

# White Paper Report

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White Paper  
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Collecting Online Music Project  
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Music libraries are well positioned to collect, preserve, and provide access to sound recordings on such tangible analog and digital formats (e.g., LP, CD, audio cassette, and reel-to-reel tape). However, as music distribution moves into an increasingly online-only mode, music libraries face an array of disruptive collection, preservation, and access issues. How will music libraries adapt to online and “format-free” distribution models? How will they collect, preserve, and provide access to online music that’s not part of a subscription package?

The Collecting Online Music Project (COMP) addressed these questions by way of facilitating two overarching activities: 1) a meeting of librarians and archivists at the Music Library Association’s annual conference to outline possible solutions to the challenges libraries are facing in collecting, preserving, and providing access to online only music, and 2) dialogue on this topic with individuals outside of the music library community (i.e., content providers and music industry representatives). Both goals were met.

### **Music Library Association Meeting**

On February 13, 2011, 10 librarians [see Appendix A] representing large music libraries gathered in Philadelphia for a one day meeting to discuss the issues and possible solutions to the problem of download-only music. Librarians in attendance represented universities with stand-alone music libraries and the Library of Congress.

Prior to the meeting the Project Directors, working with Judy Tsou (Head of the University of Washington Music Library), outlined the major issues with collecting online music. We determined that the landscape covered two major categories: the proliferation of subscription based streaming music services (e.g., Naxos and Alexander Street Press) and download only music that can only be licensed by individual users (i.e, Amazon.com and iTunes). Based on this categorization, we created a web survey to gather data about which issue was of greatest concern to the librarians polled [see Appendix B for complete survey with results].

The librarians overwhelmingly identified individually licensed download only music as their top concern [9 out of 10 respondents with number 10 not responding]. As part of the survey we also asked about the top issues regarding licensing/rights; preservation; and dissemination/access; this was an open-ended question. In gathering this data prior to the meeting on February 13 we provided a forum for attendees to voice their concerns in a controlled environment so we could focus on the solutions to the issues [which was also one of the questions on the survey], rather than wasting valuable meeting time getting the issues on the table.

All attendees received a copy of the survey results both prior to and at the meeting. The meeting began with a review of the results of the survey with attendees agreeing that the issues identified

as part of the survey were still the major concerns; there was also the opportunity to add to the issues already generated.

Below is sampling of themes and ideas that came about from the meeting (unedited meeting notes are included at the end of this document: see Appendix C).

- Possible approaches to resolving the download-only music dilemma:
  - Develop an online JSTOR-type system for archiving and providing subscription based access to download only music.
  - Collaborate with PORTICO or Hathi Trust to develop an archive of only online music. This model may alleviate preservation and ownership concerns librarians have with the increasing number of subscription based streaming music packages, however it would may not address the issue of providing access to individually licensed download only content.
  - Negotiate directly with content providers (either as individual institutions or consortia) and attempt to license download-only content for research and teaching purposes.
  - Engage in advocacy minded legal exposure, such as having a group of libraries across the country downloads a specific download-only track on a certain day and then publicize the act widely.

### **Input Beyond the Music Library Association**

Our proposal included the following statement: “To insure a diversity of perspectives, input will also be solicited from mainstream and independent music industry representatives and advocates at South by Southwest [SXSW].” After reading through SXSW’s proposed music-related panels abstracts, and following numerous conversations with artists familiar with SXSW, we determined that our attendance at the conference would probably not pull together “a diversity of perspectives.” SXSW is, generally speaking, focused on the business of recruiting and/or promoting new artists and products, not reflecting on emerging distribution models’ disruptive impacts on libraries and archives. One panel, however, was tangentially related to our topic as it addressed issues of sound recording preservation and access (“How to Keep Your Digital Music Flowing” <http://bit.ly/1Adfr4>). Fortunately one of our colleagues, Andy Leach (Director of the Rock n’ Roll Hall of Fame Archive), presented on the panel and raised many of the concerns expressed in COMP (see below for an overview of his experience). Therefore, we decided to forgo attendance at SXSW and instead focus on developing diverse perspectives via a series of conversations.

1. Amazon.com & Apple - John Vallier reached out to representatives from Amazon.com and Apple Computer about the download-only dilemma and its impact on libraries. A representative from Amazon.com—an executive in their digital download division—then discussed the issue with her colleagues at Amazon. In reporting back, the individual noted that while the company is sympathetic to the issue and its negative impact on libraries, there is nothing Amazon.com can do to change the terms of use as they are dictated by content providers (i.e. the music industry). The conversation with Apple was nearly identical. While campus Apple sales representatives were sympathetic to the issue,

Apple legal representatives stated that the terms of use could not be altered as content providers establish them.

2. Library Ideas - Vallier and Brian Downing, co-founder of Library Ideas, had conversations about the download-only dilemma in general, and Library Ideas' Freegal music service in particular. Freegal offers library patrons access to DRM-free and downloadable music selected from the Sony catalog. In order to subscribe to Freegal, Libraries pay a minimum annual commitment based upon size, ranging approximately from \$1,500 to \$20,000. Library patrons are then given a specific number of weekly downloads (usually 3). While Freegal is trailblazing a new model of music distribution for libraries, it has been criticized by librarians for its limited catalog of songs and steep costs per download. Some librarians are also fundamentally opposed to the idea of giving away (not lending) content.
3. Los Angeles Philharmonic Orchestral - In March 2011 Tsou and Vallier contacted the Los Angeles Philharmonic (LA Phil) about purchasing iTunes and download only Gustav Dudamel recordings for UW Libraries (Gustav Dudamel is one of the most popular conductors in the United States today). LA Phil referred the query to their distributor, Deutsche Grammophon, who then referred it to their parent company, Universal Music Group (UMG). Tsou and Vallier attempted to work with UMG to license the material. At first UMG stated they could not license downloads for educational use at all, but could license a CD. In a follow up email, the UMG representative then said they could license a download, but only up to 25% worth of downloadable album's content. The representative also noted that such a license would be temporary (for no more than 2 years). UMG's processing fee would be \$250. This would be on top of the licensing fee which was described as being "more than" the processing fee. Tsou and Vallier determined these terms and costs to be unreasonable. Vallier shared this experience with the COMP meeting attendees and later with all members of the Music Library Association Listserv.
4. Sub Pop - Vallier met with representatives from Sub Pop Records: Chris Jacobs (General Manager), Richard Laing (Sales), and Meghan Madonna (Digital Assets). All were sympathetic to the download only issue facing libraries and worked with Vallier to brainstorm solutions. One idea was for libraries to work with cloud-based music companies—such as Rhapsody—to develop a subscription package for libraries. Another idea was to develop an educational institution friendly licensing model for download only music based on Internet radio models. Sound Exchange was identified as being a possible partner for this approach. In terms of Sub Pop, Jacobs was interested in developing a means for education institutions to stream their content (including download only titles). He thought that such a platform would work best if hosted and operated by the educational institution. Jacobs and Laing also shared some interesting sales statistics. While downloads do account for 40% of their sales, vinyl LP sales account for 10% and are increasing in popularity. CDs sales are remaining steady in the 50% range. Therefore, unlike other labels, Sub Pop is currently committed to providing consumers with access to tangible media for nearly all of its releases.
5. SXSW - As noted above, Andy Leach from the Rock n' Roll Hall of Fame presented at SWSW 2011. On his panel Leach spoke about the issue of pre-1972 recordings and how the current copyright law regarding these is very out-of-date in today's digital age. Regarding access, Leach talked about the different ways libraries are now providing

access to digital music to their users, and brought up the download-only issue and how downloaded files can only be sold to "end user customers", not libraries. He posed the following question to panelists and audience members: if there are recordings that cannot legally be acquired by libraries, how can we guarantee that they will survive? The audience listened, but feedback was not given.

## **Next Steps**

This planning grant has enabled us to articulate the profound challenges music libraries face in an increasing on-line only music distribution environment. It has also allowed us to begin strategizing solutions to these challenges. Now that this work has been completed, we envision a second NEH Digital Humanities grant to support the realization of concrete solutions. At this point we envision such a grant being in collaboration with the Music Library Association, as they are the professional organization most concerned these issues. In particular we foresee this partnership developing in several parallel paths: 1) work with PORTICO to develop a framework for preservation of online only sound recordings, 2) based on the conversation with Universal Music Group regarding the Dudamel recordings, retain an attorney to write a sample licensing agreement to use when purchasing copies of streaming and online only recordings, 3) work to implement NISO's Shared Electronic Resource Understanding practices 4) retain an attorney to write a analysis of how Section 107 of the US Copyright Code (Fair Use provision) could be applied to the collection of online only distributed music, and 5) develop an outreach campaign to raise awareness of this issue among artists, conductors, and the general public

A 2005 study commissioned by the National Recording Preservation Board found that "rights holders appear to have few real-world commercial incentives to reissue many of their most significant recordings" (<http://www.clir.org/pubs/reports/pub148/pub148.pdf>) The study goes on to state that out of a sample of 1,521 recordings made between 1890 and 1964, "rights owners have made available 14 percent of historic recordings that they control" (ibid.). In short, we cannot depend upon rights holders to safeguard and provide access to our audio heritage. It is up to libraries, acting in the interest of the public good, to take on this responsibility.