

Music Industry

In the rapidly evolving music industry, a keen awareness and understanding of the underlying economics of the industry is paramount.

Over the past two decades, experts at The Brattle Group have advised media companies, performing rights organizations (PROs), and independent music publishers in matters pertaining to the valuation and determination of licensing fees, damages associated with copyright infringement claims, and economic analyses of royalty revenues.

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

REPRESENTATIVE ENGAGEMENTS

CRB music licensing proceeding

In a 2019/2020 Copyright Royalty Board (CRB) proceeding, a Brattle team supported expert testimony on behalf of copyright holders and assisted counsel for SoundExchange, a digital performance rights organization that collects and distributes sound recording royalties to artists and copyright owners. While commercial webcasters sought to lower the royalty rates, SoundExchange argued that higher rates would be commensurate with the rapid growth of the webcasting industry in recent years and would ensure fair compensation to artists. In its decision, the CRB agreed, increasing the royalty rates that commercial webcasters pay during the January 2021 through 2025 licensing period. The rates represent an 8% increase for subscription-based webcasters and a 17% increase for ad-based webcasters over the rates they paid in 2020.

Phonorecords III CRB proceeding

Brattle economists assisted The National Music Publishers' Association (NMPA), which represents music publishers and their affiliated songwriters, in a CRB proceeding to determine the mechanical royalty rates that interactive streaming services – including Spotify, Apple Music, Amazon Music, Google Play Music, and others – paid to copyright holders between 2018 and 2022. Our analysis showed that: (i) in an immature two-sided platform market, platforms dynamically compete for long-run customers, which can often lead firms to price their services below the long-run sustainable price; (ii) copyright owners of musical works received a substantially less equitable share of the profits generated from music streaming than their counterparts who own copyrights of sound recordings, which are not subject to a compulsory license; (iii) a game theoretic approach known as the Shapley Model



can be used to determine a notionally fair distribution of profits between content owners and content users; and (iv) relying on rates that were determined when the industry was in its infancy can result in the entrenchment of systematically inappropriate outcomes once the industry matures. The CRB cited much of the analysis of our experts in ruling to increase the mechanical royalty rate by more than 40%.

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 US Federal Trade Commission (FTC). The joint venture would reduce the number of “major” recorded music companies from five to four. Our 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 any enforcement action.

Impact of digitization on industry

Brattle Principals coauthored a report for the National Academy of Sciences 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.

Determination of appropriate licensing fees for musical works

Brattle economists have worked with performing rights organization Broadcast Music, Inc. (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 in numerous copyright infringement lawsuits in which rightsholders claim that their works are being used without the user securing the proper permissions. In one matter, we were retained by a major record company and music publisher claiming that a provider of in-flight entertainment programming used their content without a license. We evaluated the extent of claims of infringed content, and estimated the revenue and profits associated with the infringed content. Following summary judgment rulings, the parties agreed to settle the case for an amount very close to our expert’s damages estimate.

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 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

Brattle economists have been retained by SESAC, the performing rights organization that collects and distributes royalties for composers, in arbitration proceedings to determine the value of licenses that the local broadcast television industry would pay for the right to broadcast music composed by SESAC's affiliated members. In these proceedings, our work has involved supporting

the testimony of multiple 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.

CONTACT US

For additional information about our work and expertise in this practice, please contact one of our practice area representatives.



Steven Herscovici
PRINCIPAL | BOSTON
Steve.Herscovici@brattle.com
+1.617.864.7900



Coleman Bazelon
PRINCIPAL | WASHINGTON, DC
Coleman.Bazelon@brattle.com
+1.202.955.5050



William Zarakas
PRINCIPAL | BOSTON
Bill.Zarakas@brattle.com
+1.617.864.7900



Haris Tabakovic
SENIOR ASSOCIATE | BOSTON
Haris.Tabakovic@brattle.com
+1.617.864.7900

ABOUT BRATTLE

The Brattle Group answers complex economic, regulatory, and financial questions for corporations, law firms, and governments around the world. We aim for the highest level of client service and quality in our industry.

We are distinguished by our credibility and the clarity of our insights, which arise from the stature of our experts; affiliations with leading international academics and industry specialists; and thoughtful, timely, and transparent work. Our clients value our commitment to providing clear, independent results that withstand critical review.

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