

Working Together To Save The Music

Internet Services Present A Challenge—And An Opportunity—For Radio

BY JASON TURNER

Record labels took another shot to the gut Aug. 21, this time from the Second Circuit Court's ruling in *Arista Records, et al. v. Launch Media*. The court held that Yahoo's Launchcast wasn't an interactive service as defined by the Copyright Act.

Unfortunately, for labels, this means that one more potentially significant source of revenue has been dashed. Launchcast, as well as other similar Internet radio services like Pandora and Last.fm, must only pay the minimal statutory licensing fees set by the Copyright Royalty Board through SoundExchange to the owners of the recordings.

This ruling is well-reasoned despite the labels' sensible displeasure with it. But when coupled with the continuing failure of Congress to pass a Performance Rights Act, it makes it more important than ever for everyone in the music industry to work together to keep this a viable, profitable business.

When Congress enacted the first U.S. copyright law with the Copyright Act of 1790, it intended to establish an incentive for authors to share their works with the public by protecting their creations. Recall that Article I, Section 8 of the Constitution gives Congress the power to establish laws to promote the progress of science and useful arts. (Granted, it wasn't until 41 years later through the Act of 1831 that music was first recognized as a "useful art.") As the Internet became popular in the '90s, the recording industry quickly began publicizing its concern that existing copyright laws couldn't protect it from piracy.

Partially due to these concerns, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995, which was the first time that the owners of sound recordings were afforded the exclusive right to perform sound recordings (albeit an extremely narrow exclusive right pertaining only to paid subscription and interactive services) by way of a digital audio transmission. But the industry and Congress soon recognized that the swift evolution of the Internet and the advent of true "on-demand" services, which allow end



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users to decide exactly what songs they hear, called for a change to the definition of "interactive service" in 1998 to include services "that enable a member of the public to receive a transmission of a program specially created for the recipient, or on request, a transmission of a particular sound recording." Up until then, nearly all the services on the Internet were deemed noninteractive, since the content was chosen for the listener.

There's no doubt that college students and younger children these days are listening less to terrestrial radio. With the advent of social networking sites and noninteractive Internet radio sites like Pandora and iLike, the millennials are finding ways of exploring new music without the involvement of traditional radio. Does this mean that

traditional radio will soon disappear? I doubt it—but only if traditional radio doesn't make the same mistake that labels did in the late '90s when they ignored the rise of the MP3 format. Radio programmers must tap into these social networking sites to connect with the next generation. Perhaps there are ways for terrestrial stations to implement Pandora-like programs on their station Web sites, which will generate revenue while helping introduce young listeners to the new music being marketed by labels.

The labels must also pitch in, however. It's reasonable to feel empathy for them, since record sales continue to plummet at staggering rates. It seems that full albums are disappearing into the sunset. The attention span of the millennials is but a few seconds, if you're lucky. Texting, tweeting, Facebooking and other such forms of communication are the waves of now, not the future. If we're going to sustain a record industry that can reward labels for investing in the "useful art" of music, everyone needs to recognize that we are all in the same boat and help find a solution. None of us can afford to ignore the perceived problem. Especially because it may actually be an opportunity.

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FEEDBACK

SPEAK UP

Congratulations to Leila Cobo on her Latin Notas column titled "It Takes A Village" (Oct. 3). Almost everyone knows why radio stations aren't playing the music, but no one wants to talk about it.

If everyone starts speaking about this issue, radio stations will have to change their way of doing business and start playing good music. This is the way it was before.

Thanks for the well-written article.

Alfredo G Arce

FOR THE RECORD

The name of music engineer Marcella Araica's label was misstated in the 6 Questions Q&A in the Oct. 10 issue. It should have been listed as *New Age Rock Stars*.

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