

## Chapter 2

# Economic Analysis of Music Copyright: Music Users

**Abstract** The US media industry includes many segments not just radio, cable, television and Internet, but newspapers and films as well. The industry as a whole is reliant on the growth in advertising revenue to sustain profitability. This chapter explores the many music users and how their revenue becomes the source of licensing fees collected by PROs to compensate the copyright holders in the form of performance royalty payments for the use of their music. We will also examine the various types of music performances, their methods of collection, and the way in which royalty payments are computed.

## 2.1 Introduction

In many cases, the fee for a blanket license from ASCAP, BMI, or SESAC is determined by a percent of advertising or subscription revenue from various music users or media firms with adjustments made for music use and other factors. Media firms are in turn funded by advertisers with a need to make consumers aware of their products and services. Media firms play a dual role in which they must first attract advertisers by their content, and then the content must attract consumers (viewers, eyeballs, web surfers, etc.). Close attention is paid to the economic trends that will affect the demand and supply of advertising from an input cost and output perspective.

## 2.2 Media Industry Advertising Revenue

Advertising expenditures (or amount spent) and revenue (or amount earned) are both useful measures depending on their strategic importance in marketing. Advertising as a percent of gross domestic product (GDP) is one measure that has been used as a leading indicator of the health of advertising demand.<sup>1</sup> However, personal consumption and industrial production are also now being used by some in the advertising industry as macro-economic drivers to model the demand for advertising. The basic formula for calculating GDP is as follows:

$$\text{GDP} = C + I + G + X,$$

where  $C$  = Consumption spending;  $I$  = Investment spending;  
 $G$  = Government spending;  $X$  = Net of exports over imports.

In July of 2009, Magna, a corporate unit of Interpublic, changed its media forecast from an advertising expenditures–based model to an advertising revenue–based model. Magna’s new model appears to be using disaggregated GDP as some of the key inputs. Table 2.1 gives a selected view of some of the changes in the advertising media model produced by Magna.<sup>2</sup> Magna’s new advertising media forecast now focuses on advertising revenue with personal consumption and industrial production as primary drivers in the broader macro economy.

Whether the key driver of advertising expenditures is GDP or the key drivers personal consumption and industrial production correlated with advertising revenue, the story has been the same in terms of the direction of these variables. Table 2.2 indicates that beginning in 2006, some of the key drivers correlated with advertising revenue that are used in the Magna’s January 2010 forecast show a downward trend.

Mass media advertising revenue, broken down by direct, national, and local categories, is shown in Table 2.3, and is expected to decline to \$161.18 billion in 2009.

Table 2.4 shows the percent share of direct, national, and local media advertising revenue over time, direct media revenue has been increasing over time. For example, direct media advertising revenue grew from 20.74 percent in 2005 to an expected 28.19 percent in 2010. Overall, local media advertising has seen a larger share of advertising spending, but that has been declining over time. Local media made up

**Table 2.1** Changes in Magna’s Old and New Advertising Media Forecasts

	Old Media Forecast	New Media Forecast July 2009
Data Change Media	Advertising Expenditures Categorized as National and Local	Advertising Revenue Categorized as Direct, National Mass or Local Mass
Selected Key Macroeconomic Drivers	Gross Domestic Product	Personal Consumption and Industrial Production

Source: Based on data from B. Wieser, Magna, July 2009.

**Table 2.2** Key Drivers Correlated with Advertising Revenue Used in Magna’s January 2010 Forecast

Year	Personal Consumption*(%)	Industrial Production(%)
2004	6.16	2.49
2005	6.44	3.32
2006	5.71	2.30
2007	5.40	1.50
2008	3.09	-2.25

\*Nominal

Source: Based on data from B. Wieser, [www.magnaglobal.com](http://www.magnaglobal.com).

**Table 2.3** US Mass Media Advertising Revenue (\$mil.), January 2010 Forecast

	2005	2006	2007	2008	2009E	2010E
Direct Media	\$40,567	\$44,400	\$47,649	\$47,322	\$43,617	\$45,407
National Mass Media Ex-Olympics	60,746	63,482	64,643	62,276	56,229	57,316
Local Mass Media Ex-Political	94,258	93,469	91,680	79,070	61,333	58,369
Total Media Advertising Ex-Political & Olympics	\$195,571	\$201,352	\$203,972	\$188,668	\$161,179	\$161,092

E = Estimated

Source: Based on data from B. Wieser, www.magnaglobal.com.

**Table 2.4** US Mass Media Advertising Revenue (% Share), January 2010 Forecast

	2005	2006	2007	2008	2009E	2010E
Direct Media	20.74	22.05	23.36	25.08	27.06	28.19
National Media Ex-Olympics	31.06	31.53	31.69	33.01	34.89	35.58
Local Media Ex-Political	48.20	46.42	44.95	41.91	38.05	36.23

E = Estimated

Source: Based on data from B. Wieser, www.magnaglobal.com.

48.20 percent of advertising revenue in 2005, but is expected to decline to 36.23 percent in 2010, almost even with expected national advertising revenue of 35.58 percent in 2010.

Tables 2.5 and 2.6 show the year-over-year change in dollar amounts and the corresponding year-over-year change in percentage terms of advertising revenue by media categories. As the US economy worsened, the biggest decline in 2008 over 2007 occurred in local mass media which saw a decline of \$12.61 billion or 13.75 percent, while national media advertising declined by \$2.38 billion or 3.66 percent. Direct media has the smallest decline of \$327 million or 0.69 percent.

Table 2.7 provides a granular look at actual and estimated advertising revenue broken down by the components of direct, national, and local advertising revenue for the years 2008, 2009, and 2010. An inspection of Table 2.7 shows a few of

**Table 2.5** US Mass Media Advertising Revenue (Y/Y Change), January 2010 Forecast (\$mil.)

	2005	2006	2007	2008	2009E	2010E
Direct Media	3,104	3,833	3,249	-327	-3,705	1,790
National Mass Media Ex-Olympics	2,995	2,736	1,160	-2,367	-6,047	1,087
Local Mass Media Ex-Political	3,405	-789	-1,789	-12,610	-17,737	-2,964
Total Media Ex-Political and Olympics	9,505	5,780	2,620	-15,304	-27,489	-87

E = Estimated

Source: Based on data from B. Wieser, www.magnaglobal.com.

**Table 2.6** US Mass Media Advertising Revenue (Y/Y % Change), January 2010 Forecast

	2005	2006	2007	2008	2009E	2010E
Direct Media	8.29	9.45	7.32	−0.69	−7.83	4.10
National Media Ex-Olympics	5.19	4.50	1.83	−3.66	−9.71	1.93
Local Mass Media Advertising Ex-Political	3.75	−0.84	−1.91	−13.75	−22.43	−4.83
Total Media Ex-Political & Olympics	5.11	2.96	1.30	−7.50	−14.57	−0.05

E = Estimated

Source: Based on data from B. Wieser, [www.magnaglobal.com](http://www.magnaglobal.com).

the bright spots in the Magna forecast. Direct online media is expected to show an increase in advertising revenue of \$386.60 million or 2.86 percent over 2009 when the final numbers are tabulated. Overall, the advertising picture for 2010 is expected to improve for direct and national advertising revenue, while a continued decline is forecast for local advertising revenue.

## 2.3 Music Users: Radio, Broadcast, Cable Television, and Internet

### 2.3.1 Radio

The radio broadcasting industry consists of two groups of stations, commercial and non-commercial stations. These ‘terrestrial’ commercial and non-commercial radio stations may also retransmit their programming over the Internet. It has long been the case that commercial stations are paid by advertisers and corporate sponsors to deliver a listening audience defined by certain content and demographic profiles. Non-commercial stations, ‘educational’ or ‘public’ stations, earn revenue from government subsidies, subscriptions, or contributions through membership drives, or in the case of colleges and universities from student activity fees collected by the institutions that they represent.

In light of the recent year-over-year decline in radio advertising revenue as shown in Table 2.7, the *Wall Street Journal* reported that for-profit radio stations with financial problems were considering asking their listeners for donations through paid membership drives and other fund raising to partially offset the decline in advertising revenue.<sup>3</sup> Asking the listening public for donations during ‘pledge week’ has long been the practice of public stations. Not to be out-done, the same article reports that National Public Radio stations are now recruiting ad-sales professionals to drum up corporate sponsorships. The distinction between a non-commercial station and a for-profit station is increasingly becoming blurred in this environment, leading to some confusion among listeners.

The radio programming format, genre, or audience segmentation refer to the type of content that radio stations broadcasts over the air or on the Internet to its many

**Table 2.7** Change in US Advertising Revenue, 2008–2009, January 2010 Forecast (in \$mil.)

Media	2008	2009E	Change	% Change	2010E
<i>Direct</i>					
Lead Generation	\$1,690.00	\$1,546.30	–\$143.70	–8.50%	\$1,618.40
Internet Yellow Pages	1,336.70	1,444.40	107.70	8.06	1,621.70
Paid Search	10,500.00	10,922.60	422.60	4.02	12,377.10
Direct Online Media	13,526.70	13,913.30	386.60	2.86	15,617.20
Directories <sup>a</sup>	12,182.20	10,601.10	–1,581.10	–12.98	9,906.80
Direct Mail	21,613.50	19,102.60	–2,510.90	–11.62	19,883.40
Total Direct Media	\$47,322.40	\$43,617.00	–\$3,705.40	–7.83%	\$45,407.40
<i>National</i>					
National Newspapers <sup>a</sup>	1,180.30	873.90	–306.40	–25.96	775.70
Network and Satellite Radio	1,219.90	1,097.90	–122.00	–10.00	1,119.50
National Digital/Online Media <sup>c</sup>	6,186.40	5,551.70	–634.70	–10.26	5,772.50
Magazines <sup>a</sup>	19,191.80	15,437.70	–3,754.10	–19.56	14,311.50
Network Broadcast TV - English <sup>a,b</sup>	13,614.20	12,816.40	–797.80	–5.86	13,249.10
Network Broadcast TV - Spanish	1,062.80	1,035.10	–27.70	–2.61	1,118.60
National Syndication	1,934.80	1,816.60	–118.20	–6.11	1,774.50
National Cable TV <sup>a</sup>	17,885.70	17,599.80	–285.90	–1.60	19,194.70
Total National Media	\$62,275.90	\$56,229.10	–\$6,046.80	–9.71%	\$57,316.10
<i>Local</i>					
Local Digital/Online Media <sup>c</sup>	3,829.00	3,367.10	–461.90	–12.06	3,493.00
Outdoor	6,991.40	5,953.60	–1,037.80	–14.84	5,954.70
Local Radio - National	2,929.00	2,349.40	–579.60	–19.79	2,319.30

**Table 2.7** (continued)

Media	2008	2009E	Change	% Change	2010E
Local Radio - Local <sup>a</sup>	13, 607.00	10, 736.60	-2, 870.40	-21.10	10, 439.00
Local Cable TV <sup>d</sup>	3, 337.10	2, 810.40	-526.70	-15.78	2, 861.50
Local Broadcast TV <sup>a,d</sup>	14, 817.10	11, 673.90	-3, 143.20	-21.21	11, 482.90
Local Newspaper - National <sup>a</sup>	4, 815.70	3, 554.60	-1, 261.10	-26.19	3, 221.20
Newspaper Classifieds	9, 975.00	6, 110.50	-3, 864.50	-38.74	4, 904.60
Local Newspaper - Retail <sup>a</sup>	18, 768.60	14, 777.00	-3, 991.60	-21.27	13, 692.50
Total Local Advertising	\$79, 069.90	\$61, 333.10	-\$17, 736.80	-22.43%	\$58, 368.70
Total National & Local	\$141, 345.70	\$117, 562.20	\$ - 23, 783.50	-16.83%	\$115, 684.80
Total Advertising					
Excl.-Political & Olympics	\$188, 668.20	\$161, 179.20	-\$27, 489.00	-14.57%	\$161, 092.30
Total Media Advertising	\$191, 653.50	\$162, 019.70	-\$29, 633.80	-15.46%	\$164, 322.90

E=Estimated

<sup>a</sup> Excludes online advertising revenues.

<sup>b</sup> Excludes incremental Olympic advertising revenues.

<sup>c</sup> Includes Banner/Display, Sponsorship, Slotting, Mobile and Other Revenues prior to 2000), Excludes Paid Search and Lead Generation.

<sup>d</sup> Excludes local political advertising revenues.

Source: Based on data from B. Wieser, [www.magnaglobal.com](http://www.magnaglobal.com).

listeners. It is quite common for some stations to broadcast multiple genres such as part talk, part sports, or part music on a fixed schedule that might vary by time of the day or day of the week. Table 2.8 describes the dramatic increase in the number of radio formats or radio audience segments that were introduced over many years, and their evolution into many radio niches and sub-niches that define radio segmentation. This is only a partial list and many other sub-divided formats are not listed as they are far fewer in number.

**Table 2.8** Total US Radio Stations by Format (Commercial and Non-commercial March 2009)

Format	Comm.	Non-Comm.	Total	% Total	Cum. %
News/Talk	1,382	686	2,068	13.88	13.88
Country	2,005	15	2,020	13.56	27.44
Religion (Teaching, Variety)	300	1,083	1,383	9.29	36.73
Spanish	785	137	922	6.19	42.92
Contemporary Christian	137	762	899	6.04	48.96
Oldies	683	33	716	4.81	53.77
Variety	41	647	688	4.62	58.39
Adult Contemporary	623	14	637	4.28	62.67
Sports	624	0	624	4.19	66.86
Classic Hits	578	10	588	3.95	70.81
Top 40	471	33	504	3.38	74.19
Classic Rock	477	8	485	3.26	77.45
Hot AC	402	12	414	2.78	80.23
Alternative Rock	109	260	369	2.48	82.71
Adult Standards	340	18	358	2.40	85.11
Rock	301	11	312	2.09	87.20
Southern Gospel	211	90	301	2.02	89.22
Black Gospel	240	21	261	1.75	90.97
Soft Adult Contemporary	210	1	211	1.42	92.39
Classical	23	155	178	1.20	93.59
Modern Rock	118	53	171	1.15	94.74
Urban AC	163	4	167	1.12	95.86
R&B	131	26	157	1.05	96.91
Ethnic	115	17	132	0.89	97.80
Jazz	45	83	128	0.86	98.66
Pre-Teen	53	0	53	0.36	99.02
R&B Adult/Oldies	38	4	42	0.28	99.30
Gospel	26	9	35	0.23	99.53
Easy Listening	16	9	25	0.17	99.70
Modern AC	20	1	21	0.14	99.84
Rhythmic AC	18	0	18	0.12	99.96
Format Not Available	7	0	7	0.05	100.00
Total Operating Stations	10,692	4,202	14,894	100%	
Stations off the air	197	59	256		
Construction Permits	345	977	1,322		
Total Stations and CPs	11,234	5,238	16,472		

Comm. = Commercial, Non-Comm. = Non-Commercial and Cum. = Cumulative

Source: Based on data from <http://ftp.media.radcity.net/ZMST/insideradio/Mar2009TOTALFormats.html>,

The Radio Book 2008–2009 Edition, © 2009.

For example, 'rock music' has been sub-divided into 'classic rock,' 'modern rock,' 'alternative rock,' and many other categories such as 'hard rock Christian-themed,' 'soft rock,' and 'light rock.' Jazz has been sub-divided into 'traditional,' 'smooth jazz,' or 'new age.' Christian music has many sub-niches such as 'Black Gospel' with an emphasis on music heard in predominantly Black churches. 'Contemporary Christian' music can be rock-driven or the type of Gospel music heard in evangelical southern states. Music intended for Spanish-speaking listeners can be broken down into 'Tejano,' 'regional Mexican,' and 'Spanish adult contemporary.'

Other stations focus their musical content based on nostalgia and musical time-periods such as 'hits' from the 1960s, 1970s, 1980s, and 1990s, or offer a 'mix' of these time periods in a 'Top 40' context. Many of the radio formats are designed to reach a specifically defined segment or niche of the listening population based on such demographic criteria as age, ethnicity, religion, sports, political viewpoints, and hobbies. Stations owners hope that with so many formats and sub-segments targeting men, women, the young and the old, and with the right blend of music, information and entertainment programming (that is both meaningful and relevant to their segments), their intended listeners tunes in and keep listening.

One interesting observation from a music royalty and demographic perspective shown in Table 2.8 is the popularity of the interactive and low music use news/talk radio format where on-air hosts comment on the latest issues affecting listeners and then take their telephone calls. News/talk, country and religious radio formats cumulatively account for 36.73 percent of all radio stations even when all types of gospel and contemporary Christian formats are excluded. Country radio format (most are in rural areas) dominates all other formats in the United States, while the news/talk (mostly in urban areas) format follows country.

Over the course of many decades FM radio developed a larger listening audience than the AM format, in part due to better sound quality. As the popularity of music on FM gained momentum, music on AM radio waned. AM radio stations then began offering more news and talk content to attract and keep their listening audience. In New York, largest radio media market, you will find more AM radio stations (28) than FM stations (22).

The passage of the Telecommunications Act of 1996 had a dramatic effect on radio stations as radio station ownership rules were relaxed, and several companies acquired a large number of radio stations. The most significant change that occurred was that the FCC relaxed its radio duopoly ownership rules and regulations. A duopoly is defined as owning two AM and/or two FM radio stations, up to four in total, in the same media market.

Tables 2.9 and 2.10 show the revised rules on radio and television cross-ownership in which a single party could now own or control both an AM and an FM duopoly in individual markets. While no nationwide limits on the number of stations AM or FM radio that a single entity could own were put in place, there was a set limit on local radio ownership and local radio and television cross-ownership. For example a single radio entity can own up to five radio stations in a market, but no more than three stations can be on the same AM or FM service, and the market must have fewer than 14 radio stations. No single entity can own, operate, or control



**Table 2.9** Local Radio Ownership Limits

Single entity ownership	Restrictions (AM or FM)	Market size
Up to 5 Stations	Not more than 3 stations	Fewer than 14 radio stations
Up to 6 Stations	Not more than 4 stations	15–29 radio stations
Up to 7 Stations	Not more than 4 stations	30–44 radio stations
Up to 8 Stations	Not more than 5 stations	45 or more radio stations

Source: GAO (2007), Report-GAO-08-330R.

**Table 2.10** Radio and Television Stations Cross-Ownership Limits

Television stations	Radio stations	Market restrictions
1	1	Regardless of Independently Owned Media Voices
1	7	At least 20 Independent Owned Media Voice Post Merger
Up to 2	Up to 6	If Permitted Under LTMO & LRMO Caps
Up to 2	Up to 4	At least 10 Independent Owned Media Voice Post Merger

Source: GAO (2007), Report-GAO-08-330R.

more than 50 percent of the stations in a market. Limited local media ownership reflected the FCC concerns on the needs of local residents for such coverage of local news, political campaigns, and public affairs that nationwide media owners might not otherwise provide.

In addition, media companies may have cross-ownership of both radio and television stations in the same market with Local Radio Multiple Ownership (LRMO) and Local Television Multiple Ownership (LTMO) caps and other restrictions.<sup>4</sup>

While the Telecom Act of 1996 addressed the issue of terrestrial radio ownership, the act did not adequately address the issues of the soon to emerge new technologies such as the Internet, HD, and satellite radio broadcasts. By 2008, the radio industry consolidation, which had begun following the 1996 Telecommunications Act, had mostly been completed. This changed the industry makeup considerably, aided in part by advertisers.

The top 10 radio station owners in terms of 2008 estimated revenue and station ownership now included Clear Channel Communications Inc. with \$2.92 billion in revenue and 845 stations; CBS Radio with \$1.59 billion in revenue and 130 stations; Citadel Communications with \$720 million and 205 stations; and Cumulus Media with \$520 million and 305 stations as shown in Table 2.11. In aggregate, the Top 10 radio station owners in term of revenue generated an estimated \$7.82 billion in revenue in 2008. Table 2.12 shows that selected segments such as satellite and local radio in the radio industry are expected to see double digit declines in advertising revenue in 2009.<sup>5</sup>

While the number of station-owners was becoming concentrated, the number of radio formats targeting specific local community segments expanded rapidly. This sort of radio station differentiation created a huge opportunity for advertisers to connect with their targeted audience in special local marketing niches. Radio station owner concentration shown in Table 2.13 reveal that the Top 10 radio station

**Table 2.11** Top 10 Radio Owners 2008 Estimated Revenue and Stations

Owner	2008 Revenue (\$b)	% Share	Stations	% Share
Clear Channel	2.92	37.34	845	45.48
CBS Radio	1.59	20.33	130	7.00
Citadel	0.72	9.21	205	11.03
Cumulus	0.52	6.65	305	16.42
Entercom	0.47	6.01	112	6.03
Cox Radio	0.45	5.75	85	4.57
Univision	0.41	5.24	72	3.88
Radio One	0.27	3.45	52	2.80
Bonneville	0.25	3.2	28	1.56
Emmis	0.22	2.81	23	1.24
Total Top 10	7.82		1, 858	

Source: Based on revenue data from *Wall Street Journal*, 12/21/2009, p. B3.

Station owner data based on licensed data from [www.bia.com](http://www.bia.com).

**Table 2.12** Selected Radio Advertising Revenue, 2008–2009, January 2010 Forecast (\$mil.)

Media	2008	2009E	Change	% Change	2010E
Network & Satellite Radio	1, 219.90	1, 097.90	–122.00	–10.00	1, 119.50
Local Radio - National <sup>a</sup>	2, 929.00	2, 349.40	–579.60	–19.79	2, 319.30
Local Radio - Local <sup>a</sup>	13, 607.00	10, 736.60	–2, 870.40	–21.10	10, 439.00

E = Estimated

<sup>a</sup> Excludes online advertising revenues.

Source: Based on data from B. Wieser, [www.magnaglobal.com](http://www.magnaglobal.com).

owners in terms of stations owned controlled 57.56 percent (or 2,003 stations) of the Top 50 commercial radio stations. Radio concentration came with a steep rise in company debt that would later leave many station owners unable to service their debt payments as advertising revenue declined due in part to the on-going economic downturn, increased competition from Internet broadcasting, and shifts in consumer habits for pre-recorded music using devices such as iPods and commercial-free satellite radio broadcasts.

The viability of Clear Channel to remain as a going-concern during the recession of 2009 was raised in several media reports and summarized in Table 2.14. Clear Channel's nationalized ad sales model is being questioned since it contrasts sharply with the localized segmentation model that radio specializes in. 'Clear Channel not only became the nation's largest radio station owner, but also the biggest leveraged buyout ever in the media business after it was taken private by Thomas H. Lee Partners and Bain Capital. The company has \$16 billion of bank debt and another \$6 billion of junior debt'.

'In the first quarter of 2009, Clear Channel's revenue plummeted by 23 percent and its cash flow declined by 47 percent, making it harder to meet the payments on the billions in debt accumulated in the process of buying out its public investors. Furthermore in April of 2009, the company laid off 590 employees after cutting 1,850 employees in January, for an overall staff reduction of 12 percent since the acquisition.'<sup>6</sup> However, by December of 2009, it was Citadel Broadcasting

**Table 2.13** Top 50 Station Owners Ranked by Stations

Rank	Station owner	No. of stations	% Stations	Cum. %
1	Clear Channel Communications Inc	845	24.28	24.28
2	Cumulus Broadcasting Inc	305	8.76	33.05
3	Citadel Communications	205	5.89	38.94
4	CBS Radio	130	3.74	42.67
5	Entercom	112	3.22	45.89
6	Salem Communications Corporation	93	2.67	48.56
7	Saga Communications Inc	91	2.61	51.18
8	Cox Radio Inc	85	2.44	53.62
9	Univision	72	2.07	55.69
10	Cherry Creek Radio LLC	65	1.87	57.56
11	Regent Communications Inc	62	1.78	59.34
12	Gap Broadcasting LLC	58	1.67	61.01
13	GAP Broadcasting II LLC	54	1.55	62.56
14	Three Eagles Communications Incorporated	54	1.55	64.11
15	Radio One Inc	52	1.49	65.60
16	Bicoastal Media LLC	49	1.41	67.01
17	Entravision Communications Corp	47	1.35	68.36
18	ABC/Disney	46	1.32	69.68
19	NRG Media LLC	45	1.29	70.98
20	Nassau Broadcasting I LLC (New Members)	44	1.26	72.24
21	Beasley Broadcast Group	43	1.24	73.48
22	Midwest Communications Incorporated	43	1.24	74.71
23	Mapleton Communications LLC	41	1.18	75.89
24	MultiCultural Radio Broadcasting Inc	41	1.18	77.07
25	Max Media LLC	39	1.12	78.19
26	Aloha Station Trust LLC	37	1.06	79.25
27	NextMedia Group Inc, Debtor in Possession	36	1.03	80.29
28	Armada Media Corporation	35	1.01	81.29
29	Cumulus Media Partners LLC	34	0.98	82.27
30	MCC Radio LLC	34	0.98	83.25
31	Withers Broadcasting Co	34	0.98	84.22
32	Journal Broadcast Group Inc	33	0.95	85.17
33	Pamal Broadcasting Ltd	33	0.95	86.12
34	Qantum Communications Corp	33	0.95	87.07
35	Triad Broadcasting Company	33	0.95	88.02
36	Double O Radio LLC	32	0.92	88.94
37	Forever Broadcasting Incorporated	32	0.92	89.86
38	New Northwest Broadcasters, LLC	31	0.89	90.75
39	Backyard Broadcasting	29	0.83	91.58
40	Bustos Media Enterprises LLC	29	0.83	92.41
41	Flinn Broadcasting Corporation	29	0.83	93.25
42	Bonneville International Corp	28	0.80	94.05
43	Frontier Radio Management Inc	28	0.80	94.86
44	Cochise Broadcasting LLC	27	0.78	95.63
45	First Media	27	0.78	96.41
46	Lotus Communications Corp	27	0.78	97.18
47	Birach Broadcasting Corporation	25	0.72	97.90
48	Renda Broadcasting Corporation	25	0.72	98.62
49	Citadel/ABC	24	0.69	99.31
50	GoodRadio.TV, LLC	24	0.69	100.00
Total Top 50 Station Owners Only		3, 480		

Source: Based on licensed data from [www.bia.com](http://www.bia.com), January 2010.

**Table 2.14** Clear Channel Cash Flow Crisis, April 2009

Purchase Price	\$18b plus	
	\$5b in Outstanding Debt	July 2008
Debt	\$16b (Bank) plus	
	\$6b (Junior)	April 2009
Annual Interest Payments	\$1.3b	April 2009
Revenue (Decline)	\$1.2b (−23%)	1Q 2009
Layoffs (Overall Reduction)	2,440 (−12%)	January & April 2009
Cash on Hand	\$1.4b	April 2009
Company Worth	\$6.3–\$12b	April 2009

*Source:* Based on Fabrikant (2009), [www.nytimes.com](http://www.nytimes.com), \$b=Billion.

Corporation that had filed for bankruptcy protection with listed assets of about \$1.4 billion and more than \$2.4 billion in debt.<sup>7</sup>

Arbitron Inc. and The Nielsen Company are two of the businesses that measure network and local-market radio and television audiences across the United States, among other things. The Nielsen Company uses a designated marketing area (DMA) to rank television households into 210 markets, while Arbitron uses a similar ranking system broken down in finer detail by age and city groupings in 302 radio markets. There is considerable overlap between the two company media market rankings. Some media outlet's residents may be able to receive television and radio signals located in adjacent markets. All of the rankings are based on projections using US census data last collected in the year 2000.

The number of media outlets and station owners generally increase with the size of the market. For example, markets with large populations have more television, radio stations, and newspapers than less populated markets.<sup>8</sup> According to the radio rankings by population displayed in Table 2.15, the three largest media markets are New York with an audience size of 15.35 million people, aged 12 years and older, Los Angeles follows next with an audience size of 10.90 million, and the Chicago area audience is 7.78 million. From a cumulative share perspective, the largest three media outlets have a combined share of 15.75 percent of the US total audience for radio and television content. The Top 25 large media markets contain close to 50 percent of the radio and television audience. The next 100 medium media markets account for about 35.73 percent of the radio audience and the last remaining 177 small media market total 15.13 percent. All 302 radio media markets reach an estimated 216.07 million viewers or listeners.

### 2.3.2 Internet Radio

One of the most important technological changes in broadcasting has been the switch from analog to digital transmission of both radio and television signals. With the widespread introduction of web technology and high-speed Internet access, a new medium—Internet radio—emerged that lowered barriers to entry, made radio

**Table 2.15** 2008 Radio Rankings by Population Size

Market Name	Metro 12+ Pop.	Market size	Region	% Share	% Cum.
New York, NY	15,345,000	Large	NE	7.10	7.10
Los Angeles, CA	10,902,400	Large	WE	5.05	12.15
Chicago, IL	7,784,400	Large	MW	3.60	15.75
San Francisco, CA	5,969,400	Large	WE	2.76	18.51
Dallas-Ft. Worth, TX	4,973,000	Large	MW	2.30	20.82
Houston-Galveston, TX	4,639,000	Large	MW	2.15	22.96
Philadelphia, PA	4,350,000	Large	NE	2.01	24.98
Atlanta, GA	4,267,500	Large	SO	1.98	26.95
Washington, DC	4,210,000	Large	SO	1.95	28.90
Boston, MA	3,874,600	Large	NE	1.79	30.69
Detroit, MI	3,866,500	Large	MW	1.79	32.48
Miami-Ft. Lauderdale-Hollywood, FL	3,538,400	Large	SO	1.64	34.12
Puerto Rico	3,328,500	Large	SO	1.54	35.66
Seattle-Tacoma, WA	3,328,100	Large	WE	1.54	37.20
Phoenix, AZ	3,173,200	Large	WE	1.47	38.67
Minneapolis-St. Paul, MN	2,683,000	Large	MW	1.24	39.91
San Diego, CA	2,515,100	Large	WE	1.16	41.07
Nassau-Suffolk (Long Island), NY	2,359,300	Large	NE	1.09	42.17
Tampa-St. Petersburg-Clearwater, FL	2,350,000	Large	SO	1.09	43.25
St. Louis, MO	2,308,400	Large	MW	1.07	44.32
Baltimore, MD	2,255,100	Large	SO	1.04	45.37
Denver-Boulder, CO	2,244,300	Large	WE	1.04	46.40
Portland, OR	2,049,600	Large	WE	0.95	47.35
Pittsburgh, PA	1,986,600	Large	NE	0.92	48.27
Charlotte-Gastonia-Rock Hill, NC-SC	1,886,100	Large	SO	0.87	49.15
Top 25 Total	106,187,500	Large		49.15	49.15
Top 25 Average	4,247,500	Large			
Next 100 Markets Total	77,191,148	Medium		35.73	84.87
Next 100 Markets Average	771,911	Medium			
Next 177 Markets Total	32,687,600	Small		15.13	100.00
Next 177 Markets Average	184,676	Small			
All 302 Markets Total	216,066,248				

Source: Based on licensed data from [www.bia.com](http://www.bia.com).

listening interactive, eliminated coverage restrictions found with AM/FM stations, lowered overhead broadcast costs, and created unlimited space for radio content.

The options for mass communications and information technology grew rapidly so that anyone with a computer and broadband connection could now access thousands of radio stations' content such as music, sports, entertainment, and news via the Internet. Internet radio appeals to many displaced listeners who are away from their hometowns because of work, school, or other factors, and who listen to keep

**Table 2.16** Selected Total Radio Online Revenue by Year, January 2010 Forecast (\$mil.)

Revenue	2004	2005	2006	2007	2008	2009E	2010E
Radio Online	\$76	\$157	\$237	\$332	\$380	\$341	\$355
Total Radio	\$20,183	\$20,336	\$20,447	\$20,034	\$18,135	\$14,525	\$14,233
Incl. Online							
Share	0.38%	0.77%	1.16%	1.65%	2.09%	2.35%	2.49%

Source: Based on data from B. Wieser, [www.magnaglobal.com](http://www.magnaglobal.com).

up with news and current events in their home media markets. Table 2.16 provides a breakdown of the share online radio compared to total radio.

MagnaGlobal.com's January 2010 forecast estimates that online radio revenue was expected to surpass \$341 million in 2009. In terms of revenue share, online radio is expected to account for 2.35 percent of total radio revenue by 2009.

### 2.3.3 HD Radio

Today, more and more traditional (terrestrial) radio stations are not just broadcasting their signals over the Internet, but in many areas, there are also digital HD (high definition) radio signals providing multi-casting programming. The website <http://www.ibiquity.com> describes HD radio as having the ability to broadcast multiple CD quality audio programs over a single FM frequency whether the listener is at home, at work, or in the car. HD radio offers on-screen programming choices that can include text information such as song titles, artists' names, weather, and traffic alerts broadcast directly to the HD receiver's display screen. In terms of multi-casting, HD radio stations can offer one channel of news and another channel of music; two different music formats or different music formats in different languages.<sup>9</sup>

In examining the largest radio media market—the metropolitan New York City area—in Tables 2.17 and 2.18, we can get a feel for the direction of this format in both commercial and non-commercial stations. New York is ranked number one in terms of radio listeners (and television viewers) with a total of 67 commercial and 29 non-commercial radio stations in the area.

In April of 2009, of the 67 commercial radio stations in the New York market, 28 or (41.79 percent) are AM stations, 22 (32.84 percent) are FM stations, 13 (19.40 percent) are HD/F2 stations, and the remaining 4 (5.97 percent) are HD/F3 stations. F2 and F3 are definitions assigned by Arbitron to refer to HD radio stations that offer two or three additional channels above and beyond their analog and main digital channels. The data also reveal that HD radio has just over 25.37 percent of the stations in the market. For station owners such as CBS, Clear Channel, Emmis, and Citadel, HD radio now accounts for 50 percent of their stations in the New York Market. Similarly, non-commercial radio stations in the New York market, WNYC Radio, Fordham University, Newark Public Radio, and Seton Hall University, account for five stations utilizing the HD/F2 or the HD/F3 radio format.

**Table 2.17** NY Market Commercial Radio Stations by Service

Owner	AM	FM	HD/F2	HD/F3	Terr. Radio	HD Radio	Grand Total	HD % Share
CBS Radio	3	3	3	3	6	6	12	50.00
Clear Channel	0	5	5	0	5	5	10	50.00
Emmis	0	3	3	0	3	3	6	50.00
MultiCultural	5	0	0	0	5	0	5	—
Citadel/ABC	1	1	1	1	2	2	4	50.00
Cumulus	2	2	0	0	4	0	4	—
Pamal	1	2	0	0	3	0	3	—
Univision	1	1	1	0	2	1	3	33.33
ABC/Disney	2	0	0	0	2	0	2	—
Hudson West.	1	1	0	0	2	0	2	—
Inner City Bcstg.	1	1	0	0	2	0	2	—
Salem	2	0	0	0	2	0	2	—
Spanish Bcstg.	0	2	0	0	2	0	2	—
Access.1	1	0	0	0	1	0	1	—
Alexander Bcstg.	1	0	0	0	1	0	1	—
Blackstrap Bcstg.	1	0	0	0	1	0	1	—
Bloomberg	1	0	0	0	1	0	1	—
Buckley Bcstg.	1	0	0	0	1	0	1	—
Forsythe Bcstg.	1	0	0	0	1	0	1	—
Mariana Bcstg.	1	0	0	0	1	0	1	—
New York Times Co.	0	1	0	0	1	0	1	—
Polnet Comm.	1	0	0	0	1	0	1	—
Universal Bcstg.	1	0	0	0	1	0	1	—
Total	28	22	13	4	50	17	67	
Share (%)	41.79	32.84	19.40	5.97	74.63	25.37		

Terr. = Terrestrial

Source: Based on licensed data from www.bia.com, April 2009.

### 2.3.4 Satellite Radio

One of the limitations of most AM and FM radio is that those stations' signals covered only a limited geographical area. This limitation resulted in the thousands of individual stations first described in Table 2.8. XM Satellite Radio Holdings was founded in 1992 and was granted a satellite radio license in the US in 1997 by the FCC. XM was the first company to launch nationwide radio satellite service based on a revenue subscription model with commercial-free music.

In November 2001, satellite radio was operated on a subscription basis and was launched with scores of programming choices for listeners who just wanted an alternative to traditional radio, while driving. This was followed by a new competitor Sirius Satellite Radio Inc. in 2002. While satellite radio offers commercial free service in most cases and digital CD quality on a nationwide basis to listeners, the service sometimes suffers from the same 'dead zone' problems—long associated with TV satellite dishes and wireless phones—such as severe weather conditions, tunnels, skyscrapers, and other blockages that can momentarily block the satellite signal.

**Table 2.18** NY Market Non-Commercial Radio Stations by Service

Owner	AM	FM	HD/F2	HD/F3	Terr. Radio	HD Radio	Grand Total	HD % Share
WNYC Radio	1	1	1	1	2	2	4	50
Fordham Univ.	0	1	1	0	1	1	2	50
Newark Public Radio	0	1	1	0	1	1	2	50
Radio Vision	2	0	0	0	2	0	2	—
Seton Hall Univ.	0	1	1	0	1	1	2	50
Auricle Comm.	0	1	0	0	1	0	1	—
City College of NY	0	1	0	0	1	0	1	—
College of Staten Is.	0	1	0	0	1	0	1	—
Columbia Univ.	0	1	0	0	1	0	1	—
Fairleigh Dickinson	0	1	0	0	1	0	1	—
Family Stations Inc	0	1	0	0	1	0	1	—
Hudson Valley Comm.	0	1	0	0	1	0	1	—
Kingsborough C.C.	0	1	0	0	1	0	1	—
Montclair State Univ.	0	1	0	0	1	0	1	—
NYC Board of Ed.	0	1	0	0	1	0	1	—
New York Univ.	0	1	0	0	1	0	1	—
Nyack College	0	1	0	0	1	0	1	—
Pacifica Foundation	0	1	0	0	1	0	1	—
Ramapo College	0	1	0	0	1	0	1	—
Union Free School Dist.	0	1	0	0	1	0	1	—
Westchester Community	0	1	0	0	1	0	1	—
William Patterson College	0	1	0	0	1	0	1	—
Total	3	21	4	1	24	5	29	
Share (%)	10.34	72.41	13.79	3.45	82.76	17.24		

Source: Based on licensed data from [www.bia.com](http://www.bia.com), April 2009.

The consolidation wave that swept through the terrestrial radio industry soon made its way to the radio satellite industry. By 2007 Sirius decided to acquire its rival XM Satellite Radio in a \$13 billion merger, creating a monopoly in that industry segment. On July 28, 2008, the US Department of Justice approved the merger with many conditions and restrictions, despite the opposition by many industry critics. The companies were successful in convincing the Justice Department that the combined companies were not competitors because of incompatible proprietary equipment that prevented customers from accessing each other's signal. Furthermore, the companies viewed iPods, Internet radio, and the HD radio segments as their competitors. In Table 2.19, a quick look at selected quarterly performance metrics of the merged companies, now called Sirius XM, indicate that there was a 3.61 percent decline in subscribers acquired at the retail channel, while overall subscribers increased to over 19 million or a 9.54 percent. Similarly total revenue increased by \$378 million in 2008.

Sirius XM satellite radios are primarily distributed through automakers or original equipment manufacturers (OEMs) as factory or dealer-installed equipment in vehicles. Therefore, Sirius XM radio relies heavily on the sales volume of new automobiles for its subscriber growth. However, dead zone problems may be the



**Table 2.19** Selected Sirius XM Annual Performance, 2007–2008

Subscribers	2007 (000)	2008 (000)	Change	% Change
Retail	9, 239	8, 905	(334)	−3.61
OEM	8, 033	9, 996	1,963	24.43
Rental	77	103	26	34.16
Total Subscribers	17, 349	19, 004	1,655	9.54
Total Revenue	\$2, 059 (mil.)	\$2, 437 (mil.)	\$378	18.37%

Source: Sirius XM 2008 Annual Report.

least worries in this industry as the recession in 2009 takes its toll on lowered new car sales, diminished consumer spending, an advertising revenue pullback by major advertisers, and the widespread use of alternative mobile listening devices such as iPods.

### 2.3.5 Radio Royalty Payments Controversy

With all of the terrestrial radio consolidation, the emergence of new digital segments such as Internet, HD and satellite radio, computers, and portable listening devices such as iPods and ring-back tones on cell phones, it soon became apparent that there was an explosion in the massive use of digital music. Naturally, in the new digital era, two important concerns were raised. The first concern focused on the right of *recording* artists to be compensated for the use of their creative works, and share in the revenues the new digital formats were generating. The second concern among recording artists, composers, music publishers, record labels, and others was the impact of digital music on (declining) sales of copyrighted works through CDs and other pre-recorded formats.

The radio industry controversy would soon center on the traditional way under current US copyright law, in which non-dramatic performance and publishing royalties were collected and remitted to the songwriters, composers or lyricists and publishers of a song, but not to the featured recording artist (vocalists or background musicians) for audio portion of the sound recording. ‘Because ASCAP, BMI and SESAC pay the songwriter, composer and publisher directly and separately for radio, television and other types of performance of songs and scores, the writer (unless a co-publishing or participation agreement has been signed) will not share in the royalties received by the publisher.’<sup>10</sup>

This is an important point in the performance royalty controversy and turf battle: The distinction between the recording artist (singer/vocalist) and the composer or publisher of the song. When a performing rights agency collects licensing fees on behalf of its members (songwriters, composers, and publishers) from radio stations for the use of music from its catalog, the royalty payments are made to the assigned songwriter (or multiple songwriters) *and* the music publisher(s) of the song. Moreover, ASCAP, BMI, and SESAC are collecting licensing fees for the musical composition, the lyrics, and melody, and not for the sound recording. The recording artist

would *only* receive performance royalty payments if he or she is also credited as a performing songwriter, composer, publisher or through SoundExchange for certain digital *audio* performances.

With the advent of the Internet and music composition software, it is becoming increasingly common today for the songwriter/composer to also be the recording artist and a self-publisher for fairly well-established artists. In general, the copyright owner and the music user seeking the use of copyrighted works would voluntarily negotiate the royalty rates.

In the case of ASCAP (songwriters, composers and publishers), there is a 'rate-court' process under the AFJ2 (2001) in which the parties unable to reach an agreement can petition the court to establish royalty rates. Congress in other cases (recording artists, record labels for example) has appointed the Librarian of Congress, through the Copyright Royalty Board (CRB), to settle royalty disputes among parties.

The US Congress passed two important pieces of legislation that affected sound recordings: The Digital Performance in Sound Recordings Act (DPSR) of 1995 and Digital Millennium Copyright Act (DMCA) in October 1998 in order to protect copyright owners from copyright infringement in the digital age. The DMCA established the copyright law for certain digital transmissions and required performance royalties to be paid for emerging radio segments on satellite radio and Internet radio broadcasts.

Copyright owners and music users such as webcasters had two choices: they could either negotiate a royalty rate for a blanket license among themselves or adopt the rates for the digital distribution of music set by the Copyright Arbitration Royalty Panel (CARP) created by the Copyright Board. The legislation granted a 'statutory license' (license provided by copyright law as opposed to one granted by the copyright owner) to webcasters giving them the automatic right to use digitally transmitted sound recordings in exchange for the payment of royalties to copyright owners.<sup>11</sup>

In 2002, the royalty rates recommended by CARP were rejected by the Librarian of Congress. 'The Librarian then attempted to set rates that would prove controversial to both copyright owners and to small webcasters. Copyright owners believed the new rates were too low, while small webcasters believed the rates were still too high, and small webcasters sought legislative relief to lower rates further.'<sup>12</sup> Congress then enacted the Small Webcaster Settlement Act of 2002 which allowed small webcasters and copyright owners to enter into an agreement that provides for the payment of royalties based on a percentage of revenues, expenses, both revenue and expenses, or a minimum fee (whichever was greater) for time periods, the historical period, which began on October 28, 1998, and then ended on December 31, 2002, and 2003–2004 as shown in Table 2.20.<sup>13</sup>

SoundExchange, a part of the RIAA until 2003, was one of the beneficiaries of the Small Webcaster Settlement Act of 2002 and was permitted to enter into agreements on behalf of all copyright owners (mostly record labels) and performers such as vocalists and background musicians. SoundExchange is an independent, nonprofit performance rights organization that represents over 3,500 record

**Table 2.20** Summary Royalty Rates for Small Webcasters, 1998–2004 Based on Gross Revenue

Time period	Gross revenue rate	Expense rate	Minimum annual fee
10/28/98–12/31/98	8% of Revenue	5%	\$500
01/01/99–12/31/02	8% of Revenue	5%	\$2,000
01/01/03–12/31/04	10% of first \$250,000 and 12% in excess of \$250,000	7%	\$2,000 for rev. less than \$50,000 in prior year or current license period \$5,000 for rev. greater than \$50,000 in prior year or current license period

Source: GAO (2004), Report-GAO-04-700.

labels and over 31,000 featured artists and whose members include both signed and unsigned recording artists; small, medium, and large independent record companies; and major label groups and artist-owned labels. The record labels and artists are paid *digital* performance royalties when their sound recordings are performed on digital cable and satellite television music, Internet, and satellite radio (such as XM and Sirius). In contrast to performance rights organizations such as ASCAP, BMI, and SESAC (whose copyright holders are songwriters, composers, and publishers), SoundExchange distributes 50 percent of the royalties (minus operating costs) they collect to the copyright owner/record label, 45 percent to the featured recording artist, and 5 percent to a fund for non-featured vocalists and musicians.<sup>14</sup>

Legal disputes emerged among the copyright owners and webcasters as to how performance royalties and music-use factors should be assessed for blanket licenses in that industry. The Small Webcaster Settlement Act of 2002 failed in its intended purpose of improving the system of royalty payments and the resolution of disputes. The legal disputes stemmed from a complicated mix of contracts and lawsuits that focused on the economic arrangements that webcasters had with:<sup>15</sup>

1. Third party vendors (such as bandwidth providers, ad agencies, content providers, parent companies, and other suppliers) that were not included in revenue or expenses calculations;
2. Size of webcasters (small business, large business, or ‘aggregator’);
3. Medium (simulcast terrestrial radio vs. Internet only);
4. Business models (free vs. subscription or sponsorships);
5. Music use factor (amount of music used by visitors to a website); and
6. Fee calculations (gross revenue, advertising revenue per song) among radio stations, PROs, record labels, songwriters, and musicians.

Smaller independent Internet-only stations at the time felt they might not be able to afford the proposed rates given their smaller share of listening audience, the listener log documentation required to track users and the lack of revenue, unlike larger players like AOL and Yahoo with established customer bases. Even the larger players balked at paying performance licensing fees for user-generated music and

video content uploaded to Internet sites and made available to the general public by relying on the ‘safe harbor’ clause under copyright law. At the request of copyright owners, these companies promised to remove copyrighted material that infringed on the rights of the copyright owners, a costly, ineffective, and inefficient endeavor. The legal wranglings just angered and confused consumers who were not interested in the arcane topic of intellectual property rights, and just wanted to listen to their favorite music online.

The conventional thought, among webcasters and other users of sound recordings, was that recording artists receive promotional benefits such as free publicity, name recognition and a boost in record sales, concert tickets and merchandise from traditional radio airplay offsetting the need for further performance royalty payments for vocalists and background musicians, while stations owners benefited from listeners and advertising dollars. Dertouzos (2008) examined the symbiotic relationship between radio airplay of music and sales of albums and digital tracks from 2004 to 2006 in the 99 largest DMAs. He found that a significant portion at a minimum of 14 percent and as high as 23 percent of music industry sales can be attributed to radio airplay. Furthermore, the incremental sales revenue or promotional sales benefit ranged from \$1.5 to \$2.4 billion annually, excluding concert ticket, merchandising, and licensing revenue.<sup>16</sup>

Since music is considered a *cultural good*, it is a product that is *experienced* (or an ‘experienced good’) rather than one that is conventionally consumed or employed for some subsidiary purpose (such as a hand tool or appliance).<sup>17</sup> This suggests that the individual audience member must first listen to a piece of music before deciding whether to purchase it. The Internet simplified the purchasing of music, in which the user after hearing a song at a website can now click, purchase and download the song to an iPod in a matter of minutes. The listening and purchasing habits of consumers on the Internet raised an important question as to whether higher royalty rates or a new performance fee (to offset declining CD sales) may result in some online radio stations going out of business may be doing more harm than good in the recording industry.

Dertouzos (2008) suggests that ‘as the record industry advocates for direct payment from radio stations to music labels and arts through a new performance fee, it should be noted that disturbing the current symbiotic relationship that is found to exist between radio and the record industry could actually harm, not help, all parties. If a new performance fee were enacted, stations could reduce the amount of music airplay, change formats, or even cease to operate resulting in the loss of much of this promotional benefit.’

In March of 2007, the CRB set the new webcasting per play/per listener royalty rates for the years 2006–2010, retroactive to the year 2006 and with no increases for 5 years. The rates are displayed in Table 2.21 for webcasters operating non-

**Table 2.21** CRB Webcasting Royalty Rates (Commercial Non-interactive Stations)

Year	2006	2007	2008	2009	2010
Rate	\$0.0008	\$.0011	\$.0014	\$.0018	\$.0019

interactive radio stations. For non-commercial stations an annual fee of \$500 per channel or station, up to a total of 159,140 aggregate tuning hours or (one listener listening per hour) per month was set by the panel. After 159,140 ATH are maximized, the per-play/per listener rate for commercial webcasters would be applicable.<sup>18</sup>

Finally, the CRB announced the royalty rates for the mechanical and digital reproduction of music in October 2008. Details of that agreement between National Music Publishers Association (NMPA), the Nashville Songwriters Association International (NSAI), the Songwriters Guild of America (SGA), Recording Industry Association of America (RIAA), the Digital Media Association (DIMA) and other interested parties are discussed here.<sup>19</sup>

The CRB set the mechanical royalty rates for physical records such as CDs, and digital downloads in October 2008 as shown in Table 2.22. Songwriters, composers, and music publishers will be paid a rate of 9.1 cents for digital downloads, while the mechanical rate for physical products such as CDs remained at 9.1 cents. In July of 2009, groups representing artists, recording labels, and SoundExchange negotiated and reached an agreement under the Webcaster Settlement Act of 2009, which gave SoundExchange the authority to negotiate alternative rates and terms to those set by the CRB in 2007 for sound recordings on the Internet. Commercial webcasters have the option of 'opting in' to this agreement or using the existing CRB-set rates.

Table 2.23 shows the three rate classes that were established for music websites streaming music over the Internet for the period 2006–2015, with retroactive rates and late fees going back to 2006. The three rate classes are as follows: Large commercial webcasters (earning more than \$1.25 million in annual revenues), small commercial webcasters (defined as those earning \$1.25 million or less in total revenues with a cap on the amount of sound recordings streamed), and webcasters providing bundled, syndicated, or subscription services.<sup>20</sup>

**Table 2.22** Mechanical Royalty Rates (Songwriters and Music Publishers)

Type	Rate	Per Minute
Physical records	\$0.091	\$0.0175
Digital downloads	\$0.091	\$0.0175
Ring tones	\$0.24	–

**Table 2.23** Selected Webcaster Performance Royalty Rates, 2009, for Sound Recordings

Year	Large Comm. Webcasters Rate/Performance*	Webcasters Bundling Rate/Performance	Small Webcasters (2009–2014 Only)
2009	\$0.00093	\$0.0015	12% of first \$ 250,000 in Revenue
2010	0.00097	0.0016	and
2011	0.00102	0.0017	14% of revenue above \$250,000
2012	0.00110	0.0020	or
2013	0.00120	0.0022	7% of Expenses
2014	0.00130	0.0023	
2015	0.00140	0.0025	–

\*Or 25% of gross revenue whichever is greater.

Source: [www.soundexchange.com](http://www.soundexchange.com).

Some of these legal issues have yet to be resolved to make the licensing process more effective and the new royalty rates described above are already coming under attack. In a September 1, 2009 article, *Billboard* magazine reports that Internet radio provider Live365, one of the few webcasters to reject the recent SoundExchange compromise agreement for streaming royalty rates, is challenging the constitutionality of Copyright Right Board. The basis for this challenge is a recent opinion of the US Court of Appeals in the District of Columbia, where one of the judges said the CRB “raised a serious Constitutional issue.” Furthermore, the article said that Live365 has also filed a federal lawsuit in the US District Court for the District of Columbia seeking an injunction against all further CRB proceedings until the constitutionality of the entity is resolved.<sup>21</sup> The battle over music royalties in the nascent streaming industry that has yet to show that it may be viable in the long run further threatens to derail the industry. In the recession climate of 2009 with shrinking advertising dollars, even large companies might eliminate some forms of web radio as the costs of streaming due to rights fees increase.

## 2.4 Broadcast, Cable, and Satellite Television

Throughout the 1970s and well into the 1980s—NBC, CBS, and ABC (the big three as they were known) were the dominant broadcast television networks in the US. These television networks were created as the divisions of major radio networks, and television and radio manufacturers. These networks remain unchallenged until the 1980s, when a pay television segment called cable and, a fourth new broadcast network, Fox Broadcasting became serious rivals that challenged the big three for viewers and advertising revenue. Cable gets its name from the coaxial cable used to transmit transponder signals from the cable operators’ ‘head-end’ or local central office into their customers’ homes after the signals were received from orbiting satellites.

As cable system deployment expanded beyond the re-transmission of broadcast signals in rural areas, the ownership structure of the industry and viewership changed. Once characterized by privately owned small cable systems scattered in non-contiguous areas of the US, the cable industry was soon transformed into large media companies in which several systems were combined to form large multiple system operators (MSOs). Several of these MSOs also invested in the development of cable networks as well, while providing both content and a cable pipe into the home that would later lead to voice, video, and data applications, the so-called ‘triple play.’

The television industry segments soon became broadcast, cable, and satellite (an important competitor to cable) each with its own business and pricing models. Cable and satellite are subscription and advertising services that involve a monthly flat fee for a basic level of service while premium channels such as HBO and elective services such as pay-per-view (PPV) can cost extra fees. Until the switch over to digital from analog broadcasting requiring a set-top box in June 2009, terrestrial

broadcast signals were received by anyone within a certain geographic range with an indoor or outdoor antenna. Cable, initially designed for hard-to-reach rural areas with broadcast reception problems, has evolved and can now be found in densely populated areas where there is little restriction on the laying of coaxial or fiber optics cable.

In 1981, a new cable music channel called MTV was started and would soon change the way in which music was performed and distributed. The broadcast and cable industries were transformed in the late 1990s with one of the most important technological changes in broadcasting: The switch from analog to digital transmission of terrestrial and satellite television signals. Satellite television subscription service got its start in the 1980s, and focused mostly on subscribers in rural areas where over-the-air broadcast signals and cable systems were problematic.

Tables 2.24 and 2.25 show that local and network broadcast revenues have been declining since 2007, while national cable television advertising revenue has been growing.

**Table 2.24** Broadcast and Cable Networks Advertising Revenue (in \$millions)

Media	2005	2006	2007	2008	2009E	2010E
Local Broadcast TV <sup>c</sup>	17,485	16,170	17,614	14,817	11,674	11,483
Network Broadcast TV <sup>a,b</sup> —Engl.	14,617	14,522	14,433	13,614	12,816	13,249
National Cable TV <sup>a</sup>	15,291	15,972	17,053	17,886	17,600	19,195
Local Cable TV <sup>c</sup>	3,322	3,346	3,713	3,337	2,810	2,862
National Syndication	2,152	1,969	1,974	1,935	1,817	1,774
Network Broadcast TV—Span.	912	980	1,082	1,063	1,035	1,119
Total	53,779	52,959	55,870	52,652	47,752	49,681

E = Estimated

<sup>a</sup> Excludes online advertising revenues.

<sup>b</sup> Excludes incremental Olympic advertising revenues.

<sup>c</sup> Excludes local political advertising revenues.

Source: Based on data from B. Wieser, [www.magnaglobal.com](http://www.magnaglobal.com).

**Table 2.25** Share of Broadcast and Cable Networks Advertising Revenue (%)

Media	2005	2006	2007	2008	2009E	2010E
Local Broadcast TV	32.52	30.53	31.53	28.14	24.45	23.11
Network Broadcast TV - Engl.	27.18	27.42	25.83	25.86	26.84	26.67
National Cable TV	28.43	30.16	30.52	33.97	36.86	38.64
Local Cable TV	6.18	6.32	6.65	6.34	5.89	5.76
National Syndication	4.00	3.72	3.53	3.67	3.80	3.57
Network Broadcast TV - Span.	1.70	1.85	1.94	2.02	2.17	2.25

E = Estimated

Source: Based on data from B. Wieser, [www.magnaglobal.com](http://www.magnaglobal.com).



In 1994 Direct Broadcast Satellite (DBS) was first introduced and soon became widespread due to many technological advantages over cable. Satellite service operators can establish a broad geographic reach without the need for headends and multiple cable systems dispersed over a broad non-contiguous area. DBS's technical advantages included fully digital systems, compared to cable's older analog technology. DBS's fully digital capabilities at the time would soon be exploited in the way in which video signals when 'compressed' could provide the satellite capacity for hundreds of new digital channels on a nationwide basis.

Many new digital channels began to appear, often just the digital offering of the analog channel on cable systems. From a music use perspective, the most important consideration is the amount of revenue generated by broadcasters and cable networks from their advertising and subscription fees. In turn, corporate profits determine the amount of money spent to advertise on broadcast and cable TV, radio, and the Internet. Broader macroeconomic problems such as declining aggregate demand and cyclical problems such as a recession will in turn affect corporate profits and advertising revenue.

## 2.5 Internet Media

The older information retrieval and search services that initially supplied textual, numeric, and graphic data to the scientific and business communities were soon replaced with a new technology, the 1995 introduction of Netscape, the first popular web browser. Netscape would transform web search into an interactive multimedia environment with the integration of voice, video, audio, text, and images in a end-user controlled setting.

As the adoption rates of broadband bandwidth increased dramatically, and more Americans had high-speed access to the Internet both at home and at work, there was significant growth in the number of online music performances. These 'portals' now offered online radio (discussed above) and streaming video programming that only once appeared on television. The Internet made listening to music or viewing a video clip more interactive and selective, as users could now see and hear their favorite songs, recording artists, and videos at the time and place of their choosing.

Several Internet 'search engine' companies or 'portals' soon sprang up with new business models for access to content on the Internet. One such business model was the so-called search-related advertising model that demonstrated that search when paired with advertising could be monetized. And the other model was a subscription model in which users purchased content on a one-time basis or for a fixed monthly recurring charge.

Google, Yahoo, Microsoft, Ask, and AOL, the so-called Internet media companies, are some of the large competitors left standing after the brutal shakeout following the dot.com bubble implosion in 2001. In 2009, Google accounted for more than 65 percent of the online search market as shown in Table 2.26.



**Table 2.26** Online Search Share (November–December 2009)

Website	Nov-09 (%)	Dec-09 (%)	Change	% Change
Google Sites	65.6	65.7	0.1	0.15
Yahoo Sites	17.5	17.3	−0.2	−1.14
Microsoft Sites	10.3	10.7	0.4	3.88
Ask Network	3.8	3.7	−0.1	−2.63
AOL LLC Network	2.8	2.6	−0.2	−7.14

Source: Based on comScore.com data.

**Table 2.27** Sources of Online Search Revenue (\$mil.) (2Q-2008)

Advertising Format	2Q 2008 Revenue(\$)	% Share
Search	\$2, 508	44.00
Banner Ads	1, 197	21.00
Classifieds	798	14.00
Rich Media (audio/video)	399	7.00
Lead Generation	399	7.00
Digital Video	171	3.00
Sponsorship	114	2.00
Email	114	2.00
Total	5, 700	

Source: IAB Internet Advertising Revenue Report, October 2008, p. 8.

Social networking sites such as youTube, Facebook.com, and MySpace.com would soon emerge to compete with the established Internet media companies. These portals generated revenue through the various forms of advertising when users conducted a search, viewed display banner ads, opened an email, or watched a video. For example, as shown in Table 2.27, in the second quarter of 2008, the Interactive Advertising Bureau (IAB) estimated online revenue in the \$5.7 billion range with search revenue accounting for 44 percent of online revenue.

Advertisers paid the portals based on the number of times a webuser viewed the page containing the advertiser's ad, and perhaps 'clicked-through' to the advertisers own website for additional content. As advertising dollars flowed to the Internet portals, advertisers demanded objective measurements of such things as the number of unique visitors, total time spent on Internet sites, audience demographics, search activities, buying habits and reach, the percentage of the total Internet population that visited a particular site at a given time. Just like terrestrial radio stations that rely on Arbitron and television stations rely on Nielsen for rankings and ratings data, online companies rely on Nielsen and comScore for Internet traffic and usage data.

The number of unique visitors, views or 'impressions,' and 'click-throughs' would later become common metrics used for measuring music content in the industry. Each year, Google, Yahoo, Microsoft, and AOL attract hundred of millions of unique visitors to their various websites. Selected month-over-month growth in unique visitors and page view metrics for the Internet media companies Google, Yahoo, Microsoft, and AOL from comScore are shown in Tables 2.28 and 2.29.

**Table 2.28** Selected M/M Growth in Unique Visitors (000)

Company	Dec. 2008	Jan. 2009	Change	% Change
Google	149, 027	151, 010	1,983	1.33%
Yahoo	145, 708	146, 131	423	0.29
Microsoft	125, 351	125, 568	217	0.17
AOL	109, 879	108, 441	(1,438)	-1.31

*Source:* Based on licensed data from comScore.

**Table 2.29** Selected M/M Growth in Page Views (mil.)

Company	Dec. 2008	Jan. 2009	Change	% Change
Google	31, 302	34, 318	3, 016	9.64
Yahoo	38, 007	42, 586	4, 579	12.05
Microsoft	16, 732	17, 641	909	5.43
AOL	18, 761	19, 898	1, 137	6.06

*Source:* Based on licensed data from comScore.

PROs would sometimes use a music adjustment factor to make adjustments for cases in which there is a dispute to the amount of music intensity usage by various music users. The music adjustment factor is usually a variation of the ratio of total music hours (amount of time users spent streaming audio and video, etc.) divided by total site hours (total amount of time spent at a website, etc.). Some PROs rely on these companies to provide the independent data for its computation. As you can imagine, companies can both use different methodologies and reach different and controversial conclusions, which can have a direct impact on royalty licensing fees. The end result of this controversy is often the subject of litigation. We will not cover any of these legal disputes. Our focus is primarily on academic economists who are interested in the economics of art and culture.

## 2.6 General Licensing and Other Types of Music Users

PRO's general licensing of public performance venues can include bars, music clubs, restaurants, hotels, amusement parks, retail shops, symphonic concert halls, gyms, sports stadiums, colleges, universities, and many others. Non-dramatic music performances can occur on music channels on an airplane, music at a convention, or music on hold on a telephone. Jukebox music users are also required to have a license. The cost of a blanket license for these establishments depends on the type of business, the manner in which music is performed (live, recorded, or audio only or audio/visual), the size of the establishment or potential audience for the music, the number of nights per week music is offered, whether admission is charged, and several other factors.

Concert rates are based on the ticket revenue and seating capacity of the facility. Rates for music used by corporations ('Music In Business') are based upon the number of employees. College and university rates are based upon the number of full time students; retail store rates depend on the number of speakers and square

footage. Hotel rates are based on a percentage of entertainment expenses for live music and an additional charge if recorded music is used.<sup>22</sup>

## 2.7 Performance Census and Sample Surveys

In order to pay royalties to songwriters and composers, the *Second Amended Final Judgment*, AFIJ2 (2001), requires that where,

feasible ASCAP shall conduct, or cause to have conducted, a census or a scientific, randomly selected sample of the performances of the works of its members. Such census or sample shall be designed to reflect accurately the number and identification of performances and the revenue attributed to those performances, made in accordance with a design made and periodically reviewed by an independent and qualified person.

It is worth noting here that under the traditional blanket licenses issued by ASCAP and BMI, it is ASCAP's and BMI's responsibility to keep track of music performances and usage, not the broadcasters. ASCAP uses both a Census and a Sample survey to quantify musical performances. It is only under the per-program license (which is still a blanket license for music used in certain programs or segments) in which broadcasters are required to report music usage for fee calculation purposes.

Whenever it is economically sensible, ASCAP will conduct a *Census Survey*, or a complete count of performances in a medium. Where a Census Survey is impractical, ASCAP conducts a *Sample Survey* designed to be a statistically accurate representation of performances in a medium. All times of the day, all days of the year, every region of the country, and all types and sizes of stations are represented in the ASCAP sample surveys.<sup>23</sup>

The Census Survey consists of a complete count of all performances, including commercial, promotional and public service announcements, on network television such as ABC, NBC, and CBS. For other networks such as Fox, UPN, and WB, the count would include all programs and promotional announcements, while for the Univision and ION networks, the count would include all programs. Local television, cable television, PBS, live concerts, Internet, background and foreground music services, and other media such as theme parks, circuses, and digital jukeboxes would be counted using various factors.<sup>24</sup>

The Sample Survey includes commercial radio stations, National Public Radio, college radio stations, and satellite radio, airlines and other areas where the Census Survey is not practical. The greater the fee a licensee pays, the more often that licensee is sampled by ASCAP. The Sample Survey would consist of hundreds of thousands of hours of non-dramatic performances or detected airplay data from Mediaguide, station logs, 6-hour sample tapes and cue sheets, program guides and other electronic data from radio, television, cable, and other general licensing music users.<sup>25</sup> Table 2.30 takes a selected look at some of the variables involved in a typical radio performance Sample Survey conducted by ASCAP and its partners.

**Table 2.30** Selected ASCAP Radio Performances Survey Variables

Variable	Measurement type
Station	Commercial, Non-Commercial, Satellite
Radio Band	AM vs. FM
License Type	Blanket vs. Per Program
Region	West, Midwest, South & Northeast
Genre	Pop, Spanish Language, Sport/News/Talk, Urban Contemporary, Country, Religious, Jazz, Classical and Ethnic

As shown in Table 2.30, the Sample Survey would take into account large, medium, and small markets and it might also involve weighting FM stations higher than AM stations given the ratio of FM to AM stations in various regions and markets. Data from Mediaguide would also include the number of detected airplay of copyrighted compositions on hundreds of radio stations in many different ranked markets across the nation at different time period intervals.

## 2.8 Performances and Airplay

Every year billions of musical performances are licensed, and billions of dollars are collected by performing rights societies from various music users around the world on behalf of copyright holders. The licensing fees collected must then be distributed in a fair, accurate and efficient manner to the copyright holders when their copyrighted music is used in a variety of mediums. In order to accomplish this goal, the music must first be tracked on radio, television, the Internet, live venues, and other media and a determination made to as which music has been performed before the appropriate copyright holders can be paid. The PROs may all have different distribution options and payment formulas that can include premium payments for hit songs, payment schedules, and dedicated resources for collecting performance rights licensing fees.<sup>26</sup>

Ring tones and ring-back tones, the music heard and played on cell phones, represent an entirely new market in transmission technology. The cell phone is now a receiving and playing device for copyrighted musical compositions. Mechanical royalty fees, as established by the CRB, are collected and artists are compensated based on the number of ring tones downloaded from the Internet.

Tables 2.31, 2.32 and 2.33, based on data from NARM, show the 2008 top 10 radio broadcast streamed performances and the number of ring tones sales data, respectively, by song title collected by Nielsen's Broadcast Data Systems (BDS) at year-end 2008. For example, the song title *Bleeding Love* was the number one most played and most streamed song, and number six in ring tones sales in 2008. Based on these performances and ring tone downloads, the copyright holders are paid accordingly.<sup>27</sup>

Upon title registration, royalty income to songwriters, composers, and music publishing royalty based on established payment methods by the PROs would then

**Table 2.31** Top 10 Most Played Songs on Radio Year-End 2008

Rank	Title	Artist	Detections	% Share
1	<i>Bleeding Love</i>	Leona Lewis	468, 000	12.31
2	<i>Low</i>	Flo Rida/ T-Pain	410, 000	10.78
3	<i>Love Song</i>	Sara Bareilles	398, 000	10.47
4	<i>Apologize</i>	Timbaland/ One Republic	383, 000	10.07
5	<i>With You</i>	Chris Brown	369, 000	9.71
6	<i>No Air</i>	Jordin Sparks/Chris Brown	365, 000	9.60
7	<i>Love In This Club</i>	Usher/Young Jeezy	364, 000	9.57
8	<i>No One</i>	Alicia Keys	362, 000	9.52
9	<i>Lollipop</i>	Lil Wayne/Static Major	342, 000	9.00
10	<i>Sexy Can I</i>	Ray J./Yung Berg	341, 000	8.97
Total			3, 802, 000	

Source: Based on data from <http://www.narm.com/Nielsen/NielsenMusic2008.pdf>.

**Table 2.32** Top 10 Internet Streamed Songs Year-End 2008

Rank	Title	Artist	Streams	% Share
1	<i>Bleeding Love</i>	Leona Lewis	10, 699, 000	11.58
2	<i>Love Song</i>	Sara Bareilles	10, 558, 000	11.42
3	<i>Low</i>	Flo Rida/T-Pain	9, 837, 000	10.64
4	<i>No One</i>	Alicia Keys	9, 680, 000	10.47
5	<i>With You</i>	Chris Brown	8, 971, 000	9.71
6	<i>Sorry</i>	Buckcherry	8, 940, 000	9.67
7	<i>Love In This Club</i>	Usher/Young Jeezy	8, 892, 000	9.62
8	<i>Touch My Body</i>	Mariah Carey	8, 675, 000	9.39
9	<i>No Air</i>	Jordin Sparks/Chris Brown	8, 160, 000	8.83
10	<i>Stop and Stare</i>	One Republic	8, 004, 000	8.66
Total			92, 416, 000	

Source: Based on data from <http://www.narm.com/Nielsen/NielsenMusic2008.pdf>.

**Table 2.33** Top 10 Mastertones Year-End 2008

Rank	Title	Artist	Sales	% Share
1	<i>Lollipop</i>	Lil Wayne	2, 365, 000	19.46
2	<i>Whatever You Like</i>	T.I.	1, 627, 000	13.39
3	<i>Low</i>	Flo Rida	1, 607, 000	13.23
4	<i>I Kissed A Girl</i>	Katy Perry	1, 138, 000	9.37
5	<i>Love In This Club</i>	Usher/Young Jeezy	1, 013, 000	8.34
6	<i>Bleeding Love</i>	Leona Lewis	922, 000	7.59
7	<i>With You</i>	Chris Brown	892, 000	7.34
8	<i>Bust It Baby</i>	Plies	891, 000	7.33
9	<i>Sexy Can I</i>	Ray J.	852, 000	7.01
10	<i>Take A Bow</i>	Rihanna	844, 000	6.95
Total			12, 151, 000	

Source: Based on data from <http://www.narm.com/Nielsen/NielsenMusic2008.pdf>.

be made on the basis of these non-dramatic performances or airplay of the copyrighted musical compositions when used on television, radio, the Internet, on cell phones, and other licensing areas.

## 2.9 Selected Types of Performances and Airplay

A copyrighted musical composition can be used in its entirety when played as a full featured song on the radio. The song or parts of the same song can be used on television for musical and other talent type shows. Another part of a song could be used in a jingle to help sell products or services on television. Table 2.34 shows a selected view on how licensed music works for which the PROs have the right to license for public performances are used by the music users in a variety of *performance types* or airplay such as features, theme music, jingles, underscores, ring tones, or network station promos.

Different types of performances (radio and television airplay) such as features, themes, jingles, background/foreground music and network promos as classified by PROs are weighted differently and earn different royalty amounts. Performances reaching or bypassing a certain airplay threshold are sometimes paid a premium or bonus amount.

**Feature performance:** A feature performance is the performance of a song that is used whether in part or in whole and is a principal focus of audience attention at the time of the broadcast. The musical work can be performed live or by means of a recording. These works are indicated on a cue sheet with the following codes: Visual Vocal (VV) is used when the vocalist appears on camera singing a song. Visual Instrumental (VI) is used when the instrumentalist appears on camera performing a song. Background Vocal (BV) is used when a song is audible to the listening audience, even though there is dialogue and other action in the foreground scene. A medley is considered a type of feature in which several whole songs or parts of songs are used in a compilation.

**Theme performance:** Theme music is the performance of a work used to open or close a program, typically on television. It is the music that listeners might recognize as the theme of their favorite show with multiple episodes.

Table 2.34 Selected Medium and Performance Type

Music User	Performance/Airplay Type
Local Radio	Features of Variable Lengths
Local TV	Opening/Closing Theme Music
Network TV	Background or Underscore Music
Basic & Premium Cable	Jingles
Internet	Network TV Promos
Background Music	Ring Tones
Others, Concerts etc.	Ring-Back Tones

**Background and Foreground performance:** Background/foreground music is the performance of a work that when used in a television show is neither the recognized opening/closing theme nor a feature and used as underscore or background music in a show to create a certain mood or atmosphere that is normally not the focus of audience attention. On a cue sheet, the code *BI* would designate works that are background instrumental in nature.

**Jingle performance:** A jingle is the performance of a work in which a memorable melody with or without lyrics is used to brand an advertiser's product on radio or television so that the product remains in the minds of consumers. The jingle can also include a musical work written for other purposes but with the lyrics changed for commercial or promotional advertising.

**Promotional announcement performance:** Network or station 'promos' are music performances that announces an upcoming television or radio program. It can also include the station identification music used for tune-in.

## 2.10 Performances or Airplay Data Collection: Radio and Internet

Mediaguide,<sup>28</sup> one of several radio performance data collection companies in the industry,

monitors music, advertising, copyright compliance and other functions on over 2,700 college, non-commercial and commercial radio stations in 150 US markets; and over 3,500 Internet stations in real-time, 24 hours per day, 7 days per week.

Mediaguide was formed to meet ASCAP's exacting requirements for knowledge of broadcast airplay information to accurately pay songwriters. In order to meet those standards, Mediaguide developed a robust digital fingerprinting technology.

Mediaguide compiles a database of songs played on the radio and other media broken by many factors including, song titles, recording artists, record labels, genre, radio station, region, market, rankings and so on using its digital fingerprinting content recognition technology that can identify audio or video in online or offline environments.

Using a compact representation of audio or video content ('fingerprint'), Mediaguide technology identifies an unknown media by matching it to a database of the fingerprints of registered works.

Table 2.35 gives a sample of the radio performances data collected by Mediaguide for the week of 08/03/09–08/09/09 broken down by song title, artist, record label, and rankings.

For example, Mediaguide in a genre called CHR/Pop, recorded 7,306 total plays for the week of 08/03/09–08/09/09, an increase of 849 plays from the previous week, for the song *I Gotta Feeling* by the recording group 'Black Eyed Peas' and the record label was Interscope. The song was ranked number one for that week, and in the previous week it was ranked number two. The song has been on the charts for 10 consecutive and peaked at number one. Table 2.36 shows a selection of the 105 radio stations in 89 markets that were electronically monitored by Mediaguide to provide the airplay data shown in Table 2.35.

Table 2.35 Selected Example of CHR\*/Pop Radio Performances (Airplay) Data Week of 08/03/09–08/09/09

LW	TW	Title	Label	Artist	Plays	Gains(+/-)	Weeks	Peak
2	1	<i>I Gotta Feeling</i>	Interscope	Black Eyed Peas	7,306	849	10	1
1	2	<i>Waking Up In Vegas</i>	Capitol	Katy Perry	6,793	-12	17	1
4	3	<i>You Belong With Me</i>	Big Machine	Taylor Swift	6,281	301	15	3
5	4	<i>Knock You Down</i>	Mosely/Zone/4					
		(w/Ne-Yo & K. West)	Interscope	Keri Hilson	5,784	92	16	4
3	5	<i>LoveGame</i>	Steamline/Interscope	Lady Gaga	5,562	-541	17	1
10	6	<i>Good Girls Go Bad</i>	Fueled By Ramen/					
		(w/L. Meester)	Atlantic	Cobra Starship	4,372	226	11	6
7	7	<i>Fire Burning/Dance Floor</i>	E1/Beluga Hgts./Epic	Sean Kingston	4,280	-338	15	7
11	8	<i>Battlefield</i>	Jive	Jordin Sparks	4,158	84	12	8
12	9	<i>Use Somebody</i>	RCA	Kings Of Leon	4,103	488	11	9
6	10	<i>I Know You Want Me</i>	Ultra	Pitbull	3,885	-886	24	4

\*CHR = Contemporary Hit Radio Music.  
TW = this week's rank.  
LW = last week's rank.  
Plays = total plays for the week.  
Gains +/- = change in total plays from the previous week.  
Weeks = number of consecutive weeks on the chart.  
Peak = peak position achieved on the chart.  
Weeks at #1 = consecutive (not cumulative) weeks at #1.  
Resets after song/release is replaced by new #1 entry.  
Source: Based on licensed data from [http://charts.mediaguide.com/format/CHR\\_Pop\\_single.html](http://charts.mediaguide.com/format/CHR_Pop_single.html), Mediaguide, Inc., © 2009.



**Table 2.36** Mediaguide Electronically Monitored Radio Stations

Station	Frequency	Market	Market Rank
WHTZ	100.3	New York, NY	1
KIIS	102.7	Los Angeles, CA	2
WKSC	103.5	Chicago, IL	3
KHKS	106.1	Dallas/Ft. Worth, TX	5
KRBE	104.1	Houston/Galveston, TX	6
WSTR	94.1	Atlanta, GA	7
WIOQ	102.1	Philadelphia, PA	8
WIHT	99.5	Washington, DC	9
WXKS	107.9	Boston, MA	10
WHYI	100.7	Miami/Ft. Lauderdale/Hollywood, FL	12
KBKS	106.1	Seattle/Tacoma, WA	13
KZZP	104.7	Phoenix, AZ	15
KDWB	101.3	Minneapolis/St. Paul, MN	16
KHTS	93.3	San Diego, CA	17
WFLZ	93.3	Tampa/St. Petersburg/Clearwater, FL	18
KSLZ	107.7	St. Louis, MO	20
WXAJ	99.7	St. Louis, MO	20
KKRZ	100.3	Portland, OR	23
WNKS	95.1	Charlotte/Gastonia, NC/Rock Hill, SC	25
KDND	107.9	Sacramento, CA	27
WKFS	107.1	Cincinnati, OH	28
WAKS	96.5	Cleveland, OH	29
KVFX	94.5	Salt Lake City/Ogden/Provo, UT	30
KZHT	97.1	Salt Lake City/Ogden/Provo, UT	30
KXXM	96.1	San Antonio, TX	31
KMXV	93.3	Kansas City, MO-KS	32
WXXL	106.7	Orlando, FL	34
WNCI	97.9	Columbus, OH	36
WXSS	103.7	Milwaukee - Racine, WI	37
KHFI	96.7	Austin, TX	39
WPRO	92.3	Providence/Warwick/Pawtucket, RI	41
WRVW	107.5	Nashville, TN	44
WDCG	105.1	Greensboro/Winston-Salem/High Point, NC	45
WKZL	107.5	Greensboro/Winston-Salem/High Point, NC	45
WAPE	95.1	Jacksonville, FL	46
WFKS	97.9	Jacksonville, FL	46
WLDI	95.5	West Palm Beach/Boca Raton, FL	47
KJYO	102.7	Oklahoma City, OK	48
WHBQ	107.5	Memphis, TN	49
CKEY	101.1	Buffalo/Niagara Falls, NY	52
WKSE	98.5	Buffalo/Niagara Falls, NY	52
WDJX	99.7	Louisville, KY	53
WZKF	98.9	Louisville, KY	53
WRVQ	94.5	Richmond, VA	54
WEZB	97.1	New Orleans, LA	55
WKGs	106.7	Rochester, NY	56
WPXY	97.9	Rochester, NY	56
WQEN	103.7	Birmingham, AL	57
WFBC	93.7	Greenville/Spartanburg, SC	59
KRQQ	93.7	Tucson, AZ	60
WFLY	92.3	Albany/Schenectady/Troy, NY	63

**Table 2.36** (continued)

Station	Frequency	Market	Market Rank
WKKF	102.3	Albany/Schenectady/Troy, NY	63
KHTT	106.9	Tulsa, OK	65
WBHT	97.1	Wilkes Barre/Scranton, PA	70
WKRZ	98.5	Wilkes Barre/Scranton, PA	70
WWST	102.1	Knoxville, TN	71
KQCH	94.1	Omaha, NE/Council Bluffs, IA	72
WSTW	93.7	Wilmington, DE	77
WFMF	102.5	Baton Rouge, LA	78
WHKF	99.3	Harrisburg/Lebanon/Carlisle, PA	79
KHOP	95.1	Stockton, CA	80
WYKS	105.3	Gainesville/Ocala, FL	81
WIHB	92.5	Charleston, SC	84
WSSX	95.1	Charleston, SC	84
KLAL	107.7	Little Rock, AR	85
WERO	93.3	Greenville/New Bern/Jacksonville, NC	87
WNOK	104.7	Columbia, SC	89
KKDM	107.5	Des Moines, IA	90
WTWR	98.3	Toledo, OH	91
WVKS	92.5	Toledo, OH	91
KQQB	104.5	Spokane, WA	92
KZZU	92.9	Spokane, WA	92
KKMG	98.9	Colorado Springs, CO	94
WABB	97.5	Mobile, AL	96
WJLQ	100.7	Mobile, AL	96
WAOA	107.1	Melbourne/Titusville/Cocoa, FL	97
WZEE	104.1	Madison, WI	98
KZCH	96.3	Wichita, KS	99
KSAS	103.3	Boise, ID	100
KZMG	93.1	Boise, ID	100
WAEZ	94.9	Johnson City/Kingsport, TN/Bristol, VA	102
WLKT	104.5	Lexington/Fayette, KY	104
KSMB	94.5	Lafayette, LA	105
WZYP	104.3	Huntsville, AL	108
WXLK	92.3	Roanoke/Lynchburg, VA	111
WLAN	96.9	Lancaster, PA	112
KSME	96.1	Ft. Collins/Greeley, CO	120
WYOY	101.7	Jackson, MS	121
WIOG	102.5	Lansing/East Lansing, MI	125
WJSZ	92.5	Lansing/East Lansing, MI	125
WWCK	105.5	Flint, MI	127
WDJQ	92.5	Canton, OH	129
KRUF	94.5	Shreveport, LA	133
KSPW	96.5	Springfield, MO	136
WXXX	95.5	Burlington, VT/Plattsburgh, NY	138
WAYV	95.1	Atlantic City/Cape May, NJ	141
WPST	94.5	Trenton, NJ	142
KBEA	99.7	Quad Cities (Davenport, Bettendorf, IA/ Rock Island, Moline, IL)	146
KDUK	104.7	Eugene - Springfield, OR	147
WPIA	98.5	Peoria, IL	152
WIXX	101.1	Green Bay, WI	187

**Table 2.36** (continued)

Station	Frequency	Market	Market Rank
WKSZ	95.9	Green Bay, WI	187
WQKX	94.1	Sunbury/Selinsgrove/Lewisburg, PA	219
WZNS	96.5	Ft. Walton Beach, FL	227
WBNQ	101.5	Bloomington, IL	241

Source: Based on licensed data from [www.http://charts.mediaguide.com/panels/CHR\\_Pop.html](http://charts.mediaguide.com/panels/CHR_Pop.html), Mediaguide, Inc., © 2009 Week of 08/03/09–08/09/09 for data in Table 2.35.

## 2.11 Performances or Airplay Data Collection: Television

Broadcast television and cable network performances are measured using data from station or network logs, tapes, cue sheets, play lists, program guides, schedules, and other means. A cue sheet is a document, now in electronic format, that lists all of the musical compositions contained in television programs—including infomercials and commercials—made for television movies or theatrical movies that will be broadcast on television.

ASCAP and BMI use cue sheets provided by audio/visual production companies to determine how the music is used in a musical composition such as a feature, theme, background music, or in opening/closing credits, the owners' share of the copyrighted musical composition, their PRO affiliation, and so on in order to distribute royalty payments for the works.

ASCAP and BMI, along with CBS, NBC, Disney, Fox, Sony, Paramount, and others use a system called 'RapidCue,' a state-of-the-art web-based application that allows production companies to enter, manage, and electronically submit cue sheet data to ASCAP and BMI. The tens of thousands of cue sheets received each year by the PROS are then matched to television broadcast schedules to determine the number of performances; songwriters and composers are then paid accordingly for their works used.

The composer, music editor, or music supervisor is, generally, tasked with collecting the relevant information included on a cue sheet. The cue sheet information is then sent to the production company for verification of accuracy and the inclusion of additional information, such as the proper copyright information for licensed music or other publishing-related information. The production company then distributes the finished cue sheet to all interested parties, such as publishers, composers, attorneys, and performing rights organizations like ASCAP.<sup>29</sup>

Table 2.37 gives an illustration of a partial example of a cue sheet provided by the production company, Urban Skies for an episodic television series called *Urban Skies* after the final version had been edited and the show aired on the Showtime cable network. The cue sheet lists all the musical compositions; their various uses such as main title or background instrumental; the number of times that each composition was used in the hour-long program and the associated performing rights affiliation of the songwriters and publishers. Notice that the production company established a music publishing company called Urban Skies Music to collect the publisher's share of performance royalties. The songwriters, composers, and

Table 2.37 Partial Example of a Music Cue Sheet

Series/Film Title: <i>Urban Skies</i>		Company Name: Urban Skies Productions			
Episode Title/Number: <i>Grape Soda (#12)</i>		Address: 7920 Sunset Blvd., L.A., CA 90027			
Estimated Airdate: 1-12-99		Phone: 1-800-662-4490			
Program Length: 60 minutes		Contact: Chris Moll			
Program Type: Comedy series		Network Station: Showtime			
Cue No.	Cue Title	Use*	Timing	Composer(s)/Affiliation %	Publisher(s)/Affiliation %
1	<i>Urban Skies Theme</i>	MT	0:16	Rhonda Sims (ASCAP) 100%	Urban Skies Music (ASCAP) 100%
2	<i>Running Home</i>	BI	0:08	Rhonda Sims (ASCAP) 100%	Urban Skies Music (ASCAP) 100%
3	<i>Backwards Love</i>	BI	0:13	Rhonda Sims (ASCAP) 100%	Urban Skies Music (ASCAP) 100%
4	<i>Uptown</i>	BI	0:09	Rhonda Sims (ASCAP) 100%	Urban Skies Music (ASCAP) 100%
5	<i>Skies the Limit</i>	BV	1:03	Terry Oakley (ASCAP) 33 <sup>1</sup> / <sub>3</sub> %	Terrycotta (ASCAP) 33 <sup>1</sup> / <sub>3</sub> %
				Larry Joyce (PRS) 33 <sup>1</sup> / <sub>3</sub> %	Larry Joyce Music (PRS/ASCAP) 33 <sup>1</sup> / <sub>3</sub> %
				Ennio Blake (APRA) 33 <sup>1</sup> / <sub>3</sub> %	Ennio B. Music (APRA/ASCAP) 33 <sup>1</sup> / <sub>3</sub> %
6	<i>Synthroid</i>	BI	0:05	Rhonda Sims (ASCAP) 100%	Urban Skies Music (ASCAP) 100%
7	<i>Coffee In Bed</i>	BI	0:32	Rhonda Sims (ASCAP) 100%	Urban Skies Music (ASCAP) 100%
8	<i>Roll With It</i>	BI	0:15	Rhonda Sims (ASCAP) 100%	Urban Skies Music (ASCAP) 100%
9	<i>Knock Me Down</i>	BI	0:01	Rhonda Sims (ASCAP) 100%	Urban Skies Music (ASCAP) 100%
10	<i>Spinach and Ham</i>	BI	0:16	Rhonda Sims (ASCAP) 100%	Urban Skies Music (ASCAP) 100%
11	<i>Swing to Live</i>	VV	0:34	Jerry Fin (ASCAP) 100%	Fins Alive Publishing (ASCAP) 100%
12	<i>Good Luck</i>	BI	0:11	Rhonda Sims (ASCAP) 100%	Urban Skies Music (ASCAP) 100%
13	<i>Hot Water Beaches</i>	BI	0:36	Rhonda Sims (ASCAP) 100%	Urban Skies Music (ASCAP) 100%
14	<i>Polar Opposites</i>	BI	0:02	Rhonda Sims (ASCAP) 100%	Urban Skies Music (ASCAP) 100%
15	<i>No Way Jose</i>	BI	0:01	Rhonda Sims (ASCAP) 100%	Urban Skies Music (ASCAP) 100%

\*Use Codes: MT = Main Title, VI = Visual Instrumental, BV = Background Vocal, VV = Visual Vocal, ET = End Title, BI = Background Instrumental, and T = Theme  
Source: [http://www.ascap.com/musicbiz/cue\\_sheet\\_corner/pdf/SampleCueSheet.pdf](http://www.ascap.com/musicbiz/cue_sheet_corner/pdf/SampleCueSheet.pdf).

publishers will be paid directly and separately by the PROs, there is no co-mingling of royalty income.

Logs, program guides, lists, tapes, or other measures are used to determine airlines, live concerts, circuses, concert halls, theme parks, and jukeboxes performances.

## 2.12 Computing Royalty Payments for Writers and Publishers

The payment method and rules for ASCAP and BMI vary by medium licensed (radio, television, Internet, etc.) as well as type of performance (theme songs, underscore, feature performances, jingles, logos, etc.). A successful writer could be receiving payments based on the numbers of performances for a musical composition that was played on network television or cable (or both) in a full feature format (such as being sung on a musical show), parts of the songs could have been used in a network promo/tune-in, a jingle or a commercial. The same song could have been played on the radio or streamed from a website. The royalty payments made to writers and publishers are typically referred to as ‘distributions.’

It is beyond the scope of this monograph to go into the often complicated weighting rules, weighting formulas, various distribution plans for members, and survey methods used in computing PROs distributions (royalty payments) to songwriters, composers, and music publishers.

Each PRO has a different method for computing these factors and from time to time new rules are added or old ones changed. The reader interested in further details and documents that govern ASCAP and its relationship with its membership can research the following documents available at <http://www.ascap.com/reference>. There you will find several helpful documents:

- *Articles of Association*: The basic document that sets out ASCAP’s structure and governs its relationship with its members, as amended through May 2002.
- *Membership Application and Agreement*: The documents that all members sign when they join ASCAP.
- *Distribution Resource Documents*: The rules and regulations governing distribution of royalties to members, including the Writers’ Distribution Plans, the Writers’ and Publishers’ Distribution Formulas, the Weighting Rules and Weighting Formula.
- *Second Amended Final Judgment entered in United States v. ASCAP*: ASCAP’s Consent Decree with the United States government that largely governs ASCAP’s licensing activities.

For information on the methods by which BMI royalties are calculated and distributed, you can find that information at <http://www.bmi.com/creators/royalty/533113>.

PROs pay their songwriters and publishers for US performances approximately 6 months after the end of each-month performance period. In ASCAP’s weighting

rules, as described in its *Distribution Resource Documents*, performance credits are used as units of measure based on the results from its survey of music performances. For example, a feature performance may be awarded one use credit. Fractional use credits may be awarded for compositions performed as a theme, jingle or as a background, cue, or bridge music.<sup>30</sup>

A broadcast network royalty payment example as shown in Table 2.38 might be a helpful illustration. The broadcast network distribution payments would take into account the *weight* of the broadcast station based on ratings, the *use weight* for the type of performance, the *strata* multiplier for the medium in which the performance takes place, the feature multiplier add-on to all television performances and time of day.

**Table 2.38** Example of ASCAP's Network Royalty Payment Formula

Strata	Use Wgt.	Stat. Wgt.	Credits	Credit value	Dollar value
150	.60 (Underscore)	1	90	\$6.43	\$578.70
150	.60 (Theme)	1	90	\$6.43	\$578.70
150	.03 (Jingle)	1	4.5	\$6.43	\$28.94

Source: Brabec and Brabec (2008, p. 307).

The result of all of these factors is the total number of credits generated for a performance that is later translated into dollar amounts. A credit value in dollar amounts is then computed separately by dividing the total amount of license fees available for distribution (less the cost of administration) by the total number of performance credits.<sup>31</sup>

## 2.13 Foreign Royalties Collection

The PROs have reciprocal agreements with performing rights organizations throughout the world. These agreements allow those foreign PROs to license the works of the US PROs and collect licensing fees on their behalf when the music is performed outside the United States. The CISAC, the International Confederation of Societies of Authors and Composers, organization works toward increased recognition and protection of creators rights worldwide. As of June 2008, CISAC numbers 225 authors societies from 118 countries and indirectly represents more than 2.5 million creators within all the artistic repertoires: music, drama, literature, audio-visual, graphic, and visual arts.<sup>32</sup> CISAC at their website says their main activities and member services are to:

- to strengthen and develop the international network of copyright societies;
- to secure a position for creators and their collective management organizations in the international scene;
- to adopt and implement quality and technical efficiency criteria to increase copyright societies interoperability;

- to support societies strategic development in each region and in each repertoire;
- to retain a central database allowing societies to exchange information efficiently;
- to participate in improving national and international copyright laws and practices.

## Notes

1. Coen (2008).
2. See [www.magnaglobal.com](http://www.magnaglobal.com). Magna is a unit of Interpublic. McCann Erickson is now part of the McCann WorldGroup and one of Interpublic's operating entities.
3. McBride (2009).
4. See GAO (2007) Report No. GAO-08-330R.
5. Based on B. Wieser's, January 2010 Advertising Revenue Forecast, [www.magnaglobal.com](http://www.magnaglobal.com).
6. See Fabrikant (2009).
7. See *Citadel Files for Bankruptcy Amid Harsh Radio Climate*, *Wall Street Journal*, 12/21/2009, p. B3.
8. GAO (2007).
9. See [http://www.ibiquity.com/hd\\_radio](http://www.ibiquity.com/hd_radio).
10. Brabec and Brabec (2008, p. 16).
11. See GAO (2004) Report No. GAO-04-700.
12. See GAO (2004).
13. See GAO (2004).
14. See <http://www.soundexchange.com>.
15. We will not go into the details of the many lawsuits discussed and analyzed elsewhere. The reader can do an Internet search using the United States District Court: Civil Action No. 41-1395 for cases related to ASCAP or visit the Copyright Right Board at [www.loc.gov/crb](http://www.loc.gov/crb) for the relevant proceedings.
16. See Dertouzos (2008).
17. See Table 3.1: *Why Cultural Goods Are Not Like Ordinary Commodities* in Grant and Wood (2004, pp. 42–60).
18. See [www.loc.gov/crb/proceedings/2005-1/rates-terms2005-1.pdf](http://www.loc.gov/crb/proceedings/2005-1/rates-terms2005-1.pdf).
19. See <http://www.loc.gov/crb/proceedings/2006-3/dpra-public-final-rate-terms.pdf>.
20. See [www.SoundExchange.com](http://www.SoundExchange.com) for further details not reported here.
21. See the September, 1, 2009, *Digital Briefs: Live365, CRB, Napster, Live Nation* by Anthony Bruno, [www.billboard.biz](http://www.billboard.biz).
22. See <http://www.ascap.com/licensing/licensingfaq.html>.
23. Sampling methods, music weights, and survey coverage described here may vary among PROs. Not everyone follows the same exact procedures in place at ASCAP.
24. See <http://www.ascap.com/about/payment/surveys.html> for detailed information on both the Census Survey and the Sample Survey.
25. BMI uses Landmark Digital Services LLC, its wholly owned subsidiary, for some radio performance survey data.
26. It is beyond the scope of this monograph to go into the distinguishing distribution and payment methods of each PRO. See Brabec and Brabec (2008) for a more extensive overview.
27. NARM is the National Association of Recording Merchandisers, [www.narm.com](http://www.narm.com).
28. See [www.mediaguide.com](http://www.mediaguide.com) for more information on Mediaguide. Competitors to Mediaguide include Landmark Digital Services LLC, a wholly owned subsidiary of BMI, and Nielsen Broadcast Data Systems (BDS).
29. See <http://www.ascap.com/playback/2005/winter/features/cuesheets.aspx>.
30. See *ASCAP's Distribution Resource Documents*, pp. 1–30 available at <http://www.ascap.com/reference>.

31. See, for example, <http://www.ascap.com/about/payment/royalties.html> for ASCAP's royalty calculation method.
32. See the International Confederation of Societies of Authors and Composers, [www.cisac.org](http://www.cisac.org).

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