

Alan Freed still casts a long shadow: the persistence of payola and the ambiguous value of music.

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Abstract

Despite the enormous changes in the music industry in recent years, some things have persisted. Payola, the exchange of money or promotional consideration for radio airplay, has persisted if not increased over the past decade in the United States. This is due to the corresponding persistence of a series of contradictory social relationships between broadcasters, their sponsors and the audiences they seek to construct and maintain through the targeted deployment of music. I show here that payola, and its more legitimate cousin deregulation, are forms of 'inter-elite communication' designed to make the market in music more manageable and stable.

Keywords

elite communications, hit making, media deregulation, payola, popular music, radio broadcasting

It seems almost tedious to point out yet again how "everything has changed" in the music industry, but change it has. Yet, despite the enormity of the transformation, some things have endured. Payola is still a common practice in the music industry in the United States that continues not only in the face of scandals, hearings, and FCC consent decrees in the past decade, but apparently even in spite of the profound changes in the production, distribution and consumption of music. There is an intriguing fact about payola, the importance of which is often overlooked. The act of exchanging cash or promotional consideration for airplay is not actually illegal in and of itself in the United States. Such exchanges are legal as long as they are done openly, providing some manner of public

explanation of the character of the relationship between the parties involved. It is only illegal to engage in payola when those involved don't acknowledge the act and its larger purpose. With this in mind, the seemingly straightforward, everyday character of the illegal form of exchange we call payola might appear less simple. In fact, payola is a revealing form of social and economic organization that can tell us, by its very tenacity, a good deal about the changes affecting the music industry, paradoxically by showing us what is not changing in the music industry. The payola scandals and exposures of the early 21st century provide an opportunity to see how certain kinds of social relationships, attitudes and presumptions persist within the music industry despite the manifest upheaval going on around and within it.

I will argue here that the persistence of payola is largely due to the corresponding persistence of a series of contradictory social relationships between radio conglomerates, the music industry, their sponsors such as investors and advertisers, and the publics they seek to construct and maintain through the targeted deployment of music. I will further argue that payola is markedly similar to its more celebrated and decidedly legal cousin, deregulation, in that both are forms of what Davis (2003) calls 'inter-elite communications' that are crucial 'for sustaining political and economic forms of power in society.' (Davis, 2003: 669-70) As Davis argues, forms of inter-elite communication 'take place outside the public sphere of the mass media and without reference to the mass of consumer-citizens' (ibid.) in the pursuit of market power and economic predominance. Deregulation and payola are noticeably similar practices designed to reach more or less the same ends, efficient market management. Both are forms of elite discourse 'produced by, and aimed at, decision making and power-broking elites' (ibid.; see also Davis, 2000) in order to make the notoriously fickle market in music more predictable and reliable. Importantly, each lies just across a subtly shifting line of legality from one another and both are subject to the fickle winds of politics. The very definition of each is more often than not left to workings of a political system defined by the near-total "capture" of the regulatory apparatus by the very subjects of regulation.

A series of contradictory social relationships

The persistence of payola is part of a larger effort by two significant parts of the music industry, commercial radio and record labels, to resolve several sets of contradictory, but longstanding social relationships. First, the persistence of payola is due in large part to the inability of the music industry to comprehensively deal with the ambiguous value of music. As is widely acknowledged through numerous sources, the music industry fails far more than it succeeds in selling music. (Salganik, et. al., 2006; see also Kirk, 2004; Amoaku, 2005) There is a defining ambiguity surrounding both the economic value of the experience of music and the confounding nature of that experience itself for those attempting to profit from it. As Seabrook notes, '[h]it-making is an imprecise method of doing business' as no one seems to be able to predict what the big sellers will be. (Seabrook, 2003)

Second, the sheer amount of promotional work that goes into making a hit is often extraordinarily expensive. (Seabrook, 2003; Fairchild, 2008:107, 117-8; see also Garofalo, 1999:342-4) The combined risks of high promotional costs and a probable

lack of success demand that the economic value of music must be at least to some degree demonstrable in advance. Given that predicting the value of music has proven such a fiendish equation, the radio broadcasting and music industries have both taken to trying to corral the experience of music. Both industries have relied on the deregulation of their industries as well as larger trade and economic relations to produce economies of scale and a high degree of ownership consolidation to make the market in music more predictable. In this context payola can be seen as one more form of aesthetic “pre-selection” preferable to the risky and taxing effort of predicting which of the thousands and thousands or new songs released each year might be a hit.

Third, the underlying contradiction between the demonstrable need for market stability and reliability in the absence of any proven economically predictive value to music is compounded by the economic logic by which the music and entertainment industries have governed their global expansion over the last two decades. This logic, which is by no means confined to the entertainment industry, has demanded a kind of operational certainty that is very hard to sustain. We have seen an ever greater stretch to increase profits by decreasing costs through economies of scale and intrafirm synergies made possible through vertical integration that define the strategic imperatives of the music and entertainment industries. (Herman and McChesney, 1997: 52–61; Fairchild, 2008: 98; Bishop, 2005) The debt load most media mergers place on new corporate partnerships then produces even more intense pressure to make greater profits at lower costs. The oligopoly of major music labels has had to become well practiced at freeing up resources structurally to find ways to turn costs into profits in response to a corporate practice that presents extensive possibilities for cross-media promotion on a global scale. This economic context has exacerbated the immediate effects of deregulation, arguably leading to the kinds of pressures that payola might seem suited to relieve.

Finally, given that the primary social relationship for commercial radio is between radio stations’ ownership conglomerates and sponsors (investors and advertisers) and the secondary one is between individual stations and their listeners, payola and deregulation both offer an easy route to the resolution of any conflicts between the two. The primary goal of those who run commercial music radio stations is to sell the largest and most lucrative blocks of listeners to advertisers, thereby demonstrating their worth as investment vehicles. Yet they must do so by managing the experience of music, the bodily, sensuous, subjective and heavily contextual experience of music, to those listeners. At the same time, commercial radio stations must rely on the heavily administered relationships of consumerism such as focus groups, demographic and geo-demographic research, economically exclusionary relationships between suppliers and receivers etc, to clarify the value that their product, listeners’ time and attention, has for their clients, advertisers. In short, the experience of commercial radio must be both a carefully engineered form of economic experience *and* a sensuous and pleasurable form of aesthetic and social experience to have any demonstrable economic value.

To support these claims, I want to place one effort at taking the guesswork out of selling music, payola, in a close analytical relationship with another, the wholesale legalization of what had previously been illegal practices in the radio industry, deregulation. Both have been used as ways of making the market in music more manageable and have a good many similarities in their purpose, conception and execution. Both payola and deregulation are designed to exclude the public or the public sector from both formal and

informal decision-making power. Both are forms of discourse that are designed to be procedurally closed. Both aim at the naturalisation of their cultural power specifically by rendering that power invisible and prohibiting the influence of the public on the operations of the radio station or record company, even through the very market mechanisms these institutions claim as their main animating force. Both are designed to help their sponsors and beneficiaries accrue structural power over the market in music to make that market more predictable. Finally, both are intended to maintain the pretence of service to the public good specifically by hiding the conditions and purpose of the production of a variety of forms of economic and cultural power.

Given that no one can literally “hear” the effects of payola when they listen to the radio, we have to ask why it matters. Payola matters because it exists to hide the fact that commercial radio is primarily a complex mechanism of product placement set amongst an increasing number of similar mechanisms all of which seem to be increasing the depth of their penetration into everyday life and the sophistication of their abilities to do so without any concomitant scrutiny, openness or transparency. (Manly, 2006; Edwards, 2006; Moses, 2011; Kingsley, 2011) Payola is a form of ‘stealth marketing’ (Goodman, 2006) that contradicts the most basic claims that the market in music is defined by social relationships that act as some kind of referendum that ultimately expresses the elusive ‘voice of the people.’ (Cobo, 2002; Cave, 2004; Surowiecki, 2004) Given that most of what one hears on a commercial music radio station is in some sense a commercial for something else, it seems foolhardy to court license revocation or criminal prosecution simply to hide the mostly obvious sources of one’s programming staple. The explanation of this apparent paradox has to do with the peculiarity of music as a form of economic exchange. As Mol and Wjinberg (2007) note, the more difficult it is to define the economic value of a product, the greater the power that rests in the hands of those who act as intermediaries for that product to influence perceptions of its value. Their knowledge and expertise will occupy a central role in the chain of relationships through which value is ascribed to the products they help distribute. It is not surprising then that using the broadcasting of music as a currency for brokering influence would attract increased competition as well as attempts to gain competitive advantage. (Mol and Wjinberg, 2007: 701-2) Despite the manifest commonality of interest in making songs into hits held by both the commercial music radio industry and record labels, the real market competition between them that most clearly distinguishes them from one another is the influence each is able to wield through their respective practices of mediation. Payola is a way of managing this competition towards mutual advantage by making the market in music more stable and predictable. In order to understand what the persistence of payola tells us about the music industry and commercial radio broadcasting, we have to understand the far more substantial and consequential attempt to render the market docile, predictable and stable that has been in train for decades, carried forward by payola’s legal cousin, deregulation.

Deregulation: making markets more predictable

The deregulation of the broadcast regulatory system in the United States began in the late 1970s. The U.S. case is a signal example of the process, goals and consequences of broadcast deregulation as the U.S. experience has been replicated with impressive rigor worldwide. Prior to deregulation, American broadcasters were legally obliged to provide, in

return for the free use of the public resource of the broadcast spectrum, a significant amount of information regarding their programming and finances, a range of clearly defined services to the public in the form of the addressing of issues of controversy and importance, some accounting of their ability to provide free and fair access to differing points of view, and some assessment of the promises they made in comparison to their actual performance. Importantly, implied within these requirements was an actual forum in which the public could engage in criticism and press for reform of the broadcasting industry. (Ramey, 2007: 31-37; Fairchild, 2001: 67-75; Fairchild, 1999) Deregulation, by contrast, was guided by a sharply incongruous philosophy of the public good, one that had been present in policymaking for quite some time. (Moss and Fein, 2003) The idea was that only by removing all requirements to public service and accountability could the public resources of the airwaves be used to best advantage for all.

One main goal of deregulating the broadcast media was to resolve the contradictions in the broadcast market by altering the role of the state from an adversarial role in the regulatory apparatus to a role as a market facilitator. (FCC, 1999: 1) This would allow the unfettered use of the public resource of the airwaves through the private property of broadcasters and thus it follows, ideologically at least, that this would result in the best use of this resource. This philosophy, while perhaps novel in its widening influence by the 1970s, had long been comparatively marginal, and not just in the US. As Moss and Fein show, the earliest broadcast regulations in the US were shaped to reflect the determination of policymakers ‘to prevent a potentially dangerous concentration of political power.’ (Moss and Fein, 2003: 390) Their study of the early legislative record clearly demonstrates that during the establishment of the foundational framework of media regulation in the US, ‘democratic principles came into conflict with –and ultimately eclipsed–economic ones’ in ways unique to radio broadcasting. (Moss and Fein, 2003: 391)

While the contradictions between property and the state have held a central place in political debates surrounding broadcast regulation since their inception in the 1920s and 30s (McChesney, 1993; Moss and Fein, 2003), in a very real sense, the balance of the twentieth century has seen what was, at first a gradual, then a sudden domination by the private sphere over the public airwaves. As Calabrese argues, the final two rounds of deregulation in the U.S. in particular illustrated ‘a continued pattern of government-industry cooperation in accelerating media ownership and the consolidation of media power.’ (Calabrese, 2004:107) One main consequence of deregulation has been to allow an industry that was once regulated by the government to “capture” the regulatory apparatus governing its operation.¹ In this case, while insulating corporations from the interference and influence of the public and the state was supposed to lead indirectly to the enhancing of the public good, it only succeeded in transferring political, social and economic power to private entities who are now largely unaccountable for their actions.

The process of removing the public from any influential role in broadcast regulation enshrined the power of these cultural intermediaries, granting them the greater predictability they sought at the cost of the public the state purported to represent. The first and most obvious effect of deregulation was that it resulted in unprecedented concentration of ownership in the American radio broadcasting industry. (DiCola and Thomson, 2002: 18, 22-28; Huntemann, 1999) A second factor crucial in the success of broadcast deregulation at marginalizing the public has been the removal of any consequential opportunity for the public to influence to challenge the political rewards sought by powerful

corporations at the expense of citizens and consumers. The main political reward for broadcasters has been the removal of any formal role for the public in setting or influencing policy and the domination of those forums in which policy is shaped and enacted. (Fairchild, 1999; Thussu, 2007: 39-40) As with the concentration of ownership, the capture of the apparatus of state regulation and the subsequent removal of any consequential forum for public influence or accountability also served to make the commercial radio market far more predictable and easier to manage.

The same is true for one of the most far-reaching acts of deregulation, the removal of all limits on the amounts of advertising a radio station can air. The removal of these constraints changed the balance of power between advertisers, radio stations and the public. Increased amounts of advertising gave radio conglomerates more power over the medium generally and, in conjunction with the drastically consolidated ownership, allowed single companies to dominate entire radio markets by strategically using multiple stations across the full range of programming to appeal to all demographic groups simultaneously, but separately. As Huntemann has shown, the newly enlarged radio conglomerates in the US were able to incorporate restrictive, informal demographic caveats into their planning much more successfully in order to pursue those advertisers who specialized in attracting demographic niches regarded as high consumption groups. These distinctions broke down along familiar lines, largely excluding populations of poor and working class people as well as all but the most elite non-white groups. Formats and programming were aggressively reshaped to align with market research and resulted in the marginalisation or exclusion of all but the most 'valuable' listeners. (Huntemann, 1999: 399-401)

However, as significant as these points are, the impact of deregulation did not only lie in the fact that the American radio industry was restructured around a very small number of owners who could act as freely as they wanted. Those corporations which succeeded in growing quickly by buying up their competition accomplished two things. They made their markets less competitive and more predictable and these newly enlarged institutions took on substantial amounts of debt which then needed to be paid off by cutting costs. These two factors worked in tandem as the fewer, wealthier, more indebted media institutions survived the early years of deregulation by cutting large numbers of employees, placing more and more of their workers on short term contracts, using more subcontractors and freelancers, and centralizing key aspects of production, market research and information gathering. Those left had less job security, lower wages and less power within their workplaces as a result. (DiCola, 2006; Huntemann, 1999: 401-2; 'Broadcast Confidential,' 1997)ⁱⁱ Add to this the immediate pressure brought to bear by a heavily indebted head office, a public that has been structurally and practically excluded, and an industry that has accrued substantial structural power over their market and the state, and the results should not be too surprising. Similar patterns have been repeated in numerous countries as media regulations were 'harmonized' through bilateral and multilateral trade agreements. (Thussu, 2007: 2, 7, 38-41, 43-49; Winseck, 2002: 798-800; Atkinson, 1994: 146-150, 168-173)

The effects of deregulation on commercial radio programming have been very well demonstrated. Deregulation has resulted in the centralization of program production allowing greater control over content and the imposition of a broad uniformity to that content. The processes that produced programming became increasingly constrained as the number of people involved in program production was significantly reduced after deregulation. The decisions made all the way along the production line from strategic

planning to presumptions about which segments of the market to pursue to which specific program content might best attract the desired listeners were performed by smaller and more centralized groups than before. One of the main effects of deregulation has been the increased control over specific formats by conglomerates. For example, in the US, as the number of owners decreased and the number of stations they operated increased, owners were able to use their market power to exert a dominating influence over specific formats across numerous markets. This is one of the ways the decrease in the number of people actually involved in determining access to radio airplay has had a practical effect on programming. Instead of owners simply controlling access to the airwaves of specific stations, the practical result of deregulation was that most formats in the US became oligopolies in themselves, with one ownership group exerting a dominant market position over the primary means of access for entire types of music, not just individual markets. (DiCola and Thomson, 2002: 36-41)

As a result, formats and genres were often used as a form of pressure exerted by record labels on artists and exerted by radio stations on record labels in the constant struggle for mediational supremacy. Formats and genres became mutually sustaining contrivances that act as a kind of disciplining form of mediation shaping the ways in which ‘artists are recorded and presented to the media.’ (Negus, 1993: 66) As increasingly concentrated ownership groups exerted control over increased numbers of stations, radio conglomerates were able to plan across more markets simultaneously with greater ease and efficiency than before. They could target increasingly specific demographics and access those within the desired niches more exclusively. One of the effects of this kind of market construction was that individual companies could appeal across large swathes of the demographic spectrum with little serious competition. This resulted in significant control over the construction of radio formats as well as influence over music genres. This resulted in extensive overlap between different formats as the management of these aesthetic oligopolies became more and more centralized. (DiCola and Thomson, 2002: 53-59; Ross, 2003:6) As each of a range of broadly construed formats came to be dominated by one firm or another, the music market in the US was marked by a form of ‘consolidated power over musicians’ access to the airwaves’ that ‘has not existed since the earliest days of radio.’ (DiCola and Thomson, 2002: 62)

Moreover, as deregulation in the US worked out in practice over the decade following implementation, the trends apparent in the first few years following the new laws greatly intensified. As a series of studies from the Future of Music Coalition have consistently found, first in 2002 and then in 2006 and then again in 2009, there were fewer, larger and richer companies dominating the US market. These companies had gained an increasing share of an audience that was getting slightly smaller overall, and these same companies were playing a smaller number of songs that overlapped more and more across increasingly constrained and indistinct formats. (DiCola and Thomson, 2002; DiCola, 2006) The 2009 survey applied quantitative measures specifically to the concentration of songs on US radio, tracking their sources and recorded their prevalence producing results consistent with the logic of deregulation described above. Between 2005 and 2008,

the picture that emerges from these data is one of status quo: radio that is simultaneously risk-averse and controlling of its greatest asset—access to the airwaves—a circumstance that is greatly compounded by the consolidating effect of the 1996 Telecommunications Act. The

major labels continue to have the most success in getting access, in large part because of the cumulative effect of cozy relationships and incentives paid over the years, as well as the “twin bottlenecks” that the oligopolistic radio and music industries represent. (Thomson, 2009: 42)

Despite the claims of some researchers, the ‘programming repertoires’ and ‘philosophies’ as well as the ‘true diversity of practices employed by programmers’ have not provided much of a challenge to the effects corporate rationalization in commercial music radio. (Ahlkvist , 2001; Ahlkvist and Faulkner, 2002: 211) The forlorn hope that such practices might mean that ‘music programming standardization will likely be confined to larger markets’ (Ahlkvist and Fisher, 2002: 301) has been flatly contradicted by the evidence. As DiCola and Thomson demonstrate, ‘[v]irtually every geographic market is dominated by four firms controlling 70 percent market share or greater’ and that in ‘smaller markets, consolidation is more extensive.’ The largest four firms in almost all small markets control 90 percent market share or more. (DiCola and Thomson, 2002: 31-35; see also Thomson, 2009)ⁱⁱⁱ The power of the earnestly felt, fiercely honest tastes of the music programmer who is driven by a passion for music, who ‘listens with their heart’ and acts as a ‘populist’ by using ‘the listener’s ear’ (Ahlkvist and Faulkner, 2002:197, 202-3) has not been enough to challenge the systems in which they work.

Payola: Constructing audiences, economically, legally and illegally

Payola does not appear as one of the many ‘programming repertoires’ or ‘philosophies’ that some might posit as a contestation of the increased rationalization of commercial music radio, despite the fact that the widespread use of this programming practice stretches well beyond the advent of radio broadcasting, reaching back into the world of nightclubs and vaudeville theatres, with regular eruptions through to the present. (Dannen, 1991; Seagrave, 1994; Kielbowicz and Lawson, 2004) To conclude this examination, I will argue that recent examples of payola show how the exchange of money, goods, influence, or consideration, legally or otherwise, is like many procedurally closed tools used to make the market in music more manageable. Payola is made effective by excluding the public from influence over decision-making and allowing the sponsors and beneficiaries of payola to accrue structural power over their markets. The actual character of payola is masked to maintain the pretence to public service while hiding the conditions and purpose of the accumulation of power by stealth.

The recent high profile payola investigations that began to dissipate with the separate settlements between Sony BMG, the Warner Music Group, and the State of New York in 2005 had all of the elements of a classic payola scandal. There were aggrieved victims seeking redress, righteous politicians pursuing justice, contrite executives professing reform and anonymous industry sources cynically suggesting nothing would really change. (Garrity, 2005a: 5-6; Garrity 2005b: 5-6; Mokhiber, 2005: 70; Stark, 2005: 18) The scandal played out with a remarkable correspondence to earlier scandals, right down to the tone and character of the claims made by politicians as to the evils of corruption and immorality in the entertainment industry and those by industry insiders that the prosecutions and investigations would do more harm than good. (see Heine, 2006; Coase, 1979: 303-6) Commentators weighed in with the standard libertarian line that

payola is nothing more than a rational and efficient means of allocating the valued resource of broadcast time on the airwaves. Sources within this rather limited spectrum of debate argued that it is the public that is the ultimate arbiter of the success or failure in the music industry as 'every radio comes equipped with an on/off switch.' (Gross, 2005; see also Rennhoff, 2010) a rhetorical gem with a long, disingenuous history. (see Coase, 1979: 309-12) The consonance between contemporary and past scandals included the ambiguity of the final outcomes to the tussle between the authorities and the music and radio broadcasting industries. Unequivocal claims of tightened playlists and little relief for those harmed by corrupt practices rang through the industry press after the settlements concluded. (Heinie and Tucker, 2007; Serpick, 2006; Martens, 2005; Rose, 2006; Butler, 2005) As with many such scandals from the past, these too concluded with a weary acknowledgement that little had changed. (Martens, 2007a, 2007b; Harding, 2008; Jouvenal, 2008; Thomson, 2009)

The seeming lack of identifiable outcomes to recent prosecutions of misconduct and anticompetitive behaviour was due in some significant measure to the fact that these contests had little to do with the actual constitution of playlists or achieving some agreed upon measure of musical diversity on the airwaves that might be thought to serve the public good. Throughout the entire affair, few if any concrete proposals were put forward for the measurement of a specifically musical diversity. Most of the debate centred around the source of the primary materials of commercial music radio, recordings. Most of those writing about the potentially increasing or decreasing diversity on commercial music radio were forced to abandon any discussion of the aural characteristics of music completely. Perhaps more surprisingly, few if any concrete measures were offered as to what constituted serving the public's demonstrated interests in the character and equity of the larger market in music were offered. This is largely because these contests were about who would wield the mediating power over that market, not in the character of the content of that market itself. However, there are many perfectly legal means through which this power and influence can be and has been exercised with as much "efficiency" as the illegal forms of payola so recently discovered and prosecuted.

Legal forms of payola have been commonly used in radio broadcasting for decades. Of particular relevance are forms variously referred to as 'Play-for pay,' 'Spin Buys,' 'Paid Airplay,' or simply 'Legal Payola.' (Gloede, 1993; Boehlert, 1996b; BPI Communications, 1997; Thigpen, 1998; Eliscu, 2003; Garrity, 2004) The ways in which this practice evolved from the early nineties to the early 2000s provides an illuminating look at the development of the full blown payola scandal which followed. In the early nineties, paid airplay was presented by some as having an undeniable logic. The radio industry was experiencing a significant downturn and many were seeking new forms of revenue to compensate. The first wave of industry consolidation had just begun and many stations had begun to accrue the kinds of debt that would define the industry by the late nineties. (Gloede, 1993; Fairchild, 2001: 71). While it had been common practice for stations to use people euphemistically referred to as "format consultants" to advise on the composition of playlists and song rotations, these consultants were in fact record promoters indirectly paid by the recording industry to buy airtime and sell records. The plainly evident masking of the actual role of programming consultants was tolerated due to difficulties many record companies had in getting airplay for their products in the increasingly assertive radio industry. These so-called "indies" seemed to be a good solution.

Radio stations would bill the record companies indirectly for each spin they put on air, generally referring to this practice as a form of advertising or an infomercial. (Gloede, 1993; Boehlert, 1996b; Taylor, 1998: 82; BPI Communications, 1997)

The main problem was that the common practice of granting indies exclusive access to the station's airwaves and playlists through access to programming staff generated the resentment of some programming staff, many of whom referred to it as 'protection money' or extortion. (Boehlert, 1996b; Dannen, 1991: 193-9; Morris, 2000: 3; McConnell, 2003) Indies were often able to accrue a great deal of power and would often threaten to remove their services from radio stations which proved troublesome. Other more specific threats abounded. (Dannen, op. cit) The agreements between station owners and "programming consultants" represent precisely those kinds of 'inter-elite communications' designed to 'take place outside the public sphere of the mass media' by excluding the public from any role in the pursuit of market power and economic predominance. (Davis, op. cit) To avoid what became obvious conflicts of interest between record labels, consultants and station staff, many radio stations simply started to evade song brokers by formalizing the practice of paid airplay. (BPI Communications, 1997; Thigpen, 1998) Instead of continuing the charade of program consultancies, some radio stations would allow record labels to buy programming time with the stations making regular announcements about the sponsorship of specific chunks of airplay by record labels. (Taylor, 1998: 82) Quite often, radio stations would buy advertising time during 'fringe listening times at small- to medium-sized radio chains and using the time for repeated play of singles in their entirety—sometimes hundreds of times in a given week.' (Garrity 2004: 5, 92) As one industry journalist noted, these arrangements 'raise concerns about manipulation of the hitmaking process as measured by various singles charts.' (ibid.)

These practices were a direct result of the removal of all limits on the amount of advertising stations were allowed to broadcast. Indirectly, they were made economically preferable by deregulation, vertical integration and ownership consolidation. As noted, by the turn of the century, most radio stations were part of much larger music industry conglomerates which were laden with enormous amounts of debt. (Saxe, 2000; Kot, 2001) In response, the largest companies in the radio broadcasting industry cut staff and began to use 'virtual live' radio, 'voice tracking,' or more simply, program syndication, with a much greater intensity. As a result, most radio stations often didn't actually have much in the way of programming staff to make decisions about what went on the air; these decisions were taken elsewhere. (Eliscu, 2003; Silberman, 1999, 2000; Farrish, 2002; Bachman and Heine, 2005; Sterne and Yorke, 2009) In this context, one reporter noted that the practice of paid airplay has a certain undeniable if mechanistic logic to it, a logic often referred to by economists as 'signaling.' 'By putting money behind a record,' he argues, a record label can help the decreasing numbers of increasingly busy radio station staff 'filter the possible hits from the certain bombs.' A record label that pays for airplay 'signals its belief that the record has a chance to be a hit.' He notes that 'no company will spend a lot of money trying to sell something it doesn't have high hopes for.' (Surowiecki, 2004; see also Coase, 1979: 316-19)

One of the more salient problems for the recording industry with this particular "chain of value" was that the 'control of that vital link,' radio airplay, 'has been ceded to a relative handful of influential program directors.' (Phillips, 1996) As record companies were to discover, radio stations were treating their beloved products merely as 'heavily

researched programming tools to craft a winning format.’ (ibid.) Record labels found themselves funneling an estimated \$100 million a year to radio stations for promotions without getting the market control they thought they were buying. (Kot, 2001) In 2002, the record industry turned on the radio industry when a ‘coalition representing artists’ unions, major labels, and indie labels’ asked the US government ‘to take a hard look at radio consolidation, hinting that some practices by large group owners smack of payola.’ (Holland, 2002; Albiniak, 2002) This almost comically understated request was followed by one of the most aggressive, far-reaching and lengthy investigations into the music industry since the 1950s and 60s. Despite the scope and depth of the investigations, many similar anticompetitive practices continued without getting much attention as they were legal or at least ambiguous enough to go unnoticed. For example, one source reports that radio stations would often put on self-promotional concerts and use their leverage with record labels to get their artists to perform at them without charge. This problem was exacerbated with the growth of the large radio conglomerates who bought interests in concert promotions businesses. (see Foege, 2008; ‘Radio Killed the Concert Star,’ 1996) Similarly, record labels seem to be routinely engaged in price wars with their artists, selling selected titles at remarkably low prices in some markets, or colluding with each other fix unusually high prices in others. (Boehlert, 1996a; ‘Just Exactly Why...,’ 1998; Fairchild, 2008: 66-8; Garrity, 2006: 23)

Conclusion

Payola is just one of a much larger collection of practices designed to make the market in music more manageable. The underlying force which contextualizes contemporary incidences of payola is deregulation. The stark similarities between the goals and methods of payola and deregulation show that they are both responses to the same problems facing the music industry. Commercial music radio in the U.S. lobbied for and then benefited handsomely from deregulation. Several firms acted quickly and aggressively to build up both huge portfolios of radio stations and substantial debts. Then, in an effort to cut costs, increase returns for investors and centralize power within these rapidly expanding organizations, these companies decreased their numbers of full time employees, began relying more on outside programming consultants who were paid by their suppliers to make programming decisions, and began to syndicate programming through what were then newly available tools for creating virtual radio. As the process of deregulation made the commercial radio market less competitive by making a very small number of companies much more powerful, the larger conglomerates exploited market conditions to extract money from their suppliers and graft the pretence of public service onto this extortionate relationship.

One question left outstanding is the harm these practices might do to the public good. Given the increasing prevalence of covert and unacknowledged promotions in all manner of radio and television programming, not to mention online, this question is of increasing relevance. First, payola subverts the expansive rules defining sponsorship identification in the U.S.^{iv} These rules are intended to ‘express a basic goal of American communications law and policy: to foster a healthy marketplace of ideas with minimal government intervention.’ (Kielbowicz and Lawson, 2004: 332) More practically, these laws ‘stem from the principle that the public is entitled to know when and by whom it is

being persuaded.’ (ibid.) Second, substantial harm is done to musicians, smaller radio stations and smaller record labels who are excluded from equitable market competition by anticompetitive practices. Those using these anticompetitive practices often do so with the express purpose of accruing the kind of structural power over a market with which it is almost impossible to compete effectively. (ibid.: 351) Third, these forms of inter-elite communications harm the quality of public discourse by eroding public trust in the mediating institutions and in the quality of the communications themselves. (Goodman, 2006: 87) This is what happened to commercial music radio and the music industry in the U.S. as each lost the trust and loyalty of substantial part of their market as soon as viable alternatives, such as file sharing and downloading, appeared. The harm done by both legal and illegal forms of payola is not limited to the US. The US remains a dominant global music market. The ways in which things get done there do have an impact in other markets. Further, the long process of market and regulatory “harmonization” through bilateral and multilateral trade deals is well advanced. The effects of payola and deregulation in such harmonized markets will likely prove to mirror those in the US. The now utterly pervasive practices of stealth marketing worldwide would seem to point towards the strangely mundane fact of the near-total commercialization of public culture; the illegal forms of payola in the US just happen to be high-profile examples of this a much larger phenomenon.

Despite the often extraordinary changes affecting the music industry, there are certain underlying presumptions and expectations that persist. The first is that the economic value of music is demonstrably ambiguous. As Goodman succinctly notes, music competes on quality, not on price. (ibid.: 101) Given the fact that there are literally tens of thousands of new releases every year, and given the high promotional costs and risks the music industry faces, the competition to be heard is hardly one free of the distortions of anticompetitive market power. It is precisely these risks that makes the market in music potentially unmanageable. Therefore, the dominant institutions in the music and radio broadcasting industries have made substantial efforts at making the market in music more predictable, stable and manageable because of the decidedly ambiguous economic value of music. The second is that the best way to find this elusive stability is to accrue structural power over that market specifically by excluding the public and the public sector from any formal or sometimes even any informal decision-making role or position of influence. These goals have been pursued even to the extent of blunting the market power of the public, a power often used as a rhetorical justification for the political influence wielded by the entertainment, music and radio broadcasting industries as a result of their collective capture of the regulatory apparatus of the state. The third is the array of procedurally closed mechanisms used by the music and radio broadcasting industries to accomplish these goals all the while maintaining a thin veneer of service to the public. It is this pretext that has had the unwelcome consequence of damaging public discourse, the public sphere and the presumptions of trust and transparency that should be their animating forces.

Notes

ⁱ Two industries which have recently benefited handsomely from deregulation, the oil industry and the financial services industry, both had unprecedented catastrophes in consecutive years, the BP Deepwater-Horizon spill in the Gulf of Mexico in 2010 and the Global Financial Crisis of 2008-9. (Taibbi, 2011; Prins, 2006; Ferguson, 2010; Gaviria and Smith, 2010)

ⁱⁱ Foege (2008) and Fisher (2007) provide the comprehensive descriptions of these processes in the US.

ⁱⁱⁱ The claim that DJs or Music Directors have some consequential or meaningful form of autonomy in the workplace is contested by Stark (1999)

^{iv} It is important to note that these rules are distinct in the U.S. As noted in Pride, et. al. (1998), the global status of legal and illegal forms of payola is interestingly diverse.

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