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Pay for Play: An Old Tactic in a New Environment

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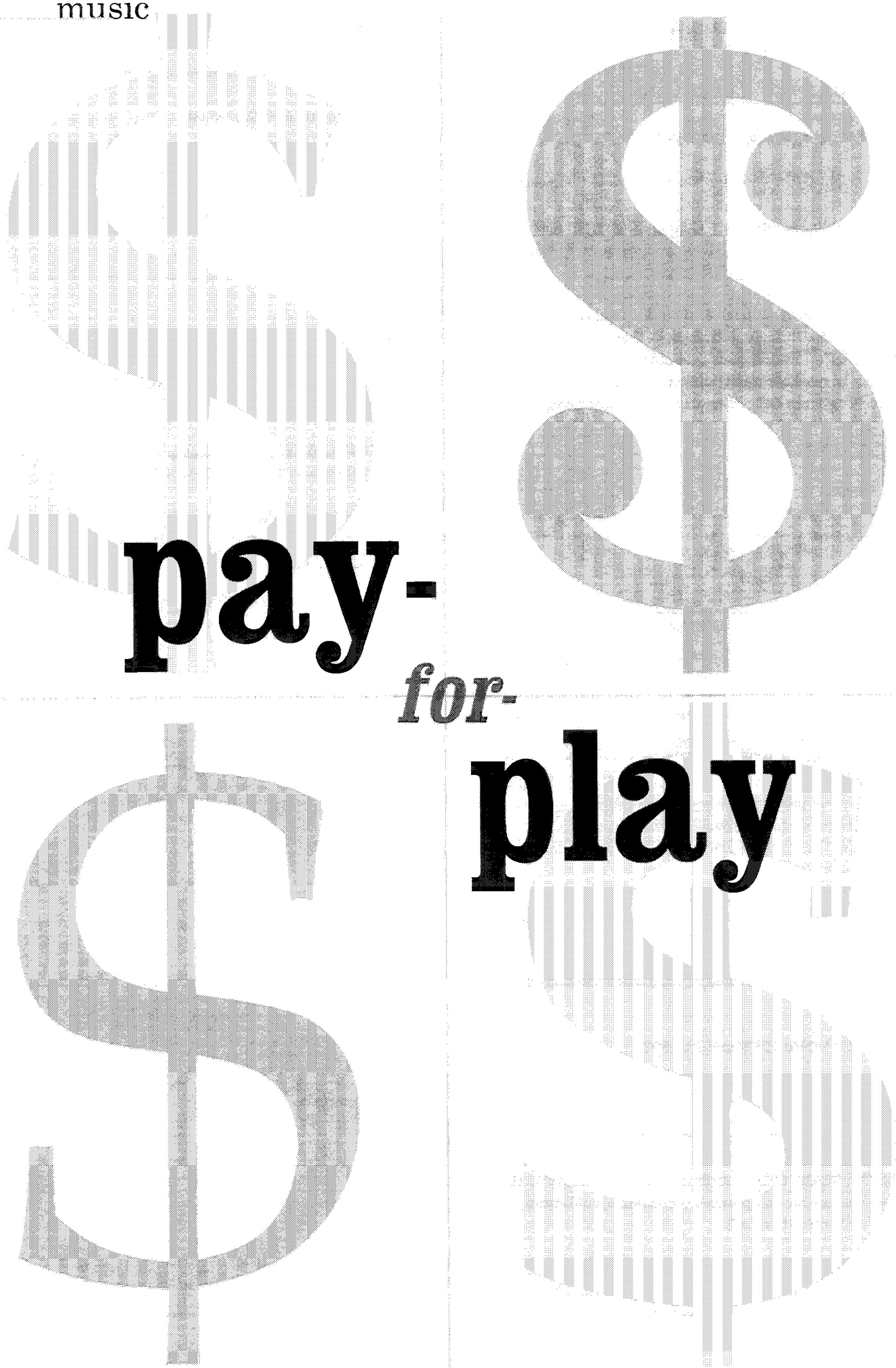

pay-*for*-play

an old tactic in a new environment

By Douglas Abell

In the late 1980s, artists such as Bruce Springsteen and Prince were on top of the music world.[1] Some radio stations, however, were playing their music for reasons other than quality or popularity.[2] Independent record promoters supplied radio programmers with cocaine, prostitutes, and hundreds of thousands of dollars in exchange for airplay for these and other artists.[3] Such illicit deals may seem inconceivable to easy listeners, but, in the high stakes music industry, songs must get airplay if artists and record labels are to survive.

For record labels, radio is the most powerful promotional tool to sell albums.[4] Many people buy albums based solely on what they hear on the radio.[5] Radio airplay's link to album sales provides record labels powerful incentives to ensure broadcast of their songs. Accordingly, record labels devise various marketing and promotional strategies to secure radio station airplay. Such tactics range from T-shirt giveaways, contests, and free concerts offered in conjunction with radio stations to paid vacations, cash, and even illegal goods provided to radio programmers. In all of these promotional practices, the goal is the same: gain exposure for a song by promising radio stations greater revenues, increased listenership, and untraceable kickbacks for programmers.

Despite the prevalence of these practices, promotional strategies involving payola — the payment of cash, drugs, or any other consideration to radio stations and their employees in exchange for airplay — are generally illegal under federal law. Theoretically, these laws prohibit only *undisclosed* payola practices. Payola scandals of the late 1980s, however, illustrate that such practices have not ended.[6] In fact, the Telecommunications Act of 1996 (the "Act") created an environment in which pay-for-play, a *disclosed* and fully legal form of payola, could thrive.[7] The possibility of returning to practices reminiscent of illegal payola has, however, sparked debate as to whether record labels should ever pay radio stations to play their music, legally or illegally. This Note resolves the debate by examining the history, current practices, and legality of record companies' promotional practices. This Note concludes that the music business may be better served by engaging in *explicit* payments for broadcasts which are properly disclosed under the law.

the environment

The term "payola" was originally coined by the publication *Variety* in 1938 to refer to the music industry practice of paying money to people in exchange for promoting a particular piece of music.[8] Today, the term refers to bribery and corrupt practices in any business, though its use in the music industry refers to payments of any type made in exchange for broadcast of material.

Payola has always existed in the music industry in various forms. The practice never garnered widespread attention from the public at large until the 1950s and 1960s. During that period, disc jockeys became powerful gatekeepers who determined what music the public heard. Some in the music industry exploited this concentration of power by bribing disc jockeys to play certain songs. The practice grew into a scandal involving rival parties accusing each other of illicit activities. This scandal resulted in probing Congressional and Federal Communications Commission investigations into the activities of many disc jockeys and their stations. Federal laws were soon passed to address the scandal and deal with the payola situation, but the practice persisted. In fact, the 1980s witnessed a resurgence of the practice through independent record promoters. These promoters paid to have a song included on the playlist of various stations. This practice influenced charts in trade publications and other station playlists that tracked the charts.

The primary impetus behind the practice in the 1960s, 1980s, and today is the fact that there are more songs being produced than can be heard by the public. Supply and demand is and always has been a basic imbalance for the music industry.[9] The Telecommunications Act of 1996, however, has added additional pressures to the normal market environment of the music industry. As a result, payola is not only increasing in use but is taking on new forms that are arguably illegal and, at a minimum, fuel anti-payola sentiments.

impact of the 1996 telecommunications act

The Telecommunications Act of 1996 has a clearly stated purpose:

> To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.[10]

The deregulation of the telecommunications industry proposed by the Act required the deregulation of broadcast ownership. Pursuant to the Communications Act of 1934, the Federal Communications Commission enforces regulations concerning broadcast stations.[11] In 1996, Congress ordered the FCC to modify its regulations concerning the ownership of AM and FM broadcast stations.[12] The new regulations set forth the number of stations one entity may own, adjusting that number based on the size of the applicable market. For example, "in a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM)."[13] In addition, the FCC is authorized "to permit a person or entity to own, operate, or control, or have a cognizable interest in, radio broadcast stations if the Commission determines that such ownership, operation, control, or interest will result in an increase in the number of radio broadcast stations in operation."[14] The Act, therefore, creates a deregulated environment in which more radio stations may operate while ownership of those stations becomes concentrated in fewer hands.

As a result, a few companies now dominate a majority of radio stations in a given market.[15] Clear Channel Communications Inc. and AMFM Inc., for example, recently agreed to merge, forming the world's largest radio company with 830 stations in small, medium, and large cities around the United States and reaching more than 100 million listeners weekly.[16] Such consolidation has made a large impact on the music industry, essentially redefining the environment in which record labels and radio stations operate. The consolidation not only enables stations to cut costs by eliminating duplicative operations, but the stations gain leverage in negotiating programming, advertising, and other deals through their control of a larger segment of the audience.[17] Prior to the Act, ownership of stations was more diverse and provided record labels numerous outlets for their products. For example, whenever one station in a market refused to air a song, other stations were available as outlets. In the new environment, however, multiple stations in the same market are controlled by the same entity, effectively reducing the number of outlets available.[18] One *group* of stations may refuse to play a song and preclude access to an entire market. Thus, consolidation of radio stations has concentrated negotiating power and essentially produced fewer outlets for record labels in each market.

This outlet shortage is not new.[19] Recording companies are aware that all songs can never reach all listeners. It is exactly this problem that produces payola. The deregulated environment created by the Act, however, exacerbates this scarcity by reducing the already inadequate number of independent outlets. The increased competition to gain access to these outlets only heightens the temptation for record labels to turn to payola. This moral hazard now tempts radio stations as well. Consolidation in station ownership has left station owners in debt, desperate for ways to service the debt and provide a return on the purchase of the stations.[20] The result is pressure on individual stations to increase revenue through advertising and other sources.[21] One untapped revenue stream is the record labels.[22] In the 1960s and 1970s, record labels devoted much of their marketing/promotion budgets to radio stations.[23] In recent years, the record labels have directed these budgets away from radio to other media such as television and print.[24] Payola is an effective means of attracting these marketing dollars back to radio. Whether it is a legitimate means is another question.

Though payola has always been present in some form in the music industry, the new environment has elevated it from a helpful promotional aid to a necessary tactic for survival in an industry plagued by scarce airtime and tight revenues. Furthermore, the new environment makes payola more effective. Consolidated ownership creates the possibility of securing national airplay for one price as opposed to separate payments to numerous local disc jockeys and record promoters. Payola, however, is illegal if undisclosed.[25] In order to circumvent this legal barrier, record labels and radio stations are developing new strategies, such as pay-for-play, and other innovative practices. The essential purpose behind these strategies is to secure increased exposure for the labels and increased money for the stations. Fearing the stigma of payola practices of the past, the music industry has not openly supported such tactics but has entered an ongoing debate as to whether record labels should offer radio stations consideration in exchange for airplay.

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the debate

Historically, actors in the music industry have publicly shunned and denied the existence of payola, though privately it was an accepted and necessary practice.[26] In the late 1950s, "booze, broads, and bribes came to signify the situation."[27] As investigations by the government uncovered rampant use of payola, kickbacks, and bribes, the practice became associated with promotion of substandard music, perjury, and tax evasion.[28] In the 1970s and 1980s, these activities were replaced by illicit payments involving increasingly large sums of money, drugs, and prostitutes.[29] Though many are appalled by under-the-table influence and its effects, the memories of related activities—more so than the act of paying for airplay itself—evoke the negative reactions to any and all forms of payola. These past abuses now animate both sides of the current payola debate.

Critics of payola want to avoid any practices, legal or not, reminiscent of past payola scandals and related illegal activities. Proponents, while shunning illegal payola and its related activities, want to engage in practices clearly permitted under payola laws. Despite this underlying concern with payola and its stigma, the current debate rarely focuses on policies underlying payola regulations, such as consumer/public protection and prevention of bribery, tax evasion, and other illicit activities. Instead, the music industry's debate focuses on how such payments affect the players in the industry and the music itself.

the price of payola

Critics of payment for broadcast contend that the practice would infect the relationship between record labels and radio stations, resulting in mediocre radio, declining listenership, and falling advertising revenues. Payment for broadcast would result in the airing of unproven songs.[30] Rather than being selected by research, sales, marketing, and requests, the music would be determined by the parties with the deepest pockets.[31] Furthermore, payments would transform music from artistic expression to an infomercial.[32] Such a system would make broadcast choices akin to advertising, wherein each paid and disclosed song evidences a commercial exchange.[33]

In addition to the fear of infomercial-ridden radio, many critics believe that because some labels are willing to pay for broadcast, radio stations will begin to charge *all* record labels.[34] In effect, radio stations would extort money from record labels just to do their job.[35] The first signs of this are payments for "back-announcing," the traditional radio practice of informing the listeners of the name and album of songs just played. Most in the industry believe back-announcing is a basic element of a station's job, not a source of additional compensation.[36] With this increased emphasis on money and possibility of extortion, new artists and independent labels will find it even more difficult to gain exposure.[37] Without the clout and economic resources of the large record labels, payment for broadcast could drive small independent acts into extinction.[38] Thus, payment for broadcast threatens the quality of music and the survival of those making it.

the power of payola

Proponents of payment for broadcast argue that paying for radio stations to play songs, accompanied by legally required disclosures, will not destroy the music industry but may help it. They claim that payment for broadcast is standard practice in the music industry. With payments for broadcast already influencing, if not determining, songs played, it is unlikely that disclosed payments for broadcast will suddenly make radio more commercial. In fact, widespread use of disclosed pay-for-play makes radio more honest. Rather than spending resources on trips, free records, and other promotional gimmicks, record labels may spend money more efficiently by securing airplay directly, the best marketing and sales tool in the music industry. Limiting promotional budgets to payments for broadcast helps rein in the spiraling costs of these promotions as well as costs of independent consultants, tip sheets, and new technologies.[39] Rather than paying all of these costs in hope of receiving airplay, the record labels can simply pay for a broadcast and receive guaranteed exposure. This direct money payment system is also better for the radio stations. Instead of T-shirts, trips, or free concerts that may or may not increase listenership and advertising revenues, the stations receive cash that goes directly to helping the bottom line. With disclosed payment for broadcast, the labels get airplay and the stations get revenue, benefiting all the parties, even small independent record labels.

Independent record labels lack capital to fully participate in promotional pay-for-play such as free concerts, trips, and giveaways. With disclosed payment for broadcast, however, they are guaranteed a return on their investment. These independents recognize that they cannot pay the high price involved with many promotional/marketing practices currently used to pay for broadcasts.[40] As Don Rose, president of the independent label Rykodisc, says, "If I had the opportunity to bet on my song, right now I've got to put money on the table, and it may or may not get played ... [But] if I had an opportunity to actually put the money on the table and let it get out there and let the consumer decide, to me that's more attractive than allowing the system to decide."[41] The direct payment option removes the current speculation regarding the promotional costs that often result in no exposure for small labels. Pay-for-play is simply a more certain market transaction. In the end, pay-for-play allows limited funds to be spent in a more effective manner, benefiting these independent labels.

In addition, payment for broadcast would reduce exploitation in the artist/label/radio relationship. Securing airplay with payments gives the labels a bigger return on promotional dollars while avoiding promotional gimmicks that harm artists. Free concerts, for example, are a promotional gamble that labels provide to radio stations in hope of gaining exposure for their artists. Such concerts, however, exploit and often harm the artists. Though the acts gain exposure, the quality of the exposure is questionable and often comes at a cost.[42] In free concerts, the artists usually must perform brief sets, often inferior shows that leave a negative impression among fans who expect a full-blown event.[43] New artists are unable to develop as touring acts, and established artists must often skip free concert cities when on their actual tour.[44] These events are costly, harming the bottom line of the bands, their managers, agents, and promoters.[45] Considering the costs and the minimal airplay gained from this method, artists are much better served if this money is directed at payments for broadcast. It improves their position and helps reduce the exploitation in the artist/label/radio relationship.

Proponents also point out that the biggest advantage to payment for broadcast is its *positive* effect on the quality of the music. Disclosed payments creates a self-regulating system that nurtures music as an art form while openly negotiating the economic realities of the music business. The ability to guarantee airplay allows record labels to take some risks and provide artistically advanced or different material that, absent payment, radio shuns in favor of proven standards.[46] With the guaranteed play, labels can be more innovative in what they send to radio and can nurture artistic freedom in the artists. In the end, the consumer, not a program director favoring the security of the status quo, determines the hits of today and the stars of tomorrow. Record labels may initially be tempted to pay for all their material, from the innovative to the inferior. Radio stations, however, can not afford to fill airtime with too many substandard or inappropriate songs. Any station that plays unlikable songs alienates listeners and risks traditional advertising revenues. Furthermore, any record label that supplies such unlikable songs loses consumer support. The commercial reality of the music business, therefore, demands the airing of good songs. Most consumers purchase albums based solely on what they hear on the radio, functionally making every song a short but vital infomercial for the album. Proponents embrace this economic reality, arguing that it forces record labels to supply good music in order to appease radio listeners and effectively market/sell albums. Payment for broadcast enables radio stations and record labels to address economic matters and needs while continuing to nurture and expand music as an art form.

In sum, detractors of payment for broadcast claim that introducing widespread use of such payments would harm the music industry, potentially plaguing the musical landscape with past scandals. Proponents of payment for broadcast argue that the musical landscape is already plagued by illegal payola. Making payments for broadcast a market transaction would avoid illicit abuse and ensure the viability of the business and the quality of the music. Though these arguments present a near unresolvable industry conflict, the law regarding payments for broadcast holds the secret to resolving the debate.

the law

The Communications Act of 1934 was passed "for the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available . . . a rapid, efficient, nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges ... ."[47] With this pronouncement, the federal government assumed the task of regulating wire and radio communications throughout the country.[48] To further this purpose, authority was centralized in a newly created commission, the Federal Communications Commission.[49] Despite this concentration of federal communications regulation, only an investigation by the House of Representatives would eventually force the FCC to deal with payola.[50]

In the late 1950s, the House Special Subcommittee on Legislative Oversight held an investigation into the "fixing" of quiz shows on television. When the investigation into the television quiz shows ended, the committee focused on payola in the music industry. The investigation, however, focused on rock and roll, small record companies, and disc jockeys, purposely overlooking the major labels. Nevertheless, the investigation revealed numerous cases of bribes to disc jockeys, tax evasion, and outside influence on radio station programming.[51] As a result, Congress amended the Communications Act of 1934, changing an existing payola provision and adding a new section.[52] Prior to these changes, only payments received by radio stations in exchange for broadcasting certain material were regulated.[53] Payments to other parties, such as disc jockeys, were not addressed.[54] The Communication Act Amendments of 1960, however, altered this regulatory landscape.

The Amendments were enacted on September 13, 1960.[55] One of the stated purposes was "to require disclosure of payments made for the broadcasting of certain matter."[56] This particular purpose demonstrated Congressional intent to fashion anti-payola regulations.[57] The result was an expanded §317 addressing radio station duties to disclose payments for broadcast and a new §508 addressing disclosure of payments to individuals connected with broadcasts. Pursuant to §317,

> All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person ... [t]he licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter

for broadcast, information to enable such licensee to make the announcement required ... .[58]

In addition, §508 now requires any employee of a radio station who accepts or agrees to accept from any person (other than such station), or any person (other than such station) who pays or agrees to pay such employee, any money, service or other valuable consideration for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance or agreement to such station.[59]

Thus, a record label may not pay, give, or promise a radio station money or any other valuable consideration in exchange for airplay unless the payment is properly disclosed.[60] Likewise, disc jockeys and other radio station employees may not receive such payments unless they or the paying party discloses the fact of the payments to the radio stations, which, in turn, must disclose such payments at the time of broadcast.[61] The law further requires that the radio stations exercise reasonable diligence to ensure that this statutory duty is met.[62] Radio stations, therefore, may not engage in undisclosed payments for broadcast and must monitor their employees to insulate them from the lure of illegal payments.[63]

When evaluating potential violations, the FCC examines the "substantial evidence" in the record.[64] Whether the actions of the parties affected the choice of broadcast material is a question of fact for the FCC.[65] The FCC, therefore, has the discretion to make factual findings in determining if the actions violate the regulations and, if so, what penalty is warranted.[66] Stations that violate the §317 disclosure requirements are subject to fines and license revocation.[67] Record labels and station employees who violate §508 disclosure requirements are subject to criminal penalties of up to one year in jail and fines up to $10,000.[68] Thus, whether the violating party is a radio station, a station employee, or a paying party, there is substantial risk in payola.[69]

Radio stations . . . may not engage in undisclosed payments for broadcast and must monitor their employees to insulate them from the lure of illegal payments.

Though Congress intended these regulations and penalties as anti-payola measures, the parties may nevertheless participate in payment for broadcast as long as the material broadcast is accompanied by a proper disclosure.[70] In carrying out its obligation to execute and enforce these regulations, the FCC does not categorically forbid record labels from paying radio stations and their employees to play songs. Instead, the FCC only requires that the public be informed of payments affecting the selection and presentation of material.[71] In fact, the FCC has stated that "The basic principle underlying statutory provisions ... is, as we have often stated, that the public is entitled to know by whom it is persuaded" and "to this end, Congress adopted Sections 317 and 508 ... ."[72] In ruling on a challenged transfer, the FCC must determine two issues: whether payment for broadcast has occurred and, if so, whether any accompanying disclosure was sufficient to immunize it.

fcc determination of payment made

The threshold issue in determining illegal payola is if a payment for broadcast actually occurs. Without payment, of course, no disclosure is necessary. FCC decisions have set forth factors such as explicit agreements and inducements for evaluating payments that mandate disclosures.

The primary question is whether an explicit agreement has been made to pay for a broadcast.[73] Explicit exchanges of some consideration for a broadcast require disclosure.[74] According to the FCC decision In re General Media Assocs., Inc., even payments to a third party for the inclusion of certain matter in a program requires disclosure.[75] Though the broadcasting party did not receive payment, the FCC required disclosure nonetheless, reasoning that "had the consideration for the inclusion of the broadcast matter been received by the radio stations ... instead of General Media they would have been required to make an appropriate sponsorship identification ... ."[76] This situation involved a hidden payment to a third party explicitly for a particular broadcast. Thus, an explicit exchange of money for the broadcast of certain matter requires disclosure, regardless of whether the transaction involves the broadcaster or a secret third party.

Exchanges involving nominal amounts of money or consideration with questionable value also require disclosure.[77] The FCC has found a payola violation when listeners dedicated songs and sent nominal amounts of money to the station's disc jockeys to ensure airing of the song.[78] Though the payments were minimal and created no pecuniary benefit to the paying listeners, disclosure was required. The FCC found that "a practice of a licensee permitting its announcers to keep money sent by listeners constitutes payments to the announcers in lieu of additional salary, wages, or bonuses, and constitutes indirect consideration to the station ... ."[79] In a case involving payments to help an individual gain exposure as an announcer, the FCC held "the language of the act is clear and includes all matter broadcast for which payment is made ... . [B]enefit derived by the purchaser of the broadcast time is not the determinative factor as to whether an announcement should be made."[80] The FCC again focused primarily on the fact a payment occurred rather than the value of the payment.

The FCC's emphasis on the act of paying consideration, regardless of the value, suggests that the key factor is merely the presence of an exchange for any consideration.[81] The fact that a radio station is willing to exchange valuable airtime for an item implicitly casts the item as valuable consideration. The statute's "valuable consideration" requirement, therefore, appears to be a catch-all term that permits the FCC wide latitude in evaluating facts. Thus, if a station solicits consideration of any type or a party pays consideration of any nature to broadcast certain material, the FCC will likely find a payment for broadcast and require a disclosure.[82]

Though sometimes an explicit agreement provides consideration to secure airplay, it is often difficult to determine if the consideration is "directly or indirectly paid, or promised to or charged or accepted by the radio station."[83] A record label could provide consideration to a radio station without explicitly demanding airplay. The record company may simply *hope* to secure airplay without a formal agreement. Such implied payments for broadcast have been addressed by the FCC. In a public notice issued prior to the Communications Act Amendments 1960, the FCC stated that "the commission is of the view that the receipt of any records by a station which are *intended by the supplier to be, or have the practical effect of being an inducement to play* those particular records or any other records on the air, and the broadcast of such records, requires an appropriate announcement pursuant to Section 317."[84] This standard covers the common practice of supplying radio stations with free records without any agreement as to the broadcast of those records.[85] Despite the absence of an explicit agreement, the FCC asserts that a payola disclosure is necessary if the records were intended to induce or have the practical effect of inducing broadcast.[86] This standard specifically addressed records. The Amendments, however, have altered the status of records as payment for broadcast, permitting record labels to supply records to build a radio station's catalog of music.[87]

In the same public notice, the FCC applied the same standard to other forms of consideration, items unaffected by the Amendments. In considering "record hops" or radio station promotions involving door prizes and live entertainment supplied by record labels, the FCC stated that "although ostensibly it may appear that money, services, or other valuable consideration is being provided gratuitously for use in some aspect of the presentation of the record hop itself, where such *consideration is, in fact, provided for the purpose of or has the practical effect of inducing on-the-air mentions or record spins*, the accompanying announcement shall clearly state that such consideration is being provided, and by whom, in exchange for the broadcast ... ."[88] The application of this standard to a different form of consideration suggests that it extends beyond free records to all forms of consideration that may induce broadcast, even though ostensibly offered for reasons other than broadcast. Thus, the FCC will consider the parties' intent and the practical effect of their actions to determine whether the choice of broadcast material has been influenced, even in the absence of an explicit agreement.[89]

Building on this inquiry, the FCC has articulated an additional standard for agreements inducing broadcast that on their face merely involve the exchange of consideration for other goods and services. The FCC addressed this situation in In re Broadcast of "Living Should be

Fun".[90] In that case, a radio station purchased a program from the creator, Food Plus. The creator then purchased advertising on the station. This advertising indirectly reimbursed the station's cost of purchasing the program. According to the FCC, "The purchase of the program and the sale of spot announcements were parts of one transaction in which Food Plus reimbursed the station for all or a substantial portion of its costs for the program, and thus, at least indirectly, paid for the program." Thus, the FCC ruled that some offers to buy advertising can be improperly coupled with inducements to purchase and air a program. Therefore, the FCC requires that radio stations disclose promises and agreements to purchase advertising time made as an inducement to broadcast.

In In re Mattel, Inc., the FCC further clarified regulation of advertising promises for programming.[91] In that case, Mattel offered to purchase advertising on radio stations that had previously purchased rights to use one of its programs. The cost to Mattel to buy the advertising was equal to the amount the stations spent to buy the rights to the show, thereby reimbursing the stations. Though the advertisements ran before and after the program rather than within it, the FCC found the facts involved in the transaction indicated two simultaneous offers. The FCC emphasized the timing of the transaction, noting that "since Mattel is making a simultaneous offer to purchase advertising on those stations which buy the program at a rate equal to that which the station pay for the program ... the purchase of the program and the sale of spot announcements were parts of one transaction."[92]

The Living Should be Fun and the Mattel decisions demonstrate that payments purportedly for advertising, marketing, or another service or good but which actually induce a station to broadcast a program require disclosure under the statute.[93] The decisions emphasize that some inducements, though seemingly separate transactions, can be recharacterized as a single transaction in which a party agrees to purchase advertising and the radio station agrees to air a program.[94] Each situation, however, is fact-intensive. In Mattel, the FCC emphasized that it "has reviewed carefully the facts" and "is unable to distinguish the basic facts in this case from those which characterized" other payola arrangements.[95] Thus, not every advertising arrangement functions as an inducement to broadcast. The analysis turns on timing, intent, and the relationship of the parties in each case. The FCC's application of the standard set forth in Living Should Be Fun and Mattel helps illustrate the difference between innocent business transactions and improper inducements.

Explicit agreements and inducements are not the only forms of payola. Pursuant to both §317(c) of the Communications Act and §73.1212(b) of the FCC's rules, each licensee is required to "exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals" information to enable the licensee to comply with the disclosure requirements of the Act.[96] For example, In re Carter Publications, Inc. a disc jockey owned songwriting royalties in a song he was playing and promoting.[97] Though no consideration for the broadcast was actually paid, the conflict of interest created questions about his motivation behind broadcasting certain material and doubts about who was actually influencing the listening public. The FCC scrutinizes such situations, generally requiring additional safeguards rather than immediately penalizing a statutory violation. In that case, the radio stations were required to implement "new policies to insure that all station's program material continues to be selected on the basis of its merit and that those associated with program material are not in any way influenced by their personal interests in making the decisions."[98] No specific policies were promulgated, but the FCC stated that "it may fall short of reasonable diligence if the licensee ... does nothing more than require its employees to execute affidavits stating that they will not violate laws and regulations prohibiting payola."[99] Furthermore, "the reasonable diligence standard can require a higher duty of care by stations whose formats or other circumstances make them more susceptible to payola."[100] Such stations would include those reporting to record charting services.[101] Thus, in determining whether improper influence has been exercised, the FCC must examine both the institutional station policies and the individual motivations of its employees.

Analysis of possible payment for broadcast situations must begin with the facts. The FCC determines whether the facts of the situation indicate that the actions affected the choice of broadcast material. To make this determination, the FCC looks for explicit agreements or inducements that result in payment for broadcast. In evaluating inducement situations, the standard requires the consideration to either be intended to or have the practical effect of inducing a broadcast. In considering advertisements and marketing agreements ostensibly unrelated to payment for broadcast, the FCC focuses on the timing of the transactions. If a payment for broadcast is found, the analysis shifts to the existence and adequacy of on-air disclosures.

fcc regulation of sponsorship identification

In its rules, the FCC sets forth requirements regarding sponsorship identification. The rules essentially mirror the statute but contain more specific disclosure requirements. According to the FCC, payment for broadcast disclosures must state that the broadcast material is "sponsored, paid for, or furnished, either in whole or in part, and by whom or on whose behalf such consideration was supplied."[102] The rules specifically state that "the term 'sponsored' shall be deemed to have the same meaning as 'paid for.'"[103]

This standard is rigorously enforced. In early cases, the FCC indicated that the exact wording of the identification was to be left to the discretion of the radio station, though the announcement "should at least state in language understandable to the majority of viewers that suppliers of goods or services have paid ... to display or promote the products ... and each supplier should be properly identified."[104] Identification merely consisting of "This has been a [Sponsor's Name] production" was insufficient.[105] The FCC wanted the disclosures to "convey to the listener the fact that the program was paid for or furnished by" the sponsor.[106] The FCC refined this requirement in later cases. The FCC reiterated that "mere mention of the name of the sponsor" was inadequate, requiring announcements to give "some indication that the program is in fact sponsored or paid for."[107] The FCC further emphasized this position when it rejected announcements using the words "presented by." The FCC found that "the term 'presented by' does not clearly inform the audience that it is hearing or viewing matter which has been paid for," thereby failing to "state in language understandable to a majority of the audience that the station has received consideration for the matter broadcast and from whom consideration was received."[108] According to the FCC, "Such an identification is subject to differing interpretations and could lead to public confusion and misunderstanding."[109] Public confusion about the true nature of the broadcast defeats the statute's purpose and the FCC's goal of ensuring that the public is "informed of any otherwise undisclosed private financial interest affecting the selection and presentation of program matter."[110]

The FCC decisions do not give a clear-cut answer to the question of what is and always will be an adequate disclosure. In fact, the FCC has said that "the public interest would be better served by continuance of our policy of dealing with the subject on a case-by-case basis."[111] Nevertheless, an FCC attorney has provided examples of a disclosure sufficient to immunize deals involving possible payments for broadcast: "The law requires identifying who 'sponsored, paid for, or furnished' the song. That precise wording is 'exactly what we want to hear.'"[112] Furthermore, "the announcement must be aired 'at the time of the broadcast.'" Thus, an adequate disclosure announcement would air at the time a song is played and say "sponsored by," "paid for by," or "furnished by" the name of the party paying for the broadcast. Though this is an apparently simple statement to make at the time of broadcast, it is nonetheless vital to ensuring a payola violation does not occur.

industry practices challenging the law

Despite the numerous interpretations and FCC guidelines concerning permissible payments for broadcast, record labels and radio stations push the limits of the law by continuing traditional industry practices and devising new strategies that involve undisclosed payments for broadcast. Record labels and radio stations claim that these practices are not and do not require disclosures. Close scrutiny of the facts surrounding certain industry practices, however, reveals that these practices generally involve payment for broadcast that should be disclosed.

free albums

One traditional practice in the music industry is for record labels to supply radio stations with free albums.[113] According to a report from the United States House of Representatives, supplying albums should not be considered a per se violation of the statute.[114] "A record distributor furnishes copies of records to a broadcast station or a disc jockey for broadcast purposes. No announcement is required unless the supplier furnished more copies of a particular recording than are needed for broadcast purposes."[115] Though "broadcast purposes" is not defined, non-broadcast uses may be identified by the quantity of records provided. For example, "should the record supplier furnish 50 or 100 copies of the same release ... an announcement would be required because consideration beyond the matter used on the broadcast was received."[116] Albums and other consideration provided for the personal use and retention of radio station personnel also require disclosure. For example, if "a perfume manufacturer gives five dozen bottles to the producer of a giveaway show, some of which are to be identified and awarded to winners on the show, the remainder to be retained by the producer ... constitute[s] payment."[117] Thus, depending on the quantity and purpose of the albums supplied, disclosure may be and usually is required.[118]

In addition to broadcast purposes, radio stations also receive free albums and other goods for use in contests and other promotions to generate publicity and help attract sponsors.[119] In some cases, the impropriety of such "promotional" payola is clear. For example, record labels often underwrite radio station contests, such as flying winners to meet a top band, in exchange for the station's airing of the label's new acts.[120] In other situations, however, the agreements are not as explicit and only involve consideration that is nominal in value, such as T-shirts.[121] Nevertheless, in both cases, broadcasts made in exchange for such consideration must be accompanied by the proper disclosure.[122]

Stations often defend themselves by arguing that songs received airplay *before* the free items arrived and before the promotions and tie-ins began.[123] This is a factual argument that must be decided upon the evidence. The FCC scrutinizes album giveaways, contests, and promotional tie-ins to determine if they have the practical effect of inducing radio stations to play a record label's music.[124] If the FCC finds such influence, a disclosure is required regardless of whether a deal guarantees airplay or only involves songs already on the playlist. An Emmis Communications station in Chicago, for example, created a promotional package alleged to include explicit promises of airplay as part of the deal. Emmis' chairman claimed, however, that the deal permitted promotions only after a song had been added.[125] In either situation, however, a disclosure would be required. If there is an explicit agreement to broadcast a song or if the stations are induced to play songs, such deals violate the statute absent disclosure. Thus, contests, tie-ins, and other promotional deals that have the practical effect of inducing airplay or that are designed to solicit payment for broadcast require disclosure.

free concerts

Another promotional tool radio stations utilize is the free concert.[126] Free concerts are generally large events promoted by a single radio station that rents a venue and hires a band.[127] The radio station or the label may cover the costs associated with the band's performance, or, as is becoming the trend, the bands will actually perform for free or reduced rates.[128] No matter who pays, a band's appearance at a station's free concert is routinely accompanied by an increase in the airplay of the band's music.[129] Concerns regarding payment for broadcast arise at the moment the band is hired to play at the event. To ensure the success of the free concert, some stations guarantee increased airplay to a band in exchange for a concert appearance.[130] The program director at New York's Z-100, for example, admitted that a tacit term of such deals is that the stations will play the single of the starring bands. However, the station denied ever offering to play a band's songs in exchange for its appearance at the station's concerts.[131]

When the station bears the cost of the free concert, its own self-interest dictates that it should play the band's music.[132] Such stations hope to realize a financial benefit from these events through increased ratings and advertising revenue.[133] Promotion of the event through music played on the station increases the turn-out, adding financial incentives.[134] The station's financial interest, therefore, conflicts with the §317 requirement that stations insulate the program selection process from potential conflicts of interest.[135] As a result, a disclosure must be made to satisfy the statute.

Payola may also occur when the record label pays the costs of a free concert or the band performs for a reduced rate. The bands and the record labels are pressured by radio stations to provide performances at these events.[136] Often the stations refuse to air a band's latest releases unless it commits to a free concert performance.[137] In some cases, the stations have even threatened to ban all of a record label's upcoming releases if the label fails to persuade the band to perform.[138] Thus, to get a song played, the bands and the record labels must sometimes grace radio stations with a free concert appearance.[139] Though the concert appearances secure radio airplay, in many instances the song is only played for several weeks prior to the concert and dropped immediately after the event.[140] Based on past FCC scrutiny of "record hops" which also involved free performances, free concerts alone appear to be inducements to broadcast.[141] In fact, one FCC official has said, "If a broadcaster is getting something valuable, like an artist performing at the station's concert, in exchange for playing the artist's song and they don't identify the sponsor of the record, then they are in violation of the law."[142] This requirement does not mean that artists' free concert appearances must cease. A performer may, without any disclosure, perform at a concert or show for free because "the performer likes the show, although the performer normally commands a much higher announcement fee."[143] If the FCC determines that a performance has the effect of inducing airplay or favorable mentions, however, disclosure must be made.[144]

> The FCC scrutinizes album giveaways, contests, and promotional tie-ins to determine if they have the practical effect of inducing radio stations to play a record label's music. If the FCC finds such influence, a disclosure is required . . . .

free trips

Though record labels and bands receive pressure from radio stations to supply free albums, support contests, and appear at free concerts, record labels engage in similar tactics to secure airplay. It is common practice for record labels to fly program directors and other radio station personnel to resort destinations.[145] These vacation-like "business trips" often involve artist performances and showcases.[146] Record labels contend that these events are not payola but are merely events featuring artists and their music in a special environment favorable to the songs.[147] They add that the trips are simply designed to make a memorable impact on the radio personnel.[148] In fact, radio stations claim that these and other payola activities are exempt as "normal business practices."

The essential purpose of these vacation trips, however, is to convince executives to play the label's records. Under FCC standards, the mere fact that such trips were offered to stations by labels suggests that they were intended to induce or had the practical effect of inducing a broadcast, thereby requiring disclosure.[149] In addition, the FCC explicitly rejects the idea of any "normal business practice" exemption characterizing such trips as payola violations.[150] The FCC finds itself "compelled to reject the contention ... that no announcement is required because such 'favors' are normal business practices."[151] Furthermore, the FCC has found "situations where consideration ... [for example, a trip to a resort] is provided as an inducement to the licensee or its employees or independent contractors to broadcast certain matter" sufficient to require disclosure.[152]

In a case involving a television broadcast, the FCC found that free rooms and food, as well as entire trips, qualified as consideration offered to influence programming choices.[153] In CBS, Inc., network employees were provided "substantial consideration" in the form of free rooms, food, and beverages by a hotel.[154] In exchange for these free items, the television producer permitted scoreboard identifications of the hotel to be placed in a manner which insured frequent on-camera exposure. Such a tactic not only violated the broadcaster's policy limiting identification of host hotels, but, according to the FCC, required a disclosure under the statute. The decision suggests that all payments for broadcast must be disclosed, whether they result in a simple increase of on-camera exposure of a provider's name or in a substantial influence on a station's programming.[155]

the mega-deal

In addition to standard industry practices involving free albums, concerts, and trips, the record labels and radio stations have developed a new industry tie-in, the "mega marketing deal."[156] These deals have record labels paying large sums of money to the radio stations in exchange for advertising time.[157] Though advertising is not in itself a violation of the payment for broadcast laws, this new breed of marketing deals creates the same hazard facing many of the standard industry practices: inducement.

In Re Mattel, Inc. and In Re Broadcast of "Living Should Be Fun" both involved marketing agreements that exchanged advertising purchases for airplay.[158] In those situations, the FCC explained how the purchase of advertising and the purchase of the program were two sides of one transaction.[159] Whether the transactions are simultaneous and whether the actions affect broadcasting choices are issues the FCC resolves on a case-by-case basis.[160] In addition to examining the transaction, the FCC also focuses on whether the consideration in the marketing deals is intended to, or has the effect of inducing, airplay of the advertising party's songs.[161] As with exchanges involving free records, free concerts, and free trips, the intent and the practical effect of marketing agreements is suspiciously favorable to both sides.[162]

For example, in an agreement between A&M Records and Chancellor Media Corporation, the owner of more than 400 radio stations nationwide, A&M paid $237,000 for a marketing campaign to support a song through a series of commercials and contests.[163] The FCC has consistently held that if airplay occurs as a result of a promotional agreement, the issue of inducement is at least raised.[164] Though the record label is ostensibly only paying for marketing, the radio stations may be playing the song because they received the high revenues and hope for more. As in Living Should Be Fun and Mattel, this arrangement could lead to a FCC finding that the deals involved a simultaneous exchange of marketing dollars for an airplay guarantee. Furthermore, a deal worth $237,000 involving the marketing of a song is intended to or at least has the practical effect of inducing airplay. This induced play is illegal payola and requires disclosure.[165]

Certain facts may, however, disprove the existence of illegal payola in such a case. For example, a high level of airplay prior to the marketing agreement suggests that the song was aired as a broadcasting decision and not in exchange for payment. In the timing of the A&M/Chancellor deal, the facts suggested that the song was played as a result of the marketing deal. The song, Bryan Adams' "On A Day Like Today," quickly hit the charts and as quickly fell off the charts.[166] Despite the decline in ratings, the song continued to receive airplay at four stations all owned by Chancellor.[167] Though Chancellor executives contended that the record company paid for marketing, not airtime, industry commentators have suggested that the song continued to receive airplay because of the marketing agreement.[168] Paying such a large amount for a song suggests intent. This factor is not conclusive, however. After all, had more stations played the song and had it been a hit, no one would have questioned the station's motives. Even absent illegal intent, the large marketing dollars paid to promote this song had the practical effect of inducing airplay. The economic incentive of marketing revenue, coupled with the fact that the only stations playing the song were the ones most benefited, suggests inducement.

In addition to the lucrative marketing agreement, there were other inducements for play in this case. As part of the marketing deal, winners from other Chancellor stations were flown to attend a Bryan Adams concert in which he waived his performance fee.[169] As noted earlier, any airplay received as a result of this free concert must be disclosed. The critical factor, once again, is whether the airplay was exchanged for the consideration, be it a free concert or advertising revenue. Under the standards set forth in FCC decisions and notices, this free concert/contest may or may not be intended to induce airplay, but it very likely has the practical effect of inducing such play.[170] Accordingly, the trip, the concert, and the entire marketing deal should have been disclosed when the song was played.

the name game

In addition to the marketing agreements exemplified by the A&M/Chancellor deal, there is another type of marketing technique gaining popularity. This technique, often referred to as "pay-to-name," occurs when a record label pays a radio station to air an advertisement immediately before or after one of its songs is aired.[171] "Pay to name" advertisements generally back-announce information about the song such as the title and the artist.[172] The advertisements are also intended to add information such as the name of the song's album and also where the album can be purchased.[173] Some music industry commentators believe that it should be standard practice for radio stations to announce such information.[174] To ensure the listeners have enough information to purchase the music they want, the argument goes, pay-to-name advertisements are hardly improper and may even be necessary.[175] Supporters of these advertisements maintain that such payments do not influence airplay but rather only influence the buying public.

The details surrounding the typical pay-to-name agreement indicate that record labels indeed may be only paying to inform the public of the artist's name and album. Recently, Capitol Nashville paid CBS-owned radio stations to air 10-second ads before or after selected records announcing the artists, the song, the album, and retail locations for purchase.[176] The ads were designed for songs that were already playing and had been proven successful on the charts.[177] An announcement stating that the ads were paid for accompanied the 10-second spots, disclosing the payment for broadcast regarding the paid advertisements but not regarding the song itself.[178] The presence of the disclosure and the songs' popularity prior to the paid advertising indicate that such tactics were pure marketing and not payments to broadcast songs. However, the risk of inducement still exists even if the record labels do not explicitly dictate which songs will be played but instead tie advertising dollars to airplay. This connection can create an incentive for a station to play the labels' music. By adding a Capitol Nashville song now, radio stations may receive advertising revenues if the song becomes a hit and could be induced to play the songs. Although the intent may not be to secure airplay, the potential advertising revenues could have the practical effect of inducing play.

the need for change

Though the legal analysis suggests that complete marketing disclosure should be required, the history of FCC regulation indicates that this move will not occur. The FCC has generally been lax in enforcing the payment for broadcast laws.[179] The situation involving Bryan Adams, for example, has been investigated without reprimand.[180] In addition, the FCC lacks the resources to investigate every potential instance of payola. After all, mass illegal promotional practices involve far less money than the mega-promotion deals. The reality of lax enforcement suggests that mandatory disclosure of *all* payments for broadcast is implausible. Some in Congress, however, are unwilling to accept this. In reaction to reports of new tactics for circumventing the payment for broadcast laws, Sen. Paul Wellstone (D-Minn.) and Rep. John Conyers (D-Mich.) have voiced concern about pay-for-play and criticized the concentration of power resulting from radio station conglomerates.[181] In fact, they have recently requested the FCC to open a review of broadcasting deals.[182] The FCC has refused. Despite FCC reluctance, some legislators' growing impatience with the lack of competition in broadcasting, its effect on consumers, and the appearance of impropriety of the new payment for broadcast schemes suggests that the landscape in the music industry is not through changing. In fact, further alteration of the current landscape is the only way to end the questionable uses and abuses of payola.

> illegal payola not only results in poor music and exploitation in the music industry, but it also misleads a trusting audience.

Though businesses in other industries commonly entertain clients and partners to generate business, such practices in the music industry are prohibited in order that "the public . . . know by whom it is persuaded."[183] Nevertheless, record labels and broadcasting companies routinely engage in practices that test the limits of the law. An application of the payment for broadcast regulations to current industry trends has demonstrated that most promotional practices in the industry violate the purpose if not the language of the law. Despite the current debate, the industry is already mired in illegal payola and would be better served by engaging in explicit payment for broadcasts if properly disclosed under the law.

Currently, illegal payola allows powerful radio conglomerates to *demand* money and other consideration in return for airplay. Though large record labels could benefit from this, small labels are unable to compete and artists are exploited by station demands such as free concerts. When airplay is determined solely by money and power, small labels and artists are exploited and the music suffers. Without incentives to foster artistic freedom or nurture new styles, the music becomes less of an innovative entertaining art form and more of a manufactured product sent to radio with guaranteed airplay. Despite these negative effects, illegal payola's most harmful effect falls on listeners and consumers. Not only are they deprived of music aired on such merits as artistic value, but they are deceived. They believe songs aired on the radio are chosen by experts with an interest in identifying and playing the best music. In reality, however, money determines what songs are on the air, defrauding listeners and consumers and undermining the policy of informing the public by whom it is persuaded. Thus, illegal payola not only results in poor music and exploitation in the music industry, but it also misleads a trusting audience.

To end these and other effects of undisclosed payments on the music industry and the uninformed public, disclosure of *all* record label/radio station promotions and marketing deals — from free T-shirt giveaways and free concerts to advertising purchases and luxury artist showcases — should be disclosed in accord with FCC sponsorship identification standards. Such a rule would require industry practices that explicitly and implicitly influence broadcast matter to be disclosed, satisfying the FCC goal of informing the public by whom it is persuaded. Furthermore, the mass disclosure would improve the music industry. By requiring all promotional deals between stations and labels to be disclosed, the rule creates incentives to move away from free concerts and the like to outright pay-for-play. By engaging in explicit payment for broadcast, the stations could continue to receive the equivalent of advertising revenue while the labels could maximize airplay, their most effective marketing mechanism.

Critics will likely claim that such a rule harks back to the days of payola and will promote substandard music and illicit activities related to payola. The primary effect of the rule, however, would be to end all *undisclosed* payments for broadcast. In addition, the economic incentives involved under such a rule not only prevent airing of substandard music but foster music as an art form. Furthermore, pay-for-play empowers all record labels, especially independents, by bringing a better return on dollars spent for promotion. As a result, labels are empowered to test the limits of the current music market and create new markets, fostering artistic freedom and innovative music which ultimately benefits music audiences.

Despite the advantage of moving to industrywide pay-for-play, there may be unforeseen consequences. Record labels, economically influenced by spiraling pay-for-play costs, may expand into radio station ownership; radio stations, empowered by the revenues from pay-for-play, may end normal advertising and air pay-for-play music twenty-four hours a day; or pay-for-play, predominantly utilized by record labels, may expand to include managers, promoters, publishers, songwriters, and any other parties having an interest in a song's airplay.[184] These and other consequences should, however, be addressed as they arise. If pay-for-play greed spirals out of control, new regulations setting a statutory price limit on airtime can be implemented.

For now, radio station consolidation has changed the music landscape and the industry faces a crisis. Though the debate over pay-for-play will continue to rage in the music industry, it is clear that radio station consolidation resulting from the Telecommunications Act of 1996 has greatly altered the music industry. Consolidation has shifted the focus from the music to revenues. This emphasis compels radio to eschew artistic innovation in favor of status quo "cookie cutter" acts that have proven to secure listeners. Though this helps maintain advertising revenues, it does little to grow the market, leaving revenue-hungry stations dependent on record labels for additional revenues. By taking artistic risks, stations could be instrumental in breaking the next big act and thereby increase their bottom line through more productive and fan-friendly means.

The economics of the current environment, however, do not permit it. The power held by the station conglomerates enables them to essentially demand perks and easy revenues from record labels. In this environment, the only way to balance power among the parties is pay-for-play, in which airtime has a price that all are equally free to pay. Whether or not the environment is altered or disclosed pay-for-play becomes the standard, in the end, the success of the music industry depends on providing listeners a choice and letting them choose which new acts they want to take to superstardom. ◆

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3 Id.

4 Chuck Philips, *Radio Pushes Bands For Freebies*, LOS ANGELES TIMES, Nov. 5, 1998, at A1.

5 Id.

6 Segrave, *supra* note 1 (examining payola abuses of the 1980s despite the presence of federal regulation on the activity) at 195-221.

7 Tara Eck, *Pay-For-Play Issue Among Topics of Upcoming Seminar*, NASHVILLE BUSINESS JOURNAL, Feb. 23, 1998.

8 Segrave, *supra* note 1 at 1.

9 See generally id. at x.

10 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

11 47 U.S.C. §151.

12 Telecommunications, *supra* note 10.

13 Id.

14 Id.

15 Eck, *supra* note 7.

16 Katherine Young, *Texas Merger To Create Largest Radio Company; Clear Channel To Buy Hick's AMFM*, THE DALLAS MORNING NEWS, Oct. 5, 1999, at A1.

17 Steve Knoll, *Good News For Owners, but What About Listeners*, NEW YORK TIMES, Dec. 30, 1996, at D5.

18 See id.

19 Segrave, *supra* note 1 at vii - x.

20 Patrick M. Reilly, *Radio's New Spin On An Oldie: Pay-For-Play*, WALL ST. J., Mar. 16, 1998, at B1.

21 Eck, *supra* note 7.

22 Chuck Taylor et al., *Paid Play Changing Biz Landscape: Rise of Direct Label/Radio Pacts Sparks Wide-ranging Debate*, BILLBOARD, May 9, 1998, at 1.

23 Neil Strauss, *Pay-For-Play Back On The Air But This Rendition Is Legal*, NEW YORK TIMES, Mar. 31, 1998, at A1.

24 Id.

25 47 U.S.C. §317 (1999); 47 U.S.C. §508 (1999) (requiring disclosure of any payments for broadcast).

26 See generally Segrave, *supra* note 1 at x.

27 Id. at 98.

28 See id. at 119, 158, 165.

29 See id. at 211-12.

30 Taylor, *supra* note 22.

31 Id.

32 David Hinckley, *Pay-For-Play Gets Plug / With Proper Disclosure, It's Kosher, Says Trade Mag*, NEWYORK DAILY NEWS, July 7, 1999, at 75; Strauss, *supra* note 23.

33 Id.

34 Strauss, *supra* note 23.

35 Id.

36 Taylor, *supra* note 22.

37 John Mainelli, *Pay-For-Play Again - Radio Is Swapping Record Cos. Ads For Airplay*, NEW YORK POST, Dec. 21, 1998, at 82; Taylor, *supra* note 22.

38 Id.

39 Taylor, *supra* note 22.

40 Id.

41 Id.

42 See Philips, *supra* note 4.

43 Id.

44 Id.

45 Id.

46 Strauss, *supra* note 23.

47 47 U.S.C. §151.

48 Id.

49 Id.

50 Segrave, *supra* note 1 at 100.

51 Id. at 119.

52 H.R. Rep. No. 86-1800 (1960) reprinted in 1960 U.S.C.C.A.N. 3516.

53 Id.

54 Id.

55 Communications Act Amendments 1960, Pub. L. No. 86-752, 74 Stat. 889.

56 Id.

57 Segrave, *supra* note 1.

58 47 U.S.C. §317 (1999).

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63 Commission Warns Licensees About Payola and Undisclosed Promotion, 4 F.C.C. Rcd. 7708 (1989).

64 Southeast Florida Broadcasting Ltd. Partnership v. F.C.C., 1991 WL 222114, (D.C. Cir., Oct. 28, 1991).

65 Id.

66 Id.

67 47 U.S.C. §503 (1999).

68 47 U.S.C. §508 (1999).

69 Id.

70 In re Termination of Plugola Rulemaking and Affirmation of Disclosure Requirement, 76 F.C.C.2d 227 (1980).

71 Id.

72 Id.

73 In re General Media Assocs., Inc., 3 F.C.C.2d 326, 327 (1966).

74 Id.

75 Id.

76 Id.

77 In re KMAP, Inc., 44 F.C.C.2d 971, 974-75 (1974).

78 Id.

79 Id.

80 Sponsorship Identification Of Broadcast Material, F.C.C. 60-239 Public Notice 85460 (1960).

81 Id.; see also In re KMAP, Inc., *supra* note 77.

82 In re General Media Assocs., Inc., *supra* note 73.

83 47 U.S.C. §317 (1999).

84 Sponsorship Identification, *supra* note 80 (emphasis added).

85 Id.

86 Id.

87 H.R. Rep. No. 86-1800, *supra* note 52.

88 Sponsorship Identification, *supra* note 80 (emphasis added).

89 Id.

90 See generally In re Broadcast of "Living Should Be Fun", 33 F.C.C. 101 (1962).

91 See generally In re Mattel, Inc., 40 F.C.C. 159 (1963).

92 Id.

93 In re Broadcast of "Living Should Be Fun", *supra* note 90; In re Mattel, Inc., *supra* note 91.

94 Id.

95 In re Mattel, Inc., *supra* note 91.

96 Commission Warns, *supra* note 63.

97 In re Carter Publications, Inc., 45 F.C.C.2d 115 (1974).

98 Id.

99 Commission Warns, *supra* note 63.

100 Id.

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105 United Broadcasting Co. of New York, Inc., 45 F.C.C. 1921 (1965).

106 Id.

107 In re Midwest Radio-Television, Inc., 49 F.C.C.2d 512 (1974).

108 Application of Sponsorship Identification Rules, 66 F.C.C.2d 302 (1977).

109 Id.

110 See generally In re Termination of Plugola Rulemaking and Affirmation of Disclosure Requirement, *supra* note 70.

111 Id.

112 Reilly, *supra* note 20 (*quoting* FCC attorney Chuck Kelly).

113 H.R. Rep. No. 86-1800, *supra* note 52.

114 Id.

115 Id.

116 Id.

117 Id.

118 Id.

119 Sponsorship Identification, *supra* note 80.

120 Strauss, *supra* note 23.

121 See generally id.

122 Sponsorship Identification, *supra* note 80.

123 Mainelli, *supra* note 37.

124 Sponsorship Identification, *supra* note 80.

125 Mainelli, *supra* note 37.

126 Philips, *supra* note 4.

127 Id.

128 Id.

129 Id.

130 Id.

131 Id.

132 Sponsorship Identification, *supra* note 80.

133 Id.

134 Id.

135 In re Carter Publications, Inc., *supra* note 97 at 166.

136 Philips, *supra* note 4.

137 Id.

138 Id.

139 Id.

140 Id.

141 Sponsorship Identification, *supra* note 80.

142 Philips, *supra* note 4.

143 H.R. Rep. No. 86-1800, *supra* note 52.

144 Sponsorship Identification, *supra* note 80.

145 Taylor, *supra* note 22.

146 Id.

147 Id.

148 Id.

149 Sponsorship Identification, *supra* note 80.

150 Id.

151 Id.

152 Id.

153 CBS, Inc., 67 F.C.C.2d 969, 974 (1978).

154 Id.

155 Id. at 971.

156 Taylor, *supra* note 22.

157 Id.

158 In re Broadcast of "Living Should Be Fun", *supra* note 90; In re Mattel, Inc., *supra* note 91.

159 Id.

160 Southeast Florida Broadcasting v. F.C.C., *supra* note 64.

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165 Sponsorship Identification, *supra* note 80.

166 Abbott, *supra* note 163.

167 Id.

168 Id.

169 Taylor, *supra* note 22.

170 Sponsorship Identification, *supra* note 80.

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174 Id.

175 Id.

176 Tom Roland, *Capitol Radio Ad Campaign Draws Fire*, THE TENNESSEAN, Apr. 17, 1998, at E1.

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178 Strauss, *supra* note 23.

179 Kevin Baxter, *Arts and Entertainment Reports From The Times, News Services, and The Nation's Press*, LOS ANGELES TIMES, July 24, 1999, at F2; Mainelli, *supra* note 37.

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184 Taylor, *supra* note 22.