

# Modern Methods of Monetization for Record Producers

**Authors: Priscilla J. Mattison and Bernard M. Resnick**



## >> Introduction

In the past, most “major label” record producers primarily earned their living supervising recording sessions. The advances and royalties they received on sales of albums and singles provided many producers with a lucrative, long-term income stream. In the 1990s, the rise of the songwriter/producer as an artistic collaborator, especially in the genres of R&B and rap, meant that many record producers saw additional income from songwriting and music publishing revenue.

With the recent and ongoing upheavals in the music business, record producers, like other participants in the industry, are seeking to diversify their sources of revenue. This article, written from a U.S. perspective, will consider some of the ways record producers are currently collecting, raising and earning money, and how attorneys can help their clients in these endeavors.

## >> Collecting Money

Any U.S. producer who is also a copyright owner of, or a featured performer on, a particular sound recording is automatically entitled to receive sound recording performance royalties from SoundExchange for non-interactive digital performances of the recordings, such as on Pandora, SiriusXM, webcasters and cable TV music channels. Such a producer simply needs to register with SoundExchange in order to receive these royalties. (A producer who is a non-featured performer on a sound recording might be entitled to receive sound recording performance royalties from the AFM

& SAG-AFTRA Intellectual Property Rights Distribution Fund.)

It is common for a producer who is not a copyright owner or performer to negotiate receiving a share of the artist's SoundExchange royalties, generally in proportion to the producer's share of the artist's artist royalties; SoundExchange will honor a letter of direction from the artist and issue direct payment to the producer when appropriate. Further, in 2015, a bill, the so-called “AMP Act,” was introduced in the U.S. Congress that would both create a statutory right for producers (as well as engineers and mixers) to receive SoundExchange royalties when they have a letter of direction from a featured artist, and establish a new process by which producers can request royalties from artists for older recordings in cases where there is no letter of direction. As of the date of publication of this article, the AMP Act has not yet been passed by Congress.

A U.S. lawyer can assist his producer client by making sure that new producer agreements provide for the payment of SoundExchange royalties pursuant to letters of direction and that, on prior deals, the producer is receiving any royalties to which she may be entitled.

The royalties paid by SoundExchange in the U.S. are one type of “neighboring rights” royalty, i.e., royalties payable to performers and master recording owners for public performances or broadcasts of a sound recording. In most countries, neighboring rights royalties are paid for public performances of sound recordings on terrestrial radio and in restaurants, bars and other public places – not just for digital performances, as in the U.S. Globally, collections for neighboring rights are increasing every year. A U.S. producer who is also a copyright owner of, or a performer on, a particular sound recording may be able to receive neighboring rights royalties for certain performances of the recording outside the U.S. by signing up with one of the many companies outside the U.S. that collect and distribute neighboring rights revenues. A U.S. attorney may be able to help her producer client by obtaining and negotiating such a neighboring rights deal and reviewing royalty statements.

“A number of successful producers have started their own artist development, production and related companies. These range from one- or two-person ventures to complex business enterprises”

## >> Raising Money

Many artists are turning to crowdfunding tools to fund their work – either by project, or under a patronage model. However, very few producers are initiating crowdfunding campaigns, either on behalf of artist clients or for projects they are spearheading themselves. Crowdfunding might be a tool for more producers to consider, at least when they are the creative force behind a project. An attorney whose producer client is thinking of starting a crowdfunding campaign may assist by reviewing the terms of the proposed crowdfunding service(s) and making sure the client is mindful of related costs, recordkeeping requirements, and tax reporting and payment obligations.

## >> Earning Money

Some producers are capitalizing on their knowledge, experience and versatility in order to find alternate ways of monetizing and sustaining their careers. The following examples are illustrative of the many types of activities producers are undertaking.

### 1) The Producer as Artist Development Company/Entrepreneur

A number of successful producers have started their own artist development, production and related companies. These range from one- or two-person ventures to complex business enterprises, depending on the strengths and interests of the founders. Singer/songwriter/producer Linda Perry has started two record labels, Rockstar Records and Custard Records, the latter best known for its success with James Blunt. Through his Ivory Productions and Dylanava Studios, producer/Grammy®-nominated engineer David Ivory has developed and recorded hundreds of up-and-coming artists including Silvertide, Halestorm, and Candlelight Red.<sup>[1]</sup>

Two other producers involved in artist development and production are Lars Hustoft and Rick Friedrich. Hustoft is a Norwegian record producer, songwriter, and manager who has worked with a number of popular European artists.<sup>[2]</sup> Hustoft owns Starbox Music Group, founded in 2012, which now holds Starbox Recordings, a joint venture with Universal Music; Starbox Publishing, a joint venture with Sony ATV Music Publishing; an indie label; a management entity,

and a studio. These days he spends approximately half of his time on management and label work, 25% on publishing, and 25% in the studio, with the amount of income earned in each category roughly equal to the percentage of time spent.

Friedrich is a producer, engineer, songwriter and musician who has worked on critically acclaimed and Grammy-nominated albums.<sup>[3]</sup> He founded The Philadelphia Record Company in 2009, and started Bold New Breed Records, a collaborative independent record label, in 2012. Currently he divides his time about evenly between engineering; working as a producer for hire; working in artist development, entering into strategic partnerships with independent artists; and taking care of other interests - primarily a building he bought with his partner in 2012, which now contains his home, residential and commercial rental space, and a studio for songwriting and demo production. Friedrich emphasizes the importance of getting publishing participation when he writes; the potential for publishing income lets him gamble with an artist.

An attorney representing a producer who is also an artist development company/entrepreneur should be alert to legal and business considerations including conflicts of interest, entity formation, proper written agreements between the producer and his business associates, copyright and trademark protection, taxes, and insurance. (Most of these considerations also apply to the other types of activity discussed below and thus will only be repeated as necessary.) In addition, real estate expertise may be required for the client who owns or rents property.

### 2) The Producer as Technology Innovator

Some producers follow their tech interests into entertainment-related innovation ventures. For example, musician/producer Thomas Dolby founded Beatnik, Inc. (originally Headspace, Inc.), which co-developed the polyphonic software synthesizer technology used in hundreds of millions of cellphones. He went on to co-found Retro Ringtones LLC, which produces ringtone asset management software.

While transforming an old schoolhouse into a recording studio, producer/songwriter/manager Lars Hustoft (see above) got the idea for a new digital tool for artists and their teams. He created a dashboard that shows all of the income streams around an artist. He believes that once this information is shared, the artist will benefit and marketing money will be more efficiently spent. He hopes that the tech venture, which is as yet unnamed, will go live by late 2016.

The attorney for the producer/technology innovator should make sure that intellectual property rights such as patent and trademark are secured, and that the client's employees sign non-disclosure confidentiality agreements.

### 3) The Producer as Artist

Timbaland, Alan Parsons, Brian Eno, T Bone Burnett, Daniel Lanois, and Quincy Jones have all released multiple albums as artists. A producer may use the relationships he has developed with the artists he has produced and include those artists as guests on his solo recordings. Being well-known as an artist can lead to sources of revenue that are less available to non-performing producers, for example, artist royalties and merchandise revenue. The attorney representing a producer/artist should beware of cross-collateralizing producer income against the more speculative artist revenue (and production and promotion expenses).

### 4) The Producer as Non-Entertainment-Industry Investor

Some producers choose to diversify their careers by getting into activities that are completely unrelated to music. Jerome "Jroc" Harmon, who won GRAMMY awards for his work with Justin Timberlake and Jay Z in 2013, and with Beyoncé in 2014, recently started a small trucking company in his home state of Texas.<sup>[4]</sup> He now spends about 40% of his time on Legendary Freight Inc. The fact that he is constantly in contact with artists, their managers and tour managers with respect to his producing leads to opportunities to make money with artists who need trucks for various reasons. Harmon also is looking to expand into the restaurant industry in the near future.

An attorney may need to help a producer client obtain special expertise regarding a heavily-regulated sector like food or trucking. In addition, the attorney should try to protect the producer's entertainment industry income from losses in the non-entertainment venture, primarily through (a) insurance, (b) entity formation, and by-laws indemnifying the officers and directors of the non-entertainment industry entity, and (c) avoiding having the client personally guarantee business loans or grant a security interest in his producer revenue to secure a business loan for the new company.

### 5) The Producer as Film/TV Composer

A number of prominent record producers, including Daniel Lanois, Brian Eno, T Bone Burnett, Quincy Jones, and Mutt Lange, have written score or songs for feature films, documentaries, television programs and specials, shorts, and other projects. King Solomon Logan and Lauren Hart are two other producers who compose for film and television. Logan has had a successful history as a record producer working in Timbaland's "camp" since 2006 on music by artists including Omarion, Fred Hammond, Keri Hilson, and Michael Jackson (the posthumous "Xscape").<sup>[5]</sup> Recently, he co-wrote and produced a composition which was featured in the closing credits of the latest "Terminator" film, "Terminator Genisys." Other film projects are in the works.

Hart, a singer/songwriter/producer, first had original songs used in several television series and documentaries.<sup>[6]</sup> She then composed the soundtrack for the 2008 documentary "Race to the Bottom of the Earth." The impetus for the film was her asking her adventure traveler husband to keep a video diary as he crossed Antarctica. He was also the inspiration for the Travel Channel series "Dangerous Grounds" (now called "Uncommon Grounds"). Hart helped create, and is the music composer for, that series. These days, when Hart is in production on "Uncommon Grounds," she spends 100% of her time writing and producing tracks. About 10-20% of her income came from writing music for television when she started; the majority of it does now. The producer/composer's attorney should be aware of all potential publishing issues that may arise, especially if the producer already has a publisher. For example, most television production companies will ask for a co-publishing share

“An attorney for a producer who is considering getting into artist management should make sure her client understands that management can be very time consuming”

in the new composition. The producer’s attorney should either (a) make sure that the producer’s publisher agrees to co-publish with the television production company, (b) avoid granting a co-publishing share to the production company, or (c) require the production company to pay separately for its co-publishing share.

#### 6) The Producer as Corporate Spokesperson

Many record producers have become celebrity endorsers and corporate spokespersons for other products, in particular electronics, home stereo retailers, and musical instrument manufacturers. Classic rock producer, songwriter and artist Alan Parsons, for example, has endorsed microphones for Audio-Technica, and developed a product for IK Multimedia. Producers who are also known as artists tend to have broader endorsement and related opportunities. Producer/artist Pharrell Williams has gotten involved in endorsing (and sometimes creating or designing) a wider range of consumer products, including Adidas, Diageo liquor, and the Apple Watch.

An important issue for the producer/celebrity endorser’s attorney in an endorsement deal is how the client will be paid – with stock in the company she is endorsing, an upfront fee, fees at specified milestones, or some combination of these. Payment in stock can have tax implications which may require special expertise. Other issues that may arise are whether the client is to have a seat on the company’s board of directors, and whether the agreement is to contain a “morals” clause pertaining to the client’s behavior.

#### 7) The Producer as Label Executive

Many producers have made the jump from independent contractor to record company employee. Some of the leading record companies in the world employ record producers as creative executives. Current examples include Don Was as the President of Blue Note Records, and L.A. Reid, who serves as Chairman and CEO of Epic Records, a division of Sony Music Entertainment. The attorney for a producer contemplating such a position may need to bring in a specialist on executive employment contracts to consult on the deal.

#### 8) The Producer as Manager

Some producers also work as artist managers. David Lai, who is the Co-President and one of the founders of management company Park Avenue Artists, has an extensive background as a record producer, conductor, A&R executive, music director, pianist, and consultant producer for television specials.<sup>[7]</sup> He won a GRAMMY award in 2010 for producing the Broadway cast album of West Side Story. At Park Avenue Artists he manages violinist Joshua Bell, along with several other classical, Broadway, and classical crossover artists. He now spends about 10% of his time producing, 30% as a musician, and 60% engaging in artist management. His income derives approximately 20% from producing, 60% from working as a musician (mostly conducting), and 20% from artist management. He hopes that the proportion from artist management will increase. He has turned down potential management clients, but “purely because of bandwidth,” as the staff at Park Avenue Artists is still small.

An attorney for a producer who is considering getting into artist management should make sure her client understands that management can be very time-consuming and that he may thus need to have a co-manager or assistant. The attorney should also be aware of conflicts of interest if the producer also manages the artist he is producing; the artist should understand that he is paying separately for two different services (or three if the producer is also the songwriter).

#### 9) The Producer as Synch/Master Use Licensor

Many producers, in particular those who also record their own music as artists, have had success licensing their music for alternate purposes such as video games, advertising, and interactive websites. Two examples are Salme Dahlstrom and Geoff Wilkinson. Dahlstrom licensed every track from her 2008 electronic album “The Acid Cowgirl Audio Trade” to various television shows and corporations, and has not let up since.<sup>[8]</sup> Her songs have been used in films, television shows, and prominent television commercials. Dahlstrom occasionally produces other artists but is best known for her own music, which she usually writes by herself. Five or ten years ago, she says, independent licensing was like the “wild west.” She tried a lot of placement companies, and some worked out and some did not.

192 She now has a handful of placement companies with which she works. These companies are similar, but they have different clients. Her relationships with them are generally nonexclusive, and each is aware that she is also working with the others. The majority of her income is from synchronization placements. She has not turned down many placements, but would not be comfortable with political or religious projects. She also avoids granting a license to a brand if the same song is already running in another commercial with a similar brand, even if the existing license does not stipulate category exclusivity. Dahlstrom has seen an increase in iTunes sales of her songs from placements in prominent commercials, and credits Shazam for helping people identify her music.

Wilkinson is the London-based producer and mastermind behind the hip hop/jazz act Us3, which has put out eight albums since the early 1990s.<sup>[9]</sup> Although several Us3 tracks have been licensed for synch uses, the track which has been used the most is “Cantaloop (Flip Fantasia),” which was a U.S. top ten hit in 1994 (and which Wilkinson has since re-recorded and re-mixed in numerous versions). The track has averaged one big placement about every year and a half for the last 20 years. As Wilkinson observes, “[a] hit generates its own syncs.”

A number of the placements came in through Wilkinson’s former publisher and one of his former labels. More recently, he entered into an exclusive agreement with a sync agent, but was disappointed in both the company’s terms and its actual performance, and so does not plan to do another deal like that. He recently licensed a track to a major U.S. television network for use on a prominent show. The request, which came in by e-mail, was for an album track which had never been synced before. Since he owns the master and the publishing, the deal was completed within a week. He continues to receive similar requests, sometimes through his attorneys. Wilkinson has also found a steady “bread and butter” career producing and writing tracks for production music companies. He noted that this kind of work can be lucrative on the back end as he collects performance royalties when the tracks are used, particularly on TV programs.

The attorney for a producer/owner looking to license her music may be able to help her client obtain a sync agent, choose between licensing companies, or respond to direct inquiries from production companies. Common issues are exclusivity, payment terms, usage, credit, and whether or not performance royalties will be paid. The attorney may also be able to help ensure that the client receives performance royalties as appropriate.

#### 10) The Producer as TV/Movie Producer

193 T Bone Burnett was a producer on the 2009 feature film “Crazy Heart” (he also composed the film’s score and co-wrote many of its original songs). Pharrell Williams was an executive producer on the 2015 feature film “Dope.” He has also produced, executive produced, or served as consulting producer on a half-dozen other projects including documentary shorts, narrative shorts, and a television movie, going back to 2004. In 2013, David Ivory (see above) produced and hosted “David Ivory Presents,” an on-demand television series featuring performances by unsigned artists and interviews with the artists and audience members.

He is currently producing a new 13-week cable television series, “David Ivory’s New Music Showcase.” Each episode will feature two artists and a different co-host, and, like the earlier series, will include interviews as well as performances. Unlike the 2013 show, the new show is being paid for by sponsors, and thus he can afford “slicker production.” Ivory will not make money directly from the series, but it will provide public exposure to the artists, the club, and his brand.

Nine-time Grammy Award-winning producer Joe “The Butcher” Nicolò executive produced or produced 11 feature films between 1994 and 2010, including “Shade” and “The Speed of Life.” For eight years he was out of the music business entirely, although he went back to producing music around five years ago when he co-founded Revel Music Group.<sup>[10]</sup> Nicolò was approached on each of the projects; he did not look for them. He spent two of his film producing years working for RKO Pictures. Together with colleagues he also started a film distribution company, Kindred Media Group, which distributed some movies they had not produced. His

start in movie producing was “baptism by fire.” Getting projects off the ground during the recession was incredibly challenging for anyone trying to make a small film. Budgets dried up, and technology was in a transformational state.

He also discovered that executive producing a movie and producing a record were dramatically different. After the movie business turned out to be less lucrative than he had hoped, he realized that music is what he loves and should be doing. (Nicolo also credits his son, Tyler, a producer in his own right, with coaxing him back into record producing.) That being said, there is a film project on the horizon now that he is contemplating. He points out that certain aspects of the film business have changed since the 2006-2010 era. There are many more avenues for distribution now. Also, producers can make a film for “pennies on the dollar” compared to the costs a few years ago. Further, he has gotten a better handle on how good the quality of a film project has to be, and the genres to focus on.

The attorney for a record producer getting into TV or film production should counsel his client to beware of paying too much for life story or other option rights. The client may require the help of a lawyer with expertise in film and television deals, particularly as “production counsel” or with respect to distribution. The client should be made aware that film producing can be very time-consuming and operates on an entirely different timetable than producing and promoting records. The distribution and payment system for films is also completely different than that for recordings and the attorney advising should be acutely aware of these differences.

#### 11) The Producer as Music Supervisor

Some record producers get additional experience, income, and creative satisfaction from working as music supervisors in film and television. In addition to producing and executive producing films, Joe Nicolo (see above) also worked as a music supervisor on one film, and produced soundtracks on two films. Music supervising was a lot of fun for him, “especially when you felt like you nailed something for a director.”

Armique Wyche, aka Jae Staxx, who has produced records for 50 Cent, Will Smith, Mary J. Blige, and Eve, took a slight detour into music supervision of television programs for a stretch in the mid-2000s.<sup>[11]</sup> Through a personal connection with Will Smith, Wyche started with the television show “Eve;” then continued on with the shows “All Of Us” and “Cuts.” He worked as both music supervisor and composer on all three programs. He had not previously been interested in bringing in hired instruments like guitar or a violin section. Working on the television shows, he got serious about the quality of vocals; engineering became a big focus; and the quality of mixes became very important. Due to the cancellation of the television shows he supervised and the merger of the television network with another network, Wyche is no longer music supervising, although he does license his own music for use by other people. He is now concentrating on turning his publishing and production entity, Mewzic Monsterz, into a brand and a household name. The role of music supervisor, which is often fast-paced and time-sensitive, can perhaps be most rewarding for producers who also write music. The attorney for a producer looking into music supervising should make sure the client has enough personal contacts and general knowledge about music to be able to select material outside of the genre in which she customarily works, in order to better serve the film or television project.

#### 12) The Producer as Music Educator

With a collaborator, Alan Parsons wrote and produced an instructional video series about recording entitled *The Art & Science of Sound Recording*, which is available as a DVD set and as downloads. He continues to support the series with lectures and masterclass training sessions around the world. Many record producers teach classes in production at local colleges and similar venues. David Ivory (see above), who helped develop the Music Industry Program at Philadelphia’s Drexel University in 2001, currently teaches in and helps run the Sound Recording and Music Technology program at Montgomery County Community College in suburban Philadelphia. He also gives master classes in producing at Millersville University. Together, the two teaching jobs account for about 20% of his income, with the remaining 80% coming from producing. He enjoys teaching, and the Montgomery County job offers the additional benefits of being close to his home and allowing him to “handpick the best interns.” A producer client should

be aware that teaching can require significant preparation time and that the teaching schedule is different from the usual producer's schedule, and is generally inflexible.

### 13) The Producer as Author

Timbaland's memoir "The Emperor of Sound," written with Veronica Chambers, came out in November, 2015. Jeff Leisawitz, the producer and creator behind the electronic act Electron Love Theory, has recently written a book called "Not F\*ing Around -- The No Bullsh\*t Guide for Getting Your Creative Dreams off the Ground" (Avasta Press), which draws on his successes and failures in music, film, screenwriting and photography.<sup>[12]</sup> Leisawitz's advice to music producers about monetizing their careers is, first, to get good at what they do; second, to market themselves properly, either by building a team or figuring out how to do it themselves; and third, to specify the target audience with marketing, messaging, and their art. In line with that advice, Leisawitz is designing a series of workshops to complement his book. He is also looking into setting up a book tour in an unusual type of venue. The attorney for a producer/aspiring writer may be able to help her client negotiate contracts with an appropriate co-writer or ghost writer, editor, and electronic or traditional publisher.

### >> Conclusion

Many contemporary producers recognize the limitations of recorded music sales as a primary source of long-term revenue. A 21st century producer would be wise to keep informed on the evolving ways to collect and raise money, and to constantly expand her network and use her personal strengths – including the recognition she has earned – in order to capitalize on opportunities in other parts of the entertainment business and beyond. Diversification, of both skills and sources of revenue, is key. The entertainment attorney can alert his client to potential legal and business considerations such as conflicts of interest, entity formation, proper written agreements between the producer and her business associates, intellectual property protection, taxes, and insurance, as well as other considerations arising with respect to particular ventures.

- [1] Telephone Interview by Priscilla Mattison with David Ivory (Nov. 18, 2015).
- [2] Telephone Interview by Bernard Resnick with Lars Hustoft (Oct. 21, 2015).
- [3] Telephone Interview by Priscilla Mattison with Rick Friedrich (Oct. 20, 2015).
- [4] Telephone Interview by Priscilla Mattison with Jerome Harmon (Nov. 11, 2015).
- [5] Telephone Interview by Bernard Resnick with King Solomon Logan (Oct. 12, 2015).
- [6] Telephone Interview by Priscilla Mattison with Lauren Hart (Oct. 29, 2015).
- [7] Telephone Interview by Priscilla Mattison with David Lai (Oct. 19, 2015).
- [8] Telephone Interview by Priscilla Mattison with Salme Dahlstrom (Oct. 16, 2015).
- [9] E-mail Interview by Priscilla Mattison with Geoff Wilkinson (Oct. 15, 2015).
- [10] Telephone Interview by Priscilla Mattison with Joe Nicolo (Oct. 29, 2015).
- [11] Telephone Interview by Priscilla Mattison with Armique Wyche (Oct. 30, 2015).
- [12] Telephone Interview by Priscilla Mattison with Jeff Leisawitz (Oct. 13, 2015).