

Fighting pay-for-play

Sources in the music industry call for a federal clampdown on the new payola.

By Eric Boehlert

April 03, 2001 | If you have to pay \$10,000 to shut your boss up, goddamn it, you pay. -- A major-label executive

For an industry that has been bedeviled by federal investigations in recent years, the music business would seem like an unlikely one to call for serious governmental overview. Yet that's exactly what's happening. Concerned about the pervasive and costly pay-for-play independent-promotion system that has become entrenched at commercial radio, some are wondering if it's time for federal regulators, in effect, to save the industry from itself. "There are lots of brilliant people who've gotten out of the business because they're sick of it," says one broadcaster who's both owned stations and more recently managed a cluster of influential music stations in a top-10 market. "They're tired of people making an obscene amount of money -- and that is the right word, obscene -- and the obscene amount of abuse that's going on. It's just wrong. We need regulators to look at it, someone who stands up and says this stinks. Because the airwaves belong to the public, they're federally licensed. You can't do anything you want with them."

The question has become more pressing with the announcement that industry heavyweight Clear Channel Communications, which owns 1,200 radio stations, is on the verge of finalizing an exclusive agreement with the independent promotion firm Tri State Promotions and Marketing.

As a recent report in Salon detailed, record companies pay the independent promoters, or "indies," hundreds of millions of dollars each year to ensure that the records the companies release get played on the radio; the indies, in turn, slip the radio stations a large chunk of this income in the form of on-the-books "promotional expenses." With a partnership formed, the rivers of money start flowing between labels, indies and stations.

Sources say that the money goes to the stations below-board as well: They say that broadcasters get money in different forms -- in vacations at hotels and on cruise lines, and in American Express gift certificates, all of which leave no paper trails. In the end, it's doubtful that even the extraordinary sums the record companies admit they're paying equals the actual amount of money changing hands.

The pending Clear Channel-Tri State alliance, the industry worries, will give Tri State extraordinary leverage and the clout to charge record labels even more money for station airplay. And it will solidify a system that awards the airwaves to the highest bidders.

"It's outright bribery and extortion, and it's nothing more than payola," complains Bernie Cyrus, executive director of the Louisiana Music Commission, part of the state's Department of Economic Development charged with promoting the state's \$2.5 billion music industry.

Prompted by Salon's recent investigation, Cyrus contacted Rep. Billy Tauzin, a Republican from Louisiana, and Sen. John McCain, the Arizona Republican, urging congressional investigations into the pay-for-play system: "The radio market is now clearly driven by greed and corruption rather than creativity and talent. Something must be done to bring attention to this, and I strongly believe that swift federal action is necessary."

Cyrus' concerns are being looked at by staff counsel for the House Energy and Commerce Committee, which Tauzin chairs, according to Tauzin spokesman Ken Johnson. The practice, Johnson says, has "raised a lot of eyebrows. I'm a former broadcaster and I had no idea how really mercenary [indie promotion] has become." Inside the industry, where indie promotion remains a taboo topic and is rarely discussed on the record, some wonder how the current system, which revolves around federally licensed airwaves, has avoided close regulatory examination. "The Justice Department has never really stuck its nose in this far enough," complains one artist manager, a 30-year industry veteran. "Damn it, if I have to pay off [indies] in order to promote my record, that's restraint of trade."

A veteran of the promotion business agrees: "I don't know what exactly will trip the [Department of Justice's] trigger if it hasn't already been tripped. There are certainly enough smatterings of improprieties in this ordeal. If an investigation happened, we could once and for all put this whole thing to rest, and the industry would be better for it.

"Instead, it's 'Hey, everybody's doing it.'"

The Federal Communications Commission has jurisdiction over any payola complaints; it would pass along matters to the Department of Justice if enforcement is needed. But the FCC acts only if a formal complaint is filed that someone at a station is receiving illegal payments.

Since the new pay-for-play payola has become a profitable part of the day-to-day business at nearly every pop music station in America, who's going to complain?

Here's how the lucrative, back-scratching system works:

Record companies need radio to play their artists, but legally they're prohibited from paying stations directly. (Technically, payola laws bar only nondisclosed payments, but for obvious reasons, neither record companies nor radio stations want on-air announcements that the airtime is being bought.)

So the companies employ middlemen, the indies. In this age of consolidation, disc jockeys and increasingly even local program directors have little input over playlists; that comes from above. The indies form alliances with a station's general managers (or the corporate owners) and cut deals, typically guaranteeing a station in a medium-sized market \$75,000 to \$100,000

annually in what is termed "promotional support" to buy a station van, T-shirts, billboard ads, etc.

The annual promotional payment secures the indie as the station's exclusive point man, the only one (or at least the first one) its programmers will talk to about playing a new single -- an "add," in industry parlance. The indie becomes a high-priced toll collector. Once that indie has claimed a station, he (it's almost always a he) sends out a notice to record companies, letting them know he will invoice them, on average \$1,000, every time the station adds a new song to its playlist. If indies don't get paid, the songs don't get played.

Considering most current music-based stations add roughly 150 new songs each year to their playlist, that translates into at least \$150,000 worth of adds for that station's indie. A small indie, working out of his office with just one or two employees, might have a dozen claimed stations; that makes for an annual income of at least \$1.5 million. For larger indies like Tri State and McClusky, multiply that \$150,000 by several hundred stations to get a sense of the amount of money changing hands annually behind the scenes -- even as the radio stations themselves continue to boast to listeners they're hearing "the best new music." For the record companies, the system costs big bucks. Launching a single at rock radio can cost between \$100,000 and \$250,000. If the song's a hit -- if it gets played at hundreds of stations across the country, with added charges for multiple plays a day -- the costs skyrocket. Appearing on a panel at the South by Southwest music conference earlier this month, Mercury Nashville president Luke Lewis told attendees his label spent more than \$1.5 million on promotion for a Shania Twain single that crossed over to pop radio. The exclusive station deals were pioneered during the '90s by indie Jeff McClusky, whose firm became the leader in the Top 40 promotion business. The practice, adopted by competitors like Tri State, has become common at R&B as well as rock radio, and even extends into niche formats, like the so-called Triple A (for "adult album alternative") stations. Now, after years of fighting the exclusive, pay-for-play approach, country radio may be the final format to succumb. That was the recent talk among industry attendees at the Country Radio Seminar in Nashville last month: that Clear Channel country stations will soon be using Tri State only.

With that sort of commodities approach applied to music, it's no surprise that songs come with a price tag -- and that it's not even a well-kept secret in the industry. TWT Records recently sent out a typical directive to indies informing them that playlist adds for Bosson's cheery dance-pop single "One in a Million" would be worth \$2,000 in the country's top 50 radio markets, \$1,000 in markets 51 to 125, and \$500 in the remaining smaller markets. Meanwhile, when record labels submit their weekly lists of new singles to radio trade magazines, the correlating add prices are often included right next to the title.

"Radio's not about the music anymore," laments Glenn Gardner, operations manager at rock radio WJJO in Madison, Wis. "And it's becoming less special every day in many places."

Says one major-market broadcaster: "I was approached many, many times" by indies looking to secure exclusive, six-figure deals. "I didn't do it," this source says, "because it's morally and ethically distasteful. You cannot serve the general public and have the decision-making influenced [by indies], yet not disclose that to listeners. Because that's what these people are trying to buy, influence. It's an ugly situation."

Yet the system today seems to adhere to the letter, if not the spirit, of the payola laws, no matter how badly out of date or irrelevant they are to today's marketplace. (They were passed 40 years ago after pioneer rock DJ Alan Freed was convicted of taking payments from record companies in exchange for airplay.) "The labels, through their attorneys, have found a way to be one step removed from the money," explains one industry source. "You go through Capitol Records, and all those indie invoices are for services rendered. That's nothing but good, solid business practices. They're clean." Some insiders suggest if investigators did some digging, they would find plenty of questionable practices imbedded in a promotion system drowning in money. For instance, the six-figure "promotional" deals the indies make often don't go to the station's promotional department. In fact, industry watchers say, sometimes they don't even go to the station.

"I've heard stories where indie arrangements have been made with the GMs and the payment goes directly to GM in scrip," says one manager, referring to the age-old radio term for coupons or gift certificates handed out by hotel chains and cruise lines. In this case the scrip is purchased by indies in bulk and shipped out to client radio stations. "There's a Top 40 station in the Midwest that did a deal with McClusky and after he made the arrangement the GM went on three or four vacations every year. Theoretically those trips were for promotional purposes at the station, but the GM decides to take his family instead."

Or, recounts another source, "It's like the West Coast station where Neiman Marcus gift cards with money on them [provided by an indie] were used for promotions. The station was going to give them away, and the morning show gave away two, but where did the rest go? Seems that a lot of merchandise was purchased at Nieman Marcus by management. There is no tax implication there, no paper trail to deal with. Just \$15,000 worth of value on those cards."

Sources say American Express gift certificates have become the currency of choice among stations looking for something in exchange for playlist adds. "That's the way [stations] want to be paid by us, because they can't be traced," explains one record company's head of radio promotion. "They can buy whatever they want; it doesn't have to be station-related. They can go out and buy themselves fishing poles."

The question becomes, are those indie payouts reflected in the station's (or the managers') bottom line? "If not, isn't that something the IRS may want to know about?" notes one indie promoter. "That's the Achilles heel of this whole system."

Meanwhile, there is strong suspicion that individual stations receive additional payments from indies above and beyond the agreed-upon annual "promotional budgets." For instance, imagine that a label desperately needs an add; it offers the indie \$6,000 to get it done and the station makes room for the song on its playlist. Will the station see a portion of that \$6,000 payment? Says the head of promotion at one label: "I guarantee you. Otherwise, there's no incentive for the station to make room." Adds another indie: "You can't see it, but you sense it's out there; the kickback." - - - - -

The extraordinary amount of money spent on indies has another, perhaps, unintended effect: locking small labels off the mainstream, commercial airwaves. "The only people who can

play that indie game are the ones with the deep pockets," says the head of promotion at a independent label. "There's no way we can compete."

Consider this hypothetical situation: If a small label releases a single that becomes a runaway hit and is added to Top 40 stations across the country, almost overnight the fledgling record company would face a potentially fatal financial crush -- invoices for playlist adds from indies totaling nearly a quarter of a million dollars. Because of the established rules, even if the indies never even heard the song, let alone pitched it to programmers, the invoice would be sent out once the song was added to their stations. And if the label didn't pay promptly, indies could do their best to get the song yanked off the air.

So why do the major labels pay the extraordinary fees and vest so much power in outside sources like indies? That complex relationship has been forged over years. But the bottom line is the music business is wrapped in rampant insecurity and revolves around one simple, short-term question: Where is the next hit coming from? Period. And the strain internally at record companies to make those hits happen is immense.

"You have no idea what the pressure is like Tuesday at 3 o'clock, if you're VP of promotion at a label," says one person who has held that post at a major label. He's referring to the weekly ritual when radio stations inform labels -- and indies -- which new songs will be added to the playlist. Those adds will determine whether a song continues its rise up the charts, stalls or begins its descent. In a business built on perception, either of the latter two are considered the kiss of death.

If a single seems to be cooling, programmers nationwide often suddenly lose interest. Without airplay, the chances of CD sales diminish greatly. So labels are desperate to maintain momentum behind new songs, often at any cost. And the indies know it.

"How'd you like to have [Columbia Records president] Donnie Ienner in your office screaming at 3 o'clock on Tuesday?" asks the promotion veteran. "If you have to pay [an indie] \$10,000 to shut your boss up, goddamn it, you pay, let me tell you. You're looking for every scrap of information to give you the edge or to give to your boss. And if Tri State [is] able to do that, and you have to pay a premium, so what? It's not your money."

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