

The Future of the Music Business

A report of the Annenberg Innovation Lab and Silicon Flatirons Meeting

On September 24, 2010 representatives of artists, record labels, music publishers, Internet Service Providers (ISPs), online distributors, collective licensing organizations, academia, and the public interest community gathered and considered the challenges and opportunities that widespread, easily accessed, low cost distribution and licensing offers the music industry. The meeting was an opportunity for a number of stakeholders in the music world to discuss ways to make music distribution “work” online.

Areas of Agreement

While there were a number of issues that were not resolved, there was a refreshing consensus by most participants that some sort of solution is both desirable and achievable. Although there were a number of areas that will require further discussion, it is important to highlight places where the majority of participants (if not all participants) agreed.

There was broad consensus that **music piracy is unacceptable**. Widespread unauthorized distribution and copying of recorded music violates existing copyright law and should not be viewed as simply the next incarnation of the music industry.

At the same time, **online distribution of recorded music provides a number of opportunities for many artists**. Digital distribution has the potential to make it easier to identify and cultivate an audience, and can make it easier for artists to come to the attention of both record labels and the public. Very low marginal costs associated with digital distribution allow for innovative business models that would have been impossible in a physical-product-only world.

More licensing is good for artists. Artists make money when their work is licensed. Although there are legitimate concerns about the loss of control that inevitably accompanies widespread licensing, licensing helps maintain music as a viable business. When licensing is easy to accomplish more people use music and more revenue streams become available to artists.

In order for music licensing to truly work, **rights holders need to be identified**. Even the best licensing regimes fail when no one knows where to send the check. Currently, rights ownership information is not centralized in a universally accessible, universally trusted location. Any attempts to mass-license recorded music may ultimately succeed or fail based on the integrity of the underlying rightsholder database.

Finally, **music requires investment**. Although digital tools can make it easier and less expensive to create music, and digital communications technology can make it easier and less expensive to distribute music, it still takes time and money to nurture artistic talent. Professional musicianship (and the infrastructure needed to support professional musicianship) costs real money. Any solution to digital music distribution must recognize that fact.

Areas of Concern In Which There Was Not Consensus

Participants were broadly discussing the possibilities and challenges of a single, blanket license for public access to recorded music. Generally envisioned, this license would allow any member of the public to pay a single reoccurring fee for permission to access all, or substantially all, recorded music.

One of the most contentious debates was over whether or not the **payment would be mandatory or optional**. Proponents of a mandatory payment, most likely linked with the monthly cost of an Internet connection, worried that the license would not be able to reach the critical mass of subscribers required for success without mandatory payment. They felt that if people were given the option not to pay, they simply would not pay.

Those in favor of an optional license expressed concern that mandatory payment could quickly lead to an expansion of mandatory licenses for all types of online content. The optional license would allow Internet users who do not want to access music to avoid paying for it, and could serve as an important check on music quality because customers would feel free to leave if quality deteriorated. Finally, supporters of the optional license felt confident that a reasonably priced, inclusive license would be able to achieve a critical mass of subscribers.

Related to the question of a mandatory or optional payment was the question of **who collects the payment**. There was some concern that ISPs could be wary of adding an additional cost onto their existing bills. Unless customers saw the license as a true value added service, they might direct complaints to ISPs. Some suggested that ISPs are uniquely well positioned to collect the license fees for digital access to music. Establishing other points of sale may require tradeoffs, but ultimately would be necessary if ISPs are uncomfortable incorporating the license fee into existing billing systems.

Finding the line between downloading and streaming has been a challenge for some time in the digital music world, and would need to be resolved for a license to work. This distinction incorporates two areas of debate: how much to pay for a distribution (traditionally downloads have been compensated at a higher rate than streams) and how that payment will be distributed (payments for streaming may go through performance rights organizations while payments for downloads may go through record labels and publishers).

Many attendees felt that, as the distinction between streaming and downloads becomes less relevant to the public (accessing a file on-demand from the cloud is

functionally very similar to playing it from a local device), any new licensing regime should strive to erase these distinctions as well. It is possible to imagine that a formula for equating streams with downloads (e.g. seven streams equals one download) could be developed for this purpose. Whatever formula is used, many participants recognized that existing collective licensing organizations provide effective models for ways to distribute payments to artists. Although there was widespread recognition that rate setting and distribution will be a challenge, few participants appeared to view it as an intractable one.

Another challenge will be to agree on **who is responsible for operating the rights database/clearinghouse**. Once payment is calculated, the rights database will be key to guaranteeing that artists are compensated. A well-designed rights database will also give all parties involved in music distribution confidence that they will not be accused of copyright infringement from an unknown rightsholder.

Participants were wary of any existing organization controlling this database. Although some participants have institutional expertise in developing and managing large databases of music rights information, and other participants have institutional expertise in making large databases accessible to the public, there does not appear to be an existing entity positioned to create and maintain the rights clearinghouse database. However, it might be possible to create a trusted nonprofit organization specifically tasked with creating and maintaining the database in an open and transparent way.

Collecting and distributing payment can only be as accurate as the **counting and reporting** system it relies upon. Some attendees expressed confidence in existing reporting metrics such as SoundScan, and skepticism about other metrics such as MySpace play counts. Finding a way to accurately measure popularity that is not vulnerable to manipulation by individual artists or their representatives will be of paramount importance. Options, ranging from deep packet inspection to distribution channel self-reporting were offered without a wide consensus forming.

There was a question as to **whether the new licensing regime should be designed to be United States only, or as an international solution**. Some attendees felt that, by focusing on the United States, the new regime could avoid the added complexity that copyright law in other countries could bring. However, others pointed out that music piracy is an international problem that will require an international solution. Ultimately, it may be possible to begin with a United States-only solution that is capable of scaling internationally.

The role of third-party services was also briefly discussed. A new blanket-licensing regime would impact existing services such as iTunes and Rhapsody. Some felt that a new regime would not adversely impact such business models. It might also give rise to new music discovery and access services. Some attendees were hopeful that these new services could drive innovation in the music industry. However, licensing and reporting details will need to be discussed more thoroughly.

Finally, there is the outstanding issue of the **price of the blanket license**. Although there was not extensive discussion as to what the “right” price may be, at some point all interested parties will have to come to a conclusion. Ideally, this price will be low enough to interest a critical mass of the public while at the same time creating a large enough pool of funds to compensate rightsholders. Fortunately, the number of potential buyers (possibly all individuals with Internet connections) is large enough that even a relatively modest per individual sum could generate substantial revenue.