

Ether Today, Gone Tomorrow

Issues in Audio Archiving

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News Flash – US & UK

- **“Digital sales** now represent **57.7%** of all music sales [in the U.S.], up from 53% in the first half of 2011”
-- Nielsen SoundScan, July 5, 2012
- **“Digital** accounted for **55.5%** of the **£155.8m** spent on music in the UK in the **first three months** of this year.”
-- BBC News, May 31, 2012

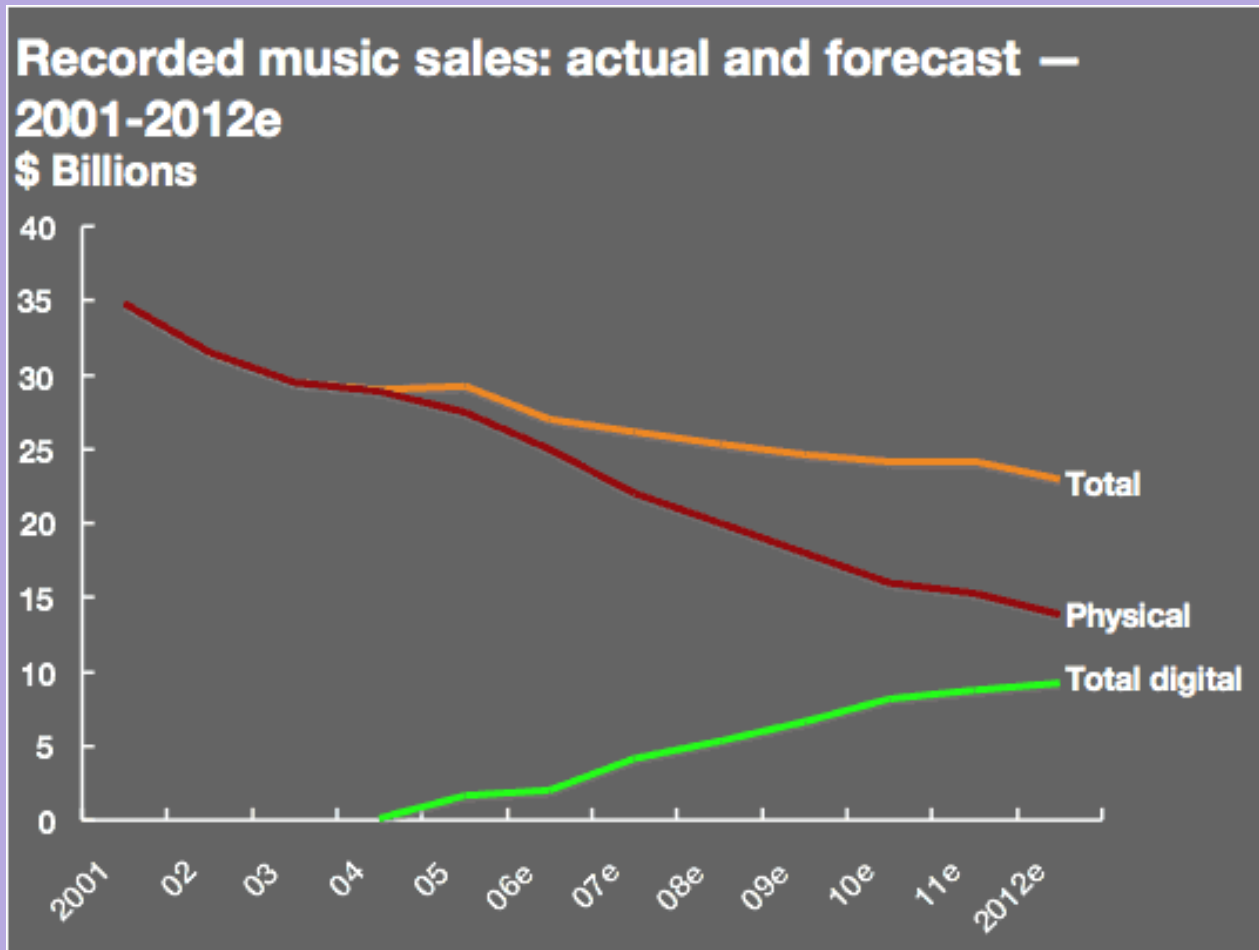
Global Market

- “Digital music revenues . . . grew 8% globally in 2011 to an estimate of \$5.2 billion.”
 - Compared to \$1.8 billion in 2008!
- “Some markets now see more than half of their revenues derive from digital channels, including [US and UK], South Korea (53%) and China (71%).”
 - Digital Music Report, 2012 (IFIP)

Digital Music Revenues

- 2009 -- \$4.6 billion; +10%
- 2010 -- \$4.8 billion; +5%
- 2011 -- \$5.2 billion; +8%

Recorded Music Sales



Technology Infrastructure

- Global surge in smart phones and tablets
- Growth of Broadband subscription
- Better Bandwidth
- Expansion of music download business

Models of Distribution

- Purchasing downloads (e.g., iTunes)
- Subscriptions
 - Downloads (e.g., Freegal, Rhapsody)
 - Stream (e.g., Spotify)
- Free – Legal and illegal

Download Purchases

- **iTunes** – 28 more markets in 2011
 - A total of **50 countries**
- **7digital** – Australia, NZ, Singapore
 - 37 countries**

Subscriptions (streaming)

- Spotify – 12 countries
 - 10 million users (2.5 million paying subscribers)
- Deezer (partner with Orange) – mostly in Europe
 - 20 million users (1.5 million paying subscribers)

Subscriptions (Download)

- Libraries subscribe for patrons to download – Libraries do not keep content
 - Freegal (Sony)

Music Library Subscriptions – Streaming Packages

- Naxos Music Library and Naxos Video Library
- Music Online (Alexander Street Press)
- DRAM (Non-profit) – Contemporary Music
- Smithsonian Global Sound

Licenses for Online Only Music

- Licensed geared towards individual ownership, not institutions
- License Lockdown – Restrictive Terms that do not work for libraries

Licensing Challenges | @ iTunes

- This license granted to you for the Licensed Application by Licensor is limited to a non-transferable license to use the Licensed Application on any iPhone OS-based device ... that you own or control.... **You may not rent, lease, lend, sell, redistribute or sublicense the Licensed Application. You may not copy** (except as expressly permitted by this license and the Usage Rules), decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Licensed Application, any updates, or any part thereof.... Any attempt to do so is a violation of the rights of the Licensor and its licensors. If you breach this restriction, You may be subject to prosecution and damages.

Licensing Challenges | @ Amazon

- You represent, warrant and agree that you will use the Service only **for your personal, non-commercial, entertainment use** and not for any redistribution of **the Digital Content** or other use restricted in this Section 2.2. You agree not to infringe the rights of the Digital Content's copyright owners and to comply with all applicable laws in your use of the Digital Content. Except as set forth in Section 2.1 above, you agree that **you will not** redistribute, transmit, assign, sell, broadcast, rent, **share, lend, modify, adapt, edit,** license or otherwise transfer or use **the Digital Content**. You are **not granted** any synchronization, **public performance,** promotional use, commercial sale, resale, reproduction or distribution rights for the Digital Content. You acknowledge that the Digital Content embodies the intellectual property of a third party and is protected by law.”

Issues with Online Music

- Licenses are restrictive and geared towards **individual ownership, not for libraries**
- **Ownership** of sound recording content **at risk**
 - Subscribe or lose content
 - Acquire redundant physical media, to ensure ownership; may not be an option

Issues with Online Music (cont.)

- Bundled contents from different vendors often overlap
- Bundled content may not map to needs.
- Unable to share through ILL
- Subscription costs increase; takes up a large part of the budget
- Long-term Preservation and Access

Collecting Online Music Project

- In 2010 the UW received a Digital Humanities Start-Up Grant from the National Endowment of Humanities (NEH) to look at these issues.
- Collecting Online Music Project (**COMP**)
 1. Meet with music librarians/archivists to discuss and outline possible solutions to these issues at the Music Library Association's 2011 meeting.
 2. Dialogue on this topic with individuals outside of the music library community.

COMP Participants @ MLA 2011

Dan Boomhower: Library of Congress

Deborah Campana: Oberlin College

Keith Cochran: Indiana University

Ginny Danielson: Harvard University

Andrew Justice: University of North Texas

Verletta Kern: University of Washington

Nancy Lorimer: Stanford University

Erin Mayhood: University of Virginia

Jerry McBride: Stanford University

Judy Tsou: University of Washington

Phil Vandermeer: University of North Carolina

Facilitators: Ann Lally and John Vallier

COMP Survey – Sample Responses

- What presents the greatest challenge to your library?”
 - 9/10 respondents selected - “Individually licensed download (or online) only music (iTunes, Amazon.com, etc)”
- In terms of licensing, what is the #1 issue with online-only music?”
 - “Does not allow institutions to own or make sound files available. It also does not address what would happen if the entity selling the content were to go out of business.”
- With preservation, what is the #1 issue with online-only music?
 - “If libraries cannot build collections... cultural legacy will be lost. .”
- And with access, what is the #1 issue with download-only music?
 - “Institutions need to be able to provide access to recordings they purchase/license to users over a secure network without limitation.”

Possible solutions?

- Most participants leaned toward negotiated agreements with providers that would allow for institutional access to content.
- Two of the participants were working with MLA to create a licensing consortium for digital audio content:
 - “The objective is to ... allow institutions to acquire commercial digital audio content for local loading.”
- One participant deviated from negotiated action, suggesting “libraries violate licensing terms and fight it out in courts.”
- Another participant aired concerns about long-term preservation of the material and suggested a kind of “dark archive” for online-only music.
- Another respondent suggested hiring a lobbyist who would relay our concerns to lawmakers.

JSTOR for Sound Recordings?

- Develop a JSTOR type model for music (non-profit, subscription-based online depository)
 - Pro: Streaming or download access w/some semblance of preservation or continued access
 - Con: Would not cover all music (only negotiated content) and would require administrative overhead; Would distributors be interested as .edu not primary market?
- Possible approaches:
 - Create task force to explore options and viability, possibly approach ITHAKA (JSTOR parent org), create a working plan, and advise on specific actions

LOCKSS for Sound Recordings?

- Establish a dark archive w/Portico or LOCKSS.
 - Pro: Long-term preservation
 - Con: Complete lack of access until ... ?
- Possible approaches:
 - Approach organizations to create a work plan
 - Have national societies negotiate with vendors, and artists for a mutually beneficial license that allows for such a dark archive

DIY Negotiating

- Institutions seek solutions independently
 - Pro: Customizable access & preservation agreements w/out large administrative overhead
 - Con: May put libraries in competition with each other; power of collective action lost
- Possible Approaches
 - Approach distributors, artists, and/or labels on individual basis

DIY Example – LA Phil

- We contacted the LA Phil about purchasing iTunes only recording for UW Libraries
 - LA Phil referred us their distributor, Deutsche Grammophon, who then referred us to Universal Music Group (UMG).
 - At first UMG stated they could not license downloads for educational use, then changed their minds

DIY Example – LA Phil (cont.)

- UMG's Terms for the educational download
 - could have only up to 25% worth of downloadable album's content.
 - License would be temporary (for no more than 2 years)
 - UMG's processing fee would be \$250.
 - Processing fee would be on top of the licensing fee, which was described as being "more than" the processing fee.
- Costs and terms were unreasonable

DIY Example – SubPop Reocords

- SubPop General Manager, Chris Jacobs, sympathetic to the download only issue facing libraries
 - worked with me to brainstorm possible solutions
 - Develop a means for education institutions to stream their content (including download only titles). Jacobs thought that such a platform would work best if hosted and operated by the educational institution.
 - Also suggested looking at Internet radio licensing agreements as possible models for libraries
- Interesting tangent -- While downloads account for 40% of SubPop sales, vinyl LP sales account for 10% and are increasing in popularity (CDs @ 50%)

Legal & Legislative Approaches

- National library organizations pursue legal (legislative and judicial) options
 - Pro: May result in a definitive law or opinion giving libraries the right to distribute online-only items
 - Cons: Highly unpredictable outcome; resulting law or opinion may curtail existing rights. Significant time and monetary commitment.
- Possible Approaches
 - Craft test case and have library orgs file amicus briefs;
 - Seek legislation, such as an amendment to US Copyright Law that would allow libraries to make access and preservation copies of works under non-negotiable licenses

Outreach Option

- Plead our own case in the Court of Public Opinion
 - Pro: can start now and if there is enough groundswell, we may be able to force distributors to reconsider their licensing term
 - Con: difficult to make people care about this issue
- Possible actions:
 - Social media campaign
 - Recruit influential artists to take up the cause
 - Civil disobedience (e.g., coordinated downloading)

Next Steps

- In the U.S., the Music Library Association formed the **Digital Audio Task Force**.
- Aim:
 - Develop a grant proposal to convene a summit of experts from both sides to discuss issues.
 - One goal could be to collaboratively establish a union database of sound recordings that allow libraries to legally acquire, preserve, and to provide access to commercially available and out of print digital audio files.

Possible Participants of Summit

- Libraries: Library of Congress, public, academic, school libraries and archives
- Digital Sound Recordings Distributors: iTunes, Amazon, Arkiv.com, etc.
- Recording Companies: Universal, Sony, Warner, independent labels, etc.
- Streaming Subscription Services – Alexander Street Press, Naxos, DRAM, Smithsonian, etc.

Participants of Summit (Cont.)

- Library vendors: Baker and Taylor, Ingram, etc.
- Music Industry: BMI, ASCAP, American Federation of Musicians, etc.
- Academic & Professional organizations: IAML, MLA, ARSC, ALA, ACRL, SAA, AMS, SAM, SMT, SEM, CMS, IASA, etc.
- Educators: MENC, NASM, AAUP, etc.
- Intellectual Rights experts

Time Frame

- Write grant proposal by September 14, 2012.
- Secure Funding – 2013
- Summit – 2014?

Merci!

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COMP Final Report

<http://faculty.washington.edu/vallier/nehcomp.pdf>