Labels, Artists, and Contracts in Today's Music Industry: An Economic Analysis

By Debra J. Aron, Ph.D.* and Steven S. Wildman, Ph.D.**

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* Vice President, Charles River Associates, DAron@crai.com

** Professor & J.H. Quello Chair of Telecommunication Studies Emeritus, Michigan State University, swildman@msu.edu

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Table of Contents

Executive Summary

The music recording industry has undergone dramatic change in the last twenty years. The ways that music is marketed, distributed, and even produced are almost unrecognizable compared to the way things were done at the turn of this century. This study updates and expands a study of music industry contracts performed by one of the present authors in 2002. Since that time, the development of digital technology, the broad dissemination of broadband access, and the near ubiquity of smartphones, laptops and tablet devices have revolutionized the distribution of music. Instead of visiting brick-and-mortar retail establishments selling music on physical media, consumers today largely obtain and consume their music via streaming and downloads from the comfort of their homes, during their commutes, at work, at the gym, or at leisure. Music can be obtained by subscription, providing consumers the ability to access a massive variety of content at no incremental (per-song or per-album) cost–a pricing structure that, compared to having to pay by the individual album or single, encourages more experimentation in sampling new music. Vendors who once sold music in physical stores and had to curate a limited selection of options to meet the realities of limited physical shelf space have been largely replaced by online streaming services who face no similar physical limitations to the number of options that can be offered to consumers. Brick-and-mortar vendors with the ability to steer consumers to certain titles, genres, or artists by their choice of inventory have been replaced by influencers, both independent and commercial, who create playlists that, by identifying trends and highlighting promising artists and releases, help streaming customers make selections from nearly boundless collections of recordings and, on occasion, launch previously obscure artists on a path to stardom.

The impact of the digital revolution on the music industry is readily apparent in industry statistics. Today 83 percent of total music revenue is accounted for by streaming services, a delivery mode that did not exist twenty years ago. Moreover, despite the far greater range of music available to consumers today, the total revenue generated by the sale of that music, whether via physical media or digital media, is far lower than it was twenty years ago. Consumers are getting a lot more and paying a lot less.

The digital revolution in music has not only democratized the selection of music available to consumers by placing the choice among a vast array of options in their own hands (literally, at

their own fingertips), but by making it possible for virtually anyone to upload a recording to a streaming service or digital download vendor at very low cost, the digital revolution has also expanded the range and quantity of music created. Consumers searching today's digital music services may find recordings by obscure artists and tunes produced and recorded in bedrooms and garages alongside the work of the world's most famous pop stars. Music today can be produced in an artist's bedroom at a level of fidelity that was once achievable only in professional studios. The major music labels traditionally identified and signed a roster of artists to whom they offered an extensive suite of services–including business expertise; advance funding; matchmaking with producers, studio musicians, and other creative professionals; marketing; and distribution of music that artists needed to be commercially successful, in exchange for a share of the revenues generated over multiple projects. Today, artists have far more ways to obtain those services, ranging from a menu of à la carte options provided by numerous companies serving artists seeking to assemble their own package of services without contracting with a label, to working with independent labels that also can provide a comparable suite of services, to contracting for particular services "à la carte" from the major record companies' label services divisions. While the major labels have scale and resources for supporting artists unmatched by independents and DIY options, it is not necessary for an artist to be signed to a major label today to access the marketplace or the technology and services needed to produce and sell their music and enjoy considerable success doing so.

Independent labels and artists working independent of labels (the so-called do-it-yourself or DIY artists) have benefitted from these changes. Independent labels have been able to build new businesses providing artists with distribution to and assistance with promotion on streaming services and via social media, and because the streaming services and digital download vendors' music catalogues are searchable using tools these services provide, music consumers are able to find and listen to music from artists signed to independent labels whose releases would not have been stocked by record stores in the past. A notable number of DIY artists have been able to achieve prominence and mainstream success by building audiences on streaming platforms with the help of services acquired on an à la carte basis from independent vendors or, in some cases, by literally managing promotion and arranging distribution to online services on their own.

Labels are in the business of finding and nurturing promising talent and helping established artists realize their full commercial potential. For artists who are offered and choose to accept contracts with labels, there are certain realities of the music business that must be addressed. These include a label's role in nurturing new talent; the need to help some artists, and new ones especially, fund the production, marketing, and distribution of their music; the benefits of guidance and advice that can help artists realize their artistic visions; the value of business knowledge; business connections that can match artists with individuals with complementary talents; the benefits of back-office assistance for reaching an audience; the unpredictability of commercial success for new artists especially, but also for forthcoming releases from established artists; and the unavoidably delicate relationship between an artist and a label that encompasses so many judgements and decisions that cannot be perfectly anticipated in a contract. While labels' efforts on behalf of their artists cannot eliminate the risks attendant to the creation, promotion, and sale of recorded music, they can increase the odds that artists' efforts will be met with success and, by sharing the risks, mitigate for artists the downside of failed releases. These realities largely motivate and determine the way that artists and labels contract with one another.

The substance and variety of label contracts today are a reflection of the modern music industry. As in the past, major labels provide a set of services to artists with whom they have contracts, the elements of which may vary, plus an advance of funds to support the artist and the production of the artist's work. Label-supplied services typically include distribution, marketing and promotion, among other things. Major label contracts typically provide terms for an initial recording project (such as an album) and terms for a specified number of additional projects. The terms for the additional projects are often conditional on the success of previous albums and allow for increased advances and royalties the greater the artist's success. The contracts allow the artist and the label to share both the risks and potential rewards of recording projects by limiting the artist's downside risk—the advance may never be recovered by the label if the album does not produce enough revenue—while allowing the artist and label to share in the upside potential of the work if it is commercially successful.

Based on our review of contract data and other information from the major record labels, we can report that for different artists the amounts of advances and royalty rates may vary by an order of magnitude or more. The number of projects optioned, and the mix and types of recordings covered by contracts, also vary considerably. It is clear that contracts are highly individualized and bespoke, as would be expected since they are tailored to needs and desires of an artist and those vary widely among individual artists. Variation among contracts shows that just about all terms are subject to negotiation, and indicates further that contract terms are heavily negotiated. The data also show that artists are virtually always represented by legal counsel in their negotiations, and that labels give artists advances to cover the cost of legal representation in their contract negotiations.

One notable feature of label recording contracts that has remained consistent over the last twenty years (at least) is that they are project-delimited rather than time-delimited. That is, a contract provides for a specified number of projects rather than a set period of time, and the contract ends when either the projects are completed or the label chooses not to exercise its option under the contract to fund the next project. That label recording contracts are project-delimited rather than expiring after a set period of time reflects the fact that investments and advances provided by labels are recoverable only if the contracted projects are completed, yet the timing and pace of project completion – even when agreed to in the contract – is in the control of the artist. In addition, while labels' investments in artists are project-specific, they also have a significant long-term component. The shorter the time and fewer the projects over which a label might be able to recoup its investment, the less a rational investor would be willing to invest, to the detriment of both the label and the artist.

Of course, because it is always uncertain how successful an artist's future projects will be, the terms of a contract will reflect the information available at the time the contract is made and the expectations of the parties at that time. Sometimes the predictions will be too optimistic, and the label may take a loss on the contract. Other times the artist may far exceed expectations. Successful artists may seek to renegotiate the terms of their contract before all projects have been completed and, despite having committed to an agreement, the artist can in practice – and typically does - exercise negotiating power and request a renegotiation of their contract before beginning their next contracted project. Successful artists have negotiating leverage both because the artist controls the pace of the recording process and because the label has an incentive to maintain a good relationship with the artist and a reputation for fairness within the industry in order to re-sign the artist when their contract is completed and to continue to attract and sign highly promising artists.

The contracting documents and information we reviewed are consistent with this analysis of the economic character of recording contracts. Although major label contracts typically specify a set number of projects, the contractual relationship with an artist rarely remains unaltered during the course of a contract. Moreover, artists can and do renegotiate contract terms even during the pendency of an existing contract. Based on our review of the rosters of the three major labels over time, we found that over half of the artists signed in 2015 (the most recent year for which we could track artists for seven years) were no longer with their original label within four years and 69 percent were no longer with the label by year seven. In documents covering a full year for one of the major labels, we found that of those who remained by year seven, all had renegotiated their contract terms by that time.

Based on the broad array evidence we reviewed to produce this report, it would be hard not to conclude that the terms of artist-label contracts and the negotiations that produce those terms are appropriate responses to the economic challenges posed to both artists and labels by today's music market.

I. An Overview of the Relationships Between Labels and Artists in the Music Industry

A. Introduction

The music industry is complex and the relationships among the players are multifaceted. In 2002, one of the present authors published a report describing the music industry and recording contracts in the mid-to-late 1990s and year 2000.[1] Since that time, the industry has changed so rapidly and extensively that understandings based on familiarity with the industry even in its recent past may be badly outdated.

This report updates and expands the report written twenty years ago to reflect the sea-change in the music industry driven by advances in technologies and new services designed to take advantage of the new capabilities unleashed by those technologies. We describe certain key features of the structure of the music industry today and critical players in the industry, along with a discussion of music industry economics.

We pay particular attention to the economic characteristics of contracts between artists and labels and the non-label options available to artists to assist them with creating, recording, marketing, and selling their music. The market participation and market power, if any, of streaming services and their pricing and intellectual property practices vis à vis artists are important topics in the modern music industry and ones that have garnered much press recently, but are outside the scope of this report. We focus on the role of the labels in the modern industry and the economic functions of their contract structures and practices. Our view is that public policy regarding recording contracts must be informed by an understanding of the goals, challenges, incentives, and benefits that contracts between artists and labels encompass. Our hope is that policymakers will be able to draw on the information and perspectives presented in this report to make better-informed choices when crafting the laws and policies that will govern the music industry going forward.

The remainder of this report is organized as follows. In the next subsection, we provide an overview of the many services that complement and support the endeavors of music artists today, and the institutions that have emerged in the marketplace that operate alongside and as alternatives

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1 Steven Wildman, "An Economic Analysis of Recording Contracts," July 22, 2002 (hereafter, *2002 Wildman Report*).

to the major labels to provide these services and enable artists to realize their vision and advance their ability to bring their music to commercial fruition and financial success.

Section II provides a brief overview of the technological changes and new services and institutions based on those changes that have upended the way fans explore, purchase, and consume music and the way artists produce and market their music and connect with their fans. We explain and provide examples of the many options available to artists today from high-touch independent and major labels to à la carte and off-the-shelf services, and we discuss how the major record companies have responded to the industry changes as well.

In Section III, we describe the challenges and nuances of the relationship between artists and labels and the role of the major terms of artist-label contracts in sharing risk and reward and aligning the incentives of both parties toward the common goal of commercial success for the artist, in part by allowing contract terms to vary substantially to appropriately reflect differences in artists' circumstances and needs. We explain that certain fundamentals of the artist-label relationship remain unchanged—and therefore, certain fundamental features of recording contracts that served a recognizable purpose in promoting successful artist-label relationships 20 years ago appear in modern contracts as well—but the profound changes in the industry have been accompanied by a notable amplification in the variety of contractable services available to artists. Section IV contains concluding comments.

B. Services and Resources Available to Recording Artists in Today's Music Industry

Musical recordings, as with many other types of media content such as films, TV programs, novels, news reporting, and blogs, for which demand is driven by content, differ from most other consumer goods in economically important ways. Each recording is a unique expression of the vision and intent of an individual artist; once the initial (master) recording is created, the costs of replication are extremely low and the cost of distributing another unit of an individual recording through any of the various channels tends to be low as well (for digital distribution it is close to zero), even though the costs of maintaining and operating the distribution channels may be quite high. Whether an audience of economically meaningful size for the artistic expression embodied in any specific recording exists cannot be known in advance, and in a music market where 100,000 new tracks (songs) are uploaded to streaming services every day[2] and many millions of earlier recordings also compete for listeners' time and attention, there is no guarantee that the listeners who may like a recording can be found even if they do exist. Recordings in which artists and labels have invested considerable time, effort, and money in anticipation of strong sales may fail to cover their costs. Time and financial commitments to the creation of new music are therefore inherently risky.

These factors make the market for recorded music difficult to navigate and challenging for artists and the companies that invest in and promote their careers. The challenges are especially great for new artists at the beginnings of their careers when they still have much to learn about the music business, including frequently the process of creating and recording music with commercial appeal. It is possible today for an artist to record a song with high fidelity sound using home recording equipment[3] and upload it to one of the streaming services like Spotify, Pandora, Apple Music, or YouTube, thereby making it available to a worldwide audience. For artists who enjoy sustained commercial success there is almost always much more involved, beginning with the production of a recording for which an artist has turned to a professional producer with a recording studio for help finding and refining a sound that matches their artistic vision, and often for managing the recording processes itself. Labels can help to facilitate matching between a record producer and an artist, or help finance the purchase of a particular instrument,[4] identify songs for the artist to record, pay for professional studio time, or help secure the use of excellent studio musicians, among other components of a music recording–services that can be especially valuable to new artists still finding their way in the industry. Our review of contract data provided by the major recording companies showed that contracts for artists signed to the major record companies' labels typically include label-funded budgets for recording costs. That labels are willing to commit upfront to cover the cost of working with a producer is strong evidence that the labels believe that

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[2] Tim Ingham, "It's Happened: 100,000 New Tracks are Now Being Uploaded to Streaming Services Like Spotify Each Day," *Music Business Worldwide*, October 6, 2022, https://www.musicbusinessworldwide.com/its-happened-100000-tracks-are-now-being-uploaded/.

[3] For example, Billie Eilish famously recorded her first album in her bedroom, produced by her brother Finneas. Alice Gustafson, "Billie Eilish's Happier Than Ever: Bedroom Production Reaches New Heights," *Headliner*, accessed February 8, 2023, https://headlinermagazine.net/billie-eilish-happier-than-ever-bedroom-production-reaches-new-heights.html.

[4] "Everything You Need to Know About Record Labels," The Planetary Group, accessed February 1, 2023, https://www.planetarygroup.com/music-promotion-guide/record-labels/.

working with a good producer can increase substantially the appeal and the likelihood that the artist's recordings will achieve financial success, including a fair return on the label's investment in the artist.

Producing a recording is only the beginning of the process of finding an audience willing to pay, or listen to ads, for the right to stream an artist's work. Once an artist's music has been recorded it must be placed with appropriate distribution channels, where in-channel promotion can be critical to finding an audience. Advertisements for a particular artist's work may be placed within the various streaming services[5] and securing inclusion in the right curated playlists on those services can also be important to creating and managing an artist's profile.[6] There may also be advertising in other media, both online and offline, as well as efforts to promote an artist's work by bringing it to the attention of critical gatekeepers and influencers, such as people who construct radio playlists, book TV appearances, write reviews of recent releases, and publish influential playlists for streaming services. If physical as well as digital copies of a recording are to be sold, their manufacture must be arranged and their placement in distribution channels for CDs and vinyl records secured. Promotion outside of the streaming platforms is also often arranged and if an artist tours in support of a recording, labels will potentially assist with coordinating venues and tour dates along with lodging and travel.

Few if any artists have the expertise to handle all of these noncreative activities well, and even if they did, the time required to manage them would come at the expense of time that could have been spent developing, recording, and performing their music. In addition, because many of these activities are costly, limited financial resources can also make it more difficult for new artists, especially, to break out.

As would be expected, a variety of institutions, organizations, and services have been developed to help artists create their music and find and connect with listeners who may enjoy their songs.

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5 See, for example, "Turn up Your Music Marketing," Spotify Advertising, accessed February 4, 2023, https://ads.spotify.com/en-US/music-marketing/.

6 See, "Music and Streaming Final Report," Competition & Markets Authority (CMA), November 29, 2022, p. 61. CMA's analysis shows that "…around 20% of streams were from playlists provided by the music streaming services (as opposed to playlists created by the users themselves) and a further 11% of streams were delivered through autoplay function on music streaming services or 'stations/radio' provided by music streaming services."

Best known are the major record companies, whose labels can provide the artists on their rosters an extensive set of services that, should the artists choose them, might prove helpful to their efforts to find success in the music business. But a contract with a major record company label is far from the only path to commercial success. While independent labels cannot come close to matching the scale of a major record company, the larger ones can offer their artists a comparable set of services as the major's labels and the smaller ones often partner with independent services suppliers to accomplish the same goal. And the many artists who work independent of labels can use a mix-and-match approach to acquire services they need from independent service suppliers on an à la carte basis.

The artist-services providers briefly described in the preceding paragraph along with the services they provide are described in more detail in Section II of this report. Because the relationships among these players and their dealings with artists are complex and multifaceted, it is not possible to craft laws and policies that serve the public's interest in the music business without a nuanced understanding of these relationships and dealings. Critical to that understanding is an appreciation of the many ways the music industry has changed over the last 20 years.

In the next section we offer a deeper look at the music industry of today and the forces that have and continue to transform it before delving more deeply in the remainder of this report into the economics of contracting that should inform the design of music industry policy.

II. The Music Industry Has Changed Dramatically in the Last 20 Years

For much of the 20th Century, and even into the early years of the 21st Century, the music industry was based on a fairly stable business model, a central feature of which was the distribution and sale of recorded music embedded in various physical media, including vinyl records, audio tapes, and CDs, that were sold through record stores and other brick-and-mortar retailers. Most music acquired by consumers was purchased through these outlets, where both the number and the variety of recordings readily available to consumers were severely constrained by the limited amounts of retail shelf space. Today the industry's revenues are primarily comprised of payments for the industry's share of revenues generated by music streaming services and digital downloads,[7] and consumers can choose among the many millions of recordings available through online services that dwarf the variety that even the largest of traditional record stores could offer consumers.[8] As is described in Section II.A, release and promotion strategies and the ways consumers find and consume music have all been changed by the shift to online distribution and the industry is still in the process of reinventing itself in response to these and other changes.

A. The technological drivers of music industry change

Like other parts of the economy, the music industry has been substantially impacted by advances in information technologies and new services and ways of doing business based on those technologies. Developments of particular importance to the music industry during the period from the earliest data employed in the *2002 Wildman Report* to the present were the rapid commercialization of the internet following the National Science Foundation's initial provision of points of access that made it possible for commercial networks to interconnect with the internet in 1995;[9] the accelerating trend driven by advances in semiconductors toward ever more powerful and compact computational devices that led simultaneously to dramatic declines in their costs and prices; and increased availability and rapid consumer adoption of fixed and mobile communication services with bandwidth sufficient to support low-latency interactive internet services, including those that stream entertainment content, both video and audio.

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7 BBC news reported that streaming and music downloads accounted for 69 percent of the $26 billion in global music industry revenues in the year 2021. See Mark Savage, "The global music market was worth $26bn in 2021," *BBC*, March 22, 2022, https://www.bbc.com/news/entertainment-arts-60837880; RIAA's own data shows that in 2021, streaming and downloads accounted for 87 percent of music revenue in the United States.

8 The difference in magnitude between the diversity of music titles that a physical store can offer in comparison to the diversity of available digital content is illustrated by analogy to the book industry. Barnes and Noble brick-and-mortar stores, for example, typically stock between 60,000 and 200,000 book titles. Barnes and Noble also maintains warehouses across the United States where it stocks "over 1 million titles for immediate delivery." In comparison, Barnes & Noble also maintains an online eBook store for its NOOK eReader. This store offers over 3.6 million titles that are available "anytime, anywhere" on a NOOK device or the Barnes & Nobel NOOK App. See "Barnes & Noble," Town Center Plaza & Crossing, accessed February 9, 2023, https://towncenterplaza.com/stores/barnes-noble; "About Barnes & Noble.com," Barnes & Noble, accessed February 9, 2023, https://www.barnesandnoble.com/h/help/about/barnesandnoble; "eBooks & NOOK," Barnes & Noble, accessed February 9, 2023, https://www.barnesandnoble.com/b/ebooks-nook/_/N-8qa?st=PSC&sid=BNB_DRS_Pinterest&2sid=PT&sourceId=PSPTC1.

9 National Science Foundation, "A Brief History of the Internet," August 13, 2003, https://www.nsf.gov/news/news_summ.jsp?cntn_id=103050.

These developments led first to the widespread use of desktop and laptop computers to download digital content, including music. Music thus acquired could be played from the computer used to download it and it could be shared with other music lovers via the transfer of files to other computers, by burning it to a CD for use with a CD player, or by saving it as an MP3 file that could be loaded on a portable MP3 player like Apple's iPod or Microsoft's Zune. Peer-to-peer filesharing services, like Napster (launched June 1, 1999[10]) and LimeWire (launched May 3, 2000[11]), facilitated unauthorized transfers of copyrighted material and contributed to the cratering of music industry revenues in the early 2000s documented below. These services took advantage of advances in digital technology to make it easy for music users to share music with each other as MP3 files online. Commercial alternatives, like Apple's iTunes Music Store, emerged a bit later to offer consumers a way to legally acquire music from online sources.[12]

Developments in digital technology also made it feasible for online service providers to build computational facilities with the capacity to store massive amounts of user-searchable data at costs per unit so low that even when much of the content attracted few or even no users, there was a reasonable expectation that some combination of user payments for access to content and advertisers' payments for access to the audiences generated would be more than sufficient to cover the cost of storing and giving users access to content. The music streaming services are applications of this business model.[13] Pandora was one of the early applications of this business model, as were Facebook, YouTube, and Spotify.

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[10] Stephen Dowling, "Napster Turns 20: How it Changed the Music Industry," *BBC*, May 31, 1999, https://www.bbc.com/culture/article/20190531-napster-turns-20-how-it-changed-the-music-industry.

[11] Viktor Hendelmann, "What Happened to LimeWire: What the File-Sharing Service is Up to Now," *Productmint*, accessed January 19, 2023, https://productmint.com/what-happened-to-limewire/.

[12] "Apple Launches iTunes Music Store," Apple Press Release, April 28, 2003, https://www.apple.com/newsroom/2003/04/28Apple-Launches-the-iTunes-Music-Store/.

[13] The differing economics of sales through offline retail establishments versus online sellers was famously articulated by Chris Andersen in a 2004 article in *Wired* magazine ("The Long Tail") and in a 2006 book (*The Long Tail: Why the Future of Business Is Selling Less of More*, New York, NY: Hyperion), especially pp. 9, 55, 153. While Anderson's prediction that relative sales volumes would shift in favor of more niche products at the expense of mainstream hits has been cast in doubt by subsequent empirical work (see, e.g., Anita Elberse, "Should You Invest in the Long Tail?," *Harvard Business Review Magazine*, July-August, 2008, pp. 88-96), his thesis that a shift toward online sales would greatly expand the number, range, and diversity of products available to consumers has been more than borne out. Compare, for example, the millions of book titles available through Amazon's bookstore to even the largest brick-and-mortar booksellers whose offerings may number in the low hundreds of thousands. The reason is that while shelf space for offline retailers, which

As the processing power of desktop and handheld devices increased and the bandwidth delivered to consumers by both wireless and fixed broadband providers increased, the annoyances of interruptions due to the buffering of streamed content diminished to the point where the consumer experience listening to streamed music was comparable to listening to traditional radio. Streaming music also had the added benefits that commercial interruptions were less frequent on ad-supported streaming services than on commercial radio stations and that ad-free versions of these services were available for a relatively modest monthly fee. This happened first with personal computers, but with the introduction of the iPhone in 2007 and the first Android phones in 2008, portable phones were transformed into high-powered multipurpose computers with the capability to store and play music files and to stream music over the internet. Today in the United States most people carry one of these streaming-capable devices in their pocket or purse. According to *Statista*, in 2021, 95 percent of American adults aged 18-49 owned a smart phone, as did 83 percent of those age 50-64 and 61 percent of those 65 and above.[14] According to Pew Research, as of 2018, 95 percent of U.S. teens also had access to a smartphone.[15]

Entrepreneurs quickly responded to these advances in technology and rapid consumer adoption of devices capable of receiving streamed content by introducing music streaming services that gave consumers new ways to listen to music and provided new channels through which artists could reach listeners. The new streaming services proved popular, and a variety of services soon emerged to help artists with the placement and marketing of their music on streaming services and to provide the whole panoply of traditional label services. These developments had a number of transformational effects on the music industry.

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includes not just the shelving but also the building in which it is housed, is expensive and at the margin must pay for itself through the profit margin multiplied by volume for the item being sold, online storage for digital products is relatively very cheap.

14 Federica Laricchia, "Share of Adults in the United States Who Owned a Smartphone from 2015-2021," Statista, October 18, 2022, https://www.statista.com/statistics/489255/percentage-of-us-smartphone-owners-by-age-group/.

15 "Smartphone access nearly ubiquitous among teens, while having a home computer varies by income," Pew Research Center, May 29, 2018, https://www.pewresearch.org/internet/2018/05/31/teens-social-media-technology-2018/pi_2018-05-31_teenstech_0-04/.

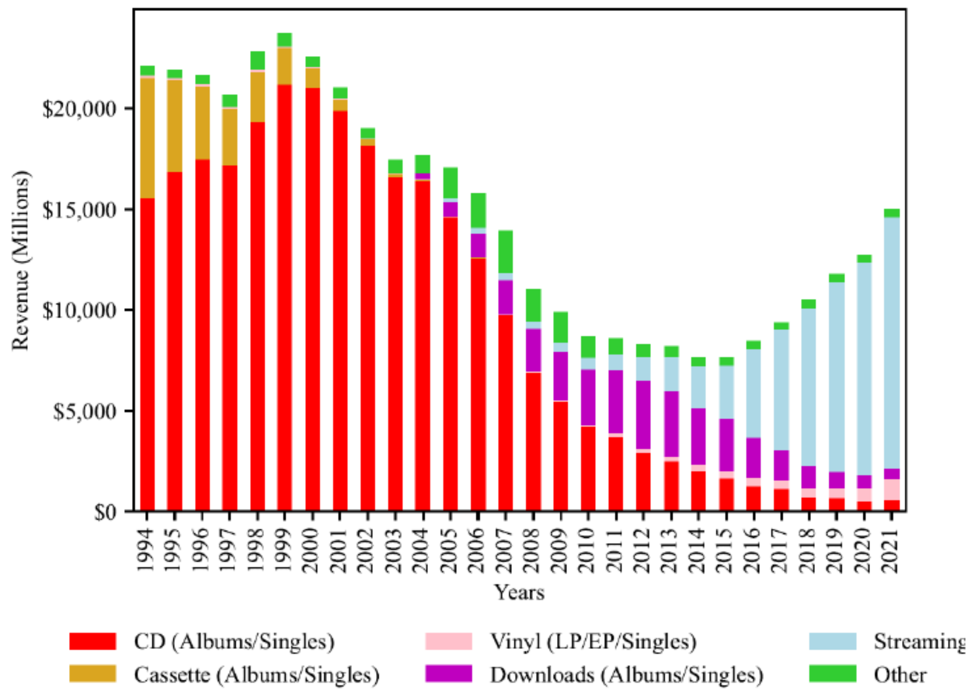
B. The distribution and consumption of music have changed

Figure 1, which shows the revenue (in 2021 dollars) generated by music sales to U.S. music consumers through various distribution formats from 1994 through 2021, reveals a near total transformation in the ways and forms in which consumers acquired music during this period. CDs, which were first commercially introduced in Japan in 1982 and in Europe in 1983 and were thus still a relatively new technology, dominated music sales in the 1990s and into the early 2000s, and, having already largely displaced vinyl records, were in the process of squeezing music cassettes from the market as well. By 2004 cassettes, which had accounted for 27 percent of revenues in 1994, were no longer a consequential component of music sales. Online music sales started to account for a noticeable share of industry revenues beginning in 2005 in the form of digital downloads, both albums and singles. That singles constituted an appreciable fraction of digital downloads was a harbinger of the trend toward single track sales rather than albums and EPs.

That trend gained force as purchases from online sources grew and singles soon became the main format of music consumed, especially as demand shifted increasingly to music streaming services, where playlists and listening are largely track-oriented. Revenue from online sales first eclipsed CD sales in 2012 and rapidly became the predominant source of consumer online music revenues.[16] In 2021 music streaming services accounted for 83 percent of total music sales, with the remaining 17 percent divided among CDs (four percent), vinyl records (seven percent), which made a comeback among audiophiles, and the mix of all other types (six percent).

[16] CD sales defined as sales of CD albums and CD singles.

Figure 1: U.S. Recorded Music Retail Revenue by Format
(1994-2021, Adjusted for Inflation, 2021 Dollars)



Notes:
[1] As stated by RIAA, the values presented are based on recommended/estimated list prices. For music formats without a retail list price, the wholesale price was used.
[2] Streaming includes paid subscriptions, limited tier paid subscriptions, ad-supported on-demand streaming, other ad-supported streaming, and SoundExchange. SoundExchange collects digital royalties from services such as Pandora and SiriusXM and distributes them to artists and rights owners. *See* https://www.soundexchange.com/digital-performance-royalties.
[3] "Other" includes DVD audio, kiosk, SACD, downloaded music videos, physical music videos, ringtones & ringbacks, synchronization, and other digital sources. For a detailed description of these and other music formats, refer to RIAA's website at https://www.riaa.com/u-s-sales-database/.

Source: CRA analysis of RIAA U.S. Sales Database provided to the authors by RIAA. Compare to figure available at https://www.riaa.com/u-s-sales-database/.

Figure 1 also shows how new technologies impacted not only revenues from traditional formats but total industry revenues during this period. Total revenue peaked in 1999 and then, due to growing use of unlicensed music file sharing services like Napster and Limewire, entered a period of steep decline that only started to reverse in 2015 as streaming services like Spotify (launched in

2008[17]), Pandora (which launched its internet radio service in 2005[18] and introduced the Pandora app in 2008[19]), and Apple Music (launched in 2015[20]) gained traction and quickly became the leading source of consumer sales, by far. Streaming services accounted for 83 percent of all U.S. consumer sales revenue in 2021. However, while total industry revenues have recovered from their low points in the first half of the 2010s, industry revenues are still well below their levels in the 1990s. Consumers have access to and are consuming more music[21] and are paying substantially less for it.

The drastic changes in the way music is consumed are also dramatically illustrated by changes in the format composition of successful recordings. Twenty years ago, most recording achieving the industry's highest metrics of success—gold and platinum designations—were albums.[22] By 2018, the vast majority were singles.

Figure 2, which reports the numbers of singles and albums certified gold or platinum each year from 2001 to 2004 and from 2018 to 2021, shows how the domination of singles over albums in

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17 "About Spotify," Spotify, accessed February 6, 2023, https://newsroom.spotify.com/company-info/.

18 Michael Arrington, "Pandora to launch next week," *TechCrunch*, August 25, 2005, https://techcrunch.com/2005/08/25/pandora-to-launch-next-week/.

19 MG Siegler, "Pandora solidifies its place as the top iPhone app with its 2 millionth user," *VentureBeat*, December 2, 2008, https://venturebeat.com/social/pandora-solidifies-its-place-as-the-top-iphone-app-with-its-2-millionth-user/.

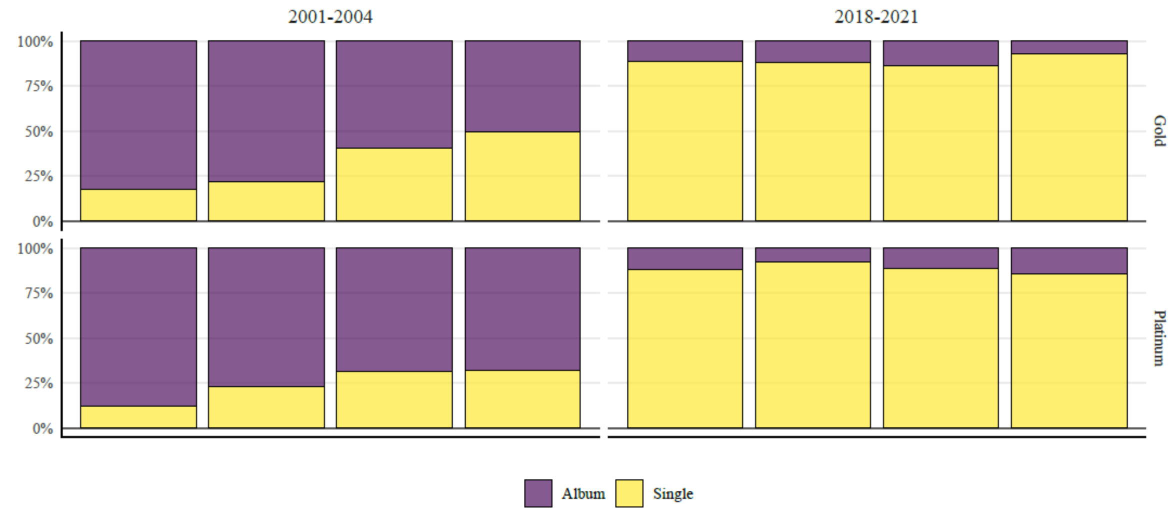
20 "Introducing Apple Music — All The Ways You Love Music. All in One Place," Apple Press Release, June 8, 2015, https://www.apple.com/newsroom/2015/06/08Introducing-Apple-Music-All-The-Ways-You-Love-Music-All-in-One-Place-/. Apple acquired the Beats Music streaming service with its acquisition of Beats Electronics in May 2014. Beats Music was shut down by Apple in November 2015 with subscribers having the choice to migrate to Apple Music and retain their music libraries and playlists. Beats Music was launched in January 2014. "Apple Is Shutting Down Beats Music On November 30, *Forbes*, November 13, 2015, https://www.forbes.com/sites/abigailtracy/2015/11/13/apple-beats-music-headphones-shutting-down-dr-dre/?sh=2ccb70a55c88. Miriam Coleman, "Beats Music Launching Streaming Service January 21st," January 12, 2014, https://www.rollingstone.com/music/music-news/beats-music-launching-streaming-service-january-21st-105067/.

21 According to Forbes, citing a study by Nielsen Music, Americans consumed over 36 percent more hours of music in 2017 than they did even two years earlier, with a trend showing "massive gains from year to year, with the average expanding by several hours every 12 months." Hugh McIntyre, "Americans Are Spending More Time Listening To Music Than Ever Before," *Forbes*, Nov.9, 2017, https://www.forbes.com/sites/hughmcintyre/2017/11/09/americans-are-spending-more-time-listening-to-music-than-ever-before/?sh=4060bcec2f7f.

22 A recording (e.g., single, short-form album, and full-length album) is certified Gold by the RIAA if it has sold more than 500,000 units. A recording (e.g., single, short-form album, and full-length album) is certified Platinum by the RIAA if it has sold more than 1,000,000 units. "Gold & Platinum: About the Awards," Recording Industry Association of America, https://www.riaa.com/gold-platinum/about-awards/.

aggregate online sales is also reflected in a shift toward singles for gold and platinum certifications.[23] Today singles account for the bulk of recordings reaching these two milestones.

Figure 2: Composition of Recording Formats by Certification
(2001-2004 and 2018-2021)



Notes:
[1] We exclude recordings with formats "Short Form Album," "Video Boxset," "Video Longform," and "Video Single." Together, these recording formats make up 7.7% of total Platinum and Gold certified recordings for the years 2001-2004 and 2018-2021.
[2] We use the release year of the recording.
[3] A Gold certified recording has sold 500,000 units. A Platinum certified recording has sold at least 1,000,000 recordings. To avoid double-counting, the figure depicts the highest certification achieved by each recording; hence, Platinum recordings are not included in the panels depicting Gold certification.
[4] RIAA defines EPs as recordings with 3-5 tracks, and are equivalent to "Short Form Albums." As noted, Short Form Albums are excluded from the Figure but recordings with more than 5 tracks are included as Albums, regardless of how the artist characterizes the recording (i.e., even if the artist considers it an "EP").

Source: CRA analysis of Gold and Platinum certified recordings data provided to the authors by RIAA.

The development and rapid rise to predominance of new distribution formats and the transformation in the ways consumers acquire and consume music are only two of the more visible ways that advancing information technologies and new services based on those technologies have changed the music industry. It is fair to say that many of the fundamentals of the music business have changed. As we discuss in the next subsection, these changes are seen in the options available to artists at every stage from the production to the distribution of music, in the ways that labels search for new talent to add to their rosters, in the growing vibrancy of independent labels, and in

23 The search for a standard of comparison that could equate streaming revenues with revenue from the sale of albums and singles through other channels led to the creation of the revenue-equivalent standard for comparing a recording's performance in different distribution channels. For example, the "Billboard 200" albums chart currently treats 1,250 paid streams and 3,750 ad-supported streams as the revenue equivalent of the purchase of one album. Gold and platinum certifications and *Billboard's* most comprehensive charts are now based on revenue equivalent measures of success. See Ben Sisario, "The Music Industry's Math Changes, but the Outcome Doesn't: Drake Is No. 1," *New York Times*, July 9, 2018, https://www.nytimes.com/2018/07/09/arts/music/drake-scorpion-streams-billboard-chart.html.

the major record companies' decisions to make sales of services to independent labels and artists significant components of their businesses.

C. Opportunities for artists and independent labels

The emergence of streaming as the predominant source of music industry revenue opened new opportunities for artists to make their music available to the music-consuming public. Streaming services make their money from a combination of advertising placed within the audio streams distributed by their lowest-tier services, which are typically free to users, and fees paid by subscribers for the ads-free higher-tier versions of their services. Because the appeal of a streaming service to its users increases with the number of recordings from which they can choose, the major music streaming services encourage uploads by virtually anyone with music to which they own the rights. Artists typically arrange for uploads to be handled by labels or by independent distribution companies who manage this process and generally collect the revenues artists earn from streaming for either a fairly low fee or a small share of the revenues they collect.[24]

The chance to access at very little cost the streaming services that can distribute music so efficiently (services that, as noted earlier, account for 83 percent of consumer-driven music revenue) resulted in an explosion of uploads by artists both well-known and obscure. Figures released by Spotify, the leading music streaming service, illustrate this point. At the beginning of 2023 the platform offered its users over 80 million songs and 4.7 million podcast titles contributed by "over 11 million artists and creators." Over 1,800,000 songs are uploaded during an average month. Tracks uploaded to Spotify have the potential to reach each of Spotify's 456 million active

[24] For example, CD Baby, DistroKid, and ReverbNation. CD Baby charges $9.95 for releasing a single and $29.99 for releasing an album for the users of their standard plan, which covers digital distribution to Spotify, Apple Music, Amazon Music, and more. See, "Pricing," CD Baby, accessed February 8, 2023, https://cdbaby.com/cd-baby-cost/. DistroKid charges a subscription fee of $19.99 per year to upload as many albums and songs as the artist wants, and they will get the artist's music to all the major streaming services. See, DistroKid, accessed February 8, 2023, https://distrokid.com/. ReverbNation offers digital distribution to six retailers (e.g., Spotify, Apple Music, and Deezer), starting at one dollar per single or nine dollars per album per year. See, "Digital Distribution," ReverbNation, https://www.reverbnation.com/band-promotion/distribution.

monthly users.[25] As noted earlier, Spotify is just one of a number of prominent music streaming services, a partial list of which includes Apple Music, Pandora, and Amazon Music Unlimited.

In addition to the upload services mentioned earlier that help artists select and place their music with streaming services, other services, such as marketing and promotion services (e.g., digital marketing, promotion, neighboring rights management, synchronization, campaign management for artists selling music or other items, such as hats and t-shirts off their own websites, and assistance with direct-to-consumer sales), and distribution services (e.g., sales, digital and physical distribution, logistics, stock management, and manufacturing), are available to artists striving to succeed in the music business.

The major record companies, through their labels, offer the artists they sign to recording contracts upfront financing and the opportunity to acquire most, if not all, of these services through a single source in exchange for a cut of the revenue the artists generate through sales of their recordings or in some cases through other activities, such as touring and merchandise sales, that may be supported by a label. A variety of alternatives have arisen in the marketplace that enable artists to acquire similar services without a major label recording contract.

With the exception of upfront financing of the artist's production process, the major record companies also offer these same services to non-roster artists through their label services divisions. In addition, larger independent labels can also offer their artists the advantages of one-stop shopping for similar services, often through a set of affiliated providers. And artists can acquire similar services from a variety of non-label suppliers as well. Hence, the market provides a variety of arrangements by which new and established artists may obtain services necessary for producing, marketing, and performing music.

Table 1 lists some examples of independent labels with on-roster artists who have achieved notable commercial success.

[25] Daniel Ruby, "Spotify Stats 2023 (Facts & Data Listed)," *Demand Sage*, December 30, 2022, https://www.demandsage.com/spotify-stats/.

Table 1: Examples of Alternatives to a Record Deal with a Major Label: Independent Labels[1]

Parent	Label Name(s)	Services Provided			Source
		A&R[2]	Marketing and Promotion	Wholesale Distribution[3]	
Bertelsmann / BMG[4]	BBR Music Group / Rise Records / Infectious Music / Vagrant Records / Trojan Records	✓	✓	✓	[1]
Beggars Group	4AD / Matador Records / Rough Trade Records / XL Recordings / Young	✓	✓	✓	[2]
--	Domino	✓	✓	✓	[3]
--	Brainfeeder	✓	✓	✓	[4]
Secretly Group	Secretly Canadian / Jagjaguwar / Dead Oceans / Ghostly International	✓	✓	✓	[5]
--	Asthmatic Kitty	✓	✓	✓	[6]
--	Warp Records	✓	✓	✓	[7]
--	Stones Throw Records	✓	✓	✓	[8]
	R&S Records	✓	✓	✓	[9]
Omnian Music Group	Captured Tracks / 2MR Records / Manufactured Recordings / Sinderlyn / Body Double / Fantasy Memory	✓	✓	✓	[10]
--	Rimas Music[5]	✓	✓	✓	[11]

Notes:

[1] Independent labels are labels that are not owned by one of the big three record companies.

[2] Talent scouting alone without successive support for artistic development or content creation is not considered A&R for purposes of this table. We assume that independent labels provide A&R services even if we cannot find explicit mention of these services on their websites.

[3] Unless noted, these independent labels have distribution deals with an independent distributor.

[4] BMG announced in 2016 that it signed a worldwide exclusive distribution deal with Warner's ADA.

[5] Rimas Music announced a global distribution deal with Sony's The Orchard in 2021.

Sources:

[1] https://www.bertelsmann.com/news-and-media/news/bmg-confirmed-as-world-s-fourth-largest-music-company.jsp; https://www.bmg.com/de/publishing.html; https://www.bmg.com/de/recording.html.

[2] https://www.beggars.com/; https://www.linkedin.com/company/xl-recordings/about/.

[3] https://www.linkedin.com/company/domino-recording-co-ltd/about/; https://www.dominomusic.com/us; https://www.musicbusinessworldwide.com/arctic-monkeys-domino-grew-its-uk-turnover-by-31-6-in-2021-driven-by-strong-catalog-sales/.

[4] https://www.ninjatune.net/about-us; https://brainfeeder.bandcamp.com/.

[5] https://deadoceans.com/artists/phoebe-bridgers/; https://deadoceans.com/artists/toro-y-moi/; https://guitar.com/review/album/the-genius-of-for-emma-forever-ago-by-bon-iver/; https://shorefire.com/releases/entry/secretly-ghostly-international-announce-new-partnership; https://www.linkedin.com/company/secretly-group-label/about/.

[6] https://asthmatickitty.com/artists/sufjan-stevens/; https://asthmatickitty.com/info/; https://www.imdb.com/name/nm2014294/awards.

[7] https://www.linkedin.com/company/warp-records/about/; https://www.grammy.com/artists/aphex-twin/18287; https://warp.net/us/about.

[8] https://www.linkedin.com/company/stones-throw-records/about/.

[9] https://www.rsrecords.com/about; https://www.musicweek.com/labels/read/r-s-records-sign-deal-with-believe-digital/065593.

[10] https://www.omnianmusicgroup.com/pages/about-us; https://thevogue.com/artists/diiv/; https://www.manufacturedrecordings.com/contact-us.

[11] https://www.linkedin.com/company/rimasmusic/about/; https://www.billboard.com/charts/year-end/2022/the-billboard-200-labels/.

Independent labels operating at a relatively small scale may outsource some of their needs, especially distribution, to a partner company. B2B providers of such services to independent labels are often referred to as "label services" companies. Some independent artists also need a team with expertise in marketing, promotion, or distribution to get their music to listeners. Companies, including some label services companies, that provide such services directly to independent artists are often called "artist services" providers. Given their overlap, label services companies and artist services companies are often referred to collectively as artist and label (A&L) services providers. Typically, like the major and independent labels and the majors' A&L services divisions, the service offerings of A&L services providers include A&R, marketing and promotion, and distribution, with the caveat that the A&R, marketing, and promotion services provided by an A&L services company are typically a subset of the services provided by a record label's A&R division.[26] However, compared to the services of the major or independent labels, A&L services are more frequently purchased on an à la carte basis and artists' relationships with these companies tend to be shorter-term and less comprehensive.

The service that independent artists and labels acquire most frequently from A&L services companies is distribution,[27] both physical and digital. A&L distribution companies often employ specialists to provide customized solutions for each artist, which is often a requirement for physical distribution. For example, Believe, a company that provides digital and other distribution services to labels and artists, purports to have "…an extensive network of physical distribution partners around the world and a team of locally based experts who are able to manage and optimize your physical distribution."[28]

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[26] "Complete Acquisition by Sony Music Entertainment of AWAL and Kobalt Neighboring Rights Business from Kobalt Music Group Limited Final Report," CMA, March 16, 2022 (hereafter, *03/16/2022 CMA Report*), p.34, https://assets.publishing.service.gov.uk/media/6231d78dd3bf7f5a8a6955f4/Sony_AWAL_-_Final_Report.pdf.

[27] *03/16/2022 CMA Report*, pp. 7, 33.

[28] "Distribution Solutions," Believe, accessed February 8, 2023, https://www.believe.com/label-artist-solutions/distribution-solutions.

Distribution deals allow the artist to retain their own master rights,[29] while master licensing deals allow the artist to regain their master rights after the licensing period has expired.[30] Both essentially grant the artist full control over their music, and therefore differ from traditional label deals. In the case of distribution deals, the artist (or the independent label that the artist works with) provides finished recorded materials to a distribution company (see Table 2 for examples of A&L companies that provide wholesale distribution). The distribution company is responsible for "… getting the songs and products to retail stores or Digital Service Providers (DSPs)."[31] In return, the distribution company takes royalties as a percentage of the sales revenue.[32]

An artist that is not on roster with a major label may also sign a master licensing deal. In such cases, the artist will create and record the music after which the artist (or the independent label that the artist works with) will use marketing services, distribution services, and possibly other services provided by a larger label to get their music on the market. In return, the larger label gets the artist's permission to "…exploit the recordings in different mediums and formats (TV, Film, CD, Digital, etc.) to generate revenue" for a specified period of time.[33] For example, Olivia Rodrigo, whose debut single, "Driver's License," dominated the Billboard Hot 100 for eight straight weeks,[34] has control of her original recording rights.[35]

Despite the sea-change in the industry described earlier, some aspects of label contractual arrangements remain as they were 20 years ago. One such notable aspect of label contractual arrangements is that they typically do not establish a fixed time period for the relationship but

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[29] "Record Deals and Their Types," *Tunedly*, September 29, 2021 (hereafter, *9/29/2021 Tunedly-Record Deals and Their Types*), https://www.tunedly.com/blog/record-deals-and-their-types.html.

[30] "What Does it Mean to Own Your Masters?," amuse, accessed January 31, 2023, https://www.amuse.io/en/content/owning-your-masters.

[31] *9/29/2021 Tunedly-Record Deals and Their Types*.

[32] "What is a Distribution Deal? 8 Pros & Cons to Great Success!," Track Garden Studio, accessed January 31, 2023, https://trackgardenstudio.com/distribution-deal/.

[33] "Recording agreement or licensing agreement?," *The Music Business Blog*, September 06, 2021, https://www.emusicentertainment.net/blog/recordingagreementorlicensingagreement.

[34] Callie Ahlgrim, "Only 25 songs in history have debuted at No. 1 on the Billboard Hot 100 and stayed there — here they all are," *Insider*, updated November 8, 2022, https://www.insider.com/number-1-song-debuts-lasting-runs-billboard-hot-100.

[35] Callie Ahlgrim, "Olivia Rodrigo has full control of her masters because she paid attention to Taylor Swift's battle over her own music," *Insider*, May 7, 2021, https://www.insider.com/olivia-rodrigo-owns-master-recordings-taylor-swift-battle-2021-5. Also, the Spotify page of Olivia Rodrigo's 2021 Album *Sour* indicates that the album is released under an exclusive licensing deal with Geffen Records, https://open.spotify.com/album/6s84u2TUpR3wdUv4NgKA2j.

rather articulate a series of deliverables.[36] The deliverables are defined in the contract to minimize ambiguity about what the product is that will be the basis for measuring performance and determining compensation. The terms of contracts typically provide that the artist is entitled to various forms of payment through the course of the relationship, and the label is entitled to ongoing reimbursement of its upfront advances and, if full reimbursement is achieved, additional compensation, depending on how much product the artist produces and its success.

It is uncommon for A&L services companies to offer A&R services, or even marketing and promotion services, at the scale of full-service record labels. According to a report by the U.K. Competition & Market Authority (CMA), A&L services companies seldom provide upfront funding, support for artists' creative activities, or tour support.[37]

Table 2 provides examples of some A&L services companies and identifies their core offerings.

[36] These deliverables have historically been (and remain today to be primarily) albums but, as just mentioned, today the deliverables may also include EPs or even, in some circumstances, singles.

[37] *03/16/2022 CMA Report*, p. 34.

Table 2: Examples of Alternatives to a Record Deal with a Major Label: A&L Services Companies

Parent	Company Name(s)	Services Provided			Source
		A&R[1]	Marketing and Promotion	Wholesale Distribution	
Universal	Virgin Music Group[2]	✓	✓	✓	[1]
Warner	Alternative Distribution Alliance (ADA)		✓	✓	[2]
Sony	The Orchard		✓	✓	[3]
Sony	AWAL	✓	✓	✓	[4]
--	Believe	✓	✓	✓	[5]
[PIAS] Group[3]	[Integral]	✓	✓	✓	[6]
--	EMPIRE			✓	[7]
--	Kartel Music Group	✓	✓	✓	[8]
--	AMPED			✓	[9]
--	RedEye		✓	✓	[10]

Notes:

[1] Talent scouting alone without successive support for artistic development or content creation is not considered A&R for purposes of this table.

[2] Virgin Music Group is Universal's independent music division which provides label and artist services, and includes Virgin Music Label & Artist Services, Ingrooves Music Group, and mtheory Artist Partnerships.

[3] Universal acquired a 49% stake in the [PIAS] Group in 2022.

Sources:

[1] https://www.virginmusic.com/about/; https://www.universalmusic.com/universal-music-group-launches-virgin-music-group/.

[2] https://www.linkedin.com/company/alternative-distribution-alliance/about/; https://www.musicbusinessworldwide.com/ada-worldwide-reveals-new-leadership-structure-appointing-heads-of-us-and-international/.

[3] https://www.linkedin.com/company/the-orchard/about/; https://www.theorchard.com/about/history/.

[4] https://www.linkedin.com/company/awal/about/; https://www.musicbusinessworldwide.com/sony-musics-430m-acquisition-of-awal-officially-cleared-by-uk-competition-watchdog/.

[5] https://www.linkedin.com/company/believeglobal/about/; https://www.believe.com/; https://www.believe.com/newsroom/believe-and-groove-attack-establish-comprehensive-label-joint-venture-a-million-music.

[6] https://www.piasgroup.net/; https://www.integralmusic.com/; https://www.musicbusinessworldwide.com/universal-acquires-49-stake-in-independent-music-powerhouse-pias/.

[7] https://www.linkedin.com/company/empire-sf/about/; https://www.grammy.com/news/how-empire-became-music-industry-giant-unlikely-city.

[8] https://kartelmusicgroup.com/; https://kartelmusicgroup.com/blog/2019/2/12/funding.

[9] https://www.linkedin.com/company/amped-distribution/about/; http://www.ampeddistribution.com/about-us.

[10] https://www.linkedin.com/company/redeye-distribution/about/; https://www.redeyeworldwide.com/.

Thanks to the advances in technology and the prevalence of streaming services, artists nowadays can also produce music, and release music to a vast audience, using a wide variety of DIY (do-it-yourself) tools and platforms even without the use of A&L service companies' offerings. Artists doing so are often called DIY or self-releasing artists, and companies providing tools or platforms to facilitate self-releasing are called DIY artist services companies. Different from labels which are more full-service and more "high-touch" (i.e., more focused on personal interaction with the artists), and A&L services companies, which can be thought of as more "medium-touch" providers, DIY artist services providers are characterized by low-touch content creation, marketing, promotion, and distribution services accessed through a common online interface using a PC or smartphone. As mentioned earlier, for $19.99/year DistroKid will allow an artist to distribute an unlimited number of albums and songs to all the major streaming services, including Apple Music and Spotify.[38] Sage Audio is a mastering studio that offers sound engineering and mastering services, both in-person and online, where artists can upload their songs through a web-based file transfer system.[39] Sonicbids is an online marketplace that helps artists build their EPKs (Electronic Press Kits[40]) and land gigs worldwide.[41] Table 3 provides examples of DIY artist services providers.

Notably, the delineation among these segments (i.e., full-service labels, A&L services, and DIY artist services) is blurring because companies of all three types have begun offering services traditionally associated with the other types of companies. Some A&L services companies do provide recoupable advances for recording and marketing; Kartel Music Group is an example.[42] Some also have their own full-service labels that leverage their in-house distribution platforms. For example, ONErpm offers marketing and career development services in addition to their core distribution services. Artists who wish to benefit from the most comprehensive end of ONErpm's service spectrum (which the company refers to as "Next Level") can obtain "full-service customer career development planning and execution," including production support, A&R development,

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38 See, DistroKid, accessed February 8, 2023, https://distrokid.com/.

39 "Sage Audio Mastering," Sage Audio, accessed February 8, 2023, https://www.sageaudio.com/.

40 "An Electronic Press Kit (EPK) is a resume or CV for music artists. It is designed to provide labels, agents, music supervisors, venue talent, buyers and the media with essential information to understand who you are as an artist so that you can get noticed, land a gig and/or make connections." See, Deirdre O'Donoghue, "What Is an EPK (Electronic Press Kit)? (+How to Make One)," G2, February 28, 2019, https://www.g2.com/articles/epk.

41 Sonicbids, accessed February 8, 2023, https://www.sonicbids.com/.

42 "Funding," *Kartel*, accessed February 8, 2023, https://kartelmusicgroup.com/blog/2019/2/12/funding.

marketing, promotion, and distribution, which makes "Next Level" service essentially an equivalent to an independent label.[43]

Some DIY services serve not only independent artists, but also have been utilized by independent labels to promote and distribute their on-roster artists' music. One example is Bandcamp. Compared to other major streaming services like Spotify, Bandcamp, according to its website, is more akin to "a record store and a music community": artists can have their own homepages on which they offer streaming of their music and sell digital and physical singles, albums or other merchandise directly to their fans;[44] while independent labels can have homepages to market and showcase the music of their roster artists, and also sell their music. Indeed, Bandcamp offers other services to independent labels, including vinyl pressing (financing, production, and fulfillment), territorial licensing, targeted fan communication, and real-time statistics.[45]

Table 3 provides examples of DIY services providers and identifies some of the types of services they advertise.

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43 "How it Works," ONErpm, accessed February 8, 2023, https://onerpm.com/how-it-works.

44 "About us," Bandcamp, accessed February 8, 2023, https://bandcamp.com/about.

45 "Bandcamp for Labels," Bandcamp, accessed February 8, 2023, https://bandcamp.com/labels?from=hplabels.

Table 3: Examples of Alternatives to a Record Deal with a Major Label: DIY Artist Services

Company Name	**Services Provided**			**Source**
	Content Creation[1]	Marketing and Promotion	Wholesale Distribution	
UnitedMasters		✓	✓	[1]
DistroKid		✓	✓	[2]
CD Baby		✓	✓	[3]
ONErpm		✓	✓	[4]
Ditto Music		✓	✓	[5]
amuse		✓	✓	[6]
Record Union		✓	✓	[7]
Sonicbids		✓		[8]
beatBread	✓			[9]
Fiverr	✓	✓		[10]
Sage Audio	✓			[11]
Bandcamp		✓	✓	[12]

Notes:

[1] Content creation refers generally to services that support artistic development, such as: sound recording, producing, or funding.

Sources:

[1] https://unitedmasters.com/about.
[2] https://www.linkedin.com/company/distrokid/about/; https://news.distrokid.com/goodies-f371fd2ae3c8.
[3] https://www.linkedin.com/company/cd-baby/about/.
[4] https://www.linkedin.com/company/onerpm/about/.
[5] https://www.linkedin.com/company/ditto-music/about/.
[6] https://www.musicbusinessworldwide.com/lil-nas-x-rejected-a-1-million-plus-deal-with-amuse-before-signing-to-columbia-records/;
https://www.amuse.io/en/content/how-to-get-signed.
[7] https://www.linkedin.com/company/record-union/about/.
[8] https://www.linkedin.com/company/sonicbids/about/.
[9] https://www.beatbread.com/.
[10] https://www.fiverr.com/ .
[11] https://www.sageaudio.com/faq.php.
[12] https://bandcamp.com/about.

At the same time that distribution was becoming more democratized, artists were creating their own social media presences and building websites to connect directly with fans. From these websites, fans can also sample tracks from an artist's recordings and, if they want, purchase them directly as downloads. Demonstrated success on streaming services and online connections with a loyal fanbase are a source of bargaining leverage for artists considering a label deal for the first time. Connections established with fans and the ability to maintain those connections using social media and other online resources without the support of a label should also raise the compensation bar for labels' roster artists when it is time to consider renewing their contracts.[46]

Online services also offer consumers tools for searching among the myriad artists and songs from which they can choose. With Spotify's search tools, for example, it is possible to filter music by year of release, by artist, by album, by individual track, and by genre, and these filters can be combined to further narrow a search.[47] Search tools made it possible for music fans to discover recordings and artists they might never have encountered before digital distribution became the norm while at the same time giving artists a new way to find an audience and build a fan base. Streaming service customers can also listen to curated playlists, which has proven to be another effective way to discover artists they otherwise might never have found. The more influential playlists have been credited with breaking new stars.[48] In January 2022, the British group Glass Animals became the first British band to reach the top of Spotify's top global song chart–this despite not receiving much support from radio or the written media. The band described streaming services as "level[ing] the playing field."[49]

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46 Rick Hendrix, a consultant and advisor to artists, makes these points in an interview with *Forbes*. According to Hendrix, "In many ways, social media and streaming platforms have made talent and potential talent more visible. It has also given artists an option and reduced the leverage that labels traditionally had over them." In addition, he explains, "Artists are now positioned better and can often attract some degree of success before labels get to them, this way they come to the table with a loyal followership and can add directly to the bottom line." Josh Wilson, "The Age Of Digital; Music Executive Reacts To The Impact Of Digitalization In The Music Industry," *Forbes*, September 14, 2022, https://www.forbes.com/sites/joshwilson/2022/09/14/the-age-of-digital-music-executive-reacts-to-the-impact-of-digitalization-in-the-music-industry/?sh=5b5da34e537b.

47 See Mark Harris, "How to Use Spotify's Advanced Search Options," *Lifewire*, October 29, 2021, https://www.lifewire.com/tips-on-using-spotifys-advanced-music-search-options-2438840. For a description of similar search functions for Apple Music and the iTunes Music store, see Markos, "How to Browse for Music Genres on iTunes," Boysetsfire, November 9, 2022, https://www.boysetsfire.net/how-to-browse-for-music-genres-on-itunes/.

48 For an example of how inclusion in an influential playlist can help jumpstart a previously obscure artist's career, see Steven Bertoni, "How Spotify Made Lorde a Pop Superstar," *Forbes*, November 26, 2013, https://www.forbes.com/sites/stevenbertoni/2013/11/26/how-spotify-made-lorde-a-pop-superstar/?sh=5955969276b4.

49 Peter Robinson, "Streams ahead: the artists who made it huge without radio support," *The Guardian*, December 1, 2016, https://www.theguardian.com/music/2016/dec/01/artists-made-it-huge-streaming-spotify-apple-music; Rachel Aroesti, "'Our managers were like: it's going to be a dud': how Glass Animals became the biggest British band in the world," *The Guardian*, January 28, 2022, https://www.theguardian.com/music/2022/jan/28/our-managers-were-like-its-going-to-be-a-dud-how-glass-animals-became-the-biggest-british-band-in-the-world.

Independent labels[50] and artists building careers without signing with a label benefitted from these developments. Independent labels quickly cultivated the capabilities and expertise needed to distribute and promote their contract artists on the online music services and were able to expand their businesses by selling these services to artists that were not on their rosters. A further benefit to independent labels is that the streaming services give less well-known artists on their rosters access to members of an extensive online audience that might never have encountered their music in a traditional music store.

Self-releasing artists who work without labels, including some who preferred that status, have also found that they can develop profitable careers[51] and, in some cases, even achieve considerable visibility placing their music with online stores[52] and marketing themselves in the online environment.[53] Chance the Rapper, who received three Grammys in 2017 working without label support, and selling only through online channels, is a prominent example of what can be achieved by independent artists today.[54] Independent artists also represent a growing share of the global recorded music industry. Between 2015 and 2019, independent artists' share of the global industry doubled and grew by as much as 35% year-over-year.[55] Some estimate that if all self-releasing artists were viewed as one entity, they would be the world's fourth largest record company.[56]

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50 Mark Mulligan, "Independent label market shares: Up on all counts," MIDiA Research, October 28, 2021, https://www.midiaresearch.com/reports/independent-label-market-shares-up-on-all-counts.

51 Tim Ingham, "DIY Artists Will Earn More than $1 Billion This Year. No Wonder the Major Labels Want Their Business," *Rolling Stone*, May 6, 2019, https://www.rollingstone.com/pro/features/diy-artists-will-earn-more-than-1-billion-this-year-no-wonder-the-major-labels-want-their-business-830863/.

52 Akil Dathorne, "10 Musicians Who Found Success Without Major Labels," *The Richest*, September 10, 2021, https://www.therichest.com/rich-powerful/10-musicians-who-found-success-without-major-labels/.

53 "Social Media's Critical Role in the Music Industry," Musicians Institute, College of Contemporary Music, April 14, 2021, https://www.mi.edu/in-the-know/social-medias-critical-role-music-industry/.

54 See Amy X. Wang, "Why Chance the Rapper–who just made Grammy history–gives his music away for free," *Quartz*, February 13, 2017, https://qz.com/908815/why-chance-the-rapper-who-just-made-grammy-history-gives-his-music-away-for-free; Amy X. Wang, "An Indie Music Expert Explains Why Artists are Turning Away from Record Deals," *Rolling Stone*, November 1, 2018, https://www.rollingstone.com/pro/news/ditto-music-lee-parsons-interview-749510/.

55 Mark Mulligan, "Recorded Music Revenues Hit $21.5 Billion in 2019," *MIDiA Research*, March 5, 2020, https://www.midiaresearch.com/blog/recorded-music-revenues-hit-215-billion-in-2019; Mark Mulligan and Keith Jopling, "Independent Artists | The Age of Empowerment," MIDiA Research, June 2019, https://www.midiaresearch.com/reports/independent-artists-the-age-of-empowerment.

56 Tim Ingham, "DIY Artists Generated $821M In 2019 – Now Amuse Is Launching A Pro Subscription Tier to 'Accelerate Their Careers," *Music Business Worldwide*, March 2, 2020, https://www.musicbusinessworldwide.com/diy-artists-generated-821m-in-2019-and-amuse-is-launching-a-pro-subscription-tier-just-for-them/.

D. Adjustments by major labels

As music consumption and purchases shifted increasingly toward content available through various online channels, the major labels had to develop expertise for placing their releases in the new channels and promoting artists and releases within these channels. For example, the major labels developed their own playlists for inclusion in the bigger streaming services and worked to place their releases on the more influential playlists on these services.[57] Labels also had to develop new skills and expertise for cross-promoting online and offline sales and using a mix of online and offline media outlets to promote their artists and releases.

As online channels came to dominate music consumption and sales, labels also had to adjust their release and promotional strategies to reflect a market in which music consumers selected their music on a track-by-track basis and promoting albums no longer delivered the financial payoff it once did. For example, a number of prominent artists with major labels have experimented with releasing their recordings to online channels first and following up later with releases in physical formats.[58]

Streaming services provide continuously updated data on sales by recording and by individual artist, and labels (both major and independent) now look to trends in streaming services' data to help them find new artists they might want to sign. Unknown or little-known artists whose streaming numbers spike when one of their recordings goes viral may be seen as potential candidates for addition to label rosters. Searching for talent by tracking streaming data is

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[57] Ashley King, "A New Study Confirms the Obvious: Major Labels Control Spotify Playlists," *Digital Music News*, May 4, 2022, https://www.digitalmusicnews.com/2022/05/04/spotify-playlist-study-major-labels/; "Independents join forces to battle major label streaming playlists," *Music Business Worldwide*, September 4, 2015, https://www.musicbusinessworldwide.com/independents-join-forces-to-battle-major-label-playlists-on-spotify/.

[58] For example, in 2018, Cardi B, an on-roster artist of Warner Atlantic, released her record exclusively through streaming services and followed up with physical record sales after the initial launch period. See, Tim Ingham, "The Album is in Deep Trouble – and the Music Business Probably Can't Save It," *Rolling Stone*, November 9, 2018, https://www.rollingstone.com/music/music-features/the-album-is-in-deep-trouble-and-the-music-business-probably-cant-save-it-753795/. Another example is Frank Ocean. His 2012 album *Channel Orange* with Universal Def Jam was available exclusively from the iTunes store one week before the official launch date. David Greenwald, "Frank Ocean's 'Channel Orange' Heading for iTunes Early Release," *Billboard*, July 9, 2012, https://www.billboard.com/music/music-news/frank-oceans-channel-orange-heading-for-itunes-early-release-481870/.

considerably less time consuming and costly and can be more comprehensive than doing so by attending local and regional artists' performances in clubs and other venues.

III. Contractual Arrangements with Artists

A. The relationship between artists and labels is complex

The massive changes in the music recording industry that we have documented, including the proliferation of alternatives to the major labels available to artists for making and distributing their music and reaching their fans, have been accompanied by a broadening of the range of terms and types of contracts available from the major labels. Contracts between artists and labels must provide a structure to the relationship that establishes incentives for the label to make investments in the artist, that establishes incentives for the artist to make best efforts to produce commercially successful work, and that aligns the interests of the label with those of the artist when artistic decisions need to be made and funded. The digital revolution in the music business has created more ways for artists to enter the music business and more services for major labels, independent labels, and other service provider to offer. But many aspects of the artist-label relationship, including the incentive and investment concerns just mentioned, transcend the upheavals to the market and must, as ever, shape the contractual terms that determine their rights and responsibilities with respect to each other. In this section we discuss the complexities of the artist-label relationship, the economic principles that would be expected to shape contractual terms between labels and artists to address those complexities, and what we have learned from examining major label contract terms and data about how those principles have been realized in practice.

In the economic relationship between recording artists and record labels, each party plays a role that contributes to the success of the partnership. Artists, of course, bring their talent, creativity, and vision for the music they create. Labels provide at least two necessary ingredients to bring the artist's vision to fruition, 1) they supply upfront financing so the entrepreneur—the artist—can obtain needed tools and equipment, retain other artists and providers of other services, such as producers, who can enhance the quality of a recording, and devote their own time and energy to creating musical recordings; and 2) they bring expertise, business relationships, systems, and connections for marketing and distributing the artist's final product so that it can achieve commercial success.

Because an important role of the label is to provide upfront financing for the artist to be able to execute their vision using their own time, talent, and expertise, the relationship between an artist and a label is more like that between a venture capitalist and an entrepreneur than to the relationship between an employer and employee. Consequently, the contractual arrangement between them navigates and addresses issues that may not arise in a typical employer/employee relationship.

The relationship between artists and labels is characterized by challenges that must be resolved to arrive at a successful outcome. For one, the success that an artist (like that of an entrepreneur) will have in the future is unknown at the time a contract is signed. An artist's success depends, of course, on the artist's talent and training, but depends also on the artist's efforts, diligence, and perseverance. None of these are factors that can be explicitly specified in a contract. Standard economic principles of contracting tell us that a contract is likely to achieve a desired outcome if the desired actions by the parties are clearly delineated. For example, a contract (written or verbal) between a retail worker and his employer might specify the number of hours, the starting and ending time, and the tasks the employee will perform. Contracts that are based on the worker's inputs (hours of work, for example) tend to be observed even in settings in which the worker's output is not directly measurable, such as in managerial roles, where the employee is not directly responsible for producing a measurable output.

Where it is possible to measure and verify the output of an individual, it is often preferable to compensate that individual in relation to output rather than input, especially when critical inputs like creativity and diligence cannot be measured well, or at all. In the music world, artists are generally compensated according to their output, measured by the profits or revenues generated by the songs, albums, or other content they create. The benefits of output-based compensation include creating effective incentives for the worker to invest time and effort into the production of the desired output, and to do so efficiently, because only the worker or artist knows the personal cost of the time and energy involved.

Artists are also compensated according to the profitability they create, rather than their inputs to the process (effort and time) for many reasons that are recognized by economic theory. First, the input of an artist is likely to be difficult to observe, measure, and verify. How hard an artist works to achieve success—to write a successful song, for example—is not a simple function of how many hours they put into the task and, in any event, the number of hours that an artist spends thinking about a song, reading, listening, or engaging in other activities for inspiration, and writing and rewriting, are not easily observable by a label or measurable. Artists control not only the amount and focus of the effort they devote to their career, but also the timing of their efforts. Artists have the ability to delay or refrain from work if they do not find their contract sufficiently motivating or if they believe doing so can extract concessions from the label.

An artist who is paid as a function of the commercial success of their work is expected to focus their efforts more on commercial success than one paid only for their time, regardless of success. While music artists are motivated by their own artistic sensibility (and not only financial rewards) to produce work that they consider valuable and that they think others will want to hear, a contract that rewards the artist on the basis of the profitability of what they create will be expected to focus the artist's creative efforts in directions that not only satisfy their own artistic sensibilities but also appeal to the public in way that will generate profits. Hence, compensating an artist on the basis of commercial productivity measured as financial returns aligns the interest of the artist with those of the label.

Paying an artist depending on commercial success has drawbacks for both the artist and the label, of course. One is that an artist's success, while related to the artist's efforts, time invested, creativity, ability to leverage social media and other forms of self-promotion, and perseverance, is also related to factors partly or wholly outside the artist's control, such as evolving tastes in music and culture. These factors that are outside the control of the artist make the endeavor risky for the artist and uncertain for the label as well. Several features of typical artist contracts mitigate the risks faced by both parties.

Developing, producing, and promoting music is a costly endeavor. A significant upfront investment may not be recouped if there is insufficient demand for the product (or if the production process fails to produce a salable product). Producing commercially successful music typically requires substantial investment be incurred before revenue, if any, is generated. Hence, as noted, one role of labels is to provide that upfront investment to artists who would otherwise not have access to the capital needed for optimal music production or to focus on their craft. Making upfront investments in artists enables new artists to break into the industry and can make the creation of recorded music a less risky endeavor for any artist.

For the business of investing in music artists to be viable there must be a way to recoup the investment. In our economy, the canonical way that investors who provide upfront capital to entrepreneurs recoup their investment is by holding a claim on a share of the revenues or profits—if any—that are generated by the investment. The investor recoups its investment if the output generates sufficient revenues that the investor's share at least covers the investment, and the investment in a particular artist turns out to be worthwhile if it generates sufficient revenues to not only allow the investor's share to cover the investment itself but to also provide a return on the investment that compensates the investor for not using her funds for some other investment instead. Like other investment settings, in the music business the business model is that artists must pay back the investment only if their music generates sufficient revenues to at least recover the investment; and the amount recouped by the label makes the investment worthwhile if it compensates the investors for the forgone alternative uses of their investment funds. The more net revenues generated by the music, the better for both the artist and the investor.

Not all artists' projects generate enough revenue to allow the label to recover its investment in that artist. According to a report published by the International Federation of Phonographic Industry (IFPI), record companies invested $5.8 billion worldwide into A&R and marketing in 2022, which accounts for approximately 22 percent of their annual revenues.[59] According to a 2016 report published by IFPI and Worldwide Independent Network (WIN), "the vast majority of albums do not break even financially."[60]

Because music labels play the role of upfront investor, they have a financial interest in the success of the artist and therefore have a financial incentive to make efforts to increase the likelihood and

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[59] "Record companies: Powering the Music Ecosystem," *IFPI*, accessed June 8, 2023, https://powering-the-music-ecosystem.ifpi.org/.

[60] "Investing in Music," IFPI and WIN, 2016 (hereafter, 2016 IFPI and WIN Report), https://www.riaa.com/wp-content/uploads/2017/01/ifpi-iim-report-2016.pdf.

magnitude of the artist's success. The structure of a typical artist contract with a label shares risk between the artist and the label—the more revenues generated by the music, the more likely is the label to recoup its investment and earn a return on it; and the more revenues generated by the music the more likely it is that the artist is able to "repay" the advance and start earning royalties. In contrast, a contract that, for example, paid the artist a lump sum for the work with the label retaining all of the proceeds would create weaker incentives for the artist to create a hit, and a contract that gave the label a capped return regardless of the success of the recording would reduce the incentives of the label to promote and advance the success of the recording. It would also reduce the ability of the label to recoup its investments overall and on average, because, as just noted, some artists' recordings never generate enough revenue to recoup the label's investment.

Indeed, a contract that capped the label's return on a recording would likely have more far-reaching effects, including effects on other artists. If labels' earnings on their most profitable recordings were capped at some level below the maximum the labels might otherwise earn, then they would likely respond by financing a more predictable set of recordings while dropping riskier recordings they would otherwise finance, including ones that are so novel or creative that they could be either wildly popular or fail abysmally. That is, capping the label's upside would make labels more risk-averse, to the detriment of artists who are the greatest risk takers in their creative approach.

Alternatively, a contract that requires the artist to pay back all the label's investment regardless of the artist's success would, in principle, reduce the label's risk but would likely be infeasible for many artists. Of course, if the artist did not have sufficient resources to reimburse the label for its investment in the production of the artist's music if the music was not successful, a contract that required the artist to reimburse the label regardless of the music's success would not in fact limit the label's risk because the artist would be unable to fulfill its obligation. New artists, in particular, do not typically have the financial resources to fund production, marketing, and distribution of their music on the scale that a label can. Hence, we would not expect to see such contracts with new artists, and do not.[61]

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[61] Some artists are extremely wealthy and would be able to make the equivalent of the label's investments in their music if they desired. Older artists who are now enjoying the benefits of reputations earned long ago by releasing music independently and using for-hire distribution and promotion services may in fact be covering a lot of their production expenses in particular on their own.

The shared risk between the artist and the label creates powerful incentives for not only the artist but also the label to undertake initiatives and develop expertise that will enhance the artist's success. Indeed, labels do not act as passive investors but play an affirmative role in increasing the likelihood of the artist's success. The success of an artist depends not only on the artist's efforts, talent, and luck, but also on the efforts, skill, and resources of the label.

Labels, therefore, make significant investments in their own capabilities that enable them to increase their artists' success. These include people with expertise in music production, experience working in the industry, or contacts with distribution companies. As mentioned earlier, according to IFPI's website, record companies invested $5.8 billion worldwide into A&R and marketing in 2022, of which $4.1 billion was in A&R, i.e., services related to discovering and signing new artists and connecting the artists with songwriters and producers to help realize their artistic visions.[62] In addition, a label must maintain information systems to keep track of artists, contracts, and contractual obligations, as well as the information systems required to keep track of relevant accounting and financial figures.

While labels make investment in business infrastructure, expertise, and other assets that are not specific to individual artists (e.g., the costs of maintaining an accounting infrastructure are not driven by the contract of any individual artist), they are made for the purpose of enhancing the likelihood and magnitude of the success of the artists under contract to them. Hence, these investments and costs must also be recovered overall from the revenues generated by the artists. Each artist benefits from the distribution, promotion, and talent development infrastructure and resources of the label, and for the label's business to be viable, the artists' contracts must be structured so that, in aggregate, they are expected to generate enough revenue to recover not only the incremental investments in each artist's work (e.g., the recording costs for that artist) but also the costs of the label's infrastructure that cannot be directly attributed to any given artist.

The benefits to artists of the label's investments in their work are not limited to a specific project. Rather, some investments have long-term benefits to artists. For example, labels' promotional efforts on behalf of their artists contribute to the development of the artist's image, persona, and

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62 "Record companies: Powering the music ecosystem," *IFPI*, accessed June 8, 2023, https://powering-the-music-ecosystem.ifpi.org/. "Industry Data," *IFPI,* accessed June 8, 2023, https://www.ifpi.org/our-industry/industry-data/.

reputation. Labels also provide assistance in developing a musical style with commercial appeal. These are investments from which the artist may benefit well into the future. Moreover, labels learn the work style and preferences of the artist and develop an understanding of the preferences and expectations of the artist's fans. Hence, labels develop artist-specific expertise.

Although output-based (i.e., profit-based) contracts align the incentives of the label and the artist toward increasing the likelihood of producing commercially successful music, they do not resolve every possible conflict. For example, while both the artist and the label may want to maximize the likelihood of the artist's commercial success, they may have legitimate differences of opinion about how to achieve it. There are multitudes of artistic choices and business decisions that must be made in the process of creating and recording music, and in the process of distributing and marketing it. The decisions that the artist views as most likely to lead to success may differ from the views of the label. And labels can refrain from best efforts to promote the artist if the label believes the artists' requests are not in the best interest of the artist's success. Because contracts cannot anticipate every possible source of differences of opinion on artistic and business matters, they must incorporate mechanisms for resolving those differences when they arise. Hence, the relationship between the artist and label is complex, necessarily risky even when both parties are making best efforts, and has the potential for disagreements. The forms that contracts take can be understood as addressing these issues.

B. The structure of artists' contractual arrangements addresses these complexities

In the music industry, artists' contractual arrangements, even with a given label, are not uniform. Contractual arrangements vary significantly from one artist to another depending on what the artist negotiated, the history and past success (if any) of the artist, and the scope of services desired by the artist.

We have reviewed data for hundreds of contracts on a confidential basis. We have found that contracts vary on numerous dimensions. These include album commitments, advances, recording funds, royalties, marketing funds, tour support, and legal advances, among others.

In addition, the payment schedule of advances—that is, the percentages payable on commencement of recording, on delivery of a certain number of masters, and on delivery of the full album—can vary across artists. Not only do the minimum and the maximum advances vary across artists, but the extent to which they increase with the successive albums also varies across artists. For one artist, the minimum advance for the last album anticipated in a contract may be only minimally higher than the advance for the initial one; while for another artist, it can be two or three times higher. Similarly, the royalty rate may also increase with the successive albums, and the extent to which it increases can vary. For some artists it may increase with each successive album, while for others it may be a fixed rate for all the albums. Album commitments also vary. We have seen some include an initial album and three to five options for subsequent albums which will be exercised conditional on the commercial success of the preceding albums. We also see examples of the initial period including one or more EPs instead of one album, or one album and one development EP.

Indeed, the data on contracts we reviewed revealed significant variability in the contracted terms negotiated by the parties. When comparing contract terms for one album, the minimum and maximum advances can vary across artists by a factor of ten. And royalty rates may vary by a factor of two.

The terms that we just described vary not only from artist to artist but according to the data and materials we have reviewed, these terms are all negotiable items. As in any contract negotiation, parties to music label contracts will not sign a contract unless the terms are at least as good in expected value as the expected value obtainable from the next best alternative. Expected value refers to the sum of the outcomes that might be achieved times the probability of their occurrence. As a simple example, if an artist might generate $1m in revenues with probability 0.2 and $100k in revenues with probability 0.8, the expected revenues this artist's work would generate would be ($1m x 0.2) + ($100k x 0.8) = $280,000. If it would cost the label $300k to produce the album, the expected value of the album would be negative, an investment the label would be expected to find unattractive. Alternatively, if the same revenue prospects would be available for an incremental cost to the label of $200k, the expected incremental net value of the project would be $80k, the split of which would likely be the subject of negotiation between the parties.

Economic principles dictate that the expected split of the $80k in this example under the terms of the contract would depend on the negotiating power of the negotiating parties, and both parties have negotiating power in this relationship. The negotiating power of each party derives from that party's unique assets. For the label, this means that, at a minimum, the label will not find it worthwhile to sign an artist on terms that would, in expected value, cost the label more than the revenue it would be expected to generate. For the artist, this means that, at a minimum, the artist will not sign a contract that would generate less in net expected revenues than the artist could achieve by signing with an alternative label or by producing and releasing the music on their own.

Suppose, for example, the label has assets that a particular artist finds more valuable than the assets of a competing label. For example, suppose that label A has marketing expertise in the particular genre of the artist such that at label A the expected revenue of the artist would be $280,000 (as above) but competing labels, with less genre-specific expertise or connections, could likely generate only $250,000 in expected revenues for this artist. Then the $30k difference in the expected increase in the profitability of this artist is attributable to the extra value contributed by the assets of label A. Nevertheless, realization of that value requires the agreement of both parties. Hence, both parties are likely to benefit from the $30k in value created.

Artists' negotiating power also derives from their unique attributes, and artists are by nature unique. An artist who could generate expected revenues of $280k for an incremental investment of $200k could, if they didn't sign with label A, sign with label B or C instead. If, at label B and C, the artist could generate expected revenues of $250k for an incremental investment of $200k, labels B and C would compete for this artist to the point that we would expect one or both B and C to be willing to offer a contract worth $50k. Hence, the artist would, in principle, not be willing to accept a contract with label A with net value of less than $50k. The fundamental principle is that the amount of value that artists can capture in their contracts depends on the value that they are expected to create.

Artists are not expected to have negotiating or legal expertise. However, based on our review of the contract data available to us, we have found that artists are in virtually all cases represented in their contract negotiations by experienced counsel. Indeed, the label generally fronts the costs for the artist's legal representation, and the artist is at liberty to retain the lawyer of their choice. Almost all of the contract materials we reviewed guaranteed the artists a "legal advance" that was separate from other funds advanced, with the amount varying from one contract to another by a factor of more than ten and with the median in the tens of thousands of dollars. These funds were typically associated with an artist's initial contract period and were usually payable immediately following the full execution of the contract to help the artist defray their legal expenses.

Hence, we would expect artists' contracts to reflect the knowledge of legal counsel and counsel's ability to negotiate over numerous terms in label contracts and to understand the degree to which the artists' alternative options can translate to negotiating power.

Artists' contracts vary not only in financial terms but in the scope of services provided. Today, the scope of contracts varies substantially, with some contracts having a very broad scope. For example, contracts may incorporate not only production, marketing, and distribution of recordings but also support for touring, merchandise, publishing, endorsements, live performances, television/film appearances, and other ancillary sources of revenue. These are known as "360" contracts in reference to full circle or wraparound of services provided by the label. Also, today, the musical products incorporated into contracts are not routinely limited to albums but reflect the fact that music sales are frequently in the form of EPs or singles[63] and the media are not limited to vinyl albums or other physical media such as CDs as in the past, but are heavily weighted toward streaming sales and downloads.

Contracts typically entail providing to the artist advances provided by the label for each project, and paying the artist a percentage of revenues generated. The payments to the artist based on a percentage of revenues are known as royalties, and typically the royalties earned are retained by the label until they are sufficient to recover the upfront advance from the label. Subsequent royalties are paid out to the artist. In this way, the label is able to recover its advance, but only if the musical product earns enough to cover it. If the revenue generated from the musical product falls short of the amount of the advance, the artist is not required to repay the difference, and the

[63] "An album or LP (Long Play) refers to a full length [sic] body of work, features between 7-29 tracks and has a running time of roughly 35-60 mins. An EP (Extended Play) refers to a half-length body of work, features between 4-6 tracks and has a running time of roughly 15-22 mins (but can be up to 30 minutes). A single is the shortest body of work you can release, features between 1-3 tracks and has a running time of roughly less than 10 mins." See "Albums vs EPs vs Singles: A Guide to Releasing Music in 2023," *Ditto Music*, May 23, 2022, https://dittomusic.com/en/blog/albums-vs-eps-vs-singles-a-guide-to-releasing-music/.

difference may carry over to the next project under the contract if the label decides to pursue the next project.[64] Hence, the artist benefits from the risk taken by the label.

Advances to the artist typically are sums that cover recording costs as well as upfront cash. The artist has considerable discretion over the use of the funds for recording, but the discretion is not unlimited because the artist and label typically must mutually agree on the choice of producer and other factors related to the music production. For example, the artist may wish to bring in certain studio musicians or collaborators or obtain the services of specific producers, sound mixers, and other technical artists whose input is important to the sound and quality of the final product, which the artist can do if the label approves. The label provides support and advice such as recommending musicians, producers, engineers, songwriters, and mixers. Indeed, a label's A&R department is responsible for introducing artists to their network of contacts in the industry and for providing creative support to help showcase artists' talents.[65]

In some cases, the advances paid to an artist increase over the course of the contract depending on the success of earlier work. As mentioned earlier, some contracts specify that an artist's future advances will be equal to a percentage of royalties from an artist's previous albums. These advances are typically subject to agreed-upon maximum and minimum values, but these contracted maximum and minimum values typically increase with each album. In addition to advances, an artist's royalty rates may increase with successive albums too, especially for artists who have not yet proven they can produce commercially successful recordings over the long term. But royalty rates also typically increase with the volume of sales. It is relatively common for an artist's contract to have a base royalty rate and language specifying an increased royalty rate for an album if certain sales thresholds are met.[66]

Contracts typically provide for a fixed number of deliverables or projects. A typical contract covers an initial album and the possibility of four to five more. This is lower than the number of projects typically incorporated into contracts 20 years ago. In the year 2000, nearly 80 percent of

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64 Owen Davie, "Everything You Need to Know About Music Advances," *Hypebot*, February 10, 2020, https://www.hypebot.com/hypebot/2020/02/everything-you-need-to-know-about-music-advances.html.

65 *2016 IFPI and WIN Report*, p. 10.

66 "An Artist's Guide to Royalties, Recoupment & Cross-Collateralization," *Mark Tavern Management*, August 1, 2020, https://www.marktavern.com/blog/2020/8/1/an-artists-guide-to-royalties-recoupment-amp-cross-collateralization.

new artists were committed to—at minimum—six albums, with 37 percent of artists being committed to seven or more.[67]

The additional projects are referred to as "options." These are termed "options" because the label decides after the execution of a project under the contract whether or not to move forward with the next project. If the label decides to move forward, advances are paid under the terms of the contract, the work is produced, the artist promotes the product via touring and other activities supported by the label, and royalties are paid according to the terms of the contract. If the option is not exercised, the contract ends.

In addition, contracts typically incorporate a "pay or play" provision by which the artist is paid and released from the contract if the label decides for its own reasons to discontinue the project midstream. The amount paid under a "pay or play" provision is often related to the number of album releases that remain on the artist's record deal. The artists may receive compensation even in the case where the artist is released without having produced any album under contract, including if the label chose not to permit the artist to complete the album. In the case where at least one album has been released under contract, the compensation structure varies and often employs a formula that incorporates some combination of the recording fund or all-in advances for the preceding, current, and remaining albums.

At any point in the relationship artists may seek to renegotiate their contracts. Even after a contract is agreed to and signed, successful artists retain some negotiating power. The negotiating power of successful artists derives from at least two sources. First, artists always and by nature of the creative process control the pace by which they create. An artist who believes their contract terms have become insufficient can choose to delay their next project while they, for example, pursue other activities such as acting, performing, writing, education, or leisure.[68] Delaying the next project is costly for the label because, as a general principle of economics known as the "time value of money," a dollar earned this year is worth more than a dollar earned in the future. By

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[67] *2002 Wildman Report*, p. 14.

[68] For example, it is not uncommon for individual members of bands to pursue other musical projects on their own or in collaboration with other artists.

threatening to delay their next project, and the date at which it, therefore, starts to generate revenue for the label, an artist creates an incentive for the label to renegotiate.

A second factor that creates bargaining power for successful artists even after a contract is signed is that labels have an incentive to maintain a good relationship with artists—particularly, successful artists—so that the artist will want to re-sign with the label when their current contractual commitments have been completed. Comparable to many professional relationships, because the relationship between and artist and a label entails numerous decisions by both parties about how the music will be performed, produced, marketed, and distributed that are not and cannot be explicitly memorialized and pre-determined in a contract, both parties face risks that the other party's idea of how to make artistically and commercially successful music will differ significantly from their own. The artist also faces the risk that, once a contract is signed, the label will not treat the artist in a way that the artist believes is "fair." Hence, an artist's choice of labels is not determined solely by the financial terms going into a new contract but also by an assessment of whether, once the contract is signed, the label will make decisions that are sympathetic with the artist's preferences and will share the artist's success with the artist once the agreement is made. The label, knowing that its treatment of an artist creates expectations on the part of the artist and creates a reputation for itself, therefore has an incentive to allow the artist to renegotiate terms during the course of a contract. Renegotiating terms while a contract is still in force may cost the label in the short run but can benefit the label in the long run by creating a relationship that advantages the label at the time of contract renewals with its most successful artists.

For example, in 2018 the artist Cardi B released her debut album. Following the success of this album, her contract was renegotiated prior to the release of her second album.[69] The rapper Jadakiss was able to renegotiate his contract after winning a high-profile rap battle in 2021.[70] After changing management, the Latin music star J Balvin was able to renegotiate "one of the most lucrative contracts ever for a Latin act" with Universal Music Latino in 2019. Balvin's new

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[69] "Cardi B Says It 'Feels Good To Be Free' After Settling Lawsuit by Ex-Manager," *Billboard*, December 28, 2020, https://www.billboard.com/pro/cardi-b-lawsuit-settled-ex-manager-reaction/; Yohance Kyles, "Atlantic Records Executive Mike Kyser Addresses Rumors Of A Contract Dispute With Cardi B," *AllHipHop.com*, May 28, 2020, https://allhiphop.com/news/atlantic-records-executive-mike-kyser-addresses-rumors-of-a-contract-dispute-with-cardi-b/.

[70] Ashley King, "Jadakiss Says His Verzuz Win Helped Him Renegotiate His Def Jam Contract," *Digital Music News*, August 4, 2022, https://www.digitalmusicnews.com/2022/08/04/jadakiss-verzuz-win-contract-def-jam/.

contract also gave him greater access to some of to the label's most exclusive marketing and promotion resources.[71]

Examples of labels renegotiating contracts for successful artists is not limited to Cardi B, Jadakiss, and J Balvin. Renegotiating the terms of major label contracts is not uncommon. In documents from a full year for one label, we have found that *all* of the artists that the label signed in that year, and remained with the label for seven years, had renegotiated the terms of their contracts.

It is in fact relatively uncommon for an artist signed to a contract to remain with a label for seven years. In our analysis of the major labels' rosters, we found that of all the artists signed in 2015 (a year chosen because it was the most recent year for which we had a full seven years of subsequent roster data) only approximately 30 percent remained on roster in year seven of their contract and fewer than half remained after year three. See Table 4. Among the artists who left a major label contract before year seven of the contract was the "American Idol" star Adam Lambert, who left Warner in 2018, his fourth year on its roster. He subsequently joined the independent label and distributor EMPIRE, produced several singles, and followed up with the Album, *Velvet*, in 2020.[72] Russ—a hip-hop artist—signed with Columbia Records in 2017. He has received 15 Gold or Platinum certified recordings that are associated with Columbia, according to the RIAA. Russ left Columbia in 2020 and announced in 2022 that he had started his own independent record label DIEMON. The single *HANDSOMER* released independently on DIEMON is currently certified Platinum.[73]

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71 Leila Cobo, "J Balvin's Plan to Become Music's Next Billionaire," *Billboard*, February 27, 2020, https://www.billboard.com/music/latin/j-balvins-plan-to-become-musics-next-billionaire-9323112/.

72 Shirley Halperin and Michele Amabile Angermiller, "Adam Lambert Lands New Record Deal Ahead of Oscars Performance (EXCLUSIVE)," *Variety*, February 21, 2019, https://variety.com/2019/music/news/adam-lambert-signs-record-deal-empire-new-song-1203144579/; https://open.spotify.com/album/3x2eQlp6uoy5E5uuI1zcdg; "Adam Lambert Discography," Discogs, accessed February 8, 2023, https://www.discogs.com/artist/646266-Adam-Lambert?limit=250&type=Releases&subtype=Singles-EPs&filter_anv=0&page=1.

73 Russ Gold & Platinum Search Results, Gold & Platinum, accessed February 9, 2023, https://www.riaa.com/gold-platinum/?tab_active=default-award&ar=RUSS&ti=&lab=&genre=R%26B%2FHIP+HOP&format=&date_option=release&from=01%2F01%2F2017&to=&award=&type=&category=&adv=SEARCH#search_section; Elias Leight, "Russ Doesn't Trust Other Labels. So He Built His Own," *Rolling Stone*, March 30, 2022, https://www.rollingstone.com/music/music-features/russ-diemon-label-interview-1329918/; Ellise Shafer, "Russ and Bugus Launch DIEMON, an 'Artist-Friendly' Label Looking to Change the Mindset of the Music Industry (EXCLUSIVE)," *Variety*, March 30, 2022, https://variety.com/2022/music/news/russ-bugus-diemon-records-label-1235217522/.

Table 4: Among the 238 Artists Who Signed to a Major Label in 2015, a Majority Did Not Remain with the Same Label After Seven Years

Year	Remained	Left	Attrition Rate
2016	194	44	18%
2017	161	33	14%
2018	109	52	22%
2019	92	17	7%
2020	80	12	5%
2021	73	7	3%
Total (2015-2021)	**73**	**165**	**69%**

Notes:

[1] Our roster data are mostly snapshots at year ends from 2014 to 2021. In the cases where a snapshot is from January, we classify that roster as being from the previous year.

[2] Artists who do not appear on a label's 2014 roster but appear on its 2015 roster are identified as having signed with that label in 2015. Therefore, labels that did not provide 2014 roster data are excluded from this analysis.

[3] If an artist appears on multiple labels' rosters in the same year, we assume that the artist was on the roster of the same label as the year before. For example, if an artist appears on label A's roster in 2015-2016 and also appears on label B's roster in 2016, we classify this artist as still being with label A in 2016. Therefore, the attrition rates presented in the table may be underestimated.

[4] We assume that gaps in between an artist's on-roster years are roster errors. For example, if an artist appears on a label's roster in 2015-2017 and on the same label's roster in 2019, and does not remain on a roster from 2020 onwards, we will classify this artist as having been on a major label roster in 2018, and we will denote 2020 as the first year this artist no longer appeared on a roster.

Sources: CRA analysis of Universal, Sony, and Warner rosters provided to the authors. Not all labels' rosters were provided.

The structure of artists' contracts is responsive to and understandable with reference to the challenges and goals of the artist-label relationship that we have just discussed. As noted, compensation to the artist is based on the commercial success of the artist's music because the commercial success of the artist's music is both measurable (unlike the artist's effort and input, which is more subjective and difficult to measure), and because basing compensation on the music's commercial success shares risk between the artist and label in a way that creates incentives for both parties to maximize the commercial appeal of the artist's work. It also creates a means for the label to finance the artist's work without knowing how successful it will be by creating a mechanism for recoupment if the music is successful.

A characteristic feature of music artists' contracts is that instead of having a fixed time-delimited term, they have a fixed product-delimited term. That is, instead of expiring after a certain pre-specified number of years, artists' contracts expire after a certain pre-specified number of projects are completed. This feature is a response to the fact that, as discussed earlier, an artist controls the pace of their creative output, while the label makes long-term investments in the artist's career and success. Because the inspiration and creative impulses that fuel successful recordings cannot be invoked on command at pre-specified times, both the label and the artist are better off if the artist has flexibility in timing to pursue the creative process. This flexibility itself creates challenges for structuring contracts with artists that serve the interests of both parties, however. In a time-delimited contract, once the label made investments that increased the artist's commercial appeal, the artist would be able to postpone output until the contract expired and then negotiate with the label or another label for a better deal now that the artist was worth more due to the label's investment. In turn, this risk would dampen the incentive for the label to make long-term investments in artists. While the natural need for flexibility in timing of artistic production creates market power for artists in product-delimited contracts as well, as described earlier, a product-delimited contract mitigates the risk associated with strategic delay because the artist would not be able to delay out of a contract entirely. The greater the confidence that the label can have in the artist's attachment to the contract, the greater the incentive and ability of the label to invest in the artist. Hence, product-delimited contracts strike a balance because, on the one hand, the evidence we have discussed demonstrates that they provide ample opportunity for major label artists who prove to be successful to renegotiate their contracts, while on the other hand they encourage more label investments in artists than would time-delimited contracts, to the benefit of the artist and the label.

As with any contractual relationship, there may be instances in which one or the other party is disappointed in the outcome or regrets committing to the agreed-upon terms. It is the nature of contracts that they are commitments for future conduct and entail uncertainty. If the artist's success is less than anticipated, despite the best efforts of the artist and the investments of the label, both parties will be disappointed and the label may suffer a financial loss on the contract, causing it to regret the deal. If the artist's success is greater than anticipated, the artist may be disappointed that they did not contract for a more generous share of revenues, causing the artist to regret the deal. But regret over the terms of a deal if the artist is successful does not mean that the artist was not well-represented and did not drive a hard, fair, and beneficial bargain at the time when the ultimate outcome was still uncertain. Parties to a contract, both of whom are represented by sophisticated and experienced counsel, would reasonably have made commitments that reflected the information available at the time. The measure of a good deal for an artist should be whether the contract provided the artist reasonable compensation given their *expected* performance using the best available information at the time of the negotiation. It is unavoidable that expectations regarding the future success of contracted projects will be characterized by some, and often considerable, uncertainty. Varying economic conditions, unpredictable trends in music consumers' tastes, the possibility new artists may arise to compete for the contracted artist's fan base, and the waxing and waning of artists' creative impulses all guarantee that this will be the case. The fact that developments that neither the artist or its label could predict produce results that exceed or fall short of expectations held at the time the contract was signed does not mean that either party failed to negotiate the most favorable terms achievable given the information they had at the time.

IV. Conclusions

The music recording industry has undergone dramatic change in the last 20 years. The ways that music is marketed, distributed, and even produced are almost unrecognizable compared to the way things were done at the turn of this century. The development of digital technology, the broad dissemination of broadband access, and the near ubiquity of smartphones, tablets, and computers have revolutionized the distribution of music by establishing the technological and infrastructure foundations for the development of the streaming services and digital download services that dominate the distribution and sale of recorded music today. The impact of the digital revolution on the music industry is readily apparent in industry statistics. Today 83 percent of total music revenue is accounted for by streaming services, a delivery mode that did not exist 20 years ago. Due to the low cost of uploads, many millions of songs have been uploaded to streaming and download services, increasing the volume of music available to consumers by orders of magnitude. Nevertheless, the total revenue generated from the sale of recorded music, whether via physical or digital media, is far lower now than it was 20 years ago. Consumers are getting a lot more and paying a lot less.

The digital revolution in music not only democratized the selection of music available to consumers by placing the choice among a vast array of options in their own hands, but also, by making it possible for anyone to upload a recording to a streaming service or digital download vendor at very low cost, the digital revolution expanded the range and quantity of music created. Consumers searching today's digital music services may find recordings by obscure artists and tunes produced and recorded in bedrooms and garages alongside the work of the world's most famous pop stars.

The major music labels traditionally identified and signed a roster of artists to whom they offered an extensive suite of services–including business expertise; advance funding; matchmaking with producers, studio musicians, and other creative professionals; marketing; and distribution of music that artists needed to be commercially successful, in exchange for a share of the revenues generated over multiple projects. Today, artists have far more ways to obtain those services, ranging from a menu of à la carte options provided by numerous companies who serve artists seeking to assemble their own package of services without contracting with a label, to working with independent labels that also can provide a comparable selection of services, to purchasing services à la carte from the major record companies' label services divisions. It is no longer necessary for an artist to sign with a major label to access the marketplace or the technology and services needed to produce and sell their music and enjoy considerable success doing so.

New technologies, and products and services built on new technologies, have changed the music industry in profound ways. Some of these changes, like the emergence of streaming and download services and the use of mobile phones as primary music listening devices, are quite visible to music consumers. Other changes are readily apparent to industry participants but largely invisible to music consumers. Examples include the growth of a panoply of independent digital services providers whose offerings may be acquired as bundles or on an à la carte basis as alternatives to services offered by the major labels – options that have proven valuable to artists who, by preference or for lack of an offer, are working without a contract with a major label. While these structural changes are significant and consequential, it is important to remember that, as in the past, music is still created by humans who differ greatly in talent and motivation and in the types of music they create, and that music is still consumed by humans whose tastes in music vary widely and may shift suddenly in unpredictable directions. Record companies and providers of related services exist to help music creators find audiences willing to support their work, while simultaneously helping music consumers find and acquire music from those creators whose recordings best satisfy their preferences in music. While industry structures and practices, including contracts, may change in response to the challenges and opportunities posed by new technologies, in the end those industry structures and practices still must reflect a number of critical features of the process of matching music consumers with music creators that remain as impactful today as they were in the past.

- The timing of the creative impulses and inspiration essential to the creation of new and original music with commercial appeal cannot be predicted in advance. Therefore, the creation of new music cannot be bound to a rigid timetable without threatening the quality and artistic integrity of the recordings produced.

- For new recordings commercial success has always been an uncertain proposition and the uncertainty is greatest for recordings from artists that do not already have a proven record of sustained success.

- While the risk of failure can never be eliminated entirely, for artists with talent, drive, creative vision, and the potential to create music with commercial appeal, the types of financial resources, creative resources, and business services that music labels provide can be employed to increase the odds of success enough to more than cover their costs.

- Artists differ considerably in both talent and the potential to create commercially appealing music and for new artists in particular it is rarely if ever obvious in advance who has sufficient potential for achieving commercial success to merit significant investments in advancing their careers.

Labels are in the business of finding and nurturing talented artists and providing resources and support services that can increase the odds that their recordings achieve commercial success. A consequence of the four features of the music creator-music consumer relationship listed immediately above is that for artists who are offered and choose to accept contracts with labels, there are certain realities of the artist-label relationship their contracts must address. These include a label's role in finding and nurturing new talent; the need to help some artists, and new ones especially, fund the production, marketing, and distribution of their music; the benefits of guidance and advice that can help artists realize their artistic visions and develop their sound; the value of business knowledge; business connections that can match artists with individuals with complementary talents; back-office assistance for reaching an audience; the unpredictability of commercial success for new artists especially, but also for forthcoming releases from established artists; and the unavoidably delicate relationship between an artist and a label that encompasses so many judgements and decisions that cannot be perfectly anticipated in a contract. In addition, because the creative process must be allowed to take its natural artist-determined course for the resultant recordings to be successful, while labels find investments in artists both more feasible and more attractive when contracts are written to terminate when specified deliverables (recordings) have been delivered rather than when a specified period of time has elapsed, project-delimited contracts better serve the interests of both artists and labels than can time-delimited contracts.

These realities largely motivate and determine the way that artists and labels contract with one another. Based on our review of the contract information we received, we can report that for different artists the amounts of advances and royalty rates may vary by an order of magnitude or more. The number of projects optioned and the mix and types of recordings covered by contracts also vary considerably, making it clear that contracts are highly individualized and tailored to needs, talents, and musical styles that vary widely among individual artists. Variation among contracts shows that just about all terms are subject to negotiation and indicates further that contract terms are heavily negotiated. The data also show that artists are virtually always represented by legal counsel in their negotiations, and that labels give artists advances to cover the cost of legal representation in their contract negotiations. Finally, because artists differ in so many ways, we should expect to see customized contracts that are correspondingly varied, which, in fact, we do.

Because it is always uncertain how successful an artist's future projects will be, the terms of a contract will reflect the information available at the time and the expectations of the parties. Sometimes the predictions will be too optimistic, and the label may take a loss on the contract. Other times the artist may far exceed expectations and the artist, may feel the benefits of that success were unfairly skewed in favor of the label. But ex post regrets by either the label or the artist do not mean that the contracting parties did not strike a reasonable deal for both parties given what was known at the time the contract was signed. Successful artists may seek to renegotiate the terms of their contract before all projects have been completed and, despite having committed to an agreement, the artist can in practice exercise negotiating power in this circumstance. Successful artists have negotiating leverage both because the artist can impose costs on the label by delaying completion of contracted projects and because the label has an incentive to maintain a good relationship with the artist and a reputation for fairness within the industry in order to re-sign the artist when their contract is completed and to continue to sign highly promising artists.

The contracting documents and information we reviewed are consistent with this analysis of the economic character of recording contracts and description of contracting between artists and labels as an ongoing and iterative process. Although major label contracts typically specify a set number of projects, the contractual relationship with an artist rarely remains unaltered during the course of a contract. Moreover, artists can and do renegotiate contract terms even during the pendency of an existing contract. Based on our review of the rosters of the three major labels over time, we found that over half of the artists signed in 2015 (the most recent year for which we could track artists for seven years) were no longer with their original label within four years and 69 percent were no longer with the label by year seven. In documents from a full year for one label, we found that of artists who remained by year seven, all had renegotiated their contract terms by that time.

Based on the evidence we have reviewed and analyzed in this report, it would be hard not to conclude that the terms of artist-label contracts and the negotiations that produce those terms are reasonable, rational, and efficient responses to the economic challenges posed to both artists and labels by today's music market.