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AIMS AND SCOPE

The International Journal of Music Business Research (IJMBR) as a double-blind reviewed academic journal provides a new platform to present articles of merit and to shed light on the current state of the art of music business research. Music business research is a scientific approach at the intersection of economic, artistic, especially musical, cultural, social, legal, technological developments that aims at a better understanding of the creation/production, dissemination/distribution and reception/consumption of the cultural good music. Thus, the IJMBR targets all academics, from students to professors, from around the world and from all disciplines with an interest in research on the music economy.

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Editorial

*Peter Tschmuck*¹

This issue of the International Journal of Music Business Research covers a wide, if seemingly disparate range of topics. A closer scrutiny of the articles reveals certain similarities between them as these cover collecting societies, music in advertisements and the peer production of live albums.

Professor Dietz, the former head of the Max-Planck-Institute for Intellectual Property and Competition Law in Munich (Germany) delivered a speech about the proposed EU Directive on Collecting Societies to the 4th Vienna Music Business Research Days in June 2013. An updated version of that speech is published here. Within the intervening time period, the European Parliament as well as the EU Council passed the Directive, which will be enforced within the EU member states. The new Directive aims to create a more efficient framework for collective licensing of online music uses by eliminating national monopolies over the global repertoire. In Professor Dietz's view this goal is in conflict with the principle of cultural diversity to which the Commission as well as other EU organs are strictly bound. He highlights the cultural function of the copyright law as well as the collecting societies and their particular role in protecting cultural diversity. The new EU Directive conversely, will strengthen the position of large collecting societies administering vast and popular repertoires. As a result, those collecting societies in the smaller member states with minority languages will struggle to survive and may eventually disappear. This could endanger the smaller national repertoires and reduce cultural diversity within the European Union.

The second article by David Allan of Saint Joseph's University in Philadelphia (U.S.) deals with the relevance of popular music for brand

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and artist awareness in television commercials. He conducted a study among 48 undergraduates at a large U.S. university asking for ad familiarity and brand attitude in relation to different types of music. The study found that a favourite song in an ad has a significantly high impact on brand awareness. These findings are significant, since earlier studies that the author evaluates extensively, arrived at a different conclusion. It is therefore important for advertisers to become aware of the target groups' music tastes and favourite songs to develop a positive emotion towards the brands. Despite their high costs, licensing popular music titles for commercials pays off. Since advertising is an important income stream for music rights holders, it is essential to control large popular music catalogues for further monetisation. Although collecting societies are not always involved in licensing synchronization rights, Allan's study implicitly confirms Adolf Dietz's fear that niche music is under threat in an increasingly hit-driven music landscape leading to a reduction in cultural diversity.

The third article by Steven C. Brown of Glasgow Caledonian University (Scotland) explores the relevance of peer production for live music albums. Although the 'bootlegging' of music shows by fans has been a constant in the live music business, co-creation by peers is a new phenomenon that has emerged in the digital economy. Certain bands such as Pearl Jam, Nine Inch Nails and Blur fostered the participation of their fans in their live music shows by encouraging them to record their shows on mobile phones and other devices for wider circulation. Allowing this not only strengthens the artist to fan relationship but creates added value for the artists as well. As consumer studies indicate "*(...) increased value is attached to both utilitarian and hedonistic products which are self-made as compared to otherwise identical products which were not self-assembled*" (p. 59). This shows there is an economic rationale to integrating fans within the overall production process of music. It also, however, begs questions of the traditional notions of authorship and suggests these could become obsolete. All those stakeholders actors preoccupied with the protection and monetisation of copyright, in particular the collecting societies, will, therefore, be under pressure to

change their licensing and remuneration systems. Peer production additionally could also change the rationale for making commercials if individual music preferences become more important for brand awareness.

In summary each of the three articles in this issue of the journal point to the future development of a music business that will be more participatory and interactive. This represents a challenge to the current legal framework as well as the functioning of the existing music licensing regimes.

The IJMBR is aimed at all academics, from students to professors, from around the world and from all disciplines with an interest in music business research. Interdisciplinary papers are especially welcomed if they address economic and business related topics in the field of music. Thus, we look forward to receiving as many interesting papers as possible and request that you send papers for consideration to:

music.business.research@gmail.com.

The European Commission's Proposal for a Directive on Collecting Societies and Cultural Diversity – a Missed Opportunity

Adolf Dietz²

Preliminary remarks

At the beginning I would like to make a hypothetical statement concerning the Eurovision Song Contest: Those of you who would have wished more people singing in their native tongue will probably in the end agree with my position as presented here, whereas those of you who are insofar indifferent or even, for marketing or other reasons, prefer "English for all" will probably react more skeptically.

Keywords: Collecting societies, EU Directive, cultural diversity

1 Introduction

Why do we need copyright, why do we need collecting societies and what are their cultural functions? What follows is an attempt to answer these questions and, at the same time to demonstrate why the European Commission's Proposal for a Directive on Collecting Societies³ has missed an opportunity.

Among other things the Proposal's "Explanatory Memorandum" starts with the important statement that collecting societies "*also play a key role in the protection and promotion of the diversity of cultural ex-*

² Prof. Dr. jur. Dr. h.c. Adolf Dietz is Senior Research Fellow (ret.) at the Max-Planck-Institute for Intellectual Property and Competition Law, Munich, Germany. This presentation is based to a large extent on a contribution to a forthcoming *Festschrift* (in French) and was a keynote of the 4th Vienna Music Business Research Days on "The Future of Music Licensing" at the University of Music and Performing Arts Vienna, June 20-21, 2013.

³ Its official title is "Proposal for a Directive of the European Parliament and of the Council on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market", of July 11, 2012, COM (2012) 372 final, 2012/0180(COD) (quoted as "Doc. 2012/0180(COD)"); the text of that Directive as adopted by the European Parliament and the Council in substantially amended form (Directive 2014/26/EU of 26 February 2014, OJ L 84/72 of 20 March 2014) could not be taken into consideration here; but see postscript below.

*pressions by enabling the smallest and less popular repertoires to access the market*⁴.

Even if this statement is justified it appears unconvincing if we ask the question whether the regulatory content of the Proposal corresponds with it in substantive terms; in other words, whether this statement fulfils its implicit promise. One can beg the question whether the provisions and general aims of the Proposal will rather achieve the opposite result by weakening the role of collecting societies, especially in relation to the smaller countries of the European Union and thereby weakening at the same time cultural diversity within the EU in favour of the large international repertoires.

This paper⁵ aims to examine that question as a great deal depends on it and it aims to critically evaluate the Commission's Proposal⁶. To enable this evaluation we will initially discuss the cultural function of copyright/authors' right law generally as well as that of the collecting societies in particular. This is a pre-requisite to understanding whether the declared aim of protecting cultural diversity through copyright law is in fact achieved or at least can be promoted by that Proposal.

⁴ See Doc. 2012/0180 (COD), p. 2; in the same sense recital 2 (at the end) of the Proposal see Doc. 2012/0180 (COD), p. 13.

⁵ Concerning three recent and much more profound studies, see *J. Heyde*, *Die grenzüberschreitende Lizenzierung von Online-Musikrechten in Europa*, Baden-Baden 2011; *S. Gräfin Grote*, *Europäische Perspektiven der Rechtswahrnehmung durch Verwertungsgesellschaften*, Baden-Baden 2012, as well as *S. Nérisson*, *La légitimité de la gestion collective des droits des auteurs en France et en Allemagne*, PhD thesis, Paris and Berlin 2011 (an updated version to be published in the near future).

⁶ See recently also the almost exclusively critical presentations concerning that Proposal, made by R. Staats, T. Holzmüller, T. Gerlach, V. Janik, C. Tiwisina, C. P. Krogmann, J. Maier-Hauff, S. Nérisson and M. Rehse during a seminar entitled "Europäischer Rechtsrahmen für Verwertungsgesellschaften" and organized on December 7, 2012 in Munich (see Nérisson 2013), as well as two equally critical documents of German expert groups, namely the Opinion (*Stellungnahme*) formulated by the German Association for Industrial Property and Copyright Law (*Deutsche Vereinigung für gewerblichen Rechtsschutz und Urheberrecht* 2013) quoted here as "Opinion of the German Group" as well as the "Comments of the Max Planck Institute for Intellectual Property and Competition Law" (Drexel et al. 2013), which can be found at the website of the MPI – www.ip.mpg.de – under "*Stellungnahmen des Instituts*" (quoted here as "Comments of the MPI").

2 The cultural function of copyright law in general

Unfortunately, as we have tried to show elsewhere (Dietz 2005, 2006), in contrast to the United States Constitution and its *Copyright Clause* (Section 8 clause 8 of the Constitution of 1787⁷), most constitutions of European countries do not expressly guarantee copyright law or even intellectual property generally; still less do they provide a constitutional guarantee of the cultural function of copyright law.

Fortunately this troubling lacuna has been resolved, at least politically, by a series of recitals within the European copyright directives. Recitals 9 and several others thereafter in the Infosoc Copyright Directive⁸, underline in various aspects the importance of copyright law for the development of creativity and culture. Some of these recitals follow⁹:

(9) Any harmonization of copyright and related rights must take as a basis a high level of protection, since *such rights are crucial to intellectual creation*. Their protection helps to ensure the maintenance and development of creativity in the interests of authors, performers, producers, consumers, culture, industry and the public at large. ...

(10) *If authors or performers are to continue their creative and artistic work*, they have to receive an appropriate reward for the use of their work, as must producers in order to be able to finance this work. ...

(11) A rigorous, effective system for the protection of copyright and related rights is one of the main ways of *ensuring that European cultural creativity and production* receive the necessary resources and of safe-

⁷ "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".

⁸ See Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society, OJ EC no. L 167 of 22 June 2001, p.10.

⁹ Emphases by the author.

guarding the independence and dignity of artistic creators and performers.

(12) Adequate protection of copyright works and subject matter of related rights is also of *great importance from a cultural standpoint. Article 151 of the Treaty requires the Community to take cultural aspects into account in its action.*

(22) *The objective of proper support for the dissemination of culture must not be achieved by sacrificing strict protection of rights or by tolerating illegal forms of distribution of counterfeited or pirated works.*

As we can see, European legislators are clearly in favour of the promotion of culture and creativity as well as cultural diversity via copyright law; in other words they are in favour of its cultural function. The political importance of that statement is accentuated by the explicit reference in Recital 12 to Article 151(4) of the EU Treaty (this became Article 167(4) Treaty on the Functioning of the European Union – TFEU), which requires the Union to take cultural aspects into account in its action, in particular to respect and promote the diversity of its cultures¹⁰.

The statements in the above recitals as well as the "cultural aspects clause" within Article 167(4) TFEU become even more important given the Charter of Fundamental Rights of the European Union of December 7, 2000¹¹ also refers to culture and cultural diversity. This is particularly evident in the third paragraph of the charter's preamble, as follows:

The Union contributes to the preservation and to the development of these common values *while respecting the diversity of the cultures and traditions of the peoples of Europe* as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels;¹²...

¹⁰ See also Doc. 2012/0180 (COD), p. 3; in the same sense recital 2 (at the end) of the Proposal, see Doc. 2012/0180 (COD), p. 13.

¹¹ OJ EC no. C 364/01, of 18 Dec. 2000.

¹² Emphasis added.

Additionally Article 22 of the charter simply states that the Union shall respect cultural, religious and linguistic diversity.

Clearly when doing legislative work in the field of copyright law and particularly in the field of collecting societies legislation, the Commission (as with all other EU bodies) is strictly bound to respect the principle of cultural diversity. It cannot escape that obligation by simply postulating that it has done so¹³ at the margin of the relevant Proposal. On the contrary the commission should have introduced far more concrete and explicit explanations and provisions to demonstrate how the principle of respect for cultural diversity would be realised. There may be a need for compromises with other principles such as the free movement of services under the Services Directive¹⁴, the application of which to collecting societies, is very dubious (Heine & Eisenberg 2009; Heyde 2011; Scholz 2011; Deutsche Vereinigung für gewerblichen Rechtsschutz und Urheberrecht 2013; Drexl et al. 2013). The latter is true, in particular since, according to Article 17 no. 11 of that Directive, a specific derogation from the principle of freedom to provide services is foreseen for copyright and neighbouring rights, a term which, of course needs interpretation; as we will see, in our view that term must be interpreted in a holistic and comprehensive way.

Finally, the apparent lack of interest from the competent services of the European Commission in the cultural role and functions of copyright law generally and collecting societies particularly is in striking contrast to the position adopted by of the European Parliament. The latter, in no less than three Resolutions¹⁵ has admonished the Commission, unfortunately in vain¹⁶, to more concretely respect the cultural diversity and the cultural and social functions of collecting societies and not to over accentuate the application of antitrust law to them (Dietz 2004, Nérissou 2011: 1019, 1074).

¹³ See footnote 10.

¹⁴ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376 of 27 Dec. 2006, p. 36.

¹⁵ Resolutions of 15 January 2004, 13 March 2005 and 25 Sept. 2008.

¹⁶ A true "dialogue of dumbs" ("dialogue de sourds"; see Nérissou 2011: title before p. 1019).

This lack of interest from the Commission is also in contrast to its deep involvement in the preparation and ratification of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions¹⁷, adopted by the General Conference of UNESCO on October 20, 2005, and ratified on May 18, 2006, by a decision of the Council¹⁸ on the basis of a corresponding proposition of the Commission of December 21, 2005¹⁹.

In its explanatory memorandum the Commission explains the importance of the implementation of that Convention of UNESCO for the Community (now the European Union) from the aspect of European cultural diversity, underlining that "*[a]t European level this diversity of situations is already the dominant reality and has been enriched by the recent historic enlargement, which brought in ten new Member States. Globalization, although it introduces new possibilities for exchanges between cultures, can also threaten the more vulnerable cultures and give rise to standardization phenomena which are likely to jeopardise cultural diversity*". Who would not think of copyright situations here?

Summing up the political reasons behind the whole issue the Commission came to the following conclusions:

The full participation of the European Community and its Member States in implementing the Convention will in particular contribute to:

- establishing a new pillar of world governance with the aim of ensuring protection and promotion of cultural diversity;

- emphasising the specific and dual (cultural and economic) nature of cultural goods and services;

¹⁷ See annex 1.a) of Doc. 2006/515/EC as well as already of Doc. 2005/0268 (CNS); see the following notes.

¹⁸ See Council Decision of 18 May 2006 on the conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2006/515/EC), OJ EU no. L 201/15 of July 25, 2006.

¹⁹ See Proposal for a Council Decision on the conclusion of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 21 Dec. 2005, COM (2005) 678 final, Doc. 2005/0268 (CNS).

- recognising the role and legitimacy of public policies in the protection and promotion of cultural diversity;

- recognising the importance of, and promoting, international cooperation to respond to cultural vulnerabilities, in particular with regard to developing countries;

- defining appropriate links with other international instruments that enable the Convention to be implemented effectively.

We cannot elaborate more on this UNESCO Convention and on the corresponding original position of the EU Commission (see in general Dietz 2008), but we should remind ourselves that not much else seems left from its worthy stance on cultural diversity when it comes to initiating new legislative steps in the field of copyright and in particular of collecting societies.

We should however consider that the ratification documents themselves established a narrow relationship between cultural diversity and copyright law. In Annex 1b, both documents²⁰ contain a list of Community Acts [EU Acts] illustrating the extent of the area of the corresponding competence of the Community. Almost all copyright directives (with the exception of the Software Directive and the Database Directive) are mentioned within them, which underlines their cultural relevance. Is this narrow relationship between copyright law and the protection of cultural diversity as shown above also not equally true for the collecting societies sector? The collecting societies are, as we will see, an integral aspect of copyright law.

3 The cultural functions of collecting societies

In most countries, in particular those of Continental Europe, regulation of collecting societies law is integrated within copyright law. The latter can be best understood as a whole system of regulation (Dietz 2003,

²⁰ See Commission Doc. 2005/0268 (CNS), p. 26, and again Council Doc. 2006/515/CE, p. 28.

2012) that rests upon at least five "pillars" or subsystems of equal importance, namely: a) substantive copyright law (protected works, owners, moral and pecuniary content, duration and limitations of copyright); b) neighbouring or related rights (in particular the rights of performers, producers of phonograms and videograms as well as of broadcasting organizations); c) copyright contract law (including performers' contracts), d) enforcement of copyright (i.e. civil, criminal and administrative sanctions for copyright infringements); and e) last, but certainly not least, collecting societies law.

If copyright law as a whole has a cultural purpose this certainly applies to its subsystems, in particular to the collecting societies. Given this view copyright legislators, if they are to take that cultural mission seriously, should adopt a positive attitude towards the collecting societies. This means without, of course, neglecting necessary control of the societies, assisting them in carrying out their tasks, rather than undermining them.

In certain cases, especially as far as societies in smaller countries are concerned, we must consider public financial assistance, at least during the formation of such societies, without which they would perhaps never be founded. This is in fact one of the reasons why in a number of countries institutions of public law and/or multi-competent societies have been allowed or even prescribed by the law, at least in the past (Dietz 1978: 563).

As a consequence, the requisite controls and supervision of collecting societies must come from within the system and should ensure collective management of copyright achieves its aims, which are intimately related to the aims of copyright law itself, including, of course protection and promotion of creativity and, through it, of culture and cultural diversity. This approach characterises the provisions that apply to collecting societies within most modern copyright laws (Dietz 2002).

Controls exercised outside the system, for example through rigorous application of anti-trust rules, appear too negative. These push the societies to compete, which is not appropriate in this sector (Nérisson 2011: 782, 1104). These controls weaken them and, at the same time,

inhibit them from fully complying with their mission, namely to strengthen protection for all creative people and to procure adequate revenues for them as compensation for their creative input.

Generally, the cultural mission of collecting societies is embodied in their role in efficiently organising the collective administration of the relevant rights and the impartial and rapid as possible distribution of the revenues they have generated. This is particularly true where, as the Proposal acknowledges, "*negotiations with individual creators would be impractical and entail prohibitive transaction costs*"²¹. If, under the supervision of the regulatory authorities, they fulfil that role effectively and transparently, the collecting societies almost automatically fulfil the general aims of copyright law, namely, to promote creativity and culture and, as far as possible, to generate corresponding revenues for the creators, the vast majority of whom need them so much.

But, this important and indeed original role only represents half of the story. To appreciate the full cultural purpose of collecting societies we must take account of the territorial aspects of what they do. The societies do not operate as it were in a neutral area – nationally, regionally (i.e. European) or internationally –, but their primary responsibility is for the creative people of "their" country or of "their" linguistic culture.

This is especially true for societies from the smaller countries with a cultural minority position within the European context²², administering "the smallest and less popular repertoires"²³ in the outside world. Based on their statutes and sometimes also under strict legal obligation, these societies have a specific cultural mandate to fulfil reaching far beyond the usual remit of collective management.

We should now mention the social or cultural funds²⁴ of collecting societies, which are sometimes strictly prescribed or at least strongly recommended by national legislations (Dietz 2002: 912; Nérissou 2011: 756) These funds have the function of "equalizing" or correcting, at least

²¹ See Doc. 2012/0180 (COD), p. 2.

²² We have to think here especially of the repertoires of the Scandinavian, Slavic or Baltic or else the Romanian, Hungarian etc. etc. languages and cultures.

²³ See Doc. 2012/0180 (COD), p. 2.

²⁴ See also footnote 46.

partly, the imbalances that exist even domestically, between exploitation of the large international repertoires²⁵, on the one hand, and their own smaller repertoires, on the other hand.²⁶

This territorial aspect is certainly one of the reasons why, despite a number of attempts to harmonise at the international and/or European level, copyright law, as a comprehensive whole, is still regulated on the national level. In my view, this underlying preference for a territorial approach, even when not directly anchored in national laws, is easily understandable through the long history of those laws and the very political sense, namely to primarily serve the creators as well as the cultural industries of their own countries. In effect, what else can the old formula "*To promote the Progress of Science and useful Arts*"²⁷ mean but precisely that? The more the original culture of a country is in a minority, the more the principle of "*Erstzuständigkeit*" (first responsibility) of the collecting societies for the creative people of their own country should apply.

4 The Proposal of the EU Commission for a Directive on Collecting Societies and Cultural Diversity – pure lip service?

Of course, the general objectives of this Proposal, namely "*to ensure the adequate provision of services using works or other subject-matter protected by copyright and related rights in the internal market*", and to stimulate collecting societies "*to adapt their methods of operation for the benefit of creators, service providers, consumers and of the European economy as a whole*", also by "*encouraging and facilitating the multi-territorial licensing of the rights of authors in their musical works by col-*

²⁵ See also Heyde (2011: 243), who analyses "*the privileges of the big music publishers with Anglo-American repertoire*".

²⁶ For more details, in particular concerning the possible means to at least partially correct these imbalances, see A. Dietz, Cultural Functions of Collecting Societies, contribution to a study on collecting societies to be published by the Munich Max Planck Institute, a preliminary version of which being available at http://www.ip.mpg.de/shared/data/pdf/2_dietz_-_cultural_functions.pdf; pre-published in Japanese and English by Geidankyo (Japan Council for Performers' Organizations), Tokyo 2010.

²⁷ See footnote 14.

*lecting societies representing authors"*²⁸, aim far beyond protection of cultural diversity.

But the erroneous, or in any case partial and one-sided approach of the Proposal is manifested precisely through the formulation of those objectives. They are aimed primarily towards the internal market and the European economy as a whole as well as towards the multi-territorial licensing of rights.

In order to realise these objectives a relatively small number of powerful collecting societies of "European competence" are to be created, known as "hubs" (Nérissou 2013: 72). If necessary, these shall represent the smaller and less powerful societies within a competitive market, in particular when granting multi-territorial licenses for online rights in musical works²⁹, based on unconditional but rather dubious, (see Heine & Eisenberg 2009; Heyde 2011; Scholz 2011; Deutsche Vereinigung für gewerblichen Rechtsschutz und Urheberrecht 2013; Drexel et al. 2013) application of the Services Directive³⁰, as that is clearly expressed in recital 3 of the Proposal.

This notion of representation of smaller collecting societies by the larger ones suggests that there is less interest which societies – the bigger representing or the smaller represented ones – administer *"the smallest and less popular repertoires"* allowing them *"to access the market"*³¹. But this apparently neutral and detached position reflects the negation or at least a neglect of the cultural role – the *"key role in the protection and promotion of the diversity of cultural expressions"*³² – of the smaller collecting societies. This is particularly true since a far less radical solution had already been found by the European collecting societies themselves (Heyde 2011: 96; Nérissou 2011: 1009). This was unfortunately hindered and frustrated by an application of antitrust rules that was too strict and inadequate.

²⁸ See Doc. 2012/0180 (COD), p. 2.

²⁹ See articles 13ff, 28ff of the Proposal.

³⁰ See footnote 21.

³¹ See footnote 10.

³² See Document 2012/0180 (COD), p. 2.

Title II of the Proposal, specifies the *"Member States shall ensure that collecting societies act in the best interest of their members and do not impose on rightsholders whose rights they manage any obligations which are not objectively necessary for the protection of the rights and interests of these rightsholders"*.³³ That principle may be inarguable but could accompany the weakening of the collecting societies' legal position as a result of their members gaining too great a freedom of action as provided in the following provisions.

In effect, the rightsholders shall be free to choose in all directions³⁴ including the right to authorise a collecting society of their choice to manage the rights, categories of rights or types of works and other subject matter of their choice, for the Member States of their choice, irrespective of the Member State of residence or of the location or the nationality of either the collecting society or the rightsholders.

In addition, the rightsholders shall have the right to terminate the authorisation to manage rights, categories of rights or types of works and other subject matter granted to a collecting society or to withdraw from a collecting society any of the rights or categories of rights or types of works and other subject matter of their choice, for the Member States of their choice.

One must question how the smaller collecting societies can continue to exist when confronted with such uncertainties. They will always have to fear their best "clients" (those also known outside the country concerned, perhaps already Europe-wide) will leave them in favour of the large societies established, already on the European level. They will be left with modest national repertoires, eventually consisting only of high risk low earning works and members and diminished by the small number of "low risk", high earning ones. As a consequence, the chances to cover even their administrative costs, let alone generate adequate monies to distribute would be very reduced.

³³ See Article 4 of the Proposal

³⁴ See Article 5(2) and (3) of the Proposal.

Furthermore, the proposed rules³⁵ on the effective participation of the members of the collecting societies within the decision-making process, on the supervision by a supervisory body (consisting of representatives of members of the societies) and on the activities of the societies in the management of rights will become stricter. This will also be true for their relationships with the users of the works³⁶. This creates an impression of a great imbalance with strict obligations imposed on the collecting societies whilst the rightsholders obligations and especially those of the users regulated only very superficially.

Initially the interests of the smaller societies seem to have been taken into account through provisions in Article 8(3) and Article 20(5) of the Proposal. These articles liberate the smaller societies³⁷ from the application of certain rules on supervision and on information to be provided in the annual transparency report. But all the other obligations remain unchanged, which appears too demanding for the relevant societies, in particular when considering specific provisions on representation agreements in the field of multi-territorial licensing³⁸, as contained in Title III of the Proposal.

In effect, the obligation of the requesting (the represented, i.e. the original) collecting society to make available the relevant information in accordance with Article 29(3) of the Proposal to the requested (the representing) collecting society is a heavy burden for the former in particular when it is a smaller or a very small society. If it is incapable of fulfilling these strict obligations this could result in the society not being represented at all in the European market with its "*smallest and less popular repertoire*" and therefore it would be totally excluded from the market.³⁹ As a consequence, we think this represents the greatest risk in the weakening of the smaller societies. Therefore, it is not at all clear

³⁵ See Articles 6ff of the Proposal.

³⁶ See Articles 15 and 18 of the Proposal.

³⁷ This concerns collecting societies which on their balance sheet date do not exceed the limits of two of the three following criteria: (a) balance sheet total: EUR 350,000; (b) net turnover: EUR 700,000; (c) average number of employees during the financial year: ten.

³⁸ See Articles 28 and 29 of the Proposal; see also the commentary given by Staats et al. (Nérison 2013: 171).

³⁹ See Article 29(3) and the commentary given by Staats et al. (Nérison 2013: 171).

what the "privileges" granted to the very small societies under Article 8(3) and Article 20(5) of the Proposal really mean.

Last, but not least, the provisions aimed at the cultural aspects are again very strict and restrictive. These concern *"the deductions made for any purpose other than management fees, including those that may be required by national law for the provision of any social, cultural or educational services in the period concerned"*.⁴⁰ The expression *"that may be required by national law"* signifies the Commission has made a large concession to national laws, without being really convinced of the value of these deductions and, even less, of the necessity to – *horribile dictu* – prescribe them within the European framework.⁴¹ Nonetheless, those deductions, where they exist, are a characteristic element of the cultural functions of collecting societies, at least on the European continent (Nérisson 2011: 756). It is questionable why Commission did not see a good opportunity here to emphasise and substantiate the contents of the Explanatory Memorandum as well as Recital 2 of the Proposal, namely the cultural role of the collecting societies.

In fact in relation to national practices, the Proposal in contrast intervenes in a rather negative and restrictive manner, as it prescribes⁴² that, within relationships between two societies, deductions for any social, cultural or educational services must be governed strictly by express mutual consent.

However we should consider the impact of this on the smaller societies. Their bargaining power has been substantially reduced and their overheads are relatively high yet their own national repertoire is often in a minority position even in their own country. Is it really acceptable that the relevant deductions only apply to the national rightsholders? In many cases obligatory deductions are prescribed by national law and do not apply just to national rightsholders (Austria is a good example here). Could such deductions not form a welcome means of rectifying the im-

⁴⁰ See Article 16 litt. f); see also Article 7(5) litt. d), Article 11(2), Article 14(1), Article 17 litt. b), Article 19(1) litt. f), Article 20(3) (referring to point 3 of Annex I) and Article 26(2) litt. b) and c) of the Proposal.

⁴¹ See also the critical remarks made by Staats et al. (Nérisson 2013: 162, 164)

⁴² See Article 14(1) of the Proposal.

balance between national and international repertoire, as it currently exists in many countries? (Dietz 2010, 2013).

This example demonstrates the Proposal was never intended to ameliorate the financial and cultural position of the collecting societies in the smaller countries. On the contrary, one has the impression that the provisions of its Title II on collecting societies is aimed only at preparing the field for which its Title III on multi-territorial licensing of rights will have to be applied. This appears to be the true objective of the Proposal and in my view, the passing reference to the cultural role of collecting societies⁴³ is purely lip service.

5 The frustration of a practical solution

Paradoxically a practical solution for the online use of musical works had already been found by the collecting societies themselves, in the form of the Santiago Agreement (concerning the right of public communication) and the Barcelona Agreement (concerning the mechanical reproduction right) (Heyde 2011: 96; Nérison 2011: 1009). It could be summarized (Nérison 2011: 1029) as "*a system where all the societies concerned offered the same and unique repertoire, combining its own repertoire with those of the other contracting societies, forming in this way a one-stop-shop in the sense that one single authorization is necessary to acquire the relevant right for the whole comprehensive repertoire*", and that for use within the whole of the EU (and beyond).

One important element of this solution antagonised the anti-trust lawyers, namely the "*economic residence clause*". This meant territorial exclusivity and demanded that a commercial user only could get a multi-repertoire and multi-territorial license from the society of the country where it was headquartered (Heyde 2011: 97; Nérison 2011: 1009). Had the EU Commission not rejected this elegant solution on the grounds it violated competition law, it might well have enabled even the smallest societies of the smallest countries to remain within the market for the online exploitation of musical works. In such a situation they

⁴³ See footnote 10.

themselves could grant such multi-repertoire and multi-territorial licenses to (probably not that many) commercial users headquartered in their respective country or, at least, the independently fixed price for the use of the repertoire on their own territory could be added to the aggregated tariff of all the societies bound by those agreements. As a consequence, the principle of the *one-stop-shop* was retained for the benefit of the commercial users (Heyde 2011: 97) and this principle was defended by the Commission itself (Nérisson 2011: 951, 1109).

In a world where online exploitation of copyright works is increasing the question has to be raised whether, in political terms, the existence of the small societies from the smaller countries can be guaranteed, especially when considering the protection of cultural diversity. Once more, the Commission, having frustrated and hindered the application of the Santiago and the Barcelona Agreements, is acting contrary to its own commitments, made at a time when it had engaged itself in fighting for the protection of cultural diversity on the international scene.

The Commission's Proposal has not helped, as we have tried to show but, in fact, has weakened or, even contributed to the elimination of, the smaller European societies from the field of the most promising sector for the exploitation of copyright works in the future.

6 Conclusion

So many voices have been raised against the Proposal for a Directive on Collecting Societies of July 11, 2012. It is time for the Commission to think again and to be made aware that its position has become untenable, because of the politically and democratically intolerable manner it ignored the will of the European Parliament. Consequently, we hope that the legislators, the Council and the Parliament reject this proposal, in its current version. From the point of view of the protection of cultural diversity it represents a substantial missed opportunity.

7 Postscript

In the intervening time between first presenting this paper in Vienna and publishing it now, a whole series of substantial amendments to the original directive have been drafted and discussed by several bodies, leading to the final adoption, in February 2014, of the "Directive of the European Parliament and of the Council on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market" (Directive 2014/26/EU of 26 February 2014, OJ L 84/72 of 20 March 2014)., One can argue that many of the criticisms of the original Proposal have been taken account of in the final text of the final directive. Indeed, for example, it is now more positive about cultural and social deductions, especially those required by national laws. It also explicitly sets out the information obligations of users as well as eliminating the small societies exceptions, the meaning of which is not yet very clear. Nevertheless I fear the main question on how far European cultural diversity in all its dimensions can be secured and maintained within the whole system of multi-territorial online licenses, remains very much unanswered.

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Turn it up: That's my song in that ad

David Allan⁴⁴

Abstract

Popular music in advertising can affect attention, recall, and purchase intention. However, relatively little is known about its effect on attitude when the song in the ad is a favourite song. This study looked at the effect of various and actual integrations of popular music on attitude towards an ad, brand and artist in television commercials in general, and when one's favourite song. Three commercials with foreground music were selected to stimulate the discussion of popular music in advertising by representing three integrations of popular music in television advertising: original vocals and lyrics (OV), original instrumental (OI), and altered original vocals and lyrics (AV). This study found high likeability for song, artist and brand in general, and in particular, when the song and artist were considered in terms of being favourites. This study also found that favourite song genres were evenly divided between classic rock, pop, and hip hop, with justifications for it being one's favourite primarily based upon the song qualities (e.g., beat). Finally, consistent with prior research (Janata, et al. 2007), the autobiographical memory triggered by one's favourite song was overwhelmingly a positive emotion and memory. Based on these results it is recommended to advertisers that for younger demographics (in this case 18-22) using favourite songs can have positive results.

Keywords: Popular music, advertising, attitude, memory

1 Introduction

Music occupies a large portion of the commercial space. Whether in retail or advertising, music is the soundtrack to a consumer's life. A Gallup survey reported that 91% of American consumers stated that music affected their shopping Behavior (Rubel 1996). Another study found that

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96% of American television advertisements contain some type of music with 14% of that being popular music, most often used in automotive ads (Allan 2008). *"For many automotive marketers, a strong music strategy means a greater likelihood of reaching influential young drivers"* (Hampp 2011). Not surprisingly, as the usage increases, so do the expenditures on music used in commercial environments. In 2011, worldwide licensing revenue from synchronization fees (i.e., money paid to use music in advertising, movies, television, etc.) was \$2.5 billion, according to the music-branding agency Heartbeats International (Sanburn 2012).

Based on these facts and figures one would assume there would be a great deal of attitude research of popular music in that environment, but that is not the case.

2 Background

It is traditionally believed that popular music research began with Adorno (1941) and was extended to advertising by Hecker (1984). This stream rests predominately in two areas: retail and advertising. Almost forty years after Kotler (1973) first called it an *"atmospheric effect"*, music is still being played in retail establishments for the enjoyment and engagement of customers and employees. Bitner (1992) suggested that it was the key ambient condition of the servicescape, or more appropriately called, the musicscape (Oakes 2000). Music is still considered to be the most commonly studied retail environmental cue (Turley & Milliman 2000). And billions of dollars continue to be spent worldwide on music in the retail environment since the 1990's (North & Hargreaves 1998). Past reviews of experimental evidence in this area have included music as part of a larger review of atmospheric effects (Lam 2001; Milliman 1982; Milliman 1986; Turley & Milliman 2000); and more narrowly focused on just its effect on shopping behavior (Allan 2006). Experimental research includes how music affects attention level and mood (Chebat et al. 1993); consumers' emotions and behavioural retail responses such as service evaluation and purchase intention (Morin et al., 2007), time

spent (Chebat et al. 1993; Kim & Moon 2009), and sales (Knoferle et al. 2012).

In advertising, music has also been used since the early days of television. It is one of the most highly utilized executional cues in advertising (Yalch 1991). It continues to *"make you watch or listen [to advertising] in a different way"* (Dunbar 1990: 200). Past research has observed a variety of music variables including music appeal (Allen & Madden 1985; Gorn 1982; Kellaris & Cox 1989; Pitt & Abratt 1988); music mood (Alpert & Alpert 1990; Alpert et. al. 2005; Kellaris & Mantel 1996); music fit (MacInnis & Park 1991; North et. al. 2004; Shen & Chen 2006); and music tempo (Brooker & Wheatley 1994; Kellaris & Kent 1991, 1994; Kellaris & Rice 1993; Oakes & North 2006) to name a few (table 1).

The advertising effects of these music variables have been tested on everything from attitude toward the ad (Morris & Boone 1998; North et. al. 2004; Shen et al. 2006); attitude toward the brand (Allen & Madden 1985; Brooker & Wheatley 1994; Gorn 1982; Kellaris & Cox 1989; Middlestadt et al. 1994; Macklin 1988; Morris & Boone 1998; Park & Young 1986; Pitt & Abratt, 1988; Shen et al., 2006), purchase intention (Alpert & Alpert 1990; Alpert et. al. 2005; Brooker & Wheatley 1994; Kellaris & Kent 1991; Morris & Boone 1998; North et al. 2004); pleasure and arousal (Alpert & Alpert 1990; Alpert et al. 2005; Bruner 1990; Kellaris & Kent 1991; Kellaris & Mantel 1996; Morris & Boone 1998); personal significance (Adorno 1941; Allan 2006; Baumgartner 1992; Fiske 1987; Grossberg 1992); memories (Best 1989; Brown & Kulik 1977; Tulving 1972); and integration (Olsen, 1995; Roehm, 2002; Scott, 1990) for instance (table 2).

	Definition	Citation
Appeal	The music's likeability or a person's preference for it.	Gorn (1982)
Fit	The music's relevance or appropriateness to the central ad message.	MacInnis & Park (1991)
Indexicality	The extent to which the music arouses emotion-laden memories.	MacInnis & Park (1991)
Jingle	Unique, novel lyrics written for a particular advertisement.	Wallace (1991)
Modality	A pitch-related variable that is the configuration of intervals between notes in the scale such as major and minor modes.	Kellaris & Kent (1991)
Mood	A fleeting, temporary feeling state, usually not intense and not tied to a specifiable Behavior.	Gardner (1985)
Music	A complex chemistry of three main controllable elements (time, pitch and texture).	Bruner (1990)
Needledrop	Music that is prefabricated, multipurpose, and highly conventional.	Scott (1990)
Placement	The position of the music in the advertisement.	Brooker & Wheatley (1994)
Popular Music	Music that is "well-liked" by "ordinary people" (Shuker, 1994) that has had wide exposure and appeal but usually for a fixed period of time.	Shuker (1994)
Tempo	A time-related variable that controls pace.	Kellaris & Kent (1991)
Texture	Comprised of timbre and orchestra.	Kellaris & Kent (1994)
Tonality	The configuration of intervals between pitches on a scale.	Kellaris & Kent (1994)

Table 1: A summary of relevant music definitions

Citation	Sample	Independent variables	Dependent variables	Results
Gorn 1982	244 undergraduates	Music appeal	Brand attitude	Hearing liked or disliked music while being exposed to a product can directly affect product preferences.
Allen & Madden (1985)	60 undergraduates	Music appeal	Brand attitude	Hearing liked or disliked music while being exposed to a product did not directly affect product preferences.
Park & Young (1986)	120 women	Music presence/absence, Involvement (high/low) (TV ads)	Brand attitude/information	Music had a facilitative effect on brand attitude for subjects in the low involvement condition and a distracting effect for those in the cognitive involvement condition.
Sewall & Sarel (1986)	200 mall shoppers/ 832 radio ads	Music background	Brand recall	Background music had no significant effect
Pitt & Abratt (1988)	172 undergraduate students	Music appeal	Brand attitude	Hearing liked or disliked music while being exposed to a product did not directly affect product preferences.
Macklin (1988)	75 pre-schoolers	Music background, presence	Ad attitude, brand attitude, brand recall	Music did not enhance outcomes.

Table 2: Summary of relevant effectual research involving advertising and music

Citation	Sample	Independent variables	Dependent variables	Results
Stout & Leckenby (1988)	1498 mall shoppers	Music tempo, mode, volume, presence	Cognitive/affective responses	Music had only minor effects.
Kellaris & Cox (1989)	302 undergraduates	Music appeal	Brand attitude	No evidence that product preferences can be conditioned through a single exposure to appealing or unappealing music (classical conditioning).
Alpert & Alpert (1990)	48 undergraduate students	Music	Mood, purchase intention	Music had a significant effect on moods and purchase intention.
Kellaris & Kent (1991)	180 undergraduates	Music tempo/modality	Music evaluation, purchase intention	Tempo and Modality influenced arousal and intent.
MacInnis & Park (1991)	178 undergraduate women	Music fit/indexicality (TV ads)	Message processing	Indexicality and fit affect the processing of both high- and low-involvement consumers, influencing message- and non-message-based processing.

Table 2 (cont.): Summary of relevant effectual research involving advertising and music

Citation	Sample	Independent variables	Dependent variables	Results
Wallace (1991)	120 subjects	Music placement-sung/spoken words (jingles/ballads)	Brand recall	Music provides a retrieval cue. Music acts as a frame, which the text is tightly fit.
Yalch (1991)	103 undergraduates	Music placement- slogans with and without music (jingles)	Brand recall	Music enhances memory for advertising slogans when the slogans were incorporated into an advertisement in the form of a jingle or song.
Kellaris & Rice (1993)	52 undergraduates	Music tempo, loudness, gender	Music responses	Gender moderates the influence of loudness resulting in females responding more positively to music at lower volumes
Kellaris et. al. (1993)	231 undergraduates	Music-message fit, attention-gaining value	Brand recall/recognition of brand name and messages	Increasing audience attention to music enhances message reception when the music evokes message-congruent thoughts.

Table 2 (cont.): Summary of relevant effectual research involving advertising and music

Citation	Sample	Independent variables	Dependent variables	Results
Brooker & Wheatley (1994)	100 participants	Music tempo/ placement (radio ads)	Ad attitudes, brand attitudes, purchase intention, brand recall	Tempo had effects on perception of music but no effect on DV's. Placement had a stronger effect on DV's.
Kellaris & Kent (1994)	288 undergraduates	Music tempo/ tonality/texture	Pleasure/arousal	Tempo affected pleasure and arousal. Tonality affected pleasure and surprise. Texture moderated tempo and tonality on pleasure.
Middlestadt et al. (1994)	97 undergraduates	Music presence	Brand attitude	Belief-based change
Wallace (1994)	64 undergraduates	Music melody	Brand recall	Text is better recalled when it is heard as a song rather than as speech, provided the music repeats so that it is easily learned.

Table 2 (cont.): Summary of relevant effectual research involving advertising and music

Citation	Sample	Independent variables	Dependent variables	Results
Wheatley & Brooker (1994)	144 undergraduate students and their parents	Music presence/absence, spokespersons (radio ads)	Brand recall, cognitive response	Music hindered message recall and did not enhance attention.
Olsen (1995)	144 undergraduate students	Music presence/absence (music/silence)	Brand recall/attribute importance	Silence effectively increases listener retention of ad information especially when the highlighted information was the last item of a series.
Kellaris & Mantel (1996)	85 undergraduate students	Music arousal/congruity (radio ads)	Ad time	Arousal was found to moderate the influence of stimulus congruity on perceived time such that congruity contributed positively to retrospective duration estimates among subjects exposed to soothing (versus arousing) music.

Table 2 (cont.): Summary of relevant effectual research involving advertising and music

Citation	Sample	Independent variables	Dependent variables	Results
Morris & Boone (1998)	90 undergraduates	Music presence/absence (print ads)	Emotional response, brand attitude, purchase intention	Music affected emotional response of print ads. No effect on brand attitude or purchase intention.
Roehm (2001)	48 MBA students/44 community people	Music placement versus vocals (radio ads)	Brand recall	Instrumentals produced greater recall of the message if the individuals knew the song. Vocals produced greater recall of the lyrics if the individuals did not know the song.
North et al. (2004)	162 participants	Music/voice fit	Attitude toward the ad, brand recall, purchase intention	Musical fit resulted in better recall of products, brands, and claims, attitude toward the ad, and purchase intention. Voice fit resulted in better recall of claims, attitude toward the ad, and purchase intention.

Table 2 (cont.): Summary of relevant effectual research involving advertising and music

Citation	Sample	Independent variables	Dependent variables	Results
Alpert et al. (2005)	75 undergraduate students	Music mood	Purchase intention	When music is used to evoke emotions congruent with the symbolic meaning of product purchase, the likelihood of purchasing is enhanced.
Zhu, Rui & Meyers-Levy, Joan (2005)	77/109 undergraduates	Music meanings (embodied/referential)	Brand attitude	Intensive processors are sensitive to music meanings.
Shen & Chen (2006)	130 students	Music fit	Ad attitude	When the music does not fit (music incongruity) it can have an adverse effect on attitudes toward the ad.

Table 2 (cont.): Summary of relevant effectual research involving advertising and music

3 Integrations, memories and prominence

Most relevant to this study is what type of integration of a popular song is used in the advertising, if it has personal significance and/or can stimulate memories, and is it in the background or foreground in the commercial. Allan (2006) found that song vocals, either original or altered, are more effective stimuli of advertising effects than instrumentals or no popular music especially when personally significant to the consumer. He concluded that advertising with popular music that is high

in personal significance to the individual supports active audience theory (Fiske 1987; Grossberg 1992), and popular music that is low in personal significance to the individual supports passive processing theory (Adorno 1941).

Music has been observed to stimulate memories from significant life events (Baumgartner 1992). This type of memory is called "episodic memories" (Tulving 1972) or, more specifically, "flashbulb memories" (Brown & Kulik 1977). These memories may affect the degree of personal significance for popular music because they are "*autobiographical, personal, and sensitive to the effects of context*" (Best 1989: 217). The research on memory for music has focused on the song title, the performing artist, or the year it was popular (Bartlett & Snelus 1980; Schulkind et al. 1999) or the memories and emotions evoked (Janata et al. 2007).

Personal significance and memories can be stimulated by a number of music characteristics including genre, nostalgia, and lyrical relevance. Television ads with popular music tend to favour the automotive category and the genres of pop, rock, and hip-hop (Allan 2008). College students prefer the genres of pop and rock with a broad diversity of favourite choices within them (Wells 1990). Music genre can have different levels of appeal to different genders considered to be central to the ways in which popular music is used and tastes are organized (Christenson & Peterson 1988). Gender has been shown to also influence the strength of the different responses with males having a stronger analytical response and females a stronger sensorial response (Lacher 1994). Of course, the Musicscape framework (Oakes 2000) suggests that musical valence (liking) is a function of listeners' demographic backgrounds and their familiarity with the music. Songs also have varying degrees of nostalgia connecting a person to certain events in a person's life (Baker and Kennedy 1994). Personal significance to music can also lead to greater ad attention and memory (Allan 2006; Kellaris 1993) with old songs, having high lyrical relevance generating better ad and brand attitudes (Chou & Lien 2010).

Whether as background (see Kämpfe et al. 2011) or foreground, music is created for commercials in several ways for different degrees of prominence or "significant presence" (Delattre & Colovic 2009: 817). Original music is sometimes written (for example, Chris Brown's 'Forever' and/or the Doublemint gum jingle) or adapted brand anthems (for example K'naan's 'Wavin' Flag' with lyrics changed for 2010 FIFA World Cup Soccer at the request of Coca Cola), scored and recorded for advertising certain products or services (most appropriately called "singles", or songs similar to jingles in that they are originated for the brand but do not include the brand name and have a long form version usually with video). In other cases, the less-expensive route of using "needledrop" – *"music that is prefabricated, multipurpose, highly conventional and used as an inexpensive substitute for original music"* (Scott 1990: 223) – is utilized. In still other instances, advertisers alter and adapt original music and lyrics already or once-popular songs (e.g., altered vocals) to their specific products or services (e.g., UPS 'Logistics' for 'That's Amore') to potentially create an earworm effect (Levitin 2006). Finally, through direct licensing, advertisers place popular music – in its original vocal or instrumental form – right into the commercials to create an association between the product or service and the song. Research suggests that some integrations may be more effective than others with regard to recall. Roehm (2001) determined that popular music instrumentals could facilitate more effective recall than vocals, possibly due to a sing-a-long effect. Olsen (1995) observed that silence integrated into popular music instrumentals can affect recall. Allan (2006) found that original lyrics are more stimulators of recall than altered lyrics especially when significant.

While much has been learned, much can still be learned concerning attitude toward the use of popular music in advertising, especially when a favourite song. With this goal in mind, the following research questions were developed:

- RQ1 What effect will various integrations of popular music including original vocals (original songs with original lyrics), original instrumentals (original instrumentals without the original lyrics from original songs), and altered lyrics (songs that lyrics have

- been altered to brand-friendly lyrics to the original or cover instrumentals) have on attitude towards an ad and brand?
- RQ2 What effect will favourite song and artist have on attitude towards an ad, brand, and artist?
- RQ3 Based on these results, what conclusions can be made in regard to the use of popular music in advertising?

4 Methods

Three commercials with foreground music were selected (Alphaville-Forever Young/Saturn; Eminem-Lose Yourself/Chrysler; Dean Martin-That's Amore/UPS) to stimulate the discussion of popular music (in this case pop, hip hop and oldies) in advertising by representing three integrations of popular music in television advertising: original vocals and lyrics (OV), original instrumental (OI), and altered original vocals and lyrics (AV).

Participants: Eighty-four undergraduate students (ages 18-22; 45% male and 55% female) from three 'Principles of Marketing' classes from a large university were randomly assigned. The use of college students in this study is appropriate because they are highly familiar with popular music in advertising based on their exposure to it and will provide a useful model (Basil 1996).

Procedure: After the initial welcome, briefing, and completion of basic demographic information (age, gender and race), one of the three television commercials was played (rotated for each group to control for primacy and recency). A set of questions was asked after each commercial to determine familiarity and attitudes towards these specific ads and ads in general that use popular music. Familiarity (How familiar are you with this ad? How familiar are you with the brand in this ad?) was ranked (very familiar/very unfamiliar) on a seven-point semantic differential scale (Park & Lessig 1981). Attitude-towards-the-ad (Aad) and attitude-towards-the-brand (Ab) included three items ("good/bad," "pleasant/unpleasant" and "favourable/unfavourable") and were ranked on a seven-point semantic differential scale (Lutz et al. 1983). In each case,

the presence and integration of popular music was controlled ("Did this ad have popular music?" [yes/no] "What type of popular music treatment was used?" [OV, OI, or AV] and followed by "Please rate your beliefs about how this ad uses popular music based on these dimensions" and measured with three items ("good/bad," "pleasant/unpleasant," and "favourable/unfavourable") and ranked on a seven-point semantic differential scale. Attitude-towards-the-ad (Aad), attitude-towards-the-brand (Ab), attitude-toward-favourite-song (Afs) were factor analysed (Principal Component extraction with varimax rotation) and shown to load together (all loadings > .7) on a single factor that was highly reliable (Cronbach's alpha).

Once completed, a set of questions was asked to determine attitudes towards ads that use favourite songs. Participants were asked to think of and name their favourite song and artist; say why it was their favourite song and what memory it evoked; and then to rate their attitudes for the artist and brands in commercials with those favourite songs. Finally, they were asked which version (OV, OI, or AV) of their favourite song they would prefer in a commercial.

5 Results

A preliminary check on ad and brand familiarity showed most were highly familiar (table 3 and 4) with Chrysler being the most familiar ad and UPS being the most familiar brand.

Commercial	M	N	SD
Saturn (OV)	2.3	84	1.51
Chrysler (OI)	4.9	84	2.21
UPS (AV)	4.3	84	2.18

$F(1,84) = 39.192, p < .00$

Table 3: Ad familiarity

Commercial	M	N	SD
Saturn (OV)	5.1	84	1.55
Chrysler (OI)	5.4	84	1.74
UPS (AV)	6.3	84	1.38

$F(1,84) = 13.399, p < .00$

Table 4: Brand familiarity

With regard to the research questions, RQ1 asked what effect various integrations of popular music (original vocals, original instrumentals and altered vocals) would have on attitude towards an ad and brand. Attitude toward the ad (table 5), brand (table 6), and integration (table 7) were all highly favourable with no significant differences in gender. Significant differences were observed between all ads and brands, and integrations except Chrysler (OI) and UPS (AV).

Commercial	M	N	SD	A
Saturn (OV)	5.3	84	1.04	.87
Chrysler (OI)	5.9	84	.906	.88
UPS (AV)	5.6	84	1.06	.85

$F(1,84) = 7.494, p < .00$

Table 5: Attitude toward the ad

Commercial	M	N	SD	A
Saturn (OV)	4.8	84	1.10	.91
Chrysler (OI)	5.4	84	1.11	.94
UPS (AV)	5.9	84	1.05	.95

Table 6: Attitude toward the brand

Integration	M	N	SD	A
Original Vocal	5.7	79	1.03	.92
Original Instr.	6.2	80	.684	.86
Altered Vocal	6.0	60	.84	.91

$F(1,80) = 6.720, p < .00$

Table 7: Attitude toward the integration

RQ2 asked what effect favourite song and artist will have on attitude towards an ad, brand, and artist. First, a high attitude preference was found for the use of popular music in advertising in general, and when a favourite song (table 8). Second, the attitude toward brand and artist used in ad was also highly favourable (table 9).

Aad	M	N	SD	α
Popular Music	6.2	83	.66	.89
Favourite Song	6.3	80	.99	.95

Table 8: Attitude toward the ads that use popular music and favourite song

Aad	M	N	SD	α
Brand	6.0	80	1.2	.94
Artist	6.0	82	1.2	.98

Table 9: Attitude toward the brand/artist that uses your favourite song in an ad

As to what type of integration of popular music in advertising is preferred, the choice was for original vocal (52%) followed by original instrumental (34%) and altered vocal (14%) with no significant differences

in gender. This is probably not surprising considering the use of popular music is highly likeable and thus, when the song is liked, original vocals are preferred due to their prominence. For advertisers looking for brand recall rather than favourable attitude, this may be a dilemma, since prior research suggests that instrumentals can be more effective than vocals (Roehm 2001) but supports past observations that original vocals are more effective than altered vocals when the song has personal significance (Allan 2006).

With regard to the questions concerning favourite song, artist, associated with a particular reason and memory, the primary genres of artists and songs were evenly divided between classic rock, pop, and hip hop. The justifications for being a favourite song were primarily based upon the song itself, and reminiscent of the "American Bandstand" response when many teenagers told Dick Clark that they liked a song because it *"had a good beat and you could dance to it."* These responses included: *"I like the beat and lyrics,"* and *"Sick beat, good lyrics"* (Note: this is interesting considering that this demographic was never exposed to American Bandstand live). Consistent with prior research (Janata, et al. 2007), when asked what came to mind when their favourite song was heard, the autobiographical memories were overwhelmingly a positive emotion and memory. These included: *"It brings up feelings of nostalgia and reminds me of freshman year of college,"* and *"I like the way it sounds and brings back memories."*

Finally, RQ3 asked that based on these results, what conclusions can be made in regard to the use of popular music especially favourite song in advertising. This sample prefers when their favourite song is used in a commercial. They also prefer that the integration be the original vocal as compared with original instrumental or altered vocal.

7 Conclusion

This study looked at the effect of various and actual integrations of popular music on attitude towards an ad, brand and artist in television commercials in general, and when one's favourite song. It appears from

this study that this younger demographic of 18-22 year olds considers the use of popular music in advertising highly likeable, even when it is their favourite song. Maybe it is because the use of popular music in advertising has saturated their commercial awareness all their lives and so any alternatives are not being evaluated (e.g., jingles). It could also be that advertising has become a promotion and distribution source and record company strategy for not only familiar popular music, but new music and artists as well. Or maybe, it is because the popular music of today is more disposable as some popular culturists might argue. I would suggest, however, that this generation looks at popular music as selling in rather than selling out with no discounting of the value of popular music today versus yesterday. This is good news for brands and bands as they continue to unite at the Alter of the marriage of culture and commerce.

Specifically, the research questions asked what effect various integrations of popular music including original vocals (original songs with original lyrics), original instrumentals (original instrumentals without the original lyrics from original songs), and altered lyrics (songs that lyrics have been altered to brand-friendly lyrics to the original or cover instrumentals) would have on attitude towards an ad and brand? All were highly favourable with original lyrics being the most likeable. As to what effect a favourite song and artist will have on attitude towards an ad, brand, and artist, the result was also positive. And based on these results, it is suggested that what conclusions can the use of popular music in advertising is alive and well.

In any case, if it is true, what Marshall McLuhan (1964) predicted, that *"historians and archaeologists will one day discover that the ads of our times are the richest and most faithful daily reflections that any society ever made of its entire range of activities,"* then I wonder what will be concluded from the Kia hamsters' commercials? Perhaps their cultural judgments of this integration of popular music in advertising at this time will be, as Simon Frith (1991: 107) describe as *"a pop discourse – the ideal experience is fun; pop provides routinized pleasures, more in-*

tense than the everyday but bound into its rhythms, and legitimized emotional gratification, a play of desire and discipline."

8 Future research and limitations

While this research took a unique look at the use of popular music in advertising from the favourite song perspective, it did so with only one demographic (although an active and important one) and a limited sample making generalizability difficult. Future research could extend the investigation to include interviews to further the understanding and control for potential biases (i.e. do the participants like popular music in advertising because it is all they know). Future research should also look at other generations and genres of music. Other commercials could be used as a foundation for the investigation into attitudes and popular music, specifically when the song is a favourite possibly manipulating the use of the actual song integrated with the brand in a commercial. Finally, more novel types of research need to be done in this area to properly reflect the ubiquitous nature of popular music in advertising. Most of the research in this area is dated and does not match the proliferation of this advertising technique. Hopefully, this study not only begins to fill the pool but also encourages others to jump right in.

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'With a little help from my friends': Peer production and the changing face of the live album

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Abstract

The live album is an important artefact in bringing together recorded music and live music. As the popularity of live music grows in tandem with the decline of recorded music, the role of the live album is explored in the context of a digital era. By exploring the recent phenomenon of peer production (or crowdsourcing), and with reference to various examples, the future of the live album is explored as one which blurs the boundaries of creation and ownership. Posing that this new era of voluntary participation may benefit musicians commercially, the article concludes that future research into peer production may inspire new ways for the music industry to appease changing consumer preferences in a time of rapid technological change.

Keywords: Crowdsourcing, peer-production, music, digital revolution, Internet

1 Introduction

Changes in technology inevitably encourage a shift in consumer preferences. Rarely has this been so markedly observable than in the case of recorded music, with North, Hargreaves & Hargreaves (2004) suggesting that rapid technological advancements have led to a decrease in the value of music. Whilst this shift is often cited as starting with file-sharing giant Napster, created in 1999, the development of the iPod just a few years later is often overlooked. Presenting music fans with a device,

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which could store large volumes of music, this development, along with subsequent advances in online modes of piracy has ultimately led to a sub-culture of pirates who choose not to pay for music (and other digital media).

A likely result of the increasingly huge storage of mp3-players and hard drives (along with their falling cost), Holt & Morris (2009) confirm mp3-player ownership is significantly linked with piracy. Holt & Copes (2010) observed through qualitative enquiry that pirates claimed not to watch or listen to all of the content that they downloaded. A wider implication of this shift, to focus specifically on music, is that music listening has become more passive. Krause & Hargreaves (2013) reveal frequent use of the 'shuffle' (or random) function on iPods, with Greasley & Lamont (2011) observing most music listening as now occurring through computers. Such examples do indeed suggest less attentive listening.

In this article however, active participation of an influential sub-culture of music fans point towards entirely new modes of production, both to the benefit of creator and to musicians alike. These practices are far from passive. The cultural and commercial implications of such changes are argued are particularly worthy of investigation in light of the present downturn in sales of recorded music as a result of widespread music piracy. Yet, there has been a dearth of discussion on the phenomenon of peer production as a means to create and distribute live albums.

This article formally introduces this niche research area into academic discussion, establishing fruitful lines of enquiry for scholars of various disciplines.

2 Fixing a hole: The live album and an in-depth introduction to peer production

The live album effectively promotes the live concert experience. Listening to your favourite artist perform live allows the listener to gain an insight, albeit limited, into what it was like to be there. In instances where the listener was in actual fact present, the live album provides a means to re-experience the concert.

Live albums have long been a staple of the release catalogue of major artists, along with singles collections and B-sides/rarities compilations. Historically, there has been a thriving market for unofficial bootlegs, often encouraged and tolerated by artists including so-called jam bands (see Shultz 2006). With a long tradition, these distinct cultural artefacts (Marshall 2004) document artists in a live setting. Crucially, fans are heavily involved in their creation and subsequent distribution. Today, the word still persists (much like B-sides), where official bootlegs are now commonplace. The trading of bootlegs (see Kernfeld 2011) is now much easier due to digital technologies, with their popularity a testament to the continued interest in live music.

In recent years, there has been a marked shift in the ways in which the live album has been produced and distributed. In their book "Macrowikinomics" (2010), Tapscott & Williams explain that mass collaboration using new technologies by voluntary participation has redefined newspaper, movie and music industries. This is the essence of peer production. In perhaps the most high profile example of peer production, *Star Wars Uncut* (2010), hundreds of fans recreated 15-second excerpts from the original 1977 George Lucas film accompanied by the original audio content to effectively remake the film. Winner of the Emmy Award for Outstanding Achievement in Interactive Media, Tapscott & Williams (2010: 247) note that: "*The question shouldn't be why did Lucas film approve this – but rather why have most other companies and content creators been slow to follow suit?*"

The time and effort involved in such projects are indicative of a wider cultural shift to engage in new technologies in creative ways to collectively create and distribute content. Whether or not it represents a concrete ethos with the potential to rival current modes of production remains to be seen; it is an under-researched phenomenon. Brabham (2008) explains that whilst peer production (known as crowdsourcing in his article) has benefits and costs, it is nonetheless a viable model, which is able to reduce both the time and cost of various problems. Indeed, much scientific research now benefits from the contributions of the general public, with a particularly notable presence amongst astrono-

mers to collect and collate data under the emerging guise of 'Citizen Science'. More commercially, many successful businesses such as Apple benefit from user-generated content on their websites. Whilst the music business may be a likely contender to benefit from voluntary participation projects similar to those listed above, the likelihood of them being implemented in a commercial way remain questionable.

The live music economy has emerged during the decline of the media economy (Holt 2010). Festival popularity, in particular, has been boosted through greater information available through the Internet (Stone 2008), the same technology, which also allows for illegal downloading of recorded music. While it is frequently claimed that the music industry is under threat, Williamson & Cloonan (2007) argue that it is one of the music industries, which is struggling to come to terms with the new business environment which has been created by technological and communications advances.

Whilst technology has forever changed the way in which music is consumed, enjoyed and valued, the notion that that the Internet is and always will be the nemesis of recorded music is misguided. Many artists such as Nine Inch Nails demonstrate not only the benefits of online music distribution, but also that that the Internet offers rich ways to interact with fans (see Brown 2011). For example, launching a mobile application called NIN Access in 2009, fans of the band were able to post messages and photos marked with their location (including concerts), allowing them to engage in online discourse with other fans. Akin to microblogging service Twitter that has since risen to prominence in facilitating online discussion of live events, Bennett (2012) explains how notions of liveness at live music concerts are changing with such applications, with fans posting set lists as they unfold in real time.

Another way in which the Internet has drastically changed live music (and to move discussion closer to the focus of this article) is with webcasts. Now commonplace⁴⁶, webcasts allow fans to share judge-

⁴⁶ For example, dance/punk New Yorkers LCD Soundsystem streamed their final ever performance at Madison Square Garden live via the internet, hosted on alternative music news website Pitchfork.com. The move was a welcome one for fans who were unable to attend the performance, with tickets selling out in 15 seconds (Kitamura 2011), thus indicating a way of connecting with fans using

ments of performers and meet likeminded people in an online environment, chatting using new communication mediums. Regardless of technological developments and massive media consumption via iPods and YouTube, for example, it is still considered that being at a live concert remains a different kind of experience; measurable in the atmosphere, the artistic performance and in social interaction (Holt 2010).

As an experience good, music must be enjoyed before it is bought. Beyond radio, alternative means to sample music now exist which may contribute to a newfound reluctance in purchasing recorded music. No speculative risk is present anymore when purchasing recorded music. Live music however, is intrinsically risky, where a variety of factors can contribute to the relative success of a concert. While fans are unable to 'try' live music before they 'buy', the live album and the live DVD as is now more commonplace, offers fans the opportunity to experience what it was like to be there. In this way, they can serve the same function as movie trailers. While even the best home stereo set-up will never quite accomplish this fully, some live recordings come close, with The Chemical Brothers' recent Grammy nominated live album *Don't Think* (2012) being a strong example. This included a DVD/Blu-Ray component, initially distributed on a limited cinema release (also now widespread).

With little reproduction values, live recordings of concerts simultaneously interest both fans who were and were not at a particular concert. To this end, grunge veterans Pearl Jam released a documentary film called *PJ20* (2011) to celebrate their 20th anniversary. On limited release in cinemas, this film would have captured the attention not only of fans who have not seen them live, but also of those who have; in the hope of capturing a glimpse of recordings from shows they attended. This would enable them to relive the experience again and again. Added to this, the band released a book to tie in with the film along with an official soundtrack complete with rare recordings. Without releasing a single new

the full capacity of technology. More recently, Nine Inch Nails side-project 'How to Destroy Angels' streamed their first ever major live performance at the 2013 Coachella festival. Entire music festivals are now often streamed live online.

song, Pearl Jam offered up a variety of relics to their fans and thus diversified their revenue streams.

3 Being for the benefit of ... (musicians)

Exploring the role of technology in further changing the nature of the live album, the internet has adjusted the level of interaction between artist and fan where, for example, throughout her 2005 Beekeeper tour, Tori Amos requested suggestions from fans for cover songs via her website, performing at least two of those chosen (Amos & Powers 2005). Exploring the success of Amos' use of official bootlegs, Farrugia & Gobato (2010) argue that her efforts in personalising each show increases the perceived value of their subsequent recordings to those in attendance and thus increasing the likelihood that these will be purchased. Other bands such as Muse have also conducted polls on their websites for fan requests, with Pearl Jam recording (almost) every single performance as an official bootleg since 2000.

The variation in live performances by live bands such as Pearl Jam will inevitably capture fans' attention, stirring interest in live recordings – legal or otherwise. The likes of Pearl Jam and Tori Amos who have successfully monetised bootlegs of their live shows demonstrate a new-era of jam bands, defined by Shultz (2006) as bands whose live sets centre on improvisation and variation and most importantly, who allow their fans to record their live shows, copying and distributing them freely. Whilst both acts now profit from their official bootlegs, they can still be obtained illegally for free and many fans are likely to do so, without affecting ticket sales. Those who do pay for them are the hardcore fans who enjoy bootlegs (Naghavi & Schulze 2001) and circulation of their live recordings both legally and otherwise form part of the reciprocal relationship between artist and fan, with reciprocity forming the basis of Shultz (2006) research into jam bands. In his own words: *"The music industry thus needs to think in terms of building loyal communities that have reciprocal relationships with artists rather than simply moving physical products into the hands of consumers"* (Shultz 2006: 657).

In the case of the aforementioned Nine Inch Nails, and in keeping with reciprocity as the glue which binds together fan and artist, the best illustration of how important this working relationship is can be found in the organisation This one is on us, an international group of Nine Inch Nails fans who have filmed and produced a series of live concert films; with high quality audio provided by Nine Inch Nails alter-ego Trent Reznor himself. The commitment to work towards a shared goal is indicative of their loyalty to Nine Inch Nails, revealing the core driver of engaging in this voluntary behaviour – a shared musical identity.

The nature of the relationship above is becoming more widespread with similar projects for Radiohead (a fan-shot concert in Prague in 2009) and Johnny Cash (a posthumously released fan-created music video of the song 'Ain't no grave' in 2010) further blurring the boundaries between fan and artist and indeed supply and demand. YouTube also boasts a fan-compiled video of Pearl Jam's legendary performance at the Wachovia Spectrum Arena, Pennsylvania on Halloween 2009. The final night of a four-night residency, Pearl Jam was the final band to play at the venue just days before it was demolished. Their set list included rare performances including songs, which have never been played, along with use of a string section and (as it was Halloween) costumes⁴⁷. With fans seemingly disappointed at no video release for this concert, they simply made one themselves using the audio from the official bootleg the band did release in conjunction with fan-shot videos (mostly from mobile phones).

4 Come together: Co-creation

The community spirit outlined above echoes the ethos which drives the open source movement online with self-sustaining websites such as Wikipedia and Yelp proving that if a clear common goal is shared by individuals, they can and will commit time to ensuring it is met. Related research on consumer involvement indicates that increased value is attached to both utilitarian and hedonistic products, which are self-

⁴⁷ Dressing up in Devo suits, covering the new wave bands hit song 'Whip it' (1980).

made as compared to otherwise identical products, which were not self-assembled (Norton, Mochon & Ariely 2011). In other words, fan-generated live concert films may be perceived as more valuable than those put together professionally.

Co-creation is an integral part of many successful companies' business models. Offering no incentive for such participatory behaviour, this new era of selfless contribution to websites such as Trip Advisor has emerged as a dominant aspect of Internet culture. Extending this principle to the creation of fan-made compilations of live recordings, musicians could in actual fact create releases, which are more valuable to fans, costing them nothing to produce. Whilst the potential benefits of this remain unknown, the cost and effort with which this can be accomplished, suggests that it is a worthy pursuit.

5 Revolution: Bootlegging for the 'Millennials'?

Another way to consider the emerging shifts on creation explored above is to reconsider crowd-sourced live concert films as a new form of official bootleg. Championing the benefits of bootlegging, Marshall (2004) explains that as bootlegs do not substitute existing recordings, artists are not the subjects of piracy as such. Indeed, bootlegs act as a promotional tool and often an indicator of demand, which often leads to successful subsequent official releases. Marshall, who has written extensively on bootlegs (including a dedicated 2005 book "Bootlegging: Romanticism and Copyright in the Music Industry") explains that where the CD facilitated distribution of bootlegs in the 1980's, the mp3 has similarly afforded a newfound ease with which to make and share bootlegs. Throughout, the interest in the music itself has been a constant. Nowhere is this more marked than with Deadheads, fans of American jam band Grateful Dead. Travelling from show to show, these individuals recorded live shows and distributed them amongst themselves for later enjoyment. Encouraged by the band, this action is noted as largely contributing to their on-going success. In a recent case into the band, Berg (2013: 189) reveals that: "*The history of the Grateful Dead is full of pio-*

neering moments in recording, performing, live sound, and audience building". The article exposes the commitment of fans to engage in peer production, highlighting issues concerning copyright and ownership in the process.

6 Let it be: Some concluding remarks

Debating the consequence of the Digital Rights Movement in reshaping the relationship between the creative industries and consumers, Postigo (2012: 1180) argues that as: "*Culture is participatory, the relations that exist (in terms of ownership of the means of distribution and production) would be reconfigured to help create a mass culture in which people can participate*". This sentiment is captured in the discussion above, where the same individuals who have been historically condemned for posing major threats to the future of these industries have been shown to perhaps pose a real benefit to them. With no data to confirm this assessment, such a claim remains hypothetical.

Regarding the artefact that is the live album itself, content creators have recently moved beyond audio recordings of concerts to include visual components⁴⁸. Fans have similarly made inroads into not merely bootlegging audio recordings but in creating audio-visual recordings, with and without the blessing of musicians themselves. Live albums are an economical way of generating revenue where a willingness for fans to use peer production to create live albums via reciprocal relationships with artists could lead to a new generation of even more economical live albums and films. Facilitated by mobile phones, it is not unreasonable that fans will be able to stream their concert experience live from handheld devices in the future, further changing what Bennett (2012) calls notions of liveness.

The live album is an important addition to any bands repertoire, as is the live film. They capture what it was like to be there (with varying

⁴⁸ American hip-hop artists Beastie Boys released a live video *Awesome; I Fuckin' Shot That!* (2006). Perhaps the first (at least high-profile) example of co-producing a live concert film, 50 fans were given camcorders to film a sold out 2004 performance in their hometown New York.

degrees of success) and effectively demonstrate the capabilities of an artist to perform in a live setting in such a way as to encourage (or perhaps discourage) future ticket sales. Live albums have a long and rich history in popular music, with seminal albums like 'Live at Leeds' (1970) by The Who and 'Alive!' by Kiss, exemplifying their particular presence in the 1970's. Often cited as a 'cash cow', live albums were often released in this era to counterbalance the reduced sales of vinyl (with their rising costs). They proved so popular, that Peter Frampton's 1976 release 'Frampton comes alive' was the biggest selling album in the USA that year. In an era of widespread piracy (marked by reduced purchasing of recorded music), the live album could accomplish the same feat in the present day.

Piracy affects artists differently (Mortimer, Nosko & Sorensen 2012; Piolatto & Schuett 2012), where Mortimer et al. discovered greater awareness of smaller artists as a result of piracy, with increased demand for their live concert performances. Furthermore, Gayer & Shy (2006) argue that demand for live performances is reduced when piracy is prevented. Such observations support the controversial notion that it may indeed be beneficial for artists to give away music for free, where a tolerance of fan-shot concert videos posted to YouTube may prove a particularly beneficial strategy. With fans actively taking the time to do so, free labour is effectively being offered to musicians to promote their output. With 800 million active YouTube users globally, and with nine out of ten of all videos on the video service being music-related (IFPI 2013), artists may face real struggles to profit from live concert films. As North & Hargreaves (2008: 254) note: "*Music piracy is an economic process, but it a psychological process also, and other factors such as the desire to be involved with the music can only be addressed by non-price related measures*".

Given the potential revenue from live performances and the low reproduction costs, which as mentioned above, are nearing zero in some instances, the future of the live album is considered secure; though ever

changing in its creation and distribution⁴⁹. As technology expands, the potential for fan-shot recordings of live performances can only improve, thus addressing the desire for good quality video recordings amongst consumers. Given also the culture of documenting one's social life⁵⁰ using social networking services etc., a potential market exists for high quality recordings of live performances for fans to relive their concert experiences. Pearl Jam have reaped the benefits of this strategy for over a decade, with no other contemporary artist having made such an effort to capitalise on the benefits of offering fans documents of their concert experiences. A high-profile and one-off exception was British rockers Blur, who released what was billed to be their final concert in 2012 as a download just hours after it was finished. Potentially proving more lucrative than crowd-sourced equivalents, this relatively recent trend may emerge as common practice in years to come. Brown's (2011) aforementioned case study of Nine Inch Nails exposes some of the reasons why certain artists may engage in activities such as this, but not others (re-marking on 'artist autonomy').

7 Tomorrow never knows: Suggestions for future research

Empirical research into what drives the creation of user-created live albums would benefit literature on both fan fiction and musical identities. Related research into guitar shred videos by Skågeby (2013) reveals one such avenue to further the knowledge of these new practices. An overlooked area of research, Skågeby explores the phenomenon of shred videos where videos of live music are overdubbed with original

⁴⁹ An emerging trend for remixes (both authorised and unauthorised) of recorded music should be considered as another important shift away from fans as merely passive consumers. To this end, the remix applications released for the 2012 Bjork album 'Biophilia' are particularly notable as well as the curious phenomenon of '8-bit' versions of albums (arranged to sound like early video games).

⁵⁰ Interestingly, gamers (individuals who enthusiastically play video games) actively share videos of themselves engaged in gameplay on the Internet, and in particular, on YouTube. New games consoles from Microsoft and Sony have in-built 'share' functions to facilitate this growing trend. Given the exponential growth of the video game industry, it may be beneficial for the music industry to evaluate the strategies employed by games developers to interact and engage with their target audiences (beyond making video games difficult to pirate).

performance. This is an example of casual piracy, which does not displace sales or overtly affect musicians in a negative way, as is the case with bootlegs (including user-created live albums).

A recent article by Blank (2013) sheds some light on who actually creates web content. Drawing from a large random sample in the UK, Blank defines three types of people producing online content: skilled content, social and entertainment content, and political content. Individuals engaging in these different types of content were noted as possessing different characteristics, with social and entertainment content created by younger, technically skilled people who have lower incomes, for example. More research in this vein may uncover the motivations of why such individuals actively commit time and effort to creating the sort of content discussed in this article. The brief review above suggests that for a significant sub-culture of music fans, the ability to actively get involved in music is important to them – they are not passive consumers. With the sophistication of tablets and smartphones continuously evolving, this wish to get involved can only expand.

In Brabham's (2008: 87) words: *"Crowdsourcing is enabled only through the technology of the web, which is a creative mode of user interactivity ... it is now the challenge of communication studies, science and technology studies, and other scholars to take up this new, hearty agenda for research"*. It is also significant to highlight that live music is particularly under-researched in the field of music piracy, with Dilmperi, King & Dennis (2011) arguing that as live music is the only paid-for music which is rising, future research should investigate the antecedents of live music attendance⁵¹. Much can be learned from further investigation into the cultural shift which has changed live music practices more broadly, occurring via digital communication advancements and whether or not, as proposed in this article, they can be used for the benefit of the music industry.

⁵¹ Research (Bowen & Daniels 2005; Henderson & Wood 2009) has shown that a significant volume of festivalgoers express little interest in the music itself. With this in mind, and working on the assumption that musicians would be most interested in encouraging listeners who are unfamiliar with their music to come and see them live, the extent to which peer-produced live albums may inspire increased attendance when performing festivals appears dubious.

Explaining that the digital revolution has altered previously held notions of ownership, sharing and copying, Williams, Nicholas & Rowlands (2010: 283) argue: "*New and creative business models are needed to resolve the problem*", rather than legal changes which may criminalise millions of people. Allowing fans to collectively create and distribute fan-made concert films may be one of them. Without further research into this area however, the suggestion that peer produced live albums may benefit musicians in any financial way must remain speculative.

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