Same Song, Different Verse:

Evolution of the Entertainment & Music Industry in the COVID Era
Introduction

• COVID-19 impacted all aspects of the entertainment & music industry
  • Suspension & cancellation of major tours
  • Closing of countless music venues
  • Loss of revenue for sponsorships, merch, ticketing, restaurants, hotels, etc.

• No one-size-fits-all response to the challenges faced
Four Themes Emerged During the Pandemic & Have Lasting Effects

1. Contract Language
2. Insurance Policy Terms
3. Livestreaming
4. New Social Media Platforms
Contract Language

• Customize the terms of their relationship
• Allocation of risk
• Courts seek to “accomplish the parties’ intentions”
• Few contracts deal with novel issues (PREDICT)
• In practice, we have utilized a few types of provisions that deal with Unforeseen Circumstances
Contract Language

During COVID: **Force Majeure**

- An event or effect that can be neither anticipated nor controlled
  - Acts of nature (i.e. floods)
  - Acts of people (i.e. strikes)
- Found in boilerplate terms
- Elements of the Claim:
  - Define the breach; Define the “force majeure;” Define the causal connection between the two & explain what will happen if performance is excused
- Must be impossible; not just burdensome (expensive)
- Must review the facts of each case…
Contract Language

Post COVID - How to Move Forward:

1. Select a resolution process that works
   • Litigation vs ADR

2. Strengthen Force Majeure Clauses
   • No ambiguities

3. Pay attention to contractual inconsistencies
Insurance Policy Terms

• Way for businesses to transfer risk or the cost of doing business

• Various types of insurance:
  • Standard Terms:
    • Physical Damage Policy
  • Negotiated Terms:
    • Event Cancellation Policy
    • Production Insurance
    • Business Interruption
    • Look at language of the Policy
Insurance Policy Terms

Current Cases -

• Federal Courts - Pro Insurer
  • As of 3/22:
    • 1,346 suits against ins co for pandemic-related coverage
    • 44% have been dismissed by the courts
    • 16-17% have been dismissed by the plaintiffs
    • 40% have not been decided

• State Courts - more split
Insurance Policy Terms

Post COVID

• Event Cancellation Policies
  • Much stricter underwriting
  • Premiums have increased
  • Likely to have to purchase from numerous insurers due to new capacity limits

• Communicable Disease Coverage
  • Almost non-existent
  • Prior to Covid, 75% of policies didn’t cover this

• Much risk falls on those who produce & promote the live event
Livestreaming

• 2020 was projected to produce the first $12B year in touring revenue worldwide (compared to the $1.2B actually earned, resulting in a 90% loss)

• Livestreaming has been around but became a necessity during quarantine and is now its own standalone sector and category of what artists offer their fans

• The format evolved for artists from grainy, poor-quality footage to better production
Livestreaming

- Grand Ole Opry
  - Named as a Top Streamer by Pollstar
- Twitch
  - Launched livestreaming incubator program called The Collective to help train and support musicians on the platform
- Nugs.net
  - “Metallica Mondays”, consisting of weekly archival concerts streamed by Metallica
- Stagelt
  - Early in the livestream space (2012) but grown in recent years
- Twitter
  - Partnered exclusively with Billboard for the 2022 Women in Music Awards
- YouTube Music
- LiveXLive
- Mandolin
- NoonChorus
Livestreaming

• Accessibility for more people than in-person audiences

• Adele
  • One Night Only - Streamed on Hulu, YouTube TV, etc. with over 10 million viewers

• Kanye West
  • Studio performance - Streamed on Amazon Prime Video, Amazon Music App, and Amazon Twitch channel
New Social Media Platforms

• Social media usage and patterns have increased and changed
• The change in the type of content being shared has resulted in new platforms
• Platforms have risen in popularity since 2020, each serving a different, distinct purpose
  • Zoom
  • Facebook Rooms
  • YouTube Shorts
  • Google Hangouts
  • WhatsApp
  • Clubhouse
  • TikTok
New Social Media Platforms

• TikTok
  • Arrived in the US in 2018 and blew up during quarantine
  • Has become an essential promotional tool for artists and labels
  • Songs that trend on TikTok often chart on Billboard 100
  • 67% of TikTok users are more likely to seek out songs on DSPs after hearing them on TikTok
  • Song promo deals between music marketers and influencers have increased
  • Catalog music usage and discovery of new music
    • Fleetwood Mac’s “Dreams” re-entered Billboard Hot 100 after 43-year absence
Conclusion

• COVID-19 impacted all aspects of the entertainment & music industry

• No one-size-fits-all response to the challenges faced

• We must continue to rely on imagination, inspiration & interconnectivity