

# Living Down Stream

BOBBY ALGER, 5 March 2018. Edited 3 April 2018.

In 1982, Prince prophetically released the album that sealed his superstardom. “I’m gonna party like it’s nineteen ninety-nine,” the extravagant pop star proclaimed, backed by trademark synth sounds. The foretold 1999 would see recorded music revenue reach the highest point it ever had<sup>1</sup>, and – thanks to the internet – likely the highest it ever will.

In the digital age of instant access and if-not-free-close-to-it, the American music industry, and perhaps our culture itself, needs governmental help to survive.

## A Drowning Industry

On 24 Jan. 2018, Senator Orrin Hatch (R-Utah) introduced the Music Modernization Act to Congress.<sup>2</sup> The bill reforms section 115 of the Copyright Act and allows the Copyright Royalty Board (CRB) to change royalty rates to match market value.<sup>3</sup>

You should support this bill because it is the first step towards protecting the ecology of creativity that has flourished and defined the American culture for the last several decades.

## Keeping Freedom Current

The Founding Fathers knew the importance of intellectual property. Article I, Section 8, Clause 8 of the U.S. Constitution says that “Congress shall have power . . . to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

Congress introduced the Copyright Act in 1790 – it was the tenth act passed by our young country’s congress. The first major revision to the Copyright Act was in 1909 with the express purpose of paying composers their fair share.<sup>4</sup> It’s important to note that the first standardized music recording and playback technology – the phonograph record – emerged around 1925, 16 years after the law was codified.<sup>5</sup>

The Copyright Act was once again updated in 1976 and introduced Section 107, commonly known as the “fair use clause,” which allows teachers to use segments of music, books, and other media to teach, but the rules governing royalties remain antiquated.<sup>6</sup> The Music Modernization Act aims to update these laws.

However, before looking at individual artists, let’s consider collectively the shifting trends in the music industry.

## From Boom to Bust

The Recording Industry Association of America (RIAA) reported a staggering \$14.6 billion (\$21.0 billion, adjusted for inflation) revenue for recorded music in 1999. Fewer than two decades later, that number has dropped to \$7.6 billion.<sup>7</sup>

CDs provided nearly 88% of revenue in 1999, with the dying cassette tape bringing the next highest portion at 7%. In contrast, 2016 saw a much wider distribution of formats – the largest market share attributed to paid subscriptions (such as Spotify and Apple Music) at 30%, CDs holding on at 15%, and downloaded singles at 12%.<sup>8</sup>

The convenience of music today is remarkable, and the death of the CD should not be mourned. In fact, the continuing shift to the internet and cloud computing means that we will likely never see recorded music dominated by a physical medium again. However, as Chris Anderson asserts in his book *Free: The Future of Radical Price*, when there is not cost of physical product (when marginal cost is zero), economics dictate that the price of a product will approach – and eventually reach – \$0.00.<sup>9</sup>

Though we cannot blame the internet for slashing music revenues by nearly two-thirds, we can demarcate some of the critical events and cultural shifts that guided the music industry to where it is today. Let’s investigate two groups: **Pirates and Swindlers.**

# Revenue 1999

# 2016

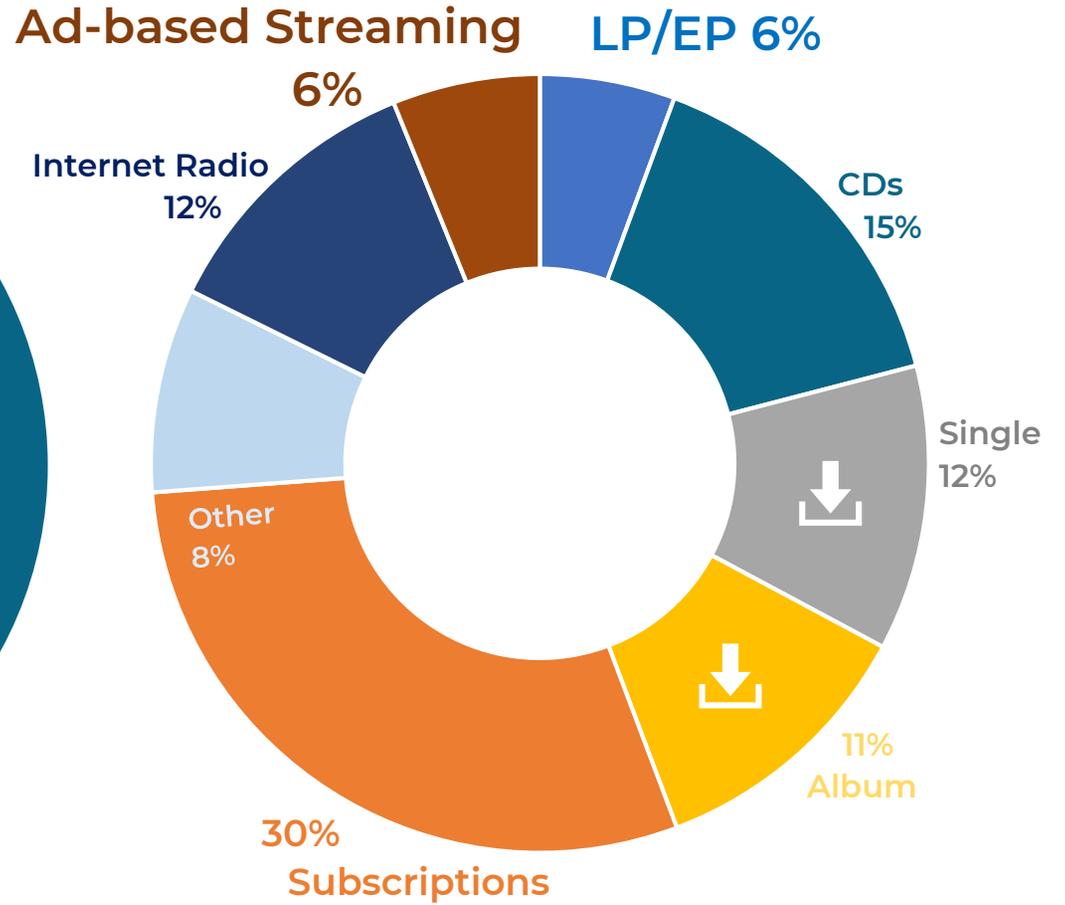
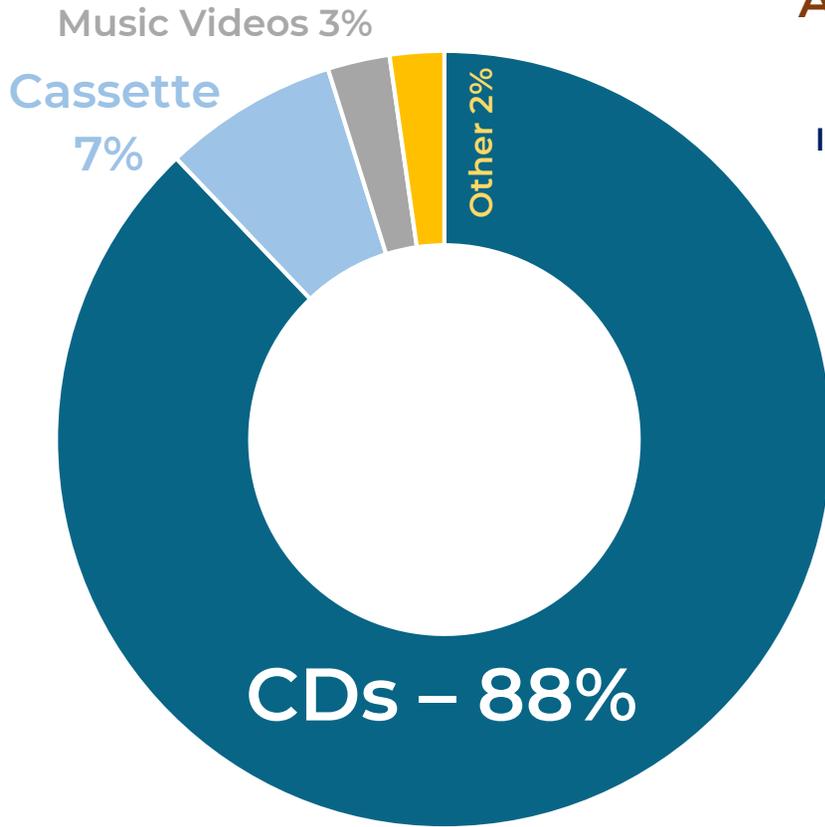


Figure 1 - Source: RIAA; An industry previously dominated by CDs is evolving as artists struggle to breakeven by monetizing any and all current platforms. Note that in 2016, LP/Eps (vinyl records) produced - \$430 million - almost as much revenue as all ad-supported (free-tier) streaming services - \$469 million.

# Raiders and the Lost Arts

The internet was created with the hope of ultimate democratization. However, the world wide web became as lawless as the wild west, full of plundering and moral ambiguity.

## The First Pirates

Sean Parker was an unassuming, asthma-ridden kid from Virginia. His dad, an oceanographer, introduced Sean to programming at a young age.<sup>10</sup>

While still in high school, Parker's home was raided by the F.B.I. after Sean was caught dabbling in the computer mainframes of an unnamed Fortune 500 company.<sup>11</sup>

Sean would become one of the wealthiest – and most disputed – figures of the digital age.

In 1999, Sean teamed up with programmer Shawn Fanning to create Napster, a file-sharing service that was the beginning of the end for the golden age of CDs.

Used primarily by college students with access to the developing university network we now know as the internet, the service allowed anyone who had access to any form of content (music, movies, textbooks) to share that content with anyone else on the site. The bandwidth required for large media such as movies hadn't developed yet, and printers were still relatively expensive, so the most trafficked content was music.

Everybody owned CDs and now everybody could, surreptitiously, own everybody else's CDs too.

Scott Timberg, author of *Culture Crash: The Killing of the Creative Class*, convincingly argues that record labels are partly to blame for their own implosion – they neglected to change their business model to match the consumers' needs.<sup>12</sup> However, the fact is that a lot of users – up to 21 million – probably got away with theft.

I asked Jimmy Alger, a student during the heyday of Napster, how ubiquitous the file sharing was. He stated frankly, "everyone had Napster. It's just the way everyone got music. And once that went down, everyone got Kazaa [another file-sharing application]. And when that went down, Limewire [sic]."<sup>13</sup> File-sharing was the *de facto* method to obtain music.

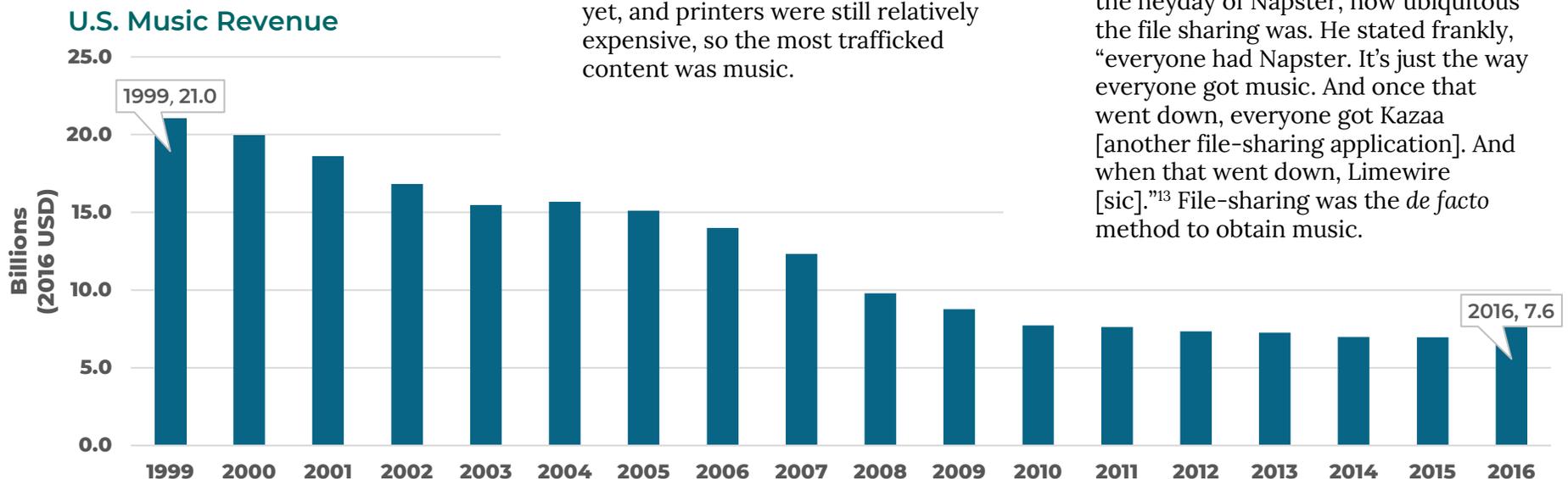


Figure 2 - Source: RIAA

So how did these companies run these smuggling operations in *broad daylight*?

## A Safe Harbor

In 1996, President Clinton signed into law the Digital Millennium Copyright Act (DMCA) to enact two treaties established by the World Intellectual Property Organization (WIPO) – an agency of the United Nations. The constituent Online Copyright Infringement Liability Limitation Act, commonly known as the “safe harbor clause”, has proven a flash point for almost all major online service providers.

Sean Parker and the Napster team came under fire in 2000 during a lawsuit famously led by Lars Ulrich, the drummer for the band Metallica. Ulrich discovered an unreleased song was being shared on Napster illegally, as well as the band’s entire discography available for free download.<sup>14</sup> The dispute was settled out of court but opened the door to a whole slew of litigation from the RIAA, A&M Records, Dr. Dre, and others.<sup>15</sup>

Parker’s defense was based around the safe harbor clause in the DMCA: he claimed his platform wasn’t responsible for policing what users share. Though eventually Napster succumbed to legal pressures, Parker and his brainchild set a precedent for almost all other forms of digital piracy today.<sup>16</sup>

## Legal Loopholes

YouTube is an excellent example of legal piracy.

YouTube is owned by Google (which is owned by Alphabet which is owned by stockholders). Google sells advertisements. Google sells *a lot* of advertisements. Google’s revenue soared to \$32 billion in 2017, a 15% increase from the year prior.<sup>17</sup>

Because advertisers pay top dollar for large view counts, YouTube has a strong incentive to maximize views. To the view count algorithm, the uploader is irrelevant; whether the content is a music video uploaded by the original artist, or an adoring fan from a foreign country – if the video drives website traffic, it produces revenue.

For copyright infringement, YouTube’s argument is basically the same as Napster’s: under the DMCA, the platform (YouTube.com) is not liable for the content that users put up; policing efforts are the charge of the copyright holder.<sup>18</sup>

At its peak,

# Napster

had approximately

# 21 million

users.

How many were

# unwitting

# accomplices?

YouTube provides quick access to file a copyright infringement complaint but does nothing to keep that content from being reuploaded immediately after.

The minds at YouTube hide behind the fact that every minute, 300 hours of video are uploaded to the YouTube servers – checking all this content would be costly, if not impossible.<sup>19</sup> However, not only is it possible, but YouTube is *quite good* at filtering videos and regularly screens videos.

## The Doubloon Standard

After backlash for hosting videos of the extremist Islamic State (ISIS), YouTube – and even Facebook – implemented systems to screen for extremist videos.<sup>20</sup>

Why? American users felt threatened and traffic decreased. Decreased traffic equates to fewer ad views. Fewer views means less revenue.

Noticeably, YouTube also does not host pornographic videos or extremely violent videos. The technology to screen content is available, but the money from the ad traffic must be too tantalizing to turn down.

# Daylight Robbery

Ultimately, the U.S. Department of Justice has ruled that under the current laws, YouTube's morally questionable model falls within the bounds of legality.<sup>21</sup> Congress is taking no immediate action to amend the DMCA or its safe harbor clause, but congressmembers should consider future reform.

But what about artist-uploaded content? Pirating is rampant at sea, but swindlers extort through legal means at every port.

## Swindlers and False Profits

YouTube lauds the normality of its superstars. The Swedish gamer PewDiePie rolled in around \$15 million in 2016<sup>22</sup> – anybody can play games, right?

In 2009, *Business Insider* reported that 52.6% of YouTube videos have fewer than 500 views, while around 0.3% have greater than 1 million.<sup>23</sup> Seven years later, *Barron's* reported that 1% of YouTube videos produce 93% of views.<sup>24</sup>

Now, consider that YouTube pays around \$2 for every 1000 views – or in other words around \$0.002 per view.<sup>25</sup> Videos that hit one million views (or 0.3% of videos) make roughly \$2,000. Minimum wage is around \$1,260 a month, so a successful video can turn a reasonable profit, though it's hardly comfortable, particularly for artists living in New York or California.

## The Lowering Middle Class

Now, I've specifically hounded YouTube and the sustainability for artists and content creators. Nevertheless, I daily enjoy the convenience of YouTube for a plethora of my entertainment needs; I just choose to stick to other platforms to listen to music.

However, the current rates for artists on streaming platforms are only marginally better than those of YouTube. Senator Hatch introduced the Music Modernization Act to help those whom Scott Timberg calls the “middle class creatives.”<sup>26</sup>

**The Music  
Modernization Act is  
to help the “middle  
class creatives.”**

A 2012 study conducted by the Future of Music Coalition concluded that median gross revenue for musicians was \$34,455.<sup>27</sup> This puts musicians 15% below the 2012 median per capita income reported by the U.S. Bureau of Labor Statistics, \$40,534.<sup>28</sup> Keep in mind that this number does not include expenses related to touring, instruments, or recording.

Of course, superstars in the music industry make enough to drive fancy cars and own multimillion-dollar homes like those featured on MTV's *Cribs*. But these personalities are the exception, not the rule. These are music's 1%.

## A Necessary Evil

Progenitors of the internet lauded the democratization and decentralization made possible through the network; “information wants to be free” was the rallying cry of the forward-thinkers of the day.<sup>29</sup> For the music industry, that meant that the behemoths that controlled the business – the record labels – would fall.

Contracts between labels and artists usually end up giving the label 50% of revenue. Of the remaining revenue, 30% goes to distributor (record shops and book stores), and the artist gets the remaining 20%.<sup>30</sup> At first glance, this seems like extortion of industrial-age proportions.

Nonetheless, Timberg notes that despite the hype about self-releasing music, artists without record deals averaged around \$26,500 gross revenue yearly – 24% less than the music industry median.<sup>31</sup> Record labels are expensive, but they take care of promotion, production, distribution, and legal matters; they allow the artist to “be quiet” and focus on the product.<sup>32</sup>

What’s more, record labels promote the ecology of music by reinvesting in other artists. Labels function as venture capitalists, funding recording projects and tours for new acts all the time.

Jonathan Taplin, director of the Annenberg Innovation Lab at USC and author of *Move Fast and Break Things*, notes the parallels of Renaissance creativity and organizations of artists today. Taplin asserts that proximity was crucial for artists such as Michelangelo, Botticelli, and da Vinci, who all lived in Florence, Italy around the same time.<sup>33</sup> Record labels foster similar creative collaboration.

## More People, Smaller Pie

Though record labels will likely need to restructure to survive, they still play an important role in royalty collections, especially considering the contract between Sony Music and Spotify.<sup>34</sup>

So how do streaming services like Spotify and Apple Music affect artists?

Let’s ignore the heyday of CDs – when a consumer who liked a single song on an album was forced to buy a \$15 disk – and compare individual song *purchases* and *streams*.

The Utah-based band Fictionist sells its song *Free Spirit* through the iTunes store for \$0.99 – \$1.29. Apple takes a 30% cut, its label Atlantic Records (whom the band has recently split with) takes its cut of 47%.<sup>35</sup> That leaves 23% of the revenue for the four band members and their families. To net \$1,000 as a group, they need to sell anywhere from 3.3 thousand to 4.3 thousand songs.

Contrast this with the streaming model: Spotify pays \$0.0060 – \$0.0084 per stream. Spotify only keeps a 25% cut, but Atlantic Records knows that streaming is less lucrative and consequently takes a 55% chunk.<sup>36</sup> This leaves the band with around 20% of the revenue. For Fictionist to make \$1,000, *Free Spirit* needs to be streamed a whopping **525.2 thousand** times by premium users or **833.3 thousand** times by free tier, ad-funded subscribers. Figure 3 represents the magnitude of difference between the two models.

Chris Anderson argues that such low prices were inevitable, saying that as the supply of information grows, the cost will become too low to matter.<sup>37</sup> But as Lord Darlington quips in Oscar Wilde’s *Lady Windemere’s Fan*, “A cynic knows the price of everything and the value of nothing.”

Will a price-centric internet kill music?

The music industry, content creators, and our culture itself needs governmental – and your – help to survive.

## Hope in Democracy

Culture, especially in America, is in constant flux. The asceticism of the 50s led to the sexual revolution of the 60s; the arena-rock era of the 80s invited the punk/grunge scene of the 90s.

Culture changes and laws should follow suit. The Google/YouTube lobbying budget (in excess of \$18 million)<sup>38</sup> will not be silenced easily, but America needs reform, especially the copyright royalty laws and the safe harbor clause of the DMCA.

Though the bureaucratic process is slow, it constitutes a crucial element of the moldable American republic we’re a part of today. The Music Modernization Act is perhaps the first of many steps to guaranteeing a future for music, but it’s an important one.

Contact your state representative today and encourage them to support the Music Modernization Act; you can find your representative’s contact information by visiting [www.house.gov](http://www.house.gov) and searching your zip code.

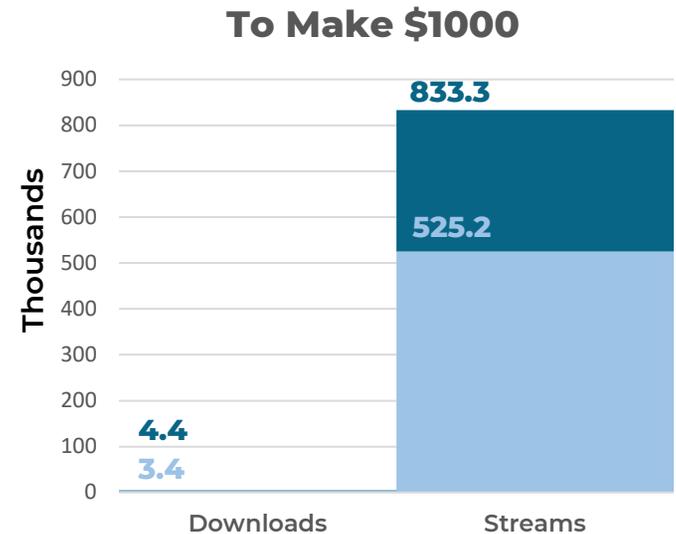


Figure 3 - Source: Rolling Stone, Spotify.com

# NOTES

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<sup>1</sup> Recording Industry Association of America. 2018. *RIAA Sales Database*. Accessed February 28, 2018. <http://www.riaa.com/u-s-sales-database/>.

<sup>2</sup> The office of Sen. Christopher Coons, D-Delaware. 2018. "Senators introduce "most significant change in music licensing laws in decades" to ensure songwriters are paid fair value for their songs." *Christopher Coons: United States Senator for Delaware*. January 24. Accessed February 21, 2018. <https://www.conns.senate.gov/newsroom/press-releases> .

<sup>3</sup> The office of Congressman Ted Lieu, D-California. 2018. "Overview of the Music Modernization Act." *United States Representative Ted Lieu: Representing California's 33rd District*. February. Accessed March 4, 2018. <https://lieu.house.gov/>.

<sup>4</sup> Association of Research Libraries. n.d. Association of Research Libraries. Accessed February 21, 2018. <http://www.arl.org/focus-areas/copyright-ip/2486-copyright-timeline>. In particular, the quotation under the header "1909: Revision of the U.S. Copyright Act."

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<sup>6</sup> Association of Research Libraries. n.d. Association of Research Libraries. Accessed February 21, 2018. <http://www.arl.org/focus-areas/copyright-ip/2486-copyright-timeline>.

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<sup>9</sup> Anderson, Chris. *Free: The Future of Radical Price*. (New York: Hyperion. 2009), 82-84

<sup>10</sup> Kirkpatrick, David. "With a Little Help From His Friends." *Vanity Fair*, October, 2010.

<sup>11</sup> Kirkpatrick, David. "With a Little Help From His Friends." *Vanity Fair*, October, 2010.

<sup>12</sup> Timberg, Scott. *Culture Crash: The Killing of the Creative Class*. (New Haven and London: Yale University Press, 2015), 104-105

<sup>13</sup> Jimmy Alger in discussion with the author, March 2018.

<sup>14</sup> United States Senate Committee on the Judiciary. 2000. "Testimony of Mr. Lars Ulrich: Member and Co-founder Metallica." Hearing Proceedings. Archived from the original on November 29, 2007. Accessed 3 April 2018.

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<sup>15</sup> Taplin, Jonathan. *Move Fast and Break Things*. (New York City: Little, Brown and Company. 2017), 89-97.

<sup>16</sup> Taplin, Jonathan. *Move Fast and Break Things*. (New York City: Little, Brown and Company. 2017), 184-189; see also Timberg, Scott. *Culture Crash: The Killing of the Creative Class*. (New Haven and London: Yale University Press, 2015), 97-108

<sup>17</sup> Shaban, Hamza. "Google parent Alphabet reports soaring ad revenue, despite YouTube backlash." *The Washington Post*, February 1, 2018.

<sup>18</sup> Taplin, Jonathan. *Move Fast and Break Things*. (New York City: Little, Brown and Company. 2017), 182-186; see also <https://www.youtube.com/yt/about/copyright>

<sup>19</sup> Taplin, Jonathan. *Move Fast and Break Things*. (New York City: Little, Brown and Company. 2017), 184-186; Need additional stats

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- <sup>20</sup> Reuters. "Facebook and YouTube use automation to remove extremist videos, sources say." *The Guardian*, June 25, 2016.
- <sup>21</sup> *Viacom International Inc. v. YouTube, Inc.* 676 F.3d 19 (NY 2012)
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- <sup>28</sup> Bureau of Labor Statistics. 2014. *TED: The Economics Daily*. United States Department of Labor.
- <sup>29</sup> Anderson, Chris. *Free: The Future of Radical Price*. (New York: Hyperion. 2009), 94-95. (Taplin, Move Fast and Break Things 2017)
- <sup>30</sup> Knopper, Steve. "The New Economics of the Music Industry." *Rolling Stone*, October 25, 2011.
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- <sup>34</sup> Singleton, Micah. "This was Sony Music's contract with Spotify." *The Verge*, May 15, 2015.; the full contract is available in PDF format on several file-sharing websites (patterned after Napster).
- <sup>35</sup> Knopper, Steve. "The New Economics of the Music Industry." *Rolling Stone*, October 25, 2011.
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- <sup>38</sup> Shaban, Hamza. "Google for the first time outspent every other company to influence Washington in 2017." *The Washington Post*, January 23, 2018.

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