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NEWSLETTER

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CALIFORNIA COPYRIGHT CONFERENCE

Just how bright is the future of the music industry really?

by Thomas McAlevey

The President's Corner

Bob Dylan's lyrics, "For the times, they are a-changin," perfectly describes the major transformations being felt throughout the music industry. Most of these transformations are the result of consumers' demand for convenience intersecting with technology. Although technology has created a world of convenience and is a part of each of our lives, it has rapidly changed all aspects of the music industry, including the value of copyrights.

What the future holds is another question, however, it is my goal, as this year's President of the CCC, to have conversations and events (i.e., in real time and via online streaming) where we can educate ourselves of the issues and changes that are unfolding before our eyes.

I hope you will participate in and/or join the CCC so we can collectively think of creative solutions. I look forward to exploring the areas of technology with you for the next year and creating an atmosphere where we can move forward as an industry, while balancing the interests of copyright and technology for modern times.

I would like to thank fellow board members Michael Morris, Charley Londono & Steve Winogradsky for putting together tonight's panel "Streaming for Dollars".

Don't forget to share your thoughts and follow the CCC on Facebook and Twitter.

Thank you for the privilege and honor to serve as your president.

Anne Cecere
President, California Copyright Conference

A new generation has spoken and Access (streaming any music in the world from 'The Cloud') will win out over Ownership (collecting a finite number of songs as CDs or files) just as Personal Radio (interactive Internet radio streaming) is replacing AM/FM. This is no longer debated by the informed, but accepted as a matter of time. Yet how often must we read that leading streaming music services like Pandora and Spotify are still losing money despite tens of millions of users and hundreds of millions of dollars invested? Journalists world-wide extrapolate from this semi-truth that it is impossible for legal streaming to make money, when the fact is that Pandora and Spotify could be profitable today.

That's not speculation. I know streaming. When Tim Westergren (the founder of Pandora) still thought his future lay in licensing the Music Genome Project to AOL, I was in Sweden running one of the world's first On-Demand services, Tomsradio.com. And while I was negotiating the royalty agreements for Tomsradio with IFPI, one of our listeners was a teenage tech-whiz growing up in Stockholm named Daniel Ek; Mr. Ek is now CEO of Spotify. But Tomsradio was ahead of its time, so we froze the service and I roamed Africa for a few years producing the film *Adventuress Wanted* while the streaming industry caught up to us. Since my return to the US the old team has been developing our new service. I've negotiated directly with all major music labels so I'm privy to the undivulgable numbers that reporters guess at. And after we took Radical.FM live on iPhones and Androids this summer I decided that it was time to set the profitability story straight: **Pandora and Spotify consciously prioritize growing market share over making money.**

Now if Tom Yorke, David Byrne, Taylor Swift, or any other artists with more creativity than business acumen read this, please refrain from using my knowledge to fuel idiotic arguments about how the new streaming paradigm is ruining the music business (though you may want to review your label contracts). Artists must accept that today's streaming royalties are sufficient to make a lucrative music industry for all parties concerned once the market matures (see Streaming Services Lift Music Revenues in Sweden), or doom themselves by demanding higher royalties that will stifle the music industry's only significant growth sector, and entire future. Streaming services should in turn acknowledge that today's royalty rates can support viable-if-not-cushy long-term business models. Current total royalty burden is about 50% of gross revenues for mature PurePlay (Personal Radio) services, and about 70% for On-Demand (Playlist) services. This rate is required to fairly compensate artists, composers, and rights holders – a prerequisite of recreating a thriving music industry.

Fact one: **Industry leader Pandora could be profitable tomorrow if it increased commercial load by an amount that would still leave it dramatically less cluttered than its FM radio counterparts.** But Pandora knows that increasing ads will reduce usage since internet savvy music consumers are less tolerant of interruptions than the baby-boomer FM radio audience.

Fact two: **Spotify was profitable years ago in the only mature streaming market in the world** (see Spotify Profits in Sweden). If they chose today to stop aggressively funding international expansion Spotify would break even overall in the world tomorrow. If they then chose to cease loss-leading with their free On-Demand service (designed to fuel the growth of their core subscription sales) Spotify would be profitable in all of its markets immediately.

Pandora and Spotify have sufficient scale already to make money, but in both cases their fear of stagnating growth outweighs their current need for cash. As long as investors will allow it, they will choose to lose money today in the hopes of shoring up a safer tomorrow; a fool's game as I'll point out below. So now that you know the truth about the current music industry's single biggest (and sometimes self-sustained) myth, what's in the cards for music this century?

Well, analyst Bob Lefsetz will do one of his classic 180s when he realizes that Playlist services like Spotify will never overtake Personal Radio like Pandora because the majority of people are not interested in picking their every song manually. But On-Demand streaming will continue to replace the $5B US physical and digital sales with all-you-can-eat playlist subscriptions (see Music Sales Down but Streaming Making Up). On-Demand will not be profitable as an ad-supported platform and subscriptions will continue to cost about $10/month. Apple will release iBeats and make it available cross-platform early on, eventually replacing downloads completely. Pandora survived iTunes Radio because creating a good personalizable endless music stream is complicated. Spotify will not be so fortunate. On-Demand is essentially a search motor coupled to a music library and Apple can do that as well as anybody. With several hundred million music lovers' credit cards on file, Apple will offer one month for free and eclipse Spotify's user base by month two.

Pandora will weather that storm too, but be challenged by a new generation of Personal Radio services that will be quicker to innovate. Pandora's complex Music Genome project is difficult to modify and integral to their current lead. In 2015 Radical.FM will introduce the most social streaming advancement ever conceived, speeding the demise of 'radio' as we once knew it. The new Internet Radio services will handle news, talk, and sports as well as music, and they will reach profitability without having to approach AM/FM ad loads. They will continue to be primarily ad-supported, with a minority of users opting for commercial-free subscriptions. Terrestrial radio will fight desperately before yielding the last of her $18B in annual ad revenues (US alone, more than three times total combined music sales) to the far superior Personalized Radio streaming services. AM/FM transmitters will go dark completely by the late 20s, becoming a fond memory of a dying generation.

Pundits like Lefsetz will do another about-face when it is revealed that the Highlander-Effect of Internet ("there can be only one") does not apply to music the way it might to Search or Social; multiple Personal Digital Radio services will coexist profitably. PONO will fizzle because even die-hard Neil Young fans don't really want to carry an extra device when smartphones will deliver the same quality (WIMP already offers FLAC streaming in Scandinavia). Vinyl's novelty cool factor will survive the Hipsters but will never clear a fraction of a percent of the total music pie.

Musicians everywhere will rejoice when they realize that streaming radio shares the massive ad revenues with them that terrestrial radio never did in the US. Then well-fed artists will create great new songs for innovative streaming services to distribute to happy consumers who whole-heartedly support a born-again music industry, one more glorious and lucrative than ever before. The skies will part, the sun will shine again, there will be music everywhere, and… well… the future's so bright I gotta wear shades!

From the Hot-Seat, Thomas McAlevey, CEO, Radical.FM

An abbreviated version of this article was posted in Billboard.

Posted in: Founder, Music Industry, Radio

Guest Post: Allow Artists to Slip Through the Digital Cracks At Your Peril, Streamers

By Christopher Tin | August 14, 2014 5:41 PM EDT

Last week, Billboard *published a guest editorial by Thomas McAlevey, CEO of streaming startup Radical.FM. The below is in response to Mr. McAlevey's piece.*

Dear Mr. McAlevey,

I read your *Billboard* guest editorial “Forget the Rhetoric, Streaming Music is Already Profitable.” Forgive me for not sharing your enthusiasm about the viability of the current streaming model. As an artist, I found your bright and cheery vision of streaming to be nonsense.

I think you need to look up the definition of a "fact."
“Pandora and Spotify are still losing money despite tens of millions of users and hundreds of millions of dollars invested” is not a semi-truth, it’s a fact. To the contrary, your assertion that “Pandora could be profitable tomorrow if it increased its frequency of commercials” is not a fact, it’s conjecture -- especially since you admit that increasing the frequency of commercials would decrease usage, which would in turn decrease advertising revenue.

I’ll allow that, given time and the right management strategies, services like Pandora and Spotify could potentially be profitable to shareholders. I’ll even allow that the major record labels they work with can find profit working with these services. But your editorial omits any mention of how these services would ultimately put a living wage in the pockets of the artists and songwriters who make up the heart and soul of these services’ products.

At the core of your argument is your assertion that streaming music could be instantaneously profitable, should streaming services choose to make it profitable. Naturally you, the owner of a startup streaming service, have every incentive to paint as rosy a picture as possible of this industry's possibilities. In light of the fact that the two largest streaming services have appeared unable to turn a sustained profit, what hope does your company, whose core business model relies on a large ‘Donate’ button, have for ever becoming profitable? But as an artist I have to wonder -- after tallying up your Paypal and Bitcoin donations, and deducting your rent, employee salaries, electricity and server costs -- how much money do you have left over to pay for the 25 million songs you serve your consumers?

Much has already been written by artists more famous than me about the tragically small artist payouts from streaming. Many of us acknowledge that the industry is inexorably moving towards an access model over an ownership model. However, your article fails to address the fact that this transition is going to be incredibly painful for a great number of artists, for whom each micro-penny royalty payment is a cutting reminder that their music is (literally) worth less than a piece of copper most people wouldn’t bend over to pick up off the sidewalk.

So when someone like you comes along and says “The future is so bright, I gotta wear shades,” well, that’s when you invoke the collective ire of the musical working class. Had you phrased things differently, perhaps I would have stopped reading after the headline, but instead I browsed the full text of your op-ed on your company’s website, and in so doing was shocked by something I’d never seen before: a CEO of a music company with an outright disdain for the musicians whose work you’re building your business on.

And nowhere is your disdain for the musicians more obvious than in this sentence:

"Now if Thom Yorke, David Byrne, Taylor Swift, or any other artists with more creativity than business acumen read this, please refrain from using my knowledge to fuel idiotic arguments about how the new streaming paradigm is ruining the music business (though you may want to review your label contracts)."

You can condescend all you want, but I’m fairly certain Thom Yorke, David Byrne and Taylor Swift have little interest in your “knowledge," much less care that you discredit their opinions simply because they’re musicians.

And then there’s this horrifying paragraph:

"Musicians will rejoice when they realize that streaming radio shares the massive ad revenues with them that terrestrial radio never did in the U.S. Then well-fed artists will create great new songs for innovative streaming services to distribute to happy consumers who whole-heartedly support a born-again music industry, one more glorious and lucrative than ever before."

It's insulting that, in your utopian vision of music’s future, the gold standard that a musician should strive for is the ability to afford food.

Secondly, your bold prediction that streaming radio will share "massive ad revenues" with artists is naïve. How do you know that music will generate large advertising revenue? Even if streaming music channels became the advertisers’ format of choice (which seems unlikely, given the rise of interactive entertainment, the web, and streaming TV) what happens when someone invents a service that, like Tivo, will allow listeners to buffer a Spotify stream and automatically skip commercials?

And even if the advertising dollars were to start flowing in, what incentive would Spotify, Pandora or YouTube have to dole out massive portions of that ad revenue to musicians? Why wouldn't they just continue to do what they've always done, and look for ways to pay less money to artists that you yourself so clearly disdain? Do you think corporations have the same generosity-of-heart that music fans do?

This brings me to the one thing I agree with you on: Your average music fan will voluntarily pay money for the music they listen to.

I, like many artists, sell my music on my website. And I give my fans the ability to pay more than they need to for it. Nearly half of them do (bless their hearts!), which I think is a testament to the fact that fans know that the artists they love need to be supported.

You seem to think that same enthusiasm will translate to a streaming services company, and have built Radical.FM on a pay-what-you-want model. And perhaps there are some people that will make contributions. But corporations are not people, and music fans have a long history of being suspicious of any company that tries to profit off the backs of music-makers. And if there's one thing I'm fairly certain of, it's this: If you ask your average music fan whether they want their $10 to be paid to the band they love, or instead to a company's profits, I'm almost certain they'll choose the former.
Christopher Tin is a two-time Grammy-winning composer, and a Governor of the L.A. Chapter of the Recording Academy. Although the Recording Academy actively lobbies for fair compensation from streaming services, the views contained herein are his own.

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PANELIST BIOS

DARRYL FRANKLIN

For close to the last 4 years Darryl Franklin has worked at senior level in Business Affairs at Disney Music Group working on matters relating to Walt Disney Records, Hollywood Records and Disney Music's live concerts division. His previous job in music was at Interscope, Geffen and A&M for 7 years. He came to the US from the UK at the end of the last millennia, where he had been Head of Business Affairs at three major labels (Mercury Records, Polydor Records and East West Records (half of the Warner Group in the UK). In 2005, while at IGA, he saw the changes about to engulf the music business and raised money to fund and then ran as CEO, a start up cell phone content business focusing on action sports, which he took to the Bulletin Board (where it failed!). For more than a decade he has managed world class action sports talent and along the way produced major sports events around the globe. His live event experience and work in private practice is what led him back to the music industry and his current position at Disney.

CHRIS HARRISON

Mr. Harrison is the Vice President, Business Affairs, at Pandora Media Inc., focusing on the acquisition and licensing of content. A frequent speaker on music licensing issues, Mr. Harrison was an Adjunct Professor of music law at the University of Texas School of Law from 2009 to 2013 and is currently a Lecturer in music law at the University of California Berkeley Boalt School of Law. Prior to joining Pandora, Mr. Harrison held various positions at commercial music service provider DMX, Inc., including Chief Operating Officer and General Counsel. As General Counsel, Mr. Harrison led DMX's efforts to obtain the first-ever adjustable fee blanket license from ASCAP and BMI, the result of nearly five years of litigation that was ultimately affirmed at the Second Circuit. Mr. Harrison received his PhD (Political Science) and JD from the University of North Carolina, Chapel Hill, in 2001.

MICHAEL MORRIS

Michael Morris has blended his tax law expertise with a passion for music and entertainment into a practice that is unique. His practice areas are tax controversy and transactional matters; estate planning; music, entertainment and general business law.

As a former trial lawyer for the IRS and a Certified Specialist in Taxation Law, Michael has the educational background and practical experience that enables him to provide insightful solutions to his clients' complicated tax, estate and business transaction issues.
The entertainment industry is a niche in which Michael has developed a strong base of loyal clients. His interest in music and years of servicing clients in entertainment has allowed him to build a solid reputation of providing valuable and effective business solutions in such areas as copyright and contractual matters. Although Michael's core competency is within the tax arena and entertainment, over the past decade he has developed significant expertise and a clientele covering a wide range of businesses. His diverse client base includes entertainment payroll companies, skin healthcare companies, a winery, talent agents and agencies, a post production house, industry executives of major studios, recording artists, including Grammy winners, production companies and film and TV composers.

As with a number of other attorneys at Valensi Rose, Michael has the distinction of being named a “Super Lawyer” among Southern California lawyers for 2006-2013 by *Law and Politics Magazine* and *Los Angeles Magazine*. He was also designated by the Los Angeles Business Journal as one of “L.A.’s Top 100 Lawyers” in 2009.

Michael writes law-related articles, moderates industry seminars, delivers speeches and has served as the president of the California Copyright Conference. He has also served on the Planning Committee for the annual CalCPA Education Foundation Entertainment Industry Conference, which he co-chaired in 2013.

He received his J.D. from the University of Arizona College of Law, where he was awarded the prestigious Order of the Coif and wrote for the *Arizona Law Review*.

D.A WALLACH

D.A. Wallach is a recording artist and songwriter who Kanye West and Pharrell Williams discovered while he was an undergraduate at Harvard College. He has been featured in GQ, Rolling Stone, Vogue, and numerous other publications, and has toured with N*E*R*D and Weezer. D.A. has also appeared on many TV Shows, including Jimmy Kimmel Live and Late Night with Jimmy Fallon.

As one half of Chester French, D.A. has released three full-length albums, and as a featured vocalist has written and performed on records with Janelle Monae, Rick Ross, Diddy, and many others. He is currently recording his first solo album for Harvest / Capitol Records, new selections from which are available at: www.dawallach.com/music.

Beyond music, D.A. invests in and advises several start-up technology companies, including fancy, Ripple, Labs, DAQRI and Spotify, where he is the official Artist in Residence. Forbes has selected D.A. as one of its 30 Under 30 and Fast Company has named him one of the 100 Most Creative People in Business. As the first artist ever to have used facebook and among the most followed artists on twitter, he is a recognized social media pioneer and regularly posts on his personal website at www.dawallach.comhttp://www.dawallach.com/.

STEVE WINOGRADSKY

With over thirty years experience as an attorney in the music industry, Mr. Winogradsky provides global media and music business affairs & legal support for composers, songwriters, music publishers, recording artists and television, film, video and multi-media producers. Prior to being in solo practice with The Winogradsky Company from 1992 to 2009, Mr. Winogradsky had served as Director of Music Business Affairs for Hanna-Barbera Productions, Inc., Managing Director of Music, Legal & Business Affairs for MCA Home Entertainment, Director of Music Licensing and Administration for Universal Pictures and Universal Television and Vice President of Business Affairs for The Clearing House, Ltd.

He was twice elected President of the California Copyright Conference, after spending nine years on the Board of Directors, and also served for four years as President of The Association of Independent Music Publishers.

Mr. Winogradsky is the author of the book “Music Publishing: The Complete Guide” published in 2013. He was also awarded the 2012 Texas Star Award by the Texas State Bar Entertainment and Sports Law section for his contributions to legal education in the State of Texas. He was also named as one of the Outstanding Instructors in Entertainment Studies and Performing Arts at UCLA Extension, where he has taught since 1997.

He has written numerous magazine articles on the subject of music for motion pictures and television and has lectured on a variety of music-related topics at MIDEM, University of Houston Law Foundation (1993, 1994, 1997), Texas State Bar Entertainment Law Seminar (1994 – 2013), American Bar Association Entertainment & Sports Law Conference, University of Southern California Entertainment Law Institute, *The Hollywood Reporter* Film and Television Music Conference (1997-2000), *Billboard* Film and Television Music Conference, NARAS, The Society of Composers and Lyricists, Loyola Law School, Southwestern School of Law, California Lawyers For The Arts, The American Film Institute, LMNOP (New Orleans), The Toronto Film Festival, Canadian Music Week, Musicians’ Institute, McNally Smith College of Music, California State University, Northridge (CSUN), NARIP, The Copyright Society of the U.S.A., Scion Music(less) Conference and various other symposia.

In addition, he is a guitarist, singer and songwriter who is both a composer and publisher member of ASCAP.