

Beethoven and Contemporaries Save a Community in Crisis

An Analysis of the Techniques Early Publishers and Composers
Employed to Protect Their Music

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Our present community, comprised of artists, businessmen, lawyers, and consumers, has been blessed with the opportunity to fundamentally and lastingly alter the business paradigm of composition, music performance, recording, and sales to the greater benefit of all involved. We face challenges from not only technological advances that have made the pirating of music in all forms easy to achieve and the derivatives of the practice readily accessible, but also overreaching and bloated copyright legislation, inadequacies in formal musical education, and the whole host of consequences these problems produce. Solutions to these troubles may at first appear complex or simply impossible. This is not the case and should not deter anyone, for all change begins with a slight shift soon increased and intensified to a point of inevitability. Turning to our rich musical history, we find these shifts have already begun and are the basis for the beginnings of solutions that will insure a better and more vibrant community. Though much work lies ahead (the absence of which would undoubtedly produce an adventure that pales in excitement), our past is the point from which to begin. This paper is an informal exploration of the use and development of profit-maximizing and intellectual property-protecting techniques used by eighteenth, nineteenth, and twentieth-century publishers, composers, and performers as well as a study of the applicability of the techniques as possible solutions for our community's current challenges and conflicts. We will first consider the early methods of earning revenue from a work, then the techniques used to protect a work, and conclude

with an analysis of the impact education had upon musicians and their careers.

Let us begin with opera publishers in a time devoid of codified and enforced copyright law. Many eighteenth-century publishers created a primitive intellectual property protection system through limiting the number of printed copies they distributed.¹ The practice was first developed by aristocrats who ordered limited printings of a commissioned work for celebratory occasions.² The practice was later adopted by music publishers who would release to the public the vocal parts of a score while withholding the instrumental parts. Only once the publisher had received payment for the rental of a work by an opera company would he temporarily release the remaining instrumental parts and full score.³ This way these publishers hoped to limit the number of illegitimate copies and secure payment from performers. Indeed, not only did this method of intellectual property protection ensure the publisher received compensation, but it also enabled opera companies and musicians to audit a work prior to fully investing in its performance.

Publishers were not the only eighteenth-century members of the artistic community to develop methods of limiting the use of and maximizing the economic return on creative works. Their contemporary composers, too, searched for ways to ensure payment for a composition. For example, Joseph Haydn

¹ Stanley Boorman et al., "Printing and Publishing of Music," *Grove Music Online* (19 Mar. 2009), 11.

² Stanley Boorman, "Bibliography of Music," *Grove Music Online* (28 Feb. 2009), 15.

³ Stanley Boorman et al., "Printing and Publishing of Music," *Grove Music Online* (19 Mar. 2009), 1.

strived to simultaneously publish his works through multiple publishers, each from a different country or location.⁴ Not only did such an approach to musical distribution allow him to share his work with a larger world audience, but it also discouraged the production of pirated copies. By collaborating with multiple publishers in varied locations, Haydn removed the “necessity incentive” for a publisher to provide and a consumer to purchase pirated copies of a work (for if a publisher is provided the work by the composer, he need not print illegal copies in order to fulfill demand). This approach to publication also created a local interest dedicated to preventing the creation and distribution of pirated and competing copies (as the local publishers could much more easily dissuade such action through local authorities than could a composer a continent away). We must take note that in the eighteenth century it was possible to remove the “necessity incentive” to pirate, for regardless if a work was genuine or pirated, the consumer still needed to pay. This is a contrast to present-day circumstances in which free copies of a work are illegally available for download.

In the nineteenth century, Frederick Chopin utilized methods similar to Haydn’s, though to different ends and under different circumstances. Because his works were not protected by a formal copyright agreement in France, Chopin published his works simultaneously with multiple foreign publishers in order to ensure his works were protected under foreign copyright law. In its early forms, copyright law was primarily concerned with where a work was first published and that location’s proximity to the jurisdiction in which the grievance was brought. Thus Chopin, by publishing his works on the same date in several countries and territories, maintained copyright privileges on an international level, at least in theory. If, however, the work were published in a particular territory prior to being published in another, Chopin forfeited his copyright privileges in all territories of subsequent

publication.⁵ While also effectively securing that which Haydn secured (the distribution of a work to a larger audience), Chopin utilized this technique more to counter the inadequacies of early copyright laws rather than to combat piracy in the absence of such laws.

In addition to Haydn and Chopin, Beethoven used a similar technique in the nineteenth century in order to receive a double commission (usually from a publisher in Vienna as well as in Britain). In such an instance, both publishers owned the rights to a work within their territory and Beethoven relinquished all subsequent claims of ownership.⁶

Let us examine now whether it might be possible to apply these methods of protecting a creative work to present circumstances. Might we not benefit from blending limited distribution and localized, simultaneous distribution? The answer is, simply, yes. We can apply a myriad of subtle tweaks to our present music sales’ business model. In fact, Apple’s iTunes is already using the eighteenth-century technique of allowing the consumer to preview a song prior to purchasing it by providing a thirty second clip for free. Yet another example is Radio Head’s 2007 album *In Rainbows*, when the group removed the incentive to pirate by providing consumers the album in a free digital download format and permitting users to choose the price to pay (including nothing). But what of the larger artistic community? Might we devise an application of these techniques to the community as a whole? If we shift from the one-size-fits-all paradigm and move to create a specialized distribution network reliant on contrasting markets while partnering with institutions in these markets to disseminate creative works, we can limit a work’s availability (as did our predecessors) and thus diminish the presence of pirate copies. Tailoring distribution services to such entities as

⁴ J. Peter Burkholder, Donald J. Grout, and Claude V. Palisca, *A History of Western Music* (New York: W.W. Norton & Company, 2006), 530.

⁵ Jeffrey Kallberg, “Chopin in the Marketplace: Aspects of the International Music Publishing Industry in the First Half of the Nineteenth Century: Part I: France and England,” *MLA Notes*, Second Series, Vol. 39 (Mar., 1983), pp. 535-569.

⁶ Barry Cooper, *The Beethoven Compendium* (Ann Arbor: Borders Press, 1991), pp. 91-93

universities, high schools, and office spaces and providing to the individuals of these entities music in digital rights management (DRM) free forms that are playable on portable music players, can potentially remove the entire incentive to pirate. Such a model would be paid for by the various organizations in the form of a blanket fee (costs inevitably passed on to the members of these organizations). Such a business model is not without precedent. Ruckus.com provided such a service to university students for a period of time, albeit with more restricted terms of use (users could not play the music on their portable music players nor fully utilize the music because of DRM restrictions). Ruckus.com has since shut down.⁷ However, should we create such a paradigm and provide the creative works to the consumer in forms free of restrictions, we might rightly find success, as did our predecessors.

Better protecting and distributing to larger audiences today's creative is but a fraction of the change we must achieve. Having seen the ways our predecessors protected themselves and their creative works and having explored the possible present applications for the techniques they developed, let us now turn to the laws that govern us and the use of our works. It is easy to see that our legislation as it currently stands in the United States is both bloated and overreaching. In the hopes we may return our copyright laws to their past and true purpose, let us shift our focus to the evolution and history of the laws surrounding music and entertainment. By the seventeenth century, early laws governing the use of creative works were present but were focused primarily on repressing undesirable political views as well as earning the king additional revenue.⁸ In fact, in England it was the king who authorized individuals with the power to print music as well as other creative works. Known as Royal Patents, these privileges essentially created a monopolistic market in which one publisher

provided the community with all of its printed material.⁹

Copyright law upon which we base our current legislation first developed in Great Britain in 1709 and gave copyright to books and music for a duration of 28 years.¹⁰ It was, however, not until the late eighteenth-century that it was first used by the English publisher Francis Broderip to protect music.¹¹ The passage of further legislation in 1814 extended copyright duration to the longer of 28 years or the life of the author and, again in 1842, provided protection for the longer of 42 years or the life of the author plus 7 years.¹² Since that time, the duration of protection has been dutifully extended and currently lasts the life of the author plus 70 years (amended in the United States with the passage of the Sonny Bono Copyright Term Extension Act of 1998).

The effects of codified copyright legislation were immediately apparent, benefiting music publishers most notably. However, enforcement was difficult and piracy continued to abound.¹³ It was not until the later half of the nineteenth-century that copyright laws began to be effectively enforced.

We are now better prepared to ascertain and consider the original purposes of copyright law as well as how we may reform present legislation. We may quickly disregard the politically motivated laws of the seventeenth-century, for their incorporation into our present is not a step in the right direction. We find we are left then to conclude monetary gain to the fullest extent was the true intent of early copyright law. The actions of both kings, lawyers, and publishers have confirmed this assertion (the king wished to expand his wealth, the lawyer wished to extend the reach of the laws, and the publisher wished for the work to earn revenue perpetually and, thus, live on). Yet in its earliest forms (what we will assume to

⁷ Rafat Ali, "College Online Music Service Ruckus Closes Down," *Washington Post*, Feb. 7, 2009.

⁸ Peter Kleiner, et al, "Copyright," *Grove Music Online* (Mar. 19, 2009)

⁹ Boorman, et al, "Printing and Publishing of Music," *Grove Music Online* (19 Mar. 2009)

¹⁰ Kleiner, "Copyright,"

¹¹ Boorman, "Printing and Publishing of Music,"

¹² Kleiner, "Copyright,"

¹³ Richard Middleton and Peter Manuel, "Popular Music," *Grove Music Online* (Feb. 24, 2009), p .2

embody the true intent of the authors), copyright law protected a work for the smallest amount of time necessary for one to earn back his investment in the creation of a work. It was not intended to last the duration of the author's life nor was it intended to extend for decades past that life (for surely then the legislation would have reflected such). But how long does it take to earn back one's investment in the production of a creative work in our present world? We cannot prescribe a simple one-size-fits-all formula. Instead, might we not amend our current legislation to provide the author (be it an individual, a group, or a corporation) with lifetime protection so long as the work is continually used? If not reproduced for monetary gain within a decade of its last release, copyright protection would be forfeited and the work would enter the public domain. In so doing, we not only reaffirm our commitment to allowing an individual/entity to earn back an investment of time so long as can be done to the benefit of the author, but we also ensure a work enters the public domain at an appropriate time.

In order to insure the change we begin today persists in a positive form, we must invest in our present and future generations' education. Our most noble efforts of reform will be without consequence if a more informed body of our community is not simultaneously fostered. Turning again to our past we find artists heavily invested and involved in the intricate facets of their own careers. Indeed, we find Beethoven corresponded extensively with his publishers and personally endeavored to protect his works and reputation through the use of contracts. For example, in a letter to George Thomas on October 1, 1806, Beethoven writes:

I hope that you will find my explanations just, and of such a kind as will probably enable us to come to a definite understanding. In this case it will be well for us to draw up a proper contract, of which you might be kind enough to have a duplicate copy made,

which I would send you back with my signature.¹⁴

By remaining actively involved in the management of and the decisions surrounding his career, Beethoven was able to minimize misunderstandings (the root of countless lawsuits) and lost profits. Because of his informed position, Beethoven was also able to clarify the ownership of his works through his correspondences. In fact, in a correspondence to Breitkopf and Haertel on November 18, 1806 Beethoven created contract parameters similar to those of our modern work-for-hire agreement.

It is understood that the works which you receive from me, or which I sold to you, also belong to you alone, vix., are entirely your property and have nothing in common with those sold to France or England or Scotland – only I must reserve to myself the liberty of selling other works of mine to the above named countries.¹⁵

Beethoven's active career-involvement also enabled him, in some cases, to counteract the pirating of his works. In another correspondence to Breitkopf and Haertel written on November 13, 1802, Beethoven writes:

Know then, that *arch swindler* Artaria...begged the Quintet from Count Fries to reprint [my work which I have licensed to you],...In my zeal to save my honour, and to prevent, as speedily as possible, any loss to you, I offered these contemptible fellows two new works if they would suppress the [pirated] edition...they protested that whatever was published by your firm would be reprinted by them...¹⁶

¹⁴ Ludwig van Beethoven, *Beethoven's Letters* (NY: Dover Publications, 1972), p. 62.

¹⁵ Ludwig van Beethoven, *Beethoven's Letters* (NY: Dover Publications, 1972), p. 64.

¹⁶ Ludwig van Beethoven, *Beethoven's Letters* (NY: Dover Publications, 1972), p. 43

Beethoven did eventually succeed in thwarting this instance of piracy, no doubt a result of his understanding and involvement in contracts and the vigilance with which he attended his career. Other composers who involved themselves in their careers, specifically in the creation of their contracts, include Robert Schumann and Joseph Haydn. Schumann personally negotiated a new, second contract after his initial document failed to properly address the specific needs of his nineteenth-century music journal, *Neue Zeitschrift für Musik*.¹⁷ Haydn, too, composed his own contracts that, though simple in nature, adequately prevented misunderstandings, law suits, and lost profits: “I acknowledge to have received seventy pounds [from William Forster, London publisher] for 20 symphonies, sonatas... composed by me.”¹⁸

The career-oriented artist is not without precedent. Yet the overwhelming majority of our generation’s artists do not actively manage their careers in an educated fashion. We can attribute this trend (as well as the tendency of the public to pirate) to blatant ignorance caused by outdated curricula. Data collected from a recent Artist Rights Workshop (attended by musicians as well as by university students, alumni, and faculty of other fields) reveals an alarming deficiency in the knowledge of the laws and business practices surrounding artists and their creative works. When asked to list the elements necessary to prove infringement of a creative work, only three percent of respondents were able to provide a derivative of the correct answer (prior access to the work and a similarity between both works). And when asked to list the two types of copyrights, only eight percent of respondents correctly replied (performing arts and sound recording), and only five percent could list the five protections provided by registering a work with the Library of Congress. Such deficiencies of knowledge are easily remedied through education and training and, in fact, following the educational portion of the

survey, participants answered follow-up surveys with remarkable increases in correct replies (increases of up to 79 percent).¹⁹

But let us consider how we might promote a more educated musician and artist. Turning first to conservatories and the curricula of soon-to-be professional musicians, a required course dedicated to introducing musicians to the laws governing them and their works and to providing young musicians with the tools to better protect themselves and their works would do much to reverse the current and prevailing trend. It is recognized that the curriculums of performance, education, and composition majors are heavily loaded and do not permit many (if any) “elective” courses. Yet a course as we might propose need not meet more than four to five times during the term in order to be successful. Indeed, the dramatic increases exhibited by participants following the Artist Rights Workshop were the result of a mere three hour’s work. Imagine what could be accomplished in fifteen. And the payoff of such a course is potentially enormous; the musician invested in personally championing and protecting her career will be better equipped not only to make informed career decisions, but also to safeguard against the hazards of the entertainment community.

The solutions that have been proposed herein are of sole speculative consequence and are instead intended to illustrate the possibilities of remembering both the musical achievements and business ethics of those from our past we admire. We may very well continue on our present path and succeed in doggedly pushing forward. Such action would surely yield security in the comfort of the known but would also simultaneously yield increasing conflict and unrest. Why not let us then embrace the opportunity before us and blend the innovative techniques of the past with the limitless possibilities of the future. Lasting change can be achieved. All that is required of us is the execution of innovating thought, creative application, and educated vigilance.

¹⁷ John Daverio and Eric Sams, “Schumann, Robert,” *Grove Music Online* (Mar. 19, 2009), p 2.

¹⁸ Barry S. Brook, “Thematic Catalogue,” *Grove Music Online* (Feb. 28, 2009), p 4.

¹⁹ Data collected from the 2009 Artist Rights Workshop held at the University of the Pacific, Stockton, CA.

