

ESSAYS

The Role and Responsibilities of Law Schools in the Deconstruction and Resurrection of the Music Industry

Ashlye Keaton*

Jerry Goolsby†

This Essay presents a vision for the participation of law schools in the music industry. The industry, which is experiencing plummeting sales and tremendous angst, is mutating as a result of marketplace pressures. The dire situation facing the industry represents an opportunity to rectify many injustices and imbalances in power that have historically existed in the industry. Law schools can take an active role in guiding the future of the industry through proactive and systematic programs designed to provide legal services to unrepresented artists in the industry by establishing a pulpit from which advocacy for change can be launched, untainted by the driving self-interests of other industry voices.

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* Ashlye M. Keaton, Esq., practices entertainment and intellectual property law with a focus on arts advocacy. Keaton maintains a private practice, concentrating on copyright and trademark issues, licensing, and litigation. Keaton is the Cofounder and Supervising Attorney for the Entertainment Law Legal Assistance (ELLA) Project, a pro bono program cosponsored by Tulane University Law School, the Arts Council of New Orleans, and the Tipitina's Foundation, which provides comprehensive legal services to low-to-moderate-income musicians in addition to an educational forum in a practice setting for Tulane Law students. Keaton also serves as Adjunct Professor of Law in Entertainment Law for Tulane University Law School. Keaton is the head instructor and choreographer for the New Orleans Children's Ballet and is also a visual artist.

† Dr. Jerry Goolsby is the Hilton/Baldrige Eminent Scholar of Music Industry Studies at Loyola University New Orleans, where he conducts research on the music industry, teaches classes in the music business program, and helps build the music infrastructure in Louisiana. He has assisted numerous music businesses in improvement efforts. He also builds custom guitars, which are prized by players nationally.

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I. BACKGROUND

The international marketplace for recorded music is transforming at an astonishing rate. Sales are dropping precipitously as new economic models arise amongst the ashes of failed companies, unemployment lines of laid off record company executives, and shadows of artists' careers.¹ Recording artists, songwriters, producers, and other industry players are finding it difficult to sustain their careers within an industry vulnerable to technological challenges, coupled with a breakdown in leadership, accountability, and innovative solutions.² Seemingly invincible multinational record and publishing companies are now dinosaur carcasses littering the landscape of a new, vibrant marketplace.³ As a result of the music industry's failure to reconcile the past with the future, artists are finding themselves more reliant on outside resources to guide them in the exploitation of their artwork in the marketplace and in making sense of a conundrum: people want music more than ever, yet music sales are plummeting into a black hole.⁴

The central purpose of this Essay is to explore the roles and responsibilities of law schools in the deconstruction and resurrection of the music industry. We believe that law schools, more than any other collective of entities, are in a position to (1) play a proactive role in protecting the rights of industry professionals as traditional business models disintegrate and (2) guide the evolution of the industry's new business models through advancement of intellectual property law necessary to meet these challenges.

The Essay is structured as follows: First, as background, a thumbnail description is provided of generally accepted explanations for the demise of traditional business models in the music industry. While a total consensus has yet to develop, the historical dynamics that led to the current woes of the industry are explored. Second, we provide an explanation of why law schools, as opposed to more industry-insider

1. See Ram D. Gopal, Sudip Bhattacharjee & G. Lawrence Sanders, *Do Artists Benefit from Online Music Sharing?*, 79 J. OF BUS. 1503 (2006); Kembrew McLeod, *MP3s Are Killing Home Taping: The Rise of Internet Distribution and Its Challenge to the Major Label Music Monopoly*, 28 POPULAR MUSIC & SOC'Y 521, 528 (2005).

2. Gopal, *supra* note 1.

3. McLeod, *supra* note 1, at 528.

4. Anita Elberse, *Bye-Bye Bundles: The Unbundling of Music in Digital Channels*, 74 J. OF MKTG. 107, 120-21 (2010).

organizations, are actually in a position to facilitate constructive change and mitigate hardships. Third, we describe intervention opportunities, including (1) clinics for renegotiating historical contracts to reflect current realities and to protect the rights of copyright holders in this rapidly changing environment; (2) facilitating dialogue between industry, political, and social groups, so that legal obstacles can be removed for progress; (3) creating proactive strategies for making changes to copyright law based on new technology and business models; and (4) establishing resources and databases for easing the ability of purchasers to obtain copyright clearances. Finally, the article ends with a call to action by the legal community to facilitate changes in the music and entertainment industries.

II. EXPLANATIONS OF DEMISE

While not the central purpose of this Essay, some high level explanations for this astonishing demise of a once great industry deserve some space.

A. *Rejection of Technology*

The overriding root cause of the demise of the current music industry model is a centuries' long rejection of technology. In its entire history, the music industry has only reluctantly accepted advances in technology or media, after fighting vigorously to reject their implementation.⁵ After finally accepting new technology, the industry blossomed larger and became more vivacious. For centuries, the music industry has shot itself in the foot by rejecting, instead of embracing, opportunities to reap fruits from new media.

For example, decades ago, music industry players filed a lawsuit against radio to prevent the broadcast of music, because they thought consumers would never buy another piece of recorded music if they could listen to it for free.⁶ Sound familiar? Radio, of course, became the number one promotional vehicle for music in the twentieth century.⁷ The widespread availability of music brought on by radio increased its popularity, made the performance of sound recordings (or the masters)

5. McLeod, *supra* note 1, at 524.

6. Rondal C. Picker, *From Edison to the Broadcast Flag: Mechanisms of Consent and Refusal and the Propertization of Copyright*, 70 U. CHI. L. REV. 281, 288 (2003).

7. Reebee Garofalo, *From Music Publishing to MP3: Music and Industry in the Twentieth Century*, 17 AM. MUSIC 318, 330-31 (1999); McLeod, *supra* note 1, at 524.

even more valuable, and lead to revenue streams for songwriters and publishers unthinkable in the pre-radio era.⁸

Historically, similar responses to technological changes have been lodged at the writing of music onto tablature, recording equipment, digital synthesizers, home recording, and, most notably for this Essay, internet transfer of music or “file sharing.”⁹

Over the past fifteen years, this most recent rejection of technology has made traditional business models essentially obsolete, as consumers gravitate to more friendly and convenient methods of obtaining music.¹⁰ As scholars began to study the impact of digital transfer of music on the industry objectively, results suggested that digital transfer of music, even those illegally obtained, are associated with increased, not decreased, physical sales of records.¹¹

The Digital Millennium Copyright Act (DMCA), aimed at extracting digital revenues for the industry, has served as yet another pothole in digital technology’s road into the music industry, effectively shutting down most internet transmission of radio stations and further inhibiting customers’ ability to listen to music through technology-friendly media.¹² As consumers shifted music listening to more portable and interactive platforms, the industry rose in concert to inhibit and confound that transfer, mostly in the name of shortsighted greed and well-meaning efforts to correct errors made in earlier copyright law.¹³ To ensure that artists and labels were paid proper royalties for any digitally transmitted radio broadcast, fees were negotiated that effectively priced many radio stations out of the market, thus blocking another opportunity for promotion of music.¹⁴

Clearly, the industry as a whole has failed to provide a workable solution to challenges brought on by rapid changes in technology and new media, as has historically been the case.

8. McLeod, *supra* note 1, at 524.

9. *See id.* at 526.

10. *See* Sudip Bhattacharjee, Ram D. Gopal, Kaveepan Lertwachara & James R. Marsen, *Stochastic Dynamics of Music Album Lifecycles: An Analysis of New Market Landscape*, 65 INT’L J. HUMAN-COMPUTER STUDIES 85 (2007); Gopal, *supra* note 1; McLeod, *supra* note 1.

11. *See* Gopal, *supra* note 1, at 1529.

12. Emily D. Harwood, *Staying Afloat in the Internet Stream: How To Keep Web Radio from Drowning in Digital Copyright Royalties*, 56 FED. COMM. L.J. 673, 681-83 (2004).

13. Harwood, *supra* note 12, at 683.

14. *Id.* at 684-85.

Owen J. Sloane & Rachel M. Stilwell, *Closing Argument: The Case for the Performing Rights Act*, L.A. LAW. at 52, May 2009, <http://www.lacba.org/Files/LAL/Vol32No3/2599.pdf>. (noting that artists and record companies are not currently compensated for terrestrial broadcasts).

B. Suing Your Customers

One does not need more than a cocktail napkin to make a list of suits the industry has brought against consumers as punishment for the industry's refusal to relinquish antiquated business models. In a notoriously high-profile set of lawsuits, the Recording Industry Association of America (RIAA) filed legal actions against consumers who had downloaded copyrighted music from the internet, including university students and elderly grandparents of teenagers who had used their computers.¹⁵ With every highly publicized industry victory, the industry became further alienated from its customers, who began to view it as an obstructionist more dedicated to money than making music available to the marketplace.¹⁶ Consequently, an extensive underground economy developed to distribute music independently of the traditional music industry.¹⁷

As previously mentioned, rigorous scientific studies provided evidence that the internet, instead of being the villain, had become a promotional tool that actually encouraged purchase of music, just as radio had decades earlier.¹⁸ For example, Britney Spears sold more records in one year than any other artist in the same year that she had the most downloads on Napster.¹⁹ Promotion leads to commerce, and instead of partnering with entities such as Napster, the record industry rejected this opportunity for "paid promotion" and went on to saturate its idea makers with the vexing problem of how to prevent file sharing.²⁰

For years, the record industry was stopped in its tracks in efforts to prevent an unstoppable new media phenomenon and failed to keep up with these changes while incurring legal fees and a high cost of doing business.²¹ Killing the internet transmission of music, in part by suing customers, had greatly constrained a potentially key promotional tool, opening the gate for other competitive media, such as video and television, to take market share from the music industry. Moreover, the threat of potential lawsuits moved the illegal transfer of music

15. Sudip Bhattacharjee, Ram D. Gopal, Kaveepan Lertwachara & James R. Marsden, *Impact of Legal Threats on Online Music Sharing Activity: An Analysis of Music Industry Legal Actions*, 49 J.L. & ECON. 91, 94 (2006) [hereinafter *Impact*].

16. See McLeod, *supra* note 1, at 527-29.

17. *Impact*, *supra* note 15, at 91-92.

18. Gopal, *supra* note 1, at 1504-05; McLeod, *supra* note 1, at 524.

19. See Matthew Green, *Napster Opens Pandora's Box: Examining How File-Sharing Services Threaten the Enforcement of Copyright on the Internet*, 63 OHIO ST. L.J. 799, 806 n.46 (2002).

20. *Impact*, *supra* note 15, at 92.

21. *Id.*

underground, with friends now copying 120 gigabyte iPods with tens of thousands of songs to friends for free, instead of sending one song at a time over policed internet networks.²²

C. Corruption and Ethical Challenges in the Traditional Music Industry

The traditional music industry has had many notorious and highly public ethical challenges.²³ Many generations witnessed industry leaders either going to jail or negotiating settlements in payola schemes, always followed by the promise of stopping its corrupt and illegal ways in the next generation.²⁴ The latest wave of corruption cases occurred between 2005 and 2010, when the Federal Communications Commission and the Department of Justice negotiated out-of-court settlements with most major labels and their executives for payola schemes with major radio stations, with many executives barely avoiding jail time.²⁵ The industry's reputation was stained as being little more than an intergenerational crime organization. Consumers, politicians, and others capable of coming to the industry's defense were reluctant to even listen to valid defenses of the industry's economic challenges when they arose.²⁶

Laid on top of the seamy culture of the industry was the unmistakable abuse of artists, particularly by record labels' lopsided and unjust contracts.²⁷ These abuses became notorious yet were considered *de rigueur* industry practices, with only a small percentage of artists recouping all expenses and receiving royalty checks from even commercially successful albums.²⁸ Implicitly (if not explicitly), the abuse of artists was buttressed by a judicial system in which music company attorneys with boundless budgets, power, lobbyists, and campaign contributions to judges were pitted against poor, defenseless musicians. Soon, musicians began to regard recording contracts as a highly unlikely source of potential future income.²⁹ Many artists turned the abuse around, taking advantage of record company recording and publicity

22. *Impact*, *supra* note 15, at 105, 111; Gopal, *supra* note 1, at 1504.

23. Fredric Dannen, HIT MEN: POWER BROKERS AND FAST MONEY INSIDE THE MUSIC BUSINESS 44-46 (1990).

24. Devin Kosar, Note, *Payola—Can Pay-for-Play Be Practically Enforced?*, 23 ST. JOHN'S J. LEGAL COMMENT. 211, 212-13 (2008).

25. *Id.*; *Judge Clears Sony BMG Software Settlement*, WALL ST. J., May 23, 2006, at D3.

26. Kosar, *supra* note 24, at 221.

27. McLeod, *supra* note 1, at 523.

28. Theo Papadopoulos, *Are Music Recording Contracts Equitable? An Economic Analysis of the Practice of Recoupment*, 4 J. OF THE MUSIC & ENT. INDUS. EDUCATORS ASS'N 83, 90 (2004).

29. *Id.*

budgets, even further worsening the financial woes of the industry. These abuses became widely known to the general public through fan club blogs and especially through media exposés like the VH1 television series *Behind the Music*.³⁰

The image of the industry and the evidence of artist abuse combined in the minds of consumers to create an ethical rationalization for illegally transferring music: Stealing from record industry thieves and mobsters could hardly be considered unethical, especially considering the extremely low odds that the artists—the consumer’s emotional connection to the music industry—would receive any compensation for legally obtained music.³¹

The demise of the industry came from seeds planted by entrenched traditions and perceptions over decades, if not centuries. In the context of this malaise, we now move to propose why law schools may offer a potential solution for the recovery of the industry.

III. LAW SCHOOLS AS A SOLUTION?

While the problems of the traditional music industry may seem intractable, law schools can serve to facilitate the transformation of the industry. We offer four overriding reasons.

First and foremost, few other alternatives exist. Most parties to creating fair and just business models are so ensconced in their own self-interests that none can be expected to provide an objective and viable solution for the future of the industry. Apparently, the major labels are prepared to ride the maelstrom right into the ground. Industry executives, via RIAA, have not only rejected new approaches, but have filed legal action in hopes of hanging onto their old revenue streams.³² Record industry leaders can hardly be viewed with hope as a source of bringing about successful change.

Other potential saviors are equally unlikely to help. Congress typically gives the most weight to those entities with the most industry clout and deepest pockets. For example, the DMCA, which had the appearance of protecting and rewarding copyrights of music publishers, producers, and artists, had the effect—intended or not—of virtually killing internet radio.³³ The largest representatives of publishers’ interests, such as Broadcast Music, Inc. (BMI); the American Society of

30. *Behind the Music*, VH1, http://www.vh1.com/shows/behind_the_music/series.jhtml (last visited Oct. 16, 2010).

31. Green, *supra* note 19, at 806.

32. *Impact*, *supra* note 15, at 92-93.

33. Harwood, *supra* note 12, at 684.

Composers, Authors and Publishers (ASCAP); and Harry Fox Agency, are naturally opposed to any solution that might weaken the status or income-earning potential of their members.³⁴ Other parties, such as the music sales tracker Neilson SoundScan, have their own agendas to protect. The National Alliance of Broadcasters, a powerful industry group, also has a vested interest in ensuring that controls are placed on the music industry in a way that benefits its members. Layered on top of these powerful industry groups are musicians' unions with even more divergent and entrenched agendas.

In contrast, most law school faculty members and students do not have the same self-interests in working to create a fair and viable solution to these problems. Academia can provide a safe environment for the free flow of information and a forum in which multiple parties can be represented fairly and justly without the economic burdens imposed on artist clients that would otherwise be present in most typical law firm settings. Nowhere does an environment exist more conducive to change than that of a law school.

Second, any viable long-term solution to the problems will have to include adjustments to current law and to the practice of law. The expertise needed to establish a legal foundation for a potential solution is clearly housed in law schools. While industry leaders and advocates for musicians (such as the Recording Artists Coalition) have pontificated tirelessly about reform to copyright laws that would undo the abuses of the current system, both against record companies and artists, no entity, especially Congress, is capable of creating a viable solution that would be fair to all parties.³⁵ The copyright laws, while updated sporadically and piecemeal, are in need of major comprehensive overhauls. A wide-ranging and systematic approach to changes must be instituted for fairness to emerge.

While a few law firms have the expertise in intellectual property law sufficient to derive a solution, few, if any, would attempt such an undertaking, unless being funded by clients, virtually all of whom would likely have a vested and biased interest. In addition, the apparent lack of objectivity would greatly hamper any acceptance of a potential solution, even if viable.

34. See Stanley M. Besen, Sheila N. Kirby & Steven C. Salop, *An Economic Analysis of Copyright Collectives*, 78 VA. L. REV. 383, 385-86 (1992).

35. See *The Recording Academy and Recording Artists' Coalition Announce Historic Alliance*, GRAMMY.COM, http://www2.grammy.com/Recording_Academy/Advocacy/rac.aspx (last visited Oct. 16, 2010).

Law schools are not beyond reproach, nevertheless. At least some accept contributions from the very self-interested parties that would seek to sway any solutions. Moreover, to teach specialized entertainment law classes, many law schools depend on adjuncts and part-time professors, who work for and represent these self-interested parties, making influence possible. In spite of such potential drawbacks, law schools are the only forum having the expertise, talent, and most importantly, the time and resources needed to propose a viable solution to some existing problems within existing copyright legislation.

Third, law schools are not myopically focused on the music industry. Within the halls of law schools can be found expertise in broader intellectual property interests such as political, economic, social justice, trademark, and other media that would be affected by any potential solutions to the music industry challenges. Any comprehensive and systematic solution will require justice that balances a wide range of actors and interests.

Fourth, law schools have an influential pulpit from which to expound for change. Because of their apparent objectivity, expertise, and alumni connections, law schools could bring all the parties to a table of compromise, as well as influence the passage of necessary legislation. Even if a short-term implementation plan failed, the continued education of future attorneys, properly trained in a new way of thinking about music industry law and policy, could slowly implement change through the writing and execution of contracts. An extensive network of industry professionals without geographic limitation, such as Tulane Law School alumni, can serve to rock the boat on any given legal issue throughout the international community. All it takes is one committed member of each community to raise their voice and charge their respective community with action. Little by little, people will begin to listen, and policy will begin to reflect the will of the populace, vested with the expertise, experience, and empathy to effectuate social policy.

IV. INTERVENTION OPPORTUNITIES

So, what concrete steps could be taken by law schools to effect change in the music industry? Below, we list a few fairly obvious activities that could serve to impact the future.

A. *Free Clinics*

Justice cannot emerge until the injustices of the past are corrected. Unfortunately, the abuse by the recording industry cannot be fixed

through the passage of any collection of legislative or judicial edicts. A network of pro bono legal clinics could be organized throughout the world for the sole purpose of representing clients with abusive contracts with unscrupulous actors across judicial boundaries.

The case of Tulane Law School's cosponsored Entertainment Law Legal Assistance (ELLA) Project serves as a pertinent illustration and template for moving such an initiative forward. ELLA provides pro bono legal services to low income artists and musicians who are located within the greater New Orleans area and throughout the State of Louisiana.³⁶ It was cofounded with the Tipitina's Foundation and Arts Council of New Orleans as an outreach to the visual arts and music communities.³⁷

Following Hurricane Katrina and the failure of the federal levees in New Orleans, ELLA was resurrected within approximately one month of the disaster, opening its doors to artists and musicians in October 2005.³⁸ With the assistance of upper-level Juris Doctor candidates, the ELLA Project has provided legal services to more than six hundred artists and musicians in fewer than five years, with a case resolution rate close to ninety percent.³⁹ Further, approximately 2000 hours have been contributed toward ELLA case matters each semester by Tulane Law students in that same time frame.⁴⁰ Through ELLA, the artistic community has achieved unprecedented access to professional legal services with an experienced attorney and Juris Doctor candidates, and the law students have gained insight into the pragmatics of the attorney/client relationship and case resolution. Reviewing contracts, negotiating contracts, registering copyrights and trademarks, dispute resolution, corporate formation, and general legal advice are included in the scope of services offered to ELLA clients and similarly run along the spectrum of legal issues to which the law students are exposed.⁴¹ ELLA demonstrates how a composed and informed third party can cut across these entrenched positions that no one else in the industry seems to be able to navigate.

Even further, the law students are vested with the opportunity to research and draft solutions to current issues arising from the

36. *ELLA Project Offers Legal Clinics Every Friday!*, ARTS COUNSEL OF NEW ORLEANS, <http://www.artscouncilofneworleans.org/index.php?topic=abp.legal> (last visited Oct. 16, 2010).

37. *Id.*

38. Alicia Duplessis, *Law Students Team Up To Help Artists*, NEW WAVE, Apr. 29, 2009, http://tulane.edu/news/newwave/042909_ella_project.cfm.

39. Documentation with Ashlye Keaton, Supervising Attorney, ELLA Project, in New Orleans, La. (Oct. 2010).

40. *Id.*

41. *Id.*

entertainment industry, including the downfall of the music industry and the rise of new business models and legal standards for administering intellectual property rights in the digital age. Administering termination rights and assessing the public performance rights for recording artists are two areas ELLA students are currently focusing on in their directed research. The law students' focus on policy helps local artists to better understand complex entertainment legal issues and stimulates dialogue among industry players. Tulane Law students have also researched and assessed local arts and music ordinances. For instance, the City of New Orleans is currently redrafting its noise ordinance, and ELLA participants helped to reconcile the proposed ordinance against public policy.⁴² Along with other issues, the aforementioned legal matters have been pivotal in changing archaic, customary industry practices to reflect the realities of living within the twenty-first century.

A highly public and cooperative effort by a network of law schools across the world to right the wrongs of the past would play well into the public mind. Any comprehensive solution will require the purchasing public to view the industry as just and serving the rights of artists. Only through a comprehensive network of law schools can justice be served, as most cases cut across multiple jurisdictions and allow unscrupulous operators to hide. The linchpin of abuse is the fact that artists do not have the legal power to fight the well-heeled abusers. In one New Orleans case, a blind, eighty-year-old diabetic artist, who had not received a royalty statement or payment for twelve years for his works—in spite of concrete proof of being the owner of the works—was told by the opposing party “You will die before I pay you one cent. My attorneys will hold you up in court, because you don't have the money to fight me.”⁴³

A concerted effort, backed by funding from insightful industry advocates, should be mobilized to renegotiate historical contracts to reflect current realities and to protect the rights of copyright holders in this rapidly changing environment. Anything less than a comprehensive effort to impose justice, supported and backed by industry leaders, will maintain the tainted and soiled image of the industry.

42. Kevin Allman, *Mitch Landrieu Statement on Street Musicians and the Noise Ordinance*, GAMBIT (June 18, 2010, 12:19 AM), <http://www.bestofneworleans.com/blogofneworleans/archives/2010/06/18/mitch-landrieu-statement-on-street-musicians-and-the-noise-ordinance>.

43. Documentation with Ashlye Keaton, Supervising Attorney, ELLA Project, in New Orleans, La. (Oct. 2010).

B. Facilitating Dialogue

One of the central problems facing the music industry is a lack of consensus on how to move forward. The industry parties are entrenched in their deck chairs as the ship sinks. Woefully little dialogue occurs between the key advocates and players in the struggle to right the ship (continuing the metaphor). Although screaming and ranting occurs at some industry meetings, typically only one side is adequately represented, and nothing resembling genuine dialogue occurs. A series of organized forums, covering the gamut of targeted topics, could take place across the world, videotaped and posted on the internet for viewing. Instead of talking past each other, perhaps the industry leaders could talk with each other about potential solutions. With the backing of industry-targeted media, the issues could be vetted in an organized and cohesive way, hopefully yielding hints of a solution. With anything resembling a consensus, legislators and governing bodies would certainly be inclined to facilitate legislation which would be presented as an industry-wide solution to problems.

C. Making Changes to Copyright Law

As the music industry mutates, the inadequacies of current copyright law are becoming obvious, most specifically because of changes in technology and business models. At least some of the frustrations of the industry arise from parts of the industry being controlled by free market forces, while others are controlled entirely by government regulations. For example, permission to use a publishing copyright in a movie is totally negotiated by market forces without government interference, while any person can record a copyrighted song, after a period of first use, without permission, as long as they pay a fee of 9.1¢ per copy.⁴⁴ This Compulsory Licensing Act essentially removes control of ownership of copyright from the publisher, thereby removing the right of the publisher to negotiate. Bad songs and great songs are paid the same rate.

Lawrence Lessig and his Creative Commons academic center have made well-meaning and potentially revolutionary changes in the use copyright law.⁴⁵ In isolation, his work stands little chance of yielding change to copyright law, but as part of comprehensive and systematic efforts worldwide, such changes could be implemented to loosen copyright uses in some cases. By providing a simple means for artists to

44. See 17 U.S.C. § 115 (2006).

45. CREATIVE COMMONS, <http://creativecommons.org/> (last visited October 16, 2010).

authorize the public to license their work, Creative Commons has facilitated a forum whereby the international community has access to a diverse pool of copyrightable works, use of which requires little effort on the consumer's part other than mere attribution to the author.

Again, providing easy access to copyrightable works, while tightening in other areas of the industry, will give the marketplace the appearance of fairness, so that justice can emerge. True "fair use" doctrines could emerge as part of a package of other changes, which protects the rights of all parties involved.

D. Facilitating Copyright Clearances

A major source of frustration in the music industry is determining the rightful owner of a copyright, typically a publisher, as well as determining whether a song is held in public domain. While various operators in the music industry certainly control the rights to their catalogue, the total of catalogues represents a labyrinth of confusion for obtaining releases. Many producers have had to inform publishers, especially those of large entertainment companies, that the publisher actually owns the copyright, so that a release can be obtained.

Law schools are uniquely positioned to create an international database of copyright owners and contact information related to holders of publisher copyright. Publishers would be encouraged to list their catalogues in this database, along with contact information, as well as potential usage fees. Because the database would be housed in a law school, any disputes in ownership could be submitted for reconciliation or legal resolution. Once installed, any entity can show a good-faith attempt to identify the copyright owner by having gone to the one-stop-shopping database. Using a song without checking the database would be indefensible. Not listing a song on the database would show an unwillingness to make the song available for licensing.

Importantly, the database would have integrity (and lack of bias) simply by being housed in a not-for-profit law school. Such a massive undertaking could be funded through seed money provided by industry groups, while maintenance funds would be obtained by a small fee for listing copyrights on the database. Some of the litigation and misuse of copyrights could be eliminated by just having a convenient mechanism for listing copyright ownership. In addition, songs that are legally in the public domain could no longer be hijacked by unscrupulous operators and sold or rented illegally, as often is the case in our current system.

V. CALL TO ACTION

This Essay has presented the skeleton of a proposal for having law schools play a central role in the evolution of the music industry. We have tried to build the case that the industry, which is now suffering immensely, needs a proactive, systematic, and comprehensive action program, coordinated across a multitude of law schools to right its sinking ship.

We call on law schools both domestically and internationally to convene for the purpose of creating an agenda for facilitating change in the music industry. More than convening meetings for the purpose of CLE credits, we propose that a multiday, invitation-only convocation be organized with representatives from high profile law schools to explore the potential of an organized and systematically integrated effort, using current best practices, or by developing new practices altogether, if necessary.

We envision a network of ELLA-like programs, sharing resources and expertise to bring justice to and balancing power in the industry, increasing fair and equitable business models, which, with consumer support, might help cast the future of the industry in a positive light. From the outcomes of these efforts, we envision trust and respect amassing, which would allow for long-term potential solutions and active intervention in the passage of new law.

Law schools, unlike any other institutions or collection of institutions, are in a position to effect change in the music industry. The change should begin now.