A Comparative Value Assessment of Private Sector and e-Government Services in the Production of a Non-Label Affiliated Jazz Album.

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Abstract

Technological advances, market shifts in the recording industry, and aesthetic elements have converged to make recording and releasing a self-produced album financially feasible for the independent jazz musician. A critical step in the process of completing such a project involves the utilization of one or more e-government services offered by the U.S. Copyright Office and the Library of Congress. This observational value assessment compares and contrasts these services with similar and related e-services in the private sector.

1. Introduction.

The meteoric rise in technology in the field of digital recording has granted thousands of independent musicians access to the ability to conceive, record, produce, release, and market self-produced, non-label affiliated albums. Recording projects that once required the resources of large, corporate record labels to complete can now be successfully undertaken by a motivated individual for as little as a few thousand dollars. A host of private sector services exist that the independent recording artist may purchase and utilize in order to bring these audio recording projects to fruition. However, a critical step in the process involves some utilization of the US Copyright Office’s registration and/or copyright research e-services. Compared to the ease and affordability of private sector services within this process-stream, the government’s e-services cost are drastically higher, and their efficiency and usability far less favorable, than private sector services utilized in this process.

If we view the process of recording, producing, and releasing a self-produced CD or MP3 album as a single-stream path from start to finish, we can quickly encapsulate the steps that must be taken by the producer in order to bring a project to completion. All along the way, technology—specifically online access to goods and services—facilitates quick fruition of these soon-to-be CD’s or an MP3-only release.

The process steps are generally as follows: Initial production of sound recording at a digital recording studio; mixing and mastering; registration of original musical compositions for copyright; securing the necessary mechanical licenses for music owned by others (also known as “covers”; production of physical product, including CD, album art-work, and packaging; entry into the physical and digital marketplace.

In recent years, a cottage industry has begun to emerge that caters to this ever-growing market of professionals, academics, semi-professionals, and hobbyists who are flooding live music communities with self-released CD’s, MP3-only albums, and even LP’s. Performers’ rights organizations such as ASCAP, BMI, and SESAC embraced this by updating their websites and portals to improve accessibility to services such as royalty collection and tracking of the same. Online services that handle post-production and packaging are numerous, fast, and highly cost-effective.

However, one critical area of this process that has not kept pace with the trend of faster services and greater accessibility is the Library of Congress’ copyright services. As I will discuss, this is the slowest, and least efficient part of the process for musicians who wish to release a self-produced album, particularly if they have chosen to record music owned by a third party. For a variety of reasons, musicians often avoid recording these so-called “covers” in favor of original music, and the cost and effectiveness of certain public sector components in this process is one such reason. These public sector services, which in the case of copyright registration represents a public sector monopoly, are in need of user-interface updating, in addition to being cost prohibitive. The cost-effectiveness and inefficiencies of the public sector components within this process have a direct impact on the music that is being recorded, thereby mediating artistic and aesthetic choices that would be otherwise uninhibited by front-end financial considerations.

My career as a professional jazz musician has informed the manner in which I view, understand, and interface with the process of producing a self-released audio recording. The nature of jazz performance in the professional realm is a unique juxtaposition of art and
commerce. Many non-label affiliated jazz musicians will produce and release multiple recordings during their careers. In almost every case, these albums are always money-losers, despite the rapidly decreasing costs associated with CD and MP3 production. To be sure, Indy-Rock, Punk, Hip-Hop, and other artists release albums for little or no profit, hoping that the recordings they produce will serve as a kind of business card that will increase the potential for them to be hired to perform live shows.

The above observations are critical components of this value-assessment because they tend to illustrate that many independent musicians are willfully operating business-losses with no hope of recovering expenses related to these self-produced recordings. Yet, there still exists a market to serve these musicians’ ambitions. While major labels have all but dropped Jazz artists from their catalogs, there has emerged a host of small, independent labels that cater to the various subgenres of Jazz. However, since artists of national and even international stature have been among those dismissed from major labels, being signed by even small labels is difficult for the upstart musician. Many famous Jazz musicians have retreated to the confines of independent record labels, closing off this avenue to younger, up-and-coming Jazz musicians. As such, the self-released recording is a popular medium for many jazz musicians at various stages in their career. [2]

2. Recording Process.

For the purposes of this value assessment, it will be helpful to outline in some detail the particulars of the process of completing a self-released recording. In order to do so, we will loosely follow the path of a self released CD that I am working on currently.

2.1. Initial Steps: Material Selection and Aesthetic Considerations.

Many Jazz musicians will begin by selecting a mix of original material and covers to record. This mix is an important consideration for artistic, professional, and market-based purposes. As a Mainstream Jazz musician, it is critical that I portray a connection to the historical roots of this subgenre, while simultaneously presenting sufficient original compositions to demonstrate my prowess as a composer/performer. [3] These “requirements” represent stylistic norms and expectations on the part of listeners within the community of Jazz consumers. The artistic control afforded to the non-label affiliated musician is of particular benefit to the Jazz musician since satisfying Jazz fans (which often include other Jazz musicians) is in many ways a matter of appealing to a niche market. But, musicians have always placed a premium on creative control, something that major labels have always struggled to usurp. [4] In the case of my upcoming release, I chose to record four original mainstream Jazz composition, and five covers of compositions from the American Songbook (American popular songs from the 1920s through the 1950s) that will have wide appeal among listeners.

Once the material has been selected, musicians are contacted to perform. There may be a series of rehearsals involved leading up to the recording session, though depending on how familiar the musicians are with the material, rehearsals may not be utilized. Musicians are usually paid a flat rate for their time in the recording studio in these circumstances, often between $100.00 and $300.00 for a session that can last up to five hours. The musicians that I contracted, all close friends and colleagues, were paid a collective total of $600.00 for their services, which included five hours of time in the recording studio and no rehearsals.

2.2. Contracting and Utilizing Audio Recording Services.

Simultaneously, a suitable recording studio and recording engineer will be contracted. Studio/engineer rates are highly variable. My own project was recorded at a rate of $65.00 per hour, which included the studio and engineer fees. The studio itself is quite small, as technology has rendered large recording equipment nearly obsolete.

At this point in the process, the audio recording is edited, adjusted sonically and rendered in final digital form. Again, given the capabilities of modern computers and digital audio technology, this part of the process has become increasingly accessible from a cost standpoint to the independent recording artist. No physical tape is used, and all audio information that is recorded may be subjected to immediate editing in the much the same manner as a word processing document. Musicians under these circumstances have nearly instant, total control over their product through the services of an engineer. 

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1 Mainstream Jazz, a style that emerged in the 1950s and makes use of acoustic instruments, is the predominant subgenre of Jazz.

2 An engineer is a specialist who operates the various pieces of recording equipment for the recording session. In most cases, small recording studios are owned and operated by engineers, though some larger studios have a staff of engineers.

3 This process is known as “mixing and mastering.”
One of the chief concerns that the independent musician will face is the quality of the recording’s sound. As Thomas Porcello postulates, “(s)tone and sound have long been intimately linked for fans of popular music…the links are so entrenched—often through the influence of a limited number of highly successful bands” that certain identifying “sounds” have emerged. [5] For mainstream Jazz musicians, this “sound” is best characterized by the work of Jazz recording pioneer Rudy Van Gelder for Blue Note Records during the 1950s and 60s. This, warm, analogue sound is the hallmark of mainstream Jazz recordings and is a must-have if one product is to be accepted by fans and critics. [6] Fortunately, digital audio recording software is fully capable of reproducing these sound characteristics quickly, often by applying a simple tool that involves only a few clicks of the computer mouse. My recording makes use of this “sound.” In-studio mixing and mastering was completed for the same $65.00 per hour fee that was levied for the use of the recording studio. In the case of my project, editing, mixing, and mastering nine songs cost approximately $500.00.

2.3. Public Sector Copyright Registration and Potential Use of Research Services.

Next, the independent recording artist must consider copyright protection for any original compositions, and copyright protection for the sound recording itself. It is at this point that the artist must enter the public sector for these services. The Library of Congress’ Copyright Office is the sole entity that offers the services needed to complete this critical step. Users may make use of traditional paper forms and mail that may be downloaded directly from the Copyright Office’s website.

Thankfully, the Copyright Office offers eCO (Electronic Copyright Office). Users must create a free, online account to use this service. In order to register an original composition, users must register each song separately. The eCO instructs users that they may not register unpublished works (including collections of multiple compositions) using this option. For each composition, a series of questions must be answered, including title of song, date of composition, name and address of author(s), information on third-party representation if applicable, and the option for expedited services. Expedited services cost $800.00. [7] Once the requested information has been completed, the “title” is added to the cart. A .PDF of a musical score and lyrics (if applicable) or a sound file must be uploaded to register a musical composition. Once this step is complete, the entire CD or MP3 album is then registered as a separate work using a similar procedure, for the same fee. E-process times are currently listed as three to five months per registration request. [8] The fee for processing and registering a single copyright claim is $35.00. In my case, I registered four of my own compositions and the entire sound recording, for a total of $175.00.

Should the independent recording artist require research services to determine the ownership of a cover, the independent recording artist can make use of the Copyright Office’s online database search tool to begin the process of securing mechanical licenses. [9] However, this only serves useful if the work in question was registered after 1978, or if copyright owners of pre-1978 works have updated registration information on these works. If a work is not found, or if there is some question as to the copyright status of the work, the Copyright Office offers research services for a fee of $200.00 per hour with a two-hour minimum. [10]

2.4. Private Sector Production Vendor Utilization for Production and Distribution.

Now the recording artist must begin considering the production of physical product and distribution of the same. Fortunately, there are many companies that cater to this need. Discmakers, considered by many the industry leader in CD duplication, replication, and packaging, is competitively priced and offers a wide array of services. [11] They offer in-house graphic designers in order to provide musicians with professional packaging, audio editing and mixing/mastering services for those who wish to use a third party. Artists who utilize Discmakers’ services create an online account, and products and services are purchased in a manner similar to shopping online with retailers like Amazon.com. Discmakers even offers services for obtaining mechanical licenses for any covers that musicians choose to record. [12] The service fee for

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4 Analogue recording technology, now outdated, made use of physical tape and a process that transferred physical sound to said tape using transducers. In contrast, audio recording today is digital, making use of microprocessors to render physical sound into recorded form.

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5 Mechanical licenses in this case are more accurately defined as “compulsory mechanical licenses.” As outlined by the 1976 U.S. Copyright Act, compulsory rates are established based on song length and the amount of copies to be distributed. Agencies such as the Harry Fox Agency issue these licenses and collects royalties on behalf of music publishers. https://www.harryfox.com/public/FAQ.jsp#12
Each requested clearance is $15.00, and multiple requests are discounted after four. Of particular benefit to the independent recording artist is that Discmakers’ partner in this service, Limelight, offers free copyright research with each license request. While this may not be a large concern for musicians from other genres who tend to record well-known covers, Jazz musicians are often recording covers whose ownership is difficult to ascertain. Limelight’s service provides absolute certainty that a self-released recording will not be in violation of U.S. copyright law. Using Limelight my covers were cleared in a matter of minutes and confirmation of my mechanical licenses emailed directly to my personal email account.

Physical CD’s are produced in any quantity desired, but the most cost-effective option for the independent musician is to purchase 1,000 copies. For just over $1,000.00, an independent musician can purchase 1,000 CD’s, complete with professional packaging, artwork, CD labeling, barcode inclusion on the physical product. CD’s take 10 business days to process and ship. The option to expedite this process for an additional fee is present.

For an additional $59.00, Discmakers facilitates the uploading of your tracks to iTunes and Amazon.com for sale in the digital market place. In addition, they monitor both sales and the status of mechanical licenses of covers, informing you if you must “refresh” your digital download licenses of covers you’ve recorded. [13]

For the independent recording, the above private sector services grant one access to the kind of product that was once only available to major artists who were affiliated with large recording labels. The speed at which an album may be conceived, recorded, produced, and sold is now only a function of human willingness. In the case of my own project, the input phase took only four days, and the packaging phase is anticipated to take twelve.

3. Comparison and Discussion of Private and Public Sector Components in this Process.

Perhaps the most closely linked components within this process are the copyright registration and research services, and those production and distribution services offered by private sector entities like Discmakers.

Cost, for the independent recording artist, is of chief concern since these consumers lack the financial backing of a major recording label. The copyright registration services provided by the U.S. Copyright Office are unable to bypassed with regards to musical composition registration. Unlike registration services offered by Proquest/UMI for dissertations and theses, there do not appear to be third party copyright registration services for musical composition. A $35.00 registration fee is nominal, but many musicians have taken to registering individual compositions as movements within a larger work (much like movements in a Symphony, Suite, or other large-scale composition). [14] This real-world option allows a musician to register multiple works under one blanket registration, thereby reducing costs associated with registration. While the U.S. Copyright Office advises users that multiple musical works may not be registered simultaneously, there is nothing that prohibits this “tactic.” However, since this method is not in the spirit of use terms outlined by the U.S. Copyright Office, I elected to register each composition separately.

Also worthy of discussion is the means by which music is marketed, moved, and sold in today’s digital market place. In a recent study, published in the MIS Quarterly, Dewan and Ramaprasad assert that recorded single tracks, or songs, are “information goods” which renders them “shareable, and able to be distributed unbundled from” and “album.” [15] This study, which focuses on the at times disparate relationship between social media-driven sales and traditional media-driven sales, goes a long way towards providing us with a deeper, empirical understanding of the forces that impact music sales. For the independent jazz recording artist, radio play is becoming less and less important to driving sales and awareness of ones work. Rather, social media is now the primary means by which an independent jazz artist may reach potential audience members. Again, as Dewan and Ramaprasad point out, many genres of music that can be characterized as “niche” music (and jazz is certainly a “niche” genre) benefit very little from what radio play, or what the authors refer to as “traditional media.” Instead, social media sites such as MySpace have a positive impact on the sales of single songs as well as albums. [16] The implications of this factor for public sector services is potentially quite significant. The U.S. Copyright Office’s fees for expedited copyright registration services are not nominal, particularly for the independent recording artist. When one considers that an entire audio recording may be set in digital form for $500.00, yet expedited services for a single copyright registration are $800.00, it begins to call into question the value of this public sector service. While many consumers will not need to make use of expedited services, some who are attempting to quickly bring a recording product to fruition and release would
certainly not wish to wait the requisite three to five months for their works to be registered, particularly if an artist anticipates immediate internet activity. It is worth noting that copyright protection is necessary when a work is set into a permanent state, not merely when that work is offered for sale. Given the speed at which music is being transmitted across the globe, and the propensity of the internet to give independent artists access to worldwide audiences, timely copyright registration will likely become a more desirable service.

Of further consideration are the dual services offered by Limelight and the U.S. Copyright Office for copyright research for the purposes of securing mechanical licenses. To be sure, the U.S. Copyright Office’s post-1978 database is extensive, and free. Yet once the information is obtained, the independent recording artist must still purchase the necessary licenses from Harry Fox Agency. And, as has been mentioned, Jazz musicians often require copyright research services to determine full ownership of specific musical compositions and musical arrangements. Utilizing the public sector search services for the two-hour minimum adds $400.00 to the cost of a self-released CD or MP3. In contrast, Limelight’s services are priced competitively at $15.00 per request. They also offer customer service contact options if more information may be needed to research a particularly unique case. In this instance, the value of the public sector research options, both free database and fee-incurring research, are outpaced by the pay-for options offered by Limelight and Discmakers.

A number of questions are raised in the course of comparing competing services in copyright research. Why does the U.S. Copyright’s Office cost so much more than the competing private sector service? In theory, private sector copyright researchers are making use of the same digital and physical databases that are maintained by the U.S. Copyright Office, making the disparity in cost somewhat perplexing. Is there adequate staffing at the U.S. Copyright Office to deal with these research requirements? Conversely, are private sector services being offered at steep discounts because they are not being researched thoroughly? Or, are the cases in which truly extensive copyright research is required so rare that the U.S. Copyright Office treats them as special requests?

It is important to note that these research services allow the independent recording artist a certain degree of “piece of mind,” and comfort in knowing that all parties to whom royalties are to be paid have been properly identified. Failure to thoroughly complete this process before an album’s release opens the independent artist up to potential litigation since he or she lacks the protection of a major recording label. The protections from litigation and unlicensed music production that this service offers the independent recording artist make them well worth the nominal added expense.

5. Conclusions and Moving Forward.

Private sector components in the process of creating an independently released jazz album have kept pace with changing trends in music marketing and consumption. One-stop-shopping and bundled services for all services minus copyright registration are offered, and can purchased at the click of a computer mouse. Mechanical licenses purchased through various private sector agencies are cleared nearly instantly, and many of these services can be purchased through the same websites and companies that offer graphic design and packaging services. The speed at which music moves through the global, digital marketplace is reflected in the services offered by the private sector. Copyright research is offered as a bundled service, with discounts for multiple purchases, which further reflects the broader reality that major recording labels are not longer the only consumers of these services, and independent artists are now a growing consumer group. The independent artists’ lack of access to large sums of capital does not impact their ability to make use of the same services that had traditionally been the purview of major, corporate record labels. In short, just as technological advances have granted the individual access to the same recording and production features as major corporations, the private sector has kept pace with this trend and stepped in to offer post-production services of comparable scope.

Conversely, the public sector lags behind in reacting to these changing market forces. Copyright registration is still relatively slow and cumbersome, and makes no concessions for multiple registrations for a single album, which could dramatically decrease costs for the independent artist. No private sector option for copyright registration of music was found in the course of this study. Copyright research conducted by the U.S. Copyright Office is unreasonably expensive when compared to the private sectors research services. Both of these factors suggests that the public sector structures that are in place have continued to treat this process as the sole domain of large corporations, with access to large amounts of capital that may be brought to bear on the creation of every single album. The needs and market demands of the independent artist seems to be largely ignored, save for the addition of the eCO’s upload services.
Copyright research services offered by the U.S. Copyright Office should be drastically reduced in cost to make these services more affordable to independent artists. If this is not possible, then the database needs to be expanded to include dates outside of the current scope in use, and the research services offered by the U.S. Copyright Office discontinued.

The utilization of the U.S. Copyright Office’s eCO services for copyright registration is unavoidable. While the U.S. Copyright Office informs users that registration is not mandatory, a work must be registered in order to pursue litigation in the case of possible infringement. [14] As one would expect, usability and user-interface elements of public sector e-services are quite plain and utilitarian, and may take considerable time to be completed. Private sector user-interfaces are sleek, fast, efficient, and services are rendered in hours or days rather than months. While the eCO is a vast improvement over traditional mail, it is but one positive factor. Again, cost is an issue. The U.S. Copyright Office should permit consumers to pay for registration services in bulk, and offer a discount for this service. Further, permitting songs to be registered as bulk collections, and clarify the guidelines for what constitutes a collection versus “multiple works.”

Finally, processing times for registration are far too long and do not reflect the lightning pace at which music is consumed today. All efforts to reduce these processing times should be made. If private sector licenses can be cleared in a matter of minutes, hours, or days, surely copyright registration can reflect, or at least conform loosely, to this timeframe. To be sure, total automation is not possible, as care must be taken to avoid copyright infringement through the registration process. (i.e. two people registering the same work) However, it is not unreasonable for a provisional registration or acceptance to be granted after some weeks.

Total, approximate cost for my self-produced audio recording is $1,987.00. The breakdown of costs is as follows: $600.00 in musicians fees; $700.00 in recording studio fees; $175.00 in copyright registration fees; $313.00 for one hundred CD’s; $59.00 for online distribution services to iTunes and Amazon.com; $315.00 in mechanical licenses and copyright research services.

Had I chosen to make use of the U.S. Copyright Office’s research services, the minimum price increase that would have been incurred would have been $400.00 since only one of the covers I recorded potentially required research services. However, had all of the covers I recorded required research services, the cost would have been $400.00 per request (two hour minimum at $200.00 per hour) for five requests, totaling $2,000.00. In the case of the former scenario, using public sector research services represents an approximately 20% increase in costs. In the case of the latter, these services represent a more than 100% increase in costs. When this information was put to a colleague who had also recently recorded an independently released jazz album, the response was poignant. “Yeah,” he stated, “I ran into the same thing. When you have to dig a little bit to figure out who to pay, and then find out you have to shell out hundreds of dollars to make sure you’ve covered your backside in terms of licenses and copyright holders, it makes you think twice about recording ‘covers.'” [17]

While not necessarily the public sector’s concern, the indirect result of this is that musicians within the jazz idiom are reluctant to record covers, which could have the dual impact. First, it denies these artists access to a market and audience that views the performance of these covers as a sort of rite of passage. Second, it constricts the free-flow of artistic commerce that benefits copyright holders of covers considered germane to the genre of jazz.

The disparity observed between these similar component services suggests that public sector services within this process are minimally beneficial to the independent recording artist within the Jazz idiom, and their expedited and extended services not worth the cost when compared to the efficiency and cost-effectiveness of private sector components within this process, though recent technological advances beg the question as to why the eCO services haven’t kept pace with private sector services observed in this process in terms of turnaround time. Also, research services offered by the government are dramatically less cost-effective than private sector services of the same type. The potential to drastically increase production costs is too great for the independent, non-label affiliated musician who is financing these albums directly from their own pocket.

It is our hope that the eGovernment services within this process stream will embrace a more consumer-centered stance, and offer services comparable to private sector components within this process.

6. References.


[16] ibid., 118.