

Record Labels Next For Scrutiny

Written by Westside ID237

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Eliot Spitzer, the New York State attorney general, has recently taken on a procession of corporate powers from Wall Street analysts to mutual funds to insurance brokers. Now he is casting his eyes on the music industry, particularly its practices for influencing what songs are heard on the public airwaves.

According to several people involved, investigators in Mr. Spitzer's office have served subpoenas on the four major record corporations - the Universal Music Group, Sony BMG Music Entertainment, the EMI Group and the Warner Music Group - seeking copies of contracts, billing records and other information detailing their ties to independent middlemen who pitch new songs to radio programmers in New York State.

The inquiry encompasses all the major radio formats and is not aiming at any individual record promoter, these people said. Mr. Spitzer and representatives for the record companies declined to comment.

The major record labels have paid middlemen for decades, though the practice has long been derided as a way to skirt a federal statute - known as the payola law - outlawing bribes to radio broadcasters.

Broadcasters are prohibited from taking cash or anything of value in exchange for playing a specific song, unless they disclose the transaction to listeners. But in a practice that is common in the industry, independent promoters pay radio stations annual fees - often exceeding \$100 Thousand Dollars - not, they say, to play specific songs, but to obtain advance copies of the stations' playlists. The promoters then bill record labels for each new song that is played; the total tab costs the record industry tens of millions of dollars each year.

The new scrutiny comes at an inconvenient time for the major record companies, which have been pressing federal and state law enforcement officials to shut pirate CD manufacturers and the unimpeded flow of copyrighted music online.

The statute involved is a federal one and the case would not seem to fit neatly into Mr. Spitzer's jurisdiction, but state attorneys general typically have wide latitude to investigate issues

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involving consumers and businesses in their states.

In this instance, Mr. Spitzer might proceed on the ground that broadcasters' dealings with middlemen severely limit the opportunities available to those artists who cannot afford to hire them.

These promoters flourished throughout the 1980's and most of the 1990's, but their influence began to weaken after Congress deregulated the radio industry in 1996, allowing for an extensive consolidation that tilted the balance of power to a handful of newly created broadcasting mammoths.

With their newfound power, some big chains, including Clear Channel Communications, at first tried to tap a bigger share of the labels' promotional dollars, and designated specific independent promoters to be the exclusive representatives for particular stations.

Promotion prices continued to rise, but at the same time the consultants had less influence over airplay, record executives say.

In 2002, the industry's lobbying organization, the Recording Industry Association of America, called on the government to strengthen anti-payola laws and examine questionable practices, including independent promotion. (Association officials are considering whether to provide new comments and information to the Federal Communications Commission as part of that agency's review of radio promotion, people in the music industry have said.)

Cox Radio, and later Clear Channel, said they would not renew their contracts with any promoters.

Since the big companies severed their ties to the practice, record labels - suffering from piracy and other financial woes - have sharply scaled back payments to the middlemen, and by some estimates pay them as little as \$30 million annually.

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One promoter, who spoke on condition of anonymity, said Mr. Spitzer's investigators "are not going to find anything; they're 20 years too late."

But questionable practices persist in a variety of markets and music formats.

In the late 1990's, the Justice Department began a broad investigation of payola that eventually encompassed dozens of Latin and urban- music radio stations across the nation. It won convictions against two top executives at Fonovisa, the biggest independent record label in the Spanish-language market, and a top radio executive. No cases have been brought in the urban-music category. Unlike the promoters in the rock and pop fields who receive payments as stations add a song to their playlist, many urban-music consultants receive initial lump sums to finance the marketing of a new single, and distribute the money as they see fit.

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