

## INTRODUCTION

In the rapidly evolving music industry, a keen awareness and understanding of the underlying economics of the industry is paramount. Over the last decade, experts at The Brattle Group have advised media companies, performing rights organizations, and independent music publishers in matters pertaining to the valuation and determination of license fees, damages associated with copyright infringement claims, and economic analyses of royalty revenues.

Our in-house and affiliated experts have significant experience evaluating the economics of the music industry. We have analyzed the value of music broadcast in numerous contexts, including broadcast and cable television, satellite and terrestrial radio, and in specific venues such as restaurants. In addition, we have estimated the determinants of value for individual copyrights and publisher catalogs.

## REPRESENTATIVE EXPERIENCE

### **Determination of License Fee for Satellite Radio**

In a proceeding before the Copyright Royalty Judges to determine the license fee that satellite radio services would pay for the right to broadcast sound recordings, a Brattle economist was retained by SoundExchange to evaluate the extent to which the rates proposed by the parties would satisfy certain policy objectives. The economic testimony identified trends in the satellite radio and recorded music industries and analyzed the potential impact that alternative rates would have on the industries at issue. The analysis further evaluated whether the proposed rates would be disruptive to either industry. In setting the license fee, the Judges cited the analysis of trends and the likelihood of disruption.

### **Major Record Company Merger**

A Brattle economist was retained by Bertelsmann AG and Sony Corporation of America to assist with the antitrust review of their recorded music joint venture by the U.S. Federal Trade Commission. The joint venture would reduce the number of “major” recorded music companies from 5 to 4. The economist analyzed a large data set of wholesale prices net of discounts charged to retailers by both companies. The analysis suggested that the large degree of variation and lack of transparency in discounts tended to make coordination on pricing more difficult. The results of the analysis were presented to the FTC, which closed its investigation without taking any enforcement action.

### **Determination of Appropriate License Fee for Musical Works**

Brattle economists have worked with performing rights organization BMI to determine the appropriate license fees for a number of types of licensees, including broadcast and cable television, commercial and religious radio, and certain eating and drinking establishments. Our work has involved analysis of large, complex data sets constructed from multiple data sources. In addition, this work has involved statistical sampling and survey methods.

### **Copyright Infringement Litigation**

We have been retained on a number of matters in which composers and music publishers have filed copyright infringement lawsuits against artists and record companies. In one matter, a composer and music publisher claimed that an album released by Lil Jon & the East Street Boyz did not secure the rights to a song on the album. A Brattle economist supported the analysis of a Brattle academic advisor who estimated the contribution of that song on the sales of the album. We developed an econometric model that related album sales and radio play of each song on the album over time and across geographic markets, while controlling for other potentially important factors, including sales of Lil Jon’s past albums. The case settled during trial on terms favorable to our client.

## Evaluation of Music Publishing Portfolio

A Brattle economist was retained by a major music publisher to evaluate certain economic metrics surrounding its contracts with songwriters. Our work included an analysis of the advances and royalty payments earned by each composition, and an evaluation of the profitability of individual contracts, as well as portfolios of contracts. We also developed models to forecast royalty revenues associated with individual composers for the client to use when negotiating initial and renewal contracts with composers.

## Music Antitrust Litigation

A performing rights organization (PRO) was sued by a radio station holding company in an antitrust counterclaim to a copyright infringement lawsuit by the PRO. A Brattle economist was retained by counsel for the PRO to evaluate the relevant market in which the PRO operates and review the analysis of the expert economist retained by the Counterclaim Plaintiff. Our expert report analyzed the degree to which radio stations can substitute music licensed by one PRO for music licensed by other PROs. The antitrust counterclaim was dismissed.

## Music License Fee Arbitration

A Brattle economist was retained by SESAC, the performing rights organization that collects and distributes royalties for composers, in an arbitration proceeding to determine the value of a license that the local broadcast television industry would pay for the right to broadcast music composed by SESAC's affiliated members. Our work involved supporting the testimony of SESAC's three economists, who estimated the aggregate value of music broadcast on local television, the share of music composed by SESAC's members, and the economic considerations associated with offering stations the option of selecting a blanket or per-program license.

## Background Music Valuation

A Brattle economist was retained by an independent music publisher and music library to estimate the value of background music on broadcast television. Our work involved analyzing the music contained in the programming of all broadcast stations in certain media markets, and measuring the amount of background music contained in that programming. The results of our analysis were presented to the Board of a major performing rights organization.

## Forecasting Performance Royalties

A Brattle economist was retained by a consortium of music rights entities to evaluate the changing landscape of how consumers listen to broadcast music. We evaluated growth projections of alternative forms of music distribution such as traditional radio, internet radio, and subscription services, and estimated the implications for royalty payments. Our work was used to evaluate the potential impact of proposed licensing structures on industry revenue.

## Impact of Digitization on Industry

Brattle principals co-authored a report for the National Academy of Science on the impact of digitalization on copyright based industries, including the music industry. The paper examined how digitization changed the economics of production and distribution and discussed the newer business models that are being developed or proposed in response to digitization.

## CONTACTS

For more information about our music industry expertise, please contact our practice area representatives.



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