

Working Paper

The Impact of Recording Artists and Music on Legal and Social Change

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Ross School of Business Working Paper
Working Paper No. 1393
June 2019

Forthcoming in *28 Minnesota Journal of International Law* (2019)

This paper can be downloaded without charge from the
Social Sciences Research Network Electronic Paper Collection:
<http://ssrn.com/abstract=3450663>

Article

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Cindy A. Schipani* and Kate Peterson**

INTRODUCTION

Whether you are in your car, on a run, or in a store, music surrounds you. Music is a part of everyday life. We form opinions, talk about, and connect with music on personal levels. Furthermore, music can influence not only personal decisions but broader social goals and ideas. This article focuses on how recording artists use their music and their celebrity status to influence social and humanitarian goals, including legal regulations and the business world. Nearly everyone can name a current or past artist associated with a social movement.

We explore this topic by first discussing the influence of music on society. From a psychological perspective, music seems to have significant social effects due to its ability to shape emotions. This is followed with a discussion of the ways artists express political ideas and how these ideas tie in with particular artists' careers. John Lennon, Yoko Ono, Bruce Springsteen, Aretha Franklin, and Bob Dylan are highlighted for their political expression through lyrics and words. The paper continues with a discussion of the role musicians have played in inspiring a revolution, and the roles they have played as diplomats.

We next examine music and business highlighting political

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speech and fundraising followed with a discussion of the effects of music on legal regulations and public policy. The role of censorship in music and its social effects are then analyzed. We ultimately conclude that artists are in an excellent position to effectuate social change and inspire others to take meaningful steps toward solving complex humanitarian issues.

I. THE INFLUENCE OF MUSIC ON SOCIETY

Before discussing the effects of music and musicians on social change or peace, it is useful to consider the way that music connects with and affects people on an individual level. Music is a form of communication. Unlike prose, music packages words in a way that is easier to remember and recite.¹ Within American history, we can look to the use of songs by slaves in the pre-emancipation era as an example of music's practical uses. Many of these slave songs communicated messages among slaves as a form of coded text.² These songs allowed slaves to communicate escape plots without being accused or punished for planning their escapes.³ Although some of these songs were only symbolic in nature, phrases such as "I couldn't hear nobody pray, O Lordy," were warnings about problems along the Underground Railroad.⁴ Thus, music has the power to convey specific messages to others in an easily accessible form. We can also see from this example, however, that when people use music to convey a message, the audience's knowledge influences interpretation. Slaves and white overseers interpreted the songs in completely divergent ways.

Although modern music may not have the same immediately practical nature of slave songs and spirituals, lyrics and musicians continue to have social influence.⁵ Both

1. ROB ROSENTHAL & RICHARD FLACKS, *PLAYING FOR CHANGE: MUSIC AND MUSICIANS IN THE SERVICE OF SOCIAL MOVEMENTS* 10 (2011).

2. G. Yvonne Kendall, "I Ain't Got Long to Stay Here": *Double Audience, Double Irony in US Slave Songs and Spirituals*, in *THIS IS THE SOUND OF IRONY: MUSIC, POLITICS, AND POPULAR CULTURE* 31, 33 (Katherine L. Turner ed., 2015).

3. *Id.* at 37–38.

4. *Id.* at 43.

5. See Astrid Keel & Rajan Nataraajan, *Celebrity Endorsements and Beyond: New Avenues for Celebrity Branding*, 29 *PSYCHOL. & MARKETING* 690 (2012) (discussing the influence that celebrities have on marketing and sales of products). When celebrities endorse goods, they are endorsing a type of lifestyle. When spreading ideas of peace and social change, celebrities are still endorsing

historically and today, music plays a fundamental role in protests and civil rights movements. For example, tobacco workers reused “We Shall Overcome,” a song which was originally a Black church song, for the 1940s workers strike.⁶ Since this strike, protestors have continuously adopted and translated “We Shall Overcome” into various languages for generations of protests across the globe.⁷ Another example of music’s contributions to protests was during the Imperial Valley lettuce-pickers’ strikes in 1934.⁸ Fellow workers, who had difficulty communicating because of language barriers, were able to use music as a form of communication because they could express thoughts and feelings through rhythms and sounds.⁹ Music creates social unity, even if the words are not understood. Music fosters the energy needed for social movements and protests.¹⁰ Music also has a way of capturing attention that prose alone cannot. In this way, music is an excellent tool for social mobilization.

From a psychological perspective, music seems to have significant social effects due to its ability to shape emotions. Empirical evidence suggests that people perceive emotions in music.¹¹ For example, the vast majority of people perceive the same sort of emotion in the same piece of music, which is (the majority of the time) the emotion that the artist intends to convey.¹² Additionally, an individual’s music preferences often correlate with his or her personality and values. Music preference is usually explored and cemented in one’s adolescence, and research indicates that many young adults place much importance on music preference, using it to evaluate themselves and judge others.¹³ Furthermore, in many cultures, music is not only meant for listening but is also a participatory

the “sale” of a type of lifestyle and good.

6. ROSENTHAL & FLACKS, *supra* note 1, at 11.

7. *Id.*

8. *Id.* at 178.

9. *Id.*

10. *Id.* at 174–75.

11. See Peter J. Rentfrow, *The Role of Music in Everyday Life: Current Directions in the Social Psychology of Music*, 6 SOC. & PERSONALITY PSYCHOL. COMPASS 402, 406–07 (2012); Symposium, *Music Psychology*, 51 INT’L J. PSYCHOL. 854, 854–58 (2016) [hereinafter *Music Psychology*].

12. Rentfrow, *supra* note 11, at 406.

13. *Id.* at 408–12. Note that this research was performed on a subject pool concentrated in North America and Europe, so these findings may only correlate to Western music. *Id.* at 409.

medium, leading to other cognitive effects.¹⁴ In Western culture, this may extend to people attending concerts and having the opportunity to directly interact with the artist.¹⁵

Sociologically, the reason music (especially popular music) is so significant is because not only do listeners make connections with the artist, they are also making connections with the other people involved in the experience. There is a social aspect in attending a concert, because although each person might experience different emotions while listening to the music and watching the performer, they are brought together by a communal passion and appreciation for the artist's work.¹⁶ In this way, music often embodies a person's values and beliefs.¹⁷ Simon Frith states, "[o]ther cultural forms—painting, literature, design—can articulate and show off shared values and pride, but only music can make you *feel* them."¹⁸

II. RECORDING ARTISTS AND THE ART OF INFLUENCE

Nearly everyone can name a current or past artist associated with a social movement.¹⁹ Bob Dylan is associated with peace movements starting in the 1960s with songs such as "Blowin' in the Wind," Bruce Springsteen is the voice of small town America's plight, Lady Gaga is renowned for her stance on LGBTQ+ rights, and, Bono is well-known for his involvement with AIDS campaigns and global poverty.²⁰ In many instances,

14. *Music Psychology*, *supra* note 11, at 854.

15. See ROSENTHAL & FLACKS, *supra* note 1, at 124–25, 255–56.

16. *Id.* at 94–95, 124–25; see Rentfrow, *supra* note 11, at 410–11.

17. Rentfrow, *supra* note 11, at 411.

18. Simon Frith, *Towards an Aesthetic of Popular Music*, in *MUSIC AND SOCIETY: THE POLITICS OF COMPOSITION, PERFORMANCE AND RECEPTION* 133, 140 (Richard Leppert & Susan McClary eds., 1987).

19. See generally Peter Dreier & Dick Flacks, *Music and Movements: The Tradition Continues*, HUFFPOST: BLOG (May 24, 2014, 7:19 PM), https://www.huffpost.com/entry/music-and-movements-the-t_b_5386353 (last updated Dec. 6, 2017).

20. David Boucher & Gary Browning, *Introduction: The Political Art of Bob Dylan*, in *THE POLITICAL ART OF BOB DYLAN* 3, 9 (David Boucher & Gary Browning eds., 2d ed. 2009); Eric Alterman, *Bruce Springsteen's Political Voice*, NATION (Apr. 11, 2012), <https://www.thenation.com/article/bruce-springsteens-political-voice/>; Jon Blistein, *Bono Receives France's Highest Culture Award*, ROLLING STONE (July 17, 2013, 3:45 PM), <http://www.rollingstone.com/music/news/bono-receives-frances-highest-culture-award-20130717>; *Lady Gaga Wins Peace Award Named after John Lennon*, CBS NEWS (Oct. 9, 2012, 1:01 PM), <http://www.cbsnews.com/news/lady-gaga-wins-peace-award-named-after-john->

society and governments have recognized musicians for the social power and influence of their musical careers by presenting artists with major awards. For example, Bob Dylan received The Commander of the Order of Arts and Letters from France, the United States Presidential Medal of Freedom, a Pulitzer Prize, and most recently, the 2016 Nobel Prize in Literature.²¹ But the question is how and why the association with musicians and peace movements developed.

A. POLITICAL EXPRESSION THROUGH LYRICS AND WORDS

Recording artists occupy a unique position in society because they have both a literal and figurative stage for voicing their opinions. Artists express their opinions through lyrics, musical composition, and music videos. With fame, artists also gain access to newspapers, magazines, and television appearances, which provide audiences of thousands of viewers. Artists understand the power of celebrity. In fact, John Lennon and Yoko Ono recognized this power when they initiated their Campaign for Peace.²² Their celebrity status inspired the idea of using the bed-in for promoting peace. Lennon and Ono capitalized on the media fascination with the “secret” lives of celebrities.²³ By appearing in a private space in their pajamas, Lennon and Ono knew they could receive greater circulation for their message of peace than by emphasizing their roles as celebrities.²⁴

Another significant example of an artist using his music and celebrity status to express social and political issues is Bruce Springsteen. As Springsteen’s career progressed, he began to write songs about closed factories, mines, and other issues

lennon/.

21. Allan Kozinn, *Dylan Joins France’s Legion of Honor*, N.Y. TIMES: ARTSBEAT (Nov. 14, 2013, 2:11 PM), <https://artsbeat.blogs.nytimes.com/2013/11/14/dylan-joins-frances-legion-of-honor/>; Ben Sisario et al., *Bob Dylan Wins Nobel Prize, Redefining Boundaries of Literature*, N.Y. TIMES (Oct. 13, 2016), <https://www.nytimes.com/2016/10/14/arts/music/bob-dylan-nobel-prize-literature.html>; see also Laura Smith-Spark, *Bob Dylan Wins 2016 Nobel Prize for Literature*, CNN (Oct. 13, 2016, 10:01 AM), <http://www.cnn.com/2016/10/13/world/nobel-prize-literature/index.html>.

22. Robert J. Kruse II, *Geographies of John and Yoko’s 1969 Campaign for Peace: An Intersection of Celebrity, Space, Art, and Activism*, in *SOUND, SOCIETY AND THE GEOGRAPHY OF POPULAR MUSIC* 11, 15–16 (Ola Johansson & Thomas L. Bell eds., 2009).

23. *Id.* at 22–23.

24. *Id.*

related to the American working class.²⁵ These earlier songs lead to the eponymous “Born in the U.S.A.,” with a music video that spliced together pictures of a young and energetic Springsteen with veterans and factory workers in small town America.²⁶ Arguably, Springsteen used his video to demonstrate the issues of small town life in America which his fans may not otherwise see. Springsteen’s political involvement only continued from this point onward with his contributions to political campaigns and his album, *Wrecking Ball*, which critiqued the lack of consequences for banks after the 2008 financial crisis.²⁷ In 2016, Springsteen even canceled a North Carolina concert to protest the HB2 law that dictated which bathroom transgender individuals could use.²⁸

Finally, the discussion of Springsteen’s political and social involvement cannot be complete without recognizing his album, *The Rising*. Story has it that after the attacks on 9/11, a fan said to Springsteen, “We need you now.”²⁹ In response to this plea, Springsteen created an entire album addressing the horror of the attacks while calling for hope and resiliency among Americans.³⁰ The importance of the story of *The Rising* is not simply that Springsteen used his music to connect with an audience after a national tragedy. In addition, the story of the fan reaching out to Springsteen is an example of how individuals relate to certain artists and their music. People wanted an artist to express the social woes and tragedy they experienced. Listening to a particular artist’s work can serve as a political and emotional outlet that laypersons may not be able to explore on their own. The audience and artist work together to express social ideas and frustrations. In the words of Springsteen, “At your best, your most honest, your least glitzy, you shared a common history, and you attempted both to ask questions and answer them in concert with your audience. In concert. The word ‘concert’—people working together—that’s the idea.”³¹ In other

25. Alterman, *supra* note 20.

26. Bruce Springsteen VEVO, *Bruce Springsteen - Born in the U.S.A.*, YOUTUBE (Mar. 10, 2011), <https://www.youtube.com/watch?v=EPHWR4d3FJQ>.

27. Alterman, *supra* note 20.

28. *A Statement from Bruce Springsteen on North Carolina*, BRUCE SPRINGSTEEN (Apr. 8, 2016), <http://brucespringsteen.net/news/2016/a-statement-from-bruce-springsteen-on-north-carolina>.

29. Bradford L. Yates, *Healing a Nation: An Analysis of Bruce Springsteen’s The Rising*, 22 J. POPULAR MUSIC STUD. 32, 32 (2010).

30. *Id.* at 46–47.

31. ROSENTHAL & FLACKS, *supra* note 1, at 255–56.

words, artists should be working together with their audience toward social change and a sense of community.

Another artist that has deep connections to political movements is Aretha Franklin. Throughout her life and career, she was associated with political movements. Franklin was born into a family of activists.³² Her father organized the Detroit Walk to Freedom in 1963, which was one of the largest civil rights demonstrations until Martin Luther King Jr.'s march on Washington.³³ Franklin met Martin Luther King Jr. at a young age and continued to support his social movements up until his death.³⁴ As Rev. Jesse L. Jackson said of Franklin, "She used her platform to inform others. She did not put her career before principles."³⁵ She was not only supportive by speaking out on social issues, encouraging others to register to vote, and adding contract clauses throughout the 1960s whereby she refused to perform for segregated audiences, she also regularly donated money to causes.³⁶ Along with fellow musician Harry Belafonte, Franklin would host concerts to raise money for MLK's Southern Christian Leadership Conference any time the organization was in need of funding.³⁷ Even in recent years, Franklin was a regular advocate for improving the subpar water conditions of Flint, Michigan.³⁸ She spoke out against the government's decision to stop providing water to the citizens of Flint and regularly encouraged Detroit District Judge Greg Mathis to return to Flint to improve ongoing water infrastructure issues.³⁹

Although Franklin was a social activist throughout her career, some of her songs became the voices of or inspirations for social movements. The song most widely adopted for these

32. *Aretha Franklin: The Sound of the Civil Rights Movement*, BBC NEWS (Aug. 16, 2018), <https://www.bbc.com/news/world-us-canada-45216581>.

33. *Id.*

34. Sandra E. Garcia, *Aretha Franklin, Civil Rights Stalwart: "In Her Voice, We Could Feel Our History,"* N.Y. TIMES (Aug. 17, 2018), <https://www.nytimes.com/2018/08/17/arts/aretha-franklin-dead-civil-rights.html>.

35. *Id.*

36. *Id.*; Rochelle Riley, *Aretha Franklin's Civil Rights Legacy*, USA TODAY (Aug. 17, 2018); *Aretha Franklin*, *supra* note 32.

37. Errin Haines Whack, *Queen of Soul Also Leaves Powerful Civil Rights Legacy*, SEATTLE TIMES (Aug. 16, 2018), <https://www.seattletimes.com/nation-world/queen-of-soul-also-leaves-a-powerful-civil-rights-legacy/>.

38. Paul Rogo, *Whoopi Goldberg Shares Aretha Franklin's Last Wish*, ESSENCE (Sept. 5, 2018), <https://www.essence.com/celebrity/aretha-franklin-flint-judge-mathis/>.

39. *Id.*

purposes was “Respect.” This song was originally recorded by Otis Redding but when Franklin recorded her version in 1967, the song took on a new life of its own.⁴⁰ Franklin’s version of the song became an anthem for both the women’s rights movements and the civil rights movement.⁴¹ Whether intentional or not, Franklin’s “Respect” became a song celebrating “female independence and sexual empowerment.”⁴² The song became a successful number one hit on the charts for twelve weeks.⁴³ Furthermore, even though “Respect” was not necessarily meant to become a widespread song of social empowerment, it became the anthem for individuals facing social inequalities. This song became an important example of how one powerful song can easily be adapted and used to support the needs of growing social movements. Even many years later, this song has continued salience as it has been adopted into the #metoo movement.⁴⁴ Franklin’s association with social movements allowed people to relate to her music and use it as a source of empowerment.

Although Lennon, Springsteen, and Franklin are examples of artists overtly addressing and involving themselves in social issues, some artists are known for their political influence despite their attempts to distance themselves from particular political stances. The most prominent example of this type of influence is Bob Dylan. Throughout his career, Dylan has been known for being evasive. Even today, he refuses to explain the meanings of his more nuanced songs.⁴⁵ Although some of his songs such as “A Hard Rain’s A-Gonna Fall” and “Desolation Row” appear to carry strong political messages, Dylan leaves the interpretation to the listener.⁴⁶ Of course, Dylan still recognizes

40. Victoria Malawey, “Find Out What It Means to Me”: Aretha Franklin’s Gendered Re-Authoring of Otis Redding’s “Respect,” 33 *POPULAR MUSIC* 185, 185 (2014).

41. DeNeen L. Brown, *How Aretha Franklin’s “Respect” Became an Anthem for Civil Rights and Feminism*, *WASH. POST* (Aug. 16, 2018), https://www.washingtonpost.com/news/retropolis/wp/2018/08/14/how-aretha-franklins-respect-became-an-anthem-for-civil-rights-and-feminism/?noredirect=on&utm_term=.1e88bc38ed18.

42. Malawey, *supra* note 40, at 201.

43. Brown, *supra* note 41.

44. *Id.*

45. Gary Browning, *Bob Dylan: (Post) Modern Times*, in *THE POLITICAL ART OF BOB DYLAN*, *supra* note 20, at 157, 178. These poetic nuances are part of the reason Dylan was recognized for his writing skills by the Nobel Prize Committee in 2016, which in one co-writer’s humble opinion, was much deserved.

46. *E.g.*, Lawrence Wilde, *The Cry of Humanity: Dylan’s Expressionist*

the political influence of his early music.⁴⁷ Dylan, however, decided to distance himself as a political figurehead because he disliked the preaching role of political figures, of which he felt he had become a part.⁴⁸ By refusing to align with a certain political side, Dylan opened up the possibility to involve himself and sing about any topic without being trapped in a certain role.⁴⁹

Artists may also have political and social influence beyond overt political agendas. For example, despite Dylan's insistence that he is not political, he is a major contributor to political movements.⁵⁰ Dylan's comment about American farmers during Live Aid, though controversial, is associated with the start of Farm Aid, even though Dylan has rarely participated in the event.⁵¹ Even though Dylan denied taking political stances for years, fans still recognize Dylan as a champion of social change.⁵² If anything, Bob Dylan teaches us that an artist's musical influence can take meaning beyond the artist to become a powerful social symbol.

Although expressing political opinion, or in Dylan's case, distancing oneself from politics, can help artists connect with their audience, there are risks when entering the political arena. For example, consider the risk the Dixie Chicks took during the early 2000s when singer Natalie Maines stated that she "was ashamed the [P]resident of the United States is from Texas," regarding then current President George W. Bush.⁵³ This political statement received a harsh reaction from Dixie Chicks' fans. Many radio stations, especially in Texas, pulled the group's music from the air.⁵⁴ The Dixie Chicks even received death threats for their political comment.⁵⁵ In some ways, by

Period, in *THE POLITICAL ART OF BOB DYLAN*, *supra* note 20, at 104, 117, 126–27 (providing the writer's own interpretation of Dylan's songs).

47. *Id.* at 105.

48. *Id.*

49. Browning, *supra* note 45, at 177–79; Chris Brown, *Bob Dylan, Live Aid, and the Politics of Popular Cosmopolitanism*, in *THE POLITICAL ART OF BOB DYLAN*, *supra* note 20, at 136, 139.

50. See *THE POLITICAL ART OF BOB DYLAN*, *supra* note 20 (noting that this entire book is a collection of essays on Dylan's political influence).

51. Brown, *supra* note 41, at 136–37, 155–56.

52. See Greil Marcus, *Bob Dylan, Master of Change*, N.Y. TIMES (Oct. 13, 2016), <https://www.nytimes.com/2016/10/14/opinion/bob-dylan-master-of-change.html> (highlighting Dylan's continued influence on society).

53. *Dixie Chicks Pulled from Air After Bashing Bush*, CNN (Mar. 14, 2003, 7:45 PM), <http://www.cnn.com/2003/SHOWBIZ/Music/03/14/dixie.chicks.reut/>.

54. *Id.*

55. Oliver Burkeman, *Dixie Chicks Turn Death Threats to Song*, *GUARDIAN*

expressing their political opinion, the Dixie Chicks' career suffered a hit. But despite the loss of airtime, the Dixie Chicks won five Grammy Awards only a few years later.⁵⁶ Perhaps there are two lessons to learn from this story. First, how an artist's political speech affects their career is related to their audience. As a country band from Texas with a large Texan fan base, speaking against a Texan president may not have been in the band's best interest. The second lesson, however, is that political controversy does not need to be career ending. Even with the loss in support and revenue from some radio stations, the Dixie Chicks were able to recover as demonstrated by winning Grammy Awards.

B. MUSICIANS AND MUSIC AS INSPIRATION

Although musicians may not have particular agendas, their music may lead to unexpected inspiration and consequences. One of the most dramatic examples of this type of influence involves the Velvet Revolution in Czechoslovakia. In 1968, Soviet tanks entered Czechoslovakia and brought an end to the era known as the Prague Spring, a short time of liberalization after the reign of Stalin.⁵⁷ The following Communist era was eventually overthrown in what was named the Velvet Revolution, which sought to return liberalization and the ideals of democracy to Czechoslovakia.⁵⁸

The Velvet Revolution was particularly notable because of the influence of music on this political upheaval. When the Soviets entered Czechoslovakia, the government banned many types of music, particularly music from America and the UK.⁵⁹ The ban on music created a space where music could become a

(Mar. 25, 2006), <https://www.theguardian.com/world/2006/mar/25/usa.arts>.

56. Dan Glaister, *From Pariahs in Texas to Heroes in the US: The Dixie Chicks Dominate the Grammys*, GUARDIAN (Feb. 13, 2007), <https://www.theguardian.com/world/2007/feb/13/musicnews.artnews>. It is worth noting that by the time the Grammy Awards occurred in this year, President Bush's approval rating dropped from 60% to under 30%. *Id.*

57. *From Velvet Underground to Velvet Revolution: Lou Reed and Václav Havel*, ECONOMIST (Oct. 30, 2013), <https://www.economist.com/blogs/eastern-approaches/2013/10/lou-reed-and-v-clav-havel>; *Prague Spring*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/event/Prague-Spring> (last visited May 15, 2019).

58. *Cf. From Velvet Underground to Velvet Revolution*, *supra* note 57.

59. Tony Mitchell, *Mixing Pop and Politics: Rock Music in Czechoslovakia Before and After the Velvet Revolution*, 11 POPULAR MUSIC 187, 191 (1992).

powerful form of social protest.⁶⁰ Even songs without politically charged messages became a form of political speech simply because people played the music in an open forum.⁶¹

Music was also an essential part of the revolution because of the story of a Czech group known as the Plastic People of the Universe.⁶² This band was deeply influenced by the works and look of the American band, Velvet Underground, whose name would inspire the name of the revolution.⁶³ The Plastic People were pressured by the government to de-Americanize their name and the music they played.⁶⁴ Instead, the Plastic People stayed underground and played music at private forums.⁶⁵ As time went on, however, people waiting outside venues to hear the Plastic People began to be arrested and the authorities burned down the farmhouse where the band practiced.⁶⁶ All these events culminated in the band's imprisonment.⁶⁷ This event inspired protests, partially led by Vaclav Havel.⁶⁸ To Havel, the band's arrest represented his concerns over notions of freedom and his idea of "living in truth."⁶⁹ Havel would go on to write the Charter 77 movement, push for human rights of freedom, and eventually become the President of Czechoslovakia.⁷⁰ During his time in power, Havel continued to cite the influence of rock music and the Velvet Underground as inspiration for his rise to power.⁷¹ He even invited the Rolling Stones and Lou Reed to play at large public venues while he was President of Czechoslovakia.⁷²

There are several reasons why the Velvet Revolution is important in a discussion of music's connection with social change. First, this revolution is a direct example of how music

60. *Id.* at 188–90.

61. *Id.*

62. *Id.* at 196.

63. David Feith & Bari Weiss, *The United States of Lou Reed*, WALL ST. J. (Oct. 29, 2013, 7:14 PM), <https://www.wsj.com/articles/the-united-states-of-lou-reed-the-united-states-of-lou-reed-1383088475>.

64. Mitchell, *supra* note 59, at 196.

65. *Id.*

66. *Id.* at 199.

67. *Id.* at 189.

68. *Id.*

69. *Id.* "Living in truth" refers to the idea of being truthful in response to propaganda and respecting the need to protect human rights of freedom. *Vaclav Havel 1936-2011: Living in Truth*, ECONOMIST (Dec. 31, 2011), <http://www.economist.com/node/21542169>.

70. Mitchell, *supra* note 59, at 189.

71. *Id.* at 190.

72. *Id.*

can influence and inspire people to make social changes. The arrest of the Plastic People had a clear influence on Havel and inspired him to protest the reigning government regime.⁷³ The story of the Velvet Revolution also demonstrates music's global impact. The Plastic People and many other musicians in Czechoslovakia played and listened to American music, like the Velvet Underground. This imported music became a space for rebellion and expressions of freedom.⁷⁴ Finally, the Velvet Revolution is particularly noteworthy because it was a peaceful transition of government power.⁷⁵ Music inspired positive and major social changes in a peaceful way. The Velvet Revolution is a prime example of how music can be the spark of large-scale social change.

C. MUSICIANS AND ARTISTS AS DIPLOMATS

Historically, musicians and artists have been an important part of diplomacy efforts.⁷⁶ Even the U.S. State Department has capitalized on the potential of musicians as diplomats. In 1954, the U.S. started a Cultural Presentations Program, which sent various musicians to foreign countries.⁷⁷ The U.S. intended to use this program as propaganda to enhance the reputation of American culture and to compete for political gains against the Soviet Union.⁷⁸ The U.S. was particularly interested in combating anti-American propaganda, which relied on racial incidents from the Civil Rights Movement.⁷⁹ The U.S. tried to establish a reputation of having stable racial relationships by sending jazz musicians, such as Dizzy Gillespie, Louis Armstrong, and Dave Brubeck overseas.⁸⁰ These musicians had dual benefits to U.S. international relations. These musicians spread jazz, a popular American "product" associated with

73. *Id.* at 189.

74. *Id.* at 189–90.

75. See *Czech Republic Slovakia: Velvet Revolution at 25*, BBC (Nov. 17, 2014) <https://www.bbc.com/news/world-europe-30059011>.

76. Mark Wheeler, *Celebrity Diplomacy: United Nations' Goodwill Ambassadors and Messengers of Peace*, 2 *CELEBRITY STUD.* 6, 7–12 (2011).

77. Danielle Fosler-Lussier, *Music Pushed, Music Pulled: Cultural Diplomacy, Globalization, and Imperialism*, 36 *DIPLOMATIC HIST.: J. SOC'Y AM. FOREIGN REL.* 53, 53–55 (2012).

78. *Id.* at 53; see also Elliot Bratton, *The Sound of Freedom: Jazz and the Cold War*, 105 *NEW CRISIS* 14, 16 (Feb.–Mar. 1998).

79. Bratton, *supra* note 78, at 15.

80. *Id.* at 15–19.

African Americans, but the performances also encouraged a sense of connection with people overseas.⁸¹ These emotional bonds promoted and fostered the creation of positive political connections.⁸²

Notably, there was some perception that the U.S. was using these musicians to promote a “false image of freedom for African-American artists.”⁸³ Traveling jazz musicians in the program were allowed to acknowledge some of the political and social issues in the U.S., which gave them more credibility as advocates, but too much criticism would cause the U.S. to cut ties with that performer.⁸⁴ For example, when Louis Armstrong expressed too much opposition to an incident at Central High School in Little Rock, the State Department discontinued Armstrong’s tours.⁸⁵ The State Department likewise removed Dizzy Gillespie from tours because of his strong criticism of racial issues in the U.S.⁸⁶ Despite the potential exploitation and propaganda motivations of these tours, musicians, like Brubeck, preferred to think of his “music as an instrument for peace, rather than a Cold War weapon.”⁸⁷ These diplomatic tours, however, reflect the U.S. need for positive propaganda and did not appear to be motivated by a desire to recognize the achievements and artistic value of jazz or the African American community.⁸⁸

While some artists use their fame to discuss political views, others become celebrity diplomats. In the 1980s and 1990s, organizations began to increase their use of celebrities as spokespersons.⁸⁹ Organizations used celebrities before these decades, such as UNICEF’s relationship with Marlon Brando,

81. *Id.* at 16; *see also* Fosler-Lussier, *supra* note 77, at 58.

82. Fosler-Lussier, *supra* note 77, at 58–59.

83. Bratton, *supra* note 78, at 19.

84. Fosler-Lussier, *supra* note 77, at 57; *see also* Bratton, *supra* note 78, at 17.

85. Bratton, *supra* note 78, at 17.

86. *Id.*

87. Stephen A. Crist, *Jazz as Democracy? Dave Brubeck and Cold War Politics*, 26 J. MUSICOLOGY 133, 137 (2009). Notably, however, Brubeck went on to create “The Real Ambassadors.” This jazz musical recognizes the irony of the U.S. State Department using African-American jazz musicians to show that the U.S. had racial harmony while Civil Rights protests and Jim Crow laws thrived in the U.S. *See* Owen McNally, *Ambassador for a Musical*, HARTFORD COURANT (Mar. 30, 2005), <https://www.courant.com/news/connecticut/hc-xpm-2005-03-30-0503300659-story.html>.

88. Bratton, *supra* note 78, at 19.

89. Wheeler, *supra* note 76, at 12.

but the 1980s marked the beginning of an increasing trend.⁹⁰ Celebrities have a cultural power and voice that can connect with a large number of individuals. The use of celebrity voices for organizations has even created the term “Bonoisation,” named after Bono, whose role as a musician and spokesperson is hard to ignore.⁹¹ In these cases, artists, like Bono, are not merely using their presence to discuss political and social issues but are becoming actively involved in diplomacy. Some argue that the use of celebrity diplomats is a valuable development from a political standpoint. For example, Bono does the work of similar advocates but his experience as a celebrity helps him deliver messages in a “charming, persuasive manner.”⁹² Artists can use their music and celebrity status to gain the attention of and pressure diplomats in a public light in a way that ordinary advocates may not be able.

Although aspects of artist diplomacy may have value, diplomacy requires a different level of experience and tact than addressing social issues through song lyrics or interviews. For one, the use of celebrities may actually trivialize important social issues.⁹³ After all, artists and other celebrities may not have a complete understanding of the nuances of the social issue.⁹⁴ Furthermore, declining fame may weaken the value of celebrity representation.⁹⁵ Finally, there is a question of effectiveness. In 2005, Bono and Bob Geldof joined to create the Live 8 concert series, inspired by the successful Live Aid Concert of 1985.⁹⁶ Unlike Live Aid, in addition to fundraising, Live 8 had a particular focus on exerting political pressure on the G8 countries to increase development assistance to poor countries in an effort to reduce poverty.⁹⁷ Although some progress on the promises to increase assistance has occurred, most countries trailed behind their goals.⁹⁸ The G8, however, appeared to honor

90. *Id.*

91. *Id.* at 7, 9–10.

92. Andrew F. Cooper, *Celebrity Diplomacy and the G8: Bono and Bob as Legitimate International Actors 8* (Ctr. for Int'l Governance Innovation, Working Paper No. 29, 2007), https://www.cigionline.org/sites/default/files/paper_29-web.pdf.

93. Wheeler, *supra* note 76, at 15.

94. *Id.*

95. *Id.*

96. *Live Aid Concert*, HISTORY, <http://www.history.com/this-day-in-history/live-aid-concert> (last updated Dec. 7, 2018).

97. *Id.*

98. Gil Kaufman, *Live 8, One Year Later: G8 Promises Are Falling Short of*

their promise to cancel debt for nineteen countries.⁹⁹ Perhaps the Live 8 concerts are a lesson that music and musicians can influence peace but like any political movement or action, the winds of change are more of a breeze than a gale storm.

Another potential issue with artists and celebrity endorsement for social causes is that celebrities may further stereotypes and misinformation about problems. An example of this issue is the HIV/AIDS awareness campaigns. For many years, AIDS was a deeply stigmatized illness and many people wrongly believed that the disease only afflicted gay men or those few who had had blood transfusions.¹⁰⁰ One of the first major celebrities to become the face of the disease was Rock Hudson.¹⁰¹ When he revealed his illness in 1985, he also revealed that he was gay, a fact Hudson had kept secret for many years to preserve his career.¹⁰² The illnesses of other celebrities, such as Liberace, Freddie Mercury of Queen, and Robert Reed of the “Brady Bunch” only further enforced the stereotypes.¹⁰³ Even after Elizabeth Taylor, a close friend of Hudson’s, began fundraising for AIDS research, many big-name celebrities were resistant to becoming associated with the disease.¹⁰⁴ It is worth noting, however, that after Hudson’s death, Congress set aside a large portion of money, \$221 million, for AIDS research.¹⁰⁵ Further, more recent celebrity announcements about living with AIDS, like Magic Johnson’s announcement, have since helped chip away at the stereotypes about AIDS.¹⁰⁶

Despite the middling success of Live 8 and the issues with

Goals, Report Says, MTV (Jun. 29, 2006), <http://www.mtv.com/news/1535470/live-8-one-year-later-g8-promises-are-falling-short-of-goals-report-says>; see also Oliver Burkeman, *Three Months Ago Bob Geldof Declared Live 8 Had Achieved Its Aim. But What Really Happened Next?*, GUARDIAN (Sept. 11, 2005), <https://www.theguardian.com/world/2005/sep/12/hearafrica05.development>.

99. Kaufman, *supra* note 98.

100. Melonyce McAfee & Katia Hetter, *From Rock Hudson to Charlie Sheen, A History of Celebrity HIV Revelations*, CNN (Nov. 17, 2015), <http://www.cnn.com/2015/11/17/entertainment/celebrity-hiv-aids-feat/index.html>.

101. *Id.*

102. *Id.*; see also Kate Eschner, *The Hollywood Star Who Confronted the Hollywood AIDS ‘Silent Epidemic,’* SMITHSONIAN (Oct. 2, 2017), <https://www.smithsonianmag.com/smart-news/hollywood-star-who-confronted-aids-silent-epidemic-180965059/>.

103. *Id.*

104. BRUCE J. HILLMAN, *A PLAGUE ON ALL OUR HOUSES: MEDICAL INTRIGUE, HOLLYWOOD, AND THE DISCOVERY OF AIDS* 113–14 (2016).

105. *Id.* at 105.

106. McAfee & Hetter, *supra* note 100.

HIV/AIDS awareness, music and artists may still be successful diplomats for raising awareness of a socio-political issue. One example is the Rock Against Racism Concerts in 1976.¹⁰⁷ Rock Against Racism was less about raising funds and more about creating solidarity. Unlike Live Aid, led by an individual, Bob Geldof, Rock Against Racism was a grassroots movement, that developed into a 100,000 person march followed by performances of punk bands and reggae musicians.¹⁰⁸ These concerts and the artists involved were essentially informal diplomats responding to the racist comments of the politician, Enoch Powell.¹⁰⁹ While Powell's comments about foreigners riled the public, it was comments from fellow musician, Eric Clapton, that gave Rock Against Racism its momentum.¹¹⁰ During one of his concerts, Clapton supported Powell's comments.¹¹¹ Clapton went on a "racist tirade," stating that Powell needed to "stop Britain from becoming a black colony."¹¹²

There are several lessons to learn from the Rock Against Racism movement. First, even though musicians were not the original organizers of this event, they created exposure to and defined the history of the movement as informal diplomats. Without the involvement of popular musicians of the time, like The Clash, to give a face to the issue, the march may not have become the memorable event that it is today. These artists brought together people with similar views and exposed the broader public to social issues. The other lesson from the Rock Against Racism movement is that artists may have conflicting political views. Rock Against Racism gained its momentum by pitting Clapton's political speech against the political leanings of other musicians, like The Clash and the Tom Robinson

107. Ben Naylor et al., *Rock Against Racism: Remembering that Gig that Started It All*, INDEPENDENT (Apr. 25, 2008), <http://www.independent.co.uk/arts-entertainment/music/features/rock-against-racism-remembering-that-gig-that-started-it-all-815054.html>.

108. *Id.*; see also Paul Gallagher, *Rock Against Racism: On the Front Line with the Clash, Specials, Undertones & Elvis Costello*, DANGEROUS MINDS (Dec. 10, 2014), http://dangerousminds.net/comments/rock_against_racism [hereinafter *Rock Against Racism*].

109. Naylor et al., *supra* note 107; see also *Rock Against Racism*, *supra* note 108.

110. *Rock Against Racism*, *supra* note 108.

111. *Id.*

112. Niall O'Conghaile, *Eric Clapton's Disgusting Racist Tirade*, DANGEROUS MINDS (July 3, 2011), http://dangerousminds.net/comments/eric-claptons_disgusting_racist_tirade.

Band.¹¹³ All musicians have influential power. In other words, almost any political stance, can likely find a musician spokesperson. Whether that musician is successful on a wide-scale will depend on the musician's popularity, the popularity of the position, and the artist's particular audience.¹¹⁴ Finally, Rock Against Racism demonstrates that artists can become symbolic diplomats in grassroots movements, even if the artists did not originally intend to take on the role of a diplomat.

D. POSSIBLE LIMITS ON ARTISTS' POLITICAL INFLUENCE

There are limits on the effectiveness of an artist's political voice. First, individuals interpret and shape their understanding of music through a personal lens.¹¹⁵ Individuals are a product of dominant social understandings and these dominant social ideas may either exacerbate or dilute an artist's original intentions.¹¹⁶ There are also various levels of interpretation. The listener can choose to fully accept a message, alter the message to fit within their world views, or sometimes the listener may miss the message entirely.¹¹⁷ Further, a song's political message is limited to audience knowledge of the topic.¹¹⁸

One example of interpreting an artists' work against the artist's intent is the previously mentioned misinterpretation of "Born in the U.S.A.," which criticizes the treatment of American veterans.¹¹⁹ Various politicians, including Ronald Reagan, incorrectly interpreted this song as endorsing strong right-wing ideals.¹²⁰ Another example of an incorrect interpretation is

113. *Rock Against Racism*, *supra* note 108.

114. Naylor et al., *supra* note 107. While Clapton was a popular artist, his racist comments angered many of his fans. Since Clapton often played blues music and had a hit song with Bob Marley, many fans thought of his comments as a betrayal.

115. BRIAN LONGHURST, *POPULAR MUSIC & SOCIETY* 202 (1995); *see also* SHEILA WHITELEY, *WOMEN AND POPULAR MUSIC: SEXUALITY, IDENTITY, AND SUBJECTIVITY* 26 (2000).

116. *See* LONGHURST, *supra* note 115; *see also* WHITELEY, *supra* note 115.

117. LONGHURST, *supra* note 115, at 199.

118. *Id.* at 119.

119. *See* ROSENTHAL & FLACKS, *supra* note 1, at 92; *see also* Kurt Loder, *The Rolling Stone Interview: Bruce Springsteen on 'Born in the USA,'* *ROLLING STONE* (Dec. 7, 1984 1:45 AM), <https://www.rollingstone.com/music/music-news/the-rolling-stone-interview-bruce-springsteen-on-born-in-the-u-s-a-184690/>.

120. ROSENTHAL & FLACKS, *supra* note 1, at 92–93; *see also* Alterman, *supra* note 20.

“Revolution” by the Beatles. Because of the song name and high-energy music, many people interpret this song as calling for political activism.¹²¹ The lyrics of “Revolution,” however, contain cautionary warnings against militancy.¹²² In this case, the rhythm and energy of the music promoted the audience to interpret the song differently from what the lyrics indicated.

Another example of an interpretational divide about what an artist represents is the work of Madonna, which has been interpreted in vastly different ways. To some fans, Madonna is a feminist icon. Madonna created a liberating space for female sexuality and showed that women could successfully participate in the music business.¹²³ On the other hand, others believe that Madonna played into traditional ideas of male gaze and patriarchal dominance.¹²⁴ Madonna’s notoriety is an example of how an artist’s music, videos, and media presence can combine to affect public opinion. Madonna’s image is also an example of how different social groups can disagree about what an artist’s image represents.

In addition to misunderstanding the purpose of an artist’s work, audiences may entirely dismiss its political messages. One example of this phenomenon is Gorillaz. On the day prior to President Trump’s inauguration, Gorillaz released a video and single for “Hallelujah Money.”¹²⁵ The song features despondent lyrics with lines referencing the building of walls and lines questioning the state of humanity such as, “When the morning comes / We are still humans / How will we know?”¹²⁶ The video for the song even includes shots that look like the inside of

121. ROSENTHAL & FLACKS, *supra* note 1, at 175–76.

122. *Id.*

123. LONGHURST, *supra* note 115, at 125–26; *see also* WHITELEY, *supra* note 115, at 136–37.

124. *See* WHITELEY, *supra* note 115, at 137. There is a potential discussion here on how expectations of ‘feminism’ and the higher scrutiny placed on women in the spotlight could lead to such an extreme divide on Madonna’s influence, however, it is outside the scope of this paper.

125. Jon Blistein, *Hear Gorillaz’ First Song in Six Years, ‘Hallelujah Money,’* ROLLING STONE (Jan. 19, 2017), <http://www.rollingstone.com/music/news/hear-gorillaz-first-song-in-six-years-hallelujah-money-w461834>; *see also* Caitlin White, *Gorillaz Return After Six Years with Apocalyptic New Video for ‘Hallelujah Money’ on Inauguration Eve*, UPROXXX (Jan. 19, 2017), <http://uproxx.com/music/gorillaz-hallelujah-money-video/>.

126. Tim Jonze, *Gorillaz Usher in the Donald Trump Era with Hallelujah Money*, GUARDIAN (Jan. 19, 2017), <https://www.theguardian.com/music/music-blog/2017/jan/19/gorillaz-single-hallelujah-money-donald-trump-benjamin-clementine>.

Trump Tower.¹²⁷ When this single was released, some Gorillaz fans lamented the political implications of the song.¹²⁸ These fans, however, apparently ignored the history of political and social messages in Gorillaz's discography. For example, the third album, *Plastic Beach*, was a social commentary regarding society's relationship with consumer waste and the effects of waste on ecology.¹²⁹ Furthermore, "Hallelujah Money" was not the Gorillaz's first foray into political issues. Several years before, Gorillaz also released a short video featuring the lead singer from the animated band participating in a sit-in for the Free Tibet Campaign.¹³⁰ Some fans seem to have either failed to notice or ignored the political and social implications of the band's previous works. Thus, an artist's political messages can easily be lost when the audience focuses on other aspects of an artist's music.

The success of an artist's political message is also subject to interpretation by a self-selected audience. Audiences often have similar beliefs to those of the artist and other audience members. The demographic attracted to a certain artist is more likely to interpret the artist's music in a particular way.¹³¹ An individual who strongly disagrees with the political messages of an artist is less likely to listen to that artist. This group solidarity can make it more difficult to reach other audiences, which is essential for creating large-scale social change.¹³² Much of this problem

127. Maeve McDermott, *Gorillaz Return with Anti-Trump Track 'Hallelujah Money'*, USA TODAY (Jan. 19, 2017), <http://www.usatoday.com/story/life/entertainthis/2017/01/19/gorillaz-return-new-song-anti-donald-trump-hallelujah-money/96775274/>.

128. See, e.g., Mr Wolfe, Comment to Gorillaz, *Hallelujah Money (feat. Benjamin Clementine)*, YOUTUBE (Feb. 9, 2019), https://www.youtube.com/watch?v=CDUrpPvU1_4&t=0s ("Jesus CHRIST, ALBARN, MAKE SOMETHING FUN AND UPTEMPO. Either that or let Gorillaz DIE already. It used to be fun, animated, poetic and poppy. Now its [sic] the sad political whining of the pub drunk."); see also Sassafrass, Comment to Gorillaz, *Hallelujah Money (feat. Benjamin Clementine)*, YOUTUBE (Feb. 9, 2019), https://www.youtube.com/watch?v=CDUrpPvU1_4&t=0s ("So is phase 4 just going to be anti-trump [sic] 'songs'? Or is it going to be actual music that doesn't try shoving politics down your throat?").

129. Paul Morley, *Paul Morley Interviews Blur's Damon Albarn*, GUARDIAN (Nov. 28, 2009), <https://www.theguardian.com/music/audio/2009/nov/28/showing-off-damon-albarn>.

130. RockAndRollArchive, *Gorillaz - Free Tibet (G-Bite)*, YOUTUBE (Dec. 11, 2011), <https://www.youtube.com/watch?v=-gVZTmHKmRg>.

131. ROSENTHAL & FLACKS, *supra* note 1, at 123.

132. *Id.* at 189.

occurs because a group can lose touch with other worldviews.¹³³ In this way, the solidarity of the audience, over which the artist has little control, can limit the artist's ability to create a widespread message.

Additionally, the shift in the way some protest and other communities advocate for their causes may affect their influence. For instance, many communities now exist online rather than in physical spaces.¹³⁴ Online communities have benefits, such as allowing a person to connect with individuals across the globe, including people they would never have the opportunity to otherwise meet. The internet also allows people to create their own blogs, videos, or discussion forums, which creates a powerful opportunity for expression and discussion of social issues.¹³⁵ At the same time, the lack of physical presence could make it more difficult for individuals to reach others outside their community.¹³⁶ Running into a live protest with people singing and taking up physical space may have more of a direct impact than stumbling upon an online forum.¹³⁷

The creative capacity of online communities can also dilute or change an artist's message. Online communities often co-opt artists into symbolic icons of peace and social change. Individually produced media can easily create a culture of hero worship.¹³⁸ An example of an artist who became subject to hero worship is John Lennon. Through his peace initiatives, messages, and his song "Imagine," Lennon became an iconic symbol of protest.¹³⁹ But, if an artist becomes an icon for a particular side of a debate, some of the artist's message may become more politicized than originally intended.¹⁴⁰ An artist's association with an extreme political position may also discourage people from openly listening to the artist's original message.¹⁴¹ In this way, the unique nature of online communities has the potential to distort the impact of an artist's message by changing the way it is depicted or by co-opting an artist to

133. *Id.* at 188.

134. Symposium, J. Meryl Kreiger, *Imagining Politics, Popular Music and Remixing: YouTube, Remediation and Protest Songs*, IND. U. BLOOMINGTON SOC'Y ETHNOMUSICOLOGY ANN. MEETING, 3 (2007).

135. *Id.* at 5–6.

136. *See id.* at 4–5.

137. *See* ROSENTHAL & FLACKS, *supra* note 1, at 123.

138. Krieger, Presentation, *supra* note 134, at 8.

139. *Id.* at 6–8.

140. *Id.* at 8.

141. *See id.*

represent a completely different cause.

The genre of an artist also influences their messages. Pop music is more likely to reflect current values, which means it may be less likely to encourage change or social activism.¹⁴² Other genres, like rock and punk, may be more likely to criticize social institutions, but they still have limited influence.¹⁴³ In punk music in particular, the culture emphasizes individualism.¹⁴⁴ This focus on the individual may inhibit group movements for social change.¹⁴⁵ Historically, society perceived rock and punk as being something outside the realm of politics.¹⁴⁶ For this reason, when rock and punk musicians involve themselves in politics, there is a risk that they become “posers” who are part of the cultural system.¹⁴⁷ When the audience feels betrayed by an artist, the artist could lose credibility, which is needed to promote social change and awareness.¹⁴⁸

III. MUSIC AND BUSINESS

Music is part of our consumer culture. The global music industry recognized around \$15 billion in sales in 2015.¹⁴⁹ Revenue from music streaming services is expected to continue growing.¹⁵⁰ Recording artists create a brand for themselves, which appeals to particular audiences.¹⁵¹ This brand extends the artists’ recognition abroad.¹⁵² For this reason, an artist’s message can reach and unite people across the globe with similar beliefs. Yet, some commentators believe that music has become

142. ROSENTHAL & FLACKS, *supra* note 1, at 181.

143. *Id.*

144. *Id.* at 182.

145. *Id.*

146. *See id.* (“‘There’s Left, and there’s Right, and there’s rock n’ roll,’ says Ray Davies, lead singer of the Kinks.”)

147. *See id.* at 244–46.

148. *See, e.g., id.* at 231. Bob Dylan’s switch from folk music to use of electric guitar caused a large backlash from some of his original fans. Despite the backlash, Bob Dylan is still well-known for his political influence. His credibility might not have experienced much harm in the long-run.

149. *Global Revenue of the Music Industry from 2002 to 2015 (in Billion U.S. Dollars)*, STATISTA (2019), <https://www.statista.com/statistics/272305/global-revenue-of-the-music-industry/>.

150. *Id.*

151. *See* LONGHURST, *supra* note 115, at 49.

152. *Id.*

too commercial to be useful for social change.¹⁵³ Nevertheless, even with a commercial component, music can still be a platform for exploring social ideas and change.¹⁵⁴ People are not mindless consumers.¹⁵⁵ Music and lyrics can encourage the audience to research political issues and social problems that may not have otherwise occurred to them.¹⁵⁶ The ubiquitous nature of music and the recognition of recording artists may be a key to spreading peaceful messages to a larger audience.

A. EFFECTS ON POLITICAL SPEECH

Music can compel change and peace only if there is an audience. The business nature of music may affect the availability of an audience and therefore complicate the success of an artist's political speech. Lack of access to record companies limits an artist's audience. Music that may not sell will have trouble finding any mainstream voice.¹⁵⁷ Additionally, the industry may strip the original intent of a work for the sake of marketing.¹⁵⁸ If the industry and audience separate music from the original intent, music may appear simply as entertainment.¹⁵⁹ Finally, record companies sometimes reject edgier versions of songs during the production process.¹⁶⁰ One famous example is Woody Guthrie's "This Land is Your Land." The original version of the song included lines emphasizing class issues in America, however, these lines did not appear in the final version of the song.¹⁶¹ For this reason, Guthrie's "This Land is Your Land" lost most of the political punch that it originally contained. Ultimately, artists can use their music for broader social change but they must still contend with industry pressures if they hope to enjoy the commercial success which leads to a broader audience.

153. ROSENTHAL & FLACKS, *supra* note 1, at 183.

154. *Id.* at 197–98.

155. LONGHURST, *supra* note 115, at 198.

156. *See* ROSENTHAL & FLACKS, *supra* note 1, at 88, 235.

157. WHITELEY, *supra* note 115, at 27.

158. *See* ROSENTHAL & FLACKS, *supra* note 1, at 183.

159. *Id.*

160. *See id.* at 216–18.

161. *Id.* at 217.

B. MUSIC AND FUNDRAISING

Another way that music can affect social change is through music's capacity as a business. Society uses the term "music business" for a reason. Every year, consumers spend a lot of money on concert tickets, music, and merchandise.¹⁶² The financial aspect of music, however, can be used for greater peaceful and humanitarian causes.

One example of using music for fundraising is the previously mentioned Live Aid concert. Bob Geldof, singer of the Boomtown Rats, organized the concert and arranged for performers to donate their talents to the concert.¹⁶³ The purpose of the concert was to raise funds for the Ethiopian famine.¹⁶⁴ Live Aid received over a billion viewers from 110 nations and raised \$125 million dollars of relief money.¹⁶⁵ In addition to the concert, Geldof's efforts led to the simultaneous recordings of "Do They Even Know It's Christmas" and "We Are the World" by various well-known artists, both of which were performed during Live Aid.¹⁶⁶ "Do They Even Know It's Christmas" became the best-selling single in Britain at the time, became a number one hit in the U.S., and raised more than \$10 million.¹⁶⁷ "We Are the World" found similar success by topping the charts and earning \$44 million.¹⁶⁸ After these financial successes, Live Aid became the poster child for using music to fundraise for a social cause.¹⁶⁹ Music has the power to create change through social attitudes in individuals and through tangible financial effects.

Although artists often receive the credit for being charitable when discussing songs like "Do They Even Know It's Christmas," it should be recognized that the record industry also plays a critical role in these fundraising concerts and events. The cost of these charitable events does not usually significantly affect the artists' bottom line, but there may be an impact on the record company's finances.¹⁷⁰ The record label, distributor, and retailer

162. See STATISTA, *supra* note 149.

163. *Live Aid Concert*, *supra* note 96.

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. Gil Kaufman, *Live Aid: A Look Back at a Concert That Actually Changed the World*, MTV (June 29, 2005), <http://www.mtv.com/news/1504968/live-aid-a-look-back-at-a-concert-that-actually-changed-the-world/>.

170. Stan Rijven & Will Straw, *Rock for Ethiopia (1985)*, in *WORLD MUSIC*,

typically work together and waive profits on these sales.¹⁷¹ Thus, the music industry is also contributing to the charitable causes.

Concerts and specialty songs are not the only way artists use their music and celebrity status to raise funds for social causes. The social recognition and wealth of artists situates them in an ideal position to create organizations dedicated to specific causes, such as Elton John's AIDS Foundation,¹⁷² and Bono's (RED). Bono created the organization to help with AIDS treatment across globe.¹⁷³ (RED) has reportedly raised \$600 million dollars in the past decade to fight AIDS, tuberculosis, and malaria.¹⁷⁴ Although the finances alone are impressive, what is particularly interesting about (RED) is how Bono uses his celebrity status to promote and fund the charitable organization. (RED)'s success is directly linked to Bono's role as a musician and his personal promotion of (RED). In the past, Bono promoted donations to (RED) by placing the names of donating fans in a raffle to win front row seats to a U2 concert.¹⁷⁵ There have also been opportunities to view a U2 dress rehearsal when a fan chooses to donate.¹⁷⁶ Bono even enlisted the help of other celebrities to encourage donations by offering the chance to go jet skiing with DJ Khaled and to attend *Magic Mike Live* with Channing Tatum.¹⁷⁷ Not only can Bono promote donations by offering his talents, but his connections with celebrity elites allows Bono to offer rewards that appeal to individuals who are not fans of U2.

Bono is not the only artist who uses private shows to entice donations. After announcing the release of their new album,

POLITICS AND SOCIAL CHANGE: PAPERS FROM THE INTERNATIONAL ASSOCIATION FOR THE STUDY OF POPULAR MUSIC 198, 204 (Simon Frith ed., 1989).

171. *Id.*

172. *See* ELTON JOHN AIDS FOUND., <http://ejaf.org/> (last visited Mar. 31, 2019).

173. (RED), <https://red.org/> (last visited Mar. 31, 2019).

174. *How (RED) Works*, (RED), <https://red.org/how-red-works> (last visited Mar. 31, 2019).

175. Ryan Reed, *Watch U2 Offer Private Concert, Make Song Puns in Charity Promo Video*, ROLLING STONE (Jan. 5, 2017), <http://www.rollingstone.com/music/news/watch-u2-offer-private-concert-make-song-puns-for-charity-w459031>.

176. Jon Blistein, *U2, DJ Khaled Offer Private Shows, Jet Ski Rides for (RED) Donations*, ROLLING STONE (Nov. 22, 2016), <http://www.rollingstone.com/music/news/u2-dj-khaled-offer-private-show-jet-ski-ride-for-charity-w452040>.

177. *Id.*

Humanz, Gorillaz offered a chance for anyone who preordered the album to enter a raffle for a live show of the never before heard album.¹⁷⁸ To enter the raffle, a mandatory \$5 donation to the White Helmets, a rescue organization dedicated to helping refugees of the Syrian War, was required.¹⁷⁹

Moreover, there are additional ways that artists raise funds for special causes. Artists can use their market value as a celebrity to encourage major companies to help raise funds for social causes. For example, Bono's (RED) has formed connections with corporations in non-music industries. (RED) has partnered with major companies like Apple, Converse, and Bank of America, with each partnership helping to raise millions of dollars.¹⁸⁰ (RED) similarly partnered with Starbucks in 2008, which donated five cents from the purchase of qualified drinks for a limited time to (RED).¹⁸¹ According to the Starbucks' website, this partnership has raised over \$14 million.¹⁸² Part of what makes these business relationships worth noting is the combination of celebrity and corporate power to reach humanitarian goals. When a celebrity runs a charitable organization, businesses can benefit from the relationship. In addition, the businesses can promote a humanitarian image that may boost sales.¹⁸³ The association with a well-known celebrity is an additional incentive for working with artist-led organizations. By working with Bono, corporations gain celebrity promotion through Bono's discussions about the partnership and the visual association of the artist with the company's product.¹⁸⁴ Associating with a celebrity is a strong

178. *Gorillaz Announce Album with Sci-fi Fantasy*, DAILY MAIL (Mar. 23, 2017, 6:58 PM), <http://www.dailymail.co.uk/wires/afp/article-4344242/Gorillaz-announce-album-sci-fi-fantasy.html>.

179. *Id.*; THE WHITE HELMETS, <https://www.whitehelmets.org/en> (last visited Mar. 31, 2019).

180. John Blistein, *Bono Crowdsources New Ideas to Help Promote AIDS Awareness Charity*, ROLLING STONE (June 24, 2014), <http://www.rollingstone.com/music/news/bono-slams-apple-for-not-promoting-red-partnership-20140624>; *Starbucks Goes Green with (RED)*, NBC NEWS (Oct. 30, 2008, 12:30 PM), http://www.nbcnews.com/id/27456998/ns/us_news-giving/t/starbucks-goes-green-red.

181. NBC NEWS, *supra* note 180.

182. (STARBUCKS) *RED*, STARBUCKS, <https://www.starbucks.com/responsibility/community/starbucks-red> (last visited Mar. 31, 2019).

183. NBC NEWS, *supra* note 180.

184. Blistein, *Bono Crowdsources*, *supra* note 180. During the talk at Cannes Lions, Bono held up his (RED) iPad, noting that the (RED) logo was not visible from the outside, though the product was clearly made by Apple.

and successful sales tactic, one that may be too good for corporations to pass up.¹⁸⁵ Although there may be questions regarding the motives of these corporations, perhaps the ends justify the means when it comes to fundraising for social causes.

When it comes to using music and celebrities for fundraising, it should be noted that much like corporations, artists may have something to gain. Offering to join in a charity concert provides publicity¹⁸⁶ and being involved with charitable causes may become part of the artist's brand. Artists cater to certain demographics by selling their style of music but also through selling a particular conception of themselves as an individual.¹⁸⁷ The artists may even benefit from increased sales because of the media exposure.¹⁸⁸ But the increased revenue from these sales does not necessarily trickle down to the social cause.¹⁸⁹ Additionally, not every cent raised at charity events always goes toward the cause.¹⁹⁰ In the case of "Do They Even Know It's Christmas," the sales tax from the song stayed with Britain.¹⁹¹

Finally, raising funds has value but charity concerts and donations often fail to solve problems caused by underlying issues within social infrastructures.¹⁹² The commercial nature of these fundraisers can trivialize and turn political issues into

185. See Keel & Nataraajan, *supra* note 5.

186. Brown, *supra* note 41, at 139–40; Brian Mansfield, *Five Live Aid Moments that Changed Careers*, USA TODAY (July 13, 2015, 6:45 PM), <http://www.usatoday.com/story/life/music/2015/07/12/live-aid-30th-anniversary-career-changing-performances/29914869/>.

187. See LONGHURST, *supra* note 115, at 49.

188. See Nick Deriso, *The Story of Pink Floyd's Reunion at Live 8*, ULTIMATE CLASSIC ROCK (July 2, 2015), <http://ultimateclassicrock.com/pink-floyd-live-8-reunion/>.

189. John Blake, *All-Star Benefit Concerts Relics of the Past?*, CNN (Feb. 13, 2008), <http://www.cnn.com/2008/SHOWBIZ/Music/02/07/music.charity/index.html>; Jessica Wong, *When the Music Stops: The Legacy of Charity Benefit Concerts*, CBC NEWS (June 12, 2017), <https://www.cbc.ca/news/entertainment/charity-benefits-1.4153320>; *Live Aid: The Terrible Truth*, SPIN (July 13, 2015), <https://www.spin.com/featured/live-aid-the-terrible-truth-ethiopia-bob-geldof-feature/>.

190. Rijven & Straw, *supra* note 170, at 201.

191. *Id.* at 200.

192. Brown, *supra* note 41, at 139–40 (noting that most of the Live Aid funds went to the Ethiopian government which was partially responsible for the famine); Mikias Sebsibe & Alexandra Topping, *Woman Who Was Face of Live Aid Laments Price of Fame 30 Years On*, GUARDIAN (July 13, 2015, 2:00 AM), <https://www.theguardian.com/world/2015/jul/13/face-ethiopian-famine-live-aid-birhan-woldu-nothing-her-geldof> (noting that Live Aid helped with famine but Ethiopia is still in need of other important resources like schools and hospitals).

commodities.¹⁹³ Concerts like Live Aid can also carry a sense of “superior morality.”¹⁹⁴ These fundraisers support the concept of first world countries as the heroes fixing the problems of other countries. Despite these potential issues, there is value in creating social awareness and taking even marginal steps toward solving complicated global issues. For this reason, artists’ contributions to charity and fundraising events have the potential to promote positive social changes on both local and global scales.

IV. EFFECTS ON LEGAL REGULATIONS AND PUBLIC POLICY

The influence of artists can extend beyond social movements. For example, an artist may be able to help establish long-lasting, concrete changes in society. Namely, efforts started or supported by artists can become so prominent in the social discourse that they can affect government regulations and policies.

A. FARM AID AND THE INCREASE IN FARMING LEGISLATION

As mentioned previously, Bob Dylan’s comment at Live Aid had a lasting and prominent effect.¹⁹⁵ At the time of Dylan’s comment, American family farms were experiencing economic crises. Many family farms faced foreclosures on their properties because of rising debt and declining crop prices.¹⁹⁶ In response, several musicians banded together in 1985 to perform concerts raising funds for American farmers.¹⁹⁷ These concerts functioned more or less like Live Aid but eventually became more.¹⁹⁸ Farm Aid continues to exist as an organization, holding its annual concerts, but also working as a lobbyist to create regulations favoring the family farmer.¹⁹⁹

193. Rijven & Straw, *supra* note 170, at 204.

194. *Id.*

195. Brown, *supra* note 41, at 136–37, 154–56.

196. Thom Duffy, *Farm Aid: Making a Difference Since 1985*, BILLBOARD, (Nov. 29, 2011, 8:02 PM), <http://www.billboard.com/biz/articles/news/touring/1159031/farm-aid-making-a-difference-since-1985>.

197. *Id.*

198. *Id.*

199. S. Renee Dechert, *Farm Aid*, in 2 ST. JAMES ENCYCLOPEDIA POPULAR

It was not long after the first concert that the co-founders of Farm Aid, Willie Nelson, John Mellencamp, and Neil Young, sought regulatory change.²⁰⁰ In 1987, Nelson and Mellencamp both appeared before Congress to present testimony on what would become the Agricultural Credit Act of 1987.²⁰¹ Farm Aid also played a vital role in passing this legislation because it was able to fund other farmer advocacy programs which kept their administrative costs down.²⁰² This Act would ultimately help with the foreclosure issues that many farmers were facing.²⁰³ Part of what makes this Act so important is that it shows that musician participation in social issues went beyond placing a financial band aid on a larger structural problem. Though concerts like Live Aid may raise millions of dollars in funding, the money only goes so far. Money alone does not address the societal source of the problem.²⁰⁴ By promoting legislative change, the musicians not only spread information about a social issue but helped create a more lasting change through regulatory processes.

Notably, Nelson and Mellencamp were able to advocate for change in farming policy even though they did not have a detailed plan on how policy should change. In fact, both mentioned in their statements that they were not “farm experts.”²⁰⁵ Mellencamp even used his lack of knowledge on the issue to try and prove his point by stating, “It seems funny and peculiar that, after my shows and after Willie’s shows, people come up to us. We are singing with bands. We are singers. Why are they coming to us to ask for advice? It is because they have got nobody to turn to.”²⁰⁶ Ultimately, the artists were able to collect and present stories of people who were affected by the farm policy issues: their fans.²⁰⁷ Through their name recognition and their access to the public affected by social issues, artists

CULTURE 277–78 (2d ed. 2013); *Our Work*, FARM AID, <https://www.farmaid.org/our-work/> (last visited Mar. 31, 2019).

200. Duffy, *supra* note 196.

201. *Current Status of Farm Programs: Hearing on S. Hrg. 100-415 Before the Subcomm. on Agric. Prod. & Stabilization of Prices of the Comm. on Agric., Nutrition, & Forestry*, 100th Cong. 75–85 (1987) [hereinafter *Current Status of Farm Programs*]; Duffy, *supra* note 196.

202. FARM AID: A SONG FOR AMERICA 145 (Holly George-Warren ed., 2005).

203. Duffy, *supra* note 196.

204. See *supra* notes 171–185 and accompanying notes.

205. *Current Status of Farm Programs*, *supra* note 201, at 76–77.

206. *Id.* at 77.

207. *Id.* at 76–77; FARM AID: A SONG FOR AMERICA, *supra* note 202, at 16.

have the potential to present a more compelling story to regulatory bodies. Further, because Nelson, Young, and Mellencamp have publicly recognizable names, they are in a more powerful position to influence regulators in a way that an ordinary person cannot. Mellencamp emphasized that although he and Nelson were merely singers, their fans looked to them for leadership on this issue, which demonstrated the failure of government officials to fulfill their roles as public representatives. Mellencamp directly said as much at the end of his testimony: “Why is it being passed on to us to be concerned with these people when, in reality, we voted for you guys to do what was morally right, and I think that is what the people of America expect.”²⁰⁸ This Act is evidence that artists’ access to public concerns and their status as household names can assist them in pushing for policy changes.

The Agricultural Credit Act of 1987 was not the only policy supported by Farm Aid. Willie Nelson and other representatives of Farm Aid made statements during the House Hearing for Federal Crop Insurance Reform.²⁰⁹ Then, in 2008, in the wake of the \$700 billion Wall Street bailout, Nelson, Mellencamp, Young, and new co-host Dave Matthews sent an open letter to Congress urging Congress to use these funds to help farm communities.²¹⁰ Farm Aid also continues to tackle and address the issue of corporate inequities in the farming business.²¹¹ For example, Farm Aid suggests that some of the issues caused by corporate domination of the agro industry are the lack of policy on “mega mergers,” lack of enforcement of the Sherman Antitrust Act and Clayton Antitrust Act, Packers & Stockyards Act, and the lack of local control on food laws.²¹² As a response to these concerns, in 2010, the U.S. Department of Justice and the U.S. Department of Agriculture held several workshops to

208. *Current Status of Farm Programs*, *supra* note 201, at 77

209. *Fed. Crop Ins. Reform and Dep’t of Agric. Reorganization Act of 1994: Hearing on H. Res. 507 Before the Subcomm. on Dep’t Operations and Nutrition of the Comm. on Agric.*, 103d Cong. 186–87 (1994) (statement of Willie Nelson, President, Farm Aid, Inc.).

210. *Farm Aid’s Nelson, Mellencamp, Young and Matthews Urge Congress to Redirect Bailout to Working Men and Women, Farmers*, FARM AID (Sept. 25, 2008), <https://www.farmaid.org/blog/farm-aids-nelson-mellencamp-young-and-matthews-urge-congress-to-redirect-bailout-to-working-men-and-women-farmers/>.

211. FARM AID: A SONG FOR AMERICA, *supra* note 202, at 104–05; Alicia Harvie, *A Looming Crisis on American Farms*, FARM AID (Apr. 13, 2017), <https://www.farmaid.org/blog/fact-sheet/looming-crisis-american-farms/>.

212. Harvie, *supra* note 211.

address issues of antitrust, competition, and corporate concentration in the agricultural industry.²¹³ These workshops, attended by Farm Aid, allowed small farmers to address their concerns about keeping their businesses from foreclosure.²¹⁴ In 2011, Nelson and the other Farm Aid board members followed up on these workshops with a letter to Attorney General Eric Holder.²¹⁵ The letter urged the administration to move forward and create regulations to deal with these agricultural competition problems.²¹⁶ Because of these lobbying efforts, the Grain Inspection, Packers and Stockyards Administration took steps to amend parts of the Packers and Stockyards Act.²¹⁷ Although the process was slow, the law was eventually changed. Thus, Farm Aid was able to influence legislation supporting to the farming community.²¹⁸

Farm Aid is a good example of the far-reaching power of artists. Bob Dylan's offhand comment was enough to create a ripple effect, causing other artists to join together and fundraise through their music. But unlike other benefit concerts, the Farm Aid concert extended into a greater lasting force that continues to shape regulation of the farming industry. Willie Nelson admits that he never pictured Farm Aid becoming the lobbying powerhouse that it is today. Nelson said, "I really felt we'd do one [concert] and call attention to it and the big powers that be, the smart guys, would see what was going on and they would fix it."²¹⁹ In a way, by involving themselves in Farm Aid, the artists who continue to head the organization not only spread word of the issue through concerts, they gained greater appreciation for

213. Letter from Willie Nelson et al., Farm Aid, to Eric Holder, Attorney Gen., & Tom Vilsack, Sec'y, U.S. Dep't of Agric. (Aug. 13, 2011), https://www.farmaid.org/wp-content/uploads/2015/04/2011-DOJ_USDA-signed_letter.pdf.

214. *See id.*

215. *Id.*

216. *Id.*

217. Poultry Grower Ranking Systems, 82 Fed. Reg. 24, 9533 (proposed Feb. 7, 2017) (codified at 9 C.F.R. 201) (looking at how a poultry dealer's ranking system can create unfair advantage in the market).

218. *Farmer Fair Practices Rules Effective Date, Comment Periods Extended*, USDA (Feb. 3, 2017), <https://www.gipsa.usda.gov/Newrelease/2017/020317FFPRCommentPeriodsExtended.pdf> (noting an extension on the comment period for all the proposed rules to address issues of fair practice). *See also* Unfair Practices and Undue Preferences in Violation of the Packers and Stockyards Act, 82 Fed. Reg. 200, 48603 (proposed Oct. 18, 2017) (codified at 9 C.F.R. 201) (extending the public comment period for the Poultry Grower Ranking Systems rule).

219. Duffy, *supra* note 196.

the need for systematic changes through legislation.

V. THE ROLE OF CENSORSHIP IN MUSIC AND ITS SOCIAL EFFECTS

As discussed above, there are many factors that may reduce an artist's ability to reach a wide audience. This section focuses on the various forms of censorship found in the industry that impact the ability of artists to get their message out. Censorship is a complicated term to define, however, the basic idea is when a third party in some way limits the presentation of ideas. There are four common types of censorship. First is moral censorship, which creates limitations on material that is an affront to public morals, like pornographic images. Second, is political, which prevents speech that goes against political stances, especially those of the government. Third is self-censorship, which represents artists' decisions to tone down their voice to avoid government enforcement, please record companies, or even to maintain a particular image. Fourth is economic censorship, which shows how corporations or public funding can influence the choice that an artist makes.²²⁰

Some examples of censorship are obvious, such as an outright ban on the sale or distribution of certain songs. Other examples, however, are more indirect. Corporations, venue operators, or radio licensees may limit an individual's speech. Though all these individuals and businesses have the right to make choices about what they sell or promote, outside factors may influence their decisions, such as Federal Communications Commission regulations or reliance on public funding.

In the music industry, censorship can also take many other forms, from banning songs, to removal of words from lyrics, or to changing the names of the songs on albums. Music involves many types of media, thus it is also subject to censorship in other ways. For example, censors may attack an album for its album art, an artist can face backlash for a music video, or a musician can be the target of censorship for their onstage antics.

In order to tackle this complex issue, this section begins with an examination of the history of censorship beginning with the major Supreme Court interpretations of First Amendment

220. NAVIGATING THE MUSIC INDUSTRY: CURRENT ISSUES & BUSINESS MODELS 44–45 (Dick Weissman & Frank Jermance eds., 2003) [hereinafter NAVIGATING THE MUSIC INDUSTRY].

protections. The next part will discuss the effects of regulation and policies on third parties, such as corporations and radio stations. Finally, this section will finish with a brief discussion on ways that non-governmental parties can use lawsuits and the legal systems as a way to silence those with opposing viewpoints.

A. LEGAL HISTORY OF CENSORSHIP

The First Amendment of the U.S. Constitution provides, "Congress shall make no law respecting an establishment of . . . or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble . . ." ²²¹ Yet, the freedom of speech comes with limitations, such as no protection for yelling "fire" in a crowded movie theater when there is no fire. ²²² The Supreme Court has carved out other First Amendment exceptions. Namely, the First Amendment does not protect obscene, indecent, and profane language.

The landmark case in the obscenity carve out is *Roth v. United States*. ²²³ The issue in this case was the constitutionality of 18 U.S.C. § 1461. This section of the code makes it a crime to mail "obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance." ²²⁴ Roth was operating a business involving the sale of books, photographs, and magazines. ²²⁵ To solicit business, Roth sent out advertising materials that were found to be obscene and in violation of the code. ²²⁶ After considering historical limitations on First Amendment freedoms, the Court decided that the First Amendment was not meant to be read as broadly as written. ²²⁷ Although "all ideas having even the slightest redeeming social importance" were subject to protection, materials of obscenity were "utterly without redeeming social importance." ²²⁸ Thus, the Court held, "obscenity is not within the area of constitutionally protected speech or press." ²²⁹

221. U.S. CONST. amend. I.

222. *Schenck v. United States*, 249 U.S. 47, 249 (1919).

223. *Roth v. United States*, 354 U.S. 476 (1957).

224. 18 U.S.C. § 1461 (1994).

225. *Roth*, 354 U.S. at 480.

226. *Id.*

227. *Id.* at 482.

228. *Id.* at 484.

229. *Id.* at 485.

The standard for obscenity became “whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.”²³⁰ Unfortunately, however, this case would end up leaving more questions than answers. After all, what is a prurient interest? Who is the average person? Standards to the average person in New York City may differ from those in a small town in Kansas.²³¹ If there is a national standard, how should the courts decide that standard? The Court also determined that “sex and obscenity are not synonymous.”²³² In other words, depictions of sex did not instantly place a work under the obscene umbrella and strip the work of First Amendment protections. The case law coming after *Roth* would need to tease out the fine line between sex as a part of a work and sex that turned a work into something obscene.

After *Roth*, the Supreme Court continued to discuss obscenity issues. One of these cases is *A Book Named “John Cleland’s Memoirs of a Woman of Pleasure” v. Attorney General of Massachusetts*.²³³ The book, *Memoirs of a Woman of Pleasure*, was written in 1750 and the State of Massachusetts sought many years later to declare the book obscene because of its graphic depictions of sex.²³⁴ The question in this case came down to whether the book fell into the obscene category created in *Roth*.²³⁵ When the Court began to apply the *Roth* standard, it considered whether the dominant theme: 1) appealed to prurient interests, 2) was patently offensive to contemporary community standards, and 3) was “utterly without redeeming social value.”²³⁶ The last element became the major issue in the case. In discussing the value of the book, the Court decided that appeals to prurient interests does not cancel a material’s social value.²³⁷ The risk that a vendor or distributor could use a book or material to appeal to prurient interests was not enough to categorize the work as obscene.²³⁸ Instead, special consideration

230. *Id.* at 489.

231. *Miller v. California*, 413 U.S. 15, 32 (1973).

232. *Roth*, 354 U.S. at 487.

233. *A Book Named “John Cleland’s Memoirs of a Woman of Pleasure” v. Att’y Gen. of Mass.*, 383 U.S. 413 (1966).

234. *Id.* at 415; JOHN CLELAND, *FANNY HILL: MEMOIRS OF A WOMAN OF PLEASURE* (1748).

235. *Memoirs of a Woman of Pleasure*, 383 U.S. at 418.

236. *Id.* at 418.

237. *Id.* at 419.

238. *Id.* at 420.

is needed if the material might have redeeming social importance.²³⁹

Following *Memoirs*, the burden for proving obscenity was high. To show that a work was obscene, one had to prove a negative. It had to be shown that the work was “utterly without redeeming social value.”²⁴⁰ This standard created a nearly impossible hurdle for declaring works obscene. The court in *Miller v. California* soon tackled this issue.²⁴¹ Much like *Roth*, the case involved a mass mailing of materials that depicted explicit sexual images.²⁴² *Miller* refused to adopt the *Memoirs* standard of “utterly without redeeming social value.”²⁴³ Social value was just one factor to consider but it did not outweigh the other concerns about the obscenity of a material. *Miller* declared that “[a]t a minimum, prurient, patently offensive depiction . . . of sexual conduct must have serious literary, artistic, political, or scientific value” to receive full protection of the First Amendment.²⁴⁴ The *Miller* Court also decided that “hard core” pornography did not have protections and was unable to meet any tests of creating social or artistic value.²⁴⁵ Of course, the line between regular and “hard core” pornography still had a grey area. *Miller* added some clarity to the standard of a work’s redeeming values, however, like in prior cases, these obscenity cases did not create defined lines. Whether something has “serious” literary, artistic, or social value to one person can easily vary from person to person.

Although *Miller* helped to limit the role of social value in obscenity decisions, this case also clarified another aspect of the *Roth* test. The community standards required by *Roth* were not previously well-defined. In *Miller*, the State of California argued that the community standards to be applied should be the standards prevalent in California, rather than a national standard.²⁴⁶ The Court decided that the lower court could use the state standard instead of creating a national hypothetical standard. Because different parts of the U.S. may vary greatly in community standards, the Court found that it made more

239. *Id.*

240. *Id.* at 419.

241. *Miller v. California*, 413 U.S. 15 (1973).

242. *Id.* at 16–18.

243. *Id.* at 24.

244. *Id.* at 26.

245. *Id.* at 29.

246. *Id.* at 31.

sense to apply local standards to obscenity tests.²⁴⁷ Further, because a jury makes the decision about whether the material is obscene, the jury would be the best barometer for determining what is or is not acceptable within their community standards.²⁴⁸ Requiring a jury apply a national standard would likely lead to confusion and case outcomes would still vary across states.

Even though these cases are not about music censorship, they laid important groundwork for later challenges to musicians and their works. In the 1950s and 1960s, the obscenity exception to First Amendment protections would often become the main weapon for anti-rock crusaders.²⁴⁹ Even as anti-rock movements slowed down, obscenity continued to be a prominent weapon for attacking rap and especially gangsta rap music.²⁵⁰ These laws would also play a fundamental role in later legislation and agency regulations that control the distribution of music.

B. THE FCC AND AGENCIES AND THEIR ROLE IN CENSORSHIP

Although individuals and organizations may independently challenge music and artists, the task became easier with the creation of the Federal Communications Commission (FCC). Once the FCC took the reins on limiting broadcast materials, groups and individuals began sending letters and complaints to the FCC about music they found distasteful. Individuals no longer needed to instigate a challenge on their own.

The Radio Act of 1927 was the precursor to the modern day regulations of the FCC.²⁵¹ This act was meant to limit “obscene, indecent, or profane language,” all of which falls into a special exemption from First Amendment protections.²⁵² Then, with the Communications Act of 1934, the FCC officially became the leading agency in charge of policing the language permitted on

247. *Id.* at 32.

248. *See id.*

249. LINDA MARTIN, ANTI-ROCK: THE OPPOSITION TO ROCK ‘N’ ROLL 23–26 (1993); Shoshana Samole, *Rock & Roll Control: Censoring Music Lyrics in the ‘90’s*, 13(2) U. MIAMI ENTERTAINMENT & SPORTS L. REV. 175, 175–76 (1996).

250. Samole, *supra* note 249, at 177.

251. John W. Lees, *F.U.C.K.: FCC’s Unlimited Censorship Keeps-Going; When Will This Shit End?*, 11 FLA. COASTAL L. REV. 409, 410 (2010).

252. *Id.*

the airwaves.²⁵³ The FCC was built upon the foundation of limiting obscene, indecent, and profane language.

Even though the FCC has the power to limit what music or lyrics appear on broadcasts and the radio, the FCC's power has slowly extended the obscenity exceptions in the previously discussed First Amendment cases. The FCC is given power over not only "obscene" material, but also "indecent and profane language." One of the major cases that demonstrate the FCC's power over radio is *FCC v. Pacifica Foundation*.²⁵⁴ The crux of this case is whether there was a distinction between indecent and obscene language. In 1973, a radio station owned by Pacifica Foundation aired George Carlin's "Filthy Words" monologue.²⁵⁵ The monologue was a satirical use of the words that are not supposed to be said over the airwaves. After the broadcast, a man wrote a complaint to the FCC about the indecency of the broadcast.²⁵⁶ The FCC sent a letter to the station stating that Pacifica "could have been the subject of administrative sanctions," though the FCC ultimately did not issue any sanctions.²⁵⁷ The FCC decided that the language in the Carlin monologue was not obscene but instead that the words in the monologue were indecent.²⁵⁸ The FCC issued a memorandum explaining that indecent language was a separate category from obscene language.²⁵⁹ "[I]ndecent' is intimately connected with the exposure of children to language that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs, at times of the day when there is a reasonable risk that children may be in the audience."²⁶⁰ The station challenged the FCC's decision arguing that the FCC was using this distinction as a form of censorship, which was prohibited under the Communications Act.²⁶¹ The Court ultimately decided the issue in favor of the FCC. Furthermore, because the Communications Act expressly gave the FCC the authority to take away a license in the case of airing obscene

253. *Id.* at 411.

254. *FCC v. Pacifica Found.*, 438 U.S. 726, 729–30 (1978).

255. *Id.* at 730.

256. *Id.* at 730.

257. *Id.*

258. *Id.* at 731–32.

259. *In the Matter of a Citizen's Complaint*, 56 F.C.C. 2d 75-200 (1975).

260. *Id.* at 98.

261. *FCC v. Pacifica Foundation*, 438 U.S. 726, 733 (1978).

materials, this was not an act of censorship.²⁶² The Court also agreed with the FCC that obscene, indecent, and profane language each had separate meanings because the statute listed each of the terms separately.²⁶³

This case is important to music censorship because it broadened the scope of the FCC's power to limit broadcasts of music. When the FCC was merely limited to broadcasts falling into the obscene category, there was a higher level of proof required to show that the music did not have artistic or social value. But with these new standards, the FCC gained greater control over the distribution of music without violating the statutory limitation to prevent the FCC from acting as a censor. The FCC can limit anything indecent, which is anything that "depicts or describes sexual or excretory activities or organs in terms patently offensive as measured by contemporary community standards for the broadcast medium."²⁶⁴ The FCC may also regulate any profane language, which is language "so highly offensive that it 'amount[s] to a nuisance."²⁶⁵ Although the FCC may not completely ban songs for being indecent or profane, the FCC is allowed to limit the allowable times for broadcasts falling into these categories. Profane and indecent broadcasts were limited to 10 PM to 6 AM, a time that supposedly decreases the risk of children overhearing the broadcasts.²⁶⁶

The increase in FCC authority over indecent and profane language appears dangerously close to a form of censorship. The rulings of the FCC are examples of how governmental authorities can lead to a form of censorship. Indirectly, there is an inherent risk that broadcast stations will self-censor to avoid running afoul of the FCC. Though the FCC may not completely ban a song for indecency, stations may risk losing their license for crossing the FCC too many times.²⁶⁷ The FCC also has long history of using the threat of license removal to remove songs from the airwaves. The threat of losing a radio license could

262. *Id.* at 750–51.

263. *Id.* at 739–40.

264. Lees, *supra* note 251, at 420 (explaining the patently offensive prong also originally required repetition, but that's standard was later removed in *FCC v. Fox Tv Stations, Inc.*, 567 U.S. 239 (2012), when the FCC was permitted to regulate "fleeting expletives").

265. *Id.*

266. *Id.* at 413–14.

267. *Id.* at 413.

easily cause self-censorship by stations.²⁶⁸ After all, if a station loses its license, it would be detrimental to their business.²⁶⁹ In 1971, the FCC sent out memos threatening to revoke the licenses of stations that played any of the twenty-two listed songs that the FCC believed to contain drug references.²⁷⁰ Though this policy was eventually ruled unacceptable in 1973, on the basis that drugs are illegal but discussing them is not, the FCC has continually found other ways to limit broadcasts.²⁷¹ In 1989, after the Carlin case, the FCC began to hand out massive fines to stations that played songs with sexually suggestive lyrics.²⁷² These fines could range from \$10,000 to \$25,000, no small sum for a radio station.²⁷³ The FCC has also created issues for internet radio and experimental college stations.²⁷⁴ Over time, the FCC has started to initiate fees to run these services, which has put experimental college stations out of business because of the prohibitive costs.²⁷⁵

The FCC, however, is not the only government agency which actions have created indirect censorship. For example, funding from government sources can limit artistic expression. Congress provides funds for the National Endowment of the Arts (NEA).²⁷⁶ In one case, many senators were upset with the NEA for providing funding to an exhibit that displayed Andres Serrano's photograph, "Piss Christ."²⁷⁷ In response, Congress cut the NEA's funds from \$170 million to \$110 million.²⁷⁸ The threat of funding cuts are just as relevant in the music world. In 1998, Florida legislators tried to withhold \$104,000 in state funding to the public radio station, WMNF, because the legislators disliked the programming and on-air praise of Kurt Cobain.²⁷⁹ For public stations that rely on funding, legislators can essentially coerce

268. MARTIN, *supra* note 249, at 191.

269. *Id.*

270. PETER BLECHA, TABOO TUNES: A HISTORY OF BANNED BANDS & CENSORED SONGS 76–77 (2004).

271. ERIC NUZUM, PARENTAL ADVISORY: MUSIC CENSORSHIP IN AMERICA 142 (2001).

272. BLECHA, *supra* note 270, at 115–16.

273. *Id.* at 116.

274. NAVIGATING THE MUSIC INDUSTRY, *supra* note 220, at 69.

275. *Id.*

276. Sopan Deb, *Despite Trump Threat, N.E.A and N.E.H Are Spared in Spending Bill*, N.Y. TIMES (Mar. 23, 2018), <https://www.nytimes.com/2018/03/23/arts/nea-and-neh-spared-in-spending-bill.html>.

277. NAVIGATING THE MUSIC INDUSTRY, *supra* note 220, at 47.

278. *Id.*

279. NUZUM, *supra* note 271, at 290.

them to play what the legislators consider “acceptable” programming.

The FBI can play a major role in censorship as well. One prominent example was the FBI’s letter in 1989 to Priority Records, the distributor for music by the early gangsta rap group, N.W.A.²⁸⁰ The letter claimed that the rap group’s music promoted “violence against and disrespect” for police officers.²⁸¹ Because of this letter, many venues refused to let the group perform, especially the song in question, “Fuck Da Police.”²⁸² Many venues wrote a penalty fee into the contract with N.W.A., providing that if the group performed the song, they would be required to pay a fee to the venue.²⁸³ This type of contractual fee could be a major disincentive for an artist to perform a particular song live.

One of the FBI’s less successful attempts at censorship was its two-year investigation of the song “Louie Louie.”²⁸⁴ The investigation was meant to determine whether the incomprehensible lyrics violated obscenity standards.²⁸⁵ At the end of the day, the FBI was never able to reach a conclusion but the investigation did not inhibit the success of the song, which went on to sell twelve million copies.²⁸⁶ Although this example did not ultimately create a censoring force, it demonstrates how an agency, like the FBI, can potentially interfere with the distribution and success of music, creating a de facto form of censorship.

The FBI has also used its authority to cause trouble for musicians by placing them on a watch list, usually because of the messages the artists supported. One example of a musician on the watch list was Jim Morrison of the Doors. Morrison was under the constant eye of the FBI, which collected data on Morrison going back to 1963.²⁸⁷ All this data collection led to Morrison’s arrest for “lewd and lascivious behavior” on stage.²⁸⁸ But Morrison was not the only one under the government’s

280. Beth Orsoff, Note, *Government Speech as Government Censorship*, 67 S. CAL. L. REV. 229, 230–31 (1993).

281. *Id.*

282. *Id.* at 231.

283. *Id.*

284. BLECHA, *supra* note 270, at 99.

285. *Id.*

286. *Id.*

287. NUZUM, *supra* note 271, at 232.

288. *Id.*

watch, he had good company from protest singer Phil Ochs²⁸⁹ to Jefferson Airplane,²⁹⁰ among many others.²⁹¹ Because of the constant watch by government agencies, these groups sometimes had difficulty finding venues in which to perform.²⁹² Although the government did not formally ban these musicians, the FBI watch was a way of indirectly censoring their acts and exposure to their music, even if its efforts ultimately had little success. Harassment by the FBI could have a chilling effect on an artist. Not every musician with a message may be able to deal with arrests, fines, and the other difficulties that come when under the watch of the FBI or other enforcement officials.²⁹³

An additional way that government agencies can create indirect censorship is through visa programs. Musicians from the U.S. need visas to travel and perform abroad, just as foreign musicians need the same visas to reach the U.S. Withholding visas from musicians has occurred several times in the past. Before their first tour in the U.S., the U.S. embassy denied a travel visa to the members of the Sex Pistols.²⁹⁴ The decision of the embassy was eventually overruled by the U.S. State Department.²⁹⁵ Likewise, the government prevented artists like Josh White and Pete Seeger, both artists who used their music to promote civil liberties, from traveling abroad.²⁹⁶ Cuban artists had difficulty obtaining the visas they needed to appear at the 2003 Latin Grammy Award ceremony in the U.S.²⁹⁷ The U.S. claimed that Cuba was deferring the visas and Cuba likewise blamed the U.S.²⁹⁸ Because of the delay, none of the nominated musicians were able to attend the Grammy Award ceremony that year.²⁹⁹

Limiting access to visas is a potentially effective method for creating censorship in two ways. First, in the case of Pete Seeger, the difficulty in obtaining a visa almost served as a type of punishment for or deterrent from creating music challenging the

289. *Id.* at 168.

290. BLECHA, *supra* note 270, at 70.

291. NUZUM, *supra* note 271, at 232.

292. *Id.* at 235.

293. BLECHA, *supra* note 270, at 70–73.

294. NUZUM, *supra* note 271, at 240.

295. *Id.*

296. NAVIGATING THE MUSIC INDUSTRY, *supra* note 220, at 57.

297. SHOOT THE SINGER! MUSIC CENSORSHIP TODAY 167–68 (Marie Korpe ed., 2004).

298. *Id.*

299. *Id.* at 168.

social and political climate. The implication is that if the artist changes the kind of music they play, the government might leave them alone.³⁰⁰ For some artists, avoiding these types of regulatory difficulties might be enough to stop them from spreading their messages through their music. Not every artist will be able to overcome these types of regulatory hurdles or have the ability to challenge wrongful denials of visas.³⁰¹ The second way that control over visas creates censorship is that visa denials can prevent exposure to messages. In the case of the Sex Pistols, the band was well-known for their punk and anarchist leanings.³⁰² Blocking the entrance of the Sex Pistols was a way to prevent its music from spreading among American audiences, even if ultimately unsuccessful. Likewise, for the Cuban musicians, the visa issue was a way of preventing Cubans from singing about their experiences in Cuba or connecting with an American audience.³⁰³ The delay in the visas effectively limited the Cuban musicians' exposure and the ability to reach a broader audience.

In the end, the government and its agencies can play a major role as a censor both directly and indirectly. Though the government may have a difficult time proving that a work is obscene under *Miller* and *Roth*, agencies like the FCC are able to work around these issues by using lower standards, such as indecency and profane language. The FCC can even create time restrictions on broadcasts, which will necessarily limit the exposure of certain music to audiences.³⁰⁴ The government's control over licensing and funding also plays a fundamental role in censorship. Any threat of losing a license or funding could easily coerce a station or distributor into removing music that may create financial risks. Even if it was not its intention, the government needs to be aware that any letter or communication from it has the power to indirectly enforce censorship.³⁰⁵ Likewise, delaying visas or constant harassment and surveillance of a musical group can prevent artists from sharing

300. NAVIGATING THE MUSIC INDUSTRY, *supra* note 220, at 57.

301. *Id.*

302. *Id.*

303. David Segal, *Visa Delays Cost Cuban Musicians*, WASH. POST (Sept. 19, 2002), <https://www.washingtonpost.com/archive/lifestyle/2002/09/19/visa-delay-s-cost-cuban-musicians/f98181dd-8395-4d95-a824-e6f8e86d4a95>.

304. *Consumer Guide: The FCC and Freedom of Speech*, FCC, <https://www.fcc.gov/consumers/guides/fcc-and-freedom-speech> (last updated Sept. 13, 2017).

305. Orsoff, *supra* note 280, at 254.

their messages with a wide variety of audiences. Using these indirect methods of censorship can be just as harmful as direct censorship because either way, the effect is limiting exposure to the musicians and their music.

C. THE PMRC AND LEGISLATIVE ATTEMPTS AT CENSORSHIP

The government and its agencies are not the only entities that have sought to limit particular audiences' exposure to music. In fact, even with the Carlin case, the FCC's actions began after receiving a complaint from an ordinary citizen. These outside groups and individuals can have major effects on how legislators treat certain musicians and their music. Though there are many examples of anti-rock groups and religious organizations that sought to limit the availability of certain types of music, one of the greatest influences is probably the Parent Music Resource Center (PMRC).

To be sure, there were attempts to declare music and songs unacceptable for the public long before the PMRC. As far back as the reformation era following the Civil War, the U.S. was practicing music censorship by not allowing anyone to sing songs that promoted the Confederacy.³⁰⁶ The PMRC began in the 1980s, with a letter signed by wives of twenty Washington businessmen and legislators.³⁰⁷ Tipper Gore, wife of then Senator Al Gore, supposedly founded the group after Tipper was appalled by the lyrics on one of her daughter's Prince albums.³⁰⁸ The group created a list of the "Filthy 15," which included fifteen songs that were inappropriate due to their references to either sex, drugs, or violence.³⁰⁹ The PMRC asked the record industry to: 1) print lyrics on album covers, 2) keep explicit covers under the counter, 3) establish a ratings system for records similar to that of the film industry, 4) create a rating system for concerts, 5) reassess contracts for performers that engage in violence and explicit sexual behavior onstage, and 6) to create a citizen and record company media watch that would pressure broadcasters not to air "questionable talent."³¹⁰ Tipper Gore took the stance that what the PMRC was seeking was not a form of censorship and thus did not implicate First Amendment issues. She stated,

306. BLECHA, *supra* note 270, at 140.

307. NUZUM, *supra* note 271, at 20.

308. *Id.* at 13-14.

309. *Id.* at 21.

310. *Id.* at 22.

“We’re a consumer society, and there are warning labels on everything else—food, cosmetics, cigarettes.”³¹¹ Essentially, Tipper was arguing that these measures were about consumer protection and knowledge. A parent may not know which lyrics or themes are in each album until after they purchased it for their child. This was not a movement to limit artistic expression but to expand consumer knowledge.

The PMRC did not get all its demands met, but its letter caught legislators’ attention. In 1985, a Congressional hearing sought to address the issue of record labeling in the industry.³¹² Members of the PMRC were present to testify. They once again explained that the labeling was part of consumer information and protection, not for censorship purposes.³¹³ The PMRC and others emphasized that the labeling standards were meant to protect teenagers, especially those who might be “troubled” and whose exposure to violent music could push them over the “emotional precipice.”³¹⁴ Among those testifying, however, were several musicians arguing against the use of the labeling system. These musicians included Frank Zappa, John Denver, and Dee Snider of Twisted Sister.³¹⁵ Zappa specifically expressed the concern that these regulations would open up music to highly subjective moral issues.³¹⁶ Denver continued this sentiment by saying that self-restraint among musicians is important, however, the government was not designed to be the “self-appointed watchdog of public morals.”³¹⁷

Stanley M. Gortikov, the president of the Recording Industry Association of America (RIAA), also mentioned some of the difficulties of implementing the PMRC’s demands. Gortikov highlighted that the PMRC was unfairly focusing on rock musicians and potentially limiting their artistic freedom.³¹⁸

311. *Tipper Gore of Parents Music Resource Center Says that Warning Labels on Records Do Not Infringe Upon First Amendment Rights*, PR NEWSWIRE, Feb. 26, 1986.

312. *Record Labeling: Contents of Music and the Lyrics of Records: Hearing Before the Comm. on Commerce, Sci., & Transp.*, 99th Cong. (1985).

313. *Id.* at 11–13.

314. *Id.* at 3 (statement of Sen. Tribble).

315. *See id.*

316. *Id.* at 54 (statement of Frank Zappa).

317. *Id.* at 65 (statement of John Denver).

318. *See id.* at 96–97 (statement of Stanley M. Gortikov, President, Recording Industry Association of America) (stating that though rock was the focus for many years, by 1992, 74% of rap records in the U.S. were sold to whites. Once rap records became commonplace in the home of the white suburban teenager, the PMRC shifted its focus from rock to rap); *see* NUZUM, *supra* note 271, at

Further, because of the large volume of songs produced each year, the task of looking at the moral quality of each song is not only subjective but also cumbersome.³¹⁹ Finally, Gortikov expressed concern that the PMRC's demands to provide lyrics to radio stations would conflict with legal limits on lyric reproduction and that there was not a way for recording companies to control live concerts.³²⁰

Despite the pushback in this hearing, several demands of the PMRC were ultimately met. By 1990, the RIAA debuted a universal warning sticker for albums featuring explicit content.³²¹ Although record companies had discretion within the RIAA sticker policy, many albums soon emblazoned the sticker, which affected how certain albums were sold and inspired legislative proposals throughout the states to further limit these explicit albums.³²² Just one step toward creating legislation on music did what Zappa and other anti-labeling advocates feared, it opened the opportunity to chip away from artistic freedom and audience exposure based on subjective morals regarding lyrical content.

Even though there is nothing wrong with groups lobbying for legislative change, the PMRC is an example of how sometimes groups with an unusual amount of power can force industry and social change, but not necessarily for the better. First, the PMRC's focus was notably rock music, without attention to country or opera, genres equally as capable of depicting the type of material the PMRC stood against.³²³ It seems that the PMRC was not necessarily interested in protecting all children from the threats of music. Instead, the PMRC was only concerned with the genre of music that garnered the interest of young white suburban children.³²⁴ Opera, despite its constant themes of sex and violence, was not limited because

109–10 (stating that the PMRC's focus on rap led to yet another hearing about the detrimental influence of gangsta rap and the need to declare it obscene); *Music Lyrics and Commerce: Before the Subcomm. on Commerce, Consumer Prot., & Competitiveness of Comm. On Energy & Commerce*, 103d Cong. 12 (1994).

319. *Record Labeling: Hearings*, *supra* note 312, at 63.

320. *Id.* at 96.

321. NUZUM, *supra* note 271, at 40.

322. *Id.* at 40–42.

323. *Id.* at 19.

324. *Music Lyrics and Commerce: Before the Subcomm. on Commerce, Consumer Prot., & Competitiveness of Comm. On Energy & Commerce*, 103d Cong. 351 (1994).

that genre was not one that generally attracted teenagers.³²⁵ This selectiveness reaches to the very heart of censorship issues. The goal is not to limit the audience for all music, just for the artists that a particular segment of the population finds threatening to their social norms.³²⁶

Another concern about the activism of the PMRC was that the organization was not comprised of ordinary citizens, these were the wives of influential men in both the business world and legislature. Four of these men were participants on the committee to hear the Home Audio Recording Act.³²⁷ This act was supposed to add a tax for blank tapes and home audio equipment as a way to reduce home taping, which threatened the recording industry.³²⁸ The RIAA was invested in the passage of the Home Audio Recording Act,³²⁹ and it is quite possible that the influence of these wives' husbands pressured the RIAA into fulfilling some of the PMRC demands. This scenario builds upon the previous examples of how the government and its agencies can create leverage that lead to censorship. The legislators had control of an issue that could seriously affect the revenues of the recording industry. Although the legislators in question did not necessarily threaten that the success of the Home Audio Recording Act would be contingent on the RIAA obeying the commands of the PMRC, one can easily see the potential coercive influence. The combination of well-connected lobbyists and industry interests can squeeze out artistic freedoms.

D. CORPORATE POWER AND CENSORSHIP

Governments are not the only entities that have the power to censor music. Businesses may also wield power over an artist's exposure. As a cautionary note, some of the censorship-inducing choices made by businesses are the result of government influence, such as trying to gain support for other business friendly legislation or to avoid fines from agencies. Businesses and corporations, however, also have independent power over an artist's exposure.

325. *Id.* at 12.

326. *Id.*

327. NUZUM, *supra* note 271, at 20.

328. *Id.*

329. Stephen W. Webb, Note, *RIAA v. Diamond Multimedia Systems: The Recording Industry Attempts to Slow the MP3 Revolution, Taking Aim at the Jogger Friendly Diamond Rio*, 7 RICH. J.L. & TECH. 5, 5 (2000).

The production and distribution of an album involves many different entities. Each of the businesses in the distribution chain affect the size of an artist's audience. First, artists may find their voice limited by recording companies. One of the main ways that a label can limit an artist's voice, as previously discussed, is the company's unwillingness to take new acts that may not be profitable.³³⁰ The other issue with these companies is that they may be able to coerce artists to change their lyrics or messages so that the artist can get a record deal.³³¹ Though the artist could sign with an independent label to ensure more artistic control, independent labels also have smaller distributions and tend to pay lower royalties.³³²

The decisions of who record companies sign is also connected to the chain of distribution. Certain stores have their own policies and will only carry and sell certain types of music. When the PMRC first rose to national attention, stores such as JC Penney and Sears both announced that they would not carry albums bearing the PMRC labels.³³³ In 1987, many small retailers refused to sell certain obscene albums for fear of eviction by their landlords.³³⁴ One other strong example of corporate influence is Wal-Mart. Similar to the policies of Sears and JC Penney, Wal-Mart music buyer policy is that it will not buy stickered albums unless it is believed that the customers will be interested in the particular item.³³⁵ In other words, the sticker is a death sentence unless Wal-Mart predicts that the album will create a lot of revenue. Although Wal-Mart does not participate in the editing process for albums, the retailer has on occasion asked for edits.³³⁶ Yet, even though Wal-Mart is just one retailer, it has a lot sway in the industry because it sells a large volume of CDs.³³⁷ In one specific example, Wal-Mart boycotted Sheryl Crow's second album.³³⁸ This album contained the song "Love is a Good Thing," which featured the lines "Watch our

330. NAVIGATING THE MUSIC INDUSTRY, *supra* note 220, at 97–98.

331. Neil Strauss, *POLICING POP/A Special Report.; Recording Industry's Strictest Censor Is Itself*, N.Y. Times (Aug. 1, 2000), <https://www.nytimes.com/2000/08/01/business/policing-pop-a-special-report-recording-industry-s-strictest-censor-is-itself.html>.

332. NAVIGATING THE MUSIC INDUSTRY, *supra* note 220, at 100–01.

333. NUZUM, *supra* note 271, at 23.

334. *Id.* at 259.

335. *Id.* at 202.

336. *Id.* at 203.

337. *Id.* at 202.

338. *Id.* at 206.

children while they kill each other / With a gun they bought at Wal-Mart discount stores”³³⁹ It seems the retail giant did not care for the negative implications about itself and thus refused to give the album a wide audience. Because retailers like Wal-Mart may refuse to sell items that feature stickers or contain messages that the retailer disapproves, record companies may stray away from artists that feature albums with explicit content or threaten the status quo.³⁴⁰ In this way, retailers can place pressure on labels to only choose the safe artists and prevent the message of artists from ever reaching a large audience. Although the digital age has changed the way music is consumed distributors can still influence the decisions of record labels.

Another way that businesses can influence an artist’s exposure is through their sponsorship funds. Corporations not only have influence in their role as retailers and distributors, but as sponsors to musical programming.³⁴¹ Just as with government funding, radio stations and festivals may be careful about the musicians they play or contract with because they rely on corporate funding. One early example of the influence of sponsors was in 1968 when sponsors threatened to take away support for a television program that featured a duet with “interracial ‘touching.’”³⁴² Further, after the backlash against the Dixie Chicks for their comment on the Bush administration, Lipton Tea, the sponsor of the Dixie Chicks’ upcoming tour, pulled its sponsorship.³⁴³ Instead of sponsoring the Dixie Chicks, Lipton quickly supported a concert of the Marshall Tucker Band.³⁴⁴ Radio stations also rely on commercials and corporate sponsors for many of their shows and may decide to avoid offending their sponsors with certain music to keep the capital flowing.³⁴⁵ As industries become more consolidated, there are also fewer sponsors for musicians and radio stations from which to choose.³⁴⁶ With the pressure of these few corporations, it could

339. BLECHA, *supra* note 270, at 134.

340. Neil Strauss, *Wal-Mart’s CD Standards Are Changing Pop Music*, N.Y. TIMES (Nov. 1996), <https://www.nytimes.com/1996/11/12/arts/wal-mart-s-cd-standards-are-changing-pop-music.html>.

341. MARK LAVER, *JAZZ SELLS: MUSIC, MARKETING, AND MEANING* 184 (2015).

342. NUZUM, *supra* note 271 at 230.

343. BLECHA, *supra* note 270, at 182.

344. *Id.*

345. NAVIGATING THE MUSIC INDUSTRY, *supra* note 220, at 59.

346. ROBERT ATKINS, *Money Talks: The Economic Foundations of*

become more difficult for diverse perspectives and voices to appear on the airwaves.

E. GROWTH OF COPYRIGHT SUITS AND EFFECTS ON CENSORSHIP

Changes in technology and copyright law have also had an interesting impact on censorship. Copyright claims are relatively easy to make and have become a way to silence political or cultural opponents.³⁴⁷ Copyright laws are equally applicable to music. Music, like most artistic traditions, builds upon the works of the past. Songs use similar rhythms and melodies and may even borrow words from other songs to create a connection with past songs, either in an ironic twist or to build upon an existing legacy.³⁴⁸ Using these past songs, however, can cause copyright violations, potentially limiting artistic expression. What makes these copyright suits concerning as a form of censorship, however, is that these suits are an entirely legal way to silence an artist, or at least some of the artist's work.³⁴⁹ For example, Led Zeppelin had a history of using compositions from Dixon, a blues artist, in many of their famous songs.³⁵⁰ Dixon sued over these songs and eventually received credit on many of the works.³⁵¹ This example seems less of a threat because this was merely a case of giving proper credit to an artist. Record companies, however, have also used these copyright suits to try to prevent artists from performing certain songs or at least force them to pay damages for using copyrighted music.

An example of record companies using copyright to limit artistic freedom is the case brought against George Harrison. The case was regarding George Harrison's "My Sweet Lord" and

Censorship, in CENSORING CULTURE: CONTEMPORARY THREATS TO FREE EXPRESSION 5 (Robert Atkins & Svetlana Mintcheva eds., 2006).

347. John Tehranian, *The New Censorship*, 101 IOWA L. REV. 245, 250 (2015).

348. Imogen Tilden, *What Pop Music Owes to the Classical Masters*, GUARDIAN, (Jan. 24, 2013), <https://www.theguardian.com/music/2013/jan/24/what-pop-music-owes-classical-masters>.

349. Tehranian, *supra* note 347, at 245.

350. SIVA VAIDHYANATHAN, *American Music Challenges the Copyright Tradition*, in CENSORING CULTURE: CONTEMPORARY THREATS TO FREE EXPRESSION, *supra* note 346, at 30.

351. *Id.*

the Chiffons' "He's so Fine."³⁵² The issue in this case was the similarity between the melodies of the two songs.³⁵³ Harrison lost the suit and soon after many recording companies started to register copyrights on songs in the hope that they would eventually be able to sue under similar circumstances.³⁵⁴ Another similar case was brought against John Fogerty. Fogerty, once a member of Creedence Clearwater Revival, started a solo career after leaving the band. One of Fogerty's solo albums featured the song "The Old Man Down the Road."³⁵⁵ After releasing this album, Fogerty's earlier record company that owned the rights to CCR's songs sued over copyright issues. The label claimed that "The Old Man Down the Road" copied a riff from the CCR hit, "Run Through the Jungle."³⁵⁶ Despite Fogerty writing both the songs in question, the label was trying to force Fogerty to pay compensation for borrowing rhythms from his own song. Fogerty ultimately won the case but not until spending over a day and half explaining his creative process to the jury.³⁵⁷

The issue with copyright cases is that they create uncertainties for artists. Like in any legal case, the plaintiff has to establish the elements of the case, and where the allegation is a violation of copyright law, the plaintiff must establish the elements of copyright infringement. In copyright of cases, the plaintiff would need show that the second composer had access to the first song and that the second composer's song was "substantially similar."³⁵⁸ Though the standard to meet these elements may give an artist some protection, music copyright suits can limit artistic expression. First, it is not unusual for popular songs to influence an artist on a subconscious level.³⁵⁹ Just as music is all around the ordinary person, it is also pervasive in musician's lives. The likelihood that a musician was exposed to the song they allegedly infringed upon is quite high. Another issue with music copyright suits is the ambiguity in knowing at what point a song infringes on copyright. Is it merely a few notes? One string of lyrics? There are only so many chords

352. *Id.* at 33.

353. *Id.* at 33–34.

354. *Id.* at 35–36.

355. *Id.* at 36–37.

356. *Id.*

357. *Id.* at 37.

358. *Id.* at 34.

359. *Id.*

that one can play. Some overlap and similarity in songs is expected. Further, copyright suits may stifle creativity. Most artists would not want to find themselves involved in a copyright suit. Finally, the threat of copyright suits may affect an artist's ability to reach an audience because of record companies' desires to avoid these suits. Much of rap music features "sampling," or taking pieces from other songs.³⁶⁰ A record company hesitant to deal with potential copyright issues related to sampling may refuse to add an artist to their label due to the legal risks.³⁶¹ In all these ways, copyright is not a harmless tool. Instead, copyright law has the potential to prevent artists from reaching a broader audience or even discourage them from building on musical artistic traditions.

F. CONTINUING THREATS TO CENSORSHIP

Artists can have a great impact on social change and spreading ideas but only when they have an audience. In the U.S., strict forms of direct censorship of songs are not common. The only song that remains banned in the U.S. to date is Ice-T's "Cop Killer."³⁶² Yet, all the forms of censorship discussed above threaten to limit artistic voices. For example, there are many lobbying groups that may push to have certain genres of music restrained based on their select moral ideals.³⁶³ Although many people would agree that limiting music used to promote recruitment for organizations like the KKK and white nationalist groups is a proper use of censorship, there will always be a line-drawing problem.³⁶⁴ Who decides which groups are a threat to society and which groups are using music to expose social injustices? Some motivations for groups, like the PMRC, are also questionable. The PMRC and other groups have often relied on rationales about protecting American youth from corruption as support for music censorship. Despite this common argument, there is little research to back up the assertion that music causes violent behavior or drug use among teenagers.³⁶⁵ A

360. *Id.* at 41.

361. *Id.* at 42.

362. BLECHA, *supra* note 270, at 128.

363. David Zucchini, *Rock Censorship: Big Brother Meets Twisted Sister*, ROLLING STONE (Nov. 7, 1985), <https://www.rollingstone.com/music/music-news/rock-censorship-big-brother-meets-twisted-sister-100136>.

364. BLECHA, *supra* note 270, at 171.

365. NUZUM, *supra* note 271, at 9.

large portion of the research relies on bad science or organizations trying to prove the detrimental influence of music sponsored the research.³⁶⁶ The young people who listen to heavy metal may endure hardships that could lead them to self-violence.³⁶⁷ Music might not be the cause of these behaviors. Instead, the genres a person listens to are likely to reflect other conditions in a person's life. Music can be a safe outlet for the expressions of frustration and stress, thus taking away access to music could be potentially be more detrimental than beneficial.

Even the legal pathway of declaring materials obscene is problematic for the industry. The standards for finding obscenity are not clear, what it is obscene one day may not be the next. Though obscene materials must be judged as a whole, it is difficult to tell at what point a few obscene lyrics may make a song, or even an album, obscene. Findings of obscenity and placing stickers on albums is even more complicated because of the nature of the music industry. How should an album cover affect the labeling of an album that is otherwise not explicit? Should the music video associated with a song influence how we perceive both the song and the album that contains it? Because lyrics are subject to much interpretation, there is also a great risk that a song may be unjustly considered explicit, like Twisted Sister's "Under the Blade," which was criticized for references to violence or suicide despite band member Dee Snider's urging that the song was about surgery.³⁶⁸ Although outright bans on music are unlikely, the courts, government agencies, and corporations all have the power to influence which artist's voice and opinions audiences hear.

CONCLUSION

Recording artists are in a unique position in society. They have access to a large audience via their music, music videos, and media appearances. Their celebrity status connects them with resources that ordinary social change and peace advocates may not have, such as corporations and other celebrities. Artists can directly campaign for social issues but music can also inspire people and give voice to social concerns which laypersons are

366. *Id.*

367. *Id.* at 61.

368. *Record Labeling: Contents of Music and the Lyrics of Records: Hearing Before the Comm. on Commerce, Sci., & Transp.*, 99th Cong. (1985) (statement of Dee Snider).

unable to express to the public. Through their music and careers, recording artists can and do promote peace and social change. Artists become the voice of generations and initiate meaningful steps through their lyrics and actions. Admittedly, there may be ulterior motives for being involved in political and social movements. But when artists are using their talents and time to make positive progress regarding social issues, perhaps we should accept the results “because something is happening here.”³⁶⁹

369. BOB DYLAN, *Ballad of a Thin Man, on HIGHWAY 61 REVISITED* (Columbia Records 1965).