Berkeley Journal of Entertainment and Sports Law

Volume 1 | Issue 1 Article 5

April 2012

The New Renaissance: A Breakthrough Time For Artists

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Recommended Citation
Steven C. Beer and Kathryne E. Badura, *The New Renaissance: A Breakthrough Time For Artists*, 1 Berkeley J. Ent. & Sports L. (2012).
Available at: http://scholarship.law.berkeley.edu/bjesl/vol1/iss1/5

Link to publisher version (DOI)
http://dx.doi.org/doi:10.15779/Z38RH1Q

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Cover Page Footnote
* Steven C. Beer is a Shareholder of Greenberg Traurig, LLP; Villanova School of Law, J.D. 1986 (Law Review); Washington University in St. Louis, (summa cum honore) 1981. I dedicate this article to my father, Seymour "Cy" Beer (1931- 2012), who always encouraged me to pursue a career in entertainment law. I would also like to thank my mother, Ronni Beer, my wife, Bonnie Landes Beer and my three sons, Alex, Max and Gabriel, for their inspiration, love and support. Finally, I would like to thank Kathryne Badura for her assistance in co-writing this article. ** Villanova School of Law, J.D. (cum laude) 2011; Villanova University B.A. (magna cum laude) 2008. I would like to thank Steven Beer for the opportunity to write this article with him and for giving me insight into the entertainment industry from his perspective. I would also like to thank Becky Peralta for her help and give a very special thank you to my loved ones who encourage and support me every day.

This opinion is available in Berkeley Journal of Entertainment and Sports Law: http://scholarship.law.berkeley.edu/bjesl/vol1/iss1/5

The New Renaissance: A Breakthrough Time For Artists

Steven C. Beer* & Kathryne E. Badura**

The world of entertainment is changing. Artists, authors, and other content creators now find themselves on the brink of a New Renaissance Paradigm of do-it-yourself creation, distribution and marketing. With new technologies and marketing strategies available to artists, the traditional brick-and-mortar corporate institutions that traditionally ruled over the entertainment world are losing their grip on the keys to the gates of show business success. The content creators themselves now hold those keys in their own hands.

This Article sheds light on this Renaissance Paradigm within the entertainment industry and what it means for artists, traditional corporate institutions, and the field of entertainment law. It first focuses on the decline of "middleman" corporate entities such as record labels, publishing houses, and film distribution companies; modern content creators are empowered by new technologies to take ownership of his or her own career. The Article then discusses how this New Renaissance Paradigm allows for artists to explore new areas of creativity. Now that they no longer must abide by the constraints of institutional middlemen, content creators are free to follow and express their own visions, contributing to the formerly limited sea of widely accessible creative content. Aside from how the New Renaissance Paradigm affects creators and traditional institutions, the Article examines how these new marketing and distribution strategies affect the consumer (or content appreciator), bringing them closer to the artist and giving rise to a form of artistic patronage. Finally, this Article analyzes how these changes to the entertainment industry will affect the practice of entertainment law and calls upon attorneys to adapt to the changing times to best protect and represent their clients.

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I. INTRODUCTION

Welcome to the New Renaissance. There has never been a better time to be a content creator or an aspiring professional within the creative arena.

Since the early days of the European Renaissance,[1] and for centuries prior, artists depended on the support of affluent patrons and established institutions for survival.[2] Without the support of these parties, artists would not have had the means to create or share their works with the public. Without these vital third parties, a sustainable career in the arts was virtually impossible. Twentieth century artists were no less dependent on established third parties. Like the proverbial tree falling in the forest, artists went unknown without the backing of record labels, film distribution companies or publishers to finance the creation, marketing and distribution of their creative works. In essence, if such middlemen were not around to "hear them," they made no sound and their artistic voices were lost.

Today, these once staunch institutional walls are crumbling. Amidst the rubble we come upon the framework of a New Renaissance Paradigm through which artists themselves can build the framework on which to sustain their careers. In this new arena, the traditional model may endure for some time but will eventually fade into a shadow of its former self. Old practices will still exist to service a narrowing sector of the industry, but the consumers for the traditional market are aging and will no longer support that old regime to the same degree.

This does not, however, mean that there is less art. It is quite the contrary. In its place is a new "universe," in which some see chaos, but others see the beginnings of a maelstrom of new ideas, visions, and sounds. We are no longer limited by institutional constraints. New and different players have been introduced into the mix of the entertainment industry and with them enter a multitude of new business models and marketing techniques that help pave the way

1. The Renaissance period in Europe is generally held to be the period following the Middle Ages, spanning from the 1300s to the late 1800s. *Renaissance*, ENCYC. BRITANNICA ONLINE, http://www.britannica.com/EBchecked/topic/497731/Renaissance (last visited Feb. 23, 2012).

2. JONATHAN K. NELSON & RICHARD J. ZECKHAUSER. THE PATRON'S PAYOFF: CONSPICUOUS COMMISSIONS IN RENAISSANCE ART 18 (2008) ("In many Renaissance commissions, intermediary agents played an extremely important role as liaison between patron and artists.").

for a content creator's success.[3]

The variety of paint colors in the palette has never been greater. As entertainment attorneys and professionals, it is now our responsibility to adapt to these new players and business models and to understand the ways in which we can best represent our clients and help them forge their own paths to success. We should seek to support this New Renaissance Paradigm in which content creators can explore new avenues of creativity and present their work directly to their audiences.

II. DEFINING SUCCESS: THE DECLINE OF THE INSTITUTIONAL "MIDDLE MAN"

Perhaps the most significant advance in the New Renaissance Paradigm is that content creators can now define their own success. They are no longer at the mercy of the major institutions that have traditionally dictated triumph and failure within the entertainment world. Billboard charts, box office results, Academy Awards, or New York Times' "Best Sellers" lists do not hold the same power over content creators that they once did. With their own visions of success, today's creators can devise a unique plan to achieve their artistic and career goals. They can avoid sacrificing their visions and the integrity of their work in order to fit the expectations of the established corporate institution. In this new world, the role of the institutional middleman is diminishing and the artist's key to sustainability is in his or her own hands.

Corporate institutions that controlled access to audiences, media and creative facilities at one time closely guarded the gates to success within any field of the entertainment world.[4] These institutions (record labels, film studios, distribution companies, publishers, etc.) carefully selected the few creators or works that they felt could be molded and tailored to meet their target audience's tastes. The "lucky few" selected by these consensus-driven institutions often faced extensive "tweaking" and "revamping" in order to fit the market's demand. Creative content produced by artists in the entertainment world was commoditized and controlled by these major institutions. With so much at stake, content creators frequently lost much creative control of their work and found their paths to success forged for them. Their publishers, labels, film studios and distributors dictated how, when, where and to whom their product would be marketed and what the artistic content would contain.

Corporate motives and profit concerns drove (and still largely drive) these institutions' heavy-handed roles as middlemen. The major record labels, large

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3. *See generally* Jeff Spevak, *Local Musicians Find a New Way of Funding*, DEMOCRATANDCHRONICLE.COM (Jan. 22, 2012), http://pqasb.pqarchiver.com/democratandchronicle/access/2566515261.html?FMT=ABS&FMTS=ABS:FT&type=current&date=Jan+22%2C+2012&author=Jeff+Spevak&pub=Rochester+Democrat+and+Chronicle&edition=&startpage=n%2Fa&desc=New+wave+of+funding (reporting how the internet and new technologies have affected the indie-music industry and strayed from traditional major record label corporate models).

4. *See id*. (referring to these corporate institutions as "barriers-to-entry" and explaining how decreased costs of self-producing and promoting eliminate the need for middle-men).

publishing houses and film studios of the entertainment industry are, after all, large international corporations. The officers and directors of these corporations must answer to shareholders, investors, and parent companies focused on maximizing returns on their investments. Because of this financial priority, these institutions are reluctant to take risks by investing in a wide variety of content or artists that, although remarkable and innovative, do not fit the commercial mold. By playing it safe and producing artists and content that are sure to sell, these companies reduce their risk of loss, thus satisfying shareholders. They hedge their investments by following the "tried and true" avenues of promotion, distribution and development in order to satisfy the tastes of audiences. Thus, due to this strict profit-driven approach to supporting content creators, major institutions maintain almost total control over creators' careers and paths to success.

In this New Renaissance Paradigm, however, the power has shifted back into the hands of creators. New developments in technologies have led to an overhaul of the traditional model for a successful career and created a situation in which the distributors, labels and publishers no longer control access to audiences and resources. Unrestricted by traditional economies of scale, content creators today can forge new ground while building customized success plans encompassing new modes of marketing and distributing their products. The Internet, with the advent of creative and social media outlets such as Facebook, and YouTube, has enabled content creators to reach a much wider audience than that which a traditional label or distributor would have targeted. The ease of using these resources for marketing and distribution purposes gives content creators a means by which to promote their material on their own. They choose where, when, how and what they disseminate to the masses. The new horizons of "DIY" (do-it-yourself) publishing, production, and distribution allow creators, for the first time in history, to define success on their own terms.

In addition, with the decline of the middleman, content creators in all entertainment realms can see greater returns on their investment in their careers. By having direct access to their audiences and personal control over their messages and material, there is no need to account for the institutional middleman's "cut" of the profits. Furthermore, they never have to worry about being "dropped" by their publisher/distributor/label or not being given enough attention by their respective institutions. With their own personal goals of success in mind, the content creators direct their own careers, generating original material and introducing untapped audiences to uncharted creative territory.[5]

III. CRITICAL VISION: EXPLORING NEW HORIZONS OF CREATIVITY

As in the days of DaVinci and Michelangelo, creativity in this New Renaissance Paradigm is beginning to flow unhindered by the need to commodit-

5. *See id*. (describing how new models of self-promotion and distribution have allowed artists to be more prolific and original in their music without control of major labels).

ize and satisfy popular taste. As mentioned above, content creators no longer have to worry about producers, record labels, or editors altering their content to fit the target market, inevitably diminishing the artistic integrity of their material. Because the need to cater to institutional middlemen has been eliminated, content creators no longer must "follow the leader" and conform to mainstream or cookie-cutter music, films, or literature styles that have proved commercially successful in the past. Creators themselves can be the leaders, attracting new audiences and taking them on the journey without asking permission from gatekeeper corporations.

The range of available artistic content within the entertainment industry is also expanding. With no shareholders or corporate hierarchy to respond to, content creators have more freedom to take risks with material. There is less fear of losing money by experimenting with new ideas and formats than there would have been under the burden of the labyrinthine accountings of the traditional institutional model.[6] Genre-breaking music, writing styles, or filming techniques that may not have been conventionally rewarded under the old regime can achieve success in new circles given artists' self-curated control over how and to whom content is presented. If targeted audiences fail to respond to the creator's pioneering new material, there is little loss to recoup, thus little worry of risk.

Content creators utilizing this new model of self-development and distribution have met with much success. Actor-turned-director, Adrian Grenier, took this self-supporting route when creating his documentary "Teenage Paparazzo." He himself handled the direction, production, marketing, and distribution of the film, which became one of the most commercially successful documentaries of 2010. Even established content creators, such as director Kevin Smith, are utilizing this new DIY method of producing content. His feature film, "Red State," was produced and distributed without the help of a major production company or distributor. Like these two well-known creators, hundreds of others are taking their destinies into their own hands and generating the cutting edge content that they always hoped to share with the public.

In this New Renaissance Paradigm, content creators are no longer required to make artistic compromises to accommodate corporate requirements that are restricted by economies of scale. The need to satisfy mainstream audiences in order to survive has diminished. Creators are now free to discover new audiences for fresh, innovative creative content.

IV. AUDIENCE SUPPORT: FORTIFYING THE LOYALTIES OF CONTENT APPRECIATORS

This New Renaissance Paradigm benefits consumers as well, thus produc-

6. *See id*. (explaining how the costs of producing and marketing music have dropped significantly with new technologies and do-it-yourself strategies).

ing a residual value for content creators. Because consumers today have easy access to more, and new, genres of music, film, literature and art, creative content no longer needs to be conscribed to fit a narrow category on a bookshelf or in a record store.

Technology makes it easy for consumers to search, explore, and discover the content creators' creative works. The ease of technology, such as free streaming and downloads, often makes it unnecessary that people "consume" the content in the traditional sense, thus turning them into content "appreciators" rather than "consumers." Content appreciators can sort through the abundance of content to produce a personalized list of material that perfectly suits their individual tastes. Without the constraints dictated by established entertainment institutions, audiences are free to satisfy their personal preferences. Content appreciators are no longer forced into generalized target market molds, and they, too, can freely express themselves through the films, books, and music that they enjoy.[7]

Some may believe that there is a double-edged sword to this new abundance of personalized content. For example, music fans are faced with a great deal of "noise" clogging the Internet. A supersaturated market may lead to consumer frustration, as they must sort through all of the unpleasant content to find the "gem" that suits their tastes.

Luckily, the entertainment industry has caught on to this conundrum. Guiding lights have emerged to help consumers navigate the digital morass. Bloggers weed through content from all outlets, extolling the quality of some and berating others for lack thereof. Music streaming sources such as Pandora carefully choose artists with sounds similar to those selected by the consumer to create customized playlists that are likely to suit that particular person's tastes.[8] Even fans themselves engage in this selection task by sharing their favorite content through social media. They make recommendations via newsfeeds, tweets, or other postings, making the most of these new platforms in order to share artists they love.

The same innovative technologies that bring the fans more content also bring fans closer to the artists. Through social media and avenues such as their own websites and blogs, content creators connect with their fans on a more personal level. They can blog about their travels on tour, share insights into the motivations behind a scene in a film, or simply broadcast their musings on topics completely unrelated to their work. For example, recording artist Justin Bi-

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7. Aside from the personalized lists of music streaming programs, fans can now interact with the artists they love by offering their personal input to artist's creative process regarding new works. *See id*. ("Some of these pledge drives are offering Skype time with the artist, or the artist will send pieces of music that aren't quite done, so you get more involved in the process. It's kind of exciting for the hyper-fan.").

8. *See About Pandora*, PANDORA, http://www.pandora.com/corporate/ (last visited Mar. 7, 2012) (describing Pandora's process of selecting music similar to consumers tastes to expose them to new artists).

eber has over 18 million followers on Twitter, who read his daily tweets about the joys of his family life, his love for his fans, and his progress in the recording studio.[9] All of these new direct avenues not only create unparalleled access to breakthrough innovative content for the fans, but also help turn Bieber into a "real person" in their eyes, rather than a semi-deity placed on a pedestal by the publicity efforts of entertainment institutions. Fans get to know him on a more personal level without the traditional middleman in place to filter and craft an image for the fans. Personal connections such as this allow content appreciators to relate to musicians, authors, or directors, creating stronger ties and feelings of loyalty to creators and their work.

The development of a direct relationship between content creators and audiences has led to the resurgence of a form of patronage for artists in the entertainment industries. The two parties become artistic and emotional partners as content creators build their own paths to success in his or her career. Content appreciators are frustrated by the traditional commoditized market of the entertainment industry and yearn for something beyond the mainstream.[10] Thus, when an appreciator discovers an artist he or she truly relates to or enjoys, he or she is more apt to support that artist in whatever way possible in order to ensure that that artist continues to produce the material the appreciator so enjoys. Like the Medicis of Italy, today's broad audiences can also serve as patrons to the arts. Appreciators can directly fund artists and their projects through websites such as Kickstarter and IndieGoGo. They can contribute as little or as much as they desire to support and sustain the artist. Independent filmmakers and musicians today are raising tens of thousands of dollars by this phenomenon known as "crowdfunding".[11] Through the donations of content appreciators via crowdfunding, content creators can raise the money they need to keep creating, while still maintaining their autonomy.

As a trade-off, by giving money or other support, appreciators have access to more interesting and provocative content. The musical artist Julia Nunes is a prime example of the potential for success in this new patronage regime. Since 2008, Julia has posted numerous music videos on YouTube and Facebook and developed a devoted fan base. To finance her CD project, she amassed a following of over 1,680 backers and raised over $78,000 on Kickstarter for her

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9. Posting of Justin Bieber, @JustinBieber, to https://twitter.com/#!/justinbieber/status/186230962391224320 (Mar. 31, 2012, 16:18) ("im about my fans. i don't let them down. i don't leave them. im there for them the way they r there for me. #FAMILY").

10. *See generally* Spevak, *supra* note 3 (quoting fans' desire to hear more and new music in contrast to record labels' desire to simply produce "more singles").

11. *Crowdfunding*, CROUDSOURCING.ORG, http://www.crowdsourcing.org/community/crowdfunding/7 (last visited Mar. 9, 2012) ("Financial contributions from online investors, sponsors or donors to fund for-profit or non-profit initiatives or enterprises. Crowdfunding is an approach to raising capital for new projects and businesses by soliciting contributions from a large number of stakeholders following three types of crowdfunding models: (1) Donations, Philanthropy and Sponsorship where there is no expected financial return, (2) Lending and (3) Investment in exchange for equity, profit or revenue sharing.").

new album alone, over four times her original goal amount.[12] Nunes declined offers from record labels seeking to market and distribute her music. Her close affiliation with her fan base enables her to stay true to her sound, present herself as she prefers and create her own overall path to success.

The New Renaissance Paradigm empowers content creators to follow their unique artistic vision and forge sustainable lifestyles. This new form of patronage allows content creators to continue to be pioneers in the industry and maintain the integrity of their vision. They are able to focus on brewing a cauldron of new ideas while raising the funds that enable them to create and produce material.

V. THE "NEW" ENTERTAINMENT ATTORNEY: WHAT THESE CHANGES MEAN FOR THE LEGAL FIELD

The New Renaissance Paradigm challenges media and entertainment attorneys to redefine their roles and responsibilities. The changing relationship between artists and content appreciators leads to a broad new landscape for lawyers to navigate in representation and advocacy. In addition to customary contracts with major publishers, labels or other entertainment institutions, media attorneys will need to address issues related to crowdfunding and self-distribution. With the power now in the hands of content creators, attorneys will help develop new business structures that best protect the rights of the creators within the emerging commercial digital universe.

Armed with the experiences of their predecessors, attorneys can take traditional practices and apply them to fit the New Renaissance Paradigm. The DIY phenomenon will compel attorneys to draft and negotiate agreements that are specially tailored to the needs and desires of their content creator clients and support the goal of forging unique success plans for artists. The days of the standard recording or distribution contract are coming to an end, and no longer will attorneys be forced to wade through encyclopedia-length documents intended to be "one size fits all" deals for all artists. There will be more interaction and personal communication between clients and attorneys. The motive behind the document drafting and negotiation process will now be based on what artist-clients want, rather than how to take what corporate institutions want and make it more "artist friendly." Client counseling skills must be refined so that attorneys can understand clients' desires, enabling them to tailor documents to provide for their clients' particular visions of success.

This New Renaissance Paradigm calls for the emerging classes of the media and entertainment fields to be leaders through this uncharted landscape. We, as media and entertainment attorneys, must take the traditional practices

12. *See* K.C. Libman, *YouTube Star Julia Nunes Balances College, Career*, ARIZ. DAILY WILDCAT, (Nov. 16, 2011), http://www.wildcat.arizona.edu/index.php/article/2011/11/youtube_star_julia_nunes_balances_college_career (noting Nunes' initial fundraising goal and amount actually raised through Kickstarter).

we have learned, avoid the mistakes of generations prior, and, with a moral purpose, apply our skills and innovative thinking to this new model of the entertainment industry. The creative world is flourishing with this abundance of new and diverse material. It is our job to adapt to the changes in the industry and ensure that we protect and reinforce this New Renaissance Paradigm.