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Why Payola Doesn't Matter

by Bart Frazier

New York Attorney General Eliot Spitzer has recently leveled a \$10 million fine against Sony BMG for payola, a practice in which radio producers are paid for promoting certain songs.

Why the fine?

The argument against payola is that music lovers are not choosing songs on the merits of quality but instead are being manipulated by the record labels to purchase something that they wouldn't have purchased otherwise. As Spitzer argues, "Our investigation shows that, contrary to listener expectations that songs are selected for airplay based on artistic merit and popularity, air time is often determined by undisclosed payoffs to radio stations and their employees."

But radio is only one among many sources of music, and if a certain genre of music is not finding success with the radio model of distribution, the market can find other ways of distribution.

In fact, the Grateful Dead, which gave birth to what came to be known as the "jamband scene," is a great example of this market phenomenon.

The Grateful Dead defied the radio distribution model. When the Dead first started playing music in the 1960s, musicians made their living by selling records. They recorded short, hummable tunes that could be played repeatedly over the radio, hoping the songs would become hits and spur sales of their recordings.

The Grateful Dead's music did not lend itself to that format. To begin with, the Dead were downright awful in the studio. While masterful musicians during live performances, their energy on stage evaporated when they tried to bottle their songs in the recording studio. In addition, most of their songs were too long for radio anyway. While most Top 40 songs were in the two- to three-minute range, most of the Grateful Dead's songs lasted 8 to 10 minutes on stage, with several running longer than 20 minutes.

They did manage to sign a record contract with Warner Brothers, but their sales were anemic and the Dead actually ended up in debt to Warner by the early 1970s. Their bread and

butter was ticket sales, and in the course of 30 years they managed to become the highest-grossing live band in the history of rock.

Yet in all of their years, they had only one hit — 1987's "Touch of Grey," which made it to number 9 on Billboard's Hot 100.

How did people even know to go to their concerts if their music wasn't being played on the radio? Incredibly, they gave their music away for free.

The Grateful Dead had a policy of allowing anyone to bring recording equipment to their concerts, record the show, and make copies for friends so long as they didn't charge for them. As with all other market phenomena, the result was unpredictable. Communities of fans sprang up to form clubs to trade tapes. Fans mailed shows from one side of the coast to the other, and a hardcore, devoted fan base developed. Some of the more rabid fans even devoted themselves to seeing *every single show*. By the early 1990s, The Grateful Dead, Inc., was grossing more than \$50 million annually from ticket and merchandise sales.

Since then, others have followed in their footsteps, creating an entirely different musical genre based on live performances, improvisational music, and free recording. Members of bands such as Phish and Widespread Panic have become millionaires, especially as iPods and the Internet have helped to spread their free music to anyone who wants it. And in 2002, the jamband scene culminated in the Bonnaroo Festival in rural Tennessee, where 70,000 people camped out for three days to listen to 50 bands that most people have never heard of. It has been held annually since.

If payola works for some as a business model, then why not leave them free to use it? Payola doesn't hurt anyone. Musicians who don't like it can find other ways to make a living. The Grateful Dead and the jamband scene found success without the help of radio and payola, but their success would not have been possible without the dynamics of the free market and musical entrepreneurship.

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