

Pandora Is Stepping into a Minefield with Its On-Demand Service

Companies: AAPL, AMZN, GOOG/GOOGL, P, TYO:6758, VIVHY

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Research Question:

Will artists and record labels cut reasonable direct license deals with Pandora so that it can become a broader platform and grow listener hours?

Summary of Findings

- [Pandora Media Inc.](#) (P) will be able to get the direct licenses from major record labels that it needs to launch an on-demand music service, but the negotiations will be tense and ultimately costly for the company, according to 13 sources representing labels, publishers, artists, competitors and industry specialists.
- Pandora is likely to have to fork over even more than the 70% of revenue that streaming music competitors [Spotify](#) and [Apple Inc.](#) (AAPL) pay, as the Big 3 record labels have a stake in Spotify and a less contentious history with Apple.
- Pandora also will have difficulty bringing the myriad independent artists, labels and publishers into the fold. Many continue to see the streaming music service as more predator than partner.
- Pandora's efforts to repair relationships with key industry players—[bringing back a CEO](#) with a music background, [selling concert tickets](#) through TicketFly and [helping artists connect with fans](#)—have done little to soothe long-running tensions over royalties.
- Independent publishers, labels and artists are likely to balk at a [proposed licensing agreement](#) for Pandora's on-demand service that it sent out this month. Without those groups on board, Pandora's launch of an interactive platform could thrust the company into the same legal quagmire that has Spotify [fighting class-action lawsuits](#) over copyright infringement, five sources said.
- Pandora may have been better off building its on-demand platform from scratch rather than [acquiring Rdio](#), one source said, especially if Rdio's existing licensing deals are not transferable.

Silo Summaries

1) Music Labels and Publishers

Pandora will be able to hammer out direct licensing agreements with the major record labels, but the labels have all the leverage in those talks. Music industry executives do not have a lot of goodwill toward Pandora. **Independent artists and publishers are unlikely to accept a proposed licensing agreement that Pandora sent out this month.** Improving [royalties paid by Google's YouTube](#) are a bigger concern than Pandora for top music executives. Pandora's Artist Marketing Platform holds promise for helping artists connect with fans, and its plans to promote and sell concert tickets through TicketFly could benefit artists.

2) Artists and Agencies

The major record labels are likely to negotiate direct license deals with Pandora, but artists think the current royalty system is unfair, which will make it difficult for Pandora to reach agreements with independent artists, labels and publishers. Pandora's model amounts to stealing from music creators, according to one source. Pandora's efforts to sell concert tickets through TicketFly could benefit some artists. However, **its Artist Marketing Platform will not be much help.**

3) Competitors

Pandora and the major record labels will be able to reach agreements on direct licenses, but the labels will have all the negotiating leverage. The biggest threats to pure streaming services like Pandora are companies like Google, Apple and Amazon. **Spotify has proven it can get consumers to sign up for a paid product and has passed Pandora for brand-name recognition.** Artists and labels continue to view Pandora in a negative light because of royalty rates.

4) Industry Specialists

Pandora will manage to complete direct licensing deals with the major record labels but will have to pay at least as much as Spotify does. Licensing discussions with independent labels and publishers will be even more contentious, and **Pandora's new on-demand service will open it up to copyright infringement lawsuits.** Pandora's acquisition of TicketFly makes sense as another revenue stream but will not help improve relations with artists. **Pandora may have purchased Rdio with the hope of using the company's direct licenses, but Sony's lawsuit suggests that is now unlikely.**

	Licensing to Favor Pandora	Pandora's Reputation	TicketFly Acquisition
Labels and Publishers	↓	→	→
Artists and Agencies	→	↓	→
Competitors	↓	→	↑
Industry Specialists	↓	↓	→

Background

Pandora is trying to broaden in its business with the [development of an on-demand music service](#), which it plans to launch later this year. Unlike its current radio-style product, an on-demand platform would allow users to choose specific songs and could have other new features, such as the ability to download songs for offline listening. Pandora [bought the assets of streaming music competitor Rdio](#) for \$75 million in November with an on-demand, subscription-based service in mind. The introduction of such a product could be key for Pandora's future. The company is proving that it can sell advertising for its free radio-style service—[its first-quarter revenue grew 29%](#) to nearly \$300 million—but its user base is stagnating. Its 79.4 million active listener base was down from 81.1 million in the previous quarter and nearly unchanged from a year ago. The company, which had \$1.16 billion in revenue in 2015, has set a revenue goal of \$4 billion by 2020.

To launch an interactive service, Pandora will need cooperation from artists and record labels, with whom the company has been butting heads for years over royalty rates. It also will need to sign direct licensing deals with the publishers that represent songwriters as well as with the labels that represent recording artists.

The three major record labels—Sony Corp.'s (TYO:6758) [Sony Music Entertainment](#), Vivendi SA's (VIVHY) [Universal Music Group](#) and Access Industries Inc.'s [Warner Music Group](#)—represent an estimated 80% of the music on the market. Pandora, which uses statutory licenses for its radio-style product, paid about 52% of its revenue for content rights last year. However, streaming music services with on-demand rights—such as Spotify and Apple Music—pay about 70% to the major labels.

Pandora has made several moves to position itself as more of a partner to the music industry than an adversary. Co-founder and former musician [Tim Westergren returned to the role of CEO](#) in March to spearhead the attempt to reinvigorate the company's brand, grow listenership and become profitable. Meanwhile, Pandora [acquired concert ticket seller TicketFly](#) in October for \$450 million. The company will begin making concert recommendations in its streaming app with the hope of selling tickets and benefiting artists, promoters and venues. Pandora also is building an [Artist Marketing Platform](#), which provides artists with information on streams of their recordings, including whether listeners responded with a thumbs up or thumbs down to their songs. A new feature called [AMPcast](#) allows artists to record messages to play for their fans, promoting upcoming albums.

Blueshift Research's [December 2014 report](#) on Pandora concluded that the streaming service was going to have difficulty growing its user base because so many competing options were fragmenting the audience. Longer term, the report cited competition from deep-pocketed giants like [Amazon.com Inc.](#) (AMZN), Apple and Alphabet Inc.'s (GOOG/GOOGL) Google.

Current Research

Blueshift Research assessed whether Pandora would be able to negotiate reasonable direct licensing deals with record labels and artists. We employed our pattern mining approach to establish five independent silos, comprising 13 primary sources (including two repeat sources) and three relevant secondary sources focused on a proposed licensing contract Pandora has sent to independent publishers and songwriters:

- 1) Music labels and publishers (4)
- 2) Artists and agencies (3)
- 3) Competitors (3)
- 4) Industry specialists (3)
- 5) Secondary sources (3)

Next Steps

Blueshift Research will monitor Pandora's negotiations with the major record labels and will further assess reactions from independent songwriters and publishers to Pandora's proposed licensing agreement. We also will garner feedback about what Pandora's on-demand product might look like and gauge its chances for success.

Silos

1) Music Labels and Publishers

Pandora will be able to hammer out direct licensing agreements with the major record labels, but the labels have all the leverage in those talks and will force Pandora to pay at least as much as Spotify and other direct licensees. Music industry executives do not have a lot of goodwill toward Pandora though that attitude also extends to other streaming services, one source said. A source with a major publishing company said the direct deal his company signed with Pandora in December included better royalty rates than Pandora has paid in the past, a sign that Pandora is becoming more conciliatory toward the industry. Independent artists and publishers are unlikely to accept a proposed licensing agreement that Pandora sent out this month, and the company will open itself to copyright infringement lawsuits if it goes ahead with its planned on-demand service, according to one source. Pandora also faces a difficult competitive landscape as Amazon and Apple's [iTunes](#) have established purchasing trust with consumers, while some industry executives are committed to helping Spotify grow. Improving [royalties paid by Google's YouTube](#) are a bigger concern than Pandora for top music executives. Pandora's Artist Marketing Platform holds promise for helping artists connect with fans, and its plans to promote and sell concert tickets through TicketFly could benefit artists but not record labels.

Key Silo Findings

Direct Licensing

- 2 of 4 sources expect Pandora and the major record labels to reach direct licensing agreements.
 - o Those 2 said the labels have the negotiating leverage to force Pandora to pay as much as Spotify and other streaming services.
- 1 said the music industry has a lot of distrust for Pandora, just as it does for other services like iTunes, Spotify and YouTube.
- 1 said Pandora is an important part of the music landscape despite concerns about royalty rates.
- 1, a representative of a major publishing company, said the direct deal Pandora signed with his company in December included more favorable royalty rates.
- 1 believes the proposed licensing agreement that Pandora sent recently to independent publishers is not going to be embraced and that the company will be open to numerous lawsuits if it launches an on-demand service.

Competition

- 2 said compensation from YouTube is a bigger concern for the music industry right now than Pandora.
- 1 said Amazon and iTunes have staked out strong positions because of purchasing trust with consumers.
- 1 said the industry is invested in helping Spotify gain traction.
- 1 said Spotify has been selling customer data.

Pandora's Future

- 1 thinks Pandora's attitude toward the music industry has become less aggressive, possibly a result of Tim Westergren's return. 1 said he is a fan of Westergren and Pandora's technology.
- 1 said tensions over royalty rates remain high, making labels and artists reluctant to deal with Pandora.
- 1 said Pandora's Artist Marketing Platform has promise but is not yet up to full speed.
- 1 thinks Pandora selling concert tickets through TicketFly could benefit artists but not labels.
- 1 said Pandora seems to be a bit disorganized since its acquisition of Rdio.
- 1, representing an independent Canadian record label, said Pandora is one of a number of similar services with an uncertain future.

1) CEO of an L.A.-based independent record label

Pandora can get direct licensing deals done with the major record labels but will pay similarly to what other streaming services pay, as labels and artists are not in any mood to give discounts under a compensation system that they deem inadequate. Despite those royalty issues, Pandora is a key part of the music distribution ecosystem, so it makes sense to work with them. This source is a big fan of CEO Tim Westergren and Pandora's music curating technology. Pandora can be an effective outlet for promoting artists though its Artist Marketing Platform is not yet fully functional. Amazon and

Pandora Media Inc.

iTunes have not delivered better quality or user experiences than other streaming services but have a big advantage with purchasing trust among consumers.

Direct Licensing

- “I don’t know why [Pandora] would have difficulty doing deals with the majors or [independent label networks like [Merlin](#), with a subscription model in place and concessions similar to those of the existing streaming radio services—unless it has something to do with the [labels’] ownership positions with Spotify.”
- “Many people involved in the process of creating music are no longer being compensated as we move into a streaming dominated industry. Producers, writers, etc., are not still being paid, [not to mention] the fractional value of streaming to the labels and recording artists, so I cannot believe better deals for the DSPs [digital service providers] are in the works.”
- “Until consumers are paying—directly or bundled into other payments—a fair market value for the product, it is going to be challenging to ask the creators or providers of the content for huge discounts.”
- “After 30 years [in the music business], it is still difficult for me to see Pandora as a radio station although I understand the analogy. I have been acutely aware of its popularity and convenience for some time although I was never a Pandora user myself.”
- “Upon learning more about the company, having artists visit the office and delving into their AMP program, I have come to the conclusion that they are an important part of our ecosystem.”
- “Naturally, I have problems with the income issues. My short-term solution was to try and maximize the existing revenue streams and steer fans towards solutions that benefit everyone. In short, if you can’t beat ‘em, join’ em.”
- “We currently license directly to [SiriusXM \[Holdings Inc./SIRI\]](#) through [Music Reports](#) as they promised higher payout. Unfortunately, the added administrative efforts cost more than the relationship is currently worth.”
- “[SoundExchange](#) is a good service with good reporting and conflict resolution. I’m still a little unclear where Music Reports vs. SoundExchange is going, but I do require a simplified paper trail for royalty accounting issues. Set up blockchain and you will have my interest.”

Competition

- “I have used streaming services since Rhapsody began. I then switched to Rdio and finally to Spotify. I have not really used Apple Music, [Tidal](#) or YouTube very much. I use Spotify radio and playlists when I’m looking for a curated experience.”
- “I use a [Sonos](#) stereo system at home, which requires me to use a Sonos app with Pandora and Spotify APIs, so the experience is limited, no matter which service I choose.”
- “I enjoyed Rdio’s user experience, but I hope Pandora’s [on-demand] offerings will be different as most of the DSPs certainly seem interchangeable at the moment. Pandora has strong artist outreach and an interesting and informative back end, so I hope they will succeed.”
- “Amazon and iTunes are leaders because they developed early online purchasing trust. They have not delivered the best experience on any level of quality, portability, user experience, recommendations, etc.”
- “It will be interesting to watch Amazon’s entrance to the field as they already have Prime in place for video streaming, and it’s hard to compete with free shipping on your Christmas gifts with your streaming service.”

Pandora’s Future

- “Having recently been to a conference with presentations by most of the DSPs, I am a huge fan of Westergren and [Pandora’s] [Music Genome Project](#).”
- “I like Tim Westergren not as a known business leader but as a thought leader. The Music Genome Project has led to great insight about music, and I imagine there is much more to discover.”
- “The study of music as mathematical, scientific, or language art is of great interest to me as its popularity and power are and have always been intoxicating. I don’t know what good Tim Westergren is to Pandora, but I do listen to what he has to say.”
- “Although I don’t recall Westergren as a prominent producer or composer when I worked at the majors as an A&R executive in the ‘90s, I do believe that Pandora is poised to grow and deliver a better service. I think their science is excellent, but so is Spotify’s [with the acquisition of Echo Nest](#). I believe online radio is viable when coupled with an on-demand subscription model.”

Many people involved in the process of creating music are no longer being compensated as we move into a streaming dominated industry. ... I cannot believe better deals for the DSPs [digital service providers] are in the works.

CEO
L.A. independent record label

- “Right now we actively engage in promoting through Pandora. Any service offering social sharing, personalized artist presence, networking, ticketing, etc., offers a leveraged opportunity to promote our product.”
- “Unfortunately, AMP is not up to speed yet, so it is difficult to turn around promotional opportunities in a timely fashion with coordination. I guess that’s the human element at work. The feedback we receive [through AMP] is interesting but tells little that we can act on to increase efficiency or productivity.”
- “Current record contracts don’t always offer the label the flexibility to get a return from our investments without crossing into ancillary revenue. So the TicketFly bonus is a benefit to the artist, manager and agent while the label is the one who invested in the recording and oversight of the digital pipeline. [Broader] deals are only of value to an artist if there is infrastructure set up to properly manage and support each ancillary revenue stream.”

2) Music producer and an independent publishing company owner

Pandora should be able to negotiate direct licensing deals with the major labels that will allow it to launch an interactive service. However, offering such a service opens to Pandora to significant risk of lawsuits from independent publishers and songwriters. The licensing language that Pandora has presented is terrible for independent publishers and songwriters as it attempts to block them from suing over unpaid royalties.

Direct Licensing

- “I do believe the major labels [will negotiate] direct deals with Pandora. However, just like [with] Spotify, those labels are able to negotiate in their benefit.”
- “With news [of [Pandora partnering with Music Reports](#) to handle licensing and royalties], I foresee a lot of legal implications that may make Pandora an easy target for tons of future lawsuits.”
- “Music Reports Inc. [MRI] is one of those companies that specializes in handling compulsory licensing duties for labels and streaming services. Pandora sent out a new mechanical license opt-in notice to indie publishers on June 7 that was billed as a license for the on-demand streaming service.”
- “The direct license [Pandora] sent out is drafted in a very tricky way that I truly believe can/will harm songwriters and indie publishers in the long run, while benefiting Pandora, MRI and its clients—labels and other streaming services—for a short period of time.”
- “[The direct license contract] benefits songwriters by dropping the auditing provisions tied to Pandora and the [CRB](#). Songwriters are not required to hire a specific CPA in order to audit Pandora [under terms of the proposed license].”
- “[But the contract] hurts songwriters and indie publishers by adding a ‘[Lowery Clause](#).’ Songwriters and publishers basically may be blocking themselves from ever suing Pandora/MRI over unmatched songs. With this said, the audit benefit I mentioned is pretty much worthless.”
- “A benefit to Pandora [of the proposed license] is they protect themselves from a lawsuit similar to the ones that David Lowery and [Melissa Ferrick](#) brought against Spotify.”
- “[However,] I foresee even more lawsuits against Pandora and MRI in the future unless the publisher/songwriter community is bullied into signing this awful direct license.”
- “Now that the indies are finally being considered to sign direct licensing deals, they are probably going to get stuck signing a deal they have no way of negotiating fairly for themselves.”

I do believe the major labels [will negotiate] direct deals with Pandora. However, just like [with] Spotify, those labels are able to negotiate in their benefit.

Music producer and owner of an independent publishing company

Competition

- “I’ve heard that Spotify in particular is doing tons of deals with their analytics—selling off data to other companies.”

Pandora’s Future

- “I own a couple of publishing companies, and I do admin for a bunch of different companies on their catalogs. I see on all the statements that the [royalty rates] are [fractions] of a penny. For example, I recently collected [a star performer’s] royalties on a new single from Apple, and let me tell you, it was very small money.”
- “[The labels and independent songwriters] are getting itchy feet about working with Pandora [because of the low royalty rates].”

3) Jonathan Simkin, co-owner of Canadian label [604 Records](#), which distributes through Sony Music

Music executives are more concerned these days with getting properly compensated by YouTube than about dealing with Pandora. They also are invested in trying to boost Spotify. The major labels tend to look at all distribution services with a distrustful eye, feeling that they are inadequately compensated by such platforms. Pandora is largely an afterthought among Canadian music listeners, and this label sees far less royalty revenue from Pandora than it does from Spotify and Apple. Pandora appears to be in some disarray since its acquisition of Rdio. Also, uncertainty surrounds Pandora's future as it is one of numerous similar services that could succeed or fade away.

Direct Licensing

- “The big topic on people’s minds [in the music industry] right now is YouTube royalties. You might have seen that Nikki Sixx from Mötley Crüe [wrote an open letter to Google](#) about this issue. I know that the majors are really not happy about the low level of YouTube royalties and feel that YouTube has built a huge business on the back of the music industry without properly paying for it.”
- “Spotify remains a big issue, though on that front the issue tends to be more about how to gain traction on that platform than about whether it is a good thing or bad thing.”
- “I talk to a lot of people at labels in the States. Honestly, if [Pandora] is a big issue, no one seems to be talking about it at all.”
- “The question you ask about how the majors feel about Pandora could be asked of other services, even accepted services like iTunes, and to a large degree I think the answers would be the same. There are definitely people in the industry who still think iTunes is more of a predator than a partner. And Spotify. And as mentioned, YouTube.”
- “That’s a pretty prevalent feeling these days in the music business, at least the major label music business. The reaction of major labels tends to be trying to co-opt these [services]. That’s why they bought into Spotify. That’s why they created [Vevo on YouTube](#).”
- “Major labels still have that tendency to feel like they deserve to own everything and get special treatment. The major labels tend to feel threatened by anything new. The reaction is always to either sue it or buy it or both.”
- “We make our content available on Pandora through Merlin. So frankly, we really don’t have a whole lot of direct contact other than on the content delivery side. And every so often some money shows up. It is nowhere near the kind of money we get from Spotify or Apple.”

Pandora is one of a number of middle-range digital music sellers that could just as easily go under as become essential and financially viable.

*Jonathan Simkin, co-owner
604 Records, Canada*

Competition

- “We are a label based in Canada, and I don’t think Pandora means here what it means in other parts of the world. Canada is all about Spotify and Apple Music and YouTube, of course. Pandora barely registers with the average Canadian, which was also the case for Rdio.”

Pandora’s Future

- “Because of [Pandora’s] recent acquisition of Rdio, it just seems like things are a little chaotic over there right now. I think we are at a minimum a year away from having any real understanding of what Pandora is going to mean in the market.”
- “Pandora is one of a number of middle-range digital music sellers that could just as easily go under as become essential and financially viable.”
- “Pandora, to me and I think to others at least in Canada, is just another one of those midlevel online music retailers. Nobody makes much money out of it, but everybody makes a little bit of money out of it so it just kind of gets grouped in with a lot of other similarly situated services.”
- “The majors’ willingness to play ball is obviously going to affect Pandora’s ability to survive. Anybody who wants to be a real player in that market clearly needs to have rights to the Beatles, the Rolling Stones, Green Day and all those other massive bands that are only available via major labels.”
- “The music business is so screwed up now that I am just happy that there is anybody selling music and paying royalties. I don’t overthink stuff. I still focus on A&R and making sure we create music that people like. That always seems to save us.”

4) Executive for a Big 3 international music publishing company

Music industry executives are starting to have a more favorable view of Pandora as the streaming service seems to be taking a less aggressive stance. The industry's ire is more focused on YouTube right now. Evidence of Pandora's improved attitude includes its willingness to hammer out licensing deals with publishing companies that improve royalty rates over those set by statutory licenses. Such a change, possibly related to the return of Pandora's former CEO, bodes well for its ability to complete licensing deals with the major record labels.

Direct Licensing

- "One of the significant aspects of the deal we did [with Pandora in December] is that there is now a dialogue between us and Pandora. The other [major] publishers, [which did similar deals](#), would probably say the same."
- "Prior [to the recent deals with publishers], the relationship with Pandora wasn't exactly a warm one. Certainly that has changed in recent times, to the degree that we were able to sit down with them and reach a deal."
- "The tone of Pandora has changed in recent times. At one stage it was a very aggressive stance they were taking, and now it seems more of one which recognizes that we're in this together. It's in our interests that Pandora is a success, but without the songwriters and what they create, then Pandora doesn't have a business."
- "One of the things that we want as a publisher, and probably all the other main publishers, is to be able to selectively withdraw rights from [ASCAP](#) and [BMI](#) so we can do direct deals with Pandora and other similar [streaming music] services. ... We can't just pull out digital rights so that we can do direct deals. We'd have to completely withdraw from ASCAP and BMI."
- "However, under the current rules, if both sides are willing to sit down and do a direct deal, that can happen. But we aren't able to trigger that. It has to be a Pandora coming to us and saying, 'We want to do a direct deal with you.'"
- "[The deal we did with Pandora last year], from Pandora's perspective, even though they can license all our songs via the compulsory license, they are aware—as we are—that this [review](#) [of the ASCAP and BMI consent decree] is going on at the Department of Justice, and we don't know what the outcome's going to be yet because the DOJ hasn't reached any conclusions. The sense is that [a decision] could be fairly near although for the last two years we've been saying 'within the next few months.'"
- "By reaching agreements with all the main publishers, Pandora now knows that, for the foreseeable future, the percentage of revenues they've got to pay for X period is this. Whereas if it was all hanging on the DOJ decision, that uncertainty would still be there."
- "It's no secret that Pandora is looking to expand outside of the U.S., because at the moment its only presence outside of the U.S. is Australia and New Zealand. And outside the U.S. the licensing market is very, very different. In Europe, for example, there isn't a compulsory [publishing] license. If Pandora wanted to launch in Europe, it would have to do direct deals with music publishing companies."
- "The [publishing deal we signed with Pandora] was specifically for the U.S., so I think [Pandora] would need to sit down with us again for anything new."
- "We never announced what the rates were [in the deal we did with Pandora], but they were very favorable [to us]—certainly improved. *Billboard* did a pretty good [piece](#) after the announcement speculating what the rate might be, and if you were to use that as a reference tool you'd be pretty close."

The tone of Pandora has changed in recent times. At one stage it was a very aggressive stance they were taking, and now it seems more of one which recognizes that we're in this together.

*Executive
Big 3 music publishing company*

Competition

- "The way music companies [including the labels] view Pandora has changed in recent times. It seems that the least popular service has moved. At one stage it was Pandora, then it was Spotify, and now all guns are pointing towards YouTube."

Pandora's Future

- "Music companies would have to concede that Pandora has had somewhat of an attitude change in recent times, and quite possibly you could at least partly attribute that to Brian McAndrews when he was CEO. I think we certainly sensed a different tone coming from them."

- “Our attitude has always been that Pandora is a great service. There were never any issues over the service. It was just the sticking point over royalties, and [our recent dealings with them] suggest that that’s changed.”
- “Among the repertoire companies—both publishing and record companies—there’s a recognition that Pandora is a very popular service with a huge audience but obviously still not in profit at the moment, so there’s issues there.”
- “Tim Westergren has taken the line that he’s a musician so he is on the side [of the creative community], but ultimately [musicians’ view of him] will come down to what Pandora’s stance is towards the record companies, the publishing companies and the songwriters. That’s what actually counts, the only thing that matters.”

2) Artists and Agencies

The major record labels are likely to negotiate direct license deals with Pandora, but the current royalty system for compensating artists is unfair and outdated, which will make it difficult for Pandora to reach agreements with independent artists, labels and publishers. One artist source believes music listeners should only be able to stream songs they already have purchased, while another source thinks artists should get paid based on a formula that accounts for the actual revenue generated by their songs. Pandora’s model amounts to stealing from music creators, according to one source, who said musicians are angry and will not accept the company’s proposed licensing agreement. All the major streaming services are viewed in a similarly negative light, one source said, while another expects streaming platforms to die out as consumers turn to podcasters and other “tastemakers” for music discovery. Pandora’s efforts to sell concert tickets through TicketFly could benefit some artists. However, its Artist Marketing Platform will not be much help in today’s marketing environment.

Key Silo Findings

Direct Licensing

- 1 of 3 sources said major labels will cut direct licensing deals with Pandora, but independent artists, publishers and labels will not.
- 1 said it is a waste of time for artists and labels to sign direct licensing deals with Pandora because the royalty system is outdated.
- 2 want the system for compensating artists to change.
 - o 1 thinks listeners should only be able to stream songs they have purchased.
 - o 1 wants artists to get paid based on the revenue their music generates.
- 1 said Pandora’s model is tantamount to stealing from artists, and the music industry is angry about it.
- 1 said Pandora’s proposed licensing agreement for independent artists is unacceptable and represents the status quo.
- 1 said Pandora is a legitimate outlet for artists to promote their music, but added that there are better options.

Competition

- 1 said streaming music services are going to die out as artists push their music directly to fans through social media and podcasters help curate music for listeners.
- 1 said all the streaming services are viewed with similar disdain by artists.

Pandora’s Future

- 2 said Pandora’s plans to promote concerts and sell tickets through TicketFly could benefit some artists, but 1 thinks the effort will help Pandora while not doing much for artists and fans.
- 1 doubts that Pandora’s Artist Marketing Platform is a relevant way for artists to market themselves.

1) George Johnson, singer/songwriter

The three major labels may do direct licensing deals with Pandora, though Mr. Johnson reported signs that Sony could take a hardline stance in negotiations. Independent songwriters, publishers and labels will be much more resistant to do deals with Pandora without higher royalty rates. Music creators do not like Pandora’s deal with Music Reports to handle songwriter publishing agreements. Recent [comments](#) by legendary music manager Irving Azoff about on-demand subscription services are just the latest evidence of a wider artist revolt against royalty rates and methods of payment for artists. Independent artists view Tim Westergren as untrustworthy at best, and his being back at the helm does not bode

well for Pandora avoiding the same lawsuits that Spotify is fighting. Mr. Johnson noted very little difference between the major streaming services—except perhaps Apple—in the eyes of most artists seeking to collect on streamed music.

Direct Licensing

- “It makes sense that Pandora will need to cut direct deals if it wants to move towards more of an on-demand model. But I would say that the only deals that it’s going to cut are with the major three labels—Sony, Warner and Universal. And then maybe someone like Merlin, with which they did a deal already.”
- “But, as evidenced by the 2015 Pandora/Merlin deal, independents got \$.0011 cents per stream, \$.0003 cents less than the [statutory] rate, so independent creators’ royalties went down. If Pandora does a better [direct] deal than the status quo, that gets entered into evidence as a benchmark in a Copyright Royalty Board rate hearing and raises Pandora’s rates, and everybody’s.”
- “If Pandora offered [independent songwriters] a real deal, then [direct licensing deals would be more likely]. But I don’t think they have any integrity; none of [the streaming services] do. You look at the Music Reports agreement that Pandora just put out, and they’re touting some big transparency push, but the rate is still horrible.”
- “The three majors represent about 90% of the market. But the wild card [in Pandora’s negotiations] is [CEO and Chairman] [Martin Bandier](#) at Sony. He seems to be the one holding out in the recent CRB songwriter/publisher hearings for more than the 9.1¢ for downloads.”
- “My rate proposal—and I’ve offered this to the Copyright Royalty Board, to the [RIAA](#) [Recording Industry Association of America] ... [is a model like] [Ghosttunes.com](#), which is closer to iTunes. You have to buy the song to stream it. It uses something called a cloud locker, and you pay around \$1.29 for the single or \$15 for the album, then stream all you want.”
- “That’s the only thing that’s going to solve this. The stream and the sale have to merge if Pandora or any on-demand licensee is to be successful in the long run since you can’t build a business for long on stealing your only product and pissing off all your vendors.”
- “It sounded crazy two years ago, but I’ve got a direct deal with Apple for five years. Lately they’re talking about getting rid of the download [model] in two years, but then they hedged and seemed to indicate they would merge the download and the stream in some manner.”
- “Recently, Tim Westergren was on television talking about how Pandora would offer downloads for sale or offline listening in the future. Tragically for creators, Pandora and others already give copyrights away for free as limited downloads, which is copyright infringement to copyright creators and must be changed.”
- “On-demand subscription models will never work for long if you don’t pay all the music creators for their cost of copyright creation by buying the song or album like it used to be.”

The stream and the sale have to merge if Pandora or any on-demand licensee is to be successful in the long run since you can’t build a business for long on stealing your only product and pissing off all your vendors.

*George Johnson
Singer/songwriter*

Competition

- “All the streaming services are the same from an artist and a songwriter’s perspective. You make [miniscule] fractions of a penny on streams ... millionths of a penny that music creators then have to split.”
- “Pandora pleads poverty when it goes before Congress and the Copyright Royalty Board, but it bought TicketFly for \$400 million. And Pandora’s top 16 executives have taken \$500 million over the past five years in executive pay and stock options, including \$30 million or \$40 million to Westergren. They’re basically thieves.”
- “Google and YouTube are the same. They won’t negotiate. Big artists like Paul McCartney will get direct deals worth tens of millions, but [independent artists don’t].”
- “The three major labels own 18% of Spotify [which is why they have direct licensing deals]. Universal owned 13% of Beats, and when Beats sold to Apple, \$404 million went back overseas to [Universal’s parent company] Vivendi in Paris instead of paying for royalties for American copyright creators.”

Pandora’s Future

- “If you’re a major artist and you tour, [Pandora’s efforts to promote concerts on its app and sell tickets through TicketFly] is a positive thing. But if you’re independent, it probably doesn’t matter as much unless you have a good following.”
- “When you look at Irving Azoff ... if you read his comments, he says it directly: on-demand, paying \$9.99 a month is not going to work. It’s just lip service, and he’s right. It’s a joke. Everybody knows that the gig is up.”

- “Pandora bought Rdio to do on-demand, but here’s why it’s not going to work: As Azoff says, it’s all lip service by Pandora, who only wants to kick the can down the road so Tim Westergren can keep cashing in millions of dollars of stock every few months. The entire music community is so [angry], and it’s come to a boil over the last three years especially.”
- “I’ve never signed on to one streaming music company. I’ve put a couple of videos up on YouTube, but I don’t want to participate in my own copyright infringement, which is what [the streaming services are]: legal copyright infringement.”
- “I think the RIAA and the labels are starting to realize that things have to change. They want to make more money in their own self-interest [as well as doing better for their artists].”
- “Pandora can do direct deals with the major labels to get their sound recordings and direct deals with their publishing arms, but the artists still have a copyright interest and [Pandora] has to deal with managers like Azoff eventually.”
- “A lot of copyrights are coming back to the writers after 35 years, and Pandora is going to have to deal with that, which is huge since it’s out of Sony’s, Warner’s or Universal’s hands at that point.”

2) Jimi Yamagishi, musician, artist advocate and head of [The SongNet](#)

Artists and labels should not pursue direct licensing deals with Pandora and other streaming services because the current royalty system is unfair and outdated. Compensation for artists should be based on a measure of the revenue generated by a song rather than a per-stream rate. In the current environment, artists are better off trying to reach fans through social media like YouTube and Facebook Inc. (FB) than through subscription streaming services. Pandora and similar platforms are going to die out as listeners opt to discover new music for free through podcasters and other tastemakers. TicketFly will mainly benefit Pandora, not artists or fans, and Pandora’s Artist Marketing Platform is not likely to be relevant.

Direct Licensing

- “Artists and labels that are signing deals with streaming services are not looking ahead or being proactive. I believe it’s a huge waste of time and money.”
- “Artists need to do direct deals with a new kind of label that can market specifically to fans in a different context: lifestyle marketing.”
- “Upping the general [royalty] ante is not the answer. Artists need to be compensated according to commercial value and generated revenue. The whole concept of royalties is archaic, convoluted and corrupt. Statutory compensation was all there could be before tracking technology.”
- “If someone is listening to a particular broadcast or podcast or stream because a particular artist’s cuts are there in heavy rotation, I believe there should be more value in that. Sure, there is some of that already, like if you get airplay during the Super Bowl you get compensated a bit more than getting play during a late-night, used-car lot commercial. These algorithms need to be applied to every play of every song in every situation with every paid sponsor. And it can be done.”
- “If a restaurant has music playing but nobody is in there, they should not have to pay for that because it’s not helping generate revenue. But if someone comes in and buys a sandwich and stays because the music is playing, a piece of that [sale] belongs to the artists being played during that time. These days, almost all receipts are timestamped, all playlists are archived. Line them up and you have the real net value [of the music].”
- “Once PROs [performance rights organizations] figure out how to adjust for this paradigm shift, they will be able to establish new and more equitable ways of structuring what is currently called ‘royalties’ and converting that to ‘use and application compensation,’ almost like licensing as an afterthought on the back end.”
- “Some artists think things are improving. They are not and will not until the industry rethinks how artists are paid. There are YouTube artists without any traditional airplay that are making millions of dollars directly from their fan

Upping the general [royalty] ante is not the answer. Artists need to be compensated according to commercial value and generated revenue. The whole concept of royalties is archaic, convoluted and corrupt.

*Jimi Yamagishi
Musician, artist advocate and head of
The SongNet*

bases and online plays. Much more than many signed artists in ‘heavy rotation’ on all the streaming services combined.”

- “The hype over Pandora is laughable to me. While I do believe it’s possibly a great way to get heard, there is revenue being generated that should be shared but isn’t, just like in the old days of terrestrial radio.”
- “Trying to keep unfair percentages of that airplay-generated revenue is the problem there. Royalties can be linked to product now. The technology exists.”
- “Sadly, because everyone only gets how the old paradigm worked, nobody is getting that the world has changed, and revenue streams need to reflect that. So we blame the most visible—Pandora, Spotify, et al.”
- “Music itself should be free, but those attaching themselves to that music to generate revenue must compensate artists in a fair manner based on perception of gained income and/or exposure from that specific work of art.”
- “[Artists should] put the music into the world so it is easy to access. Your fans will buy product if they really like what you do. They will go to your shows. Advertisers will see the numbers and ask to get on board. If that doesn’t happen, maybe you need to find a different demographic.”

Competition

- “I do not believe streaming services will last much longer as more fans discover networked podcasters and other means of discovering music that fits their specific personal requirements without paying, subscribing or releasing more information than needed.”
- “The very fact that streaming services are trying to improve their image says a lot. They’re going down and are grasping at straws.”
- “Streaming services as they are will be gone soon enough. There are already plenty of tastemakers with podcasts that people follow.”
- “To understand my viewpoint, start with a case study of [Tay Zonday](#) and go from there. Even [William Hung’s](#) end column numbers are better than many stars because though his gross may be smaller, he does not have to pay as many people to be heard and be famous and generate revenue.”
- “There are artists on YouTube and social media that are doing so much better than the industry paradigm without submitting to streaming services. Most really smart money will follow those models.”
- “Facebook is now streaming video. Of course, the audio is there too. It’s simple, and if you’re doing social media you’re already there.”
- “The internet has allowed anyone to release music into the world, and now there are too many choices and too much noise, so everything goes down in value until it can be properly sorted out, [which is] what podcasters and DJs do.”

There are artists on YouTube and social media that are doing so much better than the industry paradigm without submitting to streaming services. Most really smart money will follow those models.

Jimi Yamagishi

*Musician, artist advocate and head of
The SongNet*

Pandora’s Future

- “[Pandora selling concert tickets through TicketFly] is a noble attempt at diversification that may help both ends, but then, really, who actually winds up paying for this service? Pandora again is the clear winner here because any app worth its code will always have capture algorithms, meaning sellable data farming. And [it will benefit from] percentages of ticket sales, use fees and more.”
- “Though I have not used Pandora’s Artist Marketing Platform or examined it, I really doubt it’s relevant in today’s marketplace. Marketing has changed too much to be centralized in the traditional manner.”
- “Unless a marketing company can treat every client individually and market each artist to a very specific and personal demographic, then that marketing company is useless. There is too much noise and far too many options out there now [for marketing music]. The only thing I use my radio for these days is traffic reports.”

3) Manager with a large talent management group representing A-list artists

Independent artists are likely to sign direct licensing deals with Pandora. However, for top-selling artists like the ones this source manages, that decision rests with the major labels. Which of the streaming music services will survive and thrive over the next few years is anyone’s guess. Pandora’s efforts to promote concerts on its app and sell tickets through

TicketFly have to be a positive for artists and should be of some benefit to labels. Still, the source noted better alternatives for artist promotion in general.

Direct Licensing

- “I have not [had discussions with Pandora about direct licensing]. It could be a likely scenario for an independent artist or artist who owns his own masters. Most of our artists have deals with record labels, and the labels own the copyrights to the masters.”
- “Besides the royalty rate, [key issues in negotiations with Pandora] would be song rotation—the amount of plays an artist or track will get—and knowing what the payment and accounting practices would be with the artist.”
- “[Pandora] already is a legitimate promotional outlet. However, currently I think there are better options in terms of general promotional outlets.”

Competition

- “I honestly do not use Pandora much because it’s simply an online radio station. I prefer outlets like Spotify, Apple and even YouTube because you can pick song by song and create custom playlists. Also, some of [those competing services] have the radio station feature.”
- “The concepts of [direct licensing] deals would be similar [for Pandora and competitors like Spotify and Apple], but I wouldn’t necessarily go so far as to say the others are a template for Pandora.”
- “Good luck [trying to guess which of the music streaming services will win over the next few years], and may the best service win.”
- “I can’t see [an on-demand service from Pandora] being any better necessarily right out of the gate [than competitors like Spotify], but I’m sure they’ll try to do some things differently in order to stand out from the other services. We’ll just have to see how their platform works in practice.”

Pandora’s Future

- “Any major outlet that promotes live shows and offers access to ticket purchases [as Pandora will do with TicketFly] has to be a positive for the artist, and depending on their deal with a label, it should be of some benefit for the label, whether it be direct or indirect.”

Any major outlet that promotes live shows and offers access to ticket purchases [as Pandora will do with TicketFly] has to be a positive for the artist.

*Manager
Large talent management group*

3) Competitors

Pandora and the major record labels will be able to reach agreements on direct licenses, but the labels will have all the negotiating leverage. The trickiest part of the talks will be over the middle piece of Pandora’s planned multitiered platform, which will try to bridge the gap between its free, radio-style service and a subscription-based, on-demand product. The labels are going to take a harder line on the licensing terms for that middle tier so that Pandora is compelled to steer listeners toward the highest and most expensive level of service. The biggest threats to pure streaming services like Pandora are companies like Google, Apple and Amazon that can afford to lose money on music services in order to sell other products. Spotify, meanwhile, has proven it can get consumers to sign up for a paid product and has passed Pandora for brand-name recognition, according to one source. Two sources said artists and labels continue to view Pandora in a negative light because of royalty rates, though the third source thinks those hard feelings are softening as the music industry sees other services—most notably YouTube—compensating them similarly. The acquisition of TicketFly opens a new revenue stream for Pandora, and the company’s Artist Marketing Platform could help improve its relationships with artists.

Key Silo Findings

Direct Licensing

- 3 of 3 expect Pandora and the major record labels to hammer out direct licensing agreements.
 - o 2 said Pandora will have little choice but to pay whatever the labels ask.
- 2 said Pandora’s plans for a multitiered product will include free radio-style streaming, a monthly subscription service with on-demand capabilities and a middle tier that bridges the gap between the two.

- 1 said Pandora's most difficult negotiations with the labels will be on that middle tier as the labels will want Pandora to push customers to the more expensive, higher tier.

Competition

- 2 believe companies like Google, Apple and Amazon that can afford to lose money on streaming music are the biggest threat to streaming-only services like Pandora.
- 1 said Spotify leads all music services in its ability to get customers signed up for a paid product.
- 1 said Spotify has surpassed Pandora for brand recognition.
- 1 thinks YouTube could be a threat to Pandora.

Pandora's Future

- 2 said artists and labels still have negative feelings toward Pandora over royalty rights.
- 1 thinks Pandora's reputation is improving as artists become more educated about streaming services and see other platforms, like YouTube, treating them similarly.
 - o Listener data that Pandora provides to artists has improved its standing in the music industry.
- 1 said TicketFly opens a new revenue stream for Pandora.
- 1 said Pandora has to reduce its costs, which may mean job cuts, in order to thrive.

1) Development executive with a streaming music platform; repeat source

Pandora will have no choice but to pay significantly for direct licensing deals with artists and record labels, a reality that will continue to make profitability difficult. Pandora's reputation within the music industry has not improved, even as it tries to appeal to the artist community. Neither Pandora nor Spotify is profitable because of content costs, but competitors like Apple, Google and Amazon have other revenue to support streaming music services. Artists complain about low compensation, but streaming services pay a lot for content and have low margins. Labels and others that own the music and are collecting royalties from streaming services should pass more of these payments to artists.

Direct Licensing

- "Pandora has to cut the deals [with record labels], and it will be a question of what they're willing to stomach. At some point they'll have to pay to get these licenses, or they won't be able to carry out their plans."
- "The [labels] are going to make [Pandora] pay a lot of money to get the licenses they need and do what they said they want to do—create a multitier service with a free portion, a middle subscription tier and an on-demand tier."
- "The music industry doesn't really care about the [success of individual] streaming services. They have enough out there to generate revenue, and they don't have incentives to offer a good deal when negotiating. It's up to the services to pay what they have to pay and make that work for them as a business."
- "Getting those deals is [Pandora's] biggest hurdle because it will enable the strategy they said they want to pursue. I think they'll do it. Whatever the loss is, they'll have to figure out how to overcome it. They wouldn't be the first company to run negative for a while until they can turn things around."
- "The music industry can see that the future is in the streaming model. They made more money last year in payments from streaming than collecting from purchases on iTunes and CD sales."
- "Music streaming is going to grow. For now, 10% of people are listening to streaming while the other 90% are on FM [radio]. As kids listening to streaming grow older, there's going to be more streaming and less music in other avenues. The music companies know that, and they're invested in that. It's going to be all about streaming in the long term."
- "It's long been a complaint in the music industry that artists get taken advantage of by the people who own their music. They get into bad music deals because they're young, they want to be famous, and they don't understand the business. [The Goo Goo Dolls](#) are a famous example of that: Even though their album sold millions of copies, they still owed money to their record company. This happens over and over again."

The music industry doesn't really care about the [success of individual] streaming services. They have enough out there to generate revenue, and they don't have incentives to offer a good deal when negotiating.

*Development executive
Streaming music platform*

- “The notion that Pandora or other music streaming services should have to pay more to the artists is ridiculous. It should be that the people who own the music and are collecting from music services should maybe keep less and pay more to the artists.”
- “People still say Pandora should pay more, but Pandora isn’t in control of that. That’s up to the people who own the music. The music companies are very greedy, and they know the Pandora brand and how many users they have. They’re going to extract a pound of flesh from them.”

Competition

- “Pandora hasn’t demonstrated the ability to be profitable yet. Neither has Spotify.”
- “Google Play Music and Apple are loss leaders for their companies, but they have the bankroll to do it indefinitely. Amazon is going to come out with a music service. Their revenue models include buying licensing and losing money while creating traffic and attention and getting revenue elsewhere in the ecosystem, like hardware.”
- “For Pandora, Spotify and [our company], we have to make money on the core product. Spotify has not been able to do it. They’re in massive debt. They have to [IPO](#) to get out of it.”
- “If the IPO doesn’t go well, I don’t think Spotify will stick around. If they get their valuation, they’ll be sitting on some cash and bleeding it down like a startup. At some point they’ll have to figure out how to become profitable, but we haven’t seen that from them yet.”
- “It’s the same for Pandora. Their business model is broken, and it needs to be redesigned to become more efficient. They have the revenue, but they’re spending too much money. If they change that, they’ll probably be fine.”
- “We can’t control the licensing deals. We have to pay what’s set. It’s more about how [streaming services] can differentiate themselves, how they deliver the music they have, brand awareness, distribution. After all, we all go to the same well for the content.”
- “Spotify’s financials show that between 70% and 80% of Spotify’s revenue goes back to paying the people who own the music. Music streaming is a low-margin business.”
- “The bigger Pandora gets, the more revenue they have to pay out. They haven’t been able to turn it positive yet.”
- “Spotify seems to be following the Facebook model—get as big as they can possibly get and then they’ll figure out how to make money later once they have the audience.”
- “Pandora was initially following that strategy, but then Apple, Google and Amazon came along, and then Spotify, with its strategy, caught on. The on-demand listener is a different type of listener than the Pandora streaming listener. Pandora wants to come to on-demand to compete more directly with the other subscription services.”

They can’t continue with their existing business model. They have to make major changes, and that includes cutting some heads and figuring out a more efficient way to meet the metrics they set for themselves regarding revenue generation.

*Development executive
Streaming music platform*

Pandora’s Future

- “[The view of Pandora in the music industry] has changed from where they were two years ago when they were seen as a brand leader and flagship of the music streaming industry. Spotify has now surpassed them as far as branding and name recognition.”
- “The view of artists and musicians remains the same. Pandora’s making an effort to reach out to them, saying they’re an advocate for them. You can see in Westergren’s message that he’s appealing to the artist community. He’s saying he’s going to be their friend and they should do business with Pandora.”
- “[Pandora’s] acquisition of TicketFly ... will give them a way to push concert tickets when you’re listening to a band’s song. That could create another revenue stream.”
- “Pandora has shown it can generate revenue but hasn’t shown it can run a profitable business.”
- “It’ll be a huge expenditure to get the [direct] licensing deals done. The development work they’re doing now is going to cost them a lot of money also. They have a massive headcount and overhead.”
- “They can’t continue with their existing business model. They have to make major changes, and that includes cutting some heads and figuring out a more efficient way to meet the metrics they set for themselves regarding revenue generation.”
- “I don’t know if [Pandora’s] Artist Marketing Platform will generate revenue or [get] people listening and engaging longer because of what the artists are doing there. Or [if it will] create more loyalty for an artist or [if Pandora is] trying to build something with an artist with a revenue-sharing agreement or cross-marketing.”

- “I don’t think Pandora has shown all their cards yet as far as what they’re going to do. They have a strong brand, but I think they’ll continue to lose market share until the new Pandora [on-demand service] comes out. The question will be if they’ve done enough to regain lost listeners. But there’s still a lot of market share out there to grab. It’s going to be fought over by five major players and even more smaller players.”

2) Former marketing executive for a streaming music service

Direct licensing deals with labels will be tough to negotiate and costly, but Pandora has little choice but to pay for them. Pandora wants to create a business that bridges two models—on-demand and radio—and hopes to convert midrange customers to a premium service. Eventually, labels and artists will improve their view of Pandora and other streaming services because the increase in the number of these services will provide more revenue. Royalties paid by YouTube is a bigger problem than Pandora and Spotify for artists and labels. Fair compensation of artists by record labels is another issue that needs to be addressed.

Direct Licensing

- “[Pandora] has everything to negotiate the [direct license] deals, but it will be complicated when they’ll have to sit down with the labels, especially the major ones.”
- “The license deals will be an opportunity [for the labels] to bring in more revenue. I think they will sign a deal with Pandora. It will be complicated because the major labels are quite money-hungry. It’ll be a question of the cash Pandora can bring in, and based on that, what [Pandora’s] plan is to convert their customers to higher tiers.”
- “Not everybody has \$10 per month for a [music] subscription. Pandora needs to have a really wide range of offers to answer everybody’s needs.”
- “The major labels will offer poor [licensing] deals, especially on the midrange tiers. This will drive Pandora to push their customers to upgrade from midrange to the top-range tiers.”
- “It’s beside the point whether the deals make sense or are good business. The major labels have all the rights, and they fuel the service. Without them, there’s nothing to put in Pandora. They’re the ones with the last word, even if they also need the music services. They will negotiate deals that aren’t good, and then Pandora will try to shift its customers to premium offers.”
- “The major labels are facing a challenge. They’ve been losing money over the past 15 to 20 years. They now need to stabilize their income if they want to thrive.”
- “They’re fighting for their artists and trying to make more revenue for them. They’re also trying to get the most out of this business relation. The major issues with the major labels will be around agreement on the midrange tiers.”
- “These negotiations are already ongoing, I believe. If Pandora has the cash, the negotiations will move forward quickly. It’ll be a question of cash at the end of the day.”
- “The negotiations are going to be only about making more money. It’s an industry that’s been so badly damaged by the digital situation that it can only be about money. It’s not about sustainability, even if that’s what some people say.”
- “The artists’ deals with the major labels have to be questioned. The [Sony-Spotify deal](#) led artists to understand that Sony wasn’t telling the whole story. Artists realized that it wasn’t only streaming services that were hurting them but also the labels.”
- “If [Pandora] is willing to guarantee a minimum payment, they’ll find a way. When they have those deals, they’ll also be getting a better idea of their customers’ taste. They have 81 million users. They’ll be increasing the data they have on their user base.”
- “TicketFly is another opportunity. They can figure out what to boost to whom through that, by geography and by date.”

The major labels have all the rights, and they fuel the service. Without them, there’s nothing to put in Pandora. They’re the ones with the last word, even if they also need the music services. They will negotiate deals that aren’t good, and then Pandora will try to shift its customers to premium offers.

*Former marketing executive
Streaming music service*

Competition

- “Everybody can survive, I think, not just Pandora. At [my former service], people are working very hard to find innovative solutions for both the customers and the business.”
- “Hopefully, the increase in revenue [from streaming services] will lead the major labels to be cooler about the conditions they offer because it’s those conditions that make it impossible for services to have a thriving business. The rates they’re asking for are not sustainable.”
- “There won’t be any cannibalization for a long time between the music services. If each can find its own model and specificity, everybody can survive. For that, there needs to be an understanding partner. The major labels are still playing tough games for now.”
- “Free, on-demand is a big issue for the artists and labels, and they’re scared of it. But the threat to artists and labels isn’t coming from any of the services like Pandora or Spotify. The major threat [to the music industry] is YouTube.”
- “Eighty-seven percent of music streams are on YouTube, but the split in terms of revenue is 48%. That’s where the issue is. YouTube is totally on-demand, but it’s not paid as an on-demand service.”
- “The industry behaves as if YouTube didn’t exist. It’s hypocritical. It’s a big issue. The artists are afraid to take their fight to YouTube. They let the major labels do it. Every two years or so there’s a fight between Universal or Sony and YouTube, but it doesn’t last long.”

The major threat [to the music industry] is YouTube. ... YouTube is totally on-demand, but it’s not paid as an on-demand service.

*Former marketing executive
Streaming music service*

Pandora’s Future

- “It’s going to take a long time before artists improve their feelings regarding radio streaming. The rates are very low, and they feel they’re being exploited.”
- “When there will be less negativity, it will not be thanks to Pandora or anybody else that’s paying the artist more for streaming. It’s going to be because there will be more services.”
- “At some point the multiplication of services is going to be a good opportunity. Logically, it’s going to create more revenue with more competitors in the business. As a result, there will be more revenue for the artists.”
- “Feelings about Pandora are mixed.”
- “The music model is changing. It used to be that people would buy one or two CDs every year and for the rest of the time listen to the radio. The radio culture is particularly big in the U.S., even bigger than in Europe.”
- “There was a shift when it became possible to mix the two—free radio services and on-demand for an artist the consumer likes.”
- “Consumers who want on-demand music without advertising go to YouTube Red, Google Play, Spotify or Apple Music. There, they have the possibility to stream on-demand as much as they want, without advertising.”
- “If consumers don’t want to pay but still want on-demand, then there are the free services on Spotify or Deezer, for example.”
- “For consumers who just want to listen to the radio, they have the option of paying or not paying. Pandora has that option.”
- “As I understand it, Pandora is trying to build a bridge between the on-demand and the radio services. They were inspired by the earlier model, where people purchased only a few albums or tracks and the rest of the time, listened to the radio. They want to get there through the acquisition of Rdio. They want to be able to combine their radio service, which is leading the market, and also be able to embrace the complexity of people’s tastes and needs.”
- “If people want a full on-demand service, [Pandora] can do that. But that’s not where Pandora is going to make a difference. People who pay \$10 for unlimited music are already customers of [other] services. Pandora is trying to get the casual customers instead—the people who don’t want to spend \$120 a year—for a solution that’s between the two models.”

3) Product and strategy executive with a streaming music platform

Artists and record labels will cut direct license deals with Pandora because Pandora is an important a player that has had tremendous success in the United States. Key issues to negotiate include royalty rates, functionalities—such as unlimited

skips—and the geographic territories for which Pandora will be seeking rights. The view of Pandora has improved as the music industry has gotten a better understanding of its model and realized that other services, like YouTube, are also underpaying artists. Pandora's TicketFly acquisition and Artist Marketing Platform also are viewed as positives. Still, Pandora's future is clouded by the question of whether pure streaming music services can be profitable when their competitors are Google and Apple.

Direct Licensing

- “Pandora’s problem is they can only offer their product in the U.S. and Australia. They can’t offer their core service in other countries that have compulsory licensing laws. They have to make direct deals still for master recordings with the major rights holders.”
- “[Pandora and artists and labels] have to [find common ground and close licensing deals]. Pandora is too important a player for artists and labels, and they’ve had tremendous success in the U.S., their only market. This is the model that can work in other places too, but it can’t happen unless they actually get to the table.”
- “Key issues [to negotiate] are royalty rates; functionalities, such as unlimited skips or playing limited on-demand tracks; and the territories Pandora is asking for—worldwide or in certain countries. Those will determine the deal and the expenses.”
- “Pandora’s licensing deals will be different from those [that labels have] with Spotify, Apple and others. Apple and Spotify both have full, on-demand products. They license full catalogs and then allow users to play it on mobile or by saving it on their device to play later without a connection. It’s a different deal and price point. Pandora isn’t going after that \$9.99 market. They’re looking for something in the middle.”
- “The way Pandora’s users listen to music is significantly different than the Spotify listener who wants to play everything. Because of that, they’ll probably try to find something in the middle for features their users are looking for, like more skips or saving a station that can be played later offline.”
- “An open question is what Pandora wants exactly as a product and exactly what kind of deal they can cut with the labels to offer that product.”
- “The industry is trying to figure out streaming’s role. There are people who think streaming is taking away from retail [sales]. Instead of going to the iTunes store and downloading a song, people go to the streaming service and play it over and over again. The question is if streaming is replacing retail, or is it creating promotion to support the artist? In reality, it’s probably a little bit of both, but a lot of people have strong opinions on both sides.”

Competition

- “Pandora is different from anybody else. Pandora is designed to go along with somebody, their personal tastes. It serves a different need and it occupies a different space than Spotify, for example. Spotify is more social. Pandora is more mainstream than our company or Spotify. Apple is closer to Spotify. It developed a radio product that was supposed to be the Pandora killer, but in the end, it didn’t affect it.”
- “YouTube is still figuring out its path forward, and it could be a threat to Pandora.”
- “Spotify is now in a land grab, launching around the world and in new markets. They still have very big markets they need to launch, like India, China and Russia. They’re keeping their service as free as possible to build up the number of customers they can potentially convert into paying ones. It’s an expensive operation, and for now they’re losing money. We won’t know how successful they’ll be.”
- “There are other questions too. Can Apple figure out what they’re doing? They’ve been considered a disappointment so far. Also, can [SoundCloud](#) find a way to monetize its product? And most importantly, what will listeners around the world value and actually pay for?”
- “We’re not at a point yet where we can say who the winner is. There are a few early signs. Spotify has figured out how to sign people up to a paid product. They do that better than anybody else.”
- “There aren’t going to be many companies in the space that don’t do anything else besides music. Google sells AdWords, Apple sells hardware, Amazon sells everything. They can support the monetization of music with other products. This gives them a leg up on companies that are just pure [music streaming] companies.”

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*Product and strategy executive
Streaming music platform*

- “That puts Tidal, Deezer, Spotify and Pandora under the gun to figure out if there’s room for them in that space when you have Google spending hundreds of millions to support their music business.”

Pandora’s Future

- “Pandora, for a while, was a pariah in the industry because people felt they weren’t compensating artists enough. That view has changed recently. Partly it’s because people are getting more educated about it and have a better understanding of what Pandora does and its model.”
- “People are also getting smarter about other services, and there are a lot of conversations between artists and labels about YouTube’s compensation, that they’re not fully compensating people for their music.”
- “Pandora has changed, the view of Pandora has changed, and Pandora’s also done a lot to bring people in. They bought a company last year called [Next Big Sound](#) that has helped their ability to show information about the number of plays. It’s information that artists need for their business and to plan how to reach people.”

4) Industry Specialists

Pandora will manage to complete direct licensing deals with the major record labels but will have to pay at least as much as Spotify does (70% of revenue). Negotiations may center on per-subscriber minimums rather than just a straight percentage of revenue, according to one source, who also thinks issues like content windows and exclusivity will be on the table. Licensing discussions with independent labels and publishers will be even more contentious, two sources said, and all three believe Pandora’s new on-demand service will open it up to copyright infringement lawsuits. Also, Pandora’s initial proposed licensing contract sent to independent artists and publishers will not be well received. Apple is best positioned to emerge as the streaming music leader because of its deep pockets and consumer relationships. One source said the return of Tim Westergren as CEO is a positive for Pandora as industry executives view him more favorably than his predecessor, but another source said many in the industry dislike him. Pandora’s acquisition of TicketFly makes sense as another revenue stream. Still, one source said it will not help improve relations with artists, and another said Pandora overpaid for the service. Pandora may have purchased Rdio with the hope of using the company’s direct licenses with labels, but Sony’s lawsuit suggests that is now unlikely. Pandora would have been better off building its own on-demand product.

Key Silo Findings

Direct Licensing

- 3 of 3 sources said Pandora and major record labels will agree to direct licensing deals.
 - o All 3 think Pandora will have to pay at least as much as Spotify’s 70% of revenue.
 - o 1 thinks the labels will ask for per-subscriber minimums and that negotiations will focus on exclusivity of content.
- 2 said negotiations with independent labels and publishers will be even more difficult than discussions with the major labels.
- 3 said launching an on-demand service will put Pandora in the legal cross-hairs from independent publishers.
- 2 said Pandora’s proposed licensing contract to independent artists and publishers is going to anger them, particularly a clause aimed at steering them away from suing for unpaid royalties.
- 1 said Pandora is over-reaching in its proposed licensing contract, seeking rights for more than just an on-demand service but downloads and other features too.

Competition

- 2 said Apple is in a great position to become the leading streaming music service.

Pandora’s Future

- 3 agreed that artists and songwriters continue to have a lot of resentment toward Pandora.
- 1 said the major labels have a better opinion of Tim Westergren than they did of his predecessor, while 1 said many in the industry dislike him intensely.
- 1 said the TicketFly acquisition was a smart move to open up another revenue stream, but added that it will not help Pandora position itself as a partner with artists. 1 thinks selling concert tickets makes sense but that Pandora should have partnered with TicketFly rather than buy it outright.
- 2 said Pandora may have bought Rdio so that it could use Rdio’s direct licenses with labels.
 - o 1 said Pandora would have been better off investing in its own on-demand technology.

1) Managing director of a digital entertainment consulting firm; repeat source

Pandora will be able to get direct licensing deals with the major labels but will have to pay at least 70% of its revenue, as Spotify does. Further, adding an interactive, on-demand service could open Pandora up to litigation from the same smaller, independent labels that are pursuing class-action lawsuits for copyright infringement against Spotify. Tim Westergren's return as CEO is a positive step, but overall Pandora has not made a dent in the negative perception that many in the music industry have of streaming services. New music service choices—including the forthcoming on-demand product from Pandora—will continue to fragment audiences and make it difficult for the company to grow its user base.

Direct Licensing

- “They're going to end up paying 70% of their revenues [for direct licenses from the labels]. That's what Spotify pays, and the industry won't accept anything less. They might even impose more just because they want to see Spotify win because [the labels] own pieces of Spotify.”
- “I do think the industry has matured slightly. No longer are the biggest labels Pandora's biggest problem, even though those are gargantuan checks they will have to write. Their biggest problem is the cost of negotiating with all the little guys and independents.”
- “In their current world, they don't have to negotiate with anyone. They have a blanket license and can use anything. In the new world [with an on-demand product], they'll go to the Big 3 [music labels], they'll get their deals and they'll be done relatively quickly. The real issue will be A) the size of those deals, because they'll be gargantuan, and B) hunting down everyone else.”
- “In some ways, it's easy to meet with the Big 3 even though they charge an outsized fee because they just want to keep [streaming music services] parasitically alive. It's that the little guys are so irrationally bent on killing them. All these little terriers start nipping at your heels because they think you're a meal for them. That's when Pandora is going to wish they were back in statutory license land. These folks are truly irrational, and there are so many of them.”
- “[Small, independent labels]—that's the category that's growing the fastest. Creativity is moving from the center of the network out towards the edge. Anybody and everybody is making music. In doing so, they're very difficult to find.”
- “SiriusXM has an army of people, including [Chris Harrison](#)—who is the Prince of Darkness in this area—working to whittle down the rates they pay [to artists and labels]. On the other hand, you have Spotify with the three major labels on its board, that does absolutely nothing of the sort, wouldn't be caught dead engaging in those activities. There's no one on their staff working for shareholders to whittle down the prices they pay for the IP.”
- “Where will Pandora fall? Their choice of representation for this effort, Music Reports, speaks for itself. Everyone in the industry hates Music Reports. When Music Reports calls on behalf of Pandora, the answer is basically ‘How many ways can I tell you to [get lost]?’ Music Reports is a company that was built by the [NAB](#) [National Association of Broadcasters] to whittle down the obligations that radio stations had to music publishers.”
- “In a way it's a good sign that Pandora is bringing in someone to try to whittle down their prices, but at the same time they're not going to like the heat they get for that.”
- “[Direct licensing] is a tough path. SoundCloud is trying to do it too. Who is making money in this space? Only SiriusXM.”
- “Is [pursuing direct licenses] a smart decision? I would criticize it. I think it's laden with risk. Attorneys that I talk to around the world all say the same thing: The risk profile of statutory damages from willful infringement [of copyrights] is so great that their clients will not invest [in music services] in the U.S. until this stuff is cleared up. This is exactly the minefield that Westergren is headed the company toward.”
- “Look at Spotify. They're facing two class-action lawsuits that are quite large, and each has willful infringement as the allegation and statutory damages as the potential [penalty]. It's only in the U.S. that there are statutory damages, where the law says that \$150,000 per occurrence is the right amount for a judge to assign. Anyone who does that math realizes the cost [of being found guilty of infringing on copyrights] could be catastrophic.”

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*Managing director
Digital entertainment consulting firm*

- “[Pandora is] facing an army of litigants. What they’re after with Spotify are mechanical reproduction royalties. It’s a very obscure thing. Interactive companies like Spotify, and Pandora in the future, will need to pay twice to the songwriters—once to ASCAP/BMI/[SESAC](#) for the performance element and then a second time for a mechanical reproduction. They’re required to pay for both. In the case of the performance, it’s a little easier, but in the case of the mechanical reproduction, the set of rules is so arcane it would take hours to explain.”
- “Even Spotify, which made a deal with the [National Music Publishers Association](#) and gave every dime that every songwriter was entitled to—they still got three class-action lawsuits.”
- “How is it that you could make a deal with the publishers association and give every dime in question but still end up with lawsuits? The answer is that individual songwriters who were not members of the NMPA were bypassed in that process and not paid. I guarantee you that Spotify could not have found them or paid them because there are so many of them. They are everywhere. It’s pernicious.”
- “While I get Pandora’s point of wanting to have an interactive service, they are headed into this minefield. It’s the opposite of their current circumstance because they benefit from blanket, statutory licenses.”
- “There’s no way out of it [if they want an interactive service]. They currently pay royalties to ASCAP, BMI, SESAC [for the underlying compositions], they pay SoundExchange [for sound recordings], and that’s it. They’re done. Where they’re headed, they have to double their payments to songwriters—once for performance and another for mechanical reproduction—and then they will have to direct license [from the labels] every song recording they use.”
- “Publishers and labels are wholly different. They hate each other. They’re at each other’s throats even when they’re owned by the same company. It’s irrational. The publishing people feel they need a bigger piece of the dollar that’s on the table for music. They currently get about 9% to 10% of it. The publishers think that number should be 50%.”

There’s an enormous aggrieved class of songwriters. ... They’re actually getting screwed by the majors, but they blame every music service for it. There’s nothing Pandora has done that has dented the perception.

*Managing director
Digital entertainment consulting firm*

Competition

- N/A

Pandora’s Future

- “[Tim Westergren’s return as CEO] is good. He’s a devil the [labels] know. I don’t think they hate him. [Bringing him back] shows some attention to what’s going on in the shop. I think the labels had a low opinion of the person he chose [to succeed him in 2004], so his coming back is good.”
- “The part [Westergren] understands the most is he really does want to see AM/FM radio have to start paying like Pandora does. ... That’s a smart approach to continue the evisceration of broadcast radio.”
- “I didn’t think [Pandora acquiring TicketFly] was that bad a move because there’s synergy there. You’re not going to have huge margins in music, so if you can move your way into something else where music helps you, that makes sense.”
- “[The idea that selling concert tickets represents an attempt at partnering with the music industry] is nutty. Nobody is partnering with anybody. They’re all fighting over a dollar, and nobody gets along. I do think it’s further vertical integration though, which is smart.”
- “[Artists] still hate [Pandora]. There’s an enormous aggrieved class of songwriters, who are also musicians and performers. They’re actually getting screwed by the majors, but they blame every music service for it. There’s nothing Pandora has done that has dented the perception.”
- “If I had to counsel Pandora, I would say, ‘Stick to your knitting.’ They have a statutory license. Use it. The direct licensing thing is seductive, but it ultimately never ends and it’s trouble.”
- “[Adding] [video](#) is a smart move [to grow Pandora’s user base]. There are two kinds of people they want to reach, and one of them, they can’t if they don’t do video. Mobile people use their eyes for safety and their ears for recreation, and that’s the current Pandora user base. But once they sit in a chair, Pandora probably loses them.”
- “Pandora is a part of stretching the dial, giving people more choices in how to spend their time. When you stretch the dial and give people more choices, everybody loses market share. When you give people choices, they exercise it. One thing that’s certain in this area is that people are getting more choices, so the big boys like Pandora and Spotify lose.”

- “How do you live in that world? What I’d like to see from Pandora is more investment and focus on ad targeting technology. I want to see them go from standard ad rates to 10 times the ad rates because they can target. If you can hunt with a laser beam instead of a shotgun, things will change dramatically. That would accrue to them just as much if they never tried this direct licensing effort.”

2) Chris Castle, founder of [Christian L. Castle Attorneys](#), specializing in music technology and artist royalties

The major record labels will all do direct deals, but it may take up to two years for licensing issues to be ironed out with songwriters. If Pandora moves ahead with its on-demand service too soon, it will open itself up to litigation. Record label executives are signaling they will push for higher royalties, but in the short term, any deals with Pandora are likely to be similar to agreements struck with Spotify and Apple. Labels are unlikely to give Pandora a reduced royalty rate in return for stock as that type of deal with Spotify continues to cause major headaches. Apple is well positioned in the streaming music competition because of its reputation in the creative community and its billing relationships with hundreds of millions of iPhone users. Pandora’s Rdio acquisition was a costly mistake. Although TicketFly is a good fit for promoting artists on Pandora, the latter could have just as easily gone into partnership with the ticket seller. The return of Tim Westergren does not help Pandora in the eyes of the creative community since he represents a way of doing business that artists have long viewed with extreme disdain.

Direct Licensing

- “The labels are all going to do deals with Pandora, if they haven’t already. But Sony has a bone to pick because of the way that Pandora got into this [on-demand strategy] [with Rdio](#).”
- “[The major labels] are going to be inclined to license. The question is, how much [will Pandora pay]? There’s a number that I think Pandora’s expecting, and that they’ll pay. It will probably [be along the lines [of the Spotify deal](#)].”
- “[The labels] tend to redo the same thing [with competitors]. There are people at the labels who are now a little more leery than they were about giving a reduced royalty rate in return for stock. People really hate that, and it’s become something of a sore point [for the labels].”
- “On the streaming side, it’s all coming down to exclusivity, windowing, control over the content. It’s the way deals have been done in the entertainment business for a long time. The whole windowing concept is based on giving something to somebody that you don’t give to everybody else, or giving to certain types of people something you don’t give to everybody else. And it works.”
- “What the labels are really interested in is per-subscriber minimums because they’re in the wholesale business—not retail. There won’t just be an overall minimum guarantee of cash, but there will be minimums that [the labels and artists] will get on the free [service] side. You’ll get the greater of a minimum rate per stream, vs. a share of revenue, vs. a share of revenue using my per-subscriber minimum, which is designed to keep the service from giving away the farm.”
- “What I think you’re going to find now, on the ad-supported side, is much more limited offerings in terms of exclusivity and windowing. But you’ll also have greater attention paid to per-stream minimums. [The labels] are not going to just take a revenue share because you’ll never know what’s in the advertising pot.”
- “Pandora’s going to have to deal with the whole thing of converting free users to subscribers. There is absolutely no public consumer data that shows there is any connection between people getting something for free and [later] deciding that it’s something they should pay for instead. [As a result, the record labels] are going to end up wanting more money, and they’re going to want to have some control over what [content] transitions from the free to the paid [service].”
- “They’ll probably try to get a waiver on skips. There’ll be some functionality that Pandora will want to get for the noninteractive/radio service as well as the interactive service.”
- “That’s the difference between the Pandora negotiation and the Spotify negotiation. Pandora’s core business is still radio. They’re going to try to get some betterments for radio [in the negotiations with the labels] as part of this. That

[The major labels] are going to be inclined to license. The question is, how much [will Pandora pay]? There’s a number that I think Pandora’s expecting, and that they’ll pay. It will probably [be along the lines of the Spotify deal].

*Chris Castle
Founder of Christian L. Castle Attorneys*

could bog things down a little bit because if [the labels] do it for Pandora, they'll have to do it for everybody else—or at least they'll want to get paid to do it for everybody else.”

- “The labels are in an interesting position because they have had nothing but bad experiences with Pandora from the beginning. They’ve been forced to deal with Pandora because of the compulsory license on the internet radio side. And we’re not even talking about the publishers, where there’s a whole other conversation about the songs.”
- “Pandora is not used to having to deal with the songwriters, and if there’s any group that truly despises Pandora with the heat of a thousand suns, it’s the songwriters, who [Pandora] has been just brutal to in rate court, with ASCAP and BMI. Don’t overlook that, because [Pandora is] out there right now in the marketplace trying to do deals with the publishers for this [on-demand] service.”
- “The difference between the radio side and the on-demand side is that if [Pandora] launches [an on-demand service] without having all the licenses in place, they’re going to be in the exact same position as Spotify is in right now [facing lawsuits]. Except that you’ll already have artists who have lawyers who are keyed up to do these kinds of lawsuits, having learned from having done several of them. Adding Pandora to the list is really no problem.”
- Pandora [fought the pre-’72 issue](#) where they were trying to get out of paying royalties on digital transmissions on recordings made before 1972 because of perceived loopholes in the copyright law. The lawyers who currently represent [members of The Turtles] who were successful in the suit, and put Pandora and Sirius back on their heels, those same lawyers now represent Melissa Ferrick in [her class-action lawsuit against Spotify](#). That case got combined with [David Lowery’s case](#) recently, and I think what’s going to happen is that those same lawyers are going to end up being the class lawyers.”
- “If that happens, you’ve got the guys who just beat Pandora to a pulp on the pre-’72 issue primed to go after them on using songs without a license in their on-demand service. So if Pandora doesn’t do this just right, the likelihood of them getting a class action filed against them is 100%. It will happen, for sure, on the song side.”
- “The labels tend to get all the attention, but what screws these services up when it comes to on-demand, they give short shrift to the publishers, and now the chickens are definitely coming home to roost.”
- “On the publishing side, Pandora is in [court] right now in the current mechanical royalty rate hearing before the CRB, trying to get the mechanical royalty rate lowered, at a time when it’s never been lower in a hundred years. If that happens, the hatred [for Pandora] will bloom all over again.”
- “On the independent [artist] side, Pandora [through Music Reports] is [sending out a massive mailing](#) [containing a proposed licensing contract]. Music Reports is a company that is also not very well liked, but they have made something of a science out of doing clearances, and they do legitimate work for the likes of Apple and Amazon.”
- “I have a copy of the Music Reports license. I would take a close look at a couple of provisions in there, one of which is what’s become called the Lowery Clause, which is where they say if there’s any pending and unmatched [songs], then you have to negotiate with them, and we’ll try to work it out. It’s essentially a waiver of bringing a class action. And once that starts to sink in in the songwriter community, that’s going to make Pandora even more hated.”
- “On the on-demand side, Pandora could be looking at one year, two years, before they really get their licensing put together—and if they can’t wait that long, then they’re going to go out exposed. Because at the end of the day, [Pandora management] thinks they can finesse this somehow.”

If Pandora doesn’t do this just right, the likelihood of them getting a class action filed against them is 100%. It will happen, for sure, on the song side.

*Chris Castle
Founder of Christian L. Castle Attorneys*

Competition

- “Apple is sitting back, has no debt, has managed to compete in the old-fashioned way—personalities on radio. If you look at what constitutes [Beats 1](#), it’s personalities, it’s DJs—real people talking about real things and playing real interesting music, branded to those people. It seems to be successful.”
- “If you look at the paid subscribers, Apple has about a third of the number of Spotify subscribers in about a year. It took Spotify about seven years to get to where they’re at now. And Apple has got billing relationships with another 500 million or so people, who are used to paying for things through their iPhone.”
- “As long as Spotify thinks they have to compete with Apple, they will always have really high costs, and now they have this billion dollars’ worth of debt that they’re never going to be able to get rid of. In order to really retire that debt, that IPO would have to be Facebook level.”

- “YouTube is a similar situation to Apple, yet they are truly despised. Google is absolutely hated. YouTube is now [in the middle of a negotiation](#) where the question is going to be, are the people who lead this industry going to take the king’s shilling yet again to look the other way? YouTube is looking like it’s about to become very confrontational.”
- “Amazon wants to be a bigger player than they are. They got off on the wrong foot with their music [locker service](#). [Amazon’s bigger play into music] may be an acquisition in their future because I don’t think they have the patience or the know-how to really do this from scratch.”
- “The people who are really in the best situation, with the songwriters and the artists and the labels and the publishers, from a pure music point of view—and who seems to understand that they’re actually in the music business—is Apple. If all these [streaming services] are trying to compete with Apple, that’s really a tall order.”
- “If paid subscribers become the coin of the realm, which I think is going to happen ... it’s going to be tough because Apple’s always going to win. They keep growing, they keep paying—and people generally trust Apple because they’ve had 10 years of royalty statements that have been pretty clean.”
- “The [Eddy Cue/Taylor Swift exchange](#) meant a lot to people. That did more for Apple’s artist relations. I’ll take an Eddy Cue mistake any day of the week. I will not take a Tim Westergren mistake for one minute. Or a [Spotify CEO] Daniel Ek mistake for 10 seconds.”

Pandora’s Future

- “Tim Westergren, I still think, does not have a clear understanding of just how much some people really, truly despise him. And if you’ve got 500 songwriters who really despise you, that’s enough for a class action. So the idea is, don’t give them the opportunity [by launching an on-demand service before you’ve got your licensing issues ironed out].”
- “I’m not saying that there are no people that like him or Pandora. The main thing about Pandora is that they are the main user of the compulsory license, and they do pay a lot of money in royalties.”
- “[The creative community is] trying to get paid by the legitimate services something that’s fair, but at the same time we can’t overlook the fact that [streaming services] have an endless litigation budget to do things like really jack us around in rate court, where we have to go. Songwriters don’t have a choice about that, and on the sound recording side, at the CRB, [artists] got completely hosed—and that’s billions of dollars.”
- “The stockholders are looking at [the TicketFly] deal and wondering why Pandora spent \$450 million on a company instead of doing a commercial deal with [TicketFly] and ending up in the same place.”
- “I understand why Pandora [wanted to have TicketFly], and I hear positive things about it from managers and artists. ... The question is [it] going to balance out the \$450 million in cash that went out the door right before they borrowed \$300 million? I don’t think so.”
- “They could have gotten in the exact same place in terms of the benefit that’s being thrown off to Pandora by simply doing some kind of commercial deal where TicketFly was not acquired but had some kind of exclusivity with Pandora. It’s not that TicketFly was a bad idea, it’s just that the execution was crazy.”
- “If you read the fraud case that [Sony brought against former Rdio executives](#) ... the plan apparently was all along that Rdio was going to do a prepackaged bankruptcy and sell certain of their assets to Pandora for \$75 million in cash.”
- “While there’s some technology in the Rdio acquisition, the real value of the acquisition is they’ve already got the contracts and the relationships. [But] if the contracts can’t be assigned [from Rdio to Pandora] then that raises some issues.”
- “I’m always of a mind that you’re probably better off to build [this kind of software] today because it’s not that hard—it’s not artificial intelligence. Pandora already has a technology team, so why they wouldn’t use those guys, I don’t know. And I would imagine the core Rdio code is at least five years old.”
- “[The Rdio acquisition] is at the very least a case of Pandora overpaying for something—not as bad as the TicketFly acquisition, but overpaid on 1999 levels for something that may or may not really be that valuable. And if you’re going to acquire those [Rdio] assets, and the reason you’re acquiring them is because you want to maintain the relationships with the label, it would be a good idea you made sure the labels knew you were doing it before you did it. It sounded from the Sony lawsuit that nobody talked to them [before Pandora acquired Rdio].”

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*Chris Castle
Founder of Christian L. Castle Attorneys*

3) Executive for a leading global digital licensing firm

Record labels will agree to direct licensing deals with Pandora, but labels and publishers alike will be looking for a bigger piece of the pie in negotiations. In the proposed licensing contract Pandora sent to independent publishers this month, the company appears to be planning more than just an on-demand service, with other features like downloads also included. Larger independent publishers are unlikely to accept the terms that Pandora laid out, especially those that block them from suing for unpaid royalties. Competition ultimately will come down to pricing and product among four competitors: Apple, Spotify, Pandora and Amazon. Distrust of Pandora among music industry executives and artists remains high.

Direct Licensing

- “The labels [will do deals directly with Pandora]. I think the way the industry is right now, you’ve got to put your chips down on everything on the wheel, because you always want your marker to be on the number that comes up. So if there are more markers out there, why not take money from somebody else?”
- “Pandora is a real company that for the most part comes to the table, and when you talk about revenue from these services, you [as a record label] have to ask how many places the customer is really going to go, and do I want the customer to go to a place where I can talk to these people, where they have deep pockets, they’re going to pay me and I’m going to make good money? Or would I rather see them go to an inferior company that’s got an inferior product that doesn’t have the money to pay me? Who do I want to get behind?”
- “The labels’ [attitude is], ‘I might as well work it out and see if they’ll generate money.’ Because competitively, while there might be a price war between Apple and Spotify, now I can put my money down on three horses—or maybe four, with Amazon. And while they all can go compete amongst themselves on price and quality of service, [the labels and publishers] have now got four places they’re making money from. Maybe if they were to sweeten their deals a bit more, that might motivate [the labels and publishers] to do a different deal with them.”
- “What I hear often from labels and publishers is that you don’t have a service to offer unless you have our music, so don’t tell me that I can’t participate in all the other money that you make. Don’t try to limit me. [If a music service like Pandora] is going to have other services that they are going to upsell, [the labels] want to participate in all their revenue.”
- “I see challenges in these discussions [between labels and Pandora], whether they’ve happened already or not, where the labels and the publishers want to see more value than maybe a typical deal which dictates, say, a percentage of receipts.”
- “The [labels] want more. They feel as if these services have reached a point where they’ve all been built on the backs of music copyright and executives are making tons of money—and they want some. I think these deals will be hard to get done, because the labels and the publishers are going to want something more than what they’ve typically been getting, because they feel as if they’re making other people rich.”
- “The on-demand deals that Pandora is seeking are covering far beyond what licensing they need for just on-demand. They’re looking for all other types of usage they can imagine—downloads, you name it. They’re trying to rope it all in as one deal, so they won’t have to go back to [the publishers and labels].”
- “Pandora is being smart with doing the direct licenses [with publishers] in lieu of the compulsory license, but [in its proposed licensing contract] they’re doing too much of a reach for more rights that they would need just for the on-demand service. They’re looking for all kinds of rights. That’s going to hurt them as publishers wise up and realize that the deals they’re offering are asking for a lot more rights than simply an on-demand service.”
- “If I were them, I would establish the relationship, get the rights for the on-demand service and then just attempt [the additional rights] later, after the relationships have been established. But by looking for more now, it’s going to take longer. [This applies to] probably both the publishers and labels, but the publishers for sure.”
- “[Pandora’s proposed licensing contract] was insulting to the publishers because of this whole section about if they don’t identify their music [to pay royalties], that they’ll work together to come up with some kind of methodology to figure out what they owe you. They’re basically saying that’s your only recourse—you can’t sue [Pandora].”

The [labels] want more. They feel as if these services have reached a point where they’ve all been built on the backs of music copyright and executives are making tons of money—and they want some. I think these deals will be hard to get done.

*Executive
Leading global digital licensing firm*

- “They can use your music, make a mistake and not pay you—and only if you should find out about it under audit, they’ll come up with a methodology of how to pay. It’s basically striking everybody’s leverage for claim of infringement.”
- “If [the independent publishers] read it closely, the players of decent size will probably balk, but some small ones will just do it. But then there will be some small ones that won’t. I think when the word gets out on that provision, that’s a pretty serious issue.”
- “There are technically over 40,000 publishers. I know from our database there are about 360, which make up 90%-plus of [the content], and six probably make up 80%. So you’re talking over 300 that make up 10% to 12%, and the last 8% are probably thousands. If the [smaller] publishers don’t sign, then Pandora has to make sure those tracks don’t get used on the service. That is going to be such a headache to do. And that’s Spotify’s problem. If they don’t sign, I think [Pandora’s] just going to lock and load and send a compulsory license.”

Competition

- “Whether or not the artist community likes any of these [streaming music] services is not going to [be the decider for labels] making deals. It’s really going to be up to the consumer as to which product is superior. I haven’t seen Apple’s, but Pandora’s regular service—no issues; Spotify—very good service. The battle is going to just come from who offers the best service at the best price with the best support.”
- “Apple has the best reputation in terms of product, integration, the iPhone. I would ultimately put my money on Apple. If Apple prices it right, then they can be the winner.”

Pandora’s Future

- “I do think it’s offensive when [Pandora management] complains about royalty rates. I think it’s offensive when you see what they’re making while complaining about royalty rates, when the business is built around music and they do sneaky things like trying to buy a terrestrial [radio] station so they can qualify [for lower royalty rates]. That’s why people don’t trust [Pandora].”
- “Pandora will go ahead [with launching its on-demand service] and be up and running by the fall. If they don’t have certain licenses, they’ll just leave content out.”
- “I had heard that the Rdio deal [was done because Pandora execs thought] that maybe they could piggyback off the [licensing] deals that Rdio had already signed, and they could use those. That might have been the whole reason for the deal.”

Apple has the best reputation in terms of product, integration, the iPhone. I would ultimately put my money on Apple. If Apple prices it right, then they can be the winner.

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Secondary Sources

These three secondary sources focused on Pandora’s decision to partner with Music Reports for the administration of royalties related to its planned on-demand music service. Music Reports sent out a proposed licensing contract to artists, songwriters and publishers that are not affiliated with major record labels in an effort to secure the rights to stream their songs. The contract represents a change in Pandora’s position about who can perform audits of songs that Pandora streams. The proposal also asks rights holders to work with Pandora on a solution—rather than sue—if the company plays songs that it has not properly licensed.

Proposed licensing [contract](#)

A licensing contract sent to independent artists and publishers by Music Reports, on behalf of Pandora, contains what some are calling a “Lowery Clause”—an effort to steer rights holders away from suing Pandora for playing songs that it has not properly licensed. Musician David Lowery is leading a class-action lawsuit against Spotify for copyright infringement for streaming songs without the necessary permissions.

- “Pro-Rata Share Discrepancies: Solely with respect to the Limited Interactive Service and/or the On-Demand Service, in the event PUBLISHER believes, in its reasonable business judgment, that Pandora has failed to adequately identify sound recordings and/or the Compositions embodied therein, and/or the owners or administrators thereof, such

that the royalty calculations do not adequately account for PUBLISHER's true pro rata share of the Compositions streamed or downloaded on the Limited Interactive Service and/or the On-Demand Service (i.e., a significant number of PUBLISHER Compositions have gone unidentified or 'unmatched'), then the Parties shall engage in good faith discussions regarding a revised methodology for the calculation of PUBLISHER's pro rata share for the Limited Interactive Service and the On-Demand Service."

- "For avoidance of doubt, any such revised methodology agreed to by the Parties will be applied solely on a prospective basis, provided, however, that in the event there are any so-called 'unmatched,' 'pending' and/or 'black box' monies for the past that are being held by Pandora, the Parties may discuss applying any revised methodology agreed hereunder to such past amounts."

June 10 Hypebot [article](#)

Pandora's proposed licensing contract for its on-demand music service does not contain certain restrictions on who can perform audits to ensure proper royalties are being paid.

- "Music industry licenses that require a music service to pay a royalty to a copyright owner have traditionally included what's come to be called an 'audit clause.' Because so much information required to actually confirm that royalties are paid properly is under the control of the person doing the paying, the control of that information by the party in whose interest lies the underpayment creates significant moral hazard."
- "Under Pandora's new version of the direct publishing license for their on-demand streaming service currently being circulated by MRI, we get some good news."
- "In the MRI license, Pandora has dropped many of the restrictions on royalty compliance examinations (commonly called "audits") that it tried to get the Copyright Royalty Judges to impose on artists and record companies through the sound recording statutory license."
- "Digital services are new to royalty audits and have perpetuated the charade started with the very record companies these services are quick to criticize—this time that somehow only certified public accountants have the qualifications to conduct royalty audits of the services."
- "Royalty compliance examinations are a science of knowing where to look, knowing when you're being lied to, and having the means to hold feet to the fire. And due to the complexity of streaming and its billions of lines of royalties, an auditor also needs to have the technical expertise, staff and systems to manage enormous volumes of data."
- "This is not a knock on CPAs, but that expertise has nothing to do with GAAP or the skill set tested by the CPA licensing examinations. The reason that a digital service traditionally wants a CPA requirement is that (1) it is usually more expensive (unnecessarily so), and most importantly (2) very few CPAs do royalty compliance examinations of digital services so the service is likely to be audited by someone who doesn't know where—or how—to look."
- "Pandora has seen the error of their ways on this issue and has dropped both the CPA requirement and the licensing requirement in its most recent push for direct licensing conducted by MRI. This is truly great news and indicates a welcome change of heart at Pandora."

June 6 *Billboard* [article](#)

Pandora's decision to use Music Reports to administer royalties for its planned on-demand service is an effort to increase transparency of the royalty payment process and engender good will among artists and publishers.

- "As Pandora inches closer to the launch of its long-expected on-demand subscription service, it's aiming to avoid some of the public relations pitfalls surrounding royalty rates and payments that some of its predecessors have encountered in recent years."
- "To that end, the company announced today a new agreement with rights administrator Music Reports to use that company's platform to increase the openness and transparency of its payment process and manage mechanical licensing and royalty administration."
- "Pandora, by purchasing pieces of Rdio last year—while simultaneously making overtures to legacy music companies through direct deals and backdoor outreach—announced its intention to enter the on-demand streaming world."
- "That puts the company on the verge of a major shift in focus—its deal with Music Reports will help it complete that transition for rights holders. And continue to present itself as more friend than foe."
- "Music Reports has long been in the rights administration business, beginning with television synchs for local new stations in the mid-'90s, expanding to more than 100 clients over the past two decades, including SoundCloud, Amazon, Deezer and Guvera."

Pandora Media Inc.

- “In March, the company announced a new platform with the express goal of clearing up missing or incorrect publishing information distributed to streaming services, one of the biggest obstacles in music’s ‘Big Data problem’ that has left millions of dollars on the table, largely for independent artists. Correcting or completing that data can help free up payments that would have otherwise remained in escrow until claimed by a rights holder.”

Additional research by Eva Cahen and Emily Carr.

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