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MUSIC NEWS

In An Ever-Changing Music Industry, Cash For Hits Remains A Constant

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January 17, 2017 · 4:58 AM ET

Heard on Morning Edition

ALLYSON MCCABE



Radio DJ Alan Freed in the 1950s. Freed's pioneering career as a champion of rock and roll was marred by the revelation that he'd accepted "payola" — money from labels to play certain records.

Hulton Archive/Getty Images

Heather McDonald: In a very traditional setup, it would be the record label paying whoever's responsible for making a playlist at a radio station. In the 1950s, it was very much the process of handing money to a DJ in order for records to be played. But today that's not going to be a DJ. It would be a programming director or somebody even higher than that. Today, it's become a lot more difficult to detect.



Former TV personality Dick Clark as a disc jockey in 1959. Clark was called to testify before Congress in about receiving money from record labels for songs he played on the radio. (AP Photo/File)

GJ: What's changed?

McDonald: Today it's happening a lot through independent radio promoters that are hired by labels. The radio promoters are giving incentives to the person at the radio station to play an album. Those incentives could be a nice trip somewhere or a gift that is costly.

It can also be something a little more nebulous than that like a big advertising [campaign] by them at the station, saying, I'm going to spend \$100,000 on advertising at your end.

The benefit of that setup is you can't draw the direct connection to them [the label] because then they could say, "We didn't tell the radio promoter to do that."

It muddies the scenario.

GJ: So is payola a legal issue or is it more of an ethical problem?

McDonald: Payola is a legal issue. There's definitely a legal problem with saying, "Here is \$100,000, play my record."

But having this actual third party in the middle creates enough confusion that it is difficult to draw legal consequences for those involved.

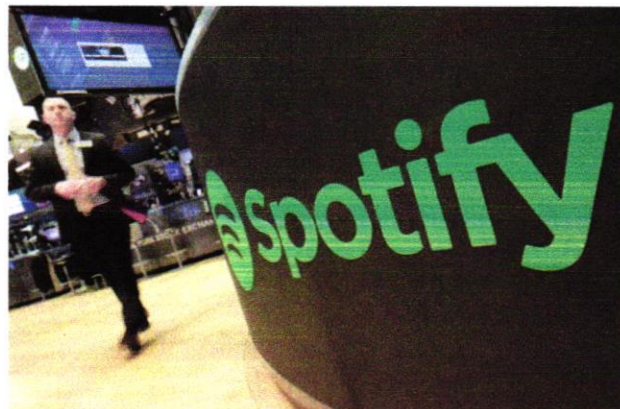
There's always that ethical concern. Here are two musicians, they're very similar. This one is on a major record label who has a big budget. This one is on the small indie [label]. Who do I release? They're very similar, but they can't access the same avenues of promotion because of the finances.

The reason is not only payola. But basically, musicians who don't have big label behind them are not that likely to be played on the radio, no matter how good the song is.

GJ: How is the situation changing with the popularity of streaming making radio less important for the music industry?

McDonald: There will be a time where it's not worth the investment to try to pay a DJ or radio stations to play everything. There's still some segments in the music industry where radio is really important, like country music and pop music to some extent.

But people are turning away from radio to find their music. They're turning to apps, and to their own streaming playlist. Payola as we know it will just disappear because there's no real financial benefit to engaging in it anymore.





Heather McDonald

Yet the issue of paying off disc jockeys to play music hardly disappeared. In 2005 and 2006, major record labels including Sony BMG Music Entertainment, Warner Music Group and Universal Music Group agreed to pay millions as part of settlements with the New York Attorney General's office over payola investigations (<https://www.nytimes.com/2005/07/26/business/radio-payoffs-are-described-as-sony-settles.html>) involving the use of third-party companies and "contests" to reward DJs for airtime.

More recently, music streaming services such as Spotify have come under scrutiny (<https://www.dailydot.com/upstream/spotify-playlist-black-market/>) for similar practices by the curators of their hugely-influential

playlists (<https://medium.com/the-business-of-content/how-artists-illegally-pay-their-way-onto-spotifys-playlists-6b85ce0865c5>). For more on the problem of payola, Global Journalist spoke with Heather McDonald, a veteran of the music industry who has managed distribution and marketing for an independent music label, done public relations for bands and labels and even managed a record store.

McDonald now teaches music business courses at the College of Charleston in South Carolina. Below, an edited version of their interview:

Global Journalist: What does payola in the music industry mean exactly?



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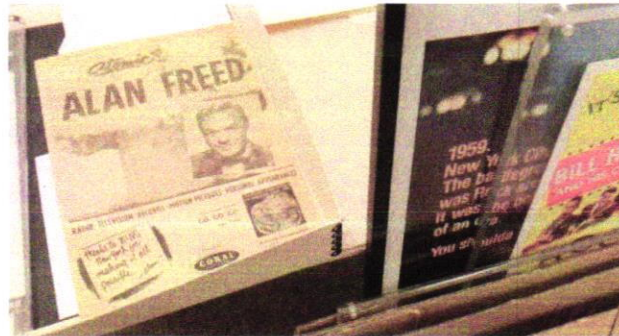
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Pay for play persists in music industry

by [Franziska Stadlmayer](https://globaljournalist.org/author/fstadlmayer/)

(<https://globaljournalist.org/author/fstadlmayer/>)

🕒 9 May 2019



"Promoters are giving incentives to the person at the radio station to play an album."

The problem of payola, the practice of bribing of paying someone to use their influence to promote a particular product or interest, has been a problem in many industries from journalism to the food companies. The roots of the term lie with the music industry, where the battle for the ears of the radio listener has long played a role in determining the success of an artist.

The problem first rose to prominence in the 1950s as music labels handed out cash, trips and other gifts to disc jockeys who played their artists. That led to congressional investigations that tarnished the reputation of Dick Clark and led to the firing of Alan Freed, the legendary Cleveland disc jockey credited with coining the term "rock and roll."

Streaming service Spotify has come under scrutiny in recent years over payments to those who curate its popular music playlists. (AP Photo)

GJ: But can't labels pay streaming platforms instead for influence?

McDonald: Definitely. Whatever music fans turn to, there will be businesses who find a way to make sure their music rises to the top of the pile. Financial ways are usually the best ways to achieve that.

GJ: What do you expect for the future of the business?

McDonald: There is some suggestion that there's about to be another big crackdown on payola. We haven't seen any kind of major enforcement efforts going on in the past several years. I read about Nicki Minaj and Cardi B. in connection with payola (<https://www.newsweek.com/what-does-payola-mean-nicki-minaj-says-cardi-b-built-her-career-sympathy-1114943>). However true that is, I think that we're going to see something fairly soon.



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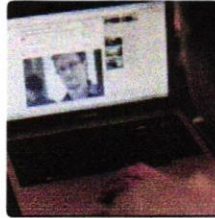
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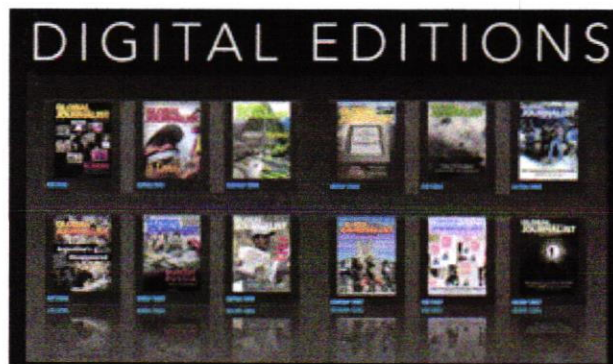
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STORY • Published July 25, 2005 • Last Update May 19, 2015

Payola Shocker: J-Lo Hits, Others Were 'Bought' by Sony

By Roger Friedman, | [Fox News](#)

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[Payola Shocker: J-Lo Hits, Others Were 'Bought' by Sony](#)

I always say when people ask me that the so-called vipers of the movie business would not last a day in the record business. Now **Eliot Spitzer's** office has decided to prove the point.

"Please be advised that in this week's **Jennifer Lopez** Top 40 Spin Increase of 236 we bought 63 spins at a cost of \$3,600."

"Please be advised that in this week's **Good Charlotte** Top 40 Spin Increase of 61 we bought approximately 250 spins at a cost of \$17K ..."

Ironically, it didn't help, as the memo notes that the company actually lost spins — or plays of

Their leader, **Eric Carmen**, went on to have a pretty nice solo career with songs like "All By Myself" and "Hungry Eyes." But The Raspberries, whose hits included "Go All the Way," "Let's Pretend" and "Overnight Sensation," became a footnote in rock history.

With **Beatle**-esque bass lines, **Beach Boys**-type harmonies and witty lyrics, The Raspberries turned out to be several years ahead of their time. If only they had appeared around 1978, the group would have fit in with the brisk, punchy pop of the New Wave movement.

Unfortunately, it was not to be. But you would never have known it last night. B.B. King's was sold out to the rafters. I'm told the same was true on Saturday night as well.

The Raspberries, who hailed from Cleveland, were always on the verge of being huge. But they were always also a little off. You couldn't tell if they were being edgy or nostalgic.

Last night they rocked the roof off of B.B. King's with their original members: a blond and gray Eric Carmen, guitarists **Wally Bryson** and **Dave Smalley** and drummer **Jim Bonfanti**, the center of their power — which is still impressive. He told me he dropped out of music completely from 1978 to 1992 and didn't even touch the drums. At 56, he should be playing with **The Who** or **The Rolling Stones** on tour. He's phenomenal.

The audience, which covered a wide age range, sang along with a lot of the songs. People are so starved at this point for melodies and musicianship that The Raspberries, having avoided the "oldies" circuit all these years, could easily stage a comeback.

Jon Bon Jovi and legendary songwriter and producer **Desmond Child** occupied a center booth Sunday night — and were largely ignored.

"I never got to see them perform the first time around. But I think I wore out their greatest-hits album," Bon Jovi told me.

Bruce Springsteen was the first to turn him on to Raspberries' records, he added.

I think **Cameron Crowe** would have especially loved the show. He's been a big fan of the band since his days as a young Rolling Stone writer, and The Raspberries are a lot like Stillwater, the fictional music group from his movie "Almost Famous."

A new album is being talked about. So is a small tour. When The Raspberries hit Los Angeles, I expect Crowe to be front and center. He had good taste three decades ago, and he will be happy to hear that nothing's changed.

[Eugene Record's Legacy](#)

Spitzer's results to clean house? Stay tuned ...

'War of the Worlds' Takes Box-Office Beating

Steven Spielberg's "War of the Worlds" took a beating at the box office this weekend. It ended up at No. 6, finishing behind newcomers like "The Bad News Bears" and "The Island."

The alien-invasion flick only narrowly defeated the Sundance indie favorite "Hustle & Flow," which played on about a third of the number of screens.

Nevertheless, "War of the Worlds" finished the weekend with \$208 million in the till domestically. That's about \$25 million more than it cost to make. But it's still not in the black, and at this point may never be.

The film's future is important for Paramount Pictures, which released it in the U.S., but it's also part of the bottom line for DreamWorks Pictures, since it's a Spielberg creation.

DreamWorks' other big release, "The Island," did not fare so well this weekend either. Co-produced by Warner Brothers, "The Island" did about \$12 million over three days. It cost about \$100 million to make.

The impact of both these films on DreamWorks is something that will be watched closely this month as the company's animation division continues to be investigated by the Securities and Exchange Commission. DreamWorks feature releases have no impact on the animation company, but the ties between the public and private entities are undeniable.

In the meantime, the one movie that's doing gangbusters at the box office this summer continues to be "March of the Penguins." It has no stars — save **Morgan Freeman** as the narrator — but it seems to be the only film that every person going to the movies actually wants to see.

It's the first real home run for Warner Bros.' Warner Independent movie division, led by former head of marketing at Miramax **Mark Gill**.

Raspberries Still in Season 30 Years Later

After 30 years, **The Raspberries** had a reunion this weekend at B.B. King's, and they blew audiences away. The cult rock power-pop group had a short run at stardom from 1973-76, and left behind four influential albums and a bunch of memorable singles still played on the radio today.

the record — even though they laid out money for them.

See above: The internal memos from **Sony Music**, revealed today in the New York state attorney general's investigation of payola at the company, will be mind blowing to those who are not so jaded to think records are played on the radio because they're good. We've all known for a long time that contemporary pop music stinks. We hear "hits" on the radio and wonder, "How can this be?"

Now we know. And memos from both Sony's Columbia and Epic Records senior vice presidents of promotions circa 2002-2003 — whose names are redacted in the reports but are well known in the industry — spell out who to pay and what to pay them in order to get the company's records on the air.

From Epic, home of J-Lo, a memo from Nov. 12, 2002, a "rate" card that shows radio stations in the Top 23 markets will receive \$1000, Markets 23-100 get \$800, lower markets \$500. "If a record receives less than 75 spins at any given radio station, we will not pay the full rate," the memo to DJs states. "We look forward to breaking many records together in the future."

Take Jennifer Lopez's awful record, "Get Right," with its shrill horn and lifted rap. It's now clear that was a "bought" sensation when it was released last winter. So, too, were her previous "hits" "I'm Glad" and "I'm Real," according to the memos. All were obtained by Sony laying out dough and incentives. It's no surprise. There isn't a person alive who could hum any of those "songs" now. Not even J-Lo herself.

Announced today: Sony Music — now known as Sony/BMG — has to pony up a \$10 million settlement with New York's Attorney General Eliot Spitzer. It should be \$100 million. And this won't be the end of the investigation. Spitzer's office is looking into all the record companies. This is just the beginning.

But what a start: Black-and-white evidence of plasma TVs, laptop computers and PlayStation 2 players being sent to DJs and radio programmers in exchange for getting records on the air. And not just electronic gifts went to these people either. According to the papers released today, the same people also received expensive trips, limousines and lots of other incentives to clutter the airwaves with the disposable junk that now passes for pop music.

More memos: "We ordered a laptop for **Donnie Michaels** at WFLY in Albany. He has since moved to WHYI in Miami. We need to change the shipping address." One Sony memo from 2002: "Can you work with Donnie to see what kind of digital camera he wants us to order?"

Another, from someone in Sony's Urban Promotion department: "I am trying to buy a walkman for **Toya Beasley** at WRKS/NY.... Can PRS get it to me tomorrow by 3 p.m. ... I really need to get the cd by then or I have to wait a week or two before she does her music again ..."

Nice, huh? How many times have I written in this column about talented and deserving artists who get no airplay, and no attention from their record companies? Yet dozens of records with little or no artistic merit are all over the radio, and racked in displays at the remaining record stores with great prominence. Thanks to Spitzer's investigation, we now get a taste of what's been happening.

More memos. This one from Feb. 13, 2004: "Gave a Jessica trip to WKSE to secure Jessica spins and switchfoot." That would be **Jessica Simpson**, for whom Sony laid on big bucks in the last couple of years to turn her into something she's clearly not: a star.

And then there's the story of a guy named Dave Universal, who was fired from Buffalo's WKSE in January when there was word that Spitzer was investigating him. Universal (likely a stage name) claimed he did nothing his station didn't know about. That was probably true, but the DJ got trips to Miami and Yankee tickets, among other gifts, in exchange for playing Sony records. From a Sony internal memo on Sept. 8, 2004: "Two weeks ago it cost us over 4000.00 to get Franz [Ferdinand] on WKSE."

Franz Ferdinand, Jessica Simpson, J-Lo, Good Charlotte, etc. Not exactly The Who, **Carly Simon**, **Aretha Franklin** or The Kinks. The "classic" is certainly gone from rock.

The question now is: Who will take the fall at Sony for all this? It's not like payola is new. The government investigated record companies and radio stations in the late 1950s and again in the mid 1970s. (When we were in high school, we used to laugh about how often The Three Degrees' "When Will I See You Again?" was played on WABC. We were young and naïve!)

Spitzer is said to be close friends with Sony's new CEO, **Andrew Lack**, who publicly welcomed the new investigations earlier this year when they were announced. Did Lack anticipate using

Eugene Record, the great soul singer and composer who founded the **Chi-Lites**, died on Friday at age 64. He had suffered from cancer for some time after seeing his records sampled and turned into hits again by the likes of **Beyoncé** and **Jay-Z**.

"Have You Seen Her" and "Oh, Girl" are the Chi-Lites' biggest hits, but Eugene also wrote two enormous hits for and with his first wife, the late **Barbara Acklin**. They were "Love Makes a Woman" and "Am I the Same Girl."

Many groups also recorded the latter as an instrumental as "Soulful Strut." You would know it if you heard it. It was almost the theme music of the late '60s.

I had the pleasure of getting to know Gene and his second wife **Jackie** in the last few years. I fought hard to get the Chi-Lites a Pioneer Award in 2000 from the Rhythm and Blues Foundation. They should also be in the Rock and Roll Hall of Fame, but that's another story.

Unfortunately, thanks to the head of his record company, Gene was involved in a payola scandal in the late 1970s. But he was far from being the kind of hustler it would take to make that story stick. He was a gentle, elegant man and a real musical genius.

He arranged the horns that make Beyoncé's "Crazy in Love" a hit — in 1969, no less — and look how they stood the test of time. The original song was called "Are You My Woman?"

In a summer when we've lost **Luther Vandross** and **Obie Benson** of **The Four Tops**, losing Gene is another blow.

The Chi-Lites go on touring with original members **Marshall Thompson** and **Squirrel Lester**. If they come to your town, don't miss them. But Eugene Record was their creative engine, and he will be sorely missed.



1960

Dick Clark survives the Payola scandal

It may be difficult for those who first encountered Dick Clark in his TV Bloopers and Blunders days to understand the power he once wielded from his platform on American Bandstand, but it was great enough in the late 1950s to make a star out of nearly anyone he chose, from Connie Francis to Fabian. It was also great enough to attract the attention of the House Committee on Legislative Oversight—the congressional subcommittee investigating the Payola scandal. At the Payola hearings, Clark would testify to holding an ownership stake in a total of 33 different record labels, distributors and manufacturers that all profited handsomely from the rise of Clark-anointed stars like Danny and the Juniors and Frankie Avalon. One of the companies in which Clark owned a stake was the label that made Duane Eddy famous and returned his initial \$125 investment. “Believe me this is not a Payola committee. I think the crime I have committed is making money in a short time on little investment. I

More important than any denials issued by fact that over the preceding months, he had himself of all of his ownership interest in m pop songs from which he earned royalties a combination, perhaps, with his good looks a York Times called the then-30-year-old Clark stand"—led Congress to give Clark a pass w uncooperative Alan Freed. "Obviously you're committee chairman, Representative Oren H on this day in 1960. "I don't think you're the product."

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Payola became a household word in the 1950s. The decade's music scene was the convergence of a number of seismic factors—the rise of rock 'n' roll and R&B (which coincided with the rise of small labels), the introduction of the inexpensive 45 rpm single, radio's shift to Top 40 music (once television took over dramatic programming), post-war prosperity and the emergence of the teenager as an economic force. Records began to replace live performance as the main way to hear—and sell—music. And labels recognized that popular disc jockeys could influence sales.

In 1950, there were approximately 250 disc jockeys in the U.S. By 1957, the number had grown to over 5,000. The increase was partially due to the sheer amount of new records being produced, both by major and indie labels. As the name suggests, a disc jockey was responsible for sorting through all these releases (naturally, the sorting was influenced by payola). These on-air personalities had so much clout with younger listeners, Time magazine called them the “poo-bahs of musical fashion and pillars of U.S. low- and middle-brow culture.”

Aware of their rising status, jocks established flat rate deals with labels and record distributors. A typical deal for a mid-level DJ was \$50 a week, per record, to ensure a minimum amount of spins. More influential jocks commanded percentages of grosses for local concerts, lavish trips, free records by the boxful (some even opened their own record stores), plus all the time-honored swag. As Cleveland DJ Joe Finan later described the decade, “It was a blur of booze, broads and bribes.”

As payola escalated, Variety and Billboard did lengthy features, calling for reform and government intervention (to its credit, Billboard wrote, “The cancer of payola cannot be pinned on rock 'n' roll”). ASCAP was also vocal in their opposition to payola, using it as a means to lambaste their competitor BMI. At the time, the larger ASCAP represented the old guard of mostly white composers from the Tin Pan Alley days. BMI was associated with the young, racially mixed writers of R&B and rock 'n' roll, as well as indie labels such as Aladdin, King and Chess. By the mid-'50s, BMI single releases outnumbered ASCAP's by almost two to one. The older organization cried foul, accusing BMI of promoting

Alan Freed and Dick Clark both played important parts in the rise of rock 'n' roll (Freed embodied the incendiary spirit of the music more than Clark, refusing to play white cover versions of black songs, such as Pat Boone's "Tutti Frutti"). And though they both denied ever accepting payola, it's almost impossible to imagine two young, popular jocks not succumbing to a little temptation. Guilty or not, it was Freed who ended up taking the fall for DJs everywhere.

Why did the committee single him out? Freed was abrasive. He consorted with black R&B musicians. He jive talked, smoked constantly and looked like an insomniac. Clark was squeaky clean, Brylcreemed, handsome and polite. At least on the surface. Once the grilling started, Freed's friends and allies in broadcasting quickly deserted him. He refused—"on principle"—to sign an affidavit saying that he'd never accepted payola. WABC fired him, and he was charged with 26 counts of commercial bribery. Freed escaped with fines and a suspended jail sentence. He died five years later, broke and virtually forgotten.



Dick Clark During House Hearing

Previous to the trial, Dick Clark had wisely divested himself of all incriminating connections (he had part ownership in seven indie labels, six publishers, three record distributors and two talent agencies). He got a slap on the wrist by Committee chairman Oren Harris, who called him "a fine young man." As Clark told *Rolling Stone* in 1989, the lesson he learned from the payola trial was: "Protect your ass at all times." Surprisingly candid words from the eternal teenager.

After Freed went down in 1960, Congress amended the Federal Communications Act to outlaw "under-the-table payments and require broadcasters to disclose if airplay for a song has been purchased." Payola became a misdemeanor, with a penalty of up to \$10,000 in fines and one year in prison.

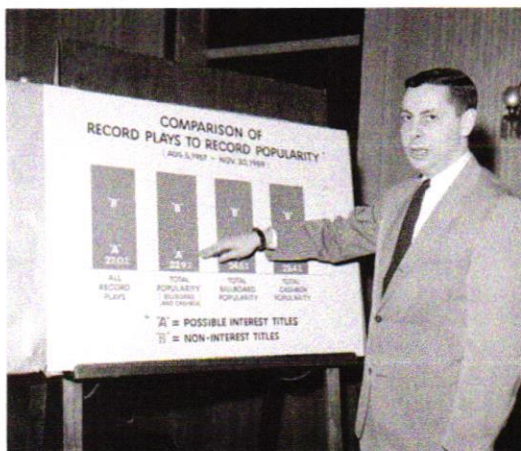
The loophole in the legislation was that it didn't say anything about "undisclosed payments." And so payola joined the cockroach and the fart joke on the list of things that, despite changing times, always manage to survive.

—By Bill DeMain

Photos © Bettman/Corbis

For the entire article on the Vaudeville beginnings of payola and the post-Freed decades: [100 Years of Payola](#)

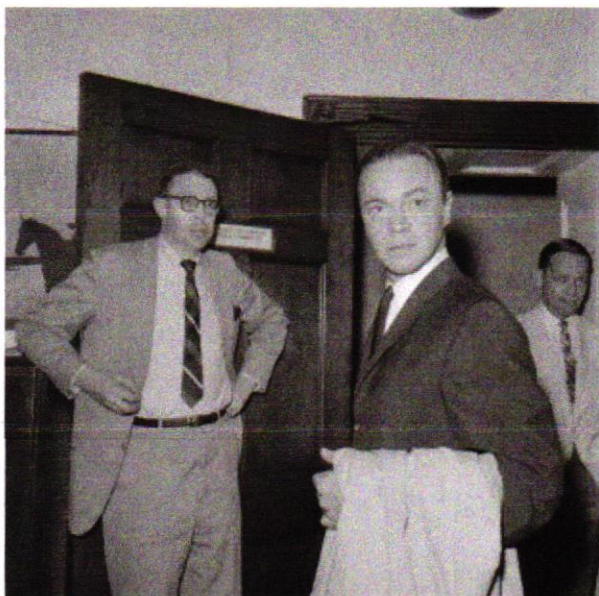
payola.



A Presentation During the Payola Hearings

Fingers pointed and words flew over payola, but it wasn't until the TV quiz show scandals of 1958 (most famously, the show *Twenty One* was found to be fixed) that the government got seriously involved. Once the "Do you now or have you ever ...?" questions began, the jig was up.

With the threat of losing their licenses, some radio stations took the precaution of firing disc jockeys who might put them at risk. In November 1959, in closed and open sessions before the U.S. House Oversight Committee, 335 disc jockeys from around the country admitted to having received over \$263,000 in "consulting fees." That figure was only the tip of the payola iceberg (before the hearings, Phil Lind, a DJ at [Chicago's](#) WAIT had confessed that he had once taken \$22,000 to play a single record). The trial heated up when the two most influential jocks in the country took the stand.



Freed Before Testifying for House Investigation Committee

BUSINESS DAY

Universal Music Settles Big Payola Case

By JEFF LEEDS MAY 12, 2006

The Universal Music Group, the world's biggest music company, has agreed to pay \$12 million to settle accusations that executives paid radio programmers to play songs, according to a settlement announced yesterday. It is the largest settlement yet in an investigation by the New York attorney general that has shaken the music business.

The office of the attorney general, Eliot Spitzer, said in documents released yesterday that Universal, a unit of Vivendi, had used a broad array of illegal "pay for play" tactics to secure airplay for its music, including bribing programmers with laptop computers, tickets to sporting events and luxury hotel stays.

Mr. Spitzer's office has been examining whether the four corporations that dominate the music industry have violated federal or New York state laws that prohibit payments of cash or anything of value to radio programmers for airplay unless the transaction is disclosed to listeners.

Last year, the authorities settled with Warner Music Group for \$5 million and Sony BMG Music Entertainment for \$10 million in similar

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money, after settlement discussions faltered.

In an interview, Mr. Spitzer said the "uniformity" of record executives' conduct, reflected in e-mail messages and other documents uncovered in earlier settlements, "speaks to the understanding in the industry that radio play is the best way to motivate sales, and folks would do what needed to be done to get the airtime."

Mr. Spitzer's office is still investigating the smallest of the four record corporations, the EMI Group, as well as several radio companies, including Clear Channel Communications and CBS Radio (formerly Infinity Broadcasting.). The Federal Communications Commission has also requested documents from the radio companies as part of a separate inquiry.

Universal said in a statement that it had been working "cooperatively" with Mr. Spitzer's office and was "pleased to have completed the process with this agreement." Universal said the reforms it agreed to are "consistent with" policies it instituted more than a year ago.

As part of the accord, the company agreed to discontinue certain practices — including providing cash for radio contests, and using middlemen known as independent promoters to funnel money to stations.

Settlement documents released yesterday offer examples of how executives at the company's various labels — Interscope Records, Island Def Jam Music Group, Universal/Motown Records and Universal South — offered enticements or used other tactics to gain airplay for their artists' songs. In some cases, the documents say, Universal tried to disguise payoffs to programmers as gifts to radio contest winners.

The documents say Universal twice paid for hotel accommodations in Miami for Donnie Michaels, then the program director of WFLY-FM in Albany, in exchange for his addition of songs by Brian McKnight and Nick Lachey to his station's playlist. In April 2004, Universal provided Mr.

radio, citadel, Clear Channel, Entercom) in 2007.

Yet for all these strides forward, little has changed, at least in my estimation: as recently as January, reports surfaced that Macklemore and Ryan Lewis “[hired an independent arm of Warner Music Group, the Alternative Distribution Alliance \(ADA\), which helps independent acts get their stuff on radio.](#)” Zach Quillen, manager of Macklemore and Brian Lewis, discussed how “[they paid the alliance a flat monthly fee to help promote the album.](#)” Many in the Hip Hop world have remarked on how [this tack resembled payola](#), and how their indie success [was essentially a fiction](#).

If the above narrative displays anything, it’s that our payola laws have enabled the erection of a [grey market](#), one in which shady, quasi-legal deals take place, and independent artists lose out more often than not (again, Macklemore is the exception, not the rule; by the metrics of his independent success, he fell into the ADA’s criteria of “[the right artist, the right time, the right record.](#)”)

Clearly payola laws have done nothing for evening the playing field of mainstream radio, because the menu of selection provided by mainstream radio is always shrinking.

Clearly congressional probes into the matter haven’t made much of a difference, because not much has changed in the wake of three different investigations; as Neil Young astutely mentioned at the top of “[Payola Blues](#),” “This one’s for [Alan Freed](#)—wherever you go, whatever you do—cause the things they’re doing today will make a saint out of you.”

So the question *then* becomes, how does an independent artist reckon with such a marketplace, one that is innately stacked against the indies (artists, not promoters—boy that’s confusing)?

Why, after more than twenty years of these laws being on the books, did congress only conduct an investigation in 1959?

The answer lies in the era: [Rock'n'Roll was starting to gain traction, gradually winning out over cultural biases against "race music," and doing so, in so small part, through radio airplay, much of it purchased.](#)

As rock'n'roll rose to prominence, major labels found themselves [competing against independent rock'n'roll upstarts like Chess Records, while the performance rights organization ASCAP \(who catered to the old, white guard\) found itself competing with BMI \(who tended to represent a bunch of rock'n'roll upstarts\).](#) In response, [ASCAP and the labels pushed for the investigation under the guise of evening the playing field for everyone.](#)

But this was a guise pure and simple, as the evidence of our modern day radio landscape would suggest: if the playing field were truly even, any artist would sport roughly the same merit-based chance of appearing on the radio, so long as consumers liked the music and demanded to hear it.

Can anyone with two functioning ears say that radio is a more varied climate than it used to be? Racially, sure, but in terms of artist variation, genre and sub-genre, no; as the Wall Street Journal reported, [FM Radio currently broadcasts less new music than ever before.](#)

Why is this the case, given that payola laws were put in place to ensure competitive fairness, at least nominally?

"The fact of the matter is payola laws have not stopped people from paying or compensating others for playing their music," George Howard told me recently. "Period. Full stop."

He should know—in addition to being the former president of Rykodisc

Now in theory, anyone with a checkbook could fork over money to these independent promoters for spinning a specific song.

But, as we indicated before, the problem becomes one of competitive frequency: most individuals don't have nearly enough money to compete for a healthy volume of spins with major labels, who, up until recently, [often kept such promoters on retainer.](#)

As a result, independent artists have found themselves “locked out of that system,” George Howard told me recently, “because the major labels—the ones...doing the *quid pro quo*—have the resources to do it on a regular basis, and they do it because it's a good return on investment.”

Indeed it is: common belief has held that radio airplay helps to drive sales, and [what little data-driven analysis there exists on that hypothesis largely bears out the claim.](#)

“It's not even ‘do you have the most money,’” George Howard said. “In the radio world, that won't even do it for you if you don't have the frequency. You need both money *and* frequency.”

Right now, a question might be fomenting in your brain: if so many entities are frequently trying to “get over” on payola laws, why has there been no substantive probe into this matter since 1950s?

There actually have been two: one in 1986, when an NBC news investigation entitled “The New Payola” inspired congressional hearings to reexamine the matter, and one again in the early 2000s.

The latter probe even yielded [monetary results](#): the Attorney General pushing for the investigation—Eliot Spitzer—reached settlements with Sony BMG (10 million), Warner Music Group (5 million) and Universal (12 million). More settlements were reached with other entities (CBS

Is there a solution to this problem in our newfangled, mixed-up ecosystem of music and tech? Is there any entity which can sidestep the indie promoters, the pay-to-play swindlers (several of whom targeted my old band in the early 2000's), and the payola laws to allow independent artists greater reach?

Stay tuned—we'll have an answer for you later in the week.

Follow me on Twitter. Check out my website.



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and managing Carly Simon, George wrote a fascinating treatise on the subject, [available here](#) (he's also the Board Advisor to a company attempting to innovate within the boundaries of payola laws, but more on that in a subsequent post).

Indeed, within radio's "many, many formats—not all formats, but certainly the higher-level formats—there is a *quid pro quo* going on," said George.

The *quid pro quo* comes indirectly: major labels have historically found a way to circumvent these laws through the use of independent promoters, or "indies" as they're more commonly known (not to be confused with independent labels, or "indies" as they're *also* more commonly known).

"The indies are the shadowy middlemen record companies will pay hundreds of millions of dollars to this year to get songs played on the radio," Eric Boehlert wrote [in an article for Salon some time ago](#). "Indies align themselves with certain radio stations by promising the stations 'promotional payments' in the six figures. Then, every time the radio station adds a Shaggy or Madonna or Janet Jackson song to its playlist, the indie gets paid by the record label."

Check out those names: Shaggy, Madonna, Janet Jackson—when was this article written? Fifteen years ago?

Almost: the article was published in 2001, and since then, little has changed; indeed, the proper word would be "upgraded": as recently as October, it came to light that Pandora, entering into a deal with Merlin (a large rights holder for many independent labels), was "[steering' its algorithms to perform more music from the Merlin catalogue in exchange for lower rates](#)"—a practice that "[sounds uncomfortably like the age-old practice of payola.](#)"

Michaels — by then a programmer at WHYI-FM in Miami — with a New York hotel room and New York Yankees tickets. The company booked the room under a false name and used a false Social Security number to conceal the transaction, the document states.

In testimony for the attorney general's office, Universal executives admitted providing hotel rooms, tickets to sports events and concerts to radio programmers for their personal use. Universal also paid for radio stations' operating expenses — like a bill for Web site maintenance — to obtain airplay for acts like the rap duo Big Tymers, Lindsay Lohan and the late hip-hop performer Aaliyah, according to the settlement papers.

At the same time Universal wooed programmers with gifts to add songs, the documents say, it also tried to deceive certain stations' personnel into believing a new song was deserving of more airplay.

Executives at the company sometimes tried to inflate the performance of a song on the charts monitored by radio programmers by openly buying airtime on certain stations. And the company hired outside consultants to manipulate call-in request lines.

In one e-mail message released by Mr. Spitzer's office, a Universal executive asked an outside company to place "curiosity calls," inquiring about a new Ludacris single, to dozens of stations. "Calls should be 75 percent female, 25 percent male 18-24 years old," the e-mail said.

Even with yesterday's settlement, Universal still faces accusations of misconduct in the promotion department at its New York-based Universal Records label.

In a lawsuit filed in Los Angeles Superior Court last year, two independent promoters accused Universal of instructing them to submit false bills so that overdue payments to the promoters could be processed. As a result, the lawsuit claims, expenses were charged to certain Universal acts,

like the rapper Nelly and the singer Paulina Rubio, when the promoters had been pushing songs for Lil' Romeo and Big Tymers.

The lawsuit also contends that Universal executives pressed certain radio stations to sever their relationships with the promoters — including National Music Marketing — and instead work with others, including the husband of an executive who was then Universal's top radio promotion official. Universal has denied the accusations.

A version of this article appears in print on , on Page C3 of the New York edition with the headline: Universal Music Settles Big Payola Case.