

Creating a Merit-Based Music Economy: Compulsory or Blanket Licensing for Interactive Subscription Services

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Summary

This paper describes the structure of the major-label and grass-roots music markets, and examines how the market structure harms the balance of commercially successful music. It then advocates expanding compulsory or blanket licensing of music to interactive music subscription services, which may help correct the market imbalance.

The Introduction refers to the Digital Millennium Copyright Act of 1998 (DMCA), and some precedents for compulsory and blanket licensing of music. Expanding compulsory or blanket licensing to interactive music subscription systems could help empower grass roots music more fully. That could fix many problems with our musical culture caused by the traditional music market, by creating a more merit-based economy for music. The discussion has four parts.

A. The Business of Music Hits and the Star System

The traditional music market is focused too much on hits and the need for artists to become stars in order to succeed. This results from the way mass media shape the music market: by funneling music promotion through one-size-fits-all programming. Broadcast radio in particular imposes a very narrow bottleneck on artists' exposure, along with other mass media (video broadcasting is even worse). Because of these bottlenecks, promotional opportunities are artificially scarce for musicians. That scarcity creates high risk and raises the cost for effective promotion, creating payola and its legal successors.

There are three important ramifications of this risk:

1. It is self-reinforcing, causing major labels to gamble more and more money.
2. It provides leverage for major labels to lock up retail record distribution.
3. It creates the "Muzak Effect" in broadcast radio (the systematic success of "tolerable" music for groups, instead of individuals' "favorite" music).

With their market leverage, labels are able to demand ownership of copyrights to recordings and publishing rights to songs, thereby locking up these artist assets.

This results in the two "Power Pillars" of major label control over the music business:

1. Controlling promotion through the risky mass media market
2. Controlling revenue from distribution to consumers

Their whole business is strategized around managing risk, so it is in their interest to sustain a risky music market, even when new technology could provide an alternative.

If the hits model is a risky, all-or-nothing "pole vault to success," then what is needed is a safer, flexible, incremental "stepladder to success" instead. Mass media are structurally incapable of providing this, so we have to look elsewhere for a solution.

B. Grass Roots Music and the Struggle For Artistic Integrity

The grass roots music scene begins to provide an alternative to the mass market. The venue market also shapes the music business, and only small venues are accessible to most independent acts. Small venues have advantages (there are many of them, so more acts can get to perform), and disadvantages (it's difficult to make a significant profit because they are small, and sometimes acts still lose money performing).

In the last 15 years or so, more resources have become available for making inexpensive professional quality records. Having a recording provides independent artists new support for promotion, sales revenue, and bookings/press, but they still can't afford much mass media promotion. There is one mass medium that indie acts can readily afford: a mailing list for flyers and newsletters. The Internet makes them even more efficient, as email lists. However, they still provide only limited promotion, compared to other ways.

The live performance (gig) is the key to success in the grass roots, because it is a tool for synchronizing local promotion with sales. Also it leads to additional promotion and sales not otherwise available. Without booking live performances, neither promotion nor sales fall into place. But, the synergy of performing, promotion and sales required for grass roots success is inconsistent. Because of this, the grass roots strategy is not a true "stepladder." Instead, it remains only a "step stool" at best, even with some incremental improvement with email and Web sites on the Internet.

C. How Mass Customization Could Empower Both Artists and Fans

Internet technology could be used to support a new kind of music service that breaks the Power Pillars of control and would allow grass roots artists to more reliably reach a national/global audience. This new music service would:

1. Be fully interactive, able to play any song or playlist immediately on demand
2. Be paid for by a flat subscription fee
3. Contain a full catalog of all recorded music
4. Guarantee payments to artists according to how often their music is played
5. Provide personalized radio-like programs with automatic music recommendations

All musicians must be allowed into the catalog, in order to break the Power Pillar of distribution revenue. But access by itself is not sufficient to empower the grass roots. If it were enough, then just having a web site could be enough for a talented act to reach its full audience (this is not the case, as noted in part B).

The other Power Pillar, promotion, also has to be addressed. This is where "mass customization" comes into play, as an alternative to mass media. Mass media are similar to mass production of the industrial sort; mass customization combines the efficiencies of mass production with the flexibility of customized options. This has only recently become possible, with the abilities of computers to store a database of individual customer profiles and to control automated production of custom products.

Music radio can now also be mass customized. This creates a new possibility for personalized radio that automatically recommends appropriate new music for each individual listener. If these recommendations are taken from the entire catalog of music, instead of just a small set of potential hits, it breaks the promotional bottlenecks of broadcast radio and other mass media. It would entertain listeners with music of their choice, while simultaneously promoting a wide range of new music.

By addressing both of the Power Pillars, this kind of service can behave as a real "stepladder" for grass roots artists. Extending from live performing, they could reach their full appropriate audience affordably over time, based on the merit of their music.

There have been other methods of alternative revenue suggested by many people, but none of them seem to address both of the Power Pillars together, which is necessary to create a merit-based music economy. These alternatives include live performing, advertising/sponsorship, patronage, and voluntary donations.

D. How the Traditional Players Could Stymie the Whole Thing Today

There are several ways major labels and publishers could unilaterally block the ideal system, because of how the copyright law is written in the DMCA.

Labels building their own subscription services would most probably not contain the special features that empower grass roots artists (a full catalog including and paying all artists per play; personalized radio-type promotion over that full catalog, based on merit).

Labels and publishers could also refuse to license their own catalogs to any independent webcasting services that have personalized radio promotion over full catalogs. That would undercut the one-stop value for fans, which is a key value of such services.

Labels could also refuse to license their catalogs to services that use subscription revenue models, thus requiring some alternate business model. This weakens the incentives to provide the best possible service to listeners, since some other customer base would be paying the bills.

And, under the DMCA, non-compulsory licenses do not guarantee a fixed percentage of revenues go back to the artists. Thus, artists signed to labels could have their revenues dramatically reduced under non-compulsory licenses, instead of getting a guaranteed amount through a compulsory framework.

Conclusion

Compulsories could be expanded to fully interactive subscription services, so that independent companies can fully satisfy the fans and empower independent artists. I don't argue for a particular form for compulsories, since there are a variety of choices, and I'm not an expert. It may even be possible for artists to form a group, under a "consent decree" similar to ASCAP and BMI, to collect royalties under a blanket license, without explicitly legislating a new formal compulsory. *Either way, independent artists and their representatives need to form an artist-only group, either to be present at compulsory rate/structure negotiations, or to offer blanket licenses to collect and distribute royalties directly.*

In the end, this service model is a win/win solution. Labels should be able to operate with less risk while still targeting the star market, which will never go away. Meanwhile, the middle ground would open up to artists with naturally smaller audiences, without having to gamble on star-level promotion. That would allow a much wider diversity of music to be commercially successful based on its merits. And we would get more quality music in the overall market, which is good for fans both as individuals and as a group.

MOCA addendum, August 2001:

In August 2001, a new bill was introduced in Congress (the Music Online Competition Act, or MOCA) that addresses a number of concerns in the DMCA, including the issues of "ephemeral copies" and digital rights management. Also, importantly, it adds a new "non-discrimination" clause that requires labels to offer licenses to any interactive music service on terms comparable to those provided to their own affiliated services.

MOCA would not necessarily empower grass roots artists. The non-discrimination clause does transfer some gatekeeper leverage from major labels to webcasters. But without a compulsory license to require webcasters to pay all artists fairly, or an artists collective offering a blanket license, webcasters would be in a position of unfair advantage over independent artists. That would not be a solution, but only a changing of the guard. The star system would still be the only game in town, and we would still not have a merit-based music economy.

Also it's not clear that even a blanket license for independent artists would necessarily guarantee that a full-catalog service including all major label artists could be licensed.

2003 Update, Distributed Systems:

As of 2003 it now appears that distributed systems using peer-to-peer architecture might be capable of providing a personalized radio-listening service similar to that described as a centralized service in this paper. If so, it could provide an alternative architecture for mass-customized music exposure that is effective in breaking down the Power Pillar of exposure.

At the same time, there is talk of blanket-licensing music (and other forms of copyrighted content) at the level of network service providers rather than content service providers. That is, instead of subscribing explicitly to a music service, everyone's subscription to Internet access itself might be surcharged, and those fees distributed to musicians according to some measurement of traffic moving across the network. Given that possibility, the Power Pillar of revenue would be broken down as well.

So, if both of these possibilities actually come to pass, both Power Pillars would be broken down. *In all cases, however, there will still be the need for an artists' collective group to participate in setting terms of licenses and how the systems actually work.*

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Introduction

These are interesting times in the music business. Since the Internet blasted into the mainstream in the early '90s, many ways of transferring music online have appeared, from FTP sites to Email attachments, Web sites, and Peer-to-Peer systems such as Napster. The combination of faster connections (especially the increasing popularity of broadband access such as commercial-T1, cable, and DSL) with better data compression (especially the MP3 codec) has made the process quick and easy, and this is changing *everything*. To most people reading this paper in 2001, this is way old news.

In the midst of this steep S-curve in music business evolution, the legacy of copyright law is obstructing some promising business models and media models for delivering music online. In 1998, the Digital Millennium Copyright Act (DMCA) was enacted to address developments in the online world, but many have criticized it for various drawbacks ranging from content protection to revenue models and user interface constraints.

In particular, the DMCA created a new compulsory license for streaming music online. However, it only covers systems that are not "interactive" (the line between "interactive" and "non-interactive" is less than perfectly clear in the statute, and it is a key issue in several recent lawsuits).

This is important because a compulsory license allows a business to deliver music to listeners without allowing the copyright owner to refuse (the copyright owner is "compelled" to allow the commercial use), so long as the business pays for that use according to a standard, statutory royalty rate. That rate is negotiated among various players in the industry, or arbitrated under government supervision if necessary.

Precedents for Compulsory and Blanket Licenses

The historical origins of copyright have been debated a lot recently, but I think most would agree that the essential intent and justification is to encourage the flowering of culture. It is intended to ensure that authors can benefit from commercial exploitation of their work, not by withholding it from the marketplace. As the U.S. Constitution states: "The Congress shall have power ... *to promote the progress of science and useful arts*, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries" (Article 1, Section 8).

If securing these rights does not lead to the intended progress, then a fundamental social purpose of copyright is betrayed. Compulsory and blanket frameworks are meant to ensure that granting these exclusive rights does in fact promote such progress, by spreading scientific and artistic value widely across society.

One example of an existing music compulsory license is the "mechanical license" that covers songs recorded for a record by a performing artist, but written by someone else. Another similar case is the blanket license arrangement that was created for broadcasting

songs on radio, administered by performing rights organizations such as ASCAP, and BMI in the U.S. These blanket licenses require a special "consent decree" by the Department of Justice that exempts them from the price-fixing prohibitions of anti-trust law. And as noted above, now there is a new compulsory license for "non-interactive" online streaming of recordings, defined in the DMCA.

Because of the blanket nature of these licenses, performers may sing any song at a concert, or record it on a commercial record (or radio stations may broadcast a live or recorded version of their song), so long as the standard payment is properly made. Under compulsory license, enforcing payment is a matter of federal law. Under blanket licenses, enforcing payment is a more private matter, but is made more efficient by collecting individual copyright holders' resources together under a single administration.

In both cases, the efficiency of automatic, group-wise royalty management opens the doors to a wide proliferation of music across our society. At the same time it ensures that songwriters can be compensated for their work, which honors the original underlying incentive of copyright. To be sure, both systems have substantial imperfections, in practice. But the same digital technology that could improve the music market could also be applied to administering these licenses, vastly improving the result.

Without compulsory constraints or collective management of copyrights, many of the businesses that proliferate music would have found it very difficult (if not impossible) to operate efficiently. Each song license would have to be negotiated individually, and there would be no guarantee that any particular song would ever be able to be licensed at all, under any conditions.

Fixing the Music Business

I don't think I am alone in thinking much of our popular culture is "broken" in today's society. There are structural reasons for this, driven by the kinds of media and businesses that dominate today's cultural marketplace. But, in the age of interactive networks and database-driven service businesses, suddenly we have new technological options for building a cultural marketplace. Those new services could go a long way toward eventually fixing what is broken.

I believe that, if grass roots music could be more widely successful, that would encourage quality and diversity, and provide the best chance to fix our musical culture.

I also believe that certain kinds of interactive subscription services could provide some of the most uniquely promising ways to empower grass roots artists with a much more fluid marketplace, leading to the flowering of grass roots music.

The service model described here serves both fans and artists, and failing to include the key features would ultimately be detrimental to both.

The remaining obstacles to building such services are increasingly not technological, but instead legislative. They would require either a compulsory license that does not now exist in U.S. copyright law, or a consent decree to exempt an appropriate blanket licensing organization from anti-trust law, in order to become commercially feasible.

This Paper

In this paper I argue for introducing compulsory or blanket music licensing, not just for "non-interactive" transmission online, but extended to *fully interactive music subscription services*. The goal is to create a fluid, merit-based music market, where value is determined directly by individual fans and artists, and not distorted by the leverage of gatekeepers that mediate the market.

First is a discussion of how the traditional music business currently works, and how its market structure distorts music culture.

That is followed by a description of the current grass roots movement, and the difficulties of providing an alternative to the traditional market.

Next is an explanation of how certain kinds of interactive online music services could substantially improve grass roots success, and create a more merit-based music market.

Finally there is a summary of key obstacles to building such a system, without the suggested compulsory or blanket license existing in some form or another.

I can't vouch for the political or collective processes that will be necessary to produce these changes, or even the specific form the laws might take. That is for experts to deal with, and I'm no expert in those areas. But if we can first agree on the general goal, then we will be better able to express our collective will as citizens, and participate in the process of calling for and bringing about those changes.

The Business of Music Hits and the Star System

Most of the traditional commercial music business is concerned with popular music, which is primarily concerned with big hits: hit songs, hit albums, hit videos, hit artists, hit concert tours, hit radio formats, hit merchandise. Everything in the music business is focused on discovering hits, developing hits, producing hits, promoting hits, and exploiting hits. If it's a hit, it's a success. If not, it isn't. The stakes are pretty simple.

Well, maybe not all *that* simple... Not all hits are successes, at least not for the artists. But, you can be darn sure that if it isn't a hit, it isn't a "success" in the ultimate sense. In order to have a chance at success in the traditional commercial market, an artist has to be a star, a celebrity -- it's as constant as death and taxes. Here's how it all basically works.

The Essence of Mass Media

One of the key constraints of the music market is the way the audience discovers new music. If the audience doesn't know about the music, it certainly won't buy it. How do music fans find out about music? People hear music on the radio, they read about it in magazines and newspapers, they see videos on TV, friends and colleagues tell them about it, they hear it accompanying TV shows and movies, and nowadays they're also starting to discover and sample it on the Internet. With the exception of word of mouth and some (but not all) Internet resources, these are all mass media.

A mass medium is a method for delivering some kind of information or entertainment from a single source to a large mass of people. It's sometimes called "one-to-many" as compared with "many-to-many" and "one-to-one" media.

Examples of "many-to-many" are: email lists, conference calls, or any other collective meeting format. Examples of "one-to-one" are: most telephone calls, letters, much email, voicemail, and our normal face-to-face conversations and business interactions in day-to-day life.

Mass media are also often called "broadcast" media. They generally include TV, radio, print periodicals (newspapers/magazines), and many web sites that don't have interactive features (especially web sites produced by print media republishing their content online).

Mass media have some fundamental features that shape content flowing through them.

1. They produce a single program of content for everyone in their audience at the same time. *One size fits all* -- everybody gets pretty much the same thing.
2. Their business models are mostly about *maximizing the size of the audience*. There is standard revenue from delivering the content, so the more people who get it, the more money you make. This is true whether the audience pays for it directly or advertisers pay for delivering the audience's attention to their ads.

3. Finally, there are a relatively *few number* of successful mass media, compared to the number of people in the audience. There is a finite number of TV channels, radio stations, newspapers and magazines to serve thousands to millions of people in their audiences.

The more successful players there are in a mass media marketplace, the more they tend to dilute each other and become less successful on average, because each individual member of the audience can only pay attention to a finite number of them over a finite period of time. In today's information-glut society, we are likely already near saturation.

This is sometimes called a "zero-sum game" -- for every audience member one media adds, they generally subtract it from some other media's audience. All the additions and subtractions across all the media generally have to total out to zero, as long as the audience stays the same size and spends the same time across all media.

Mass Media Business Models: Successful mass-media companies are those that reach the largest possible share of their market, at the expense of all competitors in the market. This tends to allow only a relatively small number of successful media, because media with small audiences drop out of the market. With a fixed overhead for creating and distributing content, and a predictable amount of revenue from each audience member, there is a minimum audience size below which the company loses money. Only those companies whose average audience is above break-even will succeed over time.

But, if the audience grows well above break-even, the potential profits are enormous. "The Publishing Model" has finite overhead costs, marginal single-customer profit, and the exponential potential of cheap mass production. Also, much mass media is supported by mass advertising, which has the same one-to-many structure. (This is one reason advertising can be so annoying: it is often crudely targeted, by aiming anonymously for a large group instead of addressing the individual needs of each person in the audience.)

To be sure, cable technology and other developments have increased the number of mass media players in recent years. Local or niche media may be able to survive with smaller audiences, as they devote their content to local or niche topics. But in general these developments haven't changed how mass media operate in principle. These are minor variations around a major theme.

Mass Media makes Collective Culture: Mass media are all about capturing as large an audience as possible simultaneously, with a single program of common interest. They embody the essence of collectivity: *We are all the same. We share the same experience.*

This is what being a star is all about: Stars are present in the mass media. If you are not visible in the mass media, you are not part of a common cultural experience. And if being part of a common culture is a requirement for being visible to your audience at all, you have to be a star to get to your audience to any significant extent.

Why Radio is (Still) So Important

Of all the mass media available to promote music to an audience, broadcast radio (mostly FM) is still the most important. There are several reasons for this:

1. *Radio provides passive entertainment.* This makes it very easy for listeners to tune in without having to make any difficult choices (the hardest choice is which station to tune in).
2. *Radio provides "novelty with familiarity."* Listeners get to hear new music in a program of familiar music in an unannounced order -- a carefully tailored mix of freshness within an expected context. Just the right blend to keep the interest of the most listeners without surprising them too much to rub them the wrong way.
3. *Radio provides promotion as entertainment.* This is the real power: Radio provides a complete sample of each song, without replacing record sales. Radio programs entertain the audience while simultaneously promoting records.
4. *Radio is ubiquitous, portable, and easy to use.* It basically works everywhere within range of a radio station, and it's simple to operate. You turn it on, choose your station, set the volume, and listen. What could be simpler than that?

Because of this, and because the program is free to anyone with a receiver (supported by selling ad space to advertisers who want to get a message to those listeners), radio has a very large audience -- you can reach a lot of people all at once, very easily.

The result of all of this is that radio has become a dominant method of promoting a record to an audience for that record. For better or worse, the characteristics of radio largely constrain the music business. Most of the music business shapes itself around this reality in response.

Videos: Music videos, which compete powerfully with radio for market influence, can't quite compete with the ubiquity of listening contexts that radio captures. You still have to watch a video to get its special effect, whereas radio is an ears-only experience, freeing the listener to do other things at the same time, whether at home, at work, traveling, or during recreation. This is an age of multi-tasking, and for that purpose, radio still rules.

Also, there are far fewer music video broadcasters than music radio broadcasters, and it is much more expensive to produce a single video than a single song. However, when the audience does turn to it, videos can provide a much more deeply engaging multi-media experience with a powerful impact. And, videos are broadcast mostly on nationwide cable channels with audiences much larger than individual radio stations.

Music videos are, in many ways, a more extreme version of music radio, and have a similar impact on the music business. But they don't reach as large a total audience as radio, in aggregate.

Bottlenecks in the System -- Scarcity of Access

There are other ways to promote music than just radio and video. For example:

- Movie soundtracks benefit from the promotion of the movie itself.
- Some urban music uses teams on the street getting the word out in person (but still broadcasting pretty much the same message to everyone).
- House music thrives in the dance clubs that serve crowds of people all at once.
- Newspapers and magazines review concerts and records, and interview artists.

All of these kinds of alternatives reflect or rely upon one-to-many communication -- they are part and parcel of the mass-market process.

Because the broadcast media are so important and powerful in reaching a wide audience, they are valuable, and buying presence there is expensive in one way or another. If you are an advertiser, then ad space is expensive. If you are looking for publicity, then "notoriety" or "news-worthiness" is relatively rare, and requires a time-intensive effort to encourage editors to provide your story with space in their media, at the expense of something else. Even word-of-mouth strategies usually must be triggered with some mass-market legitimacy to spread effectively.

It simply costs a lot of money to become a star, because only a finite number of stars can be present in the mass media at the same time. There are many more people fighting for this space than there is space available to accommodate them.

Becoming a star is a scarce commodity, so it is difficult and expensive.

Print/TV news: In news media, feature articles/segments and concert or record reviews are only available to a limited number of artists in each issue or show. Does that mean that those are the only worthwhile artists making music out there? No, of course not. It only means that no more can fit in the allotted space in the media. Many of the choices of whom to cover are not strictly music-related -- they are "news-related" in the sense of having a "hook" that would be expected to interest a large number of people in the media audience.

In many cases, the mere fact that an artist is added to radio playlists can be the news that gets them a story or review. Or, if an artist generates controversy in some way (not necessarily related to their music), that can also generate press coverage.

Being a celebrity in itself generates more celebrity.

Once you're "in the game" you have a much better chance of staying in the game. You get onto the charts, which generates more visibility. Having an established audience itself translates into the newsworthiness of "legitimacy." The Haves increasingly trample the Have-nots in a self-fulfilling cycle. It takes a big effort to break into the game.

Radio Formats: Radio has operated for many years according to the descendent of what was originally called the "Top 40" programming format. A radio programmer once noticed that the jukebox in a local restaurant wasn't getting an even distribution of play for all songs -- a few were getting played over and over, and many others were hardly getting played at all. He figured he'd be able to satisfy a large audience just by playing a few songs over and over on the radio, too. He was right. In fact he was so successful that this way of programming completely overtook big-time music radio decades ago.

Music radio formats are now usually very carefully controlled, with a combination of high-rotation, medium-rotation and low-rotation tiers. They're often duplicated on many stations across the country, as radio is increasingly aggregated into national networks. Only about 1000 music stations across the country are effective in reaching enough of an audience to sell records -- averaging about 20 per state, mostly in metro areas where the audiences are larger. (Music videos, on just a few cable TV channels, are of course even scarcer.)

This is how the zero-sum game works, with mass media. Even though there are more radio stations than just these 1000 or so, they have smaller audiences, or they don't play music repetitively, and so they are not effective in promoting music to many people. When a mass medium becomes a "one-to-not-so-many" medium, its promotional power is diluted. There are only so many radio stations that could have large enough audiences to make a difference -- otherwise they'd dilute each other too much.

Because of this, there is very little room in broadcast radio for a large number of songs at any one time. Consider that tens of thousands of albums are recorded each year, averaging somewhere around ten songs per album. Only a tiny few of these songs have a realistic chance of being played on the radio enough for mass-market visibility.

This extreme of scarce supply (limited promotional space on radio) and sprawling demand (all those new records, plus millions of older records) has made getting airplay very expensive. These days it's a legitimate business called "independent promotion" but back in the old days, when it was structured a little differently as a black market, it was known by the famous term "*payola*."

The Payola Dynamic and High Risk

The Payola Dynamic is simply the music radio version of the law of supply-and-demand: Radio exposure is scarce, compared to the demand for that exposure, so it becomes very expensive. You can push it out over here, but it'll pop up over there -- you can't just get rid of it by trying to outlaw it. All you can do is push it from a white market to a black market -- as long as there is an enormous value, someone will be there to set up a gate and collect it somewhere along the way.

It can cost a huge amount to get a song played on the radio, often at least a hundred thousand dollars for a major label act. That's an awful lot of money, on top of what (for a major label) is often a similar amount to produce the record, and much more for a video and tour support. You have to sell a lot of records to make back enough to break even and start making a profit -- typically in the hundreds of thousands of units.

The RIAA's Hilary Rosen testified before Congress on 5/25/00: "Typically, less than 15% of all sound recordings released by major record companies will even make back their costs. Far fewer return profit. Here are some revealing facts to demonstrate what I'm talking about. There were 38,857 albums released last year [1999], 7,000 from the majors and 31, 857 from independents. Out of the total releases, only 233 sold over 250,000 units. Only 437 sold over 100,000 units. That's 1% of the time for the total recording industry that an album even returns any significant sales, much less profit"

Even considering that indie labels (and majors, with "developing artists") spend rather less producing and promoting some records, so they can be profitable at somewhat lower sales levels, 15% is a pretty weak success rate for a business that wants to stay in business. How can this be? The answer is that the big hits make so darn much money that the failures get swept up in the average and the company makes money overall.

Why is the distribution of success so extremely skewed? To a great extent it's because of the scarcity and cost of mass media or equivalent exposure. There are so many more records being created than could ever possibly fit through those channels that simple arithmetic ensures only a small fraction of them could ever be successful in that market, no matter how good they are.

But then, those records may be so successful that the payola cost to play the game is completely offset by the sales that result from it.

It's a big risk with a big payoff. All or Nothing. Blockbuster or Bust. *Star or Starve.*

The Ramifications of High Risk

The pervasiveness of risk in the music business strongly shapes the balance of power in the industry, and the balance of the kinds of music that tend to succeed in the industry. High risk creates a "high friction" market that skews everything.

Risk is Infectious: Once you've taken the leap to take a big risk, other additional risks begin to seem less incrementally risky. In addition to radio promotion, you start spending more on the initial record production, you start thinking about producing a video, you start spending more to put on a major-venue live performing tour, and so on.

What this means is that a label will spend huge amounts on other things associated with the production and mass marketing of an album, above and beyond the radio promotion cost alone. This can expand the risk by another factor of ten -- instead of risking only hundreds of thousands of dollars you may now be risking millions. The risk, already high to begin with, because of mass media's bottlenecks, is now even riskier. That makes success that much scarcer. The stakes are even higher.

Leverage of the Gatekeeper: Well, obviously Joe Blow on the street can't afford to play this game. Someone must invest heavily in the ante-up just to come to the table, and those investors are the gatekeepers to the game. Mostly the major labels are those investors, and because they largely control the gates, they can dictate most of what goes on in the business, with the mass media accepted as a given.

The mass media gave them this leverage, and they have wrapped themselves around the leverage, embracing it, sustaining it, and maintaining their unique position of power over the industry. They seek to preserve the bottlenecks, because their power comes from the dependency on their risk-management through those bottlenecks.

In addition to mass promotion, the major labels control most distribution of records to retail music stores. Because of the combined market share of major label distributors, retail stores depend heavily upon them for stock. They know that major labels have the promotional clout to move their titles in much larger volumes than smaller players, so the majors get preference. Also, to get even minimal stock (say, 5 units per store) into a majority of stores spread out in many cities all over the country requires manufacturing a very large number of records in the first place, without knowing if they will all be sold.

If you want to get a record into many stores, you will have a much harder time if not distributed by a major label. Without effective distribution, even the most effective promotion will be wasted because your customers will not be able to easily buy your product.

Major labels may sometimes complain about the risks (such as the difficulty of promoting a record on radio), but these comments are at best disingenuous, since their dominance is built on the presence of risk. Their whole business is strategized around it.

Tyranny of the Majority: One of the secondary effects of mass media on the music business is that the market is addressed as a group rather than individually. This affects the balance of music culture much more profoundly than many people realize.

The way mass marketing shapes radio programming is something I like to call *The Muzak Effect*, based on the kind of empirical experimentation the Muzak company did for years, as it designed and produced background music for businesses.

The Muzak Effect: When programming music for a whole group, you must choose music that all people in the group will tolerate, instead of music that individuals in the group are passionate about.

Individual tastes in music are much more varied than the collective agreement within any typical consumer target market. And, much music that some fans are positively passionate about often prompts more negative passions in others, while music that is merely tolerable has a greater chance of being tolerable to others.

Take even just ten quasi-random people, all of a similar age, gender, income and geographical location -- the marketing business calls these similar *demographics*. You'll generally find that they have rather widely diverging tastes in music.

Try to find music that all ten can tolerate well enough in a radio program not to switch the station. You'll find they only agree on a small subset, out of all the music that they individually like. And, if you ask them how *much* they like the music they all agree on, it turns out it usually isn't all that much. They tolerate it, but their personal favorites are generally not included.

Conversely, if you ask them about what their most favorite music is, it's very unlikely that all nine others would also like it. Maybe a few others in the group might like it, but usually not all. And even if they don't dislike it, it's usually not their favorite music.

Music is personal. Mass media are impersonal. At the end of the day, it's a bad fit.

This means the more successfully a radio program satisfies a large group of people enough for them *not to switch the channel*, the less likely the program includes music that any individual listeners are passionate about, aside from the most peer-driven target markets (you guessed it: the kids). The great success of mass music carries with it the inevitable failure of music that many individual fans call their favorites.

When people talk about *popular music culture* being broken (as opposed to *the music business* being broken), this is usually what they are talking about, whether they know it or not. The music market is currently structured in a way that does not serve individual music fans' with their passions, but simply gets them not to turn off the program.

And then fans make their purchase selections mostly from those choices. In business terms, there is no measurable difference between mere tolerance and real positive

passion. As long as the listener is still listening, the ads have ears and the radio station is making money. And, the record labels are getting promotion for their products.

The Untapped Market: It seems in many cases it hasn't worked. Anecdotal evidence from the grass roots suggests many active fans don't listen to music radio regularly or even at all. They just can't stand it any more -- the hits don't work, with them.

And as a group their tastes are fragmented enough that they don't add up to big enough chunks for group-wise programming to be profitable, either for radio ad revenue or for record promotion. So they are simply lost to the mass media marketplace, entirely. And without a strong alternative to the mass market, they are increasingly lost to the recorded music business overall.

Once they fall out of the recorded music market, the industry ignores them. Labels and stations are looking for market share, not expecting to grow the market. But some people think revenues from recorded music could as much as double if the complete untapped market were reached.

Using Copyright to Leverage Risk

The major labels have two powerful tools to use as leverage for their business: market lock, and copyrights. The market lock comes from dominating distribution and promotional channels for the products they sell. Some of the more vocal critics have characterized this as the equivalent of a cartel or oligopoly -- it certainly affords them a towering influence over retailers and press. This is a powerful position of leverage over the retail market.

Copyright, on the other hand, gives the labels leverage over their artists. Typically, a record deal will state that the records produced by the label for the artist are property of the label. That is, the label owns the sound recording copyrights.

In addition, these deals often state that the label's publisher subsidiary owns the publishing rights to any songs written by the artist for these records. Those rights include half the royalties for the songs themselves, which are separate copyrights from the sound recordings.

The ownership of this intellectual property is as much of an "artist lock" as distribution and promotion are retail market locks. This is because, if the business relationship doesn't work out for the artist, the artist has no assets to bring to a competing label to negotiate a better deal. All their creative output is either partially (songs) or wholly (records) owned by the label. That's a pretty steep price to pay for market access.

It would be as if a consumer product manufacturer not only had to sign exclusive distribution rights to a retail distributor, but had to actually hand over ownership of their products to the distributor as well (or be essentially locked out of the retail market). That is, retail distributors would be hiring product manufacturers as employees or purchasing their businesses as subsidiaries, rather than making partnership deals with them.

The Power Pillars of Major Music Market Control

When you put it all together, the major labels have a dominating stranglehold on the mass market for recorded music.

It begins with mass media, especially commercial hit radio with controlled-rotation programming, and the way that skews the business towards huge success for a few artists and failure for everyone else. In order to play the game, you have to play big. Otherwise you can rarely play at all. (Even the "alternative" market for indie-label music is often based on similar mass marketing techniques, and behaves like a little brother to the Big Brother market.) This creates a high barrier to entry for promotion.

It continues with the domination of retail distribution, and the ability to make money by selling a product to the audience. That creates a high barrier to entry for sales revenue.

These are the two essential requirements for making a business work:

1. You have to make your audience aware of your product (promotion)
2. You have to deliver and sell it to them (distribution revenue)

In the major music business, they both have very high barriers to entry -- I'll call them the two *Power Pillars*.

If anyone hopes or expects to create a viable alternative to the major/hits/star music market, both of the Power Pillars have to be taken down together. That means there must be:

1. An inexpensive method for incremental exposure to the appropriate audience
2. Access to distribution that pays incremental revenue for incremental exposure

If the hits model is a risky, all-or-nothing "pole vault to success" then what is needed is a safer, flexible, incremental "stepladder to success" instead. Mass media are structurally incapable of providing this, so we will have to look elsewhere for a solution.

Grass Roots Music and the Struggle For Artistic Integrity

There are many more artists trying to build music careers than the major labels could ever reasonably consider signing to a record deal. Some would argue that the majors already sign far too many acts for the mass market, and that this is an important reason for their high failure rate. What are the rest of these artists doing? They form one growing alternative to the major system: the grass roots market.

The musical grass roots have been around for a long time in various forms, usually arising from what people tend to call "folk music." People often pursue this as an avocation, or as amateurs (strictly speaking this means "for the love of it" -- it doesn't necessarily mean that these musicians aren't professionally skilled, they just don't make much money from it, if at all).

Grass roots musicians have been increasingly struggling to find ways to build music careers. In the last 15 years or so they have made some progress by imitating some of the things labels do, but on a local/regional scale instead of national/global. The advent of the mainstream Internet has provided some hope to expand these capabilities even more, but there is a limit to how much an individual act can do alone to contribute to collective changes. Here's how it basically works.

Small Venues

In the star game, there are a limited number of large venues where acts can perform before large audiences and make a lot of money all at once. These include concert halls and auditoriums, arenas and even stadiums. This is a bottleneck, similar to the mass media and retail distribution bottlenecks. In order to get booked into such a venue, an act needs to have a proven "draw" to expect to be able to fill the venue, or at least sell a large enough number of tickets for the venue to break even on operating expenses.

If you aren't a star, you have little chance to perform at a large venue, unless you can wrangle a warm-up spot with a star that can draw most of the audience. The trends in the business are moving away from warm-up acts, with the occasional exception of a major-label "developing act" or a former hit act in leaner times. Unaffiliated acts generally do not have access to these venues, with a few exceptions that prove the rule along the way. And, it wouldn't make business sense: the venues would fail to cover their operating costs if they couldn't sell enough of the seats, and they generally can't sell those seats unless the act is well-enough known to draw the audience.

So grass roots artists tend to play at smaller venues: nightclubs/bars, cafes/coffeehouses, even private homes where hosts present a series of "house concerts" in their living rooms. Instead of playing to hundreds or thousands of people at a time, it tends to be in the dozens. There are a lot of these smaller venues, many more than larger ones, and so there are a lot more opportunities to perform at them.

But because they are so small, there isn't a lot of money to be made at any single gig (an appearance at one venue). A portion of the money that *is* made sometimes goes to the venue to cover their operating expenses, perhaps in the form of a drink or food minimum, or a share of the ticket price.

Depending on where they are located, small venue gigs may or may not be profitable for artists themselves. In large urban centers, the operating and real estate costs are higher, so less goes to the performing acts. Also there are many more acts in urban areas, many of which are happy just to get some stage time to practice performing as a group. So, that glut of artists drives prices down for acts in urban areas.

It is common for bandleaders with paid sidemen to lose money playing at small venues in urban areas, because what they take in does not cover what they pay out to the band and for promotion. Promotion is necessary because small urban venues tend to do only the barest minimum of promotion on their own, expecting the act to communicate with their fans and draw them to the venue directly.

Moving out of the urban areas to suburban and rural areas, there are many fewer local acts, and less operating expenses, so the net revenue tends to be positive, if still moderate. Also, regional venues cannot always expect an act from out of the area to market directly to a local fan base, so they tend to promote themselves more consistently and systematically as branded venues, developing a local following. If touring grass roots artists do well at a venue, returning from time to time, they may also develop a local fan base, and that can only help.

The acts that can do the best in this performing market are those with the least expenses: solos, duos, and on occasion a well-organized trio. Any more than that, and the small stage space at these venues begins to be a logistical issue as well. It's often the kind of performance format that the major business tends to call "unplugged" even if amplification is involved on a small scale. Rock bands do have outlets in the grass roots, but perhaps not as many as the acoustic-style folk acts, outside of the urban areas.

Make Your Own Record!

One thing that grass roots artists couldn't do affordably until relatively recently was record their own records. This began to change in the mid-80s, for several reasons.

At that time, there were a lot more serious independent labels trying to provide an alternative to the majors. But they didn't own their own recording studios or pressing plants for vinyl LPs and cassettes, because they didn't have a large enough roster to use these resources consistently. So, many independent studios and several pressing plants arose to cater to the indie labels' need for occasional recording and manufacturing.

The indie studios began renting their services on an hourly basis, and the pressing plants would do small runs, both at affordable rates. Studio rates ran around \$50 to \$75 per hour, and pressing plants charged around \$2 per unit for pressing and assembly of small runs of 500 to 1000 units. But, they weren't always able to fill up their business with indie labels, especially as many of those labels began struggling and dropping out of the market. These services began marketing themselves to unaffiliated acts, to produce their own records. The popular term for this market today is the DIY (do-it-yourself) market.

It is common for a well-organized act with an experienced chief engineer to be able to produce a professional quality mixed master for well under \$10,000, even as low as \$2,000-\$3,000, and to press 1000 CDs for another \$2000 or so. This is quite enough to get started in the grass roots market, and can often be afforded by a middle-class musician saving up over some time.

Recently, in addition, good quality home recording equipment has also become more common. For a few thousand dollars you can buy equipment to use indefinitely without hourly charges. You can perfect your recording techniques and prepare multi-track recordings to be mixed in a professional studio later. After the initial fixed investment, professional quality recordings can be produced for much less, perhaps \$500-\$1000 per mixed master. Bruce Springsteen led the way with his famous 'Nebraska' album recorded on a home 4-track system and remixed later in a professional studio in the early 80s.

With contemporary technology, both for recording and for MIDI-enabled synthesizing and sequencing, more power than ever is available for home recording. Even though major acts may spend \$100,000 or more to produce an album, this expense is no longer necessary to make many quality recordings.

So grass roots acts now can have CDs available to promote themselves a bit more and to generate extra revenue, in addition to performing, itself.

And, now that DIY recording is common, a professionally manufactured CD is expected, to demonstrate business development beyond just a demo tape. A tape of a live gig can still be useful as well, to demonstrate an act's crowd response and to ensure a stylistic fit with the venue. But without a commercial recording to sell, even grass roots acts have a much harder time getting booked these days.

The Precious Mailing List

Most mass media promotion is so expensive that grass roots acts generally can't afford much, if any. The one type of mass media that has always been more within reach (especially since the invention of photocopying, and even more with the personal computer, prior to the Internet) is the simple flyer/newsletter mailing list.

Every time an act performs in public, they should bring an address sign-up book and encourage anyone who likes their music to sign up, if they haven't already. The audience knows it didn't find out about this act through advertising, because the act didn't advertise and the venue's advertisements usually don't contain enough to recommend the act without additional information. Also, the audience didn't hear the music on any controlled-rotation radio station, because most of these acts can't afford to pay the independent promotion fees (even for indie label campaigns, the low end is around \$25,000, which puts it out of reach for most DIY-ers).

The mailing list is the central marketing tool for an act to reach its immediate audience. Then word-of-mouth from core fans brings others to later performances or prompts direct mail orders for the CD, with the core fans getting a "first kid on the block" boost out of it along the way.

In the Internet age, of course, an email list is a supercharged version of a snail-mail list (it's cheaper and more efficient for the act, easier for the fan, too). But until all potential fans have email, the paper version is still needed to fill in the blanks.

Even prior to the Internet age, many of the more attractive small venues (especially in urban areas) expected acts to have mailing lists and promote their own gigs, bringing their own audience as part of the deal. It is the first marker that an act that is serious about building a fan base. It's a bit like running a free fan club -- an opt-in community that doesn't mind a little well-targeted spam every once in a while. Direct niche marketing at its finest.

The Gig-Centered Business Model

The key to making a music act's business work is synchronization. Music is a product with variety and change, rather than a staple purchase like laundry detergent or breakfast cereal. People don't purchase the same CD over and over again, and they don't usually go see the same act perform over and over again, unless the act is the Grateful Dead.

In order to make sure the business strategy is complete, the promotion and distribution need to match up -- wherever and whenever you are spending money to promote the act, the distribution must be in place to take advantage of that market awareness, and vice versa. Promotion without distribution leads to fan frustration and no sales. Distribution without promotion leads to retail frustration and no sales. In both cases, you get no sales.

In the major business, the label must carefully coordinate the radio promotion with other forms of promotion, and to make sure the distribution is also coordinated. Radio promotion campaigns that may be regionally targeted need the retail distribution to be targeted to the same regions at the same time.

In the grass roots market, widespread promotion and distribution is not available. But whatever limited capabilities do exist still need to be synchronized in a similar manner in order to work together.

The essential tool for this synchronization is the gig itself, which is localized in both space and time, and so it can serve as a focus for everything in the grass roots business.

Once a gig is booked (usually a few months in advance), everything else shapes itself around that. Of course, the information goes out to the mailing list, whether a group of several gigs or just one gig at a time. But a lot more should be happening as well.

CDs: First of all, gigs are the most likely opportunities for grass roots acts to sell their CDs. Retail is difficult because unaffiliated acts usually are relegated to consignment deals handled directly in person. (You drop off some CDs without immediate payment, at an agreed price, and you get a receipt to that effect. You come back at a later time and if any are sold, you get paid for them. You can retrieve unsold units at any time as well.)

For an act touring regionally, consignment isn't usually an option until you get to town. If you have enough time, and a local music store is amenable, you might be able to get a few copies in there while you're around, and if you expect to return to the same venue later on, you could leave them until then. It's useful to have your CD sitting there next to all those big stars -- it gives you a sense of legitimacy in the eyes of the consumer. The gig is generally the only circumstance that brings you through (since you act as your own personal distributor), and thus the gig schedule is a big factor in whether consignment is even possible.

Nowadays, of course, there is also the direct mail option, via snail mail with check or over the Web with credit card. That makes things easier, but doesn't get your CD in the

rack in the store. Part of the value of being in the store is promotion, but it needs to be there a while to really kick in, in conjunction with other press and live appearances.

The one place where promotion is most powerful for the CD is at the performance itself. And, it's a lot easier to complete the transaction immediately with cash or credit card, just like a retail store.

Local Radio: One thing that becomes more possible with a gig, even when you can't get into a controlled rotation, is an interview with a local radio show host. These are usually at smaller stations with more eclectic programming formats -- college and public stations with support from revenue other than advertising.

These stations often don't play the CD much at other times, but when there is a gig coming up, and they can feature the artist live on the air, there is a mutual benefit. This is the radio promotion that counts the most, because it is local in both time and space, and focused on the gig, which is where you're going to sell those CDs. The gig legitimizes the radio appearance, and the radio appearance legitimizes and promotes the gig.

Posters: Some local venues not only will put your poster or flyer on their own bulletin board, but they may put them up elsewhere in the area, especially on college campuses. If you send a bunch of them to the venue presenter a few weeks in advance, you can get timely promotion in spots where the presenter knows the audience already tends to look.

Local Press: There are small local or college papers that will sometimes provide publicity (either a feature article or perhaps a CD review with gig notice), if you develop a relationship with them beforehand. Even if you don't get press the first time, once in a while you can get a follow-up review, or get the editorial person to attend the gig, or at least take notice for the next time around.

Whatever press you do get is always more valuable to readers if they can act on the information -- and in the grass roots, the gig is generally what they act on. CD direct-order info is not unheard of, or a URL to a web site for further info these days, but the gig is usually the thing that triggers it all. If you have consignment at a local retail store, and can get that info into the press, even better. But without the gig, the press won't happen. Without the gig, pretty much nothing happens.

To be sure, majors will do similar things in conjunction with large tours, and this is a part of the "tour support" expense. And they do these things on a much larger scale, with national radio promotion and distribution that translates into national press, etc. But the nation-wide strategy is not easily available to the grass roots artist for retail CDs.

That makes a big difference, because CDs are the one musical product an act has to sell that is mass-producible, and thus has the potential for higher profits (economists call this "higher productivity").

Things like T-shirts may add to it, while we're at it, because they can sell alongside the CDs with a higher profit margin. If the act develops any chic appeal, this can be profitable, but until the act reaches that tipping point, merchandise won't be as popular, and can actually lose money if used too much as free promotion. Either way, they are attached to the gigs as the main point of sale or promotion.

The gig is the lifeblood of the grass roots artist.

Without the gigs, nothing else falls into place. They don't necessarily support the artist all by themselves with performance fees, but they trigger the entire variety of revenue that the artist will collect, as well as the promotion that draws the audience. Then, CDs substantially enhance the earning power of those gigs.

How Do You Get the Numbers to Add Up???

With all of these things happening, it sounds like the grass roots market is in pretty good shape, doesn't it! Well, that would be rather overstating the case. Often, none of the revenue streams are large enough to support an artist single-handedly. It isn't easy to make this all add up.

The key bottleneck here is the all-important gig, and small-venue gigs have substantial limitations.

Size/Volume/Style: Small venues have performance constraints that limit the kinds of acts that are appropriate to perform there. If your act is a bad fit for most small venues, all of a sudden the grass roots method is no longer viable for you, unless you adapt your act to fit more of the venues, or create a variety of acts to accommodate different venues. (You can't play the same few venues repeatedly in a short period, because even your most loyal fans only want to see you perform live once in a while, and so your attendance will drop precipitously.)

This isn't quite as bad as the pressure a major label will sometimes exert during production, in order to fit a popular controlled-rotation radio format, but it's the beginning of commercial constraints upon artistic expression, and any time that happens there is a distorting effect on the distribution of music in the marketplace.

Live Performance: What if your music can't be performed live at all? Perhaps you created your recordings with many overdubs, where your direct performance is critical to getting the right result for each part. Sorry, live replication is not an option. Or perhaps you are using some signal processing that is not feasible in real time. If the live gig is not an option, promoting and selling the CDs is not a significant option in the grass roots market -- at least not quite yet. So, artists who work exclusively in a recorded format without live performance are very disadvantaged in this system.

Profit Margins: Even for those who fit the small-venue market well enough, the gig-centered business model doesn't lead to large sums of money. Performing revenue is substantially offset by travel, food, and lodging. In fact, some small venues do provide in-house lodging as part of the package, especially some venues that are off the beaten path. Otherwise many acts they'd like to book simply wouldn't be able to afford to get there and back for the fee the venue can afford to pay. There's not a lot to go around.

CDs have to make back the recording and manufacturing costs before there is a net profit. The same thing holds for T-shirts (but a little quicker once they begin selling). So, at first the gigging is just about getting back to a break-even, not about making enough to live on. Over several years, acts may develop enough of a following in a variety of regions to start getting paid better for performing. But they have to work very hard to do it, and they still don't do much more than make ends meet.

Promotion Synergy: Not all venues are located where promotional media are available or effective. There may be no college or small public radio station to interview you for that gig, or local press to cover the venue and the artists performing there. Or, if those resources are there, they may not be attuned to your kind of music. Even if your audience is there, you may not be able to effectively reach them to promote your gig.

Tour Efficiency: Getting bookings that count isn't an automatic thing, and getting them to fit together into a sensible tour (so that gigs located together in space are also together to some extent in time) is even harder. The strategy is to get a "keystone" gig and then aim to fill in additional gigs around the area close to that date. But those additional gigs may not be available, and may pay rather less than the keystone gig (having lower travel expenses can offset that loss, which can make it worth the effort). The more you have to travel round-trip instead of round robin, the more travel and related expenses can cut into your profit margin.

Audience Geography: The appropriate audience for your music may be geographically spread out sparsely enough that, even with everything reaching potential, it's unlikely for many of them to get together in the same place at the same time. So even if you have a decent-sized potential audience when it's all totaled up, the live performance model may simply not be a profitable way to market to them, for you as well as the venues.

Artist Community: Many if not most artists who are making their way in the grass roots find other artists with whom they share musical sensibilities. They support each other with networking about venues and press, sharing tips about a variety of professional topics, cross-pollinating their audiences, and generally providing each other inspiration as peer-mentors. But some artists may not find their peers as easily, especially if they are too geographically spread out to have a big chance of stumbling into each other. Lone wolves have a much smaller chance of survival in the grass roots than those who have found a community.

Niche Markets: There may be a special niche among the grass roots that some artists can fit, such as churches. These can be very helpful because they come with their own audiences intact, without relying on the artist's brand image to bring the audience to a performance. This is a sort of intermediate step between featured performance and work for hire (such as weddings and parties). However, a lot of music has no such niche to take advantage of, and in general one can't count on fitting into one.

The Final Analysis

It takes a lot to make this all profitable at the end of the day, and getting all the pieces to come together is not automatic, even if you are talented and do everything right. The small-venue market is very uneven, and not particularly well coordinated or integrated.

More often than not, artists still need some sort of additional part-time income to make ends meet. It's a relatively rare thing to meet artists who are making this work entirely by itself. It requires not only artistic talent and business responsibility, but a healthy dose of luck in terms of satisfying venue needs, geographical location, local promotion, and audience distribution. Take away one or two of these characteristics, and it probably isn't an exclusively music-only career that is happening.

That cannibalizes the resources of time, energy, and attention that the artist might otherwise be able to devote to the art itself, and might well keep such artists from fully achieving their artistic goals. Taken as a whole, the grass roots market is not a consistently fluid music market. In too many cases it's a "grass roots" market. It has some potential, some real promise, but in its current state music can't fully flower on its own terms. So far, this "stepladder to success" is still just a step stool.

This is especially frustrating when we see the potentials of new online technology for exposure and distribution: Something is growing here that could make all of this work much better.

The Internet: We get a hint of this with artist-operated web sites that provide a brochure of artist information, some music sampling, and even online ordering of CDs with a credit card. This is new for the grass roots, extending the equivalent of mail order to national/global access. So, if acts can promote themselves to a wide audience, it is now possible to convert some of that awareness into sales without geographic limitations of live regional performing.

But just putting up a web site doesn't guarantee that awareness, since there are millions of web sites and pages. Search engines and portals are not fully up to the task of this "content filtering" since they are generic, without a special music focus. Access to distribution by itself does not complete the marketing process.

Unfortunately, getting effective widespread exposure is still not very fluid, even with the extension of mailing lists to email. Potential fans of fringy artists may be much less likely to be directly acquainted, because they are more geographically spread out. Without that direct acquaintance, word of mouth comes to a screeching halt unless there is some extra help to bridge the gap.

Piecemeal exposure on little radio stations around the country might spark enough interest in a few fans to search out the web site for the purchase.

But that requires several things to all come together:

- The station must identify the artist when the music is played.
- The station must provide the URL when the music is played.
- The listener must be listening at the time the music is played.
- The listener must be listening at the time the artist and URL are identified.

These stations are less likely to play any particular piece of music very often, because they don't use high-rotation program formats as much as the big commercial stations. So, the chances of making this connection are still relatively small, even if the station does everything right.

The live gigs still remain the most powerful way to motivate a CD purchase. First they provide an even more pungent sampling of the music than radio. And then they immediately provide as convenient and powerful a point of sale as any retail music store.

Free Peer-to-Peer: Many people point to the Napster phenomenon as having great potential for creating a new music market online. However, it has yet to be demonstrated that "Free P2P" could provide a lasting paradigm for using recorded music to generate significant revenue.

It should be noted that the original Napster was sued by the major labels, and then was acquired by one of their parent companies, so Napster no longer qualifies as an example of Free P2P. However, other systems such as Gnutella and Kazaa may survive, if their more purely distributed architecture provides more insulation from prosecution. Some people argue that even these alternatives are vulnerable to copyright enforcement for various reasons, and will not survive. If so, the entire Free P2P issue is moot. However, since that is not certain, I will consider the possibility that Free P2P may survive indefinitely.

Free music file duplication/transmission has a potential to completely replace paid distribution of CDs, and to destroy the revenue stream from recordings that extends beyond grass roots performing revenue. Many people argue that they will go out and buy the CDs anyway, but many others have been heard to say they never expect to buy another CD ever again. Anecdotal evidence suggests that the younger fans are less likely to buy CDs than older fans that are already in the habit. As these young fans grow older, it is not certain that they will all of a sudden begin to buy CDs. Intuition suggests that they won't.

One drawback of this model is that promotional opportunities are still not very robust. Free P2P provides a relatively easy way for some people to sample music that they have already heard about elsewhere, but it is less effective in systematically exposing people to music they don't already know about. The original Napster system did allow people to explore the music directory of other users from whom they are getting a file transfer, and that acted as a sort of word-of-mouth mechanism of exposure. But it is still inconsistent, and requires fully interactive use, unlike passive radio programming. Many people don't have a lot of time to go actively exploring for music, especially if they don't know until

they actually listen to the music whether they will like it or not. It is a small step in the right direction, but not nearly all the way there.

Part of the remaining incentive to buy CDs is that P2P systems are still not all that easy to use with Internet access over dial-up modems. Most people still use modems, but this is a temporary state of affairs and as more people get broadband access, this incentive will tend to diminish.

Another incentive to buy CDs could be the packaging, with pictures, credits and other information about the artist. However, much of that information is increasingly available from other sources, especially from the Internet, especially from the artist's own web site. The market for "collector" products in their own right is relatively small. It's unlikely that many music fans would fill an entire library of recordings with collector copies of CDs.

In summary, Free P2P has yet to definitively prove that it can be a lasting tool for generating revenue from recordings. Meanwhile there are many reasons to think it won't. Without that revenue, the grass roots market is unlikely to grow into a stepladder.

If an alternative system is to replace Free P2P, it will have to provide a meaningful improvement over the value that fans can get from Free P2P. I think this is possible.

Other potentials for online technology are intriguing...

How Mass Customization Could Empower Both Artists and Fans

Right now, both business alternatives for musical artists are flawed. In the star system, the Power Pillars of mass promotion and distribution create a market lock with high, risky barriers to entry. In the grass-roots market, the special (often arbitrary) constraints of small-venue gigging distort and limit productivity.

In both cases, a great deal of market friction stands in the way of accurately matching artists and their audiences. The marketplace heavily skews the distribution and volume of apparent demand, so the actual audience demand is not well reflected by measured "market demand."

In order to allow musical culture to more accurately reflect audience demand, we need a much more fluid marketplace. Artists that appeal to moderate-sized audiences need to reach them inexpensively over a wide geographic range, and collect reasonable revenue from them.

The Internet presents an unprecedented opportunity for this to happen, if properly designed. However, there is no guarantee that it will happen. The Internet has many capabilities, including systems like Free P2P, not all of which contribute to the particular kind of system that can empower grass roots artists in this way.

There is a way to design an online system that I think provides the best potential for this empowerment. It contains a full catalog of all recorded music in a fully interactive flat-fee subscription service, it ensures fair payments to artists on the basis of use, and it provides methods of personally targeted recommendations in a radio-like experience without the narrow bottlenecks of mass media.

In short, it applies a "mass customization" model to a music service, fulfilling the roles of both broadcast radio and CDs in a single, integrated service that provides added value that is not removed from the system as it is used. It is one particular variety of what many people have called the "Celestial Jukebox" model. Here is how this version works, and how it uniquely empowers grass roots artists.

Full Catalog Access, Per-Play Revenue, and Risk-less Sampling

One of the pre-requisites for any system to empower artists is a way for them to make money from fans listening to their music. The current market is based on the idea of mass producing recordings as CDs, and selling them as products to the audience.

An online service, however, should not be in the business of selling recordings piecemeal. Instead, it could sell an integrated service with full access to all recordings on demand, plus many additional informational features. It would allow all artists to plug in, and it would pay out a royalty based on the total number of times each song gets played for individual subscribers -- the royalty should be in a range comparable to pro-rated royalties currently generated by CD sales. (Eventually this kind of service could replace the CD format to a large extent.)

For the listener, what this means is that, for a flat fee, you can listen to literally any music that you want at any time. One-stop, on-demand access to all recorded music. This takes the risk out of purchasing individual CDs with incomplete information -- fans no longer have to guess whether they will like all the songs on a CD, or decide whether it's worth paying for it just for a few songs they do like. For a fair price for blanket access, this decision never comes up -- subscribers can listen to anything without considering whether to pay extra for it.

And with an online system it's very straightforward to add artist and artist-related information (bios, reviews, pictures, liner notes, credits, tour dates, merchandise), often referred to as "meta-data." Add community features such as fan clubs, instant and time-shifted messaging, chats, and forums, and you have an integrated, full-featured music experience, with everything at your fingertips.

So far, this picture doesn't seem to include much that Free P2P can't do without charge, aside from quality of service. However, quality of service is an important consumer value. And, there is another side to the story - this system can replace not only CDs, but also radio. That is discussed in the next section, with special focus on a kind of listener value that cannot be removed from the system as it is used.

For the artist, unobstructed access to such a national/global royalty-paying online service breaks the bottlenecks of retail distribution and gig-centered sales. We've seen a hint of this already in the use of artist-operated web sites to sell CDs.

However we know that access by itself is not enough for grass roots artists to fluidly reach their full audience. What an integrated music service could add to this is a systematic way to get fluid, inexpensive audience exposure, to go along with the potential for wide distribution, and the revenue that comes from that.

Breaking the Promotion Bottleneck, Ending The Muzak Effect

If mass media created the Muzak Effect, with its insidious distortion of commercial music culture, then custom media promises to return music culture to its natural balance. The problem with mass media is that it requires the same program to be accepted by everyone in a group, leading to the success of tolerable music over favorite music, and the resulting overall cultural distortion. The solution is to find a way to deliver customized programs with the efficiency and success of mass media.

Computing and telecommunications technologies have now provided the first opportunity for this to happen widely, and it's called "mass customization" in the marketing business.

Mass Production and Productivity: Mass media have become very successful because of their efficient productivity. For a relatively small cost per audience member, information can be multiplied from a single source to a very large number of people. And because broadcasting usually has a fairly fixed overhead, and profit is generated per audience member, larger audiences generate more profit.

It is the media equivalent of the revolution in mass production started by Henry Ford's Model-T assembly line. It's a lot easier (and therefore cheaper) to make a standardized product for a lot of people all at once than to make different products for each individual customer. Customized products might still be higher quality in some ways, but they are much lower in productivity (the number that can be created with equal cost is much lower), and so custom-built products have tended to remain much more expensive compared to mass-produced products.

Mass production brought many kinds of products to the masses that were previously out of reach because of their high cost. Mass media did the same for information and entertainment, improving on the much lower productivity of live appearances and geographically constrained meetings.

Mass Customization: Mass customization combines the efficiency of mass production with the personalized quality of custom production. It's a completely unprecedented capability, with truly revolutionary potential. Using a computerized database of individual customer information, computer-controlled manufacturing can produce custom products with an efficiency approaching standardized production. In short, *machine-enhanced manufacturing* has been supercharged with *machine-enhanced variability*.

The technology to personalize consumer products and services is becoming widespread. It starts by providing standard options, from which each customer chooses a personal combination, and that "multi-standardization" is what makes the process efficient.

The same strategy can be applied to the media world, by building customer profiles for media services. That lets them personalize the choice of content efficiently enough to keep costs comparable to mass media. Deliver that personalized content using the point-

to-point technology of the Internet, and you get a fully functional platform for mass customized media -- *personalized content, combined with personalized delivery.*

Some people object that the Internet is not ready to reliably support personalized music streaming on a very wide scale yet, and they may be correct -- today. Bandwidth costs for online systems are still high, and the price most people would be willing to pay probably does not cover the full costs of delivery in today's market. However, one of the most consistent patterns in both computer and telecommunications businesses is the increase of computing power and transmission bandwidth per dollar, over time.

In the computer processor business it is known as Moore's Law (processing power doubles about every 18 months), and in the telecommunications business, bandwidth efficiency has increased at an even greater rate. It is very likely that delivering custom media online will become cost effective in a finite period. It can be debated how long it will take, but most agree that it is not a question of "if" but "when."

Personalized Radio: What this makes possible is music programming very similar to a radio program, but individually personalized for each listener, breaking the dependence upon group-wise programming that leads to the Muzak Effect. This personalization needs to include the same "novelty with familiarity" as broadcast radio, balancing freshness with an environment of favorites.

A key feature of this personalization is how new music is selected to play along with the music that listeners already list in their preferences. If we want to avoid hobbling this system with the same bottleneck as mass media, we have to avoid using a small number of human decision-makers to make these choices. The ideal service systematically identifies new music based on listener preferences, and includes some of it in the live program, on a quasi-random basis. These systems are often referred to as "*auto-recommendation*" systems, and there are several methods that can be used.

Collaborative Filtering: One of the most interesting is called "*collaborative filtering.*" This process collects the music preferences of many individuals together into a single database and then compares likes and dislikes. If fans of Artist A generally also like Artist B, then the system will sometimes play Artist B for fans of Artist A, even if they haven't explicitly chosen Artist B. This can even be done song-by-song, instead of artist-by-artist. This is a systematic way to extend the "word of mouth" process of individual recommendations between people who are not acquainted with each other directly.

Sounds-Like: Another method with some intriguing possibilities is called a "*sounds-like algorithm.*" Music is broken out into measurable variables that correspond to the ways music actually sounds to humans. It's then analyzed according to how similar it is to other music in the database, so when a fan chooses one song, similar songs are sometimes played as well. These algorithms are in the early stages of refinement, but their special advantage is that they can make recommendations without requiring a critical mass of explicit fan preferences. Collaborative filtering requires music to have a certain number of fans before it can start reliably recommending that music to other listeners.

Artist recommendations: One may also ask artists directly which other artists they feel *influenced* by, as well as which other artists they *enjoy* but who don't directly influence their music. These two kinds of *artist recommendations* can be very helpful in navigating the music world, especially if the recommendations can be used in both directions, so that a lesser-known artist who feels influenced by a better-known artist will be occasionally programmed for fans of the better-known artist.

Word of mouth: Aside from these systematic recommendation methods, there can also be forms of *word-of-mouth* made easier in an integrated system. Song and playlist recommendations might be passed from person to person. One person's preferences might be chosen by a second to add to their own preferences. And explicit searching through preferences of a selected artist's fans might lead to the discovery of new artists to sample on demand.

Traditional methods: In addition to these new methods, more traditional methods like *editorial recommendations* and *sub-genre classifications* can still be useful, even though they have an inevitable subjective skew, and in the case of editorial judgments can be constrained by the star bottleneck. They provide a standard, predictable place to start, for listeners who haven't yet explored much music, and they have their place in any full-featured system.

Having all of these methods integrated together, with flexibility to choose among them, gives individual listeners tremendous control over their music experience. At the same time, it systematically exposes a very wide range of artists to their appropriate fans.

Most of these methods are currently still not fully developed, and require more fine-tuning before they reach their ultimate potential. They have shown some real promise, but for now there are none that completely fulfill their intent. Again, it is basically a matter of time and resource allocation before these kinds of tools reach their full flower.

Imperfection: It should be noted that no recommendation system, whether human-mediated or automatic, could ever be "perfect" for an individual listener's favorite music, even if ideally implemented. People's tastes evolve over time and are unpredictable. Even though these sorts of systems can get pretty close, they will always make mistakes. But as long as the service allows the listener to skip those mistakes easily, they will not seriously degrade the overall music experience, and can be forgiven.

In the broadcast radio world, mistakes are not allowed, because the only way listeners can skip them is to change the channel entirely. But once you add moment-to-moment control to the experience, mistakes become much less damaging, and tend to be forgotten in the midst of all the other good music. And while skipping mistakes, the system can collect that information and get better at avoiding mistakes over time. Personalized systems can learn from individual users' interactions with them over time.

Replacing the Pole Vault With the Stepladder

With access to full-catalog subscriptions and auto-recommended exposure, the music service described above breaks both of the Power Pillars, allowing artists to reach a national/global market for their recorded music:

- 1. It provides all artists incremental exposure to their full audience, over time.*
- 2. It provides all artists incremental revenue from that use, as it happens.*

By combining well-targeted exposure with revenue-generating use in a single customer-centric experience, we will have finally built the stepladder that extends the grass-roots step stool upwards to more widespread success.

The way this market would work combines the grass roots process of playing small-venue gigs, with the national/global exposure and revenue that comes from the mass customized music service.

Artists would begin by playing gigs locally and regionally, as they do now. However along with collecting email addresses from fans in the audience, artists would encourage fans that subscribe to a personalized music service to include them in their preferences. This is good for fans that want to hear the artist in their personalized radio programs, and it also helps provide enough data to run collaborative filtering systems.

Unlike the star-promotion models, artists are not exposed to an expanded audience over a short period of time. Instead it happens more gradually, as the auto-recommendations are made over time. And, this viral spread of attention shouldn't cost anything to the artist. It's an added value for customers -- part of what attracts them to come back and use the service instead of just purchasing or downloading music to play from a local/home library.

Use of the service generates a pro-rated revenue stream to the artists (including songwriters) based on plays of songs, rather than lump-sum purchases that accrue plays privately over time, or even free downloads that generate no revenue at all.

Since there aren't the same huge promotional costs that are inevitable in the star system, the break-even is much lower, and artists can make a career based on a much smaller (but still very appreciative) audience than is required for the hits model. It allows an artist's career to be built on the merit of direct, individual fan appreciation, instead of being constrained by bottlenecks that create expensive market leverage or small market caps.

Why Other Alternatives Don't Help Grass Roots

There are other ways that musicians make money in the music business, and some people suggest that recorded music should be purely free, with these other methods generating the revenue that sustains a career. These include live performing, advertising, patronage, and voluntary donations. I don't think any of these alternatives actually work, because they don't break down both of the Power Pillars of the star system.

Live Performing: As noted in the grass roots section above, it's hard for most artists to make much money with live performances. There are relatively few venues that are large enough, and relatively few artists with enough local audience draw to fill them, anyway. Most artists would only generate partial to break-even levels of revenue typical of today's grass roots market.

Part of the difficulty in bringing an audience to a live performance is the double constraint of time and location. Unlike a CD, which can be played at any time (and with portable players, in any place), a live performance is stuck in one place at one time -- the audience must either come then and there, or not attend at all. Only a small cross-section of an artist's audience would be available on these terms, and so live performing is actually a rather weak method for reaching the full audience.

Also, venues have other constraints (such as stage space, seating space, etc.) that limit the variety of acts appropriate to perform there. Some artists' recordings may be all but impossible to perform live without unrealistic expense, or in only a select few venues. Even with a very large audience, such acts would generally not be able to reach their full audience with live performance.

The total revenue available in the live performance market (for original acts, not including sideman work-for-hire that the musicians' union covers -- parties, receptions, musical theater, and the like) doesn't compare at all to the total revenues from retail sales of recordings. If this were the most important way for musicians to make money, only fairly big stars would be able to make a decent profit, by playing at the few large venues where that is possible, and the star system would still dominate the market.

Advertising/Sponsorship: When artists appear in TV commercials or magazine display ads, they are selling their celebrity to associate with the brand of some other product. To be attractive to the advertiser, the artist must already have a celebrity brand that has value, as well as being a good match for the product brand. That celebrity brand has to be known widely enough to make a difference in the advertiser's market, which is to say, they must be stars. So artists will only be able to make this work if they are stars in the mass media, and have already gotten through all the bottlenecks in that system.

Patronage: Patronage is basically a private form of sponsorship, where the sponsor is not a corporation or other organization, but rather a private individual. Usually this is someone spending a lot to enhance a personal reputation by attaching it to an attractive

celebrity. It relies on the star dynamic the same as advertising, not to mention the few number of available patrons, and their unpredictable personal quirks.

Voluntary Donations: Many people have been looking to the "online tip jar" to replace sales revenue lost through free distribution of music files. They point to examples of donations and other voluntary contributions across society, such as restaurant waiters and cab drivers, public broadcasting, and other charitable gifts.

However they fail to acknowledge that most tipping is on top of base salaries and other non-discretionary consumer charges, and that many charitable contributions are encouraged through tax deductibility for strictly approved non-profit organizations.

They sometimes argue that society could develop new social norms where people recognize the value of the music, and a duty to support musicians whose work makes a difference to them. However, such social norms usually arise from the structure of the marketplace, not by being imposed from outside the market. There is no precedent to suggest that this will result in anywhere near the revenue needed to break out of the star system. So even if the promotional bottleneck is broken, there won't be enough revenue to make a difference.

Breaking down a flawed market is one thing, but building something better in its place is something else yet again. The better market won't magically appear in the wake of the flawed one without explicit planning, architecture, and implementation. If the commercial market for recorded music is undermined for major labels, it will also be undermined for grass roots artists, making that dance a little bit harder all over again.

Other Online Options: There have been other suggestions for a complete system to be built purely using distributed architecture (extending the Peer-to-Peer concept to streaming, metadata, and allocated payments of some sort, perhaps bundled in with other Internet or wireless service providers).

These ideas have not been fully fleshed out at this time, but may provide a viable alternative to the centralized subscription business model. (Note: See the section "2003 Update, Distributed Systems" for further ideas about how this might work.)

If they do, though, they would have to include the two key features of the centralized service:

1. Full access for all artists to get into the catalog, along with fair revenue per play
2. Full-catalog personalization for individual users of the system

The criteria for determining whether any proposed solution will work are still the Power Pillars. If both bottlenecks (promotion and distribution/revenue) are not broken simultaneously, nothing really changes about the star system pole vault or the grass roots step stool, and the stepladder does not get built.

How the Traditional Players Could Stymie the Whole Thing Today

Just because we can technically build an interactive subscription service with a full catalog and comprehensive personalized auto-recommendations doesn't mean anyone will. Major labels and publishers would be likely to obstruct or distort such efforts, unless forced to allow it. Compulsory licensing would be a tool to force them to allow these services to operate in the ideal form for fans and artists. Without a compulsory license, the following tactics are available to major labels and publishers.

The Full Catalog At Risk

The majors could build their own subscription services, and refuse to allow artists into the catalog other than those signed to their own labels. Even if majors create more than one service, and cross-license their catalogs to each other, independent artists are not likely to be admitted, unless they submit to substantial control or ownership by the major labels. The grass roots market could be completely excluded from participation.

Control or exclusion could involve any number of tactics used with their own artists or with retail distribution. Basically, the same leverage they exert as gatekeepers to the traditional distribution system can be imposed upon the interactive service catalog. The Power Pillar of distribution is replaced.

Fluid Exposure At Risk

Even if major-operated services include a wide range of artists in their catalog, they could limit or skew personalized exposure to a set of their own artists. If so, inclusion in the majors' catalogs would be hardly more useful than having a solitary web site unconnected to any other service. They could charge exorbitant fees for access to unbiased auto-recommendations, or force artists to use other expensive mass media to promote themselves. Grass roots artists could be excluded from inexpensive, incremental audience exposure.

Could one independent artist provide an independent service, in response? Maybe so, but it would be less valuable to present one artist's work by itself than all artists together, because most fans do not limit themselves to a single artist. They want access to a whole set of artists in a single package -- full aggregation is a very important consumer value.

Currently, fans build up a personal catalog at home by purchasing CDs, and then play them on-demand, or through home jukebox systems. Jukeboxes, however, do not include music that the listener has not already explicitly acquired. Including new music is critical for independent-artist exposure, whether by broadcast radio or a personalized service.

Since the majors operate in the star system, they want to keep their market focused on just some of their artists, in order to boost their exposure and sales as much as possible.

(In the case of a service, instead of sales it would be revenue-generating song-plays.) The diluting effect of expanding the catalog and exposing fans to the full range of artists would work directly against the financial incentives for stars, and thus the majors can be expected to avoid that choice.

Even though providing comprehensive auto-recommendations would be in the best interests of the fans, who pay the subscription fees, the majors would probably not extend these features broadly unless there were independent competitors that did so. The Power Pillar of promotion is replaced.

The Majors Take Their Ball and Go Home

For interactive subscription services not owned by or affiliated with the major labels, the majors and publishers still hold an absolute trump card: They can refuse to license their content to such services unless they agree to accept the limitations described above, recreating both Power Pillars in the unaffiliated services.

Non-compulsory licenses are not indefinite in duration; they must be renewed periodically. If the service begins to expand beyond the above limits, the majors can terminate or refuse to renew their licenses, thus removing big chunks of the competitors' catalogs, and damaging the total service value that the competitors can offer their subscribers. This is dramatic leverage that they can exercise periodically at will.

Subscriptions At Risk

The majors can also choose not to license their catalogs to interactive services that use a subscription revenue model, requiring such services to make money some other way, either with advertising, or other business models that generate alternative revenue.

Ideally, a music service may want to offer options ranging from free ad-supported service to ad-free subscriptions in a single business, and without a subscription option, the flexibility of that customer empowerment is not available.

Whenever you create a business where you have multiple customer bases (in the case of an ad-supported service, it would be both advertisers and music fans), whoever is paying the bills will get priority in any business conflicts. Advertisers don't care about a full catalog or personalized features of auto-recommendations; they only care about getting their message to a massive audience in an attractive branding environment. This reduces the incentive to serve individual fans with the best possible personalized programming across the widest catalog.

The Power Pillars are not a problem for advertisers. Advertising is a mass-media business strategy, and advertisers are perfectly comfortable with those constraints.

Unless the alternative business models were also personalized, sponsors' needs would not encourage the kind of system that breaks the Power Pillars. A music service could consider providing a personalized consumer product service as well, and user profiles from the two could be combined, for cross-referencing. But, implementing personalized marketing as an alternative to mass advertising is much more difficult, both technically and from a business standpoint. That would be a steep barrier in its own right.

Artist Revenue At Risk

Under non-compulsory licenses, as currently determined in the DMCA, there is no guarantee that artists would get a fair percentage of the revenues generated from fans using their music. (Artists do get a guaranteed percent of revenues under the DMCA compulsory for non-interactive webcasting. Direct payment of these royalties is still in doubt, though, as the RIAA's proposed collection agency has suggested that artist revenue be funneled through the labels to recoup advances.)

So even if all of these interactive service licenses were granted and sustained over time, with full catalogs and comprehensive auto-recommendations, artists signed to labels could be much less likely to actually receive the money generated from subscribers, and have it diverted to recouping label costs instead.

Conclusion

Compulsory licenses have two general characteristics: They compel copyright holders to license their content to anyone running a business of a determined type, and in turn they compel those businesses to pay a standard, statutory fee to use that content, with a guarantee that some well-defined portion is paid directly to the artists.

Rate Structure: However, there are a number of different ways to structure the fees.

- Set a fixed rate per play of any one song to an individual subscriber, and apply that universally to all plays for all subscribers across all interactive music services.
- Set a percent of business revenue that is allocated according to song use proportionally.
- List several separate rates according to different ranges of total revenue (this is the model currently used for broadcast radio blanket licenses).
- Create a more complex formula with various parameters including revenue, subscriber base, etc., that results in a different rate for each separate business, but according to a known statutory calculation.

Also, it might make sense to include both song copyrights and sound recording copyrights in a single compulsory structure, with a complete breakdown across the various copyright holders. Without both licenses, the music cannot be used, and even if a label licenses recordings, publishers might still withhold licenses to use the songs.

I don't advocate any one particular structure for the statutory rate, however I am concerned that it be set in such a way that businesses are not allowed to squander value too much. If a business were to operate on a very slim profit margin, and the statutory rate were set as a proportion of net profit, then it would be very easy to dramatically reduce the amounts paid to artists. So not all possible structures will benefit the artist properly, by providing a fair rate for use of their work

Independent artists and their representatives need to be included in the negotiation of the structure and magnitude of statutory rates under a compulsory license.

Blanket Licensing under Consent Decree: Some people suggest that, instead of a strict compulsory license imposed by legislation, artists should collect together into a single bargaining unit to offer a blanket license. This would correspond more to the structure of ASCAP and BMI, who operate under a "consent decree" from the Department of Justice. The consent decree exempts them from having to avoid price fixing, which violates anti-trust law, in return for certain restrictions on their operation.

Artists will need to collect together either way: to request a consent decree for blanket licensing, or to participate in rate negotiations for a compulsory license (or to participate in rate arbitrations if negotiations are unsuccessful). In both cases, other parties with

conflicting interests, such as publishers, should not be included. And, parties with overlapping interests such as small independent labels might very well be included.

Market Lock: Without being compelled to license their content to interactive subscription music services under terms that allow a fluid market for all artists, the major labels and publishers will be able to extend the Power Pillars to the online world.

These bottlenecks no longer are technologically necessary with online services, as they are in the mass media and physical distribution markets. But with the powers currently granted in copyright law, the big players can unilaterally impose similar bottlenecks on the online market, to their advantage, once again.

The Win/Win Solution: Creating a viable grass roots market actually would not threaten the demise of the star system. Mass media will always exist, even if only as integrated aspects of a full-featured service.

There will always be artists who aspire to the largest audiences and celebrity possible, and there will always be some group of fans that idolizes them. It will always be expensive to promote music to these large fan bases, because there will always be scarcity in the channels to reach audiences of that size, whether those channels happen to run on traditional mass media technology or are integrated into an online service.

The star system will never go away.

However, the star system need 't be the only effective option for artists to build careers with original work. With a stepladder marketplace that works, reaching up from the grass roots, artists would have the option to cruise at a lower level of audience size without having to gamble on an attempt to get to star level.

Artists Win: This would change some things about the major label business. Labels would have somewhat less leverage among "baby bands" that would no longer need them for their own initial career development. Because of this, only artists who had gotten to a substantial level of success would work with majors to bring them up to a full star level of celebrity. These artists would have more leverage to negotiate as business partners, rather than as dependents to the gatekeepers, because there would be much less risk of failure and they would have a workable alternative to the star system.

Labels Win: At the same time, there would be much less failure because majors would be less likely to sign risky acts, and they would not be filling up the mass media channels with so much more than they can handle. In short, much of the risky side of the business would be abandoned to the grass roots market, and the artist development aspect of A&R would be rolled back to simply observing grass roots artists and choosing those that are demonstrably ready to move up to stardom.

Also, labels might still reduce their losses with any "unsuccessful" artists with the incremental use that comes from inexpensive auto-recommendations.

Fans Win: Music fans would get a music experience that is optimum for each of them personally. In the process, they would drive a music market that is diverse and high quality, and the blossoming of musical culture would be enhanced for everyone.

In order for all of this to happen, we need to extend some form of compulsory or blanket licensing to interactive music subscription services. There is a good deal of work to be done to determine the ideal rate structure and negotiate the magnitude, and the full range of interests needs to be included in the process. However, if we don't first agree on the compulsory goal, we may never get there. And that could be one of the most important opportunities the music world has ever squandered.

MOCA addendum, August 2001:

In August 2001, a new bill was introduced in Congress (the Music Online Competition Act, or MOCA) that addresses a number of concerns with the DMCA, including the issues of "ephemeral copies" and digital rights management. Also, importantly, it adds a new "non-discrimination" clause that requires labels to provide licenses to any interactive music service on the same terms it offers to affiliated services in which they own significant equity.

If this bill is enacted as originally written, interactive services will be in a more powerful position to create services that provide great value to their customers. However there are two drawbacks that would remain for independent artists:

1. *Independent artists and labels would not be guaranteed the same royalty rates as the major labels, perhaps even no royalty at all.* This might be remedied if independent artists and labels were able to create a collective bargaining unit and receive a consent decree from the Department of Justice to offer a blanket license.

Even so, it's not clear that even a blanket license for independent artists would necessarily guarantee that a full-catalog service could be licensed including major label artists. But without such an outcome, the Power Pillar of distribution revenue would remain.

2. *Major labels could still include terms in their licenses with their own affiliates that exclude independent artists from auto-recommendation features in personalized programming.* These terms would then constrain all services from extending auto-recommendations to the full catalog. This would leave the Power Pillar of promotion in place, unless these terms were deemed illegal anti-trust violations.

MOCA would not necessarily empower grass roots artists. The non-discrimination clause does transfer some gatekeeper leverage from major labels to webcasters. But without a compulsory license to require webcasters to pay all artists fairly, or an artists' collective offering a blanket license for a significant share of market, webcasters would be in a position of unfair advantage over the music market.

Even under a blanket license, there is no guarantee that terms covered by non-discrimination would allow the sort of system that breaks down both of the Power Pillars. That would not be a solution, but only a changing of the guard. The star system would still be the only game in town, and we would still not have a merit-based music economy.

2003 Update, Distributed Systems:

As of 2003 it now appears that distributed systems using peer-to-peer architecture might be capable of providing a personalized radio-listening service similar to that described as a centralized service in this paper. Such a system has not yet been demonstrated in a working form, but in theory it might happen. If so, it could provide an alternative architecture for mass-customized music exposure that is effective in breaking down the Power Pillar of exposure.

At the same time, there is talk of blanket-licensing music (and other forms of copyrighted content) at the level of network service providers rather than content service providers. That is, instead of subscribing explicitly to a music service, everyone's subscription to Internet access itself might be surcharged, and those fees distributed to musicians according to some measurement of traffic moving across the network.

In such a situation, it would be very important to ensure that the measurement system is equitable and fairly operated, providing a fair share of revenue that accurately matches real traffic, and allowing any artists to plug into the payment system independently. Given that possibility, the Power Pillar of revenue would be broken down as well.

So, if both of these possibilities actually come to pass, both Power Pillars would be broken down.

As of mid-2003, it is difficult to predict what if any blanket licensing might occur, and whether it will be voluntary or compulsory. However it is encouraging to think that there are at least two architectures (centralized and distributed) and two legal strategies (compulsory and voluntary) that might eventually work.

In all cases, however, there will still be the need for an artists' collective group to participate in setting terms of licenses and how the systems actually work (and in the case of voluntary blanket licenses, to actually license, collect and distribute the money).

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Dan Krimm is a musician who has worked in the online business for over 20 years. As a progressive jazz composer/bandleader and fretless electric bassist, he was awarded a *National Endowment for the Arts* Jazz Fellowship grant in 1984, and produced two albums and a concert video of his own work. He was also the first Webmaster for both *Discover Magazine* and *Consumer Reports Online*, and from July 2000 to May 2001 was a Project Manager at Launch Media, Inc., working on the *LAUNCHcast* personalized radio and video service.