

**United States District Court
For the District of Massachusetts**

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Civil Action

No. 08-11727-NMG DISTRICT COURT
DISTRICT OF MASS.

Samuel Barley Steele,
Bart Steele Publishing and
Steele Recordz,

Plaintiffs

v.

Turner Broadcasting System, Inc.,
Major League Properties, Inc., Time
Warner, Inc., Island Def Jam Records,
Fox Broadcasting Company,
John Bongiovi, Individually and
d/b/a Bon Jovi Publishing, Richard
Sambora, Individually and
Individually and d/b/a Aggressive
Music, William Falcon, Individually
And d/b/a/ Pretty Blue Songs,
Universal-Polygram International Publishing., Inc.,
SONY/ATV TUNES, LLC,
Kobalt Music Group, A & E Television
Networks, AEG Live LLC, Vector
2 LLC, and Boston Red Sox, Inc.
The Bigger Picture Cinema Co.,
Mark Shimmel Music

Opposition To Motion To Dismiss

Defendants.

I. Procedural Issues

In their Motion to Dismiss, defendants' lawyers point out mistakes I, a Pro Se claimant, may have made in presenting my claim to the Court in the proper format. Defendants served me with 2 separate motions to dismiss my amended complaint. One of the motions states th at defendants Fox Broadcasting Company, Sony /ATV Tunes LLC, A&E Television Networks, AEG Live LLC, Vector 2 LLC and The Bigger Picture are not "implicated" in my amended complaint. Any differences between my original complaint and amended complaint are intended to clarify my

claims. As defendants' lawyers know, the "non-implicated defendants" were indeed involved in violating my rights. Fox Broadcasting used the infringing ad on their networks, increasing their advertising revenue. Son/ATV Tunes is one of the co-publishers of an unauthorized derivative version of my copyrighted work. A&E Television Networks helped get the ad out by doing artwork for the Bon Jovi CD and DVD. AEG Live is Bon Jovi's concert promoter who increased concert ticket sales through the "I Love This Town" video contest in which Bon Jovi invited fans to submit video images synched to the unauthorized derivative version of my work. Vector 2 LLC is Bon Jovi's manager, who worked on the creation of the unauthorized baseball ad. The Bigger Picture played the ad in thousands of theaters. Clearly, they are implicated in this case.

Defendants also state that I have added and dropped parties. I added my record label (Steele Recordz) to emphasize for the Court that I own all rights to my works. The only new defendant added to the amended complaint is the Boston Red Sox. Defendants also seek to use against me the fact that Mark Shimmel Music was named in the original complaint but not the Amended Complaint. This was an oversight on my part. Shimmel was served with the original complaint in December. I have not received a response from Shimmel to date. Even though Shimmel never responded to my original complaint, the moving defendants now claim that my inadvertent omission of Mr. Shimmel in the Amended Complaint is grounds for dismissing him. Mr. Shimmel played a key role in the creation of the infringing ad. When I asked Mr. Shimmel how Bon Jovi got a copy or version of my song, he pointed the finger directly at Turner. I therefore ask the Court to consider everything in both my original and amended complaint, and to require all defendants, including Mr. Shimmel to respond to my allegations.

II. Why this case matters: Blurring Music and Advertising Squelches Advancement of the Arts.

Much of the Music Distribution Today is Controlled by Corporations Seeking to Advertise Their Products in the Music They Present to the Public

The use of the Bon Jovi song derived from my song in the baseball advertisement is an example of a growing trend: an advertiser getting an artist to write a corporate jingle song that is a perfect commercial because nobody notices that it's a commercial. To read about this deceptive product placement method please read the Wall Street Journal article attached as Exhibit A. In this July 28, 2008 article entitled, "Chew on This: Hit Song is a Gum Jingle", it is revealed how the Chris Brown song "Forever" (which also ironically came out before the ad) is simply an

extended version of the classic Wrigley's Doublemint jingle and that Brown was commissioned to write and sing both the pop song and the new version of the jingle. They had hoped to keep all this quiet because letting the details out causes a credibility problem for both the brand, the advertisers and the artists. More to the point, the ad won't be as effective if listeners know that it's an ad rather than just a good song. As Russel Simmons, co-founder of Def Jam (one of the defendants) stated in an April 06, 2005 Business Week.com article discussing a similar deal with McDonalds, once people know how such a deal works, it probably won't work. Advertisers don't like to leak the details of these arrangements. But the arrangements are common because they benefit the artists, the advertising agencies, and the corporate brands.

Why and How Advertisers Do This

Please note that defendants' ad was one of the most expensive ad campaigns in history. "If a brand is going to spend tens of millions of dollars for tv, radio or web time, they want a song that has immediate recognition and that can put you in a particular place or time.", says Martin Bandier, Chairman and CEO of *defendant* Sony / ATV Music Publishing, in a June 18, 2008 USA Today article entitled "Ad Track: Jingles Out, Cool Songs in at Cannes." Mr. Bandier goes on to say, "The world has recognized that music is the great thing that can catch your attention. This is a good time to be in the music-publishing industry." (Exhibit B). The reason advertisers are happy to work with (and become) music publishers is, of course, money. Making music and ads inseparable creates a new revenue stream for everyone because music buyers and the target advertising audience become one. Perfect cross-promotion.

The Kluger Agency is one of the companies that makes its money by bringing together musicians and corporate brands. Kluger's CEO shed some light on this shady advertising method when he mistakenly sent an email to the Anti-Advertising Agency, which the Anti-Advertising Agency posted on its website. The Kluger email reads, "We feel you may be a good company to participate in a brand integration campaign within the actual lyrics of one of the worlds most famous recording artists' upcoming song/album. Lyrics play an important part in the use of music as marketing. Just as a catchy tune could assail your senses, a good jingle or cute lyrics could become a part of society for quite some time." Kluger added that the company gives corporations an opportunity to "discretely advertise their product". Not surprisingly, The Kluger Agency's top clients include defendants Island Def Jam, and Universal Music Group. Defendant Island Def Jam makes its money through the practice of bringing together its artists and "co-branding" them with corporate America. Def Jam, one of the defendants, actually specializes in this co-branding

/product placement practice. They have a Strategic Marketing VP whose sole purpose is to partner corporate brands with artists. Or, in their own press release, "Mr. Straughn will be responsible for building long term integrated strategic partnership programs between Island Def Jam and its respective artists, with corporate America and their respective brands, where partnerships are formed in which both entities share assets to meet mutually beneficial marketing goals". See Exhibit C. Jay Z, former president of Def Jam's new advertising company Translation Marketing, said it best in their new motto, "Translation blurs the line between advertisement & entertainment".

For a specific example involving defendant Turner, please see (www.youtube.com/watch?v=4blSScJkQoM&feature=related). In this video, rapper Pharrell states that he "got a call from Turner" asking him to compose music for a video "capturing the essence" of NBA ballplayers for an advertising campaign promoting NBA on TNT. Note that the video shows Pharrell reviewing video images of NBA games in order to come up with the music they wanted. TNT (Turner Network Television) is a sister corporation to defendant TBS (Turner Broadcasting System), and Craig Barry acts as "musical director" for the NBA TNT ad and the TBS MLB ad. Please note the intro credits in that promo ad are almost identical to the Bon Jovi promo. The Pharrell ad creation clearly shows Turner contacted him to do music for a promo, and Pharrell, like Bon Jovi, also put the ad on his album. Neither artist created the music and then took it to Turner. Turner approached them. The problem in this case is that Bon Jovi's work was not original-- they did an unauthorized derivative work based on my song. Whether or not TBS or MLB or Bon Jovi themselves committed the infringing act of rearranging my copyrighted song does not really matter at this point. However, my suspicion is that Turner was the willful infringer. When I called Mark Shimmel (Turner's musical consultant for the promo) demanding to know how Bon Jovi got my song, his response to me was "Sorry Bart, you're on your own on this one...TALK TO TURNER". When companies want to use an independently written, existing song and get synch rights, they call ASCAP and/or the song's publisher. They wouldn't "work with Mark Shimmel, Jack Rovner (BJ's manager), and Island Def Jam Records" as Craig Barry put it. See Exhibit D.

The defendants own press release sums up this practice:
 "TBS also recently completed promos with comedian and longtime Red Sox fan Dane Cook in step with MLB's "There's Only One October" advertising campaign. The fresh Bon Jovi and Dane Cook ads are another triumph for Turner, which has received critical acclaim for its

previous ads featuring such entertainment superstars as Jay-Z, The Rolling Stones, actor Jeremy Piven, music producer Pharrell and comedian Sacha Baron Cohen."

Two other great examples of ads passed off as popular songs are "Forever" and "I'm Lovin' It."

The full length gum ad "Forever" for Wrigley by Chris Brown has nothing to do with gum, and the full length ad that Justin Timberlake did for McDonalds "I'm Lovin' It" has nothing to do with food. "The music doesn't necessarily promote [the sponsor's product] but the promotions go hand in hand. There is no real border between the content [the music] and the advertising." See Exhibit E. The companies want to associate these artists with their brands by paying for the studio time and producing the videos showing images of these artists with pieces of gum, burgers, even baseball stadiums. Thus the public associates those artists with those products. This is how companies have resorted to sneaking in their ad messages in a world where we have learned to pause/mute/tivo them out, etc. They co-brand with artists willing to include corporate messages within their songs. The Bon Jovi song that defendants claim was not written for the baseball promo ad is a blatant example of this practice. Keep in mind when you watch " Forever", which was admitted to be an ad, the only gum reference in the video (among countless images of Chris Brown) is a one second shot of Chris Brown putting a generic piece of gum in his mouth. In contrast the Bon Jovi promo video is the equivalent of Chris Brown chewing gum on top of a gum machine inside a Wrigley gum factory, mixed with images of a live concert. The Bon Jovi promo video includes at least separate 30 images of TBS and MLB logos, and more than 80 baseball images, with only 56 images of Bon Jovi. Both Chris Brown and Bon Jovi were hired to do ads, but then took advantage of the studio time provided by their corporate employers to do longer versions which they then passed it off as original art on their albums.

In the TBS press release explaining how Craig Barry worked with Jack Rovner, Mark Shimmel, & Island Def Jam in creating the unauthorized ad based on my work, Barry states he "wanted a song with a 'bigger picture' that could work with different cities." He says "This song captures the essence of the game, and the cities and the towns. The song must stimulate the senses and work with the sport". He is clearly referring to how the song must have a bigger picture than a song about one town, and that the song must work with the video of the sport. Again, if, as defendants claim, they heard a pre-existing song such as the Bon Jovi version of "I Love This Town," and wanted to use it for their ad, they would license it from the publisher. The fact that defendants did not do so is further proof that Island Def Jam had Bon Jovi do this song

for the MLB promo video. There is **absolutely no reason** for Turner to "work with" any record label if the song was pre-existing. Craig Barry essentially admits this was an ad when he states, "Bon Jovi has always been known to captivate and entertain diverse audiences around the world, so who better to deliver the message for TBS". See Exhibit F. Clearly, this shows that the defendants had my song and had Bon Jovi do a 'bigger picture' and generic version as I had suggested to the defendants several times, in order to reach the intended worldwide market. MLB's intent obviously was to make baseball seem like more exciting, like a Bon Jovi concert. One month after the BJ/MLB promo aired around the world in the most expensive ad campaign in history, Bud Selig, commissioner of MLB, explained how the ad was part of a "concerted effort to expose its product to other parts of the world", he continued "I'm putting myself on the spot here, but I'm very hopeful to draw 80 million-plus, and I think our revenues will continue to go up".

Why Artists Do This :

A June 18 2008 USA Today article titled "Ad Track: Jingles Out, Cool Songs in at Cannes" discusses this blurring of advertising and music. It states, "everyone wins when it works--the advertiser gets a fresh sound for a steal, and the artist gets prime TV exposure at a time when promoting new music has gotten tougher. " This article quotes Geoff Mayfield, director of charts for *Billboard* magazine, explaining why artists play along with the practice: "Radio playlists have been tight for decades, and it's really hard to sell an album these days. In an environment like that, commercials, in a way, are the new radio stations. The ads are becoming the best way for artists to be heard." Which is to say, the reason Bon Jovi did the MLB promo video is that it's harder than ever to sell an album these days, and to get exposure for an album. While commercials are the new radio stations, advertisers are becoming the new music publishers. Companies like Turner and MLB Productions work with artists to create audio visual works they own, and thereby control the soundtrack for the work.

How This Hurts Advancement of The Arts

The pattern in the music business is this: artists are being paid to re-do corporate jingles, and then paid more again for full-length songs derived from the jingles, all the while claiming full writing credit. As Andrew Orłowski states in a "Music and Media" post dated February 2, 2009, "The problem is that the future isn't evenly distributed. With an ad man in charge of music, money flows to the already-established artists: good news for Byran Adams and Madonna. If brand sponsorship finds its way to an up-and-coming band, then it comes with strings

attached....You'll have extreme commercialization on one hand, and the very indie-oriented artist on the other who rejects taking the king's shilling. There's not much in between." (Exhibit G) As this practice becomes more common, and commercials become the new radio stations, it gets harder and harder for those artists who are not part of this game to be heard.

The blurring of music and advertising explains how my song became the Bon Jovi ad soundtrack. Bon Jovi did several baseball ads and played concerts in Central Park, promoting the MLB all-Star game on TBS and the MLB postseason on TBS. In exchange, Bon Jovi gets to pretend that the unauthorized derivative baseball ad song is theirs and not a corporate jingle. They help promote Bon Jovi by playing the brand jingle all over the planet so they can sell more albums, ringtones, merchandise, concert tickets etc. with the "I Love This Town Contest." Bon Jovi helps promote MLB and TBS in their effort to get people to pay for something that once was free (i.e: MLB is now on cable television).

In short, MLB/ TBS obviously commissioned the shorter versions of the ad as well as the "full length 2 minute 30 second promo" which was released after Bon Jovi released the 4 minute, 30 second version of the song on their album. This again squeezed more value from the shared assets. MLB and TBS controlled ownership in the audio visual works, for which they could claim copyright only if they commissioned them as works for hire. By doing this, MLB and TBS avoided the need to pay for synchronization rights, master use rights, or performance rights. The only problem is that MLB and TBS never had the rights to use the work they started with: my copyrighted song.

III. Specific Response / Opposition to Defendants' Motion to Dismiss The Amended Complaint

I contend that defendants' conduct violates the Copyright Act, the Lanham Act, and Massachusetts General Law Chapter 93(a). As a Pro Se claimant, I lack the resources of a law firm like Skadden Arps, and therefore respectfully request that this Court consider my papers with that in mind. I know in my heart that I have been ripped off. Defendants' conduct falls into an area covered by all three of these laws. Just like defendants' admitted practice of blurring the line between advertising and entertainment, defendants' conduct blurs the line between copyright infringement and unfair business practice.

Copyright law, as defendants state, is the traditional way to look at this type of problem. But copyright law has not yet caught up with all the ways of changing and exploiting music--like using one song as a temp track for a video and then (with the help of ever-more-sophisticated

technology) altering it to suit their promotional needs. Defendants hide this issue within their argument that all claims other than my copyright claim are preempted by the copyright law. My claims are neither outside the copyright law nor preempted by copyright law. I ask the Court to consider all the facts in the light most favorable to me, and deny defendants' motion to dismiss.

A. Copyright Infringement--Creation of Unauthorized Derivative Works

The question for the court to answer is not whether my song and the MLB Bon Jovi promo ad are exactly the same, as defendants insinuate. Rather, the court should decide whether the similarities between my song and defendants' works are substantial enough to allow me to show that defendants' works were derived from my song. Defendants do not dispute that they had access to my song (nor that Bon Jovi was hired by TBS/MLB). So we are past the hurdle of judging whether the similarities between the works are so overwhelming i.e. "striking similarity", that we can only conclude that defendants had access to my work. That leaves us with the issue of whether, in spite of their attempts to cover their tracks, the similarities between the works allow us to conclude that they used my work as a temp track and thereby created unlawful derivative works.

There are substantial similarities between my original copyrighted song, "Man I Really Love This Team" and defendants' unauthorized derivative works--the MLB promo video and its several different-length soundtracks, the Bon Jovi album version of the song, etc. The dates of publication and copyright registration clearly show that my song came well before any of defendants works. I also notified defendants that I was rewriting my song as "Man I Really Love This Town" before defendants published their works. Although defendants correctly note that my rewritten song "Man I Really Love This Town" was not included in my CD deposited with the copyright office, that fact changes nothing. My claim is for violation of my right to control derivative uses of my work (my original song) and the creation of derivative works. I only copyrighted some derivative lyrics in 2006. As my computer files will prove, the re-recording of "Man I Really Love This Town" began Aug.22, 2006.

The Copyright Act defines a derivative work as follows:

"A 'derivative work' is a work based upon one or more preexisting works, such as a transmission, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, a bridgmet, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations,

elaborations, or other modifications which, as a whole, represent an original work of authorship, is a 'derivative work'."

When you read the plain language of the statute, it seems as if defendants used it as a guide for maximizing use of my song. They have created transmissions, musical arrangements, motion pictures, sound recordings, etc. all based upon my work. The only problem is that they never got my permission to create any of them, and have therefore violated my copyrights. New infringing works crop up every day on the internet as Defendants' global cross-promotion spreads. This of course makes it difficult to even begin to calculate damages. Every day another friend or fan of my band finds another "I Love This Town" video, ringtone, cover song, etc. in a different language or from a different country. A friend called me last week to tell me about a youtube video of Alvin and The Chipmunks performing the song, and asked if I was legally allowed to sue chipmunks in Federal Court.

Similarities between the Promo Soundtrack and My Song

The similarities between my original song "Man I Really Love This Team", and defendants works, coupled with defendants undisputed access to that song and knowledge of my derivative work about any town, clearly establish my claim for copyright infringement. Defendants' claim that a side-by-side comparison of my song with the Bon Jovi soundtrack reveals no similarity, as a matter of law, is ridiculous. The similarities are substantial. The CDs and other evidence provided to date establish enough similarity for the court to allow the case to proceed and allow me the chance to prove what we all sense is true: Defendants took discrete, identifiable elements of my song, rearranged them and combined them with video images inspired by my song, all in a sophisticated attempt to avoid and frustrate the copyright law. This attempt should fail.

The Standard and the Hook (Uh-Oh, Here Comes the Hammer)

Defendants' claim that the 'mandatory side by side comparison' fails to reveal substantial similarity is ridiculous. Defendants stole the heart of my song, the chorus hook, and turned into their corporate promo jingle. As defendants know, there is no "4 bar exception" or leeway for taking only a small portion of a song. The law recognizes that hooks are important enough to warrant protection. See *Santrayall v. Burrell* (39 U.S.P.Q. 2d 1052, S.D. N.Y. 1996). The Santrayall case is discussed in *This Business of Music, 10th Ed* by Krasilovsky and Shemel as follows:

"two rap musicians brought suit against M.C.Hammer, claiming that the song "Here Comes the Hammer" was a copy of the "hook" in the plaintiff's song. The hook involved the syncopated,

quadruple repetition of the slang term "uh-oh". The Court sated that "the repetition of the non-protectible word "uh-oh" in a distinctive rhythm comprises a sufficiently original composition to render it protectible by the copyright laws."

The Santrayall / uh-oh case is also discussed on the UCLA-Columbia Copyright Infringement Project website located at <http://cip.law.ucla.edu>. See also Exhibit H, lyrics to the MC Hammer song found to have infringed on the plaintiff's "uh-oh" song. It is interesting to note that MC Hammer's infringing lyrics actually use the phrase "oh-oh" repeated 3 times, and sometimes 5 times, not "uh-oh" repeated 4 times as in the original. So making minor changes in supposedly uncopyrightable lyrics does not help the defendants.

My argument, of course, is this: If the phrase "uh-oh" in a rap song warrants copyright protection, then surely my musical and lyrical expression "love this team / town", in a baseball song deserves the same protection against defendants' infringing use in a baseball ad. This "uh-oh" case effectively disposes all of defendants' arguments that any similarities between my song and defendants' derivative works are entirely unprotected cliches, common expressions and scenes a faire. I suggest the Court focus its attention on this case and ignore defendants' citations to cases dealing with candles, phone books, lawn ornaments or pornographic magazines. The baseball context and other similarities between my work and defendants' works vastly outweigh the factors the "uh-oh" court found sufficient to warrant copyright protection. I have shown the Court more than enough to easily beat defendants' motion to dismiss.

Defendants repeatedly refer to Johnson v. Gordon without explaining how that case applies here. As is true with the other cases cited by defendants, the Johnson case is too different from my case to control the Court's decision. Although Johnson did involve a corporate defendant taking a song from an unknown artist, then producing a similar song performed by a different band, my case is much stronger than the case dismissed in Johnson. I registered the copyright in my song before the defendants released their unauthorized versions; the Johnson plaintiff did not.

I also produced an audio visual work / music video for which I own the copyrights as well. As I have shown and will continue to show, the similarities between my song and the Bon Jovi/MLB/TBS promo are stronger than the similarities discussed by the Johnson court. Johnson did not deal with a baseball song submitted to a baseball organization, leading to defendants' creation of a baseball promo ad song that they claim is not even about baseball. Johnson also did not include ASCAP weighing in on the issue of similarity and stating, "we find it pretty hard to believe this was independent creation." Nor did Johnson involve ASCAP sending out a

discrepancy letter in an attempt to settle the case informally, as ASCAP did here. I spoke to an ASCAP employee at the 2008 "I Create Music" ASCAP Expo about my case while Jon Bongiovi and Richie Sambora were giving their staged interview in the next room. We discussed the similarities between my song and the defendants' ad, and the possible argument that I had somehow lost my rights by sending my song to the Red Sox and MLB. The ASCAP employee told me, that everybody knows they need permission to do what they did with my song.

Johnson is also dubious authority for another reason: it contains the peculiar insinuation that the Court is not required to listen to the songs at issue in a copyright case. At the very end of the opinion, the Johnson court states:

"The plaintiff takes umbrage at the fact that neither the district judge or the magistrate judge explicitly stated that he had listened to the two songs. This argument is hopeless. The plaintiff has cited no authority for the proposition that the court was required to listen to the music, and at any rate, there is no evidence that the court failed to do so."

Huh? The Court doesn't have to listen, and you can't prove it didn't? I am confident that this Court has listened, and will continue to listen to the songs involved here, especially the infringing chorus hooks.

Predominant Themes of My Song are the same as Defendants' Illegal Derivative Works

The predominant theme of my first song is why I love my hometown team. As I notified defendants, the predominant theme of my derivative work "Man I Really Love this Town" is why everyone loves their town and baseball. As Craig Barry, the musical director (and most likely the author of the unauthorized Bon Jovi soundtrack), states in a TBS press release dated 8/27/2007, this was precisely the message they sought to deliver through Bon Jovi: "These fans love their hometown as much as they love the baseball team that represents them, and that is the essence of the piece." See Ex. F. It is obvious that defendants took my song and knowledge of my derivative work and ran with them. They just never included me in their plans.

SR Copyright / Sampling and Similarity Standard

Defendants have misconstrued my statement regarding the similarity standard for use of sound recordings. My point was this: The mere use of a sound recording without permission constitutes violation of the copyright in that sound recording. This is a common issue in "sampling" cases. Even if the portion of the sampled song is insufficiently original to be

protected by the copyright in the musical composition, the owner of the SR copyright must give permission to use the recording of the composition.

In a case involving the use of a 2-second sample from a guitar solo in "Get Up Off Your Ass and Jam" by George Clinton and the Funkadelics, the court found that "the portion of the musical composition used (a three-note apeggiated chord repeated several times) was insufficiently original to constitute infringement of the musical composition. *However, the court applied an entirely different standard to the admitted use of the sound recording, holding that for a sound recording to be infringed, the two recordings need not be "substantially similar."* Rather, the party bringing suit need only prove that the original sound recording was used without authorization." Please see The Musician's Business and Legal Guide, Compiled and Edited by Mark Halloran, Esq, Pearson Prentice Hall, 2008, at page 85. I (Steele Recordz and Bart Steele) own the SR copyright in the CD recording of my song. I believe defendants used that recording in creating their derivative works. I never gave them permission to do that.

My statements regarding lower threshold of similarity were also based on the standard outlined in Rice vs. Fox 330 F.3d 1170, 1178 (9th Circuit 2003), as mentioned in Substantial Similarity in Copyright Law by Robert and Eric Osterberg, PLI 2003. "The greater the proof of access, the less similar the works need to be." (Ironically Fox is one of the defendants in this case). This is the so-called "inverse ratio rule." This rule makes sense: If defendants had access to plaintiff's song, they have the opportunity to change it so that the resulting work is less similar to plaintiff's. If defendants have access to a song and time to change it and attempt cover their tracks, there might be less evidence of copying remaining to prove substantial similarity.

I believe that this Court has seen enough to decide, under any standard, that I can show defendants have infringed my copyrights. We know that defendants had access to my song. I believe that they had my song synched to a video in their studios, where all it would take is a few mouse clicks to get from my song to the infringing work. ASCAP did not need to decide what standard of similarity applies to make their statement that they find it hard to believe this was independent creation, and to freeze royalties on defendants' works through the upcoming baseball season. ASCAP also told me I'd be more depressed to know how much this type of thing happens in the music and advertising business. The courts should keep in mind that on ASCAP's very own board of directors are the CEOs of defendants Sony BMG and Universal Music. Everything was almost settled last April, until lawyers got involved and stopped any such resolution. This is the reason we are in court today and why this was not settled quietly last year as ASCAP had hoped

would happen. So if anyone is wasting the Court's time here, it is obviously the lawyers for the defendants. As to the Lanham Act violations, "origin" is at the heart of this. ASCAP's job is to know what the origin of the musical work is. They don't care that BJ is singing it. They know that the origin of the BJ song is my song, further proof that this case must be allowed to go forward.

In the old days, it was impossible for artists to get their music out unless they signed with a major record label. Now it seems impossible to get music out unless you make it part of a corporate marketing campaign. With CD sales down due to the easy availability of free music, even major artists find it necessary to "co brand" with corporate interests. The increasing extent to which methods of distribution are controlled by a small number of large corporations means that it is mainly the major established artists who are getting their music out. This is clearly contrary to the interests protected by copyright law.

On page 4 of the defendants motion, they mention Beddall vs State Street Bank and "bald assertions or unsupportable conclusions". Lets again listen to the infringing chorus hooks again, then maybe ask ASCAP if these assertions are "bald and unsupportable conclusions". The defense also does not get what ASCAP and I both understand: Bon Jovi, just like Chris Brown and the Wrigley promo ad song, went into the studio with the intention of doing this short length promo and made longer derivative versions at the same time because the studio time was paid for. The lyrics on the Bon Jovi album version were not the reason they were commissioned to record the ad. The album version is a derivative of the commissioned audio visual. They added one verse for the album version and claimed that was the original song and reason they were in the studio. I know the courts are smart enough to see through defendants' attempt to shuffle the facts. The defense claims a complete lack of similarity in any copyrightable expression. The courts find it's not how much you stole or borrowed, it's what you took. Please again listen to the choruses back to back. They stole my chorus hook, the heart of my song, and they took many other elements as discussed in my musicology report, Exhibit I.

If the defense wants to waste the courts time trying to argue that "I Love This" is uncopyrightable, and that my chorus hook is therefore uncopyrightable, that is unfortunate. The courts realize that the expression is copyrightable. The defense tries to justify minimal copying by saying "not all copying amounts to copyright infringement". As the Courts know, and the defense obvious does not, stealing the heart of the song most certainly is copyright infringement.

Please refer again to the 'Uh-Oh Case' : The court stated, "The creative expression to support a copyright claim in a work need be no more than 'a dash'. The court finds that the repetition of the non-protectible word 'Uh-Oh' in a distinctive rhythm comprises a sufficiently original composition to render it protectible by the copyright laws. The court notes in this respect that this composition-the hook-was the part of the "Here Comes The Hammer" song that licensee PepsiCo chose to use in its television advertising, which lends support to plaintiffs position that even a combination of two otherwise unprotectible elements can create a sufficiently original, and indeed, commercially marketable composition."

Just to add a quick obvious comment, the original "uh-oh" song from which Pepsi and MC Hammer got "Here Comes The Hammer", was NOT about Pepsi. Here we have one baseball playoff anthem, that was adapted for use by MLB and TBS for a baseball playoff commercial.

The defense also says that substantial similarity depends on the "ordinary listener" after reading, listening, or viewing protectible elements side-by-side. I also made a music video in 2004 with my original song as soundtrack. The theme of my music video is my band performing at a ballpark while, ironically, being filmed for TV broadcast. This video also aired on television, and clearly the Red Sox, who advise MLB on advertising and marketing, had access to it. This video also shows similarities with defendants' works. At the exact same moment of the songs (in the bridges) where BJ's lyrics address the crowd in the exact same way "you/you/you", culminating in "Come on now, Here we go again" as BJ points to the crowd then to the sky. In my audio visual after "you/you/you" I then say nearly the exact same thing "Come on let'm know, say Here we go Red Sox". Ironically in my audio visual, I point to the crowd and the sky encouraging the same sing along. The defense could argue this is all by chance, however, the Court can see that it is not. This is what those protectible expressions were seeking to accomplish with the crowd sing along, point at them, get them involved in the sing along. Again, this is outside of the infringing chorus hooks. I could point out that "heard the news" was changed to the answering phrase, "I always knew" at the exact same moment. I could add that when I sing "on Yawkey Way"(and ironically the camera pans up to a Yawkey Way street sign), at that exact moment BJ is sing "on this Street". Again this is simply further proof of copying. The music video I recorded in October 2004 bears an a strong resemblance to Bon Jovi's performance in the MLB ad. The vocal harmonies, country/Nashville feel, story elements and setting in my video performance all found their way into defendants' ad. I would be happy to provide copies of the video to the Court or defense if they would like to see it.

Even in cases where things are normally uncopyrightable, it is the expression of the ideas, music, lyrics, etc. that matters. In another interesting case Swirsky vs. Carey, the courts observed that uncopyrightable expressions and elements such as genre, melody, harmony, rhythm, pitch, tempo, phrasing, structure, and chord progressions when taken together can amount to copyrightable material and can be used to prove substantial similarity.

The defense claims I can't have a monopoly on elements that belong in the public domain. I assume they're talking about lyrics in baseball songs. Yet, the defense claims the BJ baseball promo song is not about baseball. The only monopoly here is MLB and arguably Time Warner. Please read Exhibit J, "My Beef With Big Media", by founder of defendants Turner in which he argues the media conglomerates today, (i.e: Time Warner), should be broken up like Ma Bell and the railroads because they control entertainment and news and have an adverse effect on democracy in general. I think he is right. If the defendants control the entertainment, then all music will eventually sound like Madonna, Hannah Montana, The Jonas Brothers, and Bon Jovi.

Music Comparison

The defenses' statements regarding the musicology analysis filed with my original complaint again attempt to mislead the Court. The defense implies that analysis does not say the songs were substantially similar. I know the songs are substantially similar and this was not what was asked of the musicologist who prepared that report. The only reason why I had this gentleman look at the songs was to look at the similarity between my song and the video images, i.e: Temp Track similarities. Not the similarity between the two songs musically. Never having ever talked to or met this person, I simply said in my email please look at this and "confirm what we know already, they used my song as a Temp-Track". I pointed out numerous similarities for him to look at. His email response about the temp-track similarities was "I think you have a great case here and I really hope things work out for you. I agree fully with everything you enumerated in the list, regarding your song and the video. I won't comment on that because I think it's clear as day." Then on his own took it a step further "I have a couple comments about the similarities between the songs themselves, which may or may not be useful." Although this was helpful, I already could see these similarities because they are clear as day to me as well. In fact the first time I saw the promo ad with the unauthorized BJ version, I noticed that BJ sings "street" when I'm singing "Yawkey Way", and I knew BJ addresses the crowd in the bridge in the same way in the bridge "you, you, say hey, say here we go etc." culminating in almost the exact same language " Come on now, Here we go again". After hearing the choruses, I almost vomited!!! Again, his response to

the video similarities to my song were that they were "as clear as day". So do not let the defense mislead the court that this gentlemen didn't find substantial similarities.

Furthermore, in another attempt to mislead the court, the defense implies that I say the songs are different in the Boston Magazine article. If the courts again read the article, it explains that even though they made changes to my song " I KNEW THIS WAS MY SONG". Any attempt to mislead the courts otherwise is improper and inappropriate. Especially when you consider that the Boston Magazine article was filed with my original complaint, and the defendants now take the position that any defendants mentioned in the original complaint but accidentally left out of the amended complaint should be dismissed from this case.

In yet another attempt to mislead the courts, the defense claims I now offer "side- by-side audio comparisons of a few carefully chosen excerpts of the two works". It is simply my copyrighted chorus back to back with the obviously infringing chorus. The defense then claims even with this back to back chorus comparison there is " no musical similarity". Keep in mind that the songs are in different keys. Why do they sound so similar? I leave that judgment up to the courts and not the defense attorneys who are paid to make this argument.

In fact the defendants came up with the illegal arrangement making but a few moves with a mouse. Please see Exhibit K. This is an illustration of how defendants were able to transform my song into their work with a few clicks of a computer mouse. In this illustration, verses are yellow, choruses are pink, and bridges are green. If you make my 2nd and 3rd verses pink, i. e.: choruses, and move the solo in front of the bridge, there you have it, this is the basic form of the infringing illegal rearrangement. They made only a few more copy/ paste moves with the pre-existing form to come up with what I call "Bart Jovi", Exhibit L.

Lyrics Comparison

More than 50% of the BJ promo lyrics are derived from my song or the original video synched to my song. It is important The similarities between my lyrics and defendants' lyrics include, but are not limited to, the following:

1. My song starts ("Have you) heard the *news...*" This became the first line of the defendant's song, "I always *knew...*" The video images at this point are circling aerial views of a baseball stadium as my song continues "... goin' round." Then as I continue, " Our hometown team is series-bound", the visual images switch to a smiling Manny Ramirez jumping out of the World-Series-bound Red Sox's dugout, as Bon Jovi sings, "You don't have to look too *far* to find a friendly face." As I sing "And the word is out on *Yawkey Way*", defendants' video shows a

Yawkey Way street sign, and Bon Jovi sings "I *feel* alive when I'm walkin' on this *street*." Again the defendants can't and won't touch this remarkable "coincidence."

2. The Bon Jovi lyric continues "I *feel* the *heart* of the city. ..." Compare this to my lyric " *Feel* that *spirit* *far* and near." Far & near in my song refers to "from Landsdown Street ... to Cooperstown...", i.e., one city to another. Defendants took this idea and transformed it into images and lyrics applicable to any generic city. " You don't have to look too *far* to find a friendly face." This also shows my use of Cooperstown to rhyme with Landsdown. Defendants repeatedly rhyme "round", "down" and "town" in their chorus. This comes directly from goin' *round*, *hometown*, *Landsdown* and *Cooperstown* in my song.

3. Defendants' use of a call-response to encourage the crowd to answer them is also derived from my copyrighted expression. Bon Jovi says, "Say Hey" and "Say Yeah"; crowd responds "Say Hey" and "Say Yeah." Compare my song "Say it Loud...Say Here We Go Red Sox, Here We Go", crowd response. [Willie Mays, the "Say Hey Kid" might be offended by defendants' claim that these words are not about baseball.]

4. Defendants' lyric "you make me *feel* at *home*" was also based on my lyric "*hometown* team, and "*feel* that spirit..." from my hometown. Defendants' video at this point shows a baseball player reaching home plate. Again, this is not a coincidence; it's an example of how my song and its lyrics were used to select video images for a baseball promo. Furthermore, the video shows a Tiger player 'goin round' first base at the same time I am singing, " Tigers." We leave it to the Court to decide whether this, like the Yawkey Way street sign, can be mere coincidence. Then listen to the infringing chorus hooks again for the curtain call.

5. As I sing "Anyone will tell you Boston Rocks" and then proceed into my chorus "Scream man I really love this team", BJ is singing TBS/MLB's message, "You make me feel at home somehow...that's why I love this town". Again, I invite the Court to compare the expressions of love for a place: my "Boston Rocks" and "I Love this Team/Town" with defendants' "I Love This Town."

6. As BJ goes into their bridge, obviously derived from my song as well, they sing 'shoutin from the rooftops' (video shows Red Sox fans screaming on top of the Green Monster...the rooftop video image where they obviously derived their lyrics). Ironically, at the beginning of my bridge when I start speaking directly to the crowd telling them to stay tough ("you got to keep believing...you got to stay tough...you...you"), the visual images show players being tough bumping chest, etc. If you watch the MLB promo ad, these video images having nothing to with

the BJ song or what they are singing about. Furthermore, adapted from my addressing the crowd "you got to" was changed to "you got it" for the infringing BJ version, clearly a visual cue they knew they could use and show a player catching a ball. BJ only addresses the crowd with 3 "you's" instead of my 4 "you's", then culminating in almost the identical language at the ends of both our bridges. In My version it goes, "Come on let'm know, Say Here We Go Red Sox". In the MLB/TBS bridge ending, "Come on now, Here We Go Again". If the defense wants to further waste the courts time, they can argue this is by chance. Or, perhaps they might want to argue this is uncopyrightable like they have been. If "Uh-Oh" was deserving of protection under the law, why can't this be. Keep in mind this possible infringement is above and beyond what already is clearly infringement...The Chorus Hooks.

Similarities that combine lyrics and music

Further analysis of BJ's chorus also shows substantial similarity in the chord progressions of the music and the way the chord progressions line up with the lyrics in both songs. The chord progression in my song lines up on the 1 bar like this ('Thats Why' is before the I chord):

(Thats Why) I				Love This Town
				Man I Really Love This Team
	IV	V	I	(this is the BJ chord progression)
IV	V	(VII -VII#)	I	(this is my chord progression)

The only difference in chord progression is my passing chords going home to the I chord. Try singing (Thats Why) Man I Really Love This Team. This is how it is, and I don't know what kind of a smoke screen the defense can put up for this other than. ...claiming it's not copyrightable.

Attached as Exhibit I is a more thorough analysis of overall similarity. The author of this analysis is Jonathan Yasuda, a law student and professional musician who holds a BA in music. Mr. Yasuda is also a temp-track victim himself.

B. Non-Copyright Claims: Mass. General Laws Chapter 93A and Lanham Act / Reverse Palming Off

My complaints do adequately state violations of Section 9 3a

Defendants' motion to dismiss argues that I have failed to specify what actions by defendants are unfair and deceptive acts prohibited by Section 93A. I drafted the Amended Complaint for the sole purpose of putting my claim into a format more like the format used by defendants' top-tier lawyers. It now appears that these attorneys seek to use that against me, stating that they still find my claims to be unclear.

So let me be clear: taking my song, using it as a temp track for cable television commercials and other derivative works are unfair and deceptive business practices., especially when the ad is secret and discreet. They are clear attempts to sidestep copyright law. I ask the Court to acknowledge this. Defendants' unfair deceptive practices also include their continuing claims of authorship of the MLB soundtracks, when they are in fact unlawful derivative works based on my song. Many of the defendants were involved in this deceptive practice of presenting an unauthorized derivative work as Bon Jovi's original work. The fact that they made it into an ad makes it worse, not better. Jon Bon Jovi has repeatedly stated on television interviews and in concert introductions of the song that he wrote the song about Nashville. We know this is not true. Defendants knowingly "wrote" the song, an unauthorized derivation of my song, as an ad for MLB. Ironically, professional baseball was the first business in which music including product placement was used in 1927, with the song "Take Me Out to the Ball Game."

The Wrigley's Doublemint gum commercial starring Chris Brown illustrates this troubling practice. It also shows how this conduct falls within the realm of both copyright law and Mass. Section 93A. The Chris Brown song, "Forever" was released and became a big hit, with Brown claiming he wrote the song. After the song became a hit a shorter derivative version of the song was used in a commercial, for Wrigley's Gum. The full-length song that became popular contains no references to gum, and the only musical and lyrical "similarities" between the full-length version of the song and the gum commercial are--you guessed it--the "hook" ("Double your Pleasure") containing the message the corporate advertisers wanted to convey. The big difference in this case is that Bon Jovi and MLB refuse to admit that the Bon Jovi song is an ad, probably because Chris Brown's nickname is now "Sellout Chris Brown." When people found out it was an ad and not just a song, they called for boycotts of Wrigley Gum.

There are several versions of MLB ads, of varying lengths, all focusing on the stolen hook /lyrical/musical heart of my song--the phrase "Love This Town." The unfair business practice and copyright violation is this: The creation of a longer/slightly different version (such as the Bon Jovi album version of "I Love This Town", which includes an additional verse having

nothing to do with the rest of the song) clearly intended to both evade copyright law and deceive the public into believing a corporate jingle is actually independently created art. When it became public knowledge that "Forever" was written for an ad, and that (just as must have happened in this case) the corporate had sponsors provided Brown with messages to be included in the song, the public was outraged. Chris Brown and Wrigley's now admit that "Forever" is in fact nothing more than a Doublemint jingle / "crypto-ad" commissioned by Wrigley's Gum. In the full-length version of "Forever", there is but one "reference" to gum, a brief image of Brown putting a stick of (unidentified brand) gum in his mouth. By the logic defendants use in their motion to dismiss, this would be proof that the "Forever" cannot be connected to a gum commercial. But it is, admittedly, an ad. In contrast, the Bon Jovi song defendants claim is arguably not even about baseball includes many elements taken from my "baseball" song and used in the most expensive ad in history promoting none other than baseball. As I have stated previously, the visual images in defendants promo video (all about baseball) track my song's lyrics.

Standard copyright infringement cases don't quite address this new unfair business practice of advertisers paying for songs that *intentionally* have nothing to do with the product being advertised. As noted above, the whole idea is to get the product placement / message in without being too obvious about it; to simply blend the images of the artist and the product in the consumer's mind.

There is a public interest at stake here. The public has a right to know when they are viewing advertisements, rather than pure art. The public has the right to have their guard up and know that the song is an endorsement of baseball and promotion of cable television. The public / audience involved here is all over the world; again defendants were attempting to equate baseball

(a tedious, slow sport,) with a Bon Jovi concert. ¹The images of the band in concert are actually towards the end of the promo ad. The images actually show the band pretending to perform the song at soundcheck. This was an attempt to look like they were in a ballpark. Towards the end, showing the fans getting up off their seats screaming at baseball games and merging them with scenes of the real live BJ concert was an attempt to brand the two together. To show not just America, but the world that baseball is extremely fun and exciting like a BJ concert, not a boring sport as much of the world perceives it to be.

Furthermore, as this ad played in 74 countries around the world, the courts must consider who the intended audience of this promo ad were...mostly countries in which English is not the primary language. In an article on branding that explains how Courvoisier sales went up 20% after Puff Daddy and Busta Rhymes did their promo ad song "Pass The Courvoisier", the article explains that as seen in 'Science Daily', " Positive feelings can be transferred to the brand (far better than traditional advertising). Plus, music is a universal language; this means that brands will be exposed and understood around the globe, this is especially beneficial to globally distributed products." See Exhibit M.

Defendants also claim that I failed to give adequate notice of my 9 3A claims before filing this lawsuit. Again, I believe it is grossly inappropriate for Skadden Arps to make such a technical argument against a Pro Se claimant. In light of my numerous letters and phone calls to defendants, all of which I have detailed in my complaints, defendants' claim that they lacked notice of my claim is simply unsupportable. I ask the Court to rule that my 93 A and Lanham Act / Reverse Palming Off claims can stand.

¹ Interestingly, the EU and other countries have stricter laws regarding disclosure of advertisers' "product placement" in audio visual works. The fact that the intended audience for this ad was global means that it was even more important for defendants to choose Bon Jovi rather than an unknown artist to deliver their message. Had defendants used my unaltered song, they would not have been able to control and license the song as they wished. They needed to own the song.

Conclusion

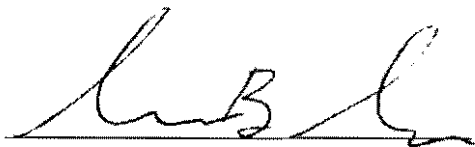
My original and Amended Complaints adequately state claims for

1. Copyright Infringement
2. Violation of Mass Gen. Law ch. 93A
3. Violation of the Lanham Act / Reverse Palming Off

I therefore respectfully request that the Court deny defendants' motion to dismiss. In the alternative, should the Court find that my complaints are in any way deficient, I request that the Court identify how I have failed to state a claim, and allow me to amend my papers accordingly.

Respectfully Submitted,

Samuel Bartley Steele, Pro Se



Dated: 03/03/09

Samuel Bartley Steele

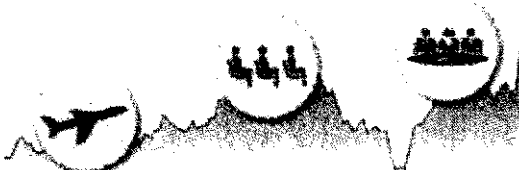
Bart Steele Publishing

Steele Recordz,

Plaintiffs.

Ex A

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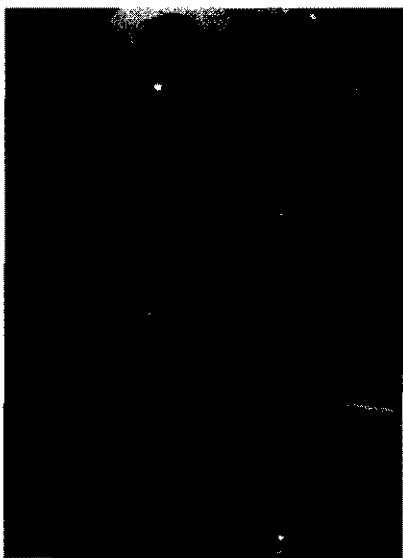
Chew on This: Hit Song Is a Gum Jingle

By ETHAN SMITH and JULIE JARGON

Sharp-eared pop-music fans may have noticed a brief reference to an old chewing-gum jingle buried in "Forever," Chris Brown's top-10 hit. "Double your pleasure/double your fun," the R&B singer croons in the chorus.

What listeners don't know -- and what Wm. Wrigley Jr. Co. planned to reveal Tuesday -- is that the song is a commercial.

"Forever" is an extended version of a new Doublemint jingle written by Mr. Brown and scheduled to begin airing next month in 30-second spots for Wrigley's green-packaged chewing gum.



Getty Images

R&B singer Chris Brown's "Forever," which hit No. 4 on the Hot 100, is also a gum jingle.

Mr. Brown is one of a trio of pop stars enlisted by ad agency Translation Advertising, a unit of Interpublic Group of Cos., to update the images of three of Wrigley's best-known brands.

The campaign includes spots featuring R&B singer Ne-Yo doing his own take on Big Red's "kiss a little longer" jingle. And "Dancing With the Stars" regular-turned-country-singer Julianne Hough recorded a twangy version of Juicy Fruit's "The taste is gonna move ya."

But Mr. Brown's "Forever" is the most ambitious part of the campaign. Mr. Brown was commissioned to write and sing both the pop song and a new version of the Doublemint jingle, introduced in 1960.

First, Mr. Brown updated the jingle and recorded it with hip-hop producer Polow Da Don. Then, during the same Los Angeles recording sessions in February, paid for by Wrigley, Mr. Brown added new lyrics and made a 4½-minute rendition of the tune, titled "Forever."

In April, Mr. Brown's record label, Jive, released the song to radio stations and digital download services as a single. After the song became a hit, Jive added it to his 2007 album, "Exclusive," and re-released the album in June. "Forever" reached No. 4 on Billboard magazine's Hot 100 chart last week.

All three new Wrigley jingles are scheduled to be unveiled at a news conference Tuesday in New York, with each of them to be performed by the artist involved. Mr. Brown is slated to sing "Forever" and segue into his jingle. New television commercials and radio spots featuring the jingles and print ads showing new packaging for the gum are set to appear in August.



Getty Images

Some of Wrigley's popular gum brands

The campaign illustrates a deepening of the ties between pop music and advertising. Rappers frequently mention luxury products like liquor or cars in songs, and occasionally serve as paid spokesmen for the brands. And for McDonald's Corp.'s 2003 "I'm Lovin' It" campaign, the burger chain, with the aid of Translation Chief Executive Steve Stoute, enlisted Justin Timberlake to write and record a song using the slogan as its chorus. But the song was never released on one of his albums.

Tom Carrabba, executive vice president and general manager of Sony BMG's Zomba Label Group, which includes Jive, says label executives initially had qualms about releasing and promoting a

song recorded at an advertiser's behest "But the song was so potent and strong. That overruled us being maybe a little hesitant," he adds.

Sony BMG is a joint venture between Bertelsmann AG of Germany and Japan's Sony Corp.

Other than the "double your pleasure" line, the lyrics to the song and the TV jingle are different. But the melody and the music behind it are nearly indistinguishable. A 60-second radio ad scheduled to air starting Friday further blurs the line between the song and the commercial. It starts with a section of "Forever," and moves seamlessly into lyrics promoting the gum. "I'ma take you there, so don't be scared," Mr. Brown sings. "Double your pleasure; double your fun. It's the right one, Doublemint gum."

The campaign was conceived and executed by Mr. Stoute, a former senior executive at Interscope Records who counts rapper Jay-Z as a partner in his business. The idea was to connect the hit song and the jingle in listener's minds. That way, Mr. Stoute says, "by the time the new jingle came out, it was already seeded properly within popular culture."

Mr. Brown said in an email that he wrote "Forever" and the related jingle in about 30 minutes each. "I actually thought it would take longer to write a jingle they would like," he wrote. "But they said it was a perfect fit after the first try."

Paul Chibe, Wrigley's vice president for North American gum marketing, declines to disclose how much Mr. Brown was paid for his role in the campaign.

Wrigley's push to update its older gum brands started earlier this year, when the company began selling them in new slim, envelope-style packages. Some of the gum was reformulated to improve its flavor and make it last longer. Juicy Fruit -- Wrigley's oldest brand, launched in 1893 -- Doublemint, Big Red, Spearmint, Winterfresh and the newer Extra line, represent around 30% of the company's U.S. gum business.

Wrigley chose Mr. Brown to develop the new Doublemint song, in part because the company's consumer research showed that African-American consumers prefer Doublemint to other gum brands. Mr. Chibe calls the move "the future of the brand."

Mr. Chibe added that the mildly suggestive lyrics have never given the company pause. "Everything he's done with 'Forever' represents the brand and it fits our brand personality for Doublemint," Mr. Chibe added.

While Wrigley has had strong sales in emerging markets, it has lost market share in the U.S., where it faces strong competition from Cadbury PLC, maker of Trident, Stride and Dentyne. Last year, the company's North American sales were flat, at \$1.75 billion.

During the company's annual meeting in March, Chairman William Wrigley said he was "far from satisfied" with the company's domestic performance in 2007, though results improved in the first quarter of 2008. In April, Wrigley agreed to be acquired by Mars Inc., the closely held maker of M&Ms and Snickers, for about \$23 billion.

Write to Ethan Smith at ethan.smith@wsj.com and Julie Jargon at julie.jargon@wsj.com

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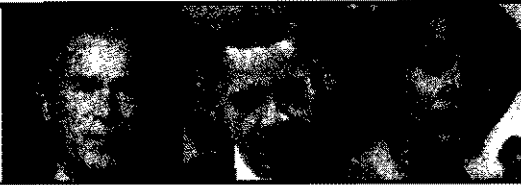
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Ad Track: Jingles out, cool songs in at Cannes; see video

By Theresa Howard, USA TODAY

CANNES, France — The music business has a new beat: Madison Avenue.

Music labels, publishers and songmakers have found an increasingly lucrative niche in licensing or making songs for marketers and advertisers looking for just the right 30-second soundtracks for their commercials. Helping to make music a hit with marketers is technology that's made it easier to store, share and make music for ads.

MORE FROM CANNES: Major marketers look for ideas

NEW & NOTABLE: Bottling up McCain, Obama

MARKETING WORLD: Archive of previous Ad Tracks

Ad use is welcome revenue for the music industry, which is seeing consumer sales continue to slide — down 29% since 2005, according to the Recording Industry Association of America.

"It's more and more an important stream of revenue for the music industry," says Geoff Mayfield, director of charts at trade magazine *Billboard*. "Album sales have been down for the last six years and are likely to be down again."

Music industry representatives will be looking to drum up more business this week in and around the award ceremonies, seminars and parties here at the annual Cannes Lions International Advertising Festival. The creative competition — 28,284 entries in 11 ad categories this year — attracts thousands of top-level ad types from around the world. Entries for Best Use of Music are up 23% from last year, to 139, and up 50% in the past five years.

Advertisers' appetite for hit music in ads, or songs composed to sound like hits, has largely sent the old hard-sell jingles, with campy music and product lyrics, the way of vinyl LPs.

"Before I was in the business they were using jingles all the time," says Josh Rabinowitz, senior director of music for ad agency Grey Worldwide. He'll host a seminar about commercial music at Cannes with Grammy-winning singer Tony Bennett. "They were a little cheesy; they weren't hip, not cutting edge — and not in tune with modern pop culture."

Today's advertisers want their music to be cool.

"No one ever calls up and says, 'I want to sound like an ad,'" says Marc Altshuler, a partner in New York City-based music production house Human Worldwide. "They say, 'I want to sound like a hit on the radio.'"

Aggressive efforts by music labels and publishers to sell their existing songs have increased the competition faced by companies such as Human that create original tracks for ads.

Advertisement



What to do if You Can't Pay the IRS



When it's Smart to Comparison Shop for Auto Insurance



Get the Landscape Look You See in Magazines

Advertising provided by: ARALifestyle.com

"Within the past year there's been some sort of palatial shift in the record and publishing industries to monetize their back and current catalog and for emerging artists to find an outlet for their music," says Andy Bloch, also a partner at Human.

The agency has a staff of 11 full-time composers, most of whom play multiple instruments, and has written songs for such advertisers as Coca-Cola (KO), Procter & Gamble (PG), Nike (NKE) and Sprint (S).

This year Human has two songs entered for Cannes Lions, including one written for Coke and another for Al Gore's The Climate Project.

The agency is a music factory stocked, for example, with more than 100 guitars, including a Fender Stratocaster and a Gibson Les Paul. Each of the composers' offices is a mini-studio that's wired into a recording studio so that as they cut a song, everyone can listen and give feedback.

Advertisers pay Human \$10,000 to \$200,000 for music, depending on the length of the music used and when and where the ad will run. The fee gets an advertiser a choice of 12 to 20 tracks and all rights to the song or music without additional fees.

Getting the right chemistry

Whether marketers buy music from an agency like Human or licenses existing tunes from labels or publishers, they are paying the big bucks because the right chemistry among product, music and ad message will make a brand stand out.

"If a brand is going to spend tens of millions of dollars for TV, radio or Web time, they want a song that has immediate recognition and that can put you in a particular place or time," says Martin Bandier, chairman and CEO of Sony/ATV Music Publishing. "The world has recognized that music is the great thing that can catch your attention. This is a good time to be in the music-publishing industry."

Sony's (SNE) music-licensing revenue is up 17%, and the volume of deals is up 9% for the fiscal year ended March 31, Bandier says. He recently named Rob Kaplan to the new post of global marketing vice president, making it Kaplan's job to sell songs from Sony's list of 750,000 to marketers and their ad agencies.

Ad use has proved to have a payoff beyond license fees, particularly for up-and-coming artists. *Billboard* has even started tracking when ad use causes a tune's sales to spurt.

"In the last few years we've given more attention to branding news," Mayfield says. "Every week we have a number of different opportunities to explain (sales) increases on a chart, and if something picks up steam we look for causes of that."

More and more the cause turns out to be an ad. Use in an Apple (AAPL) ad for the MacBook Air, for example, helped push *New Soul* by newcomer Yael Naim to the top of the charts at iTunes — more than 800,000 downloads have sold since the TV ad began airing in February.

Love Song by Sarah Bareilles rose as high as No. 2 on *Billboard's* Hot Digital chart after it was in an ad for music-download site Rhapsody.

Apple and Old Navy (GPS) have, in fact, made an art of catching artists ready for a career breakout: Naim and also Feist with Apple; Ingrid Michaelson and Lights with Old Navy.

Everyone wins when it works — the advertiser gets a fresh sound for a steal, and the artist gets prime TV exposure at a time when promoting new music has gotten tougher.

"Radio playlists have been tight for decades, and it's really hard to sell an album these days," says *Billboard's* Mayfield. "In an environment like that, commercials, in a way, are the new radio stations."

Licensing existing music is not simple, however. Even when a music publisher just wants to sell an advertiser the right to redo the music with studio musicians, the original artist and label typically have to be on board.

"It's not a business you can just go into overnight," says Sony's Bandier. "You need a history and understanding of songs."

Ad use no longer has stigma

Changes in the music business and pop culture, however, have eliminated a lot of artists' former reluctance to sell their music for ads. These days, you hear music in ads from everyone from The Beatles (*Hello Goodbuy*, a pun version for Target (TGT) of *Hello Goodbye*) and Bob Dylan (Victoria's Secret) to Meat Loaf (AT&T) (T) and Sting (Jaguar) to Iggy Pop (Carnival Cruises) (CCL) and

The The (M&Ms).

"Nowadays, more and more artists are willing to have their songs played in a commercial," says Andrea Kinloch, global strategy vice president for Warner Bros. Records. Her job is to get artists from her label into ads. "Music has changed so much. There are so many different ways to access music and learn about music that it's become a non-issue for artists to have their songs in commercials."

And she adds: "It's not a bad fee to make, either. Commercials pay fairly well."

There remain limits for some musicians, however. Meat Loaf recently appeared along with his music in AT&T ads for its prepaid mobile GoPhone. He even was willing to create a parody of his *Paradise by the Dashboard Light* for the traditional 30- to 60-second commercials. But he balked at doing a version for a five-minute Web ad (the original song clocks in at more than eight minutes).

"A little 30-second or 60-second ad — that's fine," Meat Loaf says. "I can parody (the song) and it won't get in the way. I won't feel like I've sold out me or the song."

Many factors affect fee

As with original songs, the licensing fee for an existing tune is affected by where, how and how long the ad will run. Added factors with existing songs can include the fame of the artist and/or the song and whether the song will be used in original form or changed by the advertiser.

"It depends on the product, if they want it exclusively in the product line and whether it's used in radio, TV or on the Internet," says Sony's Bandier. "Prices range from \$50,000 up to \$2 million to \$3 million, depending on the song."

Some songs even seem to work so well in an ad that rights can later be sold to another advertiser for other commercials.

The Electric Light Orchestra's upbeat *Mr. Blue Sky*, currently licensed by EMI Music for use in a new ad campaign for JetBlue (JBLU), has been heard in previous years in ads for Guinness, Sears and Volkswagen. A version of it has been used in commercials for a French cellphone company, SFR.

More Michelle Branch

Creating a 30-second ad is complex, often requiring one to three days of filming and five to 10 days of editing. Creating the track takes additional time for writing music and lyrics or getting a song licensed, and then the audio must be added and mixed in post-production.

"Music is a huge planning element for an ad," says Richard O'Neill, head of production for agency TBWA/Chiat/Day, which created the Apple ads. "It's a real art, and a real craft. Whether you are buying a popular piece of music that's going to be perfect for that ad or composing a piece that you want to become a popular piece of music, it's really hard to try to find a 30- or 60-second hit song to go with that ad."

At a recent meeting at Human Worldwide, Bloch and a fellow composer, Cameron Ballantyne, spent an hour on the phone with an ad agency reviewing seven versions of a track for an ad for a Playtex women's hygiene product. None quite worked, according to Bob Sullivan, Grey's creative director. He wanted the tune to make a woman "get up and dance."

One interpretation needed to be "more Michelle Branch, less Hillary Duff," while track No. 7, considered a "Shania Twain version," had a "good melody," but the "voice needed to be more upbeat."

The next day Bloch and Ballantyne came up with a version in the ad, which now is in consumer testing.

"You can spend six hours working on the last five seconds of an ad," Human's Bloch says.

USA TODAY will be reporting from the annual festival throughout the week.

NEW & NOTABLE

Campaign posters go carbonated

With all the campaign hype, it may already seem that the presidential candidates are being sold with as much salesmanship as Coke and Pepsi. Now the folks at Jones Soda have joined the two worlds with Campaign Cola.

For \$14.99 per six pack at CampaignCola.com, Jones is offering you a choice of presidential colas with candidate photos on the labels: John McCain (Pure McCain Cola), Barack Obama (Yes We Can Cola) and beaten but unbowed Hillary Clinton (Capital Hillary

Cola).

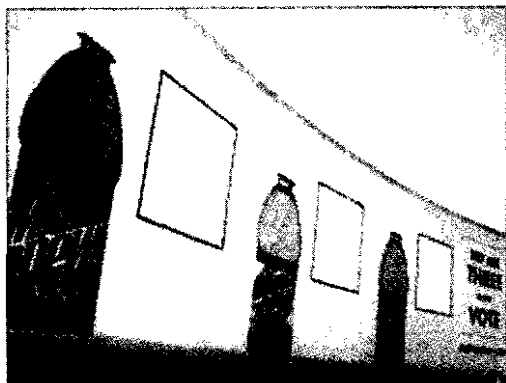
"What could be a better conversation starter than drinking from a soda that has your chosen candidate's face?" asks Seth Godwin, Jones marketing director.

California Roll over, Rover

Think of it as sushi for your dog — no chopsticks required. Pet Botanics Omega Treats, a hand-rolled dog snack that looks and smells like sushi, is just hitting pet store shelves. The basic ingredient is fish and, as at your favorite sushi restaurant, there are varieties to choose from, such as cod rolled with tuna, salmon or duck.

Good news for doggie dieters: They have just 9 calories each and are loaded with omega 3 and 6 fatty acids. "They won't give your pooch a paunch like a lot of dog biscuits will," says Tony De Vos, president of treat maker Cardinal Laboratories.

For people who think of their dogs as dogs — and not family members — the \$4.99 tab for a 6-ounce bag may be over-the-top, De Vos says. "But people do crazy things during tough times to take their minds off their troubles, and for under five bucks, it's a cheap thrill."



Mountain Dew

A billboard lets people blast away to vote for their favorite Mountain Dew flavors using paint balls

Take a shot at a new soft drink

If you don't care about politics, but want to vote for something, Mountain Dew will let you weigh in on which of three new flavors should survive. In Los Angeles, Dew-heads can even vote by firing paint balls at the options on a billboard the brand put up last week.

Less aggressive soft-drink fans can vote online at DEWmocracy.com for raspberry-citrus Voltage, strawberry-melon Supernova or wild berry Revolution. The flavors are now in stores nationally, but only one will get to stay. Dew will tally the billboard and Web votes and announce the winner in September.

A la carte in Newport Beach

When is a restaurant more than a restaurant? When it's A Restaurant.

That's the oh-so-sly new name for The Arches, a Newport Beach, Calif., institution since the 1920s. Stars from Humphrey Bogart to John Wayne were patrons.

What A-list names will be spotted at the new A Restaurant? It's too early to tell. But owners Tim and Liza Goodell have partnered with director McG (*Charlie's Angels*) and singer Mark McGrath (of band Sugar Ray).

If you visit, bring the plastic. For wine alone, beverage director Tamira Clayton notes, there's a regular list (under \$100) and a "Captain's List" (\$100 and up).

Doctor endorsers are weak medicine

Note to Rx-focused marketers: Think twice before paying a doctor big bucks to endorse your brand in an ad. Three-fourths of consumers say a physician's appearance does not make the medicine seem more effective, according to a March phone survey by Rodale's *Prevention*, *Men's Health* and *Women's Health* magazines. Almost as many say it doesn't make the drug seem safer.

While a doc in an ad is not much help, putting information in a doctor's office builds brand awareness: 63% say they notice posters, brochures or videos there. Ads in magazines work, too: 75% of consumers say magazine ads are somewhat or very useful in conveying drug benefits and 76% in communicating risks.

One final stat: Half of consumers said they visit drugmakers' websites. So our advice is to ditch any ho-hum, jargon-filled areas that might scare off the patients.

Ads earn silver for screen owners

Those branded popcorn bags, pre-movie ads and sponsored soft-drink cups are big business for theater owners. Today, the Cinema Advertising Council will report that in-theater ad revenue of its members grew by 18.5% to \$540 million in 2007. (CAC members account for more than 82% of U.S. movie screens.)

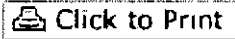
On-screen commercials accounted for 92% of cinema ad revenue. Among the fastest growth was in so-called off-screen advertising: Concession-area marketing revenue was up 48%, and the take from in-lobby product sampling promotions was up 374%.

The Ad Team wonders why the in-lobby product samples are never food products. Ten bucks for a kiddie-size popcorn and soft drink is busting our bank.

By Laura Petrecca and Bruce Horovitz

Find this article at:

http://www.usatoday.com/money/advertising/adtrack/2008-06-15-cannes-music-ads-adtrack_N.htm



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Ex C



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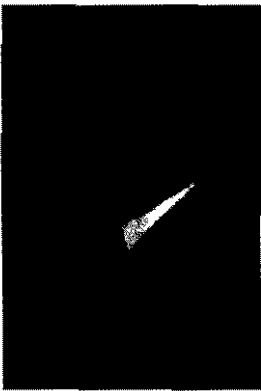
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Jeff Straughn Appointed Senior Vice President, Strategic Marketing, Island Def Jam Music Group



Jeff Straughn, Senior Vice President, Strategic Marketing (PRNewsFoto/The Island Def Jam Music Group)

NEW YORK, NY UNITED STATES

NEW YORK, Nov. 17 /PRNewswire/ -- Jeff Straughn has been appointed Senior Vice President, Strategic Marketing, Island Def Jam Music Group, it was announced today by Steve Bartels, President & COO, Island Def Jam Music Group. In his new role, Mr. Straughn will be responsible for building long term integrated strategic partnership programs between Island Def Jam and its respective artists, with corporate America and their respective brands, where partnerships are formed in which both entities share assets to meet mutually beneficial marketing goals. Mr. Straughn, who is based in New York, reports to Mr. Bartels.

(Photo: <http://www.newscom.com/cgi-bin/prnh/20081117/NY46553>)

Mr. Straughn has served as Vice President, Strategic Marketing, Island Def Jam Music Group, since July 2005. While at IDJ, Mr. Straughn has been responsible for building year-long relationships with many consumer and auto and electronic brands where both partners feed off each others assets and develop fully integrated and sound partnerships. Mr. Straughn was also instrumental in creating and launching Tag Records with IDJ and Procter & Gamble.

"Jeff has made major contributions to the marketing plans of our artist campaigns," said Mr. Bartels. "He thinks out-of-the-box and follows through in his pursuits with fortitude. We are thrilled to be able to give Jeff his well deserved promotion as recognition for those efforts and we look forward to the energy he will bring to the future growth of the Island Def Jam Music Group."

"It's a privilege to work for an organization that -- under the forward-thinking leadership of LA Reid and Steve Bartels -- is embracing the future of the music industry. These past few years have been a real thrill and I have gained tremendous experience along the way," said Mr. Straughn. "I am truly humbled and honored to be able to call this amazing iconic label Island Def Jam my home."

Straughn came to IDJ after nine years at Octagon Sports and Entertainment (a member of Interpublic group), where he was Vice President of Music & Entertainment. He began his career in advertising in 1989, as Assistant Account Executive at API Advertising (a subsidiary of Saatchi/Saatchi). In 1992, he moved to Bozell Advertising, where he was Senior Account Executive for three and a half years. He joined ADV Marketing in 1996, as Account Director. Mr. Straughn graduated from Bradley University in Illinois, with the Bachelor Of Science Degree in Advertising & Public Relations. He received his Associates degree in Communications from Keystone College in Pennsylvania.

Ex D

MAKING THE BRAND: BON JOVI'S DESIGNATED HIT

Group's MLB Spot Rounds Third And Heads For Home
By MICHAEL PAOLETTA
September 15, 2007
BillboardMagazine

It's a very cool, in-your-face spot. Bon Jovi is jamming onstage, performing "I Love This Town," from its new Mercury/Island album, "Lost Highway." The band's fans are excitedly jamming right along. At two minutes and 30 seconds, the spot has the feel of a music video. But make no mistake, it is an ad to promote exclusive Major League Baseball postseason coverage on TBS, the new home of MLB.

The promo is interspersed with action footage of some of MLB's coveted postseason contenders, including the New York Yankees, Boston Red Sox and Chicago Cubs.

Background music would not be sufficient for this sort of campaign, says Bon Jovi's manager, Jack Rovner of Vector Management: "The music must be able to live on its own, to stand front and center."

The Bon Jovi spot is airing through Oct. 11 on more than 6,400 movie screens nationwide as part of National CineMedia's preshows in AMC, United Artists, Regal, Edwards, CineMark and Georgia Theatre Co. movie theaters.

Truncated versions of the ad will appear on TBS. Additionally, "I Love This Town" will be featured in interstitials throughout the network's 2007 MLB postseason coverage.

In an interesting twist, this music video-as-ad network spot is also playing in ballparks, with Turner Sports creating different versions—with Bon Jovi intact—for different baseball teams to give the promos a more hometown-centric feel.

According to Turner Sports VP/creative director Craig Barry, it is the first time Turner Sports is using music in this way for localized versions of a promo. The network is in the process of creating spots for the Cleveland Indians and other teams. So, in the case of the Indians, the promo could feature notable players like Grady Sizemore, Travis Hafner and Fausto Carmona—as well as the team's logo and scenery from Jacobs Field and surrounding areas (the Flats and West Sixth Street, for example).

For Barry, the musical element of a campaign like this is "an addition, a bonus to our property." In each case, he adds, "the song must stimulate the senses and work with the sport."

For this campaign, Barry worked with Rovner; Mark Shimmel, a music consultant to Turner Sports; and Island Def Jam.

When it came time to find music, Barry wanted a song with "a bigger picture" that could work with different cities. "This song captures the essence of the game, and the cities and the towns," he says. "More so than any other sport, baseball stands for a city."

"I Love This Town" is one of those spirited, anthemic, feel-good singalongs in the same vein as Bruce Springsteen's "Born in the USA." For a sport like baseball, it makes complete sense.

This is not lost on Rovner. "Music must become part of the dialogue in the spot," he says.

"I Love This Town" pulls that off. And while the song is not planned as a single (the album's second single, the title track, is on its way to pop radio), that could change.

"I Love This Town" is not the first track from "Lost Highway" to receive props from corporate America. Prior to the album's June 19 release, "We Got It Going On" and the title track were licensed to ESPN ("Arena Football") and the film "Wild Hogs," respectively.

"This album is young. We are continuing to spread overall awareness of it," Island Def Jam senior VP of marketing Adam Lowenberg says. "With the second single now going to radio, and the upcoming holiday season, the baseball campaign is perfect timing."

A home run, perhaps.

Ex E

The Blurring Borders Of Music And Advertising: P&G Starts A Record Label With Def Jam 08/19/2008

from the *soap-opera dept*

For a while now, we've been pointing out that people in both the advertising and content businesses need to recognize that they're both in the **same business**. All advertising is content, and all content is advertising -- whether intentional or not. The latest example of this is pointed out by reader *lavi d*, who points us to a clip from NPR's All Things Considered about how Procter & Gamble has **teamed up with Def Jam records to create a new record label: Tag Records**, which is connected to the P&G product Tag Body Spray.

Rather than bringing on a big name star to "endorse" its product, Tag Records has signed a relative unknown, and is basically promoting both this new musician, Q, and the body spray at the same time. The music doesn't necessarily directly promote the body spray, but the promotions go hand in hand, and there is no real border between the content and the advertising. If the content itself is good content, it doesn't much matter. And, it appears that other brands are following suit. The radio clip notes that the energy drink Red Bull is apparently building its own studio to do the same thing. To some extent, it's no surprise that Def Jam would recognize this as a direction to go in: we pointed out in the past how a bunch of hip hop music execs were way **ahead of the curve** in recognizing new business models where the music itself is part of the promotion for something else.

And here, once again, we're seeing a totally new business model for the music business. Suddenly the success of the musicians on these labels isn't as much about selling *music* as it is in getting the music out there to promote other products as well. This doesn't mean (as I'm sure some angry commenters will imply) that all music will soon have some sort of consumer packaged goods connection -- but it shows, once again, that new business models emerge, and those business models will ensure that plenty of *good* content continues to show up. Because, if the music put out by these record labels suck, then it won't do much good for anyone: the consumer goods they're connected to, the musicians or the labels.

EX F



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TBS Jams with Bon Jovi to promote exclusive MLB postseason coverage

08/27/2007 11:41 AM ET
MLB.com

TBS, home of the **Major League Baseball (MLB) Division Series** and the **National League Championship Series (NLCS)**, unveiled today a new full-length promo featuring the **GRAMMY® Award** winning rock 'n roll group **Bon Jovi**. The rollicking new spot features the band performing "I Love This Town" from their new *Lost Highway* album interspersed with action footage of some of MLB's hottest postseason contenders, including the **Boston Red Sox, Chicago Cubs, Los Angeles Angels of Anaheim, New York Yankees** and more. The two minute 30 second spot will run in its entirety exclusively in movie theatres and select MLB ballparks throughout the country. Shorter versions will appear on TBS with the song serving as the primary musical bed for bumps and teases throughout the network's 2007 MLB postseason coverage. TBS takes the mound on **Oct. 3rd** with exclusive coverage of the Division Series, followed by the NLCS.

The Bon Jovi promo will appear **Aug. 31 - Oct. 11** on more than 6,400 movie screens nationwide during **National CineMedia's** digitally delivered pre-show exclusively in **AMC, United Artists, Regal, Edwards, CineMark** and **Georgia Theatre Company** movie theatres.

"The true heart of a baseball franchise lives outside the stadium walls, in the hearts and minds of the fans. These fans love their hometown as much as they love the baseball team that represents them and that is the essence of the piece," said **Craig Barry**, vice president and creative director for Turner Sports. "We wanted to find an up-tempo, grassroots piece of music that represented not only baseball and the teams, but the fans and cities as well. Bon Jovi has always been known to captivate and entertain diverse audiences around the world, so who better to deliver the message for TBS."

TBS' MLB campaign will also include on-air promos featuring the network's Hall of Fame announcers **Cal Ripken, Jr.** and **Tony Gwynn**. The 30-second spots will run in heavy rotation on the Turner family of networks, which includes TBS, **TNT, CourTV, CNN, CNN Airport Network** and **Cartoon Channel**, beginning in September. **Ripken** (studio analyst) and **Gwynn** (game analyst) are the cornerstone of TBS' marquee roster of baseball announcers which also includes two-time **Emmy®** award-winning studio host **Ernie Johnson**, MLB veteran **Joe Simpson** (game analyst) and veteran baseball announcer **Chip Caray** (play-by-play).

TBS also recently completed promos with comedian and longtime Red Sox fan **Dane Cook** in step with MLB's "There's Only One October" advertising campaign. The fresh Bon Jovi and Dane Cook ads are another triumph for Turner, which has received critical acclaim for its previous ads featuring such entertainment superstars as **Jay-Z, The Rolling Stones**, actor **Jeremy Piven**, music producer **Pharrell** and comedian **Sacha Baron Cohen**.

"Our new baseball marketing campaign is designed to drive awareness about our exclusive MLB postseason programming in a fresh and exciting way," said **Jenny Storms**, SVP of marketing and programming for Turner Sports. "From the energizing Bon Jovi piece in theatres, to the on-air spots featuring baseball legends, to the billboards featuring hometown favorite players, we've created a captivating and energetic campaign to get fans riled up to watch the postseason on TBS."

The Bon Jovi, Ripken and Gwynn and Dane Cook promos are a part of TBS' multi-platform marketing campaign to promote its first year of MLB postseason coverage. Additional campaign outreaches include an extensive outdoor campaign in major markets such as **Atlanta, Boston, Chicago, Los Angeles** and **New York**, which will include two towering billboards in **Times Square** featuring larger-than-life images of **Derek Jeter** (NY Yankees), **David Wright** (NY Mets), **David Ortiz** (Boston Red Sox) and **John Smoltz** (Atlanta Braves).

Additional marketing activities include national radio buys, online advertising and print advertisements in national publications such as **USA Today, Sports Illustrated** and **Sporting News**. TBS will also implement a unique Hispanic outreach campaign with specialized outdoor, radio and print advertising in select markets, including Los Angeles and New York.

In Sept. TBS will launch **TBS Hot Corner** on **MLB.com**, a new broadband channel that will offer unique streaming from postseason match-ups and reports and updates from TBS on-air announcers.

Turner Sports, Inc., a Time Warner company, presents some of the best and most popular sporting events worldwide and is a leader in televised sports programming. With events airing on TBS and TNT, Turner Sports' line-up includes NASCAR and NASCAR.COM,

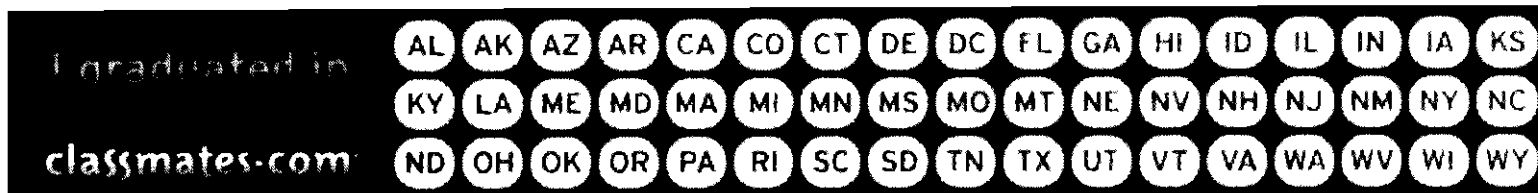
the NBA, Major League Baseball, professional golf, PGATour.com and PGA.com.

TBS, a division of Turner Broadcasting System, Inc., is television's "very funny" network. It serves as home to such hot contemporary comedies as *Sex and the City*, *Everybody Loves Raymond*, *Family Guy*, *King of Queens*, *Seinfeld* and *Friends*; original comedy series like *My Boys*, *The Bill Engvall Show*, *10 Items or Less* and *Frank TV* (working title); first-run series like Tyler Perry's *House of Payne*; specials and special events, such as *Funniest Commercials of the Year* and *The Comedy Festival* in Las Vegas; blockbuster movies; and hosted movie showcases. Turner Broadcasting System, Inc., a TimeWarner company, is a major producer of news and entertainment product around the world and the leading provider of programming to the basic cable industry.

This story was not subject to the approval of Major League Baseball or its clubs

MLB.com

EX G



Original URL: http://www.theregister.co.uk/2009/02/02/emi_brand_sponsorship_please/

Brand sponsors - 'The most worrying trend in music'

Smells like Doritos™

By Andrew Orłowski (andrew.orłowski@theregister.co.uk)

Posted in Music and Media, 2nd February 2009 14:14 GMT

Free whitepaper – Implementing energy efficient data centers

Sponsorship by corporate brands will replace the disappearing record label, Avril Lavigne's manager Terry McBride told us one soggy summer day last year.

"We'll have Dorito™-sponsored bands. They'll come to an artist with a \$5m ad budget, and they will say will add x money to your business, but we want something for that." Recorded music would be "an upsell technique" to sell you something else - like a T-shirt.



A few months later, Avril Lavigne left to get a new manager. Perhaps it's a coincidence, or perhaps she wasn't inspired by Terry's Doritos™-centric vision

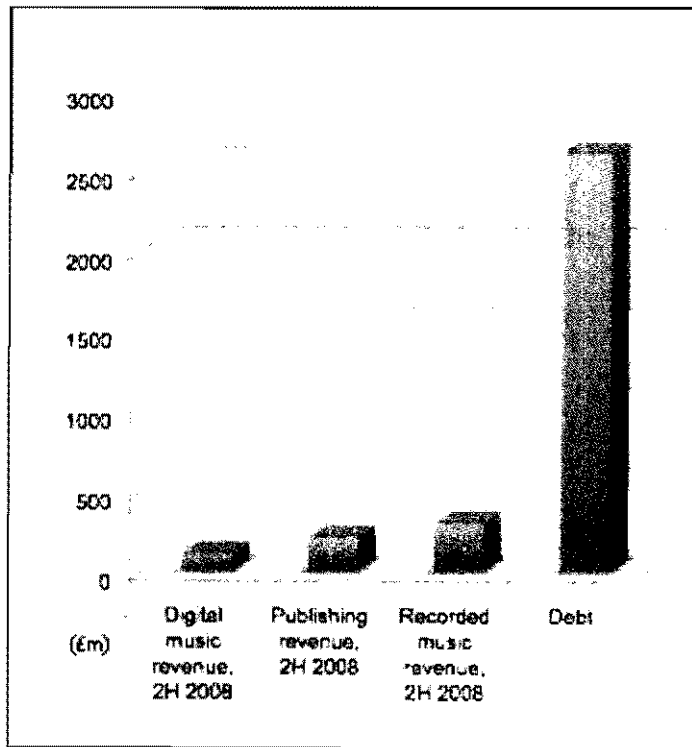
(http://www.theregister.co.uk/2008/05/15/terry_mcbride_interview/print.html) of the future. Chris Castle calls the dependence on advertising and sponsorship the most worrying trend in music.

"I can't see this new music business producing another Bob Dylan - or anyone like that who openly defies corporatization," he told us gloomily last year. (http://www.theregister.co.uk/2008/11/27/chris_castle/print.html)

Well, a music business dictated by a guy marketing deodorant gets nearer every day. Announcing its results last week, EMI said it was switching its focus away from the CD, where sales are falling, and focussing on brand advertising "partnerships" and sync licensing deals.

Elio Leoni-Sceti, EMI's chief executive, had already announced a reorg designed to capture this revenue (<http://www.emi.com/page/emi/AboutEMINews2009/0,,12641~1528895,00.html>). CD sales at EMI declined by 8 per cent to under £300m over the past six months, while digital recorded music sales grew by over a third to top £100m for the first time. EMI's publishing business brought in £205m, but didn't show any growth.

A long shadow of debt falls over the company: £125m in interest payments alone, and £2.4bn in all. EMI's annual loss in 2H 2008 fell to £155m with revenues up to £667m. The Sony music companies also announced a decline in overall revenue, 22 per cent down year on year.



EMI's 2H-2008 by numbers

In both cases, they're large publishing companies as well as recorded music companies. And in both cases, investors view the publishing side as undervalued, while the recorded music side is a dead duck. (Sony was one of the labels which helped put the Virgin P2P scheme on ice - the first real new revenue for recorded music in the digital era.)

Yet despite the gloomy prognosis for big labels, there's interest from corporate sponsors in the total revenue a big artist can generate, as their managers are well aware. So why not fill the gap by turning bands into singing, dancing, beer and crisp and aftershave adverts?

The problem is that the future isn't evenly distributed. With an ad man in charge of music, money flows to the already-established artists: good news for Bryan Adams and Madonna. If brand sponsorship finds its way to an up-and-coming band, then it comes with strings attached.

I know of one successful Asian rock band that found it couldn't play festivals abroad sponsored by a rival beer brand. This reduces them to chattel. Disputes between artists and labels are legendary, but at least the artist could still play live, if he or she wanted, down the pub. The much vaunted "360 deal" ends that freedom.

As Castle put it here, you'll have two extremes: "You'll have extreme commercialization on one hand, and the very indie-oriented artist on the other who rejects taking the king's shilling. There's not much in between." ®

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Saving ISPs and the music biz: Is it even worth it? (28 January 2009)

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A new economics of P2P file sharing (30 October 2008)

http://www.theregister.co.uk/2008/10/30/shadow_pricing_p2p/

EX H

Mc Hammer-Here Comes The Hammer Lyrics

Oh-oh oh-oh oh-oh
Here comes the hammer
Oh-oh oh-oh oh-oh
Here comes the hammer

Yes this is a mission
That I'm on taking out the weak
On the microphone
Cause I'm hype so don't talk
About the hard hitting hammer
When you can't even
Walk on the stage after me
And if you do you're a catastrophe
Happens just like that
I rock em all from white to black

OH OH OH Punch it

Oh-oh oh-oh oh-oh
Here comes the hammer
Oh-oh oh-oh oh-oh
Here comes the hammer

Oh-oh oh-oh oh-oh Oh-oh oh-oh oh oh

Naw no is what I say
When I came to see a show
I look and it's dead dead you know
Like a body in the ground
Will your show ever grow
Let me know if not the gloves come off
Cause you sure ain't hot
It needs work like a car in a wreck
They call me hammer yeah earn my respect

OH OH OH Yeah

Oh-oh oh-oh oh-oh
Here comes the hammer
Oh-oh oh-oh oh-oh
Here comes the hammer

Oh-oh oh-oh oh-oh Oh-oh oh-oh oh oh

Let's make it smooth huh (repeat 4 X)

Punch it

I don't hesitate or wait
Before the bell rings I'm out the gate
And rolling out for mine
Working so hard for such a long time
In the light, that's here and gone
So pedal to the hammer
While I'm watching the floor
I'm not a king just filling pipe
You dance to the music while I'm on the mic

OH OH OH Here we go

Oh-oh oh-oh oh-oh
Here comes the hammer
Oh-oh oh-oh oh-oh
Here comes the hammer

Oh-oh oh-oh oh-oh Oh-oh oh-oh oh oh

Let's make it smooth huh (repeat 4 X)

Punch it

Been to a tomb and I'm rolling
A whole new style but the people are holding on
Too I move I groove I rap you people's so plain

Just plain your ego's so big
That you miss the whole thing
Dang my crib the people wanted more
That's why the hammer's in

OH OH OH Yeah

Oh-oh oh-oh oh-oh
Here comes the hammer
Oh-oh oh-oh oh-oh
Here comes the hammer

Oh-oh oh-oh oh-oh Oh-oh oh-oh oh oh

Let's make it smooth huh (repeat 4 X)

Check me out
Move it on the floor and get hype
You betta get ready and this is your night
Yeah you let em know
The cool the hard the fly *OHHH*
They're in here and it's pumpin'
Hammer's gto the speakers
And you know the bass is pumpin'
Loud and low it's about that time
So here we go

OH OH OH Punch it

Oh-oh oh-oh oh-oh
Here comes the hammer
Oh-oh oh-oh oh-oh
Here comes the hammer

Oh-oh oh-oh oh-oh Oh-oh oh-oh oh oh

Let's make it smooth huh (repeat 4 X)

Punch it

EX I Jahnni Yasuda Report

When Ludwig Van Beethoven composed his Symphony No. 5 in the early 19th century, who would have thought that a benign group of consecutive eighth notes followed by a half note would be the trademark of classical music centuries later. It is arguably one of the most powerful and enduring rhythmic gestures of western music. Try shouting “DA DA DA DAAAAA!” in the middle of a crowded park – even intentionally sing it out of tune – and see if anyone can submit that some old, famous, dead dude donning a white wig, wildly waving a baton, might have written it long ago. So you might get arrested, but if you’re lucky, maybe the police officer will ask on your way to the station, “Was that Beethoven?”

That timeless rhythmic motif continues to live and breathe in cartoons, movies, advertisements, sampled rap music, high school orchestras, radios, and the list goes on. Now, see how many people can hum the entire symphony. Good luck. You see, that is beauty of music. A single note, or a single rest – silence – or perhaps a handful of notes can be the very essence or heart of a composition. For example, since it’s technically impossible to lift all of Tchaikovsky’s *Romeo and Juliet* score for a 30 second television ad, why not just use a snippet of the most memorable love theme? Sure, it cuts to the chase, omits perfectly good sections of music, but it effectively delivers and encapsulates the message of love. That’s just one very simple way to extract the “heart” of the composition. You just copy a musical sentence and paste. Done.

It is no mystery to professional songwriters, musicologists, or even the common listener, that good pieces of music often have something that catches a listener, whether it be a lyric, rhythm, harmony, melody, or maybe some combination of those elements. In other words, there could be one or more elements in a piece of music that work together

to deliver a message to an audience. Now here's where technology and copyright infringement intersect. Tech-savvy musicians inside a recording studio can easily reduce a song to its most memorable or marketable elements and then create a "new" composition. To put it another way, this so-called "new" or "derivative" composition is really one of those "Based On A True Story" types of movies where the producers stick to the basic, original storyline, but add a few lovemaking scenes and Hollywood explosions to lure mainstream moviegoers to the theatres.

So when the heart of the original composer's composition – again, whether it be a particular lyric, rhythm, harmony, melody, or maybe a combination of these elements – saturates some "new" work, you have to ask yourself two questions: (1) did someone have access to the original composition in order to commit the infringement; and (2) how substantially similar are these two compositions?

Here, in order to show that Bon Jovi's "I Love This Town" songwriters had access to Bart Steele's "Man I Really Love This Team" sound recording, Steele claims that he sent his lyrics and recordings to the Defendants. Determining whether the Defendants actually used Steele's song to create a derivative work may seem like an impossible task. How can one go back in time and step inside the studio where the Defendants allegedly tampered and manipulated Steele's song to create the derivative work? Just as a murder weapon may have fingerprints, so does a fraudulently fabricated television commercial.

To explain, it is necessary to understand how a composer can get the musical ideas for a commercial. One way is called "temp-tracking" whereby the producer uses an

existing composition to set the mood for the images of the commercial; then the television composer writes a seemingly new score for the commercial. As one can imagine, this is the perfect breeding ground for derivative work copyright infringement. Composers can get sloppy, deliberately trying to change a few musical and lyric elements to mask the true author's work. As the New Grove of Dictionary states, this process is often rife with plagiarism:

Temp-tracks and classical styles are convenient means by which a director can suggest appropriate musical idioms to the composer; models have included Strauss's Salome for Waxman's Sunset Boulevard (1950), Holst's The Planets for Williams's Star Wars (1977) and Reich's Music for 18 Musicians for Tangerine Dream's Risky Business (1983). Egregiously, the practice of directly modeling scores on already successful original soundtracks is widespread, with plagiarism often disguised only by token alterations.

There is clear and convincing evidence that Steele's "Man I Really Love This Team" was used as a template, or temp-tracked, to produce Bon Jovi's "I Love This Town" TBS commercial. An easy way to reveal the fingerprints of a fraudulent temp-tracker is to conduct a simple experiment – no ultraviolet light required.

Instead of watching the commercial with the Bon Jovi soundtrack, try watching the commercial with Steele's music as the soundtrack. You will then see how Defendants' access to Steele's composition is undeniable and how they based the entire commercial off of Steele's song. Here are the four blatant temp-tracking examples:

- 19 seconds into the commercial, when Steele sings, "Yawkey Way," the Yawkey Way street sign appears right on cue in the commercial.
- At 42 seconds, when Steele sings about the Detroit "Tigers," the footage clearly shows a ballplayer running the bases; and yes, the ballplayer is in fact wearing a Detroit Tigers uniform.

- At 56 seconds, when Steele sings, “Get up off your seats,” the crowd in the commercial is cheering off their seats.
- From 1:07 – 1:09, three consecutive clips show ballplayers chest butting, displaying their toughness, while Steele sings, “You gotta stay tough.”

Given these four isolated temp-tracking examples within the commercial, it is more than just uncanny that Steele’s baseball anthem matches the exact content of the MLB video clips. It is highly suspicious. And since Steele did send lyrics and sound recordings to Defendants, even showing how his lyrics could be adapted for different cities, the temp-tracking evidence shows further proof of Defendants’ access to Steele’s registered composition.

Knowing that the Defendants based their commercial on Steele’s song answers the question of access, but to claim that Bon Jovi’s “I Love This Town” is substantially similar to Steele’s “Man I Really Love This Team” requires us to compare and contrast the two songs. What elements, if any, were taken from Steele’s composition? Was the heart and soul of Steele’s composition ultimately stolen?

Rhyme scheme is a good place to start. Both songs begin with identical rhyme structures: **A-A-B-B-C-C-C**. This rhyme scheme is the backbone of the two compositions. They also open with the same number of syllables: nine.

Steele: Have / you / heard / the / news / that’s / go / in’ / round

Bon Jovi: I / al / ways / knew / that / I’d / like / that / place

When Steele sings about Boston's historic street, Yawkey "Way," Bon Jovi's sings about feeling alive "walkin' down the street." Though "Way" and "street" do not rhyme by any stretch of the imagination, their lyrical import and meaning are the same. Further, those two words share the same placement in the rhyme structure (opening "B" rhyme). Also, notice how Steele's "Round" appears in Bon Jovi's "C" rhyme. As the song progresses, "Round" becomes a repeated chorus line in Bon Jovi's song. Moreover, Steele's love for his "Team" and Bon Jovi's love for the "Town" appear at the seventh line in the rhyme scheme.

A A B B C C C

Steele's 1st Verse: Round / Bound / Way / Stay / Seats / Scream / ██████

B. Jovi's 1st Verse: Place / Face / Street / Feet / Round / Down / ██████

Steele's bridge employs the use of *anaphora*, the rhetorical device of repetition. He emphasizes that the crowd ("you") has to believe, stay tough, keep the faith, and cowboy up. Bon Jovi's bridge also utilizes anaphora. Just as Steele repeats "you" to excite the crowd, so does Bon Jovi. The familiar chant of "here we go," sung in the last line of Steele's bridge, also surfaces in the last line of Bon Jovi's bridge. Moreover, notice how Steele's "come on" phrase is also used in Bon Jovi's song to raise the level of excitement.

Steele's Bridge

And you got to keep believin'

And you got to stay tough

And you got to keep the faith

And you got to cowboy up

Stand up proud and say it loud, [REDACTED] and let'm know

Say here we go, Red Sox, here we go ... (crowd repeats)

Bon Jovi's Bridge

There's shoutin' from the rooftops

Dancin' on the bars

Hangin' out the windows

Drivin' in their famous cars

You want it? You got it. You ready? I'm on it.

[REDACTED] now, here we go again ...

Given all the aforementioned evidence, combined with the attached rhythmic analysis, I believe Bon Jovi's "I Love This Town" and Steele's "Man I Really Love This Team" are substantially similar.

EX 5



[Respond to this Article](#)

July/August 2004

My Beef With Big Media

How government protects big media--and shuts out upstarts like me.

By Ted Turner

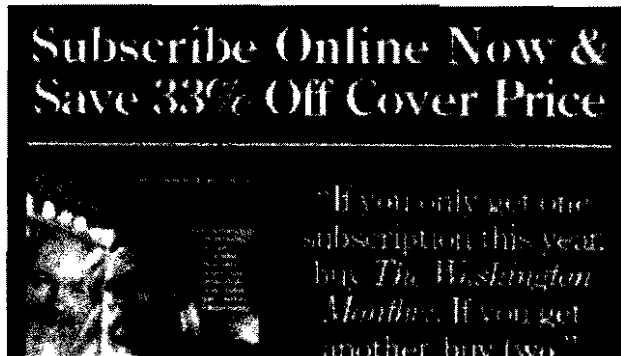
In the late 1960s, when Turner Communications was a business of billboards and radio stations and I was spending much of my energy ocean racing, a UHF-TV station came up for sale in Atlanta. It was losing \$50,000 a month and its programs were viewed by fewer than 5 percent of the market.

I acquired it.

When I moved to buy a second station in Charlotte--this one worse than the first--my accountant quit in protest, and the company's board vetoed the deal. So I mortgaged my house and bought it myself. The Atlanta purchase turned into the Superstation; the Charlotte purchase--when I sold it 10 years later--gave me the capital to launch CNN.

Both purchases played a role in revolutionizing television. Both required a streak of independence and a taste for risk. And neither could happen today. In the current climate of consolidation, independent broadcasters simply don't survive for long. That's why we haven't seen a new generation of people like me or even Rupert Murdoch--independent television upstarts who challenge the big boys and force the whole industry to compete and change.

It's not that there aren't entrepreneurs eager to make their names and fortunes in broadcasting if given the chance. If nothing else, the 1990s dot-com boom showed that the spirit of entrepreneurship is alive and well in America, with plenty of investors willing to put real



money into new media ventures. The difference is that Washington has changed the rules of the game. When I was getting into the television business, lawmakers and the Federal Communications Commission (FCC) took seriously the commission's mandate to promote diversity, localism, and competition in the media marketplace. They wanted to make sure that the big, established networks--CBS, ABC, NBC--wouldn't forever dominate what the American public could watch on TV. They wanted independent producers to thrive. They wanted more people to be able to own TV stations. They believed in the value of competition.



So when the FCC received a glut of applications for new television stations after World War II, the agency set aside dozens of channels on the new UHF spectrum so independents could get a foothold in television. That helped me get my start 35 years ago. Congress also passed a law in 1962 requiring that TVs be equipped to receive both UHF and VHF channels. That's how I was able to compete as a UHF station, although it was never easy. (I used to tell potential advertisers that our UHF viewers were smarter than the rest, because you had to be a genius just to figure out how to tune us in.) And in 1972, the FCC ruled that cable TV operators could import distant signals. That's how we were able to beam our Atlanta station to homes throughout the South. Five years later, with the help of an RCA satellite, we were sending our signal across the nation, and the Superstation was born.

That was then.

Today, media companies are more concentrated than at any time over the past 40 years, thanks to a continual loosening of ownership rules by Washington. The media giants now own not only broadcast networks and local stations; they also own the cable companies that pipe in the signals of their competitors and the studios that produce most of the programming. To get a flavor of how consolidated the industry has become, consider this: In 1990, the major broadcast networks--ABC, CBS, NBC, and Fox--fully or partially owned just 12.5 percent of the new series they aired. By 2000, it was 56.3 percent. Just two years later, it had surged to 77.5 percent.

In this environment, most independent media firms either get gobbled up by one of the big companies or driven out of business altogether. Yet instead of balancing the rules to give independent broadcasters a fair chance in the market, Washington continues to tilt the playing field to favor the biggest players. Last summer, the FCC passed another round of sweeping pro-consolidation rules that, among other things, further raised the cap on the number of TV stations a company can own.

In the media, as in any industry, big corporations play a vital role, but so do small, emerging ones. When you lose small businesses, you lose big ideas. People who own their own businesses are their own bosses. They are independent thinkers. They know they can't compete by imitating the big guys--they have to innovate, so they're less obsessed with earnings than they are with ideas. They are quicker to

seize on new technologies and new product ideas. They steal market share from the big companies, spurring them to adopt new approaches. This process promotes competition, which leads to higher product and service quality, more jobs, and greater wealth. It's called capitalism.

But without the proper rules, healthy capitalist markets turn into sluggish oligopolies, and that is what's happening in media today. Large corporations are more profit-focused and risk-averse. They often kill local programming because it's expensive, and they push national programming because it's cheap--even if their decisions run counter to local interests and community values. Their managers are more averse to innovation because they're afraid of being fired for an idea that fails. They prefer to sit on the sidelines, waiting to buy the businesses of the risk-takers who succeed.

Unless we have a climate that will allow more independent media companies to survive, a dangerously high percentage of what we see--and what we don't see--will be shaped by the profit motives and political interests of large, publicly traded conglomerates. The economy will suffer, and so will the quality of our public life. Let me be clear: As a business proposition, consolidation makes sense. The moguls behind the mergers are acting in their corporate interests and playing by the rules. We just shouldn't have those rules. They make sense for a corporation. But for a society, it's like over-fishing the oceans. When the independent businesses are gone, where will the new ideas come from? We have to do more than keep media giants from growing larger; they're already too big. We need a new set of rules that will break these huge companies to pieces.

The big squeeze

In the 1970s, I became convinced that a 24-hour all-news network could make money, and perhaps even change the world. But when I invited two large media corporations to invest in the launch of CNN, they turned me down. I couldn't believe it. Together we could have launched the network for a fraction of what it would have taken me alone; they had all the infrastructure, contacts, experience, knowledge. When no one would go in with me, I risked my personal wealth to start CNN.

Soon after our launch in 1980, our expenses were twice what we had expected and revenues half what we had projected. Our losses were so high that our loans were called in. I refinanced at 18 percent interest, up from 9, and stayed just a step ahead of the bankers. Eventually, we not only became profitable, but also changed the nature of news--from watching something that happened to watching it as it happened.

But even as CNN was getting its start, the climate for independent broadcasting was turning hostile. This trend began in 1984, when the FCC raised the number of stations a single entity could own from seven--where it had been capped since the 1950s--to 12. A year later, it revised its rule again, adding a national audience-reach cap of 25 percent to the 12 station limit--meaning media companies were prohibited from owning TV stations that together reached more than 25 percent of

the national audience. In 1996, the FCC did away with numerical caps altogether and raised the audience-reach cap to 35 percent. This wasn't necessarily bad for Turner Broadcasting; we had already achieved scale. But seeing these rules changed was like watching someone knock down the ladder I had already climbed.

Meanwhile, the forces of consolidation focused their attention on another rule, one that restricted ownership of content. Throughout the 1980s, network lobbyists worked to overturn the so-called Financial Interest and Syndication Rules, or fin-syn, which had been put in place in 1970, after federal officials became alarmed at the networks' growing control over programming. As the FCC wrote in the fin-syn decision: "The power to determine form and content rests only in the three networks and is exercised extensively and exclusively by them, hourly and daily." In 1957, the commission pointed out, independent companies had produced a third of all network shows; by 1968, that number had dropped to 4 percent. The rules essentially forbade networks from profiting from reselling programs that they had already aired.

This had the result of forcing networks to sell off their syndication arms, as CBS did with Viacom in 1973. Once networks no longer produced their own content, new competition was launched, creating fresh opportunities for independents.

For a time, Hollywood and its production studios were politically strong enough to keep the fin-syn rules in place. But by the early 1990s, the networks began arguing that their dominance had been undercut by the rise of independent broadcasters, cable networks, and even videocassettes, which they claimed gave viewers enough choice to make fin-syn unnecessary. The FCC ultimately agreed--and suddenly the broadcast networks could tell independent production studios, "We won't air it unless we own it." The networks then bought up the weakened studios or were bought out by their own syndication arms, the way Viacom turned the tables on CBS, buying the network in 2000. This silenced the major political opponents of consolidation.

Even before the repeal of fin-syn, I could see that the trend toward consolidation spelled trouble for independents like me. In a climate of consolidation, there would be only one sure way to win: bring a broadcast network, production studios, and cable and satellite systems under one roof. If you didn't have it inside, you'd have to get it outside--and that meant, increasingly, from a large corporation that was competing with you. It's difficult to survive when your suppliers are owned by your competitors. I had tried and failed to buy a major broadcast network, but the repeal of fin-syn turned up the pressure. Since I couldn't buy a network, I bought MGM to bring more content in-house, and I kept looking for other ways to gain scale. In the end, I found the only way to stay competitive was to merge with Time Warner and relinquish control of my companies.

Today, the only way for media companies to survive is to own everything up and down the media chain--from broadcast and cable networks to the sitcoms, movies, and news broadcasts you see on those stations; to the production studios that make them; to the cable, satellite, and broadcast systems that bring the programs to your television set; to the Web sites you visit to read about those programs; to the way

you log on to the Internet to view those pages. Big media today wants to own the faucet, pipeline, water, and the reservoir. The rain clouds come next.

Supersizing networks

Throughout the 1990s, media mergers were celebrated in the press and otherwise seemingly ignored by the American public. So, it was easy to assume that media consolidation was neither controversial nor problematic. But then a funny thing happened.

In the summer of 2003, the FCC raised the national audience-reach cap from 35 percent to 45 percent. The FCC also allowed corporations to own a newspaper and a TV station in the same market and permitted corporations to own three TV stations in the largest markets, up from two, and two stations in medium-sized markets, up from one. Unexpectedly, the public rebelled. Hundreds of thousands of citizens complained to the FCC. Groups from the National Organization for Women to the National Rifle Association demanded that Congress reverse the ruling. And like-minded lawmakers, including many long-time opponents of media consolidation, took action, pushing the cap back down to 35, until--under strong White House pressure--it was revised back up to 39 percent. This June, the U.S. Court of Appeals for the Third Circuit threw out the rules that would have allowed corporations to own more television and radio stations in a single market, let stand the higher 39 percent cap, and also upheld the rule permitting a corporation to own a TV station and a newspaper in the same market; then, it sent the issues back to the same FCC that had pushed through the pro-consolidation rules in the first place.

In reaching its 2003 decision, the FCC did not argue that its policies would advance its core objectives of diversity, competition, and localism. Instead, it justified its decision by saying that there was already a lot of diversity, competition, and localism in the media--so it wouldn't hurt if the rules were changed to allow more consolidation. Their decision reads: "Our current rules inadequately account for the competitive presence of cable, ignore the diversity-enhancing value of the Internet, and lack any sound bases for a national audience reach cap." Let's pick that assertion apart.

First, the "competitive presence of cable" is a mirage. Broadcast networks have for years pointed to their loss of prime-time viewers to cable networks--but they are losing viewers to cable networks that they themselves own. Ninety percent of the top 50 cable TV stations are owned by the same parent companies that own the broadcast networks. Yes, Disney's ABC network has lost viewers to cable networks. But it's losing viewers to cable networks like Disney's ESPN, Disney's ESPN2, and Disney's Disney Channel. The media giants are getting a deal from Congress and the FCC because their broadcast networks are losing share to their own cable networks. It's a scam.

Second, the decision cites the "diversity-enhancing value of the Internet." The FCC is confusing diversity with variety. The top 20 Internet news sites are owned by the same media conglomerates that control the broadcast and cable networks.

Sure, a hundred-person choir gives you a choice of voices, but they're all singing the same song.

The FCC says that we have more media choices than ever before. But only a few corporations decide what we can choose. That is not choice. That's like a dictator deciding what candidates are allowed to stand for parliamentary elections, and then claiming that the people choose their leaders. Different voices do not mean different viewpoints, and these huge corporations all have the same viewpoint-- they want to shape government policy in a way that helps them maximize profits, drive out competition, and keep getting bigger.

Because the new technologies have not fundamentally changed the market, it's wrong for the FCC to say that there are no "sound bases for a national audience-reach cap." The rationale for such a cap is the same as it has always been. If there is a limit to the number of TV stations a corporation can own, then the chance exists that after all the corporations have reached this limit, there may still be some stations left over to be bought and run by independents. A lower limit would encourage the entry of independents and promote competition. A higher limit does the opposite.

Triple blight

The loss of independent operators hurts both the media business and its citizen-customers. When the ownership of these firms passes to people under pressure to show quick financial results in order to justify the purchase, the corporate emphasis instantly shifts from taking risks to taking profits. When that happens, quality suffers, localism suffers, and democracy itself suffers.

Loss of Quality

The *Forbes* list of the 400 richest Americans exerts a negative influence on society, because it discourages people who want to climb up the list from giving more money to charity. The Nielsen ratings are dangerous in a similar way-- because they scare companies away from good shows that don't produce immediate blockbuster ratings. The producer Norman Lear once asked, "You know what ruined television?" His answer: when The New York Times began publishing the Nielsen ratings. "That list every week became all anyone cared about."

When all companies are quarterly earnings-obsessed, the market starts punishing companies that aren't yielding an instant return. This not only creates a big incentive for bogus accounting, but also it inhibits the kind of investment that builds economic value. America used to know this. We used to be a nation of farmers. You can't plant something today and harvest tomorrow. Had Turner Communications been required to show earnings growth every quarter, we never would have purchased those first two TV stations.

When CNN reported to me, if we needed more money for Kosovo or Baghdad, we'd find it. If we had to bust the budget, we busted the budget. We put journalism first, and that's how we built CNN into something the world wanted to watch. I had the power to make these budget decisions because they were my companies. I

was an independent entrepreneur who controlled the majority of the votes and could run my company for the long term. Top managers in these huge media conglomerates run their companies for the short term. After we sold Turner Broadcasting to Time Warner, we came under such earnings pressure that we had to cut our promotion budget every year at CNN to make our numbers. Media mega-mergers inevitably lead to an overemphasis on short-term earnings.

You can see this overemphasis in the spread of reality television. Shows like "Fear Factor" cost little to produce--there are no actors to pay and no sets to maintain--and they get big ratings. Thus, American television has moved away from expensive sitcoms and on to cheap thrills. We've gone from "Father Knows Best" to "Who Wants to Marry My Dad?", and from "My Three Sons" to "My Big Fat Obnoxious Fiance."

The story of Grant Tinker and Mary Tyler Moore's production studio, MTM, helps illustrate the point. When the company was founded in 1969, Tinker and Moore hired the best writers they could find and then left them alone--and were rewarded with some of the best shows of the 1970s. But eventually, MTM was bought by a company that imposed budget ceilings and laid off employees. That company was later purchased by Rev. Pat Robertson; then, he was bought out by Fox. Exit "The Mary Tyler Moore Show." Enter "The Littlest Groom."

Loss of localism

Consolidation has also meant a decline in the local focus of both news and programming. After analyzing 23,000 stories on 172 news programs over five years, the Project for Excellence in Journalism found that big media news organizations relied more on syndicated feeds and were more likely to air national stories with no local connection.

That's not surprising. Local coverage is expensive, and thus will tend to be a casualty in the quest for short-term earnings. In 2002, Fox Television bought Chicago's Channel 50 and eliminated all of the station's locally produced shows. One of the cancelled programs (which targeted pre-teens) had scored a perfect rating for educational content in a 1999 University of Pennsylvania study, according to *The Chicago Tribune*. That accolade wasn't enough to save the program. Once the station's ownership changed, so did its mission and programming.

Loss of localism also undercuts the public-service mission of the media, and this can have dangerous consequences. In early 2002, when a freight train derailed near Minot, N.D., releasing a cloud of anhydrous ammonia over the town, police tried to call local radio stations, six of which are owned by radio mammoth Clear Channel Communications. According to news reports, it took them over an hour to reach anyone--no one was answering the Clear Channel phone. By the next day, 300 people had been hospitalized, many partially blinded by the ammonia. Pets and livestock died. And Clear Channel continued beaming its signal from headquarters in San Antonio, Texas--some 1,600 miles away.

Loss of democratic debate

When media companies dominate their markets, it undercuts our democracy.

Justice Hugo Black, in a landmark media-ownership case in 1945, wrote: "The First Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."

These big companies are not antagonistic; they do billions of dollars in business with each other. They don't compete; they cooperate to inhibit competition. You and I have both felt the impact. I felt it in 1981, when CBS, NBC, and ABC all came together to try to keep CNN from covering the White House. You've felt the impact over the past two years, as you saw little news from ABC, CBS, NBC, MSNBC, Fox, or CNN on the FCC's actions. In early 2003, the Pew Research Center found that 72 percent of Americans had heard "nothing at all" about the proposed FCC rule changes. Why? One never knows for sure, but it must have been clear to news directors that the more they covered this issue, the harder it would be for their corporate bosses to get the policy result they wanted.

A few media conglomerates now exercise a near-monopoly over television news. There is always a risk that news organizations can emphasize or ignore stories to serve their corporate purpose. But the risk is far greater when there are no independent competitors to air the side of the story the corporation wants to ignore.

More consolidation has often meant more news-sharing. But closing bureaus and downsizing staff have more than economic consequences. A smaller press is less capable of holding our leaders accountable. When Viacom merged two news stations it owned in Los Angeles, reports *The American Journalism Review*, "field reporters began carrying microphones labeled KCBS on one side and KCAL on the other." This was no accident. As the Viacom executive in charge told *The Los Angeles Business Journal*: "In this duopoly, we should be able to control the news in the marketplace."

This ability to control the news is especially worrisome when a large media organization is itself the subject of a news story. Disney's boss, after buying ABC in 1995, was quoted in *LA Weekly* as saying, "I would prefer ABC not cover Disney." A few days later, ABC killed a "20/20" story critical of the parent company.

But networks have also been compromised when it comes to non-news programs which involve their corporate parent's business interests. General Electric subsidiary NBC Sports raised eyebrows by apologizing to the Chinese government for Bob Costas's reference to China's "problems with human rights" during a telecast of the Atlanta Olympic Games. China, of course, is a huge market for GE products.

Consolidation has given big media companies new power over what is said not just on the air, but off it as well. Cumulus Media banned the Dixie Chicks on its 42 country music stations for 30 days after lead singer Natalie Maines criticized President Bush for the war in Iraq. It's hard to imagine Cumulus would have been so bold if its listeners had more of a choice in country music stations. And Disney recently provoked an uproar when it prevented its subsidiary Miramax from

distributing Michael Moore's film *Fahrenheit 9/11*. As a senior Disney executive told *The New York Times*: "It's not in the interest of any major corporation to be dragged into a highly charged partisan political battle." Follow the logic, and you can see what lies ahead: If the only media companies are major corporations, controversial and dissenting views may not be aired at all.

Naturally, corporations say they would never suppress speech. But it's not their intentions that matter; it's their capabilities. Consolidation gives them more power to tilt the news and cut important ideas out of the public debate. And it's precisely that power that the rules should prevent.

Independents' day

This is a fight about freedom--the freedom of independent entrepreneurs to start and run a media business, and the freedom of citizens to get news, information, and entertainment from a wide variety of sources, at least some of which are truly independent and not run by people facing the pressure of quarterly earnings reports. No one should underestimate the danger. Big media companies want to eliminate all ownership limits. With the removal of these limits, immense media power will pass into the hands of a very few corporations and individuals.

What will programming be like when it's produced for no other purpose than profit? What will news be like when there are no independent news organizations to go after stories the big corporations avoid? Who really wants to find out? Safeguarding the welfare of the public cannot be the first concern of a large publicly traded media company. Its job is to seek profits. But if the government writes the rules in a way that encourages the entry into the market of entrepreneurs--men and women with big dreams, new ideas, and a willingness to take long-term risks--the economy will be stronger, and the country will be better off.

I freely admit: When I was in the media business, especially after the federal government changed the rules to favor large companies, I tried to sweep the board, and I came within one move of owning every link up and down the media chain. Yet I felt then, as I do now, that the government was not doing its job. The role of the government ought to be like the role of a referee in boxing, keeping the big guys from killing the little guys. If the little guy gets knocked down, the referee should send the big guy to his corner, count the little guy out, and then help him back up. But today the government has cast down its duty, and media competition is less like boxing and more like professional wrestling: The wrestler and the referee are both kicking the guy on the canvas.

At this late stage, media companies have grown so large and powerful, and their dominance has become so detrimental to the survival of small, emerging companies, that there remains only one alternative: bust up the big conglomerates. We've done this before: to the railroad trusts in the first part of the 20th century, to Ma Bell more recently. Indeed, big media itself was cut down to size in the 1970s, and a period of staggering innovation and growth followed. Breaking up the reconstituted media conglomerates may seem like an impossible task when their

grip on the policy-making process in Washington seems so sure. But the public's broad and bipartisan rebellion against the FCC's pro-consolidation decisions suggests something different. Politically, big media may again be on the wrong side of history--and up against a country unwilling to lose its independents.

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Ex K

BART STEELE
09/29/04
"I Love This Team"

Have You heard the news that's goin' round
Our hometown team is series bound
And the word is out on Yawkey Way
Our boys in red have come to play

[CHORUS]

Get up off your seats,
E-very-body scream
Man I really love this team

V-2 —
The Yankees, Ryals and the Rays,
The Tigers, Rangers and The Jays
Just ask Rem-Dawg in the box
Anyone will tell you Boston Rocks

Get up off your seats
E-very-body scream
Man I really love this team



[GUITAR SOLO]

V-3 —
From Lansdown Street to Pesky's Pole
From Cooperstown in days of old
Feel that spirit far and near
Those Fenway fans begin to cheer

[REPEAT x3]

Get up off your seats
E-very-body scream
Man I really love this team

BON JOVI
06/19/07
"I Love This Town"

I always knew, that I'd like this place
You don't have to look too far, to find a friendly face
I feel alive when I'm walkin' on this street
I feel the heart of the city poundin' underneath my feet

[CHORUS]

Yeahhhhh let the world keep spinnin round h' round
This is where it all goes down, down, down
That's why I, love this town
That's why I, keep co-sin' round

Say hey (say hey) say yeah (say yeah)
You make me feel at home some how, ight, now
That's why I, love this town

[GUITAR SOLO]



That's why I, love this town
That's why I, love this town

No matter where you're from, tonight you're from right here
This is where it all goes down, down, down
That's why I, love this town

Say hey (say hey) say yeah (say yeah)
I love this town

Ex J

BART JOVI
??/??/?? (ask TBS when)
"I Love This Team"

Have You heard the news thats goin' round
Our Hometown team is series bound
And the word is out on Yawkey Way
Our boys in red have come to play

[CHORUS]
Get up off your seats everybody scream
Man I really love this team
Man I really love this team
Man I really love this team

(Add 1 Bar for tension)

Say (Here we go Red Sox here we go)
Man I really love this team
Man I really love this team

(Add 1 Bar for tension)

[exactly 1/2 GUITAR SOLO]



(Bart Adds) * one bar here

Man I really love this team
Man I really love this team

Get up off your seats everybody scream
Man I really love this team
Man I really love this team

(Add 1 Bar for tension)

Say (Here we go Red Sox here we go)
Man I really love this team

BON JOVI
06/19/07
"I Love This Town"

I always knew, that I'd like this place
You don't have to look too far, b find a friendly face
I feel alive when I'm walkin' on this street
I feel the heart of the city poundin' underneath my feet

[CHORUS]
Yeahhhhh let the world keep spinnin round it sound
This is where it all goes down, down, down
That's why I, love this town
That's why I, keep coming round

(Add 1 Bar)

Say hey (say hey) say yeah (say yeah)
You make me feel at home some how, ight, now
That's why I, love this town

[GUITAR SOLO]



(Added Bar)

That's why I, love this town
That's why I, love this town

No matter where you're from, tonight you're from right here
This is where it all goes down, down, down
That's why I, love this town

(Added Bar)

Say hey (say hey) say yeah (say yeah)
I love this town



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Brand attitudes improve when paired with a favorable endorser

September 30 2008 PPN Staff

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According to a study performed by ScienceDaily, a consumer's fondness for an artist's music is directly proportional to the consumer's fondness for the products placed in the artist's music/music video. That was the conclusion of a research article recently conducted by Psychology and Marketing.

Recently, it has been unveiled that the collaboration between rap artists Puff Daddy and Busta Rhymes for the hip-hop song titled "Pass the Courvoisier Part Two," is indeed a product placement. After the song's release in 2001, Courvoisier cognac had a sales increase of 20 percent.

As seen in Science Daily,

That phenomenon got a team of researchers and senior author Christian Schemer thinking about how consumers process brand information presented to them in spot

advertising versus how consumers process brand-related information when it is presented in the course of programming (such as music videos).

The researchers found that product placements in videos are potentially harmful, and at the same time potentially beneficial. On one hand, positive feelings can be transferred to the brand (far better than traditional advertising). Plus, music is a universal language, this means that brands will be exposed and understood around the globe, this is most especially beneficial to globally distributed products.

On the other hand, rap videos are not always known to produce positive feelings, especially for parents. Lyrics play a key role here. When rap artists start blurting profanity, parents are not going to like it—hence, it will produce negative sentiments about the brands mentioned in the song.

Product Placement & Branded Entertainment News

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