

# Nationalism vs Globalism: Regional and Transnational Legal Issues Reshaping the Entertainment Industry.

Edited by William Genereux & Marijn Kingma



# Message from the President: Jeff Liebenson



Welcome to our 2021 IAEL book. The topic of Nationalism vs Globalism has exceeded my expectations, even covering issues arising from working during a pandemic.

We can only hope that the devastation the pandemic has brought across the globe will subside and we will once again meet in France in next June for our annual IAEL meeting during Midem.

The ongoing relevancy of the topics in the book reflects the world we live in today as the rise of nationalism separates countries and globalization brings them together. While the book focuses on digital and other entertainment deals crossing borders, it also addresses what legal needs still should be considered on a national or country-by-country basis.

I want to thank Marijn Kingma from The Netherlands and William Genereux from Canada, our co-editors who have brought their experiences from where they live and their legal expertise to life in this book. Our contributors from around the world illuminate these developments from their own perspectives which inform their articles.

Thanks to Duncan Calow and Marcel Bunders for your continued support, guidance and humor with respect to the many adversities we have weathered these past two years.

Our hope is that exploring these legal trends will help us in guiding our clients to deal with our multicultural world of entertainment law, notwithstanding the nationalistic urges of our time. Perhaps this mirrors our IAEL meetings with members from around the world enjoying our different cultures and coordinating our common interests.

We hope this book furthers that spirit, our 35th annual book published by the IAEL, Nationalism vs Globalism: Regional and Transnational Legal Issues Reshaping the Entertainment Industry.

# Editors' Introduction: William Genereux & Marijn Kingma



When we had our last IAEL General Meeting in June 2019, we could not have foreseen we would not be able to come together in Cannes for the next two summers – or that as a result of a pandemic we would not be publishing the entire book until well into 2021. We also could not have foreseen how relevant the topic of our book would turn out to be. Over the last year and a half we have been on a global rollercoaster ride and it has become more clear than ever that we do not live in separated worlds, and that national borders do not mean anything when push comes to shove. We have also learned that global efforts are needed to solve global problems. Many countries came together to find the vaccines needed to get us out of this situation. The COVAX program is trying to provide global equitable access to vaccines so that not just some countries, but the whole world can hopefully return back to normal soon. Hopefully we will learn from this experience for that other, even more pressing, global emergency: climate change.

Although it was a difficult decision to postpone the release of our book last year, we believe it was the right decision. It gave us the opportunity to include additional contributions dealing with the impacts of the pandemic on the entertainment industry and take a look at how to move forward. The chapters that were written last year have been updated, resulting in a comprehensive publication that we believe was worth waiting for.

The chapters in this year's IAEL book explore the longstanding conflict between nationalism and globalism as it relates to the entertainment industry. Originally we had intended to use the term "globalization" in the title rather than globalism. That probably would have been more correct, insofar as

globalization is a word used by economists to describe a process by which businesses or other organizations develop international reach or increase the international scale of their operations. Globalism, on the other hand, tends to be more of a raw, emotional, political concept. It describes a potential threat that can be rallied-against. It's often rejected by nationalists, conspiracy theorists and indeed anyone who might be content to sit in their own backyard and let the rest of the world be damned. It's used often in a defensive way – to describe existential threats that are perceived to have been created by others, like having rules or market forces emanating from outside our own borders that nevertheless come to affect us.

We decided to go with the more difficult word, globalism, because it more accurately describes the zeitgeist of our times. Our entertainment industry already is global, and international trade, which is what globalization is all about, has been occurring and disrupting markets since at least the early days of spice trading thousands of years ago. Now of course the Internet allows us unprecedented new types of access to foreign markets and the promise of having our services and products seen, heard and used by countless millions of others. This development has moved up a gear due to the pandemic. But here's the thing, there are a lot of vested interests that get in the way. The forces of disruption invariably leave footprints across the backs of incumbents. There usually are winners and losers, and even the venue where this all happens – our planet Earth – becomes a stakeholder as we take environmental issues into consideration. The discussion about what's best for the entertainment industry moving forward becomes nuanced, because it's not simply about changes that make things cheaper, faster or most transparent. Folded into the discussion are issues about people, culture, autonomy, stability, flexibility, privacy, freedom and sexuality. The tension between all these forces is beguiling. It makes for interesting reading but leads to much deeper conclusions. One region or territory might want to defend its culture from being diluted by outside influences, yet might want that same culture to find an audience abroad. A territory or region might enact laws that purport to have transnational reach, yet this might directly encroach on the sovereignty of others. Our willingness to embrace change is tempered with fears of losing the status quo. Ultimately, these are

all political issues laced with policy considerations that demand to be understood.

The 2020-2021 IAEL book examines an array of regional and transnational forces that currently are shaping the entertainment industry. Chapters have been subdivided into three major categories, as shown in the table of contents. The first category focuses on issues in specific jurisdictions and markets. The second attempts to map-out the expansion of regional forces into wider applications. The third seeks to bring a holistic view that reconciles many of the vital issues affecting the industry at large, and which are shaping our future world.

The first part of the book focuses on regional issues and differences. This part includes articles on sometimes underexposed but increasingly important markets: India and Nigeria. A contribution from Italy focuses on documentary films and cultural heritage, and the viability of specific Italian legislation in the light of Europe's DSM Directive. There are several articles about major legislative developments in the U.S. and the EU, including the U.S. Music Modernization Act and the EU Audiovisual Media Directive. A comparative contribution from three of our authors describes the limitations and exceptions to copyright in three major territories: the EU, the U.S. and Asia.

The second part of the book shows that regional developments can have global consequences. The GDPR, for example, has left its marks all around the world as countries are adapting their data protection legislation to keep up with Europe's strict rules. The infamous article 17 of the EU DSM Directive is bound to have an impact on the rest of the world. These global influences of regional legislation are discussed in this part of the book. This chapter also looks at the global impact of new technology and new industry economics. Important issues that are discussed include licensing in the age of globalization, how to deal with aggregators, and new types of platforms. And let's not forget something that we all have in common: paying taxes. A contribution from the Netherlands looks at the influence of globalization on international tax principles. Finally, we have an article that focuses on jurisdiction of U.S. courts. Under what circumstances can a non-U.S. entity be hauled into a

U.S. Court thousands of miles away to defend itself under United States law?

The third part of the book takes a look at some of the broader social and environmental issues of our current and future world. A contribution from Denmark discusses the changing expectations for artists as global role models. Another article looks at the (im)possibility to regulate fake news and political advertising on social media platforms. We also have a very helpful contribution on transgender music artists and the legal issues they encounter. We are also very pleased to have an article on what is no doubt the biggest challenge of our times: global warming. And then there are pandemic-related chapters that we never thought we'd be writing about. They are intended to provide useful information. There's information on data protection laws and privacy from the perspective of several different global regions, and there's information on how the pandemic has affected contractual relations. We also have chapters looking at the effect of the pandemic on future of the entertainment market, such as the acceleration of the shift to streaming and the changed relationship between brands and customers. As the global entertainment industry becomes more entwined, we believe these topics are instructive for everyone in all regions.

We would like to thank IAEL's president Jeff Liebenson for his time, effort and leadership as we've planned, changed our plans, planned again and finally executed on the making of our book. We would also like to thank Janneke Popma, associate at Höcker, for her indispensable organizational skills. Additionally, the authors all need to be recognized for their creativity, diligence and flexibility. A lot of energy that could have been directed toward remunerative, billable work instead has been gifted to us all, so that we can see the issues in their chapters through their specialists' eyes. Without the generosity of all the contributors this book could not have happened. Thank you everyone.

Finally, to quote Vera Lynn who passed away last summer at the respectable age of 103: we'll meet again.

William Genereux & Marijn Kingma

# How Can Lawyers Help the Music Industry Green itself and Respond to the Climate Crisis?

“Although the pandemic caused short-term drops in fossil fuel production in 2020, nations are still planning to produce far more fossil fuels by 2030 than would provide for limiting warming to 1.5°C or even 2°C.”



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## 1. Context

It’s clear that the climate crisis is the defining threat of our time<sup>1</sup>. It is also clear from recent headlines that many in the music industry are aware of this and want to do something about it.<sup>2</sup> In fact, a seeming wave of news stories from the period around Earth Day, 2021,<sup>3</sup> suggests that increasing numbers of participants in the music industry are concerned about climate change and actively working to address it, both in their own careers and in the broader world. Of course, other artists, artist representatives, companies and nonprofit organizations have been outspoken about, and actively working on, environmental impacts of the music industry for years.<sup>4</sup> The U.S.-based nonprofit group REVERB, for example, has worked with musicians, festivals and venues to “green” their concert events since the mid-2000s,<sup>5</sup> and has broadened its efforts.<sup>6</sup> U.K.-based Julie’s Bicycle, which was formed in 2007, initially focused on the

music industry and now works with the entire creative community on climate change and environmental sustainability.<sup>7</sup> Julie’s Bicycle is also one of the forces behind the U.K.-based music industry collective Music Declares Emergency.<sup>8</sup>

The UN Environment Programme’s 2019 Emissions Gap Report stated that, globally, GHG emissions needed to fall by 7.6% each year between 2020 – 2030 for the world to succeed in limiting temperature rises to near 1.5°C.<sup>9</sup> The more recent Production Gap Report (complementary to the Emissions Gap Report) found that global fossil fuel production would have to decline roughly 6% each year between 2020 and 2030 to limit warming to 1.5°C.<sup>10</sup> Although the pandemic caused short-term drops in fossil fuel production in 2020, nations are still planning to produce far more fossil fuels by 2030 than would provide for limiting warming to 1.5°C or even 2°C.

Manmade greenhouse gas (GHG) emissions arise from various activities. The Intergovernmental Panel on Climate Change analyzes the emissions by economic sector -- energy supply (including electricity and heat); agriculture, forestry and other land use (“AFOLU”); industry; transport; and buildings.<sup>11</sup>

Obviously, music business activities – including in connection with the live sector and the recorded music sector (both digital and physical), as well as merchandise, publishing, marketing and promotions – result in GHG emissions.

A special mention of digital music emissions is warranted. A number of articles and publications over the past few years have raised concerns about the GHG emissions caused by streaming video and music, including emissions from streaming music as compared to physical product. Recently, George Kamiya, an analyst with the International Energy Agency (IEA), detailed why the emissions caused by streaming video are not as high as some had previously estimated.<sup>12</sup> Although Kamiya has not done specific calculations for streaming music, he expects GHG emissions from streaming music to be generally lower than streaming video, and much lower compared to alternative formats or other daily activities.<sup>13</sup> Kamiya notes that the energy efficiency of

digital devices, data centers and networks is improving rapidly.<sup>14</sup> The major unknown factor in calculating the net effect of music streaming, Kamiya believes, is “the extent to which the ease and low cost of streaming means that people are consuming more than before, and whether this ‘rebound effect’ swamps the much more efficient delivery modes we have today”.<sup>15</sup> He suspects “the balance would go strongly on the side of digital being much less energy and carbon intensive” than earlier formats like CDs.

That being said, it is certainly desirable to lower emissions from streaming music, and some music industry participants, such as Impala, are starting to work on how to do just that.<sup>16</sup>

It’s worth keeping in mind that, as discussed in Rolling Stone, the biggest future growth in the recorded music sector may well come from social media, gaming, livestreaming, and fitness, rather than music streaming subscriptions.<sup>17</sup>

What seems clear is that the music industry – like every other human enterprise – must become more aware of the environmental impacts for which it is responsible, and work to substantially lessen those impacts. This is a matter of enlightened self-interest as well as good citizenship, since the music industry itself, of course, is not immune to direct impacts from climate change.<sup>18</sup>

A recent U.S. article discussed why lawyers of all types should address the climate crisis.<sup>19</sup> The authors mentioned lawyers’ duties under the U.S. Model Rules of Professional Conduct, and a recent American Bar Association resolution and an International Bar Association statement on the climate crisis, among other factors. Empirically, however, music industry lawyers do not seem to have played a large role in the music industry’s climate change efforts so far. This article considers some of the challenges and opportunities facing music industry participants in general, and lawyers in particular, who seek to green the industry and support the larger fight against climate change.

## 2. Goal

U.K.-based Music Declares Emergency’s declaration commits signers to, among other things, “[s]peak up and out about the climate and ecological emergency” and “[w]ork towards making our businesses ecologically sustainable and regenerative.” Working to make a business regenerative implies more than just stopping adverse environmental impacts; it implies restoring and improving the ecosystem. If the world’s music industry participants could work together, what should our goal(s) be? With respect to greening the industry itself, the goal could be to stop causing adverse environmental impacts. Presumably this would mean achieving zero emissions and zero waste – in all corners of the industry – and halting biodiversity loss. With respect to digital music, the most important aims would be increasing energy efficiency, moving to an all-renewable electric grid,<sup>20</sup> and greening the internet. Beyond this, we could work to change our industry so that it has the effect of restoring and improving the ecosystem whenever possible. Further, we could use our expertise and visibility to achieve these same goals on a broader scale.

## 3. Challenges

Those working to make the music industry more environmentally friendly may face numerous challenges, including:

### 1) **The complexity of the music “ecosystem”**

The music industry is complex, making it a challenge to determine the scope of research and of sustainability efforts. For example, in the recorded sector, some listening devices are used only for listening to music while others, such as laptops, are used for multiple purposes. Data centers store and transmit more than just streaming music data. A track, once recorded, can be played in a number of different formats.

One sustainability tool is life cycle analysis. Life cycle analysis (sometimes called life cycle assessment) (LCA) is a way of evaluating a product’s or service’s impact on the

“Transparency is vital if the music industry is to be changed for the better.”

environment through its lifetime, from extraction and processing of raw materials, through materials processing, manufacturing, distribution, use, repair and maintenance, recycling, and final disposal. In the music world, LCA could be applied to anything from musical instruments to different formats of recorded music to the beverage containers used at a venue. The steps in conducting an LCA include defining the goal and scope of the study, including by selecting a functional unit to analyze; compiling an inventory of relevant energy and material inputs and environmental releases; evaluating the potential environmental impacts; and interpreting the results to help inform decision makers.<sup>21</sup>

Taking digital recorded music as an example, what is the appropriate scope of research? Is the “functional unit” to be studied a single track, or a download/stream? Should the scope of research include the device which the consumer uses to listen to a track, such as a cellphone? If so, should the research include the manufacturing of the user device and the shipping of the device, as well as the use of the device? Should the scope of research include the process of recording music, the manufacturing and shipping of the instruments played, and the manufacturing, shipping and use of the equipment used in the recording process?

Fortunately, there is a framework in place to help address questions like these. Emissions can be analyzed in three different categories.<sup>22</sup> Scope 1 emissions are the most direct emissions, such as a company’s facilities or vehicles. Scope 2 emissions are indirect emissions from the generation of purchased energy that the company consumes. Scope 3 emissions are all other indirect emissions that occur in connection with the company’s value chain, including emissions connected to products that the company buys and the products it sells. These Scope 3 emissions can constitute the company’s largest source of emissions. As one journalist observed, “all emissions are scope 1 to someone, so inevitably this kind of accounting creates overlaps between the emissions that different companies are trying to reduce”.<sup>23</sup> This overlap is not necessarily a bad thing, and can lead to companies working together to decarbonize an entire value chain.

## 2) The diffuse nature of the music industry

Participants in the recorded music industry are spread across the globe and range from major multinational corporations to children at home in their bedrooms.

## 3) Company concerns

Music industry companies asked to make changes for environmental reasons may have understandable concerns such as rising costs, lower profitability, loss of competitive advantage, and so forth – especially given the added financial stress and uncertainty due to the pandemic. Corporate directors and managers may be under pressure – if not the legal obligation – to maximize short term shareholder value. On the other hand, companies may face pressure from employees,<sup>24</sup> investors,<sup>25</sup> reporters, activists, and the general public about taking steps to lessen their environmental impact. Also, taking action voluntarily might be more palatable than waiting for governmental edict. Further, companies that take steps toward sustainability may reap a variety of benefits, including in-house benefits such as efficiency gains, waste reduction, greater innovation, more highly-motivated employees, an advantage in attracting employees, and a greater ability to raise impact investment capital; and marketplace benefits such as brand enhancement and greater profitability, in addition to the benefits to society at large.

## 4) Artist concerns

Artists considering taking steps to decrease their environmental impact might be concerned about rising costs and about public reaction. Some artists’ fans, of course, would support and expect environmental accountability and leadership from their favorite artists. However, perceived artist hypocrisy or misstatements of fact can meet swift criticism. Speaking out collectively could give individual artists greater leverage and help dampen any negative public reaction.

## 5) The need for transparency

Transparency is vital if the music industry is to be changed for the better. It would be difficult or impossible to fully confront the environmental impacts

of the industry if information is lacking or inaccurate, or if the sources of information aren't trusted. Transparency necessitates verification of research results, environmental marketing claims and the like by experienced and trustworthy third parties. For example, reforestation projects to offset carbon emissions should be monitored to ensure that the expected trees are actually planted and left in place to absorb carbon as expected. Ideally, the third-party verifiers are themselves subject to random audits on an ongoing basis.

Businesses should be prepared to provide details about new sustainability initiatives and campaigns – who is involved,<sup>26</sup> what levels of funding and staffing will be established, and for how long; what monitoring and enforcement mechanisms are in place; and what will happen in the event that promises are not lived up to.

“Greenwashing” is damaging to public trust, and, when detected, can cause a backlash.<sup>27</sup> Regulations and related guidance documents about environmental marketing claims seek to promote truthfulness and prevent greenwashing.<sup>28</sup>

#### 6) **Constantly-changing technology**

Not only is the technology for creating and performing music constantly changing, the types of devices on which consumers listen to music is also constantly evolving, and consumers are constantly changing or upgrading their devices. For example, the worldwide smart personal audio device market, consisting of true wireless stereo, wireless earphones and wireless headphones, grew at a fast clip in 2019.<sup>29</sup> Spatial audio technology is on the rise.<sup>30</sup> New devices may be more energy efficient, but manufacturing and shipping them and replacing the older devices still requires energy and results in waste.

#### 7) **Changing trends**

Separate from evolving technology, music consumption may reflect consumer fashions and preferences, such as the resurgence of traditional vinyl and cassettes. Such changing trends can make it hard to plan, and under

some circumstances might result in higher emissions and waste.

The recent surge of interest in non-fungible tokens deserves special mention. Although the surprising amounts being paid for some NFTs have gotten the most attention, and the creative and business uses of NFTs in the music industry are just in the early stages of being explored, some observers and researchers are focusing on the environmental impacts of minting NFTs.<sup>31</sup>

#### 8) **The logistics of getting to net zero**

A company trying to be carbon neutral (i.e., to release net zero emissions into the atmosphere) might reduce its direct emissions (e.g., from its vehicles and equipment), and reduce its indirect emissions through energy efficiency measures and switching to green power. Perhaps the company can also generate some of its own renewable energy; often, though, switching to renewable energy will involve buying renewable energy credits (“RECs”). RECs (also known as renewable energy certificates or green tags) are market-based instruments that “represent[] the property rights to the environmental, social and other non-power attributes of renewable electricity generation.”<sup>32</sup> A REC is created when each megawatt-hour of renewable energy (from wind, solar, biomass, geothermal, or certain hydropower sources) is generated and delivered to the power grid. The owner of a REC “has exclusive rights” to the attributes of one megawatt-hour of renewable electricity, and “may make unique claims associated with renewable electricity that generated the REC”, including “reducing the emissions footprint associated with electricity use.”<sup>33</sup>

The company might also turn to buying carbon offsets. An offset project – intended to reduce GHG emissions, increase carbon storage, or increase GHG removals from the atmosphere – is supposed to be “additional”, meaning that the emissions reductions are in addition to what would occur under the company’s business-as-usual scenario.<sup>34</sup> The emissions reductions should be real, permanent, and verified. These requirements are important, and it is worth noting that science is always evolving and that some carbon offset projects have not been as effective as expected or have had unintended consequences.<sup>35</sup>



“Despite the many potential challenges, there are also many potential opportunities for those seeking to green the recorded music industry and fight climate change. ”

Companies aiming for net zero emissions need to address all their emissions (including those broad, indirect Scope 3 emissions, discussed above).

Further, companies need to work on making deep cuts to their emissions, rather than just compensating for their emissions through offsets.<sup>36</sup>

#### 9) **Consumer price sensitivity**

The cost of addressing climate impacts may result in costs that cannot easily be passed on to consumers. Getting listeners to pay for recorded music has obviously been an evolving challenge over recent years.

Fans might not want (or be able) to pay extra for optional eco-friendly goods or services. Of course, fan bases differ between artists.

#### 10) **Jevons paradox**

Writing about coal in the 1860s, William Jevons observed that technological efficiency gains actually resulted in increased production and consumption. This “Jevons paradox” notion of a “rebound” effect can be applied to virtually any resource, such as streaming media. To reduce the risk of rising energy use and emissions associated with the growing demand for data, Kamiya of the IEA writes, investments in research, design and development for “efficient next-generation computing and communications technologies” are necessary, as well as ongoing efforts to decarbonize the electricity supply.<sup>37</sup> Consumers can reduce their environmental footprint by using smaller devices, he notes, and by replacing them less often, since much of the lifecycle emissions associated with devices come from the production phase; this would also help with the problem of e-waste.

#### 11) **Growing numbers of consumers**

Regardless of Jevons paradox effects, with human population rising it appears that the number of music consumers will continue to increase in the near future; this presumably will lead to increased production and consumption. With respect to streaming, growth is expected to be strongest in emerging markets.<sup>38</sup>

#### 12) **Regional/national versus global**

The climate crisis is a global threat, but many aspects of our legal systems are national or regional. Environmental regulations, for example, are more stringent in some countries (or, for example, U.S. states) than others. Corporate law, securities law, advertising regulations and other area of law pertinent to climate concerns vary across and sometimes within countries.

#### 13) **Lawyers' duties and pressures**

Lawyers eager to help make the music industry more sustainable might represent clients who are uninformed about or disinterested in the climate crisis, or opposed to change. In certain circumstances lawyers might be restricted by their fiduciary duties to their clients.

### 4. **Opportunities**

Despite the many potential challenges, there are also many potential opportunities for those seeking to green the recorded music industry and fight climate change. Here are some steps that could be or already are being taken.

#### 1) **Artists take action**

Artists could speak out about the climate crisis, either through their music (as Billie Eilish, Grimes and others are doing),<sup>39</sup> or more directly. Artists could donate to or serve as spokespeople for environmental groups. They could invest in environmentally-friendly businesses; for example, FEAT. in Australia is an artist-initiated platform that allows artists to “reshape the environmental legacy of the music industry” by investing in Australian solar farms.<sup>40</sup> Artists could work collectively through climate-focused groups such as Music Declares Emergency, Julie's Bicycle, Green Music Australia,<sup>41</sup> the Green Music Initiative<sup>42</sup> in Germany, and DJs for Climate Action,<sup>43</sup> or through industry organizations such as performance rights organizations and record industry trade groups. For example, artists could collectively pressure the companies they work with (such as streaming platforms and the companies those platforms

rely on for their data storage and transmission needs) to press for a faster transition to all-electric power, and for regulations for a 100% green renewable electric grid.

## 2) Companies speak out

Companies assessing and improving their own carbon footprints is arguably necessary but not sufficient. Like artists, companies could take an advocacy role and push for international engagement,<sup>44</sup> a price on carbon, regulations for a 100% green renewable grid, etc. They could speak out against climate-unfriendly trade group practices;<sup>45</sup> companies, like artists, have more clout when they speak collectively, so the lobbying efforts (or lack thereof) of trade groups are significant.

In a 2018 article, Thomas P. Lyon and co-writers called for companies to become as transparent about their “corporate political responsibility” (CPR) as their corporate social responsibility (CSR), and for rating systems to demand CPR information when assessing a company’s CSR.<sup>46</sup> Companies, they wrote, should fully disclose their corporate political activity, align their political activity with their public pronouncements and CSR efforts, and support public policies that will enable the private sector to better pursue sustainability efforts and commitments.<sup>47</sup> It is clear that academics, journalists, and nonprofit organizations are increasingly paying attention to the nexus between corporate pronouncements and corporate lobbying.<sup>48</sup>

## 3) Governments promote sustainability

Governments – national or other – can of course address climate concerns in myriad ways – for example, by taxing emissions, establishing carbon markets, setting emissions targets (including committing to net zero emissions by a specific date), establishing green building codes, regulating vehicle emissions, financing energy efficiency programs, mandating best practices for the development of clean energy, requiring government agencies to use the social cost of carbon as part of the cost-benefit analysis of new regulations, setting aside land and ocean areas for protection, creating green jobs programs, etc. In

particular, governments could use the pandemic recovery as a chance to “build back better” with policies and investments that advance sustainability.<sup>49</sup>

Some less-obvious government sustainability efforts could be directly relevant to the music industry, such as passing right-to-repair laws<sup>50</sup> and reducing plastic waste. Legislation intended to drive a “circular economy” (one that reduces reliance on virgin materials), reduce the impact of packaging, require products to contain minimum percentages of recycled materials, or make companies responsible for end-of-life disposal could result in the music industry lessening its environmental impacts.

In a 1995 article, Wharton School professor Eric Orts advocated for the idea of “reflexive environmental law” which “attempts...to encourage ethical environmental behavior by providing positive incentives.”<sup>51</sup> A model of environmental regulation is needed, Orts argued, “that encourages businesses to adopt environmentally proactive policies” and allows them to prosper in doing so; the model must also “discourage businesses that are environmentally irresponsible.”<sup>52</sup>

Just as governments can have positive effects on the sustainability of the music industry, music industry participants can press governments to ramp up sustainability efforts, including measures that will level the playing field for companies that compete against each other.

## 4) Companies use voluntary management standards

Companies can use voluntary standards to improve their environmental performance, such as the ISO 14001 standard regarding environmental management systems. ISO 14000 is a family of voluntary international standards developed by the International Organization for Standardization (ISO) that provides “practical tools” for companies and organizations of all kinds “to manage their environmental responsibilities.”<sup>53</sup> ISO 14001 is the key standard of the 14000 series and establishes the requirements for an environmental management system; users of the standard can be certified by a third party through an optional accredited certification process.<sup>54</sup>

The EU Eco-Management and Audit Scheme (EMAS) is a voluntary management instrument which incorporates the ISO 14001 requirements and adds other requirements as well.<sup>55</sup> However, international standards like ISO 14001 (and ISO 20121, which applies to sustainable events<sup>56</sup>) are likely most useful to large companies, and ISO 14001 has not been widely taken up in the U.S. Organizations in Finland, Norway and Sweden manage and develop national environmental management standards which are based on ISO 14001 and EMAS but are geared more to small and medium-sized enterprises.<sup>57</sup>

##### 5) Companies broaden obligations

The benefit corporation movement, started by nonprofit group B Lab, allows companies in certain U.S. states to voluntarily expand the obligations of their corporate boards, “requiring them to consider environmental and social factors, as well as the financial interests of shareholders.”<sup>58</sup> Although it is primarily privately-held corporations that have chosen to become benefit corporations, benefit corporations can go public. Since the benefit corporation structure is a legal tool, the Benefit Corporation website has a section of detailed information for attorneys, and also provides a list of attorneys “interested in working with businesses to explore whether benefit corp status makes sense for them and how it could be most useful.”<sup>59</sup> The benefit corporation concept has also been introduced into a few other countries.

B Lab also certifies “B Corporations.” B Corp Certification “measures a company’s entire social and environmental performance.”<sup>60</sup> Certified B Corporations “are legally required to consider the impact of their decisions on all their stakeholders”; they “make this legal change by updating their articles of incorporation, reincorporating as benefit companies, or making other structural changes.”<sup>61</sup> There are now Certified B Corporations in more than 70 countries; most Certified B Corps are small businesses. In December, 2019, over 500 B Corps from around the world publicly committed “to accelerate the reduction of their greenhouse gas emissions to reach a 1.5 degree trajectory leading to net zero by the year 2030—20 years

ahead of the 2050 targets set in the Paris Agreement.”<sup>62</sup> Martin Guitar and a couple of music production companies have become Certified B Corporations.<sup>63</sup>

Economy for the Common Good, a movement for an alternative economic model that started in Austria and has spread across Europe and to other continents, has developed a system called the Common Good Balance Sheet.<sup>64</sup> The Balance Sheet system examines a company’s contribution to the common good across numerous factors including environmental sustainability. Over 500 companies have published a Common Good Balance Sheet.

##### 6) Companies commit to specific initiatives

Companies can commit to specific climate-related initiatives, on their own or through established programs. For example, We Mean Business is a global coalition of seven international nonprofit organizations that “work[s] with the world’s most influential businesses to take action on climate change.”<sup>65</sup> Interested companies can contact We Mean Business about committing to one or more initiatives designed by the coalition partners. One of those initiatives is RE100, led by nonprofit group The Climate Group in partnership with the nonprofit CDP. Companies joining RE100 must match 100% of the electricity they use with electricity produced from renewable sources; they can generate renewable electricity themselves or procure it from the market, including as energy attribute certificates.<sup>66</sup> Joining companies must disclose their third party-verified electricity data each year, and RE100 reports on their progress. Music industry-related companies Apple, Alphabet, Facebook, Panasonic, Rackspace Hosting, and Sony are among the companies who have joined RE100. Chinese technology company Baidu has committed to another initiative, the EV100 initiative; EV100 companies are invited to publicly commit to undertake one or more of several electric vehicle actions by 2030.<sup>67</sup> Vivendi, Bertelsmann, Amazon and Facebook have committed to the Science Based Targets Initiative (SBTi), which asks companies to “[c]ommit to setting a science-based emission reduction target.”<sup>68</sup> The partners behind SBTi recently that they are working to create a global standard for corporate net-zero pledges.<sup>69</sup>

Another example of an initiative relevant to some music industry participants is the New Plastics Economy Global Commitment, led by the Ellen MacArthur Foundation, in collaboration with the UN Environment Programme.<sup>70</sup> Signatories commit to three actions (eliminate, innovate, circulate) to realize the vision of “a circular economy for plastic in which it never becomes waste”. Signatories include companies representing 20% of all plastic packaging produced globally, as well as governments, nonprofits, trade associations and others. Apple, Walmart and Philips are all signatories.

#### 7) Companies disclose climate risks

Whether or not required to by applicable law, companies could disclose the climate risks (and opportunities) they face. Some companies already do so.

There are a number of organizations that facilitate the disclosure of sustainability reporting (i.e., environmental, social and governance (ESG) information), such as CDP and the Sustainability Accounting Standards Board (SASB). There is also guidance available regarding climate-related financial disclosure; the Task Force on Climate-related Financial Disclosures (TCFD), convened by the international Financial Stability Board, released climate-related financial disclosure recommendations in 2017 and is now “helping companies implement the recommendations and promoting advancements in the availability and quality of climate-related disclosure.”<sup>71</sup>

There is currently a movement to integrate sustainability reporting and climate-related financial disclosure. In December, 2020, five “leading organisations in sustainability and integrated reporting” published a paper illustrating “how their current frameworks, standards and platforms, along with the elements set out by the [TCFD], can be used together to provide a running start for development of global standards that enable disclosure of how sustainability matters create or erode enterprise value.”<sup>72</sup>

#### 8) Companies give sustainability bonuses

Companies could pay employees – executives or entire workforces – for meeting sustainability targets, and could offer better financial

terms to suppliers who meet sustainability goals.

#### 9) Companies invest in sustainability-focused ventures

Companies with the financial means (or their corporate parents) could invest in start-ups and other ventures that are focused on sustainability efforts. For example, BP, Microsoft, and Ikea are all investing in sustainability-related ventures.<sup>73</sup>

#### 10) Financing approaches

Music companies and others could borrow innovative financing approaches from other industries. For example, PepsiCo, Chanel, and Burberry have all issued green bonds to fund their sustainability agendas.<sup>74</sup> An October, 2019, article about the shipping industry mentioned several financing concepts that could potentially transfer to the music industry – lease-financing packages to minimize upfront costs for companies seeking to install new sustainability technology; pay-as-you-use subscription models for companies using new sustainable tech services; and a global industry carbon fund that would impose a tax on industry participants’ emissions, then apply the funds to emissions reduction efforts.<sup>75</sup>

Companies could also take advantage of sustainability-linked loans that let borrowers lower the cost of debt if they meet specified sustainability metrics.

## 5. What Could Lawyers Do?

It seems there are numerous things that music industry lawyers could do, depending on our skill sets and circumstances, and whether in our roles as lawyers or as concerned individuals (and subject, of course, to our ethical obligations), including:

#### (1) Green our own offices and activities

This is an important first step. For starters, we can seek to work in green buildings, drive less, fly less, buy locally-grown food, and use our computers efficiently. Useful advice about greening offices is available from a variety of sources such as

bar associations and organizations seeking to help small businesses.<sup>76</sup> In the U.S., the nonprofit organization Law Firm Sustainability Network has developed a self-assessment tool for law firms to assess their sustainability programs; the Network has partner organizations in Australia and the U.K.<sup>77</sup> Julie's Bicycle published a guide for greening offices in all the creative industries; it touches on travel practices as well.<sup>78</sup> The Music Declares Emergency website suggests actions for people in various roles in the music industry -- not specifically including lawyers, but many of the suggestions, such as switching to or generating 100% renewable electricity for the office, banking with ethical banks that don't invest in fossil fuels, and divesting pension funds from fossil fuels, could be applied to law firms.<sup>79</sup>

If advisable and affordable, we can ask our employers to hire sustainability directors or consultants. In any event, we can educate ourselves about the climate crisis and sustainable practices. We can support and get involved with green music groups, the green initiatives of general industry organizations and entertainment law groups, and law firm sustainability groups.

As urged by the U.S. group Law Students for Climate Accountability, those of us in large firms can seek to persuade our colleagues to wind up work that supports the fossil fuel industry, and instead take on work that addresses climate change.<sup>80</sup> Such steps may have the beneficial effect of attracting younger lawyers.<sup>81</sup>

**(2) Normalize eco-friendly practices in the industry**

We can seek to make eco-friendly practices such as green touring procedures and eco-friendly merchandise the norm and even the default choice in the industry.

**(3) Review, draft, and/or negotiate specific kinds of contracts or contract provisions**

To date it does not seem that many lawyers are being asked to work on sustainability-oriented contracts or provisions; even green tour riders are usually generated by non-lawyers. As green practices become the norm in the

industry, it seems likely that lawyers will draft provisions and entire agreements regarding matters like sustainable merchandise and green tour vehicles.

**(4) Encourage clients to adopt eco-friendly practices, both in their professional and personal lives**

Clients, of course, have widely varying needs, abilities and interests. Artist clients, for example, might be open to selecting recording studios that use 100% renewable energy, and buying used instruments and rechargeable batteries for their equipment. A lawyer might learn of a new technique or opportunity, such as a new type of green vehicle, and consider which client might benefit from or be interested in that opportunity.

**(5) Support clients' environmental efforts**

We might be able to support our clients' efforts with sustainability resources, information, and assistance regarding anything from putting on a sustainable event to hiring a consultant to identifying potential sources of financing for sustainability projects.

**(6) Do basic due diligence about clients' potential sustainability projects and partners**

We might help our clients simply by asking the right questions about their potential partners' qualifications and track records, and how potential projects would work and what the possible roadblocks might be.

**(7) Work with clients to ensure compliance with environmental laws**

**(8) Assist corporate clients with broadening their obligations to include**

sustainability considerations Clients might be interested in becoming Benefit corporations, Certified B Corporations, or similar.

“The moment is ripe for the global music industry to come together to share information, set goals, develop best practices, and establish a framework for effective action. ”

**(9) Help clients avoid actions that would lead to charges of hypocrisy or greenwashing**

Artist clients, for example, need to be careful about becoming brand ambassadors for products that turn out to be less environmentally friendly than they purport to be.

**(10) Take action against greenwashing by others**

**(11) Support and help fund research into music industry impacts**

**(12) Donate to or invest in environmental causes and green services and technologies**

We could also support our clients in making such donations or investments.

**(13) Encourage trade organizations to become informed about and proactive on sustainability issues, and to establish sustainability guidelines and standards**

**(14) Press for government action and investment into energy efficiency and truly clean renewable energy sources**

**(15) Draft proposed model laws, and work to persuade lawmakers to adopt them**

In the U.S., the Deep Decarbonization Legal Pathways Project uses volunteer lawyers to draft proposed model laws for use at the federal, state or local level.<sup>82</sup> Local governments in general may welcome assistance with sustainability legislation.

## 6. Conclusion

Many people and organizations are already working to address the environmental impacts of the music industry and the climate crisis in general. However, much more needs to be done, and time is of the essence. The moment is ripe for the global music

industry to come together to share information, set goals, develop best practices, and establish a framework for effective action. Artists may be the first or the most visible to speak out or take action, yet companies' efforts are crucial, and there is a role for everyone, including lawyers, to play. Each one of us can use our specialized skills and our industry experience to transform our industry and our world.

- [1] See, e.g., Shannon Osaka, 'The planet is broken,' UN chief says, *Grist* (Dec. 3, 2020) <[https://grist.org/climate/the-planet-is-broken-u-n-leader-says-in-state-of-the-climate-report/?utm\\_medium=email&utm\\_source=newsletter&utm\\_campaign=daily](https://grist.org/climate/the-planet-is-broken-u-n-leader-says-in-state-of-the-climate-report/?utm_medium=email&utm_source=newsletter&utm_campaign=daily)>, and Miyoko Sakashita, Latest climate study predicts disaster for oceans, coastlines and life as we know it, *The Hill* (July 26, 2020) <[https://thehill.com/opinion/energy-environment/509027-latest-climate-study-predicts-disaster-for-oceans-coastlines-and?utm\\_campaign=Weekly%20Digest&utm\\_medium=email&hsmi=92352936&\\_hsenc=p2ANqtz-9uJcviGL0BQR8Clbk4mInmviO4zESYAywFda1B4OAOedsBKRb5Eh8SKc96R636WLQvcK8pg7D8lrOlGfVfTuidiBNGg&utm\\_content=92352936&utm\\_source=hs\\_email](https://thehill.com/opinion/energy-environment/509027-latest-climate-study-predicts-disaster-for-oceans-coastlines-and?utm_campaign=Weekly%20Digest&utm_medium=email&hsmi=92352936&_hsenc=p2ANqtz-9uJcviGL0BQR8Clbk4mInmviO4zESYAywFda1B4OAOedsBKRb5Eh8SKc96R636WLQvcK8pg7D8lrOlGfVfTuidiBNGg&utm_content=92352936&utm_source=hs_email)>. It is evident that climate change (climate weirding/the climate crisis/the climate emergency) is intertwined with the ills of biodiversity loss, mass extinction, and toxicity; for the sake of brevity this article refers primarily to climate. For a recent assessment of global risks, see World Economic Forum, *The Global Risks Report 2021* (Jan. 19, 2021) <[http://www3.weforum.org/docs/WEF\\_The\\_Global\\_Risks\\_Report\\_2021.pdf](http://www3.weforum.org/docs/WEF_The_Global_Risks_Report_2021.pdf)>, particularly at 14.
- [2] See, e.g., Melanie May, David Gilmour guitar auction raises \$21m for Climate Change, *UKFundraising* (June 26, 2019) <<https://fundraising.co.uk/2019/06/26/david-gilmour-guitar-auction-raises-21m-for-climate-change/>>; James Hanley, UK music industry declares climate and ecological emergency, *Music Week* (July 12, 2019) <<https://www.musicweek.com/labels/read/uk-music-industry-declares-climate-and-ecological-emergency/076773>>; Coldplay to pause touring until concerts are 'environmentally beneficial,' *BBC News* (Nov. 21, 2019) <<https://www.bbc.com/news/entertainment-arts-50490700>>; Helen Pidd, Massive Attack to help map music industry's carbon footprint, *The Guardian* (Nov. 28, 2019) <<https://www.theguardian.com/music/2019/nov/28/massive-attack-to-help-map-music-industrys-carbon-footprint>>; Ashley King, Foals Keyboardist Says Bands Should Stop Touring to Save the Environment, *Digital Music News* (Dec. 4, 2020) <<https://www.digitalmusicnews.com/2020/12/04/foals-keyboardist-environment-comments/>>; and INTL: BMG offsets 3,000 tons of CO2 en route to climate neutrality, *BMG* (Feb. 24, 2021) <<https://www.bmg.com/us/news/bmg-path-to-climate-neutrality.html>>. Other examples are at *Music Declares Emergency* <<https://www.musicdeclares.net/gb/home/#declarers>>; *Julie's Bicycle* <<https://juliesbicycle.com/music/>>; *Orchestra for the Earth* <<https://www.orchestrafortheearth.co.uk/whatwedo>>; and *Climate Live* <<https://www.climatelive.org/>>.
- [3] See, e.g., *Impala Launches Sustainability Programme Aiming for a Net Positive Independent Music Community by 2030*, *Impala* (Apr. 8, 2021) <<https://impalamusic.org/impala-launches-sustainability-programme/>>; Ben Homewood, Beggars Group & Ninja Tune unveil plans to go carbon negative, *Music Week* (Apr. 19, 2021) <<https://www.musicweek.com/labels/read/beggars-group-ninja-tune-unveil-plans-to-go-carbon-negative/083066>>; Ryan Middleton, Brian Eno Launches Climate Change & Environmental Sustainability Fund EarthPercent, *Magnetic Magazine* (Apr. 22, 2021) <<https://www.magneticmag.com/2021/04/brian-eno-climate-change-environmental-sustainability-fund-earthpercent/>>; Eric Renner Brown, Climate Control Projects Announces Summer 2022 Music Festival SOS: Concert For The Planet and Stateside Launch of EarthPercent, *Pollstar* (Apr. 21, 2021) <<https://www.pollstar.com/article/climate-control-projects-announces-summer-2022-music-festival-sos-concert-for-the-planet-and-stateside-launch-of-earthpercent-147877>>; Live Nation Announces Its Live Music Sustainability Program, *Green Nation*, *CelebrityAccess* (Apr. 21, 2021) <<https://celebrityaccess.com/2021/04/21/live-nation-announces-its-live-music-sustainability-program-green-nation/>>; and United Kingdom: Classical musicians declare a climate emergency, *Climate Emergency Declaration* (Apr. 29, 2021) <<https://climateemergencydeclaration.org/united-kingdom-classical-musicians-declare-a-climate-emergency/>>. Adam Met advocated a broader approach to sustainable touring; Adam Met, AJR's Adam Met On A Future In Sustainable Touring (Guest Post), *Pollstar* (Apr. 19, 2021) <<https://www.pollstar.com/article/ajrs-adam-met-on-a-future-in-sustainable-touring-guest-post-147846>>.
- [4] See, e.g., *Green Highway – Bonnie Raitt (2002)* <<https://greenhighway.net/on-tour/#bonnie-raitt-2002>>; *Stuff & Nonsense – Carbon Neutral DVD*, David Gilmour Music Ltd. (visited May 3, 2021) <<https://www.davidgilmour.com/nonsense.htm>>; Pearl Jam donates green for environment, *USA Today* (July 12, 2006) <[https://usatoday30.usatoday.com/life/people/2006-07-11-pearl-jam\\_x.htm](https://usatoday30.usatoday.com/life/people/2006-07-11-pearl-jam_x.htm)>; A medley of music-related eco-news, *Grist* (Feb. 17, 2007) <<https://grist.org/article/i-like-the-sound-of-that/>>; 15 Green Musicians and Bands, *Grist* (June 22, 2007) <<https://grist.org/article/musicians/>>; and *The Groove House Story* <[http://www.groovehouse.com/company\\_history](http://www.groovehouse.com/company_history)>. For a past-to-present listing see Brett Milano, Don't Drink The Water: How The Environmental Movement Shaped Music (Apr. 21, 2020) <<https://www.udiscovermusic.com/stories/environmental-movement-in-music/>>.
- [5] *About Us*, REVERB (visited May 1, 2021) <<https://reverb.org/about/>>.
- [6] For a recent profile of REVERB, see Francisco Rendon, REVERB's Journey Toward A More Sustainable Touring Industry, *Pollstar* (Apr. 20, 2021) <<https://www.pollstar.com/article/reverbs-journey-toward-a-more-sustainable-touring-industry-147860>>.
- [7] *Why We Exist > Story*, *Julie's Bicycle* (visited May 3, 2021) <<https://juliesbicycle.com/why-we-exist/story/>>.
- [8] See *Music Declares Emergency*, supra, note 2, "About" section.
- [9] See *Cut global emissions by 7.6 percent every year for next decade to meet 1.5°C Paris target - UN report*, UNEP (Nov. 26, 2019) <<https://www.unenvironment.org/news-and-stories/press-release/cut-global-emissions-76-percent-every-year-next-decade-meet-15degc>>.
- [10] SEI, IISD, ODI, E3G, and UNEP, *The Production Gap Report: 2020 Special Report (2020)* <<https://productiongap.org/2020report/>>.
- [11] See, e.g., *Climate Change 2014 -- Mitigation of Climate Change: Summary for Policymakers and Technical Summary*, Intergovernmental Panel on Climate Change (2015) <[https://www.ipcc.ch/site/assets/uploads/2018/03/WGIIIAR5\\_SPM\\_TS\\_Volume-3.pdf](https://www.ipcc.ch/site/assets/uploads/2018/03/WGIIIAR5_SPM_TS_Volume-3.pdf)>, pp 7-9.
- [12] George Kamiya, *The carbon footprint of streaming video: fact-checking the headlines*, International Energy Agency (Dec. 11, 2020) <<https://www.iea.org/commentaries/the-carbon-footprint-of-streaming-video-fact-checking-the-headlines>>.
- [13] Kamiya points out that the energy and emissions for streaming music will generally be much lower than streaming video because the user device (usually a smartphone plus headphones, laptop, or smart speaker) is generally

more energy efficient than a television (which is used by most Netflix users). Email from George Kamiya, Digital Energy Analyst, IEA (Jan. 5, 2021). For the global average grid, he estimates, streaming music emissions would likely range from 1 – 10g of CO<sub>2</sub> per hour, depending on whether the user device is a smartphone or a laptop. For an average listener, he notes, emissions from streaming music could total a couple kg per year, which is “a tiny slice of the average 16,000 kg for an average American’s GHG per-capita footprint”. (The carbon footprint of streaming music in any particular country will depend on how the electricity in that country is generated.) Emissions from data centers (which have previously been a focus of Greenpeace – see Greenpeace USA, *Clicking Clean* (Jan. 2017) <<http://www.clickclean.org/usa/en/>>, and Greenpeace Reports, *Clicking Clean Virginia* (Feb. 13, 2019) <<https://www.greenpeace.org/usa/reports/click-clean-virginia/>>), constitute, according to Kamiya, “a small slice” (less than 10%) of the overall footprint for both streaming video and music compared to user devices or data transmission, so that any effect of how data centers are powered should have a relatively small effect on the emissions associated with streaming a song. Further, Kamiya notes that any comparison of streaming music to legacy products should include both the user device and the transportation energy and emissions for the CD or vinyl. For example, “a basic CD player consumes 10x as much electricity as a smartphone while playing audio”, and transport emissions (including last mile delivery) were historically a significant part of total emissions from retail or e-tail CD purchases. Transportation systems are becoming more energy efficient by a couple percentage points a year, he observes, but the energy efficiency of data transmission has doubled about every two years since 2010.

[14] Kamiya, *supra*, note 12.

[15] Kamiya email, *supra*, note 13.

[16] In March, 2021, Impala called for “[working] with the recorded music sector to help assess and reduce the carbon footprint of digital music”; see *It’s Time to Challenge the Flow – Impala’s 10-Point Plan to Make Streaming Work*, Impala (Mar. 3, 2021) <<https://impalamusic.org/its-time-to-challenge-the-flow/>>. The point was reiterated in Impala’s Climate Charter; see Impala, *supra*, note 3.

[17] Tim Ingham, *Social Media, Not Streaming, Is the Music Industry’s Future*, *Rolling Stone* (Dec. 2, 2020) <<https://www.rollingstone.com/pro/features/social-media-tiktok-instagram-video-games-music-money-1097428/?curator=MusicREDEF>>.

[18] The effect of climate-exacerbated extreme weather events on the live sector is apparent. Further, the infrastructure of the internet itself is vulnerable to climate change; see, e.g., *The Nature Conservancy, Will Nature Go Mainstream in 2021?* (visited May 3, 2021) <<https://www.nature.org/en-us/what-we-do/our-insights/perspectives/nature-mainstream-global-recovery-2021/>>. For another example of direct climate impacts see Priyanka Runwal, *Climate Change Hits Rock and Roll as Prized Guitar Wood Shortage Looms*, *Scientific American* (Oct. 28, 2020) <[https://www.scientificamerican.com/article/climate-change-hits-rock-and-roll-as-prized-guitar-wood-shortage-looms1/?utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=week-in-science&utm\\_content=link&utm\\_term=2020-10-30\\_top-stories&spMailingID=69096518&spUserID=NTM5ODI1MDg3NgS2&spJobID=1983389286&spReportId=MTk4MzM4OTI4NgS2](https://www.scientificamerican.com/article/climate-change-hits-rock-and-roll-as-prized-guitar-wood-shortage-looms1/?utm_source=newsletter&utm_medium=email&utm_campaign=week-in-science&utm_content=link&utm_term=2020-10-30_top-stories&spMailingID=69096518&spUserID=NTM5ODI1MDg3NgS2&spJobID=1983389286&spReportId=MTk4MzM4OTI4NgS2)>.

[19] Dernbach, John C. and Russell, Irma S. and Bogoshian, Matthew, *Advocating for the Future*, *The Environmental Forum* (Mar./Apr. 2021), available at <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3786134](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3786134)>.

[20] As noted in a recent report about the U.S., transforming electricity generation to become carbon-free would not only eliminate pollution from electric power, it would also result in the clean electrification of buildings, transportation, and some heavy industry. Leah C. Stokes et al., *A Roadmap to 100% Clean Electricity by 2035*, Evergreen Collaborative and Data for Progress (Feb. 2021) <<https://www.evergreenaction.com/policy-hub/evergreen-ces-report.pdf>>.

[21] See, e.g., Mary Ann Curran, *Life Cycle Assessment: A Systems Approach to Environmental Management and Sustainability*, American Institute of Chemical Engineers (AIChE) (Oct. 2015) <<https://www.aiche.org/resources/publications/cep/2015/october/life-cycle-assessment-systems-approach-environmental-management-and-sustainability>>.

[22] See World Resources Institute and World Business Council for Sustainable Development, *GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard* (Sept. 2011) <[https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporting-Standard\\_041613\\_2.pdf](https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporting-Standard_041613_2.pdf)>, at 5.

[23] Emily Pontecorvo, *Big Oil is finally talking about scope 3 emissions. What the heck is scope 3?*, *Grist* (Feb. 12, 2020) <<https://grist.org/energy/big-oil-is-finally-talking-about-the-elephant-in-the-room-the-emissions-footprint-of-its-products/>>.

[24] See, e.g., Zoya Teirstein, *Thousands of Amazon employees walk out for climate strike*, *Grist* (Sept. 20, 2019) <[https://grist.org/article/hundreds-of-amazon-employees-walk-out-for-climate-strike/?utm\\_medium=email&utm\\_source=newsletter&utm\\_campaign=daily](https://grist.org/article/hundreds-of-amazon-employees-walk-out-for-climate-strike/?utm_medium=email&utm_source=newsletter&utm_campaign=daily)>, and *Google Workers for Action on Climate, Open Letter on Climate Action at Google*, *Medium* (Nov. 4, 2019) <<https://medium.com/@googworkersac/ruth-porat-497bbb841b52>>.

[25] See, e.g., Simon Jessop et al., *Show us the plan: Investors push companies to come clean on climate*, *Reuters* (Feb. 24, 2021) <<https://www.reuters.com/article/us-climate-change-agm-insight/show-us-the-plan-investors-push-companies-to-come-clean-on-climate-idUSKBN2A00IR>>.

[26] See, e.g., Kate Yoder, *Footprint Fantasy*, *Grist* (Aug. 26, 2020) <[https://grist.org/energy/footprint-fantasy/?utm\\_medium=email&utm\\_source=newsletter&utm\\_campaign=daily](https://grist.org/energy/footprint-fantasy/?utm_medium=email&utm_source=newsletter&utm_campaign=daily)>.

[27] See, e.g., Andrew R.C. Marshall et al., *Climate change turns up the heat on ad industry*, *Reuters* (Dec. 17, 2020) <<https://www.reuters.com/article/climate-change-advertising-insight/climate-change-turns-up-the-heat-on-ad-industry-idUSKBN28R1NJ>>.

[28] See, e.g., in the U.S., *Green Guides, Federal Trade Commission (16 CFR Part 260)* (visited May 3, 2021) <<https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/green-guides>>; in Europe, *Guidance on the Implementation/Application of Directive 2005/29/EC on Unfair Commercial Practices (Commission Staff Working Document)*, European Commission (May 25, 2016) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0163&from=NL>>; and in the UK, *Make an environmental claim for your product, service or organization*, Department for Environment Food & Rural Affairs (Dec. 21, 2016) <<https://www.gov.uk/government/publications/make-a-green-claim/make-an-environmental-claim-for-your-product-service-or-organisation>>, and *Environmental claims: General*, ASA (Dec. 3, 2013) <<https://www.asa.org.uk/advice-online/environmental-claims-general.html>>. Recently, French and Dutch regulators have called for European Union rules to prevent greenwashing. See Huw Jones, *EU faces Franco-Dutch*



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- [29] Canals: smart personal audio devices set for strongest year in history, TWS the largest and fastest growing category, Canals (Dec. 30, 2019) <<https://www.canals.com/newsroom/canals-smart-personal-audio-devices-Q3-2019?ctid=1060-d95dda51587f732b73de504ab50bf6b2>>.
- [30] See, e.g., Ashley King, 360 Reality Audio Support May Be Coming Soon to Android, Digital Music News (Apr. 13, 2021) <[https://www.digitalmusicnews.com/2021/04/13/sony-360-reality-audio-android/?mc\\_cid=0c2a41a800&mc\\_eid=59e827ef94](https://www.digitalmusicnews.com/2021/04/13/sony-360-reality-audio-android/?mc_cid=0c2a41a800&mc_eid=59e827ef94)>.
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