idea of giving 21 years to existing works (which from the standpoint of commerce is an infinity), followed the pattern of the Statute of Monopolies from 1656 to find a way to buy off the existing monopolies. Now the most evil of these monopolies at the time lived here in London: the ‘Conger’, a collection of publishers who particularly powerfully controlled the spread of knowledge. It was against this particular group that Parliament acted when it tried to ensure that competition of the market – not the power of the law – would control the way culture spread, but it wasn’t until the case of ‘Donaldson versus Beckett’ in 1774 that these limits were recognised.

Beckett, a Scottish publisher, published works contrary to a monopoly alleged to be held in perpetuity, and the House of Lords finally decided in a 2-1 vote that when the Statute of Anne said, 'terms would be limited', it meant that no protection for copyright would exist after that limited term. In 1774 for the first time Shakespeare, in England, was free. For the first time in our tradition there was a concept of free culture, culture that could be appropriated and reproduced and spread without the permission of an owner.

Now creativity always has two lives at least. In its first life commercial activity is most important. This is when a book is first published and continues to be in print. That life, even for the most fortunate of authors, is extremely short. In the US the average time a book remains in print is just a year. So the first life for publishing in the US remains extremely short, but its second life – its afterlife, what we might think of as a non-commercial life associated with this creative activity – is essentially perpetual. It's as long as we allow culture to remember. So the used bookstores or libraries or archives that collect our culture and continually make it available to us, do so without giving (in the American tradition at least) copyright owners any continued return.

Now it's extremely important that copyright law continues to grant authors and artists an exclusive right to control the production and reproduction of their work during its commercial life. But both lives are important to securing a free and spreading culture. Within the book-publishing universe of the US there are probably 100,000 titles currently in print, but the archive of non-alive titles – the afterlife archive – is over 26 million volumes large. The proportion here is extraordinary. Our culture is the sum of both, and continuing access to both is an extraordinarily important part of the Progress of Science and the useful Arts.

Copyright law regulates creative work during its first life. It does not regulate creative work in its afterlife. During its afterlife, if you trade or give or sell or sleep on the book, you will not have violated the law. These uses of creative work are totally unregulated by the law, because the law traditionally understood that we need the ability to use and share and spread culture, free of the permissions required by copyright law, if in fact culture is to flourish and spread the way the Parliament in 1710 understood culture should spread.

Now these parts of our tradition have changed radically on a number of dimensions. The duration for example – originally 14 years – is now the life of the author plus 70 years, which, for a creator like George Gershwin, would mean a total term of 140 years for his most popular work. It's changed in its scope – originally limited to certain objects, maps, charts and books – now essentially reaching any creative work in a tangible form.

Before the internet I don't think it mattered. The afterlife I described survived, for example, the extension of copyright terms. You could buy and sell a book in a used bookstore, or read it in a library or put it in an archive, because all of those ordinary uses were unregulated under the copyright law. The real burden was not the law of copyright, but the law of economics. It was the fact that atoms had to be moved around as culture was shared – atoms in the context of books or films – that made it extremely expensive for people to produce and share culture. The scarcity of an atoms-based economy meant that only the few could engage in the act of broadcasting to the many.

Digital technologies change this economics. They change it because bits function differently from atoms. The bits that constitute digital creativity are cheap. The internet means we could



build an archive that would gather knowledge and culture and make it available for the first time in our history. While we in the US dream again about travelling to the Moon and on to Mars, the most extraordinary idea is that for a fraction of the cost we could achieve the dream of the Enlightenment by building these archives and making them available, equally and universally.

A second idea is eventually going to prove more profound. Bits move. There's an idea that the consumer in the US is a couch potato. Broadcast culture is fed to him and he reacts passively. He's a receiver of culture, not a producer. This too is changing. The digital consumer increasingly uses this technology to – as Apple Computer says – 'rip, mix and burn' the culture around us. Anyone with a \$3,000 computer can grab images and songs from around the web and CDs, and mix them together in a way that is more powerful than anything anyone could write right now, and spread it across the internet more quickly than any newspaper can spread it. This is the essence of digital culture, the opportunity to easily share and transform and speak in a way we have not been able to before. This is the promise of bits – to both guarantee universal access in a way we have never seen before and enable a kind of democratic creativity in a way we have never dreamed of before.

Now I come from the country of war. The US is waging many wars right now: the drug war, the war in Iraq, but there is another war I want to focus on – the copyright war. The President of the Motion Picture Association of America, Jack Valenti, calls this his own 'terrorist war', where the terrorists are our children. This war is being waged against something called piracy and it's being waged through both new laws and stronger technology, both designed to give the owners of content a new kind of control. These two go together, but it's important to focus on the increasing control offered through technology, through code. Here's an example. My Adobe e-book reader is a technology to enable me to read books on my computer. Here's one book, *Middlemarch*, a book in the public domain. If you click on the permissions to this book, *Middlemarch*, you're instructed that you're allowed to copy 10 text selections from this book to the clipboard every 10 days. Public domain works, books not protected by the law against copying or printing, are protected by technology that doesn't allow you to copy pages – even though in the US there is a concept called 'fair use' that guarantees you the right to print pages from a book, so long as the printing was not significantly large or for commercial purposes. So when you try to print 11 pages from *Middlemarch*, it stops you, not by the police knocking on your door, but by your computer telling you that you have exhausted your rights. So code becomes the enforcer of the restrictions of copyright, the law no longer plays its role. Except, in addition to code, there's more protection increasingly offered by the law. In this radical effort by the people fighting terrorism to increase the protections of code and law, they've now increased the protection by adding laws that protect the code, which itself is designed to protect the copyrighted material. The law says, in effect, that if you circumvent code designed to protect copyrighted material, even if the purpose is totally legal, even if the purpose would have been a protected fair use under copyright law, it is still a violation of the law.

Now add together these changes – changes of term, changes in scope, changes in the force of copyright as it exercises its protection through technology rather than law – to something I've not talked about yet, the increasing concentration of media around the world and therefore increasing concentration of the owners of this property. These together produce a fact, which we as a culture have got to recognise, for it should be startling. Never in our history have fewer

exercised more control over the production and transformation of culture than now. Never. The reach and force and effect of this law now is bigger than it has ever been, and it more dramatically affects the opportunity for free culture than it ever has, so here's the point. We're in the middle of this war, this terrorist war, and we need to begin to focus, not just on the piracy, but on the collateral damage. Not on efforts to reduce stealing of content, which is wrong and should not be permitted, but instead, on the ways in which this war harms other values that are more important and fundamental. The digital potential here of universal access to knowledge and democratic creativity is threatened by this war, because this digital creativity crosses the lines of copyright. The potential is regulated and coded away. The potential for Progress, for the spread of culture through universal access for the advancement of culture, through this type of bottom-up creativity, will be destroyed by the burden of this regulation.

Now what we need right now is peace in this war. We need to sue for peace by getting away from the binary way this war is approached. In the US, it's framed as if there are only two choices: 'piracy' or 'property'. If that's the choice, any good red-blooded American knows what the answer is: 'property'. But there's more to this debate than these two options. We need to show the space between the extremes that now define this battle, a space for free culture...not free as in 'free beer', but free as in freedom as the Free Software Foundation describes it...free in the sense that Progress requires. Never has it been more important for this struggle to be waged than now, because the potential has never been greater. Nor has the threat to that potential ever been greater. The traditional balance has been lost and our objective is to find a way to rediscover it and the ideals of Progress, ideals that said, 'let's limit the power of the 'Conger' to encourage creativity to spread the Enlightenment'. These ideals of balance need to be rediscovered. Need to be rediscovered again.

Lawrence Lessig is a Professor of Law at Stanford Law School and founder of the school's Center for Internet and Society. Chairman of the Board of Creative Commons, he is author of three books: Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity (2004), The Future of Ideas: The Fate of the Commons in a Connected World (2001) and Code and Other Laws of Cyberspace (1999). www.lessig.org ; www.creativecommons.org ; www.fsfeurope.org

ANTHONY LILLEY

OPENING REMARKS

Only the creator and the consumer are constants

If aliens were to land on earth, what would they think about the business of music content? Would it strike them as odd that the people called ‘record companies’ have a place in the value chain at all? What are records anyway? I am reminded of a colleague’s 14-year-old son who earnestly enquired what those round black things were called that his mum used to listen to in the old days. Or would our aliens be interested in where the value truly and properly resides in the relationship between music creators and the people who listen? No one, it usually turns out, has a permanent position in the value chain. Our visitors would see the effect of a lot of words that begin with the letter ‘c’:

1. **Choice.** More and more media assail our senses. In the endless noise of the mediaspace, how do we find meaning and value?
2. **Communication.** Pictures and sounds, text messages and video. Music has always communicated powerful ideas, but now everyone is at it. Digital technology makes creators of ordinary people, albeit not everyone is Mozart, or even Norah Jones.
3. **Context.** Media is everywhere; music is all around you, there are TV screens in railway stations and don’t get me started on the wireless internet. With changing context (started by the Walkman, or was it the transistor radio; no, wait a minute, it must have been the Edison cylinder) comes a change in the relationship between creators and consumers.
4. **Control.** I want my media now, how I want it; not necessarily in some bundle of other stuff I don’t like (previously known as an album). And I want to be able to do stuff with it. ‘Rip, mix, burn’ as Apple and Professor Lawrence Lessig put it.
5. **Contribution.** Content on a communications network gets changed and people distribute their own stuff. And they often do it, horror, without charging or paying.

So what does this add up to? A disastrous cocktail of threats from new technology? If so, we need to get out there and sue it to bits before it swamps us. That usually works; remember that pesky video recorder? We’d have gotten away with it if it hadn’t been completely futile. Just like Napster.

No, it’s nothing more and nothing less than a huge upheaval in the value chain. We need to find our place, wherever that may be. One thing is sure, if there’s a station for us at all on this network, we’re bound to be somewhere on the journey between creator and consumer. They are the constants. And on this journey, only the necessary, those who add something of value, survive for long.

Anthony Lilley is Managing Director of Magic Lantern Productions, advisor to Department of Trade and Industry on intellectual property and content, and former Chairman of the Broadband Stakeholder Group. www.magiclantern.co.uk ; www.broadbanduk.org

TIM CLARK

OUR BEST HOPE FOR A MUSIC RENAISSANCE

If we allow 'copyright owners' to set the agenda, we will lose the most remarkable vehicle ever conceived for the exchange of ideas

New technologies are not a threat. I see them as enabling our artists. I have three daughters and I'm afraid they're criminals – they download. Recently my middle daughter, who's 26 years old, went to the Jazz Café to see Richie Havens. I didn't even know Richie was still alive, for goodness' sake, but he's a brilliant artist and she discovered him and spent her own money to go see him. Both my other daughters bought Norah Jones albums and knew about Norah well before I did and well before her album was released in the UK. Where did my daughters learn about these and a plethora of other artists? From the internet. From P2P file sharing.

Why am I excited that my daughters are doing this? Because the internet is providing an education they couldn't possibly get elsewhere. The internet provides an opportunity for educating our young, all of us really, in what is available in our broad culture. That freedom of information needs to be protected every bit as much as the rights of legitimate copyright owners.

The RIAA and BPI are using the carrot and stick approach to P2P – the only trouble is, they forgot the carrot. Yet 200 million people are file sharing, they are our market and they are not all criminals. And we can make file sharing legal and profitable in the blink of an eye.

I was lucky enough to come into this industry in the sixties. The major record labels, five of them, were not signing the so-called 'underground' artists and that let in people like Chris Blackwell with little independent record companies. There was an explosion of little labels and artists from all sorts of genres doing well. It was the most wonderful mini-renaissance.

What chance of a mini-renaissance today, with the dead hand of corporate business at the levers of power? None – but for the internet, which is allowing people not just to learn about new (and old) artists, but also for artists themselves to exchange ideas. If we allow the so-called 'copyright owners', who are rarely the people who created the work in the first place, to set the agenda, we will lose the most remarkable vehicle ever conceived for the exchange of information and ideas. It is a battle for freedom – no more, no less.

Tim Clark is founder partner of IE Music, which represents Robbie Williams, Archive, Sia & Craig Armstrong. www.iemusic.co.uk

YOEL KENAN

BILLIONS OF SALES EACH DAY

Music providers will cede total control over a sole channel and instead become a revenue-partner of many channels

To envisage any market in 10 years' time is a difficult task. However, history has taught us that music will always be popular. Recent events have shown that music consumption is increasing not only in volume but also in prevalence. Music permeates nearly all aspects of our lives – not only through advertising and media, but also via the plethora of personal music players permitting consumption anywhere, anyhow, anytime.

Therefore, considering that the 'digital revolution' is upon us, I would foresee a marketplace where music is ubiquitous. Not only will people who originally 'owned' or 'repeatedly consumed' 100 sound recordings own or consume 1,000 songs in the future, but the distribution landscape will change beyond recognition. Music will be as easily purchased and consumed as a bottle of one's favourite soft drink. How, when and where it is consumed will be a decision entirely within the consumer's control.

Should the market players successfully create the necessary new business models and navigate the pricing and licensing quagmire, the market will be able to sustain a much higher volume of content across an ever-multiplying array of personal and commercial media. Billions of sales can be made in one day – something unimaginable within our current practices. Furthermore, with the proliferation of distribution and content, music providers will cede total control over a sole channel and instead become a revenue-partner of many channels.

In the short to medium term, the industry will look to the enabling potential offered by digital and mobile platforms. Windowing products across a set sequence of these channels with product alterations will also increase the number of revenue streams per artist and partially offset the decline in revenue as margins decrease on physical and digital sales. As labels encourage and technology permits one-to-one relationships between artists and fans, new products can be conceived.

To sustain this volume the market will feature many new businesses and players. It will be very fast and, contrary to some opinion, remain a wonderfully exciting place to work. Drawing upon history once more in conclusion, in 10 years' time the world's record companies will return to their core business and do what they have always done better than anyone: find talent; nurture, fund and develop that talent; and then distribute and promote sound recordings to create stars who are enjoyed by people all over the world.

Yoel Kenan is Senior Vice President, International Marketing and A & R at BMG. He is also former CEO of MP3.com in Europe. www.bmg.com

WAYNE ROSSO

MUSIC: FROM PRODUCT TO SERVICE

Music – and all content, for that matter – has been devalued by the internet

Scientists are developing new algorithms that will allow you to download a full DVD in less than two seconds. Internet access is also changing. Power companies in France and Spain have been experimenting with delivering internet service via power lines. Since electricity companies have every home and office in the world networked, you could just plug something into a socket and it could communicate with any other device in the house.

The next step is wireless access. The internet will surround us. Content will be moving throughout the atmosphere continually – from home to auto to office to portable devices. Peer-to-peer technology will play a significant role in the delivery of this content. Imagine that Robbie Williams or Coldplay has their own version of Kazaa or Blubster and it's gated. They could fully control the content, requiring virtually no infrastructure or bandwidth, and for the first time they (or a content owner) could have a one-to-one ongoing relationship with the customer.

Additionally, content could be pushed to the user and refreshed at will. Many think a website does that. But a website is no different from a storefront on Oxford Street. A customer pops into a shop, and when he leaves the relationship ends until he chooses to return. P2P technology can completely change that as well as significantly reduce marketing and distribution costs. Content will be packaged like cable television is today. In fact, you may be buying your total content service from your cable company – television programmes, films, music and games. You'll be able to access that service from anywhere in the world, wirelessly.

Music – and all content, for that matter – has become devalued by the internet. The music industry is in a precarious position where they've helped it devalue their own product because they've become so reliant on the supermarkets, who only carry the top 50 titles and who aren't in the business of selling music. These giant retailers are using music as a loss leader to sell washing machines. Now that paradigm is being duplicated online. Apple's not selling music. They can't make a profit from it. But they're making a sizeable profit from selling iPods. What's going to happen is the same thing that's happening in the analogue world. Competition for market share will drive prices down. These market factors coupled with technological advances will converge to transform music from a per unit product to a service.

Wayne Rosso is CEO of Optisoft, publishers of Blubster; former President of Grokster; and a founding member of P2P United. www.blubster.com ; www.p2punitied.org

PAUL SANDERS

THE NEW UBIQUITY OF MUSIC

Music is in danger of becoming wallpaper in the intimate setting of personal listening

Over the last half century, the music industry has produced a recordings archive of immeasurable size and value, and this production continues today. In the last decade we have become aware that technology could make all this music ubiquitous, so we could hear any recording at any moment. That possibility is being realised at a pace many inside and outside the industry find difficult to accommodate.

There has been a creative explosion in technologies to manage catalogues of music information, in music search and retrieval, and new audio file formats. The technology world regards the problem of music distribution as essentially solved, and has moved on. Today, instead of the handful of broadcast music radio stations, anyone with an internet connection has access to thousands from all over the world. File sharing creates a unified catalogue from the music on millions of personal computers.

Music, however, is but a small part of the economic value of the new data networks. Where interests of music producers conflict with those of network operators or other larger businesses, music will suffer. Music businesses have only a small voice in managing and regulating the networks. Nor can they look to the government for protection; the telecommunications industry is far more important to the economy.

Ubiquity creates its own problems. It is increasingly unlikely that a listener to internet radio will hear a track twice in a day. Music is in danger of becoming wallpaper in the intimate setting of personal listening, as it is in many public places. For the creators, too, the ubiquity of music presents a new challenge; the relationship with listeners becomes more ephemeral as familiarity with a single piece of music becomes rarer. Where passive listening is normal, it's more viable to play it safe.

Technology and economics are difficult forces to resist. Already music recommendation systems are increasing the difficulty of making personal choices, and decreasing serendipity, by selecting for us music that we are statistically more likely to buy. Tracking technology allows highly targeted marketing information to intrude into our relationship with music. These techniques open up new ways to extract value, but this value arises in the first place from the social context of music. Technology can also enable a new world of social context in which we can discover new music, and share our enjoyment of both the discovery and the music with people around the world. In such a world, ubiquity is a blessing and a joy.

Paul Sanders is co-founder and Managing Director of states51. www.states51.co.uk

LARRY KENSWIL

A DIFFERENT BUSINESS STRUCTURE FOR MUSIC

The challenge for record companies is to find ways to add value within a whole new business model

I work in an intensely competitive business that tries to make a profit in a landscape that has undergone rapid, irretrievable, fundamental change.

Record companies are run by people who love music and they serve an important purpose. They are middlemen. Artists contract with record companies to bring their music to consumers. Consumers look to record companies to bring them music worth listening to. If they fail to do those two fundamental things, they close up shop and disappear. Let me address some ideas that are out there.

1. Artists don't need record companies, they can go direct to the people. Without the marketing, promotion, and in many cases creative input of a third party, artists will have an audience closer to the street corner singer than the stadium tourer. With few exceptions, we have yet to see a band really break through without an indie or major behind them. The few established artists who have gone direct to their fans have achieved limited sales.

2. The internet will fundamentally change the economic relationship between artists and any middlemen. Of course it will. But the free market will control, in the end. Popular artists will end up with the same choice they have now: big upfront money, or the potential for a bigger back end.

3. Music should be given away in order to sell other products. That's fine, as long as the owner of the music gets to make that decision. Art needs to be paid for. Creators need to be paid, or they won't create. The picture of the web minstrel posting her song and collecting quarters from all of her newfound fans is very romantic but nonsensical. The last thing singers want to happen is to be regressed to sidewalk performers living off the beneficence of their audience. The best music is created when there is a financial incentive and business structure to foster that creativity. Don't misunderstand: things never will again be what they used to be. The challenge for record companies is to find ways to add value within a whole new business model.

The download market is exploding in the US and we can begin to make comparisons between the physical and virtual world. Whereas sales for physical CDs are typically 65/35 in favour of new releases over back catalogue, our sales online are 65/35 in favour of catalogue – a complete reversal. What's happening is a good thing and it is with downloads that this effect really kicks in. There are no inventory and shelf space restrictions and every track is as available as every other. As a result, sales are much flatter, to the joy of artists, songwriters and record companies everywhere.

Compulsory Licenses. The download business is taking off in the US and there's no reason to believe it won't be as successful here. We need a free open market, not a regulated one. Let's

look at what would happen if there were a compulsory license for recorded music on the internet. There are questions such as what the license would attach to and how content owners would be compensated for lost revenue, but the biggest problem is that the compulsory license turns the music business into a zero sum game. The total money coming in is fixed, can't go up, can't go down.

There is little incentive to invest, and next to no incentive to market. Record companies would adopt models lucratively employed by the publishing companies — 80% of employees would be let go and marketing budgets would be slashed. Market share would be the sole determinant of what is paid to artists and companies. Now, my company has the biggest market share, so we'd have the least to worry about. Who would have the most to worry about? The little artists and the independent label. And how do they get found by their fans? P2P is a total pull environment. The music that comes in is the music that is requested. There is no motivation for anyone to do anything but collect their share of the fixed amount coming in. There is no upside, so there are no entrepreneurs. Few producers and artists would spend the hours required to make a recording perfect, when it would get lost in the P2P shuffle anyway. It is the ultimate triumph of sterile technology over an art form.

Let the free market prove itself. Investments are pouring in. All the content is being put up for sale. Business needs a stable environment in which to work, and that environment is in place. You can debate how slow the old world was to move, but there is no debating that the change is now happening and that the grand future of the celestial jukebox — all music being available to all people where, how, and in the form they desire and at fair and reasonable prices — is upon us.

Larry Kenswil is President of Universal eLabs, a division of Vivendi Universal's Universal Music Group, and a board member of the RIAA. www.umusic.com ; www.riaa.com

PATRICK BRADLEY

A NEW FUNDING MODEL FOR MEDIA COMPANIES

For the first time independents can withhold rights and keep their value

Ingenious itself represents a new business model. We came into being in part because of the failing business model of the major record labels. Four years ago we identified an opportunity to become an independent source of finance to independent media and entertainment companies, allowing them to break away from the traditional model where the majors acted as the bank and venture capitalist. Their strategy was simple: once you walk through their door and ask them for money they very kindly say to you 'we'll take 25% of your business and we'll fund it for you' but the flip side was that they effectively stripped the economic value from your company so you would never be able to sell it to anyone else.

Our philosophy was to create a source of independent capital for young media companies whereby they could keep control of their rights and build their company to a stage where they could go into the market and get a market valuation.

Several essential elements are coming together now to create opportunities for music and media companies:

- ***New technologies.*** Technology has almost always driven growth, potentially explosive growth – as in the experience with DVD in film. Digital technology has created new sources of revenue in mobile applications, computer games, broadband etc. For the music industry, this represents another chance to sell their catalogue in new ways. Consumption of music has also increased dramatically by being available over so many new formats, although not all are sources of revenue at present.
- ***Legislation.*** It's important that those new revenue streams are proprietary and capable of protection. We therefore need legislation to allow independent companies more control of their value and rights and to redress the balance of power between majors and independents. For example, in TV the recent ITC review of rights for independent television companies has produced some excellent results; now big broadcasters cannot automatically take all rights when they license programming. For the first time, independents can actually withhold rights and keep their value.
- ***New sources of capital.*** When we add the availability of private equity from ourselves and others we start to see a new business model – that of independent companies properly financed to leverage their position with the major labels.

Despite all this, businesses still need the right management team and the right content strategy – and a plan that is executable, sustainable and profitable. The internet boom of the nineties proved that, without these, no business can succeed long term.

Patrick Bradley is Director of Ingenious Ventures Ltd, the private equity arm of Ingenious Media plc. www.ingeniousmedia.co.uk



PETER GABRIEL

MUDDA: THE MAGNIFICENT UNION OF DIGITALLY DOWNLOADING ARTISTS

We are determined to transform the music business so artists are on level terms with record companies

We are now witnessing the most fundamental transformation of the selling of music since records were first invented. We believe the way forward must be a partnership in which the artist can take a much bigger role in how their creations are sold, but also have the chance to stand at the front of the queue when payments are made instead of the traditional position of being paid long after everyone else.

Four years ago I co-founded a digital downloading service called OD2. We are now Europe's number one digital distributor for music, and are about to launch in Australia and Asia. We are determined to help transform the music business so artists are on level terms with record companies, receive fair payments and can be their own retailer when they choose.

I have been developing ideas with Brian Eno for an alliance of artists to ensure that artists' interests are treated fairly, as this new business model takes shape. This dream for MUDDA can only become a reality with enough endorsement and involvement of other artists.

THE MUDDA MANIFESTO

WHY? Transform creativity: • No constraint, editing or external control over what is released. • No time limit on the length of music. • No more waiting for an album cycle. • Be creative with what you sell and how much you sell it for.

WHY? Full, fair and fast payment: • The official artist website is a great place to see your catalogue, so why not allow fans to buy downloads from this site? • Sales can be monitored instantly. • Artists' share of retail can be accounted for monthly. • Where artists can license directly, they can get the full dealer price as well as a percentage of retail.

WHY? Reasons to be cheerful: • We can put music back in the hands of musicians. • Artists can take some ownership and creative control of the output and delivery as well as the content. • Artists can negotiate from a position of strength. • With enough artists acting together it's not too late to transform the music business to be one of partnership. • With good filtering and easy access, we can use the technology to compete with free music downloads from the web.

All this is possible – just ask MUDDA. The download site made by artists for artists. The MUDDA of all download sites.

Peter Gabriel is a recording artist, co-founder of OD2 and founder of Real World Records.
www.mudda.org ; www.OD2.com ; www.petergabriel.com

HUGH GRIFFITHS

MOBILE NETWORKS AND MUSIC

The music business may cut itself out of a value chain its own customers are driving forward

The UK mobile phone ringtone market is now bigger than the CD singles market, with sales of over £70 million in 2003 alone. Against a backdrop of immense scepticism about people's willingness to pay for online content, the mobile phone industry (with 50 million handsets in use) is seeing millions of consumers purchasing digital content.

Yet if you go back a few years, the mobile ringtone industry was in a similar space to the current online music industry where piracy was widespread. Today, working with music content providers, the network operators have turned around this market. We are paying license fees for content, investing in joint marketing initiatives and have consequently increased market revenue for both operators and providers.

Mobile network operators do three things very well that offer a massive potential for the music industry:

1. We run UK-wide networks accessible to every member of the public.
2. We offer the most established and sophisticated new media content billing platforms that can bill down to the last second or kilobit.
3. Ultimately, we offer the music industry a new route to market, which is available to consumers anywhere, anytime, via mobile handset devices that are accepted and used daily by millions of European consumers. Investing significantly in R&D, the mobile phone industry has already moved on from the first generation of MP3 music players to devices like O2's new digital music player, which allows consumers to download the latest hits, pre-releases and back catalogue in around 40 seconds.

What we don't have is the content and *joined-up* marketing initiatives. To untap the true potential of music on the move, the mobile industry needs to work with the record companies. We have a front end 'shop window' in the form of the screen of mobile handsets in the hands of millions, and we have an established base of customers who understand how to pay for content and are continually looking for new content.

This synergy can only be exploited if both industries willingly engage and accept a realistic revenue share model. We can't guarantee the music industry the same return they may currently get from a physical CD, but we're offering access to an audience that pays and the ability to make money. If the music industry drags its feet for too long it is going to cut itself out of a value chain its own audience is actively driving forward.

Hugh Griffiths is Head of Data Products at O2. www.O2.co.uk



PAUL HITCHMAN

REINVENTING THE MUSIC INDUSTRY FOR A NEW CENTURY

We must start with the premise that the customer is the answer and not the problem

The traditional record company business model is under threat, it seems, from all sides: from new technologies such as MP3, broadband, P2P and wireless; new entrants such as telecom companies, ISPs, and mobile operators, all of which are encroaching on the music business value chain; and competing products such as computer games and mobile phones. Most record companies were initially either slow to react to these threats or responded defensively. This is now changing: record companies are licensing to new digital services, and the outstanding case of iTunes is held up as an example of this evolution to a legitimate digital music marketplace. In other words, the digital music marketplace is now open for business.

However, there are worrying signs of complacency. We're seeing the practice of record companies suing individual consumers spreading from the US; we're seeing the iTunes model being held up as the only viable solution for digital distribution of music, despite the fact that the a la carte download model is only a very slight development of the traditional record company model and may even accelerate the decline in music revenues if consumers cherry pick individual tracks rather than buying whole albums; we're seeing many companies enter the music market whose primary concern is not music or artists, but rather the selling of another product; and, worrying from the UK's perspective, we're seeing that the digital music agenda is being driven almost exclusively from the US.

The challenge for the music business is to reinvent itself for a new century. To do this we must start with the premise that the customer is the answer and not the problem, and we must accept that innovation is the key. Innovation in technology, innovation in business models. History shows that every technological change has led to growth in the music business, from phonograph records to radio, to CD and digital recording technology. The current era is one of massive opportunity.

PlayLouder is responding to this challenge by launching PlayLouder Music Service Provider (MSP), the first ISP in the world to pay a share of its revenues to music rights owners in return for licensing its subscribers to freely share music. The business model is innovative as for the first time it enables music companies to earn revenues from consumer activity that was previously illegal. Mutually beneficial partnerships such as this between content owners and technology innovators hold the key to future growth.

Paul Hitchman is co-founder and Director of PlayLouder, PlayLouder MSP and Consolidated Independent. www.playlouder.com ; www.playloudermsp.com

MIKE MILLER

THE 360-DEGREE BUSINESS MODEL

Our philosophy is that we put the artist at the centre of everything we do

We hear a lot about the music industry and the recording industry as if they are interchangeable, but in fact the recording industry made up only about 70% of the music industry in 2002. Revenue streams outside records are important – and they are multiplying and growing. If you're spending money to create an artist, you should be reaping some of those rewards. Some examples:

- **Touring.** In 2003 we saw the biggest touring schedule in the UK ever and in the US since 1990. In the UK, ticket sales rose to £2.5 billion from £1.1 billion in 2003; since 1996, there has been an annual increase. At the same time, ticket prices went from an average of \$26 in 1990 to over \$53 last year. It's not just about the current top tier artists. Iron Maiden, a band formed in 1979, had its biggest touring year ever.
- **Merchandising.** Over \$1 billion was spent in 2002 on merchandising – you know, good old T-shirts, good old baseball caps – and it was significantly up in 2003 as well. Increasingly, we're seeing retail merchandising – that is, in shops, not on tours – posters, calendars, mobile phone covers, ringtones.
- **DVDs.** Music video was pretty much dead and then along comes this brand new format; from nowhere in the last few years we've seen the DVD business rise to over \$1.2 billion in 2002 and continuing to rise substantially.

Sanctuary is a 360-degree music business: we operate across all areas of the music industry and generate money from every aspect of the artist's career. We are agents, merchandisers and a record company as well. Our philosophy, which is crucial, is that you put the artist at the very centre of everything that you do. It's about building their career – building their long-term value to themselves and obviously to you as a business.

The sort of bands that we're involved in, what we call 'career artists', build loyal fan bases. They're the sort of bands that, yes, some kids may get into them by some illegal download, but if they do like the band and find that they've got some empathy with the artist, they start to buy the albums. They then start to go to concerts, start to buy the T-shirts and you've got them for life. That's very important to us and we think that's one crucial way forward for the music business and obviously the record business.

Mike Miller is Group Finance Director, Sanctuary Group. www.sanctuarygroup.com

FEARGAL SHARKEY

MUSIC RADIO IS NO LONGER ABOUT MUSIC

The music industry's traditional thinking, based around the concept of exclusive ownership, is about to change

There are signs that the global collapse and imminent demise of the music industry were a little premature, but that should not give us grounds for complacency. Never have we been faced with a greater dilemma: an ever-evolving environment operating beyond and out of our control. Greater external pressures. Greater external demands. And absolute clamour for right of access to the one thing we prize most highly above all else – our music.

The Communications Act of 2003 allows for far-reaching, penetrating consolidation of the UK media industry. The merger of Carlton/Granada has been green-lighted and radio will soon follow, yet for almost nine decades we have placed an unswerving reliance upon radio. For those nine decades we have enjoyed a truly unique symbiotic relationship – radio gets access to content and in exchange we get promotion – but that balance has already begun to shift. In broad terms, music radio is no longer about music. It is increasingly a methodology-based means of attracting an ever younger, more narrowly defined, fragmented social demographic.

To generalise, commercial radio has (not quite justifiably) started targeting 15-25 year old females, because that's what their national advertising accounts want, that's what the market wants. Their job is to deliver that audience to their advertisers. So, you either start making lots and lots of records that will appeal to that audience or you're going to be in trouble trying to find any kind of exposure for your acts. That is going to increase the more those media companies consolidate and start driving brand identities across a number of outlets and platforms. Radio will continue to become more centralised, more national in appearance and more brand oriented. For the music industry, that will carry a long-term cost.

Music television will not escape this evolution. It has already embarked upon a similar journey to radio. But don't think for one second the change is limited to media companies. The internet has already proved that. It is incredibly easy to forget lessons we have learned. That technology will always challenge the established order. That every single major growth period in the music industry's history has been driven by technology, not by music. And the rest of the world has awoken to the idea that we jealously guard a rich seam of revenue, one they are eager to mine.

In December 2003 Apple announced that iTunes users had just downloaded the 25-millionth song. That does not take into account the hardware business that goes along with it. In a three-month period leading up to Christmas, Apple sold 750,000 iPods at a minimum of \$300 each. In one three month period, Steve Jobs created the potential for a rather astonishing 2.7 billion downloads at 99 cents each. I'm struck by the fact it has taken an outsider to come into this industry and focus our attention.

Don't think convergence stops with computer companies. I recently spoke to one BT executive quite happy to be quoted about his company's aspirations to 'become a major player in the music

industry'. I already know of one large telecommunications company that has spent an inordinate amount of effort examining the content delivery capabilities of digital radio. Meanwhile, in North America, John Alderman in his book proffers a vision for the music industry operating in a converged marketplace. Music is given away for free to the consumer. Record companies derive their income from taking a direct financial share and interest in every activity undertaken by their artist. In Europe the process has already begun. We have cross-media companies, exploiting Alderman's theory and driving brand identities across dozens of entertainment platforms.

What is clear is that record companies' traditional thinking, based around the concept of exclusive ownership and their ability to control their own destiny through that ownership, is about to change. Curiously, we actually have the ability and the infrastructure to manage this if we choose to. Do we need to start vigorously investigating other means of exploiting and driving forward our income base? Is there a case for proactively helping our licensees develop their own models, creating other income generating opportunities, ones from which we can all benefit? Do we become the world leader in the exploitation of digital rights in the brave new world? What this industry needs, more than at any time in its history, is creative, highly focused, highly motivated leadership. Simply cited, copyright legislation and an ability to cope with market demands will no longer be considered a defence.

There are a number of certainties. There will always be an almost insatiable demand for music and that, ironically enough, provides certainty for those frequently left out of this equation – musicians and creators. They will always have gainful employment trying to satisfy that demand. The bit that is uncertain is the bit in the middle, the music industry. At the end, if there is anything we can rely upon about the future, it is that we are probably missing something very important. Above all else, the one certainty we do have, from this point on: the music industry has no veto over the future.

Feargal Sharkey is a musician, music industry consultant and Chair of the Live Music Forum. www.culture.gov.uk/creative_industries/music/livemusicforum.htm

WILLARD AHDRIITZ

A NEW MODEL FOR COLLECTING ROYALTIES

A reduction in royalty collection time of up to 50% and substantially improved transparency

Collection of royalties has historically been time-consuming and costly. Usually writers receive royalties nine to 24 months after they are earned and pay a significant amount – up to 50% – of gross royalties to intermediaries, including collection societies. In addition, low transparency and complex reporting have made it near impossible for writers to understand if collected royalties are correct or comprehensive. The millions of transactions in the current real world will become billions of transactions in the digital world. As the variety and volume of transactions increase, this situation can only get worse.

While others debate whether and how to change this system, Kobalt has created a new model for collection of publishing royalties that represents a profoundly different approach. Combining modern technology with our knowledge of the music publishing business, we have developed a centralised administration organisation. This enables us to collect royalties and provide information through a web portal from transactions around the globe.

The new model offers a service that reduces the number of interfaces from writer to user. Kobalt directly interfaces with collection societies or end-users for approximately 85% of global royalties, without the use of local representatives and agents. This cuts out many fees usually paid to middlemen. Kobalt's services also enable clients to enter information directly into the system, as well as receive live information about their catalogues and associated royalties. Automation provides quick access to information and reduces error rates. As a result, Kobalt offers a reduction in royalty collection time of up to 50%, as well as substantially improved transparency. Kobalt gives detailed and comprehensive information to clients, allowing a better understanding of their income and a higher level of comfort that they are being paid correctly.

Kobalt believe this is a highly attractive proposition for both writers and publishers, representing a fundamental change of approach and vast improvement in service levels. Clearly, royalty collection for international copyrights of all sorts can be managed much more efficiently in a similar way.

Willard Ahdriz is founder and CEO of Kobalt Music Group Ltd., which represents Sanctuary Music Publishing, Badly Drawn Boy, Air-Edel, B-unique and Integrated Copyright Group among others.
www.kobaltmusic.com

MARCO DISTEFANO

TECHNOLOGY CAN IMPROVE EFFICIENCY

If a DJ, a producer and 10 musicians are involved in a track, these complex rights can be captured at point of sale in real time

At the moment, royalty collection is an incredibly complex process. It's costly, it's time consuming and artists' earnings are distributed infrequently – half-yearly or yearly. It would certainly suit most artists better if they received royalty payments monthly.

Collecting societies are posed with significant difficulties in collecting and collating the data accurately and ensuring that it relates back to licensing payments.

By utilising technologies like asset management, digital rights management and enhanced metadata, a content owner can ensure that when content is distributed digitally, all rights – whatever their complex breakdown – are captured and represented. If a DJ, a producer and 10 musicians are involved in a track, these rights can be recognised at point of sale, when the track is played, and data can be collected in real time. This can increase the speed and frequency of payments to artists.

Improvements could also be made in the way royalties such as MCPS are calculated; for example, published price to dealer often doesn't reflect the price the end user pays and so artists' payments are capped. By collecting that information at point of sale, we could see the price actually paid and therefore account more fairly. We would know that someone has experienced a piece of music and whether they have bought it for perpetuity or a single consumption. This provides us with a way to aggregate that data through the value chain and back to the collection societies who can then manage payments to artists more efficiently.

Through the extended use of digital rights management, rules can now be established around content distribution, playback and burning rights. Digital rights can be applied to a track so that it can only be played once, for example, or burnt three times to a CD. Content can be distributed among friends but unless the sender or receiver purchases a license to view the content, it cannot be consumed. This provides opportunities to drive new types of revenue and, more importantly, really measure what's happening to a piece of content.

As a record label owner, I'm going to make the best use I can of digital rights management to grow my market. As a BT representative, we aim to work with content owners to enable them to distribute content at the right time, in the right format, at a fair price, to the most important person in the value chain – the end consumer.

Marco Distefano is Head of Music for the BT Rich Media division and is also the founder of a number of Independent Labels including Rocstar BT. www.btrichmedia.com

PETER JENNER

WE NEED 'ONE STOP SHOPS'

It currently requires up to 100 licenses to deliver commercial music to the whole of Europe

In 10 years' time there will be a multiplicity of models for buying music, from hard carriers to downloads to programmed streams to customised monocasts, coming from many different sources and going to many different countries, all with slightly varying copyright regimes. Many payments will be very small, and will include many performers, writers and other rights owners/controllers. The only practical system for collecting, allocating and distributing this money is that of the collection societies.

However, these societies have been set up under different legal and social structures within different nation states for different rights. With a European Union of 25 countries, you probably need up to four licenses per country (performance and mechanical licenses for the recording and the underlying compositions) in order to deliver a commercial music service to the whole of Europe.

This clearly implies the immediate need for the development of 'one stop shops' to facilitate trade. Progress in this direction has been slow and needs to be hastened. The societies need to cooperate internationally and standardise their rates – and also their fair treatment of all users and creators everywhere.

To facilitate efficient operation, societies need to adopt efficient uniform electronic identifiers of works. Behind that, the appropriate metadata also needs to be standardised with ISO numbers for composers, authors, publishers, performers, record companies, etc. and all other data required to facilitate the seamless transfer of funds from purchaser to provider to creator and rights owner.

The collection societies are granted enormous privileges. In return for this they should be required to get the necessary numbering together and to initiate systems of governance and administration that are transparent, democratic, non-discriminatory, fair and efficient. They also need to provide easy usage systems for users, and efficient, honest payment systems for providers, including cheap and accessible appeal, mediation and arbitration systems for national and international disputes.

All this will never be perfectly achieved, but creators and other stakeholders need the societies to work toward this end, and governments should require it if the societies wish to maintain their monopolistic privileges. If we don't make the development of electronically delivered services easy and economical, illegal services will flourish and the copyright owners' legitimacy will be so undermined that their rights will become unenforceable. The creators cannot afford to permit this to happen.

Peter Jenner is founder and Managing Director of Sincere Management, manager of Billy Bragg, co-founder of AURA and Director-general of the IMMF. www.immf.net ; www.aurauk.com



JOHN BENEDICT

INSTANTANEOUS PAYMENTS

To provide an efficient system for royalty collection, the current model must itself become part of the very technology it is looking to change:

1. The metadata relating to each piece of music must be stored and made available by an industry body with a globally recognised tagging system.
2. Registration of copyrights and their administration should be effected electronically from the relevant source country simultaneously and instantaneously with all collection societies.
3. The methods and periods for the accounting and payment of monies between the exploiter of music (i.e. a webcaster), the relevant collecting society, the licensee in the relevant territory, the owner in the source country and the artist/songwriter are archaic and anachronistic. The periods are based on time lags needed when the whole process was done manually and you had to book a week in advance to make an international phone call. Accounting and payments should be made online and on time – ultimately there is no reason why the transactions should not be at the speed of bank transfers and with the same transparency. If music is identified instantly, it can be charged instantly, and accounted and paid instantly.

Ultimately I see the artist/songwriter being able to draw on monies earned, say, from a broadcast in Tokyo, the morning after the broadcast, in London. Only the song can remain the same.

John Benedict is a music attorney and music industry consultant. www.benedicts.biz

DANIEL DUFFEL

NEW FORMS OF MUSIC

How will copyright law and royalty collection address a form made entirely of samples? Whereas traditional DJs rely on the content of the compositions they play to give structure to their performances, and DJ mix CDs are clearly formed from recognisable individual compositions, new kinds of musical instruments will break this barrier, enabling artists to create their own new structures, live, from fragments of literally hundreds of existing compositions. Obviously, existing blanket licensing of performance contexts covers the live aspect of the form (to some extent) but it is very likely that consumers will wish to purchase recordings of these artists in action. Under present law such a musical form would be almost impossible to copyright clear because each and every sample needs to be cleared. Current prohibitive copyright payment settlements would make commercial release of such a form unfeasible.

Daniel Duffel is a writer, audio engineer, music technology consultant and author of The Sampling Handbook.

ANDY HEATH METADATA IS KEY

In respect of new media, the biggest single issue that collection societies need to address properly is the creation of a proper source of accurate enhanced metadata. Between MCPS, PRS and PPL there's an opportunity now to create probably the most useful tool for everybody, which is a reliable set of detailed data relating to the various creators and rights owners in each individual musical work, the intention of which is to license to users so that not only could it be a source of income in itself, but it would allow everyone to work on a reliable basis, which would be like 'holy ground'. It's there, we've just got to compile it in a usable form. It's not to our credit that it hasn't been achieved already. Once we have this database created and made useful and workable and available, then a lot of other problems will be easier to deal with.

Andy Heath is a Director of the Beggars Group and serves on the board of MCPS and PRS. www.beggars.com ; www.mcps-prs-alliance.co.uk

DOMINIC MCGONIGAL A COMBINATION OF SOLUTIONS

Ten years from now we'll be able to get our music from almost anywhere, through a proliferation of distribution channels. We will need sophisticated collections systems to generate a return to artists from this myriad of uses. The blueprints for those systems already exist in the music industry today. The record companies process millions of transactions through their royalty systems. The collecting societies license billions of uses of music in public and on radio and TV. Online, the technology that brought us communication power of the internet, mobile phones and file sharing will be able to deliver the processing power and digital rights management applications to reward artists. The answer lies in combining solutions.

Dominic McGonigal is Director of Strategy and Business Development at PPL. www.ppluk.com

PAUL MCGUINNESS

QUESTIONS TO BE ANSWERED

- In the digital future, will rights collection societies face competition?
- Will some collection societies admit only successful members, not bothering with small fry?
- Will legislators and regulators need to intervene to set tariffs and direct what happens to surpluses (unallocatable royalties) that will inevitably occur? How long will this intervention take? Will there be a bonanza of unallocated royalties while practice catches up with theory?
- Will artists in the future make deals with collection societies at the time they make deals with record companies and publishing companies?

Paul McGuinness is founder and Managing Director of Principal Management, managers of U2.

ALISON WENHAM

A RETAILING MODEL

The future administration of the music industry could involve collection societies in a more far-reaching capacity. However, their role might be defined by stakeholders; there will be the opportunity to create flexible structures which offer fair reward to all rights owners in the chain, with speed and efficiency. Systems with quarterly, half-yearly or annual accounting to rights owners will need to be overhauled to produce more immediate returns based upon a retailing model. That the conventional rights owners will change is not in doubt, and that fact therefore throws into question who the new rights owners are and how they will exercise their rights, both individually and collectively.

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LAWRENCE LESSIG

DEFINING OUR CHILDREN INTO CRIMINALITY

Innovation is supported best by laws that minimise the role of lawyers

I want to start by making two points. Point one: The history of copyright is the history of technology changing the way creative work gets used, and the history of copyright law is copyright law adjusting to the technologies that change the way creative work gets used. For most of its history, copyright law did a pretty good job of balancing the law against the particular technologies that affect the way content gets used.

Point two: We are entering an age of the remix culture, where an extraordinary number of people are going to be empowered through technology to take culture around them and mix it together in ways nobody ever intended. Mix it and share it and spread it, not for commercial purposes 98% of the time, but just because this is the way they remix their culture.

Now here's the way these two points go together. I spent a long part of my life trying to change laws; I've failed totally. So I am reformed. I'm now going to propose laws. The question presented in this panel was, 'Which copyright policies will best support innovation?' Here's Lessig's Law: Innovation is supported best by laws that minimise the role of lawyers.

Now minimise doesn't mean eliminate. There's an important role that lawyers will always play, especially for important commercial ventures. The point is, laws, if they rely upon lawyers, can kill the opportunity for an extraordinary amount of innovation, especially innovation in the context of a remix culture. If every time your kid wants to remix a song with some video image, he's got to go clear the sync rights with some lawyer in Hollywood or be a criminal, we're defining our children into criminality. The law is ridiculous when it forces that kind of transaction for somebody engaged in creative activity.

The claim was made that copyright law with long terms doesn't interfere with the second life or afterlife of commercial products, the life where they go into archives, libraries or used bookstores. From an academic perspective that's true. All you have to do is track down the copyright owner and ask permission. But in the real world, saying you've got to get permission means you will not do it unless you're one of these obsessive people who's going to spend a year clearing all the rights. It terminates the afterlife for a tonne of work and maximises the role for lawyers.

Creative Commons is about the right of artists to choose to share their work freely, and enabling others to understand that choice simply and cheaply without calling a lawyer.

Lawrence Lessig's biography appears on page 9. www.creativecommons.org

JENNY TOOMEY

CURRENT LAW SUPPORTS MONOPOLIES

A handful of corporations control the means to make or break artists

The original Copyright Act of the US was designed to protect two classes of beneficiary, the creator and the citizen. Sadly, copyright law in its current form does more to protect corporations than citizens and creators. As the entertainment publishing industry becomes increasingly consolidated and vertically integrated, multi-national corporations control a larger and larger percentage of the most lucrative distribution and promotion channels. Another overlapping handful of corporations control the access to the markets and the means to make or break artists. All five, soon to be four and possibly three, major record labels require artists to sign away their copyrights in their standard contracts.

Between 87% and 100% of the songs on three of the most profitable US commercial radio formats have copyrights controlled by major labels. The major labels defend this as simply due to their expertise at identifying and promoting the most talented artists. Critics suspect something else: the standardisation of independent radio promotion, where large sums of money are paid to radio station owners by major labels through a third party, the independent radio promoter, in order to secure consideration for song placement on radio play lists. Few if any songs are programmed on the commercial dial unless a substantial tithe has been paid through independent radio promotion channels. The costs associated with promoting through these channels are enormous.

If artists refuse to sign a major label deal, they will have little access to radio, distribution through chain stores and promotion through TV and print media. If artists do sign a major label deal, they give away their copyrights. This standard practice allows large corporations to control huge pools of the most valuable copyrights and thus to have the power to determine the future structure of the music industry. If you're a technologist who's designed a mechanism to allow downloads to become a new business model, you must first negotiate with the major labels in order to use the copyrights they control. If your new model more equitably serves artists and citizens but threatens the traditional model, they are not required to license to you.

The concentration of ownership of the channels of distribution and promotion means that entrenched oligopolies will control what the next forms look like. For this reason, media concentration has become our central issue. Until we fix distribution channels to force beneficiaries of public broadcast licenses to negotiate fairly with independent contractors and respond to citizens and creators, the market will simply replicate the existing models, which serve neither artists nor citizens.

Jenny Toomey is a composer, performer, former independent label owner and Executive Director of the Future of Music Coalition. www.futureofmusic.org

DAVID VAVER

UNNECESSARILY STRONG AND VICIOUS LAWS

Copyright has got out of touch with the realities of composition

We should take the idea that copyright law provides an incentive to authors or composers with a large bag, rather than grain, of salt. On that edifice is built a copyright law of unnecessary strength and even viciousness. Far from being an incentive to innovation or creativity it is a positive disincentive, a menace. I could give any number of examples but I'll take just one, the little imbroglio that occurred in 2002 between Mike Batt and the copyright holder of John Cage's work *4 minutes and 33 seconds*.

A musical group called The Planets issued a record album that included a track entitled *one minute silence*, which indeed is an accurate description of the track. The track was attributed to John Cage and one of the group's members, Mike Batt. When the record was released, the publishers of John Cage's work *4 minutes and 33 seconds* complained that Batt had infringed the copyright owned by Cage's estate. For those of you who don't know the work, it's quite short and reads thus on an otherwise blank page: '4 minutes 33 seconds for any instrument or combination of instruments'. The idea is that a performer will come onto the stage and stay silent for that period of time.

This all sounds quite amusing, except that the publishers were in earnest and the case settled, without going to court, for a substantial sum – probably in five figures. Batt paid over this sum to clear the title surrounding his record. To cap matters, Batt says that he has registered copyrights on all silent musical seconds from one minute up to 10 minutes, except for 4 minutes and 33 seconds. 'I've got Cage hemmed in', he is reported as saying, 'he will be breaching my copyright if his piece is performed and overruns by a second or two'.

Cage died in 1992. His estate can therefore continue to claim copyright on *4 minutes and 33 seconds* throughout the world until the end of 2042, and in Europe and the US until the end of 2062.

A law that pressures musicians to buy off claims such as Cage's is absurd and cannot morally be imposed and yet that is what Western nations have subscribed to and are pressing through international trade agreements on the rest of the world. Copyright has got out of touch with the realities of composition. It really is time for policy makers and legislators to stand back and take stock of the morass that copyright law has created for honest authors and composers.

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ANDREW YEATES

COPYRIGHT LAWS ARE NECESSARY AND IMPORTANT

Music rights owners should be able to choose their own destiny

1. We shall continue to need copyright policies in the future. Copyright remains a vital incentive for creativity and inventiveness.
2. International harmonisation of copyright protection will become increasingly important in a digital age. Digital technology and the ease with which catalogue copyright works can be made available supports arguments for the extension of copyright in sound recordings to a period nearer that of underlying works. There are now more opportunities for the development and representation of works in ways that attract consumer interest.
3. Copyright owners must be entitled to a degree of choice in how to exercise their key rights and to mark out the areas and markets in which they wish to secure the majority return for business risks and investment. This choice must not be replaced by systems of compulsory licensing or levies determined by what *others* regard as a 'fair' reward.
4. Many seem to assume that somehow music is ceasing to have value in the digital age. I do not accept this. Music is the stimulus for so much creativity and innovation. Those who are able to write, compose and develop music, and those who invest in the recording, marketing and distribution of music, should be recognised *in themselves*, and not simply regarded as a negotiating pawn for other creators of intellectual property to develop their businesses. Music rights owners should be able to choose their own destiny. Some may decide to make available their works without charge, others may decide not to enter a particular area of potential exploitation or licensing, and others may choose to market and exploit in an extremely broad and imaginative way.
5. Fair dealing and fair use provisions within copyright law will remain important to creating an appropriate balance between protection of property and the need for future creativity and the cultural dissemination of music. This balance will also ensure that there are proper and effective means for the enforcement of the rights of property that are properly recognised under copyright law.

There is strong evidence that copyright can be rendered ineffective unless owners are able to take strong enforcement action. But enforcement per se is not the goal. The ability to market and distribute and enable access to music that has been recorded is the driving force. I hope that in developing copyright policies in the future, realism over the enforcement and the protection of rights can be properly balanced with the opportunity offered by copyright law to stimulate innovation, investment and imagination.

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RESOURCES

Alliance Against Counterfeiting and Piracy: www.aacp.org.uk
Association of Independent Music: www.musicindie.org
Association of United Recording Artists: www.aurauk.com
Authors Licensing and Collecting Society: www.alcs.co.uk
British Music Rights: www.bmr.org
British Phonographic Industry Ltd: www.bpi.co.uk
Campaign for Digital Rights: www.ukcdr.org
CODE (Collaboration and Ownership in the Digital Economy) Conference: www.cl.cam.ac.uk/CODE
Copywatch: www.copywatch.org
Creators' Rights Alliance: www.creatorsrights.org
Educational Recording Agency: www.era.org.uk
Electronic Frontiers Foundation: www.eff.org
Federation Against Copyright Theft: www.fact-uk.org.uk
Foundation for Information Policy Research: www.fipr.org
International Confederation of Societies of Authors and Composers: www.cisac.org
International Federation of Phonographic Industries: www.ifpi.org
International Network for Cultural Diversity: www.incd.net/incden.html
Mechanical Copyright Protection Society: www.mcps.co.uk
Music Publishers Association: www.mpaonline.org.uk
Musicians' Union: www.musiciansunion.org.uk
Performing Right Society: www.prs.co.uk
Phonographic Performance Ltd: www.ppluk.com
Publishers Licensing Society Ltd: www.pls.org.uk
Resonance 104.4FM: www.resonancefm.com
The Free Software Foundation: www.gnu.org
The UK Patent Office: www.patent.gov.uk/copy/index.htm
UK Intellectual Property site: www.intellectual-property.gov.uk
WIPO (World Intellectual Property Organisation): www.wipo.int

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