

Filozofická fakulta Univerzity Palackého
Katedra anglistiky a amerikanistiky



Marketing in the Music Industry

(Bakalářská práce)

Autor:

Jan Kašpír

Studijní obor:

Angličtina se zaměřením na aplikovanou ekonomii

Vedoucí práce:

Joseph James Ference Dr.

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I declare that I elaborated this paper independently and that I mentioned the absolute list of works cited

In Olomouc on the day

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I hereby express my deepest gratitude towards Dr. Joseph Ference for his constant guidance, advice and patience in the development of this bachelor thesis.

List of Abbreviations Used in the Thesis

A&R – artist and repertoire

ARC – American Record Corporation

BBC – British Broadcasting Company

BMG – Bertelsmann Music Group

CBS – Columbia Broadcasting System

CD – compact disc

CD-R – recordable compact disc

CD-ROM – Compact Disc Read-only memory – preprinted CD containing data readable by a computer

CEO – chief executive officer

DAT – Digital Audio Tape

DMCA – Digital Millennium Copyright Act

DNS – Domain Name System

DRM – Digital Rights Management

EMI – Electrical and Musical Industries

e-tailer – electronic (internet) retailer

GE – General Electric

IFPI – International Federation of the Phonographic Industry

IP – internet protocol

ISP – internet service provider

LP – long play record

M. C. – music cassette

MCA – Music Corporation of America

mp3 – MPEG2 Audio Layer III – audio compression format

P2P – peer-to-peer: computer internet network allowing users to share files

PIPA - PROTECT IP Act - Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011

R&B – Rhythm and Blues

SME – Sony Music Entertainment

SOPA – Stop Online Piracy Act

UMG – Universal Music Group

VCR – video cassette recorder

WEA – Warner-Elektra-Atlantic

WMG – Warner Music Group

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1 Introduction

This work captures the development of the music industry, mainly the ways of promotion and distribution. This topic attracts a lot of attention from experts and the customers in the market. Since music is present in most people's lives, the possible customer base is enormous.

The aim of this paper is to summarize the history of recording industry, the ups and downs and most importantly, the impact of technological evolution on the music market – the way the inventions like compact disc, the internet, or data compression influenced record sales and what did or didn't the main players in the industry do to adapt to the newly established digital age environment. The paper doesn't try to find a particular solution to the problems the industry is going through. Instead, it tries to capture possible directions the music market will take.

The first chapter briefly summarizes the history of recorded music from the technological point of view. How have the different formats that kept appearing influenced the marketing strategies of the main players and of course the attitude of all people towards the business of music. The greatest changes came in the 1990s so the thesis focuses primarily on the modern era of the music industry.

The following chapter then continues describing the modern music industry. This time an analysis of the traditional marketing model and its drawbacks in connection with today's technological possibilities is made. The final decision to at least partly leave the conservative approach of the biggest companies which for a long time refused to adapt to the environment created by people who quickly learned to use and misuse the digital technology might have come too late. The industry instead of using the technology to make profit only started to fight back with law enforcement falling behind with the actual development of any new system.

After discussing the problems that the traditional model set in the modern age suffers, the next part of the thesis focuses on alternative approaches in some new business models. Those models of course are made not only for the customers' well-being but to save the industry from the way it is heading now.

2 Music history from a technological point of view

In this first chapter I am going to summarize and organize in chronological order major inventions and some other terms important to understand the evolution of music marketing. Most important are the advancements in music recording area, for recorded music is the main subject of marketing. Although it doesn't count as recorded, I am going to include sheet music, because it was the first tangible form of music sold to people.

2.1 Sheet music

One of the forms of music which has been around for a very long time is sheet music. The term refers to a paper containing one piece of music, usually main voice accompanied by a guitar tablature or more commonly a combination of voice and piano. Its spread began mainly after the invention of the printing press and it dominated until the early decades of the twentieth century. In the late nineteenth century it was common for many people in the US to have a piano at home. Therefore, the popularity of sheet music was at its peak.¹

Early sheets consisted of only a single page having no cover. Later, some pieces began to have more interesting design, being accompanied by an illustration which at that time involved expensive engraving so it was more common to present a simple-looking piece of paper to save money. Major change in presentation of music came with the invention of lithography at the end of the eighteenth century. Sheet music began to have an illustrated front cover, first in black and white and later in full color. This was a great step in the marketing of music. People could get a more complex picture of the particular piece of music, it got some added value and became a better selling product.² In many cases publishers used the spare space of the back cover to advertise other pieces of music from their production.

¹ James R. Ogden, Denise T. Ogden and Karl Long, "Music marketing: A history and landscape," *Journal of Retailing and Consumer Services* 18 (2011): 121, accessed March 17, 2011, doi:10.1016/j.jretconser.2010.12.002.

² David Horn and David Sanjek, "Part II The Industry: 15. Publishing: Sheet Music," in *Continuum Encyclopedia of Popular Music of the World*, vol. 1 (Continuum International Publishing Group Ltd/Books, 2003), 600.

2.2 Recorded music

True music mass marketing started only after the music began to be recorded. Music records opened a huge market consisting not only of the records alone but many complementary goods such as the devices needed to reproduce the sound.

The greatest advantage of recorded music was that the original sound could be copied and it was easier to distribute the music all over the world. It's no problem to make thousands or millions of identical copies people can buy as opposed to the difficulty of arranging a concert or any live performance to allow people to hear the particular piece of music. More people were now able to listen to what they liked. Copying was the advantage that eventually would become the biggest threat to the music industry.

2.2.1 The beginning of recorded music: Phonograph

It was in 1877 when Thomas Edison introduced his machine. The phonograph was initially intended to serve as a dictation machine which would rid people in the business world of having to write letters.³

A later version of the phonograph was incorporated into the "nickelodeon". It was a prototype of today's jukebox. For five cents (a nickel) it would play two minutes of music. This system quickly started to replace sheet music because everyone could listen to something that was once available only to the rich people.⁴

2.2.2 Gramophone: first disc media start to appear

After some time, a competitor to the ordinary phonograph appeared. The gramophone was a type of phonograph which used flat discs to play music. It was perfected at the Berliner's United States Gramophone Company and although it was technologically inferior to Edison's phonograph, it was commercially more successful. Despite the sound quality disadvantages, gramophone discs had some major advantages. They were much less space demanding than the cylinders used

³ "Tinfoil Phonograph," Rutgers, last modified February 20, 2012, <http://edison.rutgers.edu/tinfoil.htm>.

⁴ James R. Ogden, Denise T. Ogden and Karl Long, "Music marketing: A history and landscape," *Journal of Retailing and Consumer Services* 18 (2011): 122, accessed March 17, 2011, doi:10.1016/j.jretconser.2010.12.002.

by Edison's phonograph. Moreover, they could be easily mass produced by molding and stamping.⁵

The first gramophone discs to be sold in Europe were songs by Enrico Caruso. The company which manufactured and sold these discs was formed by merging the rights of the three biggest firms in this market: North American Phonograph Company, Edison National Phonograph and Bell and Tainter Graphophone. The result was Columbia Phonograph Company.⁶

These discs were worldly responsible for encouraging many singers and artists to record their voices, because they had been reluctant until then to put their voices into a solid object to make them everlasting.⁷

2.2.3 Compact cassettes

After a long period of time taken by vinyl discs, another recording format gained commercial success in the non-professional area.

Music cassettes (M.C.) were first introduced in 1966 by The Mercury Record Company, an affiliate of Philips.⁸ The first music cassettes were not of high sound quality, being intended mainly for dictation. During the following years, manufacturers improved the technology and implemented some new features, such as Dolby type B noise reduction. That made cassettes much more suited for music recordings. And in the 1980s SONY came up with "Walkman", a portable pocket player.⁹

Giving people the ability to listen to their favorite songs out of home, virtually anywhere, was something that finally granted M.C.s long-lasting popularity. Sony targeted their advertisement at young people and made Walkman a sign of fitness, youth and mobility.

⁵ "Vintage Audio History," last modified December 9, 2011, http://www.videointerchange.com/audio_history.htm.

⁶ David Horn and David Sanjek, "Part II The Industry: 16. Recording: Record Labels/Companies: Columbia (US)," in *Continuum Encyclopedia of Popular Music of the World*, vol. 1 (Continuum International Publishing Group Ltd/Books, 2003), 702.

⁷ "Phonograph vs. gramophone," Todo Tango, last modified November 6, 2008, <http://www.todotango.com/english/biblioteca/cronicas/fonovsgra.html>.

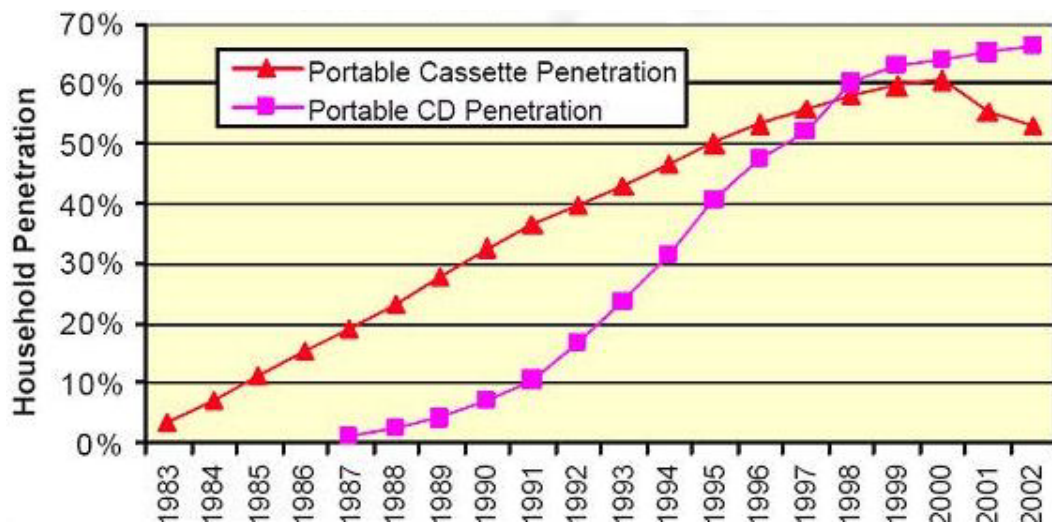
⁸ "The History of Cassette Tapes," eHow, accessed April 13, 2012, http://www.ehow.co.uk/about_5409924_history-cassette-tapes.html.

⁹ Tim Jarman and Nick Jarman, "WM-10," Walkman Central, accessed April 12, 2012, <http://www.walkmancentral.com/products/wm-10>.

Compact cassettes caused repeat buying behavior as with the LPs. People bought the same music pieces they had already bought before on another medium. Such behavior could and can be seen with every successful medium that takes major share on the market.

Sony was determined to make Walkman smaller. So during the years the second edition was released and it wasn't much bigger than the tape itself. Sony's contribution in the area of portable music has to be considered as even bigger than that of Apple and its iPod in the decades to come.¹⁰

Graph 1 shows how portable players penetrated the music market opening a whole new consumer sphere.



Graph 1: Portable player household penetration
Source: Liebowitz¹¹

2.2.4 Rise of the digital era: Compact Disc

In the first half of the 1970s, Philips engineers were given a task to develop an optical audio disc. The goal was to make a disc which would be more immune to dirt and scratches than the LP disc and not much bigger than a cassette tape. At first, they tried analog technology, but the problem was that it wasn't much more immune than the LPs. So the solution was to make a digital disc.¹²

In 1978, both Philips and Sony presented their own versions of the digital audio disc and the next year a decision was made to join the two teams of engineers to

¹⁰ Jacqueline Nelson, "The Ode: Sony Walkman (1979 – 2010)," *Canadian Business* 83 (2010): 27, EBSCOhost, accessed July 20, 2011.

¹¹ Stan J. Liebowitz, "Record Sales, MP3 Downloads, and the Annihilation Hypothesis," (University of Texas at Dallas, 2002)

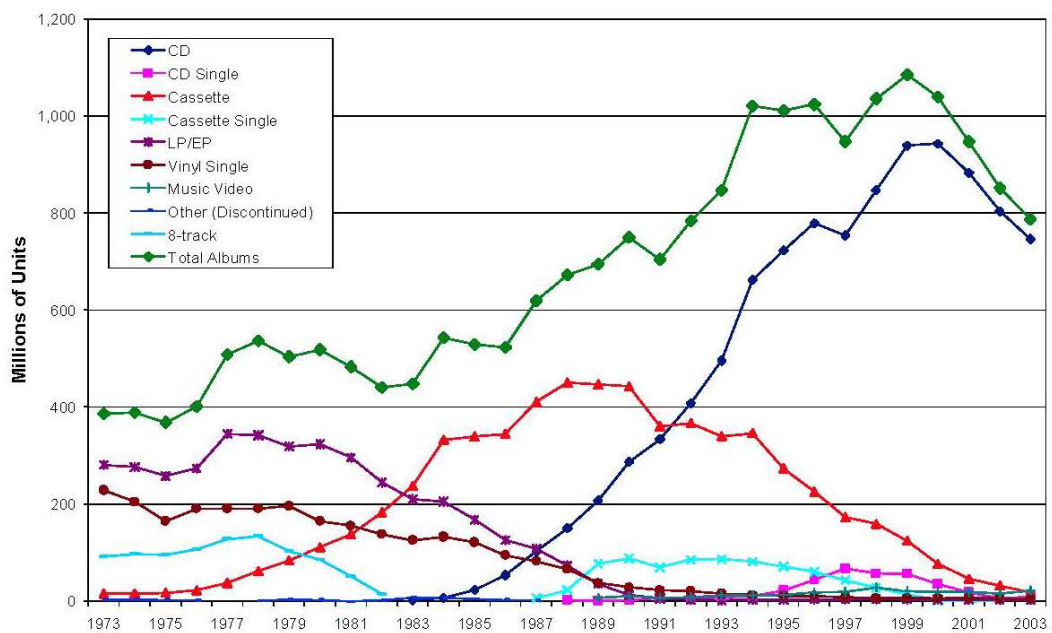
¹² Kees A. Schouhamer Immink, "The Compact Disc Story," *Journal of the AES* 46 (1998): 459.

develop a single standard. Philips contributed with their research in physics of the laser system and Sony had a huge experience with digital audio.

Leaving the technical specifications and some disagreements between the two teams, they finally came up with the Compact Disc (CD) in 1982. The sound quality was on absolutely different level than of the other media. It still remains the best in the consumer world even today.¹³

The effect of the new medium at the audio market was significant. Over the following years, there was a great decline in the sales of LPs and a continuous rise in the sales of audio CDs.

To conclude this chapter, the following graph shows the amount of albums sold between the years 1973 – 2003 in various formats. The evolution of the market is shown, as the new formats always substitute the older ones.



Graph 2: Units shipped by format
Source: Boorstin¹⁴

Within some six years, audio CD took over the role of the leading audio format and until today continues to hold the number one place among the tangible media.

¹³ Immink, “The Compact Disc Story,” 460.

¹⁴ Eric S. Boorstin, “Music Sales in the Age of File Sharing” (A.B. thesis, Princeton University, 2004)

Repurchase behavior started over again and not only with CDs, but with CD players and other equipment connected with this format. Recording industry was on the rise with very promising expectations. But only until digital intangible formats were developed. This topic is covered later in the chapter about music piracy.

3 Record label

A record label is a company responsible for recording, marketing and promotion of music. It takes care of production, manufacturing and promotion of music recordings.

3.1 Organization of a record label

In modern times, most labels are part of a huge company and operate under the umbrella of their parent company. Every label has its hierarchy which varies according to the size of each particular label. As we can see in figure... major record labels are made up of several departments of which I will focus at those that are connected with marketing, promotion, artists and publicity. The departments and functions connected with management of the label itself are not so important at this time for our purpose.

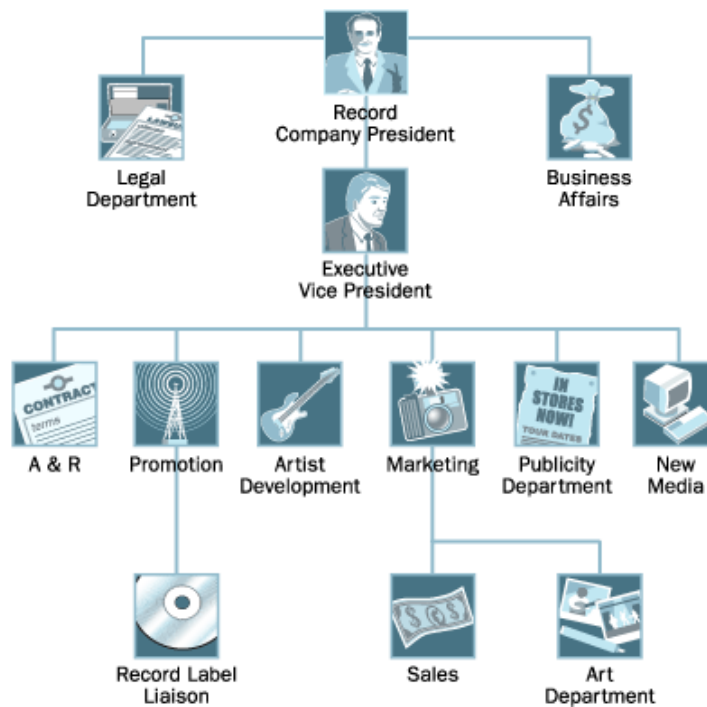


Fig 1: Organization of a Record Label
Source: How Stuff Works

The department which is at the beginning of the process i.e. finding and signing the artists is the **A&R department** (artist and repertoire). This is maybe the most important department of all because it carries the task to discover new talents.¹⁵

¹⁵ “How Record Labels Work,” How Stuff Works, accessed August 20, 2011, <http://entertainment.howstuffworks.com/record-label1.htm>.

The job of an A&R person can be quite difficult. In today's business artists can't make it to be successful without being noticed by someone in charge of finding new talents. People from A&R are overwhelmed with demos and other recorded material people send them. They must choose carefully because their choice means either success or failure. That is why they have their trusted sources. So if artists want to be successful they have to have contacts among the people in the business. Otherwise there is only a small chance to get noticed.¹⁶

After an artist is signed by the A&R department, people from the **artist development** can help him plan his or her career. In some cases the long term process is unnecessary as the artist can be signed only as a "one hit wonder".¹⁷ However, even in the case of these short time stars the development is important, maybe even more important than in other cases. Image and public appearance must be thought through carefully, so does the target group of listeners.

The **publicity department** then has the task to get the word out about the artist. Promotion in magazines and newspaper is also important and is done by this department. A publicist has to make sure that the artist gets a good publicity. They have to arrange interviews either in the television, radio or other media.¹⁸ If the artist gets bad publicity a publicist has to make sure it comes out as good in the end.

The **marketing department** is superior to the publicity department in the way that it coordinates its plans for promotion. This department takes care of advertising and promotion of each new album planned for release. A whole marketing campaign has to be created for the artists and their albums.¹⁹

The person who gets the last word in making decisions and who focuses on the overall direction of the record label is the **CEO**. In major labels his task is usually taking care of the politics rather than active participation in the whole album making and artist developing process. On the other hand, CEO of an independent label is usually more involved in such operations.

¹⁶ Simon Perry, "Inside the Record Business," *Musical Opinion* 132, July 2009, 18.

¹⁷ "How Record Labels Work."

¹⁸ "Inside Record Labels: Organizing Things," Music Biz Academy, last modified April, 2010, <http://www.musicbizacademy.com/knab/articles/insidelabels.htm>.

¹⁹ "How Record Labels Work."

3.2 Music Publishing

A publishing department can be found in the structure of the mother corporations of the record labels. Its job is equally important as the discovery of new talents. Many singers do not write their own lyrics and music. Music publishers take care of getting the right material for the “less creative” interpreters.

Once a songwriter creates a song he needs to get it to the audience. It could be extremely difficult if it was completely up to him or her. For this purpose, there are publishers. Publishing is a work in many ways similar to that of the A&R department.

The main functions of music publishers are:

1. Finding users

Once a songwriter assigns the copyright to the publisher, he then needs to find people who would use the material. These are usually record companies, print, or maybe the song can be used in a movie.

2. Issuing licenses

After the song users are found, the publisher gives them the licenses to use the song.

3. Collecting money and paying the writer

Publisher takes care of the money. He collects the money from the song users and then splits the income with the writer (usually 50/50).²⁰

The above mentioned are called administration rights and the publisher gets those after signing the contract with the songwriter.

In the past, until the first half of the 20th century, publishers had much more power than they do today. There weren't many artists who would write their own songs, so they depended on the songwriters who were under the publishers' control. So publishers decided which artist would get the right to sing a particular song.

Today, publishers have a slightly different role. They can help people find a record company and then promote the record. Some songwriters are publishers at the same time and can promote themselves.

²⁰ Donald S. Passman, *All You Need to Know About the Music Business*, 5th ed., (New York: Free Press, 2003), 201.

3.2.1 Mechanics of publishing

A publishing company, unlike a record company, has no need for a large staff, expensive equipment for recording the songs etc. To become a publisher, people don't need a large capital investment.

A publishing company needs only a few people and some functions can be done by a single person.

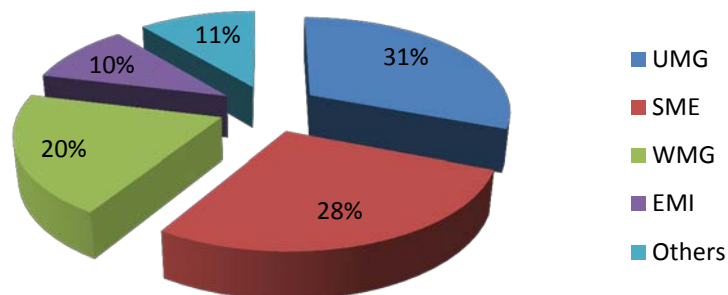
An administrator is the person who takes care of the copyright, licenses and money. Another person involved is a "song plugger" and he's the one who gets the song recording done. The last function is a creative staff person. He's in charge of finding, connecting and improving writers. This last function is only necessary when the publishing company has any writers under control.²¹

²¹ Passman, *All You Need to Know About the Music Business*, 204.

4 Major companies in the industry

There are four major record labels in the music industry nowadays, known as the “big four”. These are: Sony Music Entertainment, EMI Group, Warner Music Group and Universal Music Group. These four labels control about 90% of the market worldwide. The huge music recording companies are all parent companies to a number of individual labels. Although there have been some changes during the creation of this paper, and there are now only three remaining major companies from the four, I cannot leave out the one that no longer exists and will write about EMI as well. I will focus on the history and achievements of EMI first, as it was a European company which was involved greatly in the technological evolution of the industry. Then I will move on to the remaining ‘Big Three’.

The following is a graph of global market share of the major record companies as it was in 2010, almost two years before the EMI left the market.



Graph 3: Global record company market share in 2010
Source: The Nielsen Company²²

4.1 EMI Group

EMI was the biggest Europe-based music company. It concentrated not only on the music industry but also other leisure and technology sectors.

EMI was formed in the United Kingdom by the merger of the Columbia Graphophone Company and the Gramophone Company. The year was 1931. The merging companies were the two most important record companies in Europe.²³

²² “The Nielsen Company & Billboard’s 2010 Music Industry Report,” Business Wire, accessed April 17, 2012, <http://www.businesswire.com/news/home/20110106006565/en/Nielsen-Company-Billboard's-2010-Music-Industry-Report>.

The circumstances leading to this merger were obvious. The deepening depression caused a decrease in sales of the records hence the companies had to take some defensive measures. The new company gained rights for records of RCA/Victor and Columbia outside America.²⁴

In the 1930s the British part of the company focused on radio and television broadcast development. The TV system was later on adopted by the BBC. In the time of WWII and the years after, EMI Group was in trouble after losing its overseas branches. These bad times continued until Joseph Lockwood was appointed new managing director in 1954. In the following year EMI bought Capitol records to keep their access to US records.²⁵

In the 1960s the profits of EMI were by one fifth made by the Beatles. Capitol in US also profited from Beach Boys. But the money was used for other purposes than investment into music as EMI was operating in other spheres too. At the end of the 1970s EMI was running at a loss.²⁶

It was in 1992 when EMI bought Virgin Music Group for \$960 million, which significantly improved EMI's position in the market.²⁷ In European market share EMI was second after Polygram. Through the 1990s EMI (other labels too) acquired many local labels in Latin America and Southeast Asia.

On the break of the millennium there were attempts to merge EMI first with Warner Music Group later with BMG both unsuccessful because of European competition authorities.

4.1.1 EMI's labels and artists

EMI Group now owns several label groups such as Virgin Music Group, Capitol Music Group, Blue Note Label Group, EMI Christian Music Group, which consist of smaller record labels.

²³ "EMI Classics About Us: History," EMI Classics, accessed October 15, 2011, <http://www.emiclassics.com/aboutushistory.php>.

²⁴ Dave Laing, "Part II The Industry: 16. Recording: Record Corporations: EMI," in *Continuum Encyclopedia of Popular Music of the World*, vol. 1 (Continuum International Publishing Group Ltd/Books, 2003), 633.

²⁵ EMI Music: Timeline," EMI Music, accessed October 15, 2011, <http://www.emimusic.com/about/history/timeline/>.

²⁶ Laing, "Record Corporations: EMI," 633.

²⁷ "EMI Group: Chronology," Ketupa, accessed October 15, 2011, <http://ketupa.net/emi2.htm>.

Some of the most popular artists signed with EMI and its sub-labels: Beatles, Elvis Presley, Joe Cocker, Black Sabbath, David Bowie, Queen, Pet Shop Boys, R.E.M., Radiohead, Blur, Roxette, Spice Girls, Coldplay and many others.

In November 2011, after years of financial difficulties, EMI finally split up between two of the three remaining major record labels – Sony and Universal. Citigroup, the owner of EMI label, managed to sell it for as much as US\$4.1 billion causing some surprise about the final sum.

This is how the two labels split their bounty: Universal Music Group bought EMI's recorded music division for \$1.9 billion while Sony took over the copyrights for the songs for \$2.2 billion.²⁸

This disappearance of EMI will probably have both positive and negative effects. While there is no doubt that many of the starting artists will remain unnoticed with one huge A&R department gone, this can be a great opportunity for the independent labels on the market to fill the newly empty spot. And of course with independent labels having more space it can be assumed that digital distribution will raise as well as they are more open to the inevitable changes the market has to undergo. Ultimately, this should lead to the profit of customers, as they have been open to this channel of distribution for a long time.

The situation on the market will change dramatically for the major labels as the 'Big Four' are reduced to the 'Big Three' with Warner Music Group having some trouble keeping up with the other two giants. Sony will become the largest publisher in the world as this title was held by EMI until recently. On the other side we have Universal, which has been the largest record label so far and will become even bigger having gained such an influence mainly on the European market. It can be expected that Warner's future will be similar to that of EMI.²⁹

4.2 Sony Music Entertainment

Another member of the 'Big Four' is a subsidiary of one of the biggest and best known companies worldwide, Sony Corporation. Sony may not have the longest

²⁸ "And Then There Were 3: Sale Splits EMI Assets Between Sony and Universal," Technology News, accessed February 20, 2012, <http://www.technewsworld.com/story/73745.html>.

²⁹ "Deals to Split EMI Spur Scrutiny and Criticism," The New York Times, accessed February 25, http://www.nytimes.com/2012/02/20/business/media/emi-consolidation-with-sony-and-universal-prompts-scrutiny-and-opposition.html?_r=1.

but undoubtedly technologically very progressive history in the home and professional electronics sphere having developed some of the most commercially successful products associated with music and recording. Everyone knows devices such as transistor radio, Walkman, or compact disc.

Although Sony Corporation was founded 1946³⁰, the record company has longer history. Its roots date back to 1888 to the Columbia Phonograph Company (not to be mistaken for Columbia Graphophone Company which was a unit of EMI). Columbia Records remains until today one of the record labels parented by Sony Music Entertainment (SME).

Columbia Phonograph Company was a local firm producing phonograph related equipment in Washington D.C. (Columbia in the name of the company is derived from District of Columbia). Columbia was the first company that started to produce cylinders with pre-recorded sound, which means it can be considered the oldest record label.³¹

Columbia Phonograph Company was later (1934) acquired by American Record Corporation (ARC) which in 1938 was acquired by Columbia Broadcasting System (CBS), a company which was originally founded by Columbia Phonograph Company.³² In 1953 CBS founded Epic Records, a label which today is known for having signed such artists as ABBA, Boston, The Clash, The Jackson Five, Steve Vai and many others.

The first involvement of Sony was in 1968 when CBS/Sony Records was formed as a joint venture in Japan.³³ Sony's great experience and the fact that it (with Philips) developed the CD proved useful and when the compact disc hit the market CBS was ready and able to supply discs from Japan to the US.³⁴

In 1987 Sony Corporation of America acquired CBS Records and then renamed it to Sony Music Entertainment in 1991. In 2004 SME merged with Bertelsmann Music Group (BMG) and the result was Sony BMG Music Entertainment. Later

³⁰ "Sony History: Chapter 1: Rebuilding from the ashes," Sony Corporation, accessed April 10, 2012, <http://www.sony.net/SonyInfo/CorporateInfo/History/SonyHistory/1-01.html>.

³¹ "How Late Did Columbia Use Brown Wax,?" Tim's Phonographs and Old Records, accessed February 19, 2012, <http://www.gracyk.com/wax.shtml>.

³² Horn and Sanjek, "Record Labels/Companies: Columbia (US)," 703.

³³ "CBS/Sony profile," Discogs, accessed February 19, 2012, <http://www.discogs.com/label/CBS%2FSony>.

³⁴ "CBS/Sony Inc.," The New York Times, accessed February 20, 2012, <http://www.nytimes.com/1982/12/08/business/cbs-sony-inc.html>.

in 2008 Sony bought the Bertelsmann's 50% in Sony BMG returning to the name of Sony Music Entertainment.

4.2.1 SME's labels and artists

A company of such a size has an enormously long list of artists signed under its labels. Here are just the most renowned names: AC/DC, Bob Dylan, Boney M, Cyndi Lauper, Foo Fighters, George Michael, Genesis, Jimi Hendrix, Joe Satriani, Johnny Cash, Madonna, Michael Jackson, Oasis, Ozzy Osbourne, Pink Floyd, Whitney Houston etc.

With the acquisition of the EMI publishing from 2011, SME will become the biggest music publisher worldwide taking Universal's place.³⁵ Universal will hold its position as the largest of the major record companies and the remaining Warner Group will have hard time to keep up with such a competition.

4.3 Universal Music Group

Talking about the biggest record companies I will now proceed to the largest of the giants. Universal Music Group is a daughter company of Vivendi and its beginnings date back to 1934 when Decca Records was formed in the US.³⁶ Nowadays UMG is the biggest record company and probably the most hated one by the opponents of the traditional business model. This is because UMG has made the most effort to make the transition to any new business model more difficult by controlling free channels of distribution like YouTube and others.

Decca was a record company which also owned Universal Studios Hollywood Company.³⁷ The American branch of Decca Records was later in 1959 sold to MCA Records to finally merge in 1962.³⁸

Music Corporation of America (MCA) was a booking company founded in 1929. After WWII, MCA focused on cinema ownership and artist management.

³⁵ "Sony/EMI Deal: Publishing Companies Would Remain Separate, But Managed by Sony," Billboard, accessed February 20, 2012, <http://www.billboard.biz/bbbiz/industry/publishing/sony-emi-deal-publishing-companies-would-1005511832.story>.

³⁶ "Decca Records US," Rate Your Music, accessed February 20, http://rateyourmusic.com/label/decca_records_us.

³⁷ Dave Laing, "Part II The Industry: 16. Recording: Record Corporations: Universal Music Group," in *Continuum Encyclopedia of Popular Music of the World*, vol. 1 (Continuum International Publishing Group Ltd / Books, 2003), 635.

³⁸ "Decca Records US."

Later on, MCA started to expand by purchasing record labels such as ABC-Paramount, Dot and Dunhill in 1979 (together for \$30 million), or Geffen for as much as \$465 million in 1990. In the 1970s the company enjoyed great success in the country music sphere, whereas there was little success in the pop music.³⁹ In 1989, MCA's head Irving Azoff was allegedly involved in business with mafia concerning the purchase of millions of deleted MCA albums.

In the time when Sony enjoyed an increase of influence after buying CBS Records and Columbia pictures, its great rival, Japanese company Matsushita bought the MCA group for \$6.1 billion in 1990 to keep up with Sony.

MCA's main artist portfolio remained to consist mostly of country and black music and the importance of MCA started to grow with the acquisition of Geffen which signed such artists as Nirvana, Guns N' Roses, or Aerosmith. After 1994, MCA started to expand its influence to Europe, Asia and Latin America by establishing more than 20 branches there. Not only did US artists gain new audience, but MCA signed new artists from the local sources.

Big changes started after 80 % of MCA was purchased by Seagram Company in 1995. Doug Morris, former head of Warner Music, was appointed the Chairman and CEO of MCA.⁴⁰ In 1996 MCA was renamed to Universal Studios, Inc. with the music division named Universal Music Group. In 1998 there had been an important acquisition – the European company PolyGram previously owned by Philips. After that, UMG instantly became the largest record company with 22% of global market share.⁴¹ UMG was later sold to Vivendi which sold most of the entertainment part to General Electric (GE). This included Universal Pictures, so the movie division of Universal was finally divided from the music recording division which continues to operate as Universal Music Group under Vivendi. In 2007 Vivendi bought BMG Music Publishing for \$2.4 billion becoming the largest music publisher until 2011 and Sony's acquisition of EMI publishing.

³⁹ Laing, "Record Corporations: Universal Music Group," 635.

⁴⁰ Chuck Philips, "Company Town : SHAKE-UP AT TIME WARNER : A Very Bizarre Year at Time Warner : Chronology: Industry waits to see if established and new artists defect to rivals in wake of executive turnover at music giant," *Los Angeles Times* November 17, 1995, accessed February 20, 2012, http://articles.latimes.com/1995-11-17/business/fi-4210_1_time-warner.

⁴¹ Laing, "Recording: Record Corporations: Universal Music Group," 636.

In November 2011, Universal bought EMI Music, EMI's record division for \$1.9 billion strengthening its position as the largest record company.

4.3.1 UMG's labels and artists

UMG has a large structure and its labels are spread all over the world. Here are just some labels, those most important: Geffen Records, Polydor Records, Decca Records, Mercury Records, Verve Records. Since the end of 2011 UMG owns also EMI's recording division and the labels belonging there.

Among the artists signed under UMG's labels, here are the best known: ABBA, Bob Marley, Deep Purple, Depeche Mode, Duran Duran, Green Day, Guns N' Roses, No Doubt, Rammstein, Robbie Williams, U2, The Who, and many more, including some of the artists who recorded different albums under different labels.

There is one of the major companies yet to be included in this chapter so the list is complete.

4.4 Warner Music Group

What is interesting about Warner Music Group (WMG) is that it's the only one of the four major record companies which didn't evolve somehow from Columbia Phonograph Company or Berliner Gramophone. Instead, its roots date back to 1958 and the founding of Warner Bros. Records as a soundtrack factory for Warner Bros. movie studios (founded in 1922).⁴²

In 1963 Warner Bros. Records merged with Reprise Records founded in 1960 by Frank Sinatra.⁴³ The Reprise president, Mo Ostin became a key person to form the success of Warner Bros. In 1967 Warner Bros. Studios was bought by Seven Arts, which then renamed to Warner-Seven Arts and subsequently acquired two very important independent labels, Atlantic Records and Elektra Records.

From the mid 1960s onward, Warner-Seven Arts enjoyed a great boom and started to dominate the US music market after being purchased by Kinney National Company in 1969.⁴⁴ Kinney CEO Steve Ross led the company through its most successful period. The greatest strength of the group then was Warner's

⁴² "Warner Music Group – Timeline," Warner Music Group, accessed February 19, 2012, <http://www.wmg.com/timeline>.

⁴³ Laing, "Record Corporations: Warner Music Group," 637.

⁴⁴ "Warner Music Group – Timeline."

mainstream rock (Neil Young), Atlantic's soul and R&B dominance and US rights to British super-groups Cream, Yes, The Rolling Stones and Led Zeppelin.⁴⁵

This success was supported even more when David Geffen's Asylum Records (founded in 1971) was sold to Warner in 1973 with Geffen becoming head of Asylum and Elektra.

Before this acquisition, Kinney renamed to Warner Communications, and Warner-Elektra-Atlantic (WEA) was formed in 1970, the first major music distribution company in the US, giving origins to WMG. WEA International (formed in 1971) started further international expansion founding new branches in Japan, France, Canada, Germany, New Zealand and Netherlands during the years 1971 – 1975, and entering Latin America (1976) and Southeast Asia (1978).⁴⁶

Despite the rich overseas artist catalog, WEA's sales from a great majority came from the US artists. In 1983 there was an unsuccessful attempt to merge WEA with Polygram forbidden by both US and German authorities, so in 1986 Polygram sold Chappell Music to WEA for \$275 million, which made WEA a major force in international music publishing.⁴⁷ In the same year, WEA Manufacturing is founded to become the first WEA's CD manufacturing plant. In 1990, Warner Communications completed a merger with Time Inc. forming Time Warner. In the following years Warner kept acquiring smaller independent labels.

The events that finally harmed the company the most were internal fights for power. These started after the death of Steve Ross in 1992. Some of the music managers like Mo Ostin had been in their position for a very unusually long time and they came to a conflict with WMG chairman Robert Morgado. They were too different, with Ostin's wide view and long experience in the recording business, and Morgado's political history. This "virtual civil war" resulted into the resignation of Mo Ostin and Elektra's head Robert Krasnow in 1994. After one more year of Morgado's poor management damaging Warner's reputation he was

⁴⁵ Laing, "Record Corporations: Warner Music Group," 637.

⁴⁶ "Warner Music Group – Timeline."

⁴⁷ Laing, "Record Corporations: Warner Music Group," 637.

forced to resign from his position being replaced by HBO chairman Michael J. Fuchs.⁴⁸

In 2000, WME offered an online library of digital downloads for the US and Canada and a year later started selling its music on iTunes.⁴⁹

Because of high debt, in 2004, Time Warner sold WMG to a group of investors for \$2.6 billion.⁵⁰ From this time, the name Warner Music Group is the official name of the company.

4.4.1 WMG labels and artists

Apart from many independent labels belonging to WMG, there are some big labels targeted at key spheres of the market, the best known are: Atlantic Records, Elektra Records, Reprise Records, Rhino Records, or Asylum Records.

The best known artists signed under WMG are (or were) then: A-Ha, Aerosmith, Bee Gees, Phil Collins, Dream Theater, Aretha Franklin, Genesis, Jethro Tull, Korn, Led Zeppelin, Lynyrd Skynyrd, Metallica, Muse, Oasis, Prince, Red Hot Chili Peppers, Scorpions, Frank Sinatra, Van Halen etc.

⁴⁸ “Warner Music Chief Expected to Quit Today: Entertainment: Robert Morgado, under fire for restructuring, will reportedly be replaced by HBO’s Michael Fuchs,” Los Angeles Times, accessed February 25, http://articles.latimes.com/1995-05-03/business/fi-61908_1_warner-music-group.

⁴⁹ “Warner Music Group – Timeline.”

⁵⁰ “Warner Music Group – Investor Relations,” Warner Music Group, accessed February 20, 2012, <http://investors.wmg.com/phoenix.zhtml?c=182480&p=irol-newsArticle&ID=708718&highlight=>.

5 Marketing and the business models in today's industry

The industry has been changing rapidly during the last decade and there are many new strategies for selling the product. However, not all of the participants are very keen to adapt to the changing market. Many record labels were used to do things their own way for quite a long time but the technological evolution made them aware of the imperfection of the old business model.

5.1 The traditional business model

In this chapter I will try to explain the features and demonstrate the drawbacks of the traditional business model. Despite the fast development of new models, the traditional one still remains there. Probably because it is hard to stop practicing something, that has been there and worked well for such a long time.

The traditional business model is based on the mass production and distribution of physical goods.⁵¹ The chain includes record labels as the manufacturers and the role of the distributors is fulfilled by bricks-and-mortar stores, e-tailers and other sellers. This model has been there in a nearly unchanged form for almost one century.

To illustrate the properties of the model properly a marketing mix for music business has to be described. The traditional business model in its nature used the traditional marketing mix, the 4 P's. Record labels looked at music as a physical product and considered themselves as manufacturers and distributors. However, as new technologies arrived and music began to be available in other than physical form the whole business system had to be looked at differently, including CD's and all the other tangible forms of music. The product marketing mix had to shift to a services marketing mix.

5.1.1 Services Marketing Mix

In order to obtain a scheme for the services marketing mix, three other P's have to be added to the original structure of the traditional product marketing mix. These

⁵¹ Valerie L. Vaccaro and Deborah Y. Cohn, "The Evolution of Business Models and Marketing Strategies in the Music Industry," *The International Journal on Media Management* 6 (2004): 47, accessed October 10, 2011, doi:10.1207/s14241250ijmm0601&2_7.

are *Process*, *People*, and *Physical Evidence*.⁵² The complete structure of the services marketing mix then includes:

- **Product** – the marketers have to know what the needs of the customer are, and in what way will the service satisfy those needs.
- **Price** – analysis of the prices of similar goods has to be made. How does the customer value the service? Possible discounts have to be measured.
- **Place** – a place for selling (providing) the service has to be chosen based on where people look for the kind of service the company provides.
- **Promotion** – choosing the way of getting the information about your service to the customers.⁵³ Through what channels will the marketers try to access people? Advertising via mass media: internet, television, radio. Proper time (season of the year) for promoting of the service has to be chosen carefully.
- **Process** – the company has to decide what processes will be included in order to deliver the service to the customer. The service has to be delivered as quickly and effectively as possible.
- **People** – people are one of the key elements of the service marketing mix. People deliver the service, interact with customers.⁵⁴ In order to be successful, companies have to choose their staff carefully and let them improve further.
- **Physical evidence** – because services are intangible, it is important to give the customer some tangible bonus elements. This can be the environment

⁵² “Service Marketing Mix,” Marketing 91, accessed October 10, 2011, <http://www.marketing91.com/service-marketing-mix/>.

⁵³ Vaccaro and Cohn, “The Evolution of Business Models and Marketing Strategies,” 53.

⁵⁴ Vaccaro and Cohn, “The Evolution of Business Models and Marketing Strategies,” 54.

in a restaurant. All visible and tangible aspects of a company serve as physical evidence to the customer.⁵⁵

5.1.2 The Traditional Business Model and the Services Marketing Mix

An analysis of the services marketing mix applied to the traditional business model was done by Valerie L. Vaccaro and Deborah Y. Cohn. Each of the 7 P's was applied to the model which was further compared to other alternative models.

- **Product** – the main record labels choose only a small part of their catalogs to be sold massively. All the recordings are sold on tangible media (CD's, vinyl discs, etc.), so there are some extra costs for the production. The goal is to focus on the most profitable artists and then go on with the mass production. Accessing less known artists is difficult for the customer with the traditional business model. This is partly caused by the limited space available at the stores.⁵⁶
- **Place** – in the 1990s CD's (and MC's, vinyl discs) were sold only in brick-and-mortar stores. The evolution of the internet brought new possibilities for selling (not only) music. So with the beginning of the millennium some e-tailers emerged. This enlarged the music catalog because customers were no longer limited by the size of the shop but the size of the warehouse.
- **Price** – in the music business not only the product but its price too is dictated by the labels and retailers.⁵⁷ Price is probably the biggest reason of the dissatisfaction of customers and the existence of alternative renegade business models. There are a number of costs contributing to the total average price of a CD. As shown in the figure 2, the artist gets but a fraction of the total cost. The data shown in the figure date back to year 2000, but the percentage is more or less the same as today.

⁵⁵ "Service Marketing Mix," Learn Marketing, accessed October 10, 2011, <http://www.learnmarketing.net/servicemarketingmix.htm>.

⁵⁶ Vaccaro and Cohn, "The Evolution of Business Models and Marketing Strategies," 51.

⁵⁷ Vaccaro and Cohn, "The Evolution of Business Models and Marketing Strategies," 50.

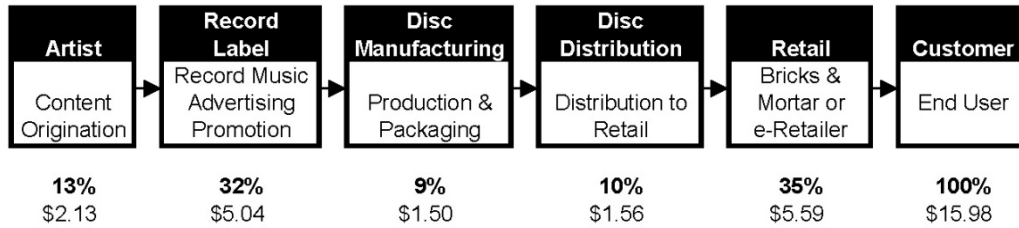


Fig 2: Traditional Music Distribution Value Chain & Distribution of Profits.
Source: Fischbeck⁵⁸

Thanks to the retailer margin and the sum going to the label the average retail price of a CD in the US was nearly \$16 in 2000. And much more in countries like Czech Republic. For customers this pricing was very inconvenient and they tended to get their music somewhere else than in a shop. People would borrow CD's from a friend and simply copy them at home, because in 2000 most people had a CD writer inside their computer.

- **Promotion** – with the traditional business model record labels use huge amounts of money to promote their key artists. This includes making of expensive videos which are then played on MTV or other cable television such as VH1. Artists also perform live on TV, for example to introduce songs from their new album.

There is also an antipiracy campaign going on to convince customers to get music in a legal way.⁵⁹ A lot of effort is made to persuade people that piracy is as serious as stealing a car.

- **Process** – buying a CD in a store can be an uncomfortable process. This is partly because of today's people's laziness and the need to buy everything on the internet. But it is true that people can be discouraged from buying a CD by some unpleasant factors. For example the store can be set in a style (of music) that the particular person dislikes or it can be situated quite a long way from their home.

⁵⁸ Brian Fischbeck, "Digital Music Business Models" (Final paper, University of Virginia, 2000), 4.

⁵⁹ Vaccaro and Cohn, "The Evolution of Business Models and Marketing Strategies," 53.

- **People** – meaning people directly involved in selling the music CD. Those are usually people who only take the customer’s money and give them a receipt – cashiers. Customer usually gets no advice regarding the music recordings the store sells from the staff. They have to know what they want and search for it.⁶⁰ But this is a natural thing with music. It is uncommon to buy something the customer has never even heard about. E-tailers usually have some people who can communicate with customers and who often can give some useful information. The question is whether it is not better for the customer to look at the info about the artist on the internet.

- **Physical evidence** – when a customer gets a CD he usually gets a case with a disc in it and a colored booklet maybe with lyrics and some other info about the artist. Record labels are starting to realize that when a customer buys the music in a tangible form he wants more than just a compact disc with the recording. More and more, special enhanced editions, “collector” editions are released. This type of edition can include photos, little books, badges or other merchandise which is sold separately.

⁶⁰ Vaccaro and Cohn, “The Evolution of Business Models and Marketing Strategies,” 54.

6 Legal environment in the music industry

6.1 Copyright Law

Copyright is a kind of legal protection bound to works created by any person. It is one of the forms of intellectual property.

Types of intellectual property:

- Copyrights
- Trademarks
- Patents
- Industrial design rights
- Trade secrets

Copyright gives protection to many kinds of works such as musical compositions, songs, lyrics, records, poems, books, films, TV shows or computer software.⁶¹ There are some requirements the work has to meet in order to be protected by copyright:

- **Originality** – the work has to be original meaning that it must not be copied from a different source
- **Fixation in a tangible media of expression** – the work has to exist in a stable form so one can reproduce it, there can be no protection of a song which is only in one's head
- **Minimum degree of creativity**

The creator can use the copyrights to protect both songs (consisting of melody and lyrics) and recordings (CDs, MCs, DATs, mp3s, etc.). The former should protect against unauthorized reproduction of the song by someone else, the latter should protect the recording against making of its copies.

6.1.1 Rights of the copyright owner

There are some exclusive rights bound to the holder of the copyright, meaning that only they are allowed to perform these actions:⁶²

⁶¹ Peter J. Strand, Robert Kouhoukas and William Rattner, "Legal Issues Involved in the Music Industry," *Lawyers for the Creative Arts* (2005), 1, http://www.law-arts.org/pdf/Legal_Issues_in_the_Music_Industry.pdf.

⁶² "Rights Granted Under Copyright Law," BitLaw, accessed February 25, 2012, <http://www.bitlaw.com/copyright/scope.html#reproduction>.

- 1) **Reproduce the work** – this is the most important of the rights given by copyright. The copyright owner is the only one who can in any way make any reproductions or copies of the work.

Infringement of the reproduction right occurs when someone photocopies a book, incorporates a part of another's song into a new one, manufactures a compact disk containing copyrighted sound recordings etc.

- 2) **Make derivative works** – according to the Copyright Act, a derivative work is “a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted.”⁶³

In the case of music, a derivative work can be also an original song combined with new lyrics.

- 3) **Distribute copies** – the copyright holder has the exclusive right to make authorized copies of the work available to public by selling, renting, lending. The distribution right is limited by the ‘first sale doctrine’, meaning that the copyright owner has controls only the first sale of a unit and has no control over what happens to that unit after. It can be resold, rented etc. However, the ‘first sale doctrine’ was prohibited for computer software and audio records.⁶⁴

- 4) **Perform works publicly** – public performance is any when the song is performed at a "place open to the public or at a place where a substantial number of persons outside of a normal circle of a family and its social acquaintances are gathered."⁶⁵ The copyright owner has the control of playing the song on the radio, TV, in a night club or anywhere it can be heard publicly.

- 5) **Perform copyrighted sound recordings by means of a digital audio transmission** – the newest of the rights. It gives the copyright holder the right to perform the song via internet or digital satellite radio stations.⁶⁶

⁶³ “17 USC § 101 – Definitions,” Legal Information Institute of Cornell University Law School, accessed February 25, 2012, <http://www.law.cornell.edu/uscode/text/17/101>.

⁶⁴ “Rights Granted Under Copyright Law.”

⁶⁵ “17 USC § 101 – Definitions.”

⁶⁶ Strand, Kouchoukas and Rattner, “Legal Issues Involved in the Music Industry,” 2.

When talking about international copyright, one document cannot be left out – the Berne Convention. The treaty was signed in Bern, Switzerland in 1886. Member countries of the Berne Union (signatories of the Berne Convention) are required to recognize the copyright of works originating in other member countries in the same way they do with their domestic works.⁶⁷ The minimum duration of copyright set by the Berne Convention is 50 years after the author’s death (except for photographic and cinematographic works), but members can provide longer terms.⁶⁸ The European Union has 70 years-after-death duration, the same as the U.S.

6.2 Influence of the digital age on the current state of the music industry

After the compact disc was developed, the music industry enjoyed a decade of sales growth in the 1990s. The CD format was very popular thanks to the sound quality. So what eventually caused the dramatic drop of CD sales in the year 2000? It was the fast going evolution of the information technology. People started using computers at home as everyday tools. With the digital technology development there appeared many ways of exploiting the advantages it brought.

6.2.1 Piracy

In the music industry piracy means the unauthorized distribution of music recordings. This can be either a person copying a music CD on a CD-R with no intention to make a profit from it or it can be the organized making of illegal copies which are then massively sold for money - this is a commercial piracy.

Piracy can be further divided as physical and digital.

6.2.1.1 Physical piracy

Physical piracy has been there for quite a long time but only after the compact tape cassette arrived in the 1966 and the first cassette recorders were available to

⁶⁷ “The Berne Convention – fact sheet,” The UK Copyright Service, accessed April 25, 2012, http://www.copyrightservice.co.uk/copyright/p08_berne_convention.

⁶⁸ “Duration of Copyright,” The UK Copyright Service, accessed April 25, 2012, http://www.copyrightservice.co.uk/copyright/p10_duration.

ordinary people it became a more serious problem.⁶⁹ The true seeds of the never-ending fight of the industry can be found in 1984 and the *Sony* “Betamax” case.⁷⁰ Although not directly concerning music, the US Supreme Court had to decide, whether the selling of video cassette recorders (VCRs) can lead to copyright infringement if the recorders are used for taping of copyrighted TV programs at home. The verdict was that the primary use of home VCRs was for “time shifting”. This time shifting meant recording of a program for later viewing with the tape eventually being erased or reused. Such use of VCRs is not copyright infringement, since those tapes usually were not used for commercial purposes.⁷¹

However, *Sony* didn’t imply that this statement would be applicable to home taping of audio, and the court said nothing about making audio tape copies. If such copies would be made with a purpose of repetitive listening and sharing, then it would be a copyright infringement.

The home audio recording became a serious problem only after the advent of digital audio tape (DAT). This tape had a huge advantage compared to the traditional MC, it allowed making of exact copies without any sound quality loss. So DATs became a serious threat to the CD market which was on the rise and in the late 1980s the recording industry was determined to do every step needed to put a stop to the importing and selling of all the DAT related equipment.⁷²

This eventually led to a compromise reached by the Congress involving the DAT technology in 1992. None of the DAT related equipment was prohibited from sale. Instead a mandatory royalty was implemented. A part of the price of every piece of the DAT equipment sold would be a compensation for the copyright owners. The result was clear: consumers were paying the copyright owners for the possibility to make their home audio copies.⁷³

⁶⁹ Jelle Janssens, Stijn Vandaele and Tom Vander Beken, “The Music Industry on (the) Line? Surviving Music Piracy in a Digital Era,” *European Journal of Crime, Criminal Law and Criminal Justice* 17 (2009): 77, accessed February 22, 2012, doi:10.1163/157181709X429105.

⁷⁰ *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417, 104 S.Ct.774, 78 L. Ed. 2d 574 (1984).

⁷¹ Edward B. Chansky and Levett Rockwood, “Putting a Coin Slot on the Virtual Jukebox: Copyright Protection in the Post-Napster World,” *Levett Rockwood Newsletter* (June 2001): 2, accessed February 15, 2012, <http://www.levettrockwood.com/00128500.pdf>.

⁷² Chansky and Rockwood, “Putting a Coin Slot on the Virtual Jukebox,” 3.

⁷³ U.S. Copyright Law: 17 U.S.C. § 1001 *et seq.*

Another format which eventually started to be pirated too is a CD. Because it is a digital format and the sound is recorded in a form of zeros and ones it later (1985) started to be used as a storage medium for computer data (CD-ROM).

In the year 1988 Philips and Sony introduced the CD-R medium. The -R stands for recordable. And as music on CD is stored as data this meant that music too could be recorded on CD-Rs. After the first models of recording systems which were labeled with a price tag of about \$35,000, Hewlett-Packard introduced a writer which cost “only” \$995 in 1995.⁷⁴ During the next few years price of CD writers fell to an acceptable level and the device quickly spread so people at homes were enabled to make their own copies of Audio CDs.

But that was just a beginning, CD sales were still increasing (although slower than before) and the true turning point was the development of internet peer-to-peer sharing systems. Thus the digital piracy arose.

6.2.1.2 Digital piracy

It was the compact disc that stood at the beginning of the era of digital piracy. Although itself the Audio CD could not be digitally pirated and the amount of data stored on one disc was huge for the 1990s technologies, people eventually found a way to get the data (music) on their hard-drive. The key was data compression. In 1993 a new format of lossy audio data compression was published. It was the MPEG-2 Audio Layer III commonly known as MP3 and it allowed people to shrink the amount of data spent on one album more than ten times depending on the quality chosen. The encoding software soon became available to all the people and so many of them started to create music collections on their computers.

In 1999 a website was launched that enabled people to easily share files stored on their hard-drives with other people. A major part of these files were MP3 music files. The site’s name was *Napster*. The authors’ argumentation regarding the legality of this service was that it did not actually copy any music nor did it operate as a central switchboard through which illegal copies of music were

⁷⁴ Bob Starrett, “The History of CD-R,” *Roxio Newsletter* (January 2000), accessed February 16, 2012, <http://web.archive.org/web/20030202233907/http://www.roxio.com/en/support/cdr/historycdr.html>.

transferred.⁷⁵ Instead, it provided its users with a program which enabled them to search other users' computers and download the music files found there. So the legal responsibility was transferred directly on the users.

The court accepted the owners' arguments of not actually copying any music. But overall they didn't succeed. The court's conclusion was that computers are not comparable to the "digital recordings devices" which were the subject of the 1992 Act (concerning DAT) because computers do not serve primarily for producing digital audio copies for private use.⁷⁶ The court's further argumentation was that *Napster* was used worldwide by millions of users who to one another were complete strangers, implying that such copying and sharing of music files via *Napster* should be considered a commercial use and thus a copyright infringement.

So in July 2001 *Napster* in its original form had to be shut down having to pay \$26 million as a settlement for the past and \$10 million as future licensing royalties. It continued existing in some kind of a subscription form but in 2002 the owners declared *Napster* bankrupt.⁷⁷

Napster undoubtedly was one of the turning points in the evolution of the music industry. In the following years peer-to-peer file sharing was becoming more and more popular all over the world. Unlike *Napster*, the newer P2P services do not operate a central server which indexed users and songs. The only thing necessary is a software program installed on the user's computer. The protocol is called *BitTorrent*.

A person who wants to make a file (or multiple files, e.g. a music album) available through *BitTorrent* service only has to create a very small *torrent* file which he then stores on a *tracker*. This person becomes a seed. People who want to download the file then search the database of such a site (there are special sites which serve as search engines for *torrents*). They download the small *torrent* file,

⁷⁵ Chansky and Rockwood, "Putting a Coin Slot on the Virtual Jukebox," 4.

⁷⁶ Chansky and Rockwood, "Putting a Coin Slot on the Virtual Jukebox," 5.

⁷⁷ Moya K. Mason, "Early History of Napster," accessed February 16, 2012, <http://www.moyak.com/papers/napster-history.html>.

open it with a special software program and then can download the music album from the seed. These people become *peers*.⁷⁸

The legal issue is that by downloading a file, the person is simultaneously uploading the same file to other *peers*. So the person shares copyrighted material and breaks the law. But it is very difficult to shut down any of the trackers as there is no copyrighted file content stored on them.

6.2.2 The effect of piracy on the recording industry

According to the major labels file sharing has a substitution effect.⁷⁹ That means when someone downloads a music album via internet without paying any money, they would never buy a CD legally. Record labels claim that every downloaded album is a market sale lost. In fact this statement is far from being true, because if there was no way to get music for free, many people would not get it at all rather than buy a CD.⁸⁰ But undoubtedly, the percentage of people who get their music illegally is very high, as we can see in figure.

Percentage of internet users accessing at least one unlicensed site monthly	
Europe	27 %
Global	28 %

Fig 3: Percentage of internet users accessing illegal sites (2011)
Source: IFPI Digital Music Report 2012⁸¹

6.2.3 The latest legal issues: SOPA & PIPA

For a few years, it seemed that the recording companies found their way to embrace the opportunities the internet gives us. But along with the U.S. Senate they have been preparing to strike against internet piracy in a very alarming way.

The U.S. anti-piracy law had no means of punishing foreign websites for internet piracy, so, new legislation had to be prepared. The senate came up with two legal acts to protect intellectual property which can affect sites and users all over the world.

⁷⁸ Bram Cohen, "The BitTorrent Protocol Specification," BitTorrent.org, accessed February 15, 2012, http://www.bittorrent.org/beps/bep_0003.html.

⁷⁹ Jenssens, Vandaele and Vander Beken, "Music Industry on (the) Line," 91.

⁸⁰ Jeroen van Wijk, "Dealing With Piracy: Intellectual Asset Management in Music and Software," *European Management Journal* 20 (2002): 689, accessed February 17, 2012 through EBSCOhost.

⁸¹ "IFPI Digital Music Report 2012," IFPI, accessed April 20, 2012, <http://ifpi.com/content/library/DMR2012.pdf>.

Since the beginning of the 21st century new sites have been appearing offering a file storage service. People could store all kinds of files on these servers, e.g. documents, photographs from their holiday, and of course music and video files. From the legal perspective, these sites were harmless because most of them didn't offer any kind of search engine, so people couldn't browse the site's servers for any content other than the files uploaded by them. Alone, the sites really work as simple personal data storage. Even if there was an illegal content stored on their servers, the only person who can access it is the uploader. After uploading a file the uploader is given a link to download the file later.

Eventually, people started to exploit this service by founding various discussion forums where they can share the download links instead of the files. Great advantage of the file storage servers is a possibility to buy a *premium account* which allows incomparably higher download and upload speeds so people with *premium accounts* are limited only by their connection speed. But with the opportunity to share files in this indirect way comes the possibility of the copyright holders to find the content too and force the sites to delete it from their servers. So copyright holders hire people to control these forums and search for any links with their copyrighted material. The sites are left with no other option than to delete the files stored by their paying customers, and since they operate from the money they collect for the *premium accounts* they are in great danger. If downloaders see that the links at a particular site are "dead" i.e. the file was deleted, they reconsider where to put their money and buy a *premium account* from a different file storage site.

The people who profit the most from this system are downloaders, by downloading copyrighted material they break no law as long as they do not distribute it to other people. On the other side are those who are punishable: the people who store these copyrighted files there are breaking the copyright law and the sites are forced to delete the files. Copyright holders are losing profit.

The problem for copyright holders was that the U.S. copyright law applies only for U.S. based and managed sites. If there is a copyrighted material stored on a server outside the United States, then it is very hard to punish that particular site for copyright infringement.

But copyright holders didn't give up and along with the U.S. Senate they came up with the necessary legislation. On May 12, 2011, Senator Patrick Leahy introduced the *Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011* (PROTECT IP Act, or PIPA). This bill provides protective measures against overseas domains taking part in copyright infringement. If there is a site operated and registered overseas which serves mainly for distributing of illegal copies, the bill says that⁸²:

an "information location tool shall take technically feasible and reasonable measures, as expeditiously as possible, to remove or disable access to the Internet site associated with the domain name set forth in the order". In addition, it must delete all hyperlinks to the offending "Internet site"

This means that the site would stop being accessible through any links, it could be accessed only through its IP address, but downloaders wouldn't be able to access the uploaded files. Also, search engines such as Google or Yahoo! would be obligated to⁸³:

"(i) remove or disable access to the Internet site associated with the domain name set forth in the [court] order; or (ii) not serve a hypertext link to such Internet site."

Originally, it was planned that these rogue websites would be deleted from the Domain Name System (DNS), meaning that when a person enters the web address of the site, it would appear the site did not exist.⁸⁴ There have been some objections to that and many IT specialists claimed that such deleting of site domain names could harm the structure of the internet.

Other complaints about the bill have appeared concerning the freedom of speech. Some people say that blocking of sites with infringing content would block a lot of content that does not infringe any copyright law. Most mentioned are sites like

⁸² "Full Text of S. 968: Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011," accessed April 15, 2012, <http://www.govtrack.us/congress/bills/112/s968/text>.

⁸³ "Full Text of S. 968: Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011."

⁸⁴ "SOPA protests shut down Web sites," The Washington Post, accessed April 20, 2012, http://www.washingtonpost.com/politics/2012/01/17/gIQA4WYl6P_story_1.html.

YouTube, Facebook or Twitter, which only enable users to add content, but have only limited control over its legality.

Because of these issues the bill suffers, the vote on it was postponed until the problems are resolved. In the meantime, the U.S. House of Representatives, namely Lamar L. Smith, introduced another bill with similar aims – *Stop Online Piracy Act* (SOPA). The goal of the bill is the same as that of PIPA, protecting the intellectual property of the United States against the bad foreign websites that steal one of America’s main competitive advantages.⁸⁵

This time, the copyright holders would be given more rights along with better protective measures. Not only would search engines be obligated to delete links to rogue websites, but advertising networks and online payment facilities would have to cease doing business with those websites. Also, the copyright holders would be able to get court orders allowing them to make internet service providers (ISP) block access to rogue websites.⁸⁶ In addition, unauthorized online streaming of copyrighted material would be punishable with a maximum penalty of five years in prison.

There have been even more objections to this bill than to its predecessor, mostly regarding increased liability of the sites that host content (YouTube and others). According to *Digital Millennium Copyright Act* (DMCA) from 1998, the sites were obligated to remove an infringing content only after the copyright holder requested them to do so. With the new bill, the hosting sites would be responsible for detecting and removing infringing copyrighted content themselves.⁸⁷ This weakening of the “safe harbor” protections would potentially mean that any internet website could be shut down based on a single complaint.

⁸⁵ “The US Stop Online Piracy Act: A Primer,” PC World Business Center, accessed April 20, 2012, http://www.pcworld.com/businesscenter/article/244011/the_us_stop_online_piracy_act_a_primer.html.

⁸⁶ “Bill Summary & Status - 112th Congress (2011 - 2012) - H.R.3261 - CRS Summary,” THOMAS (Library of Congress), accessed April 19, 2012, <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:HR03261:@@D&summ2=m&>.

⁸⁷ Markham C. Erickson, “H.R. 3261, “Stop Online Piracy Act” (“SOPA”): Explanation of Bill and Summary of Concerns,” *Net Coalition* (Nov 1, 2011), accessed April 19, 2012, https://www.cdt.org/files/pdfs/NC-Analysis_of_HR3261_FINAL.pdf.

Due to its broad language and other technical problems there has been a lot of disagreement between the supporting politicians and the opponents and it was decided that the bill would not come up for a vote until a consensus is reached.⁸⁸

In connection with the two bills, there is one case that attracts a lot of attention. On January 19th, 2012 a file-storage website *Megaupload.com* was taken down by FBI due to copyright infringement. It was done so without any preceding lawsuit or any kind of warning. The most alarming fact is that neither of the new bills was in force at that time, so the website should have been under the protection of the DMCA. The site was taken down with no trial with its owners being arrested and about HK\$330 million (equals to US\$39 million) of assets being frozen. The FBI claimed that *Megaupload.com* in many cases did not obey the copyright owners' requests to delete an infringing material from their website. The website's founder Kim Dotcom argued that about 180 companies from the entertainment industry had an agreement with the website allowing them personally to delete any link they would find on *Megaupload.com* with the website not being involved at all in the deletion. Among the 180 companies were all major movie studios, Microsoft and others. The prosecution also said that the website was responsible for "Copyright infringement on a massive scale with estimated harm to copyright holders well in excess of 500 million US dollars". The number was meant only for music files and only during a two week period before the takedown. Kim Dotcom argued, how can one company do a damage of more than one half of the entire US music industry (500 million per two weeks is 13 billion a year and K.D. said the industry is about 20 billion) when there are many other companies of similar size offering the same service. Even companies like Microsoft, Google or Apple have a file storage service of their own.⁸⁹

The *Megaupload.com* case has not yet come to any verdict. Most people see the company as a sacrificial lamb that the huge companies from the entertainment industry viewed as a potential threat. In a response to these events, many similar

⁸⁸ "White House Says It Opposes Parts of Two Antipiracy Bills," The New York Times, accessed April 20, 2012, http://www.nytimes.com/2012/01/15/us/white-house-says-it-opposes-parts-of-2-antipiracy-bills.html?_r=3&ref=technology.

⁸⁹ "Kim Dotcom's first TV interview: 'I'm no piracy king'," 3 News, accessed April 10, 2012, <http://www.3news.co.nz/Kim-Dotcoms-first-TV-interview-Im-no-piracy-king/tabid/817/articleID/244830/Default.aspx>.

websites have limited their services or even stopped working fearing that they could be the next ones.

6.3 The search for a new business model

What needs to be done to save the music industry from “dying”? It is clear that the traditional business model doesn’t work in the digital age environment. Since the *Napster* and P2P breakthrough there have been some attempts to create a new, functioning business model. Some of those attempts have been working well so far and have persuaded even the major labels to look another way.

It is certain, that the new working model has to be designed for selling digital music, as the portion of the market taken by digital music trade is rising every year. We can see that in figure 4.

Digital music trade revenues by year			
	2009	2010	2011
Trade revenues (US\$)	4,6 billion	4,8 billion	5,2 billion
Growth	10%	5%	8%
% of industries' global revenues	27%	29%	32%

Fig 4: Digital Music Trade revenues in 2009, 2010 and 2011

Source: IFPI Digital Music Report 2012⁹⁰

Since the coming of the MP3 format, the market with digital music started. Among many illegal sites, there were some companies which took the opportunity and started legal online stores to become the pioneers of digital music market. One of these was the American giant Apple. In 2003, the company opened its iTunes Music Store which became the largest music vendor in the United States after five years of its existence.⁹¹

Apple instantly gained a very strong market position, because by that time, its portable mp3 player, iPod, had been for almost 2 years on the market. Using a small (1,8”) 5GB hard drive, it allowed users to store more than 1,000 songs in very good sound quality. At the time iPod was introduced, there were not many legal digital music services, so people filled their devices mostly with unlicensed material. But the existence of such a device created fast increasing demand on

⁹⁰ “IFPI Digital Music Report 2012,” 7.

⁹¹ “iTunes Store Top Music Retailer in the US,” Apple, accessed April 25, 2012, <http://www.apple.com/pr/library/2008/04/03iTunes-Store-Top-Music-Retailer-in-the-US.html>.

digital music services, and Apple took its opportunity to start iTunes Music Store. As of 2011, Apple sold more than 300 million units of its portable music player. Current generation iPods use flash memory with maximum of 64GB storage space and a full color touch display for viewing videos.⁹²

At the beginning, Apple implemented a digital protection in most of the music files called Digital Rights Management (DRM). DRM serves as a copy protection tool to prevent unauthorized distribution, but at the same time the user is unable to make legal backup copies.⁹³ Also, some mp3 players weren't able to play files with DRM, so most companies have abandoned implementing it into their music.

Currently iTunes Music Store contains 28 million songs and videos. The business model is based on payments for each downloaded item. The price for one song is usually 99 cents, for a new album from 10 to 15 dollars. While this is a working digital music model, the prices are almost as high as CD prices a few years ago. People need some alternatives. Maybe they can find these in models which leave out the major record labels from the music making process. Another way might be a different approach to the ownership of music, where people would pay less money, because they wouldn't own any copies of music. Let's have a look at some of these alternatives.

During the last few years, some of the new models gained quite a lot of success. When discussing the future of music marketing, most people mention one of the following three business models:

- Direct-to-fan
- Free-to-consumer
- Subscription

Each of these models works in a different way and is suited for artists with different approach to their fan base. I am not going to promote any of those models, nor am going to choose the best one. This final chapter should serve simply as an overview of what is out there and working well for the artists.

⁹² "Identifying iPod models," Apple, accessed April 29, 2012, <http://support.apple.com/kb/ht1353>.

⁹³ "The pros, cons, and future of DRM," CBC News, accessed April 20, 2012, <http://www.cbc.ca/news/technology/story/2009/08/06/tech-digital-locks-drm-tpm-rights-management-protection-measures-copyright-copy-protection.html>.

6.3.1 Direct-to-fan model

One of the alternative business models is a model which completely bypasses the role of major record labels. The direct-to-fan model is used by independent musicians, independent record labels and many other professionals from the entertainment sphere.

Without the participation of a major record label, there is a great portion of extra work for the artist to do. And because it is a model created to work effectively in the internet age, artists have to maximize the use of social networks such as Facebook, Myspace, or Youtube.

Using these websites, an artist creates their fan base. It is very important to keep in touch with their fans, sending them regular updates, offering special merchandise, or even giving rewards for downloading a song or buying a ticket to their show.⁹⁴ Any activity leading to fan participation is important for an artist.

There are complex direct-to-fan solutions offering help to artists with various parts of fan management. Such companies offer manufacturing of CDs, warehousing, payment processing, website administration, ticket sale, and many services regarding merchandise.⁹⁵ The difference from the traditional business model is that artists don't sign any "fair" contracts with these companies.

Some of the direct-to-fan solutions are: Nimbit, DiscRevolt, Tunecore, or Topspin.

6.3.2 Free-to-consumer model

This business model is based on online streaming of music. The foundations of this model were probably laid by the huge success of YouTube. The website enables people to upload a short video of any kind, which can be then viewed online by anyone. Although YouTube was sued for having an illegal content uploaded on its servers, later even the major record labels created their own accounts where they posted videos from their artists.

This became the inspiration for a new business model. Online streaming sites can buy licenses for streaming audio files from the copyright owners and then can

⁹⁴ "Direct-to-Fan: Hitting Your True Potential," ASCAP, accessed April 20, 2012, <http://www.ascap.com/playback/2010/12/FEATURES/nimbit.aspx>.

⁹⁵ "Plans & Pricing," Nimbit, accessed April 20, 2012, http://www.nimbit.com/compareplans/compare_signup.html.

offer whole albums for listening online. All that can be done for free. The sites are funded by advertisements which are played between songs.⁹⁶

The content stored on these websites can be only viewed, or listened to online, it cannot be downloaded to a hard-drive by standard means.

Examples of such audio and video streaming sites are: Pandora, Grooveshark, Jango, or MusicJet. These free streaming sites are often called internet radios.

6.3.3 Subscription model

The subscription business model is based on regular user payments. The most successful services give people access to quite an extensive music library for their money. Similarly to the free model, the subscription model uses online streaming in most cases.

Here is an example of how the subscription model with online music streaming can work. Customers are given an application which enables them to completely manage their account. It serves as a music player, and a search engine for browsing the library. Moreover, providers of such services offer their customers various options for their subscription. For example, they can choose from different “packages”. More expensive packages can include software for mobile devices such as tablets, mobile phones etc.

Some of the major record labels have already adopted the idea of streaming subscription, but most customers are probably looking for a complex solution, through which they can access a huge library containing licensed material from all labels at one place, including the independent ones.⁹⁷

An example of a very successful subscription service is a company named Spotify. This online service was founded in 2006 and to this date has about 10 million registered users from which about 3 million are paying users.⁹⁸ The company’s music catalogue contains 15 million licensed tracks varying in every country. The service is available in 13 countries (12 European and USA), but the company puts great effort to arrange licenses in as many countries as possible.

⁹⁶ “Future Music Business Models: A Response,” Dotted Music, accessed April 20, 2012, <http://dottedmusic.com/2012/audio-streaming/future-music-business-models-a-response/>.

⁹⁷ Fischbeck, “Digital Music Business Models,” 10.

⁹⁸ “Background Information – Press – Spotify,” Spotify, accessed April 25, 2012, <http://www.spotify.com/int/about-us/press/background-info/>.

As it seems, subscription model will become one of the most commonly used paid business models in future for mass music marketing. As we can see in figure 5, the service is enjoying a very fast growth. Another mass marketing model for digital music which is probably here to stay is the pay-per-download model, which has been there for more than a decade.

Estimated paying subscribers to music subscription services globally	
2010	8,2 million
2011	13,4 million

Fig 5: Paying subscribers in 2010 and 2011 globally
Source: IFPI Digital Music Report 2012⁹⁹

⁹⁹ „IFPI Digital Music Report 2012,“ 11.

7 Conclusion

An uncertain future is awaiting the recording industry. It is only up to the major players, whether they can keep up with the technological evolution and the consumers' tastes. So far, they haven't shown any ability to change their marketing strategies in time.

The paper tries to give a complex picture of the background of the recording industry – where did the problems, it is going through, come from and how are they dealt with.

It is certain that the traditional business model, which was set in the era of highest cassette and CD sales, cannot be applied to the modern era of digital music. It seems there are a few possible ways the industry can take, depending on whether people will prefer to pay more money for ownership of music files or will rather have online access to extensive music libraries through subscription with regular fees.

Another goal, which is harder to accomplish, is to start completely bypassing the major record companies. While the first two options depend on the consumers' and service providers' choice, this one depends on the artists.

Maybe that if some of these options are combined, the record labels and copyright holders will change their attitude and maybe they will realize that music in modern times is not a product but a service and has to be marketed accordingly, instead of creating a very complicated legislation which can negatively affect democracy on the internet.

Summary

Tato bakalářská práce popisuje vývoj hudebního průmyslu od jeho počátku, tedy doby, kdy hudba začala být masově prodávána až po nejaktuálnější trendy a problémy na dnešním trhu. Hlavní důraz je kladen na 21. století, tedy dobu digitální hudby, jelikož s jejím příchodem nastaly největší změny v chování zákazníků.

První kapitola pojednává o technologickém vývoji, který vedl ke vzniku nahrávacího průmyslu. Jeho počátky jsou již v roce 1877, kdy Thomas Edison uvedl svůj vynález určený k nahrávání telefonních hovorů – fonograf. Ten měl v podnikatelské sféře nahradit nutnost posílání dopisů. Nicméně již tento přístroj mnohdy sloužil k nahrávání hudby a jeho pozdější verze se stala základem prvního jukeboxu – nickeloedeonu. Později přišla konkurence v podobě gramofonu, který byl založen na stejném principu, ale jako záznamová média byly použity ploché desky namísto rozměrných válců. S tímto přístrojem přišel Emile Berliner a i přes horší zvukovou kvalitu slavil komerční úspěch. Hlavní výhodou byla možnost hromadné produkce zvukových nahrávek na gramofonových deksách.

Dalším milníkem v historii nahrávacího průmyslu bylo uvedení MC audiokazet. Ty využívaly technologie záznamu na magnetický pásek. První hudební audiokazety byly vydány v roce 1966 a v průběhu následujících let, kdy byla novými technologiemi zvyšována zvuková kvalita jejich záznamu, se staly ideálním médiem pro nahrávání hudby.

Nicméně hlavní předností audiokazet byly jejich rozměry a největším hitem s nimi spojeným se stal přístroj jménem *Walkman*, který v 80. letech uvedla společnost Sony. Jednalo se o přenosný přístroj, který umožňoval lidem poslouchat hudbu mimo jejich domovy. V roce 1995 byly přenosné přehrávače přítomny v 50 % domácností.

Ve stejné době, kdy byl uveden *Walkman*, již ale Sony spolu se společností Philips uvádí první optické médium s digitální technologií záznamu – kompaktní disk (CD).

Jeho rozměry byly srovnatelné s audiokazetou, ale vynikal hlavně nesrovnatelně lepší kvalitou zvukového záznamu a dodnes se může chlubit nejlepším zvukem

mezi médii ve spotřebitelské sféře. CD a digitální audio celkově později umožnilo také příchod komprimace zvuku a následný rozmach digitálního pirátství. Na toto navazuje kapitola o právním prostředí, autorském právu a právě problémech v této oblasti.

Následující kapitola se věnuje nahrávacím společnostem, tedy jejich organizační struktuře a historii. Je věnována pozornost rolím, které jednotlivá oddělení plní. Poté je rozebírána historie *Velké čtyřky* nahrávacích společností, tedy EMI, Sony Music Entertainment, Universal Music Group a Warner Music Group. Tři z nich vzešly svým způsobem ze společností Columbia Phonograph Company a Berliner Gramophone. Postupně pohlcovaly menší nahrávací společnosti, až se z nich stali dnešní nahrávací giganti. Toto vedlo dokonce k rozdělení EMI mezi Sony Music Entertainment a Universal Music Group a je pravděpodobné, že podobný osud očekává také v současnosti nejmenšího z obrů, Warner Music Group.

V další kapitole je rozebrán marketingový model, kterým se nahrávací společnosti řídily v době rozmachu a největších prodejů fyzických hudebních nosičů. Bohužel, nahrávací průmysl jen těžko pochopil, že ve 21. století a době digitální hudby je potřeba upustit od tradičního marketingového modelu, který s hudbou nakládá jako s produktem a najít nový fungující model, který ji bude chápat jako službu. Je provedena analýza tradičního modelu na základě marketingového mixu a následně jsou poznatky aplikovány na hudební průmysl.

V další kapitole se práce věnuje autorským právům, kterými jsou hudební nahrávky chráněny. Dále práce pokračuje nástupem hudebního pirátství. To zažilo první velmi vážný rozmach s příchodem DAT kazet, tedy audiokazet s digitálním záznamem zvuku. To umožňovalo vyrábět přesné kopie bez ztráty kvality a DAT kazety vážně ohrozily trh s CD, který v té době zažíval vzestup. Proto byl nahrávací průmysl odhodlán k zákazu importu a prodeje veškerého souvisejícího vybavení ve Spojených státech. To se nakonec nepovedlo a výsledkem snahy bylo zavedení licenčních poplatků. Tedy do koncových cen DAT kazet a souvisejícího zboží byl zahrnut poplatek, který v podstatě zákazníkovi povoloval dělat kopie pro soukromé použití. Dalším velkým problémem byl příchod kompaktních disků používaných pro záznam počítačových dat, tedy CD-ROM. V roce 1988 bylo uvedeno CD-R, tedy disk, na který bylo možné pomocí „vypalovačky“, tedy vybavení osobního počítače, možné data zapisovat. Tedy i kopírovat a týkalo se to

i hudebních CD. Na konci devadesátých let se vypalovačky staly běžným vybavením počítačů v domácnostech a hudební průmysl byl ve vážných problémech.

Ještě větší problémy ale způsobil nástup formátu mp3. Šlo o formát využívající zvukovou komprimaci a hudební CD mohlo být zkomprimováno až na desetinu (přibližně) své původní velikosti za zachování téměř stejné zvukové kvality. To umožňovalo pohodlné vytváření hudebních knihoven na osobních počítačích, které v té době nedisponovaly příliš velkou pevnou pamětí.

V roce 1999 přišla rána z největších. Byla spuštěna internetová stránka, která umožňovala lidem pomocí počítačového programu procházet sdílené složky jiných lidí připojených skrz stejný program. Stránka se jmenovala *Napster* a její tvůrci jejím založením způsobili největší pohromu v hudebním průmyslu. Prodeje CD nosičů začaly rapidně klesat a už se nikdy nedokázaly přiblížit prodejům před spuštěním *Napsteru*. Nicméně, tvůrci stránky byli zažalováni za hromadné porušení autorských práv a u soudu se svou obhajobou neuspěli a byli nuceni zaplatit pokutu 26 milionů dolarů za způsobené škody a 10 milionů dolarů za budoucí licenční poplatky. Poté již stránka zažila jen krátkou dobu existence a v roce 2002 vyhlásili majitelé bankrot.

Na podobném principu, tedy peer-to-peer sítích je založen i *BitTorrent* protokol. Ten umožňuje stahování souborů od jiných uživatelů pomocí programu, ve kterém uživatel otevře malý torrent soubor, který slouží jako spojka mezi uživatelem a počítači s potřebnými soubory. Tyto sítě jsou hromadně využívány dodnes a jejich užívání ke stahování hudby porušuje autorský zákon, jelikož při stahování souboru uživatel stejný soubor zároveň odesílá ostatním uživatelům. To je považováno za nepovolenou distribuci.

V souvislosti se všemi těmito nástroji hudebního pirátství je všude po celém světě vyvíjeno úsilí nahrávacích společností k zavedení všemožných zákonů, které mají zabránit existenci stránek porušujících autorská práva, ale tyto zákony jsou vytvořeny tak, že v důsledku omezují svobodu internetu. Jde především o americké zákony PIPA a SOPA, tedy *Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act of 2011* a *Stop Online Piracy Act*. Ty v podstatě vlastníkům autorských práv umožňují kontrolovat obsah

internetu. Poskytovatelé internetového připojení podle těchto zákonů mají být povinni na popud vlastníků autorských práv zablokovat přístup k internetovým stránkám, které se dopustily porušení autorských práv. A to i v případě, kdy internetová stránka má malou šanci zabránit každému takovému porušení. Tedy v případech, kdy obsah na stránku vkládají miliony uživatelů a stránka pouze UMOŽŇUJE nebo USNADŇUJE vložení nelegálního obsahu. S novými zákony je stránka nově zodpovědná za detekci a odstranění takového materiálu. Tyto zákony prozatím nebyly přijaty, nicméně v lednu 2012 FBI zablokovala veškerý přístup ke stránce *Megaupload.com*, jedné z největších stránek nabízejících služby úschovy souborů. Tento čin vyvolal velkou nevoli, také proto, že v té době nebyly nové zákony v platnosti a stránka tedy měla být pod ochranou staré legislativy.

V poslední kapitole jsou rozebrány marketingové modely, které by mohly v budoucnu udržet hudební průmysl naživu. Velmi důležité ale je, aby si to uvědomily také nahrávací korporace a pokusily se uchopit možnost konečně využít možností internetu namísto neustálého bojování proti němu.

V současné době asi nejrozšířenějším modelem je model založený na poplatcích za jednotlivé stažené skladby, nicméně hudba je takto stále velice drahá a model je pouze jakousi kombinací tradičního modelu s digitální distribucí.

Je tedy na zákaznících, zda si vyberou tento model nebo nejspíš největší konkurenci v podobě modelu založeného na pravidelných poplatcích. Tímto předplatným si zákazník zakoupí možnost přístupu k rozsáhlým hudebním knihovnám. Tento systém se liší také v tom, že uživatel hudební soubory nevládní, ale pouze je může poslouchat pomocí programu online. Tento model zažívá vcelku rychlý vzestup a objevují se nové společnosti s nakoupenými licencemi nabízející služby online „vysílání“ hudby.

Další možností vývoje, leč hůře proveditelnou a méně pravděpodobnou je vypuštění služeb velkých nahrávacích společností a využití modelu direct-to-fan (přímo k fanouškovi). Existují společnosti, které nabízejí veškeré nahrávací služby a také služby spojené s propagací za velmi nízké ceny a hlavně bez jakékoliv umělce svazující smlouvy. Pokud se tento model uchytí, bude to nejspíš trvat velmi dlouhou dobu.

Je jasné, že hudební průmysl si od začátku 21. století prochází značnými problémy. Vývoj moderních technologií a hlavně internetu přinesl nové možnosti ve způsobu propagace a distribuce hudby, nahrávací společnosti ale dlouho nebyly ochotny něco měnit v zaběhnutém systému. Toto fatální nepochopení je stálo nemalé ušlé zisky a soudními rozepřemi a novými nepochopitelnými zákony si proti sobě poštvaly nemalou část veřejnosti. Nicméně stále ještě mají možnost nějakým způsobem se udržet ve svých významných rolích v průmyslu, ale musí projevit ochotu jít s moderní dobou a naslouchat svým zákazníkům.

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Annotation

Author: Jan Kašpír

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The aim of this paper is to capture the development of the music industry, its technological evolution with the emphasis on some turning points in music distribution. It will give some background information on the history of the main players of the industry – the record corporations. Further, the paper will analyze the impact of modern technologies and the transition from physical distribution to the modern ways of digital distribution. There will be a chapter on copyright law as a weapon against music piracy and the way it affected the freedom of the internet. At the end, the paper summarizes a few business models that are probably going to set the direction of the future recording industry.

Anotace

Autor: Jan Kašpír

Název katedry: Katedra anglistiky a amerikanistiky, Filozofická fakulta

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Klíčová slova: Marketing, hudební marketing, hudební průmysl, nahrávací průmysl, autorská práva, digitální distribuce hudby

Cílem této práce je zachytit vývoj hudebního průmyslu a s ním souvisejících technologií se zaměřením na zásadní změny ve způsobu distribuce hudby. Poskytne pohled na historii hlavních aktérů tohoto průmyslu, tedy nahrávacích společností. Dále se bude zabývat vlivem moderních technologií a přechodem z klasické distribuce fyzických hudebních nosičů na dnešní metody distribuce digitální. Práce bude obsahovat kapitolu o zákonech týkajících se autorských práv, které při boji proti pirátství ovlivnily základy svobodného internetu. Na závěr poskytne přehled nově užívaných marketingových modelů, které pravděpodobně naznačí směr budoucího vývoje hudebního průmyslu.