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NEW RELATIONSHIPS IN THE MUSIC INDUSTRY: 360 DEGREE CONTRACTS

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CCŞ Probleme Actuale ale Matematicii, Informaticii şi Economiei

Prezentul articol are în vizor interrelațiile ce apar în industria muzicală pe parcursul ultimului deceniu, unde schimbul online gratuit de muzică joacă un rol central. Deşi unele părți vizate, precum casele majore de discuri, au o poziție negativă față de fenomenul dat şi depun eforturi considerabile pentru a-l stopa, în articol se adoptă o viziune mai largă asupra industriei discutate şi se susține că schimbul online gratuit e inevitabil şi, prin urmare, trebuie acceptat şi integrat în noi strategii şi modele de business. O asemenea strategie e Contractul de tip 360 de Grade, în care companiile reprezintă toate aspectele carierei unui artist, cele mai importante fiind muzica înregistrată şi activitatea concertistică. În lucrare e prezentat şi analizat un model economic teoretic construit în baza strategiei de business menționate. Se constată că renegocierea contractelor muzicale ar permite internalizarea externalităților pozitive ale schimbului online gratuit, producând beneficii atât pentru companie, cât şi pentru artist. Considerăm că modelul economic necesită a fi dezvoltat prin includerea altor aspecte, precum utilizarea muzicii şi imaginii artistului în publicitate pentru terțe persoane.

Music has been a primary form of artistic expression since the dawn of civilization and in the last a little bit over a century period it turned into a very vibrant, influential and fast changing industry, significant both in economical and cultural terms. The characteristics of the musical product, the constant supply and demand of new music, and the fast technological advances are forcing this particular industry to continuously adapt and bring innovations into it. Music industry may be referred to as a business industry connected with the process of creating a musical work and of exploiting it, being comprised of the artists, music listeners and all the structures that lay between them. It can be stated that music started to grow as an industry at the moment it became possible to record and distribute a sound, i.e. at the end of the 19th century. Thus, music industry has been always greatly influenced by the technological developments and, consecutively, the former lobbied, and still does, for changes in the copyright law.

The music industry is associated with high revenues in the developed countries and with potential success in the developing and underdeveloped countries, since it mainly engages the human capital, the local and national culture, and it has low capital goods requirements, especially now, when the new digital technologies are extensively used in the production, marketing and distribution of music. On the other hand, music has a variety of roles in a society: educational, behavioural, communicational, cultural, and others, therefore its enrichment and outreach has to be assured. These arguments determine the importance of research in the field of music industry.

The present work targets the most up-to-date inter-relations that occur in the music industry during the last decade, since 1999 (the year of Napster appearance – the first online music peer-to-peer file sharing service). Thus, the main issue for this period is *free online music sharing*, which we define as the distribution of digitally stored music or the provision of access to it, via Internet, either in an authorised or unauthorised by the copyright holder manner, while the non-commercial end consumer (the individual) doesn't explicitly pay for the use of music. Nonetheless, Peer-to-Peer networks account for the majority of free online music sharing. Some players from the music industry, especially the major record companies (labels), understandably (because their main activity is actually selling recorded music), have a negative position towards the phenomenon of file sharing and tried, and still do, to terminate it. Within the present article we adopt a broader view on the music industry, composed of such main sectors as: recording, song writing and publishing, live music, artist management, and thereafter analyze the various compensations and their magnitudes. Assuming (although it can be proved, but we will leave it for a future article) that the phenomenon of free online music sharing is inevitable, given a series of reasons of different nature, our view is that society (including major businesses) has to accept it and, by utilizing its benefits, to develop new strategies and models that would further ensure the creation and consumption of music.

One such strategy will be analyzed as follows.

New Relationships in the Music Industry: 360 Degree Contracts

Live music performances are perhaps the only unique, excludable, non-duplicable, scarce products left in the music industry, which are becoming more and more attractive and necessary. People really have no choice

but to pay if they want to experience a live performance. Live shows have always been one of the most profitable parts of the business, but now the concert business is thriving, driven in part by the ability of free music to enlarge the fan base (Anderson 2009). Free recordings may simply be a form of sampling or advertising for concerts. Therefore, reliance on revenue from live performances is proposed by some. The sampling of freely available music might inform consumers of concerts they might like to attend. Thus recordings can be considered as a necessary promotional expense for other, more profitable businesses, like touring. Nonetheless, we consider that recordings should continue to be treated as independent products, too, especially if they are offered in an enhanced form. Some authors, like Oberholzer-Gee and Strumpf (2007), regard concerts and new recordings as complements: a recording becomes more enjoyable if one can reminisce about the time at the concert, and knowing the songs in advance might make the concert more enjoyable.

Many musicians make a living by performing their own works and those of others. Some superstars as Madonna, U2, and the Rolling Stones make a fortune thanks to concerts; some artists do not make much, but to the extent they are making anything at all, it is mostly income from performances (Schultz 2009). Connolly and Krueger (2007) describe developments in the concert industry from 1981 to 2003, using *Pollstar*’s Box Office Report database (*Pollstar* is the trade magazine of the concert industry, and a widely recognized authority on concerts), containing 260,081 reports. They find that from 1981 to 1996, concert ticket prices grew slightly faster than inflation, but from 1996 to 2003, concert prices grew much faster than inflation: 8.9 percent a year versus 2.3 percent a year. Thus, the difference appears to have widened since the advent of file sharing. In 2002, the top thirty-five touring bands, including the Eagles and Dave Matthews Band, made four times as much from their concerts as they did from selling records and licensing, according to Krueger (2005). Some bands, such as the Rolling Stones, make more than 90 percent of their money from touring.

The data for 2003 also shows that the top 1% of artists took in 56% of concert revenue. The top 5% took in 84%. Namely, the remaining 95% of artists in Connolly and Krueger’s sample shared the remaining 16% of revenue. When looked at in this light, the initial magnitude of the revenue numbers no longer appears as promising as it did initially (Schultz 2009). Since music industry is changing incredibly fast, the more recent data could point different results, as is the example of the UK music industry. Economists of Performing Rights Society (PRS for Music) from United Kingdom, the country with the third position in the worldwide music market ranking, looked at the music industry in a business-to-consumer (B2C) and business-to-business (B2B) form. Business-to-consumer comprises recorded music sales which fell 6% (in 2008 comparing to 2007) and live revenues which grew 13%. The consumers spending on music increased with 6% on 2007. The B2B is more complex and refers to gross collections of various associations and trade groups, publisher direct revenues, record company licensing revenue, advertising and sponsorship. In 2008 the B2B revenues grew by 10%. In UK 75% of the total music industry revenues come from B2C with live music industry bringing a slighter bigger contribution than the recorded music industry. In UK the three main pillars of the music industry revenue – recorded music, live music, and performance rights, had gone through several important changes over the last five years, as can be seen in Figure 1. If following the same growth rates, the revenues from live music payable to artists could exceed, for the first time, the revenues collected by labels through recorded music sales.

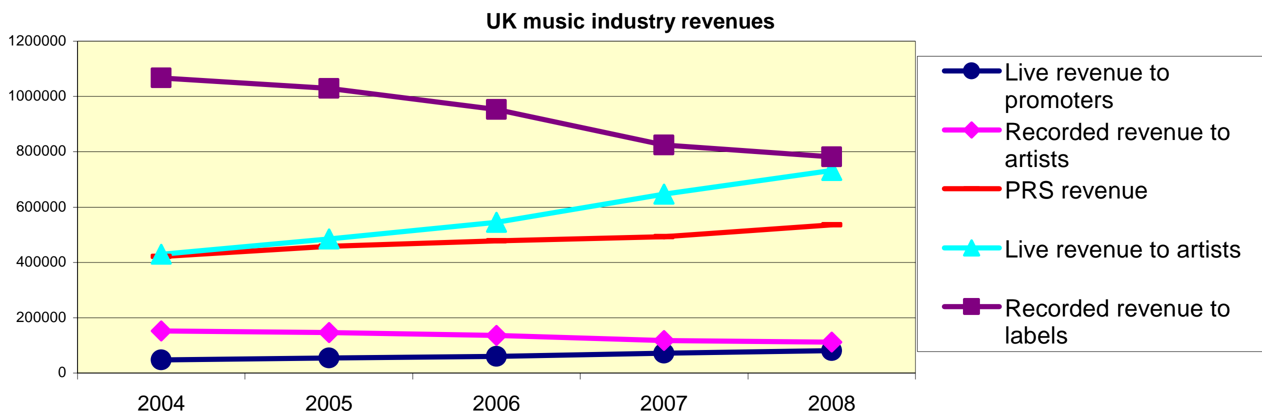

Figure 1. UK broader music industry revenues

Source: BPI, PRS for Music (figures in pounds thousands) (labs.timesonline.co.uk 2009)

Besides, the samples used by Connolly and Krueger, although large, do not include so many other artists from countries where Pollstar is not collecting data. Another defect related to the underestimation of concert importance is taking superstars as unit of comparison: in this light, music is just another activity/job and income has to be earned for a decent living and for continuing the music activity – becoming a superstar should not be the primary aim. Moreover, the data for recorded music is also not much different in revenue distribution. Therefore, the highly uneven distribution of revenue is not an argument against relying on live performances.

Oberholzer-Gee and Strumpf (2007) also cite Mortimer and Sorenson (2005) with regards to more detailed evidence on the link between file sharing and concerts. Studying 2.135 artists over a ten-year period, it was also concluded that the demand for concerts increased due to file sharing. One way to analyze this is to estimate how many CDs an artist needs to sell to produce $20 of concert revenue: the number fell from 8.47 in the pre-Napster era to 6.36 in the 1999 to 2002 period. Not surprisingly, artists responded to these incentives by touring more frequently. Overall, the shift in relative prices and activities led to a sharp increase in income for the typical artist included in the authors' dataset.

Anderson (2009) also notes that nowadays the summer festival season stretches to half a year, and a generation is growing up scheduling their lives around it. It is worth noting that the revenues don't just come from the attendees: tours are often sponsored, and companies such as Camel will pay for the right to give out free cigarettes or other products to festival-goers. Between the food, drink, merchandise, and housing, festivals are an entire tourism business built on the lure of music that many fans never thought to pay for.

The past five years have seen a significant evolution of the recording contract, most significantly with respect to how the contract dictates the sharing of revenue derived, both directly and indirectly, from the music (Rollins 2008). Taking into consideration the live performance importance and other aspects of an artist's career, during the recent years a new trend regarding the artist-label business relationship starts to gain popularity, namely the "**360 Degree Deal/Contract**". This is one of the industry's responses to the decline in record sales. In a 360 model the music company represents all aspects of an artist's career, including touring, licensing, endorsements, and merchandise. Therefore, the company agrees to provide greater recording royalties, financial support for the artist, including direct advances as well as funds for marketing, promotion and touring, as an investment to the artist's lucrative potential. The artist agrees to give the company a percentage of all of their interests. Now the music company (label, formerly) has the ability to cross-market items like CDs, ring tones, V.I.P. concert packages and merchandise. Also, in exchange for getting a bigger cut from the artists they represent, the labels say they will commit to promoting the artist for a longer period of time and will actively try and develop new opportunities for them. In essence, the label will function as a pseudo-manager and look after the artist's entire career rather than only focusing on selling records. Such revenue sharing might allow the labels to cross-subsidize newer acts with a share of touring revenue, which is what the major labels currently do with recording revenue. Eventually, those new acts might develop into well-established acts with significant touring revenue.

Commonly known as "multiple rights" or "360" deals, the new pacts emerged in an early iteration with the deal that Robbie Williams, the British pop singer, signed with EMI in 2002. Signalling this new thinking, Warner Music Group, for example, abandoned the label "record company" in 2007 and instead took the "music based content company" one, on the grounds of the development of new revenue streams other than the direct sale of recorded music. WMG reported in 2008 that the company now requires all new artists to sign 360 Deals, and that about a third of their signed artists are under those contracts.

Some record industry executives contend that these deals will benefit not only the industry by giving it a fresh revenue stream, but will also benefit artists by allowing record labels to invest more patiently in an artist's career by freeing the labels from the "tyranny of megahits." (Schultz 2009)

Madonna has been the most prominent artist to sign such a contract (a 10 year $120 million deal), but the majority of this type deals are made with unknown, developing acts (Anderson 2009). In Madonna's case, Live Nation International acts as a label, promoter, presenter, and gift shop. Other famous artists that signed deals with Live Nation are U2 and Jay-Z. The U2 deal, however, is not a true 360-degree pact, as there is no publishing component and the band retains its relationship with Universal Music to release music.

The new market offers great opportunities for negotiating, signing contracts on various terms, acting as a DIY.

Some music companies propose options like additional advance in exchange of a greater percent (like 30%) of future net income.

Nonetheless, the 360 contracts have had limited success so far, mostly because the labels aren’t yet very good at other jobs required by the deal and artists often complain about the high percentage fee they charge for them. Also it is criticized as a cynical and desperate move by the record labels that are experiencing a critical period in their activity and thus are trying to unfairly rip young artists. Knowles (2008) puts it in the following way**:** “whilst such deals are clearly of interest to record labels, this practice is seen as somewhat controversial from an artist perspective as the artist’s output and intellectual property are entirely controlled by one company.” But, as Arrington (2008) write, 360 deals give labels a place in the new music economy, and there’s nothing wrong with their attempt to keep their businesses alive over the long run. Artists can choose to go with them or not, depending on their own opinion of the benefits. If labels really can bring enough marketing and promotional benefits to the table, artists will take those deals.

Therefore, the very good news for the present music field is that artists have the ability to choose and their choice does not mean to do or not to do music, it means choosing the infrastructure for doing music. Some independent artists are developing their own business entities along the value chain, as a form of vertical integration, to take their music more directly to the market – and this can also be considered as a 360 deal, just that on a another level.

The transformation of record labels into 360 music companies offering mainly services is also supported by Leonhard (2008).

Independently of whether the “360 deal” is performed within a big company, independent label or a DIY format, the various aspects of an artist career have to be assessed and decided upon which main efforts should be channelled and how other aspects can be integrated. Although challenging, and effort and time consuming, this type of contracts offer a great number of opportunities, even if recordings are freely available.

Since it is a fairly new business model, not too many theoretical and empirical studies were carried out.

I would like to shortly present a theoretical model by Curien and Moreau (2009). They summarize their idea as follows: “Revenues yielded from live performances and ancillary products (ringtones on mobile phones, T-shirts, caps, etc.) increase with the diffusion of an artist’s recorded music, be it legal or illegal. Incorporating these sales into their business model, to the contrary of current music industry practice, could allow record companies to compensate for the loss in CD revenues or even to benefit from piracy, and it might also be of profit, to some artists, at least.” Thus, although negatively altering the recorded music market, digital unauthorized music sharing has a positive impact on other segments of the music market, because it generates positive externalities benefiting those activities.

Through a 2-player strategic game between a record company and an artist, the “The Music Industry in the Digital Era: Toward New Contracts” study shows that a renegotiation of music contracts could allow the internalizing of this positive externality, while being welfare-improving for both record companies and artists. The welfare improvement of the consumer is assumed, since free online music sharing is accepted as a given.

The model considers a relation between a record company and an artist as a bilateral monopoly, hence ignoring competition effects and highlighting a high degree of horizontal product differentiation that is characteristic for the music industry, where each album of a given artist is an independent product. Consumers form a heterogeneous population based on the tastes for a given artist and they are indexed on a non-negative segment by x $[0, \infty]$. The album is located at 0 and marked with price p.

Through the choice of quality k_i (i = *L*ow or i = *H*igh), the record company makes the album more or less attractive to consumers.

Willingness to pay (WTP) is maximal and equal to k_i for consumers located at 0 on the segment of tastes and decreases linearly with respect to distance, falling to 0 at distance k_i.

WTP of a consumer located at distance x: $v(k_i,x) = k_i - x$.

The release of a CD imposes a fixed cost: F_i ($F_H > F_L$), which includes a minimal return on assets, but no marginal cost.

There are two types of consumers: 1) consumers that purchase CDs at price p, in proportion $(1 - \tau)$; 2) consumers that download for free the recordings, in proportion τ.

Another assumption is that both types consume live music of that particular artist and that WTP for concerts is proportional at rate γ ($\gamma > 0$) to their taste for the artist, and hence to their WTP for the CD. Therefore: $\gamma v(k_i,x)$ – amount spent on live music by consumers with taste x. Thus, the supply conditions in the recorded music market influenced revenues in the live music market.

My suggestion for further research would be to make some transformations on this assumption, since the decision to engage in piracy may as well lead to directing the saved money to concerts, therefore, the second category of recorded music consumers may spend more on live performances.

To assess the record company's profit and the artist's revenue, the two markets must be aggregated. To simplify, the authors assume that revenues generated in the recorded music market go exclusively to the record company, which does not misrepresent reality. Conversely, revenues generated in the live music market as a consequence of the consumption of recorded music are assumed to be shared between the record company and the artist: a fraction σ ($0 \le \sigma \le 1$) of the global revenues that the artist earns from concerts is granted to the record company. Note: in this article the term "sharing" is used for the relationship between the artist and the record company.

The two sub-markets of both types of consumers are aggregated and the global profit of the record company is derived:

$$P_i = (1-\tau)\left[pk_i - \frac{p^2}{2}(2+\sigma\gamma)\right] + \sigma\gamma\frac{k_i^2}{2} - F_i$$

and the artist's revenue is expressed as follows:

$$A_i = (1-\sigma)\cdot\gamma\cdot\left[\frac{k_i^2}{2} - (1-\tau)\frac{p^2}{2}\right]$$

Further it is considered that the parties enter a two-step strategic game in which the artist acts as a Stackelberg leader: at the first stage of the game, the artist selects σ so as to maximize his or her revenue, knowing that, in the second stage, the record company will maximize its profits with respect to the nominal price p and the quality investment k_i. It is assumed that the artist has some fame, thus being able to negotiate a more advantageous contract.

By maximizing the record company's profit and the artist's revenue, the optimal price for the CD is obtained:

$$p_i^* = \frac{k_i}{2+\sigma\gamma}$$

The record company's profit is an increasing function of the sharing rate but decreases with piracy:

$$P_i = \left[\frac{1-\tau}{2+\sigma\gamma} + \sigma\gamma\right]\frac{k_i^2}{2} - F_i$$

Given the pricing decision of the record company, the artist's revenue is:

$$A_i = (1-\sigma)\cdot\gamma\cdot\left[1 - \frac{1-\tau}{(2+\sigma\gamma)^2}\right]\frac{k_i^2}{2}$$

Here there are two multiplicative factors:

Factor $\gamma(1-\sigma)$ – increasing in γ and decreasing in σ, reflecting both the positive effect of market externality on the artist's revenue and the cost of sharing (cost effect) necessary to give the record company an incentive to release a high-quality, rather than a low-quality, CD.

The factor in squared parenthesis is an increasing function of both σ and τ, reflecting the benefit of sharing arising from a stimulation of consumption in the market of live music caused by a price cut in the market of recorded music. The record company has an incentive to cut the CD price so as to increase the number of consumers in the recorded music market and so, through the exposure effect, in the live music market. The price cut can then be recovered through sharing with the artist. The extra revenue the artist earns from live performances is boosted by piracy, because the wider the use of P2P, the more the record company is concerned by its indirect revenues from the live music market and thus the more it is inclined to forsake the direct revenues it used to obtain by charging a high price in the recorded music market.

The authors make further assumptions and calculations and find that the sharing rate σ is an increasing function of the production cost and of the piracy rate (the greater the difficulties encountered by the record company in recovering its investment in high quality, the greater the share that the artist will have to grant to the record company), and a decreasing function of the market externality. If the case in which an artist continues

to benefit from high quality recording without sharing any of his/her live market revenues is dropped, the artist can only gain from piracy because he/she increases the concert audience without giving anything back in return.

The way an artist considers piracy depends on the intensity of the market externality that the recorded music consumption generates in the live music market. A rational artist should not be in unconditional favour of pervasive piracy, nor should he/she be hostile to limited piracy below a certain threshold.

It is further shown that the existence of a positive externality between the CD market and the live market suggests that vertical integration should be profit-enhancing because it enables this externality to be internalized.

If the hypothesis of the artist as Stackelberg leader is removed and the bargaining power is considered to be in the hands of the record company, then the record company's profits rise to the detriment of the artist's revenues.

Under the hypothesis of strong externality of the market, the record company, therefore, gains from sharing, even when it is constrained to accept the sharing rate imposed by the artist. In the absence of sharing, the record company will indeed choose low quality for zero profit, whereas sharing provides it with strictly positive profit.

Therefore, the article brings a contribution at shedding a new light on the problem faced by record companies of how to accommodate piracy and it explores an alternative mechanism for the music industry: should a new contractual arrangement be implemented, piracy could prove to be profit-enhancing for record companies. A key point of the model is to show that artists could themselves benefit from granting to record companies a limited share of their non-recorded music income; a grant that should lead to wider exposure, through a higher quality release, and thus to an increase in the demand for CDs, as well as for live performances and ancillary goods.

If majors experience too many difficulties in convincing artists to share ancillary revenues, the possibility that they will look for a downstream vertical integration, mainly by entering the concert industry can not be excluded.

Also, the model suggests that all artists are not equal when facing piracy because the positive externality that recorded music generates for live music obviously depends on the artist's intrinsic live performance quality.

It is shown that rather than protecting their existing business model, with piracy deterrence as the only objective (whereas piracy is probably an unavoidable corollary of P2P networks and thus of the Internet itself), record companies could accommodate piracy by taking advantage of its main positive feature—the ability to ensure large-scale access to music at a very low cost. Benefiting from higher ancillary revenues generated by wider diffusion and from a renegotiation of contracts with artists, major record companies could increase their profits by allowing cheap or even free downloads of music from their legitimate Web sites. In such a scenario, instead of focusing on a strict copyright enforcement policy consisting of suing pirates, the record companies would support innovative means of deriving revenues from legal P2P. Implementing such a solution requires a revision of the usual contractual setting that prevails in the music industry: An artist and his or her label should share all revenues generated by the former's music, directly or indirectly (i.e., through distribution of CDs, sales of concert tickets, merchandising, etc.), namely a "360 deal" is proposed.

There is still a lot of ground for further research, taking in consideration even broader "360 deals", where advertisement would be also included, for example.

As much as live performances are of great importance, the ability of generating income through such activities as advertisement should not be neglected. Although advertisement does not refer directly to music, it is a good method of financing the music products. An artist is contacted for collaborations with a business, if he/she is sufficiently popular; as popularity increases, the remuneration for the advertisement participation is higher. Thus, having a well based, but also broad, audience is necessary, just like for live performances. And popularity now can be easier gained by more musicians thanks to the omnipresence of music, which is actually made possible by free online music sharing.

Also, empirical researches on "360 contracts" are highly expected and, since the new model is not yet widely spread, some well grounded study cases would be welcomed.

Besides the above-discussed business strategy or model, worth-mentioning and to be analyzed in a further article are two other ones:

- Exploring niche markets – In the new environment, where the costs of bringing music to the listener greatly decreased, and an efficient business model option for music companies is to rely on niches that can address the incredibly various musical tastes of people around the world. During the last decade, niche music appeared in large amounts, but it was not efficiently managed;
- Statutory license legalizing file-sharing – non-commercial users of P2P system would be legally free to distribute and modify files as they fish, but providers of services and devices the value of which is substantially enhanced by P2P file-swapping should be charged a statutory fee. The likely candidates to be charged include Internet Service Providers, P2P software and services, computer hardware, consumer electronic devices. A mechanism of tracking the popularity of songs and distributing the revenues would be developed, similar to the performing rights one.

Nowadays, more than ever, music is ubiquitous and it became an integrant part of people's everyday life and this is mainly the merit of free online music sharing. Thus, the present state of affairs can not be without significant benefits for all entities in the music industry, old and new, if they accept change and do not fail to adapt and innovate.

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