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Monetization Opportunities in Web3
An Analysis of The Copyright Issues Surrounding Streaming, and How Artists Can
Democratize Their Earnings

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Web 3.0, or Web3, stands to make waves in the monetization of art by allowing artists more direct lines of profit through Non-Fungible Tokens (NFTs) and securing them through blockchain technology and decentralized autonomous organizations. The internet under Web3 won't be controlled by a cabal or entities (or, in some cases, a single entity), because the means of control of the flow of information will be controlled by the users themselves (Marr, 2022). In this, users can create shared environments where they can interact with other users in virtual reality, called "Metaverses" (Singleton, 2021).

In these Metaverses, and through opportunities through the NFT market, musicians and songwriters have a new opportunity to directly get compensated for their music in a way that hasn't been possible before without massive resources to begin with. Before, musicians had to sign with music labels to have any chance at mainstream distribution. Because of that partnership, music labels would take a percentage of the musician's earnings to keep themselves afloat. Today, many streaming services, such as Spotify and Apple Music, own rights to the music outright and monetize not through purchases of individual tracks or albums, but through mass subscription fees. Those fees spread out amongst all the artists in a service's catalog, mean that an artist is getting very little compensation on a per-play basis (Ditto Music, 2023). This essay looks to analyze the current processes of streaming monetization and speculate on how artists can more directly monetize their work in the third iteration of the internet, named Web3.

Brief Legal History

In *Twentieth Century Music v. Aiken* (1975), the Supreme Court outlines the purpose of the Copyright Law of the United States (§ 102) as such:

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"the immediate effect of the copyright law is to ensure a fair return for an author's creative labor, but the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good" (1975).

In a sense, the Copyright Law is there so the author of a given work is properly compensated for the work they put in for a given work. However, this seems to infringe upon the American people's right to free expression. "Because copyright limits access to information and knowledge, it also fundamentally restricts access to all expression otherwise protected by the First Amendment." (Lisby & Myers, 2023, p. 228). As has been the case with laws such as these, the relationships between artists and their art have always been evolving. The initial copyright law in 1790 only covered books, maps, and charts for 14 years. This has expanded to prints in 1802, musical compositions in 1831, dramatic compositions and performances in 1856, photos in 1865, fine arts in 1870, and musical performances in 1897 (Lisby & Meyers, 2023, p. 228). Through these protections, artists and their kin have been able to make their money by having exclusive rights to them for a specific amount of time and then allowing that creative spark to enter the public domain sometime after.

In the years after the initial 14-year copyright statute from the date of publication, the duration has increased multiple times. Most recently, the Copyright Term Extension Act of 1998 has extended copyright protection to the life of the author, plus seventy years. Meaning, that if an author died in 2000, their works would not enter the public domain until 2070. This bill, best known as the "Mickey Mouse Protection Act", was lobbied very heavily by the Walt Disney Corporation in the years following up to the bill's passing (Ota, 2016).

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Recent Case Law

A notable case of the infringement of copyright is *Williams v. Gaye* (2018), where artist Pharrell Williams, along with Robin Thicke and others, released a song, "Blurred Lines" which had a similar musical structure to the Marvin Gaye song "Got To Give It Up". A panel ruled that Gaye's song was subject to copyright protection because "musical compositions are not confined to a narrow range of expression." (*Williams v. Gaye*, 2018, p. 7). Meaning that musical performances that are at least similar to another protected performance are infringing on the original performance's copyright.

Another, although contradictory, case is the recent *Skidmore v. Led Zeppelin* (2020), where two songs with arguably similar melodies, Led Zeppelin's "Stairway to Heaven" and Spirit's "Taurus". Skidmore, a trustee of the writer's trust, alleged infringement on the opening notes of "Stairway to Heaven", alleging that, through similar chromatic melodies, Led Zeppelin stole the melody of "Taurus". The Ninth District Court decided that, even though the songs have similar elements, the two songs were not substantially similar enough to incite an infringement of copyright.

In these two cases, we can see that the line for copyright infringement in music is murky, at best. In a recent case, Spotify settled for \$43 Million with musicians David Lowery and Melissa Ferrick for copyright infringement. This was because these musicians were not getting their royalties from Spotify because "...the data necessary to confirm the appropriate rightsholders is often missing, wrong, or incomplete." (Legal Entertainment, 2017). Spotify also implemented a program that allowed musicians to recoup unpaid royalties (*Ferrick v. Spotify United States*, 2021).

Law Review Analyses

Cohen (2023) looks at recent developments in legislation for an idea of how relationships between musicians and distributors may extrapolate in the future. The recently passed Music Modernization Act (MMA) looks to resolve some long-standing issues in how music has been licensed to streaming services.

"Historically, interactive streamers like Spotify and Apple Music have had to pay both mechanical and public performance royalties for every song in their libraries, but massive repertoires of readily-available music made paying out the compulsory and statutory licenses for each individual song more complex and costly than ever." (Cohen, p. 6).

However, despite the recent advancements in how music rights are negotiated through streaming, one problem still remains: how are the artists getting paid? With recent debacles like Ferrick fresh in the minds of musicians, and the disparity in how much money is doled out between live performances and streaming, a musician looking to make ends meet may be looking toward newer streams of income.

In the wake of the MMA, copyright collectives have become more prevalent in the music scene than they've ever been before. As digital streaming has taken the throne as the largest form of mass music consumption, the shifts in how copyright is managed will still be moving and maybe moving for some time into the future. Priest (2021) explores the idea of collective copyright negotiation further. Priest finds that there are multiple different kinds of copyright management today: collective licensing; where copyright owners pool their works together to negotiate contracts for all the owners' works, direct licensing; where the copyright owner directly negotiates with the distributor, compulsory licensing; where a song is used without permission, but with a standardized fee, blanket licensing; which covers a copyright owner's catalog, and

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collective management; acting as a middleman on behalf of the copyright owners. In a sense, outside of directly managing one's own music, artists have to rely on a middleman of some form to get their music out onto streaming services. In many ways, these middlemen are still adapting to how streaming services monetize their music, so the kinks of getting the artists what they're owed is a system that still has many kinks to work out.

Conclusions

In many ways, we as observers and participants in the monetization of music are on the edge of an age where we may see many more legal cases concerning the streams of revenue because of those kinks that are still being worked out. Rather than go through that headache of figuring out who owes who what, some artists may look to new avenues of how they make money from their music. The days of putting out one's own work onto websites and hoping that word of mouth translates to dollars in the bank account are still going strong, but as the internet stands to cash in on its newest iteration, artists are given more and more opportunities to make a living without having to pay the piper, as it were. Web3 stands to make it more feasible for burgeoning artists to make that leeway into the zeitgeist without having to pay the dues or sign with a label that may short that artist sometime down the road. However, as with any new technology, there are many hurdles to jump through still, and skepticism about Web3 is still abundant, as it should be with any technology that promises what Web3 promises.

As it stands in today's Web2, information is not directly sent from one person to another on platforms that people generally use, such as social media. Platforms like Twitter, Facebook, TikTok, etc. distribute information that is inputted by users based on a particular algorithm. This idea of an information middleman goes hand-in-hand with that of the music label, just for all information that a given user sees or inputs. Web3 looks to remove that middleman, allowing

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users to own their own data, and giving those users more opportunities to be compensated for their data. For instance, instead of Facebook memorizing your interests and tailoring advertisements to the data you've given without your permission, you personally put in that data yourself, and then are fed ads based on the data you've put in, and nothing else. This removal of that data middleman also allows content creators, musicians specifically, to more readily utilize streams of revenue. Without the databases of social media taking their share off the top of a given creator's revenue for holding on to and distributing that data, the creators get to keep more of their own money, because they distribute their stuff, their way.

However, as with any emerging technology, Web3 has many drawbacks. For one, the hurdles for getting into Web3, with its cryptocurrency and NFTs, are prohibitively expensive in many cases. Metaverse interfaces require people wishing to utilize those spaces to have virtual reality infrastructure, which can be in the high triple-digits on its most affordable end. NFTs required to start participating in particular activities start at as high as \$5,000, just to cover the infrastructure of the game. Interfaces in Web3 are all still in development, and with so much money in cryptocurrency and NFTs, being able to navigate these menus for those out of the crypto loop can be very costly. On top of all that, Web3 is almost entirely unregulated, has the capability to topple the economy as we know it if utilized in the wrong way, and really doesn't stand to give much to people who may want to do things on Web3 that aren't about making money (Supra, 2022). All that being said, Web3 is in its infancy, so there are many problems to work out, but the opportunities that it may create for content creators may just be worth it if the right people can work out the right bugs in time.

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