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LAWYERS

# Nationalism vs globalism: regional and transnational legal issues reshaping the entertainment industry

Edited by William Genereux & Marijn Kingma



# IAEL 2020

“Nationalism vs globalism: regional and transnational legal issues reshaping the entertainment industry”



## Message from the President: Jeff Liebenson

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I hoped this year of 2020 would be marked by our pursuit of this very interesting and relevant topic of Nationalism vs Globalism. And also my tenth year of serving as President of the IAEL, which is and continues to be such an honor.

But we are confronted by a pandemic that has affected our world. As we go inward to avoid mass contagion and yet continue to hear about its devastating effects across the globe, it sometimes is difficult to think of anything else. I echo the co-editors' hope that normalcy will to some degree return soon.

I am quite certain that the subject chosen by our co-editors will remain relevant. So in that spirit, we move on.

At times like this, it's inspiring to see the IAEL do what the IAEL does best—focusing on the key issues of the day, and enjoying the collegiality of our fellow members across national boundaries.

So while the world is going through distancing and isolation, the IAEL has come together to mount its first-ever digital IAEL Legal Summit. This has been a true group effort with major contributions from different corners of the world, bringing our different backgrounds and perspectives to work together across national borders.

I want to thank Marijn Kingma from The Netherlands and William Genereux from Canada, our co-editors who have brought their experiences from where they live and their legal expertise to life in developing this book, as well as our contributors for providing their rich perspectives.

Thanks to Duncan Calow and Marcel Bunders for your continued support, guidance and humor with respect to the many adversities we have weathered this year!

While the book focuses on digital and other entertainment deals crossing borders, it also addresses what legal needs still should be considered on a national or country-by-country basis. Our hope is that exploring these legal trends will help us in guiding our clients to deal with our multicultural world of entertainment law, notwithstanding the nationalistic urges of our time.

Perhaps this mirrors our staging of this digital IAEL Legal Summit with members from around the world enjoying our different cultures and coordinating our common interests.

We look forward to the upcoming publication of this, our 35th annual book published by the IAEL, Nationalism vs Globalism: Regional and Transnational Legal Issues Reshaping the Entertainment Industry.

# Editors' Introduction: William Genereux & Marijn Kingma



When this year's topic 'nationalism vs globalism' was chosen at the IAEL general meeting in 2019, no one could have foreseen that our world would soon be faced with a global pandemic. As we are writing this, COVID-19 has halted normal life throughout the world. With countries taking extreme lockdown measures, the impact on the economy is unimaginable and the entertainment industry had been brought to a near standstill. Concerts, festivals, movie releases and other events have been cancelled and entertainment lawyers are faced with unprecedented legal issues. But the entertainment industry is also proving its creativity in these times with initiatives like drive-in festivals, balcony concerts and virtual movie watching parties.

It was unavoidable that Midem, where we present our annual IAEL book each year, was cancelled. This has led to the decision to hold our 2020 IAEL book so that we can present it to the IAEL community at next year's Midem. The book will be released as the "IAEL 2020-2021" book. We believe the topic and content of the book will remain relevant.

However, we did not want to refrain from publishing anything at all this year, so we have decided to release five contributions from our book for next year as a 'sneak preview.' We believe the chapters we have chosen are a good reflection of our book and are also great standalone reads.

Our 2020-2021 book will explore the longstanding conflict between nationalism and globalism as it relates to the entertainment industry. Contributions will be subdivided into three major categories. The first category focuses on issues in specific jurisdictions and markets. The second attempts to map-out the expansion of regional forces into wider applications. The third seeks to bring a holistic view that reconciles many of the vital issues affecting the industry at large, and which are shaping our future world.

As a sneak preview from the first chapter, we have chosen a contribution about the effects of Brexit on the entertainment industry, a topic that cannot be missed in a chapter about regionalism. From the second part of our book, we have selected two articles about the effect of the GDPR around the world, as countries are adapting their data protection legislation to keep up with Europe's strict rules. Finally, we have released two contributions from the third chapter of the book. The first looks at the (im)possibility to regulate fake news and political advertising on social media platforms. The second article is about what is no doubt the biggest challenge of our times: global warming. The article discusses environmental impacts of recorded music and what we as lawyers can do to help mitigate climate change.

The fast spread of the virus is a direct result of globalization – international air traffic has quickly moved it around the world. And while countries are all imposing their own countermeasures, the virus knows no national borders. Meanwhile, globalization may also halt the virus. The global scientific community was able to find a reliable test for COVID-19 within days and is now working together to find a treatment and a vaccine. We are hoping that by the time our book comes out in 2021, global efforts will have resulted in a return back to – relative – normalcy.

We would like to thank IAEL's president Jeff Liebensohn for his time, effort and leadership. We would also like to thank Janneke Popma, associate at Höcker, for her indispensable organizational skills. Additionally, the authors all need to be recognized for their creativity and their understanding when we had to postpone the release of the book.

Thank you everyone.

## >> William Genereux

### TORONTO

William is a Toronto lawyer with 35 years' experience in entertainment law, corporate law and litigation. In the 1980s he played in a hardcore punk band. In the 1990s he co-owned and operated a dance music record label. In the 2000s he was a lecturer at the Ted Rogers School of Management – Ryerson University, Toronto. His clients include top-selling recording artists, producers, writers, digital technology entrepreneurs and filmmakers. He is a member of the Law Society of Ontario, volunteers with Artists' Legal Aid Services in conjunction with the University of Toronto Faculty of Law, and is a past-chair of the Canadian Bar Association – Ontario, Entertainment, Media and Communications Law Section.

## >> Marijn Kingma

### U.S.A.

Marijn Kingma is a partner at Höcker Advocaten, based in Amsterdam. Marijn specializes in information law, with a focus on copyright and privacy-related issues. Marijn has a varied practice; her clients range from collective management organisations and NGO's to broadcasters and international entertainment companies. She conducts complex, strategic litigation and has been involved in several national and European landmark cases. Marijn is ranked in the Chambers guide as a "very strong, young up-and-coming lawyer" who is "unbelievably good and very clever" and is ranked in the Legal500 guide as "next generation lawyer", noting that "her knowledge, flexibility and positive mood makes working with her a fun, but still very effective experience". She is editor for the Dutch law journal AMI, an active member of the International Association of Entertainment Lawyers and a regular speaker at (national and international) conferences.

# Environmental impacts of recorded music: how can the music industry green itself and fight climate change?

“Emissions from electricity are notably relevant to digital music.”



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## 1. Context

It's clear that the climate crisis is the defining threat of our time.<sup>1</sup>

It is also clear from recent headlines that many in the music industry are aware of this and want to do something about it.<sup>2</sup> These stories offer some of the most widely-reported recent evidence that participants in the music industry are concerned about climate change, and actively working to address it, both in their own careers and in the broader world. Of course, other artists, artist representatives, companies and nonprofit organizations have been outspoken about, and actively working on, environmental impacts of the music industry for years.<sup>3</sup> The U.S.-based nonprofit group Reverb, for example, has worked with musicians, festivals and venues to “green” their concert events since the mid-2000s.<sup>4</sup> U.K.-based Julie’s Bicycle, which was formed in 2006, initially focused on the music industry and now works with the entire creative community on climate change and environmental sustainability.<sup>5</sup> Julie’s Bicycle is also one of the forces behind the U.K.-based music industry collective Music Declares Emergency.<sup>6</sup>

According to the UN Environment Programme, globally, GHG emissions need to fall by 7.6 percent each year for the next 10 years if the world is to succeed in limiting temperature rises to near 1.5 degrees Celsius.<sup>7</sup> Manmade GHG emissions arise from various sectors, including energy (which includes electricity and heat, manufacturing and construction, and transportation, along with other sources), industrial processes, agriculture, waste, forestry, and other sectors. Energy is by far the largest sector, with electricity and heat by far the largest sub-sector.

Emissions from electricity are notably relevant to digital music. A recent study by University of Oslo professor Kyle Devine, further discussed in Devine’s book “Decomposed: The Political Ecology of Music,”<sup>8</sup> concluded that the energy required to stream and download digital music has resulted in significant increases in greenhouse gas (GHG) emissions. The environmental impact of listening to recorded music, he determined, is higher than ever.<sup>9</sup>

The Devine study compared the environmental cost of recorded music in the U.S. in 1977, 1988, and 2000, “the(U.S.) sales peaks of the LP, cassette, and CD,”<sup>10</sup> as well as in 2016. The plastics production associated with making LPs, cassettes and CDs was compared with “the energy intensity of storing and transmitting music as digital files” by converting “both plastics production and electricity intensity into greenhouse gas emissions, also known as carbon dioxide equivalents -- CO<sub>2</sub>(e).”<sup>11</sup> Although the study judged that the amount of plastic used to make physical formats fell off “dramatically” from the 1977 - 2000 period to 2016,<sup>12</sup> it also concluded that the total GHG emissions associated with recorded music increased from nearly 137 million kilograms in 1988, to 157 million kilograms in 2000, to somewhere between 205 - over 350 million kilograms in 2016.<sup>13</sup>

Assuming that Devine’s overall conclusions about the rise in GHG emissions associated with streaming are correct, this is likely a surprise and disappointment to those in the industry who assumed that environmental impacts of recorded music diminished when the industry turned away from CDs and all the plastic they entailed. The news is also ironic because streaming is what has finally helped the recorded music sector recover from the debacle of Napster and all that followed.

“The music industry is complex, making it a challenge to determine the scope of research and of sustainability efforts.”

The environmental takeaway from Devine’s study and book, though, is not that one form of recorded music is more environmentally friendly than another (although others have discussed which form is “the greener option” under different scenarios), but that every form of recorded music has environmental impacts, and that we may have to “question our expectations of instant access and infinite storage” and “recognize that recorded music is as finite as everything else.”<sup>15</sup>

What seems clear is that the music industry - like every other human enterprise - must become more aware of the environmental impacts for which it is responsible, and work to substantially lessen those impacts.

This article considers what music industry participants could and should do to green the industry, as well as to support the larger fight against climate change. Given the recent study about increased emissions from streaming, the focus will be on digital recorded music.

## II. Goal

Music Declares Emergency’s declaration commits signers to, among other things, “[s]peak up and out about the climate and ecological emergency” and “[w]ork towards making our businesses ecologically sustainable and regenerative.”

If the world’s music industry participants could work together, what should their goal(s) be? With respect to greening the industry itself, the goal could be to stop causing adverse environmental impacts. Presumably this would mean achieving zero emissions and zero waste, and halting biodiversity loss - from the recorded music sector, the live sector, and from merchandise, publishing, and promotions. With respect to digital music, the most important aims would be increasing energy efficiency, moving to an all-renewable electric grid and greening the internet.

Working to make a business regenerative implies more than just stopping adverse environmental impacts; it implies restoring and improving the ecosystem.

## III. Challenges

Those working to make the recorded music industry more environmentally friendly may face numerous challenges, including:

### 1) The complexity of the recorded music “ecosystem”

The music industry is complex, making it a challenge to determine the scope of research and of sustainability efforts. For example, in the recorded sector, some listening devices are used only for listening to music while others, such as laptops, are used for multiple purposes. Data centers store and transmit more than just streaming music data. A track, once recorded, can be played in a number of different formats.

When asked about the best way to identify the environmental impacts of recorded music going forward, Professor Devine says the next important step would be much more thorough, global, and team-oriented life cycle analyses of various formats.<sup>16</sup> Life cycle analysis (sometimes called life cycle assessment) (LCA) is a way of evaluating a product’s impact on the environment through its lifetime, from extraction and processing of raw materials, through materials processing, manufacturing, distribution, use, repair and maintenance, recycling, and final disposal. The steps in conducting an LCA include “selecting a functional unit(to analyze); defining the goal and scope of the study; compiling an inventory of relevant energy and material inputs and environmental releases; evaluating the potential environmental impacts; and interpreting the results to help decision makers make a more informed decision.”<sup>17</sup>

What is the appropriate scope of research with respect to digital music? Is the “functional unit” to be studied a single track, or a download/stream? Should the scope of research include the device which the consumer uses to listen to a track, such as a cellphone? If so, should the research include the manufacturing of the user device and the shipping of the device, as well as the use of the device? Should the scope of research include the process of recording music, the manufacturing and shipping of the instruments played, and the manufacturing, shipping and use of the equipment used in the recording process?

“Businesses should be prepared to provide details about new sustainability initiatives and campaigns.”

## 2) The complexity of the internet

As noted in Rolling Stone, music streaming is not the only component of the internet that data centers power; there is also video streaming, social media, and other content<sup>18</sup> Thus, the voice of the recorded music industry might just be one among many. On the other hand, the lines are getting blurred as, for example, social media sites add music products. Further, since everyone ultimately benefits from a greener internet, there might be opportunities for collaboration across industries.

## 3) The diffuse nature of the music industry

Participants in the recorded music industry are spread across the globe and range from major multinational corporations to children at home in their bedrooms.

## 4) Company concerns

Music industry companies asked to make changes for environmental reasons may have understandable concerns such as rising costs, lower profitability, loss of competitive advantage, and so forth. Corporate directors and managers may be under pressure - if not the legal obligation - to maximize short term shareholder value. On the other hand, companies may face pressure from employees,<sup>19</sup> investors, reporters, and the general public about taking steps to lessen their environmental impact. Also, taking action voluntarily might be more palatable than waiting for governmental edict. Further, companies that take steps toward sustainability may reap a variety of benefits, including in-house benefits such as efficiency gains, waste reduction, greater innovation, more highly-motivated employees, an advantage in attracting employees, and a greater ability to raise impact investment capital; and marketplace benefits such as brand enhancement and greater profitability, in addition to the benefits to society at large.

## 5) Artist concerns

Artists considering taking steps to decrease their environmental impact might be concerned about rising costs and about public reaction. Some artists' fans, of course, would support and expect environmental accountability and leadership from their favorite artists. However, perceived artist hypocrisy can meet swift criticism. Speaking out collectively could give individual artists greater leverage and help dampen any negative public reaction.

## 6) The need for transparency

Transparency is vital if the music industry is to be changed for the better. It would be difficult or impossible to fully confront the environmental impacts of the industry if information is lacking or inaccurate, or if the sources of information aren't trusted. Transparency necessitates verification of research results, environmental marketing claims and the like by experienced and trustworthy third parties. For example, reforestation projects to offset carbon emissions should be monitored to ensure that the expected trees are actually planted and left in place to absorb carbon as expected. Ideally, the third-party verifiers are themselves subject to random audits on an ongoing basis.

Businesses should be prepared to provide details about new sustainability initiatives and campaigns - what levels of funding and staffing will be established, and for how long; what monitoring and enforcement mechanisms are in place; and what will happen in the event that promises are not lived up to. For example, Amazon, a major global company and, via its subsidiary Amazon Web Services, a major provider of web services (including to numerous music and video streaming platforms), recently announced that it had co-founded, with Global Optimism Ltd. (a “purpose driven enterprise focused on social and environmental change”<sup>20</sup>), an initiative called “The Climate Pledge,” which “calls on signatories to be net zero carbon across their businesses ... a decade ahead of the Paris Agreement's goal of 2050.”<sup>21</sup> On review of both Amazon's and Global Optimism's websites, however, it is not clear if any other company has signed on to this initiative or how it would do so, how the signatories' progress toward the stated goal is going to be monitored, to whom they are to report their progress, or what happens if a signatory fails to live up to its pledge.<sup>22</sup>

“Greenwashing” is damaging to public trust.<sup>23</sup> Regulations and related guidance documents about environmental marketing claims seek to promote truthfulness and prevent greenwashing.<sup>24</sup>

## 7) Constantly-changing technology

The pace of technological change is especially apparent in the recorded music sector. Not only is the technology for creating music constantly changing, the types of devices on which consumers listen to music is also constantly evolving, and consumers are constantly changing or upgrading their devices. For example, the worldwide smart personal audio device market, consisting of true wireless stereo, wireless earphones and wireless headphones, grew at a

“Despite the many potential challenges, there are also many potential opportunities for those seeking to green the recorded music industry and fight climate change.”

fast clip in 2019.<sup>25</sup> The 3” vinyl record (with tiny turntable) is back,<sup>26</sup> HD Vinyl is purportedly coming,<sup>27</sup> as is the Phonocut, an analog vinyl lathe for making records at home.<sup>28</sup> New devices may be more energy efficient, but manufacturing and shipping them and replacing the older devices still requires energy and results in waste.

#### 8) Changing trends

Separate from evolving technology, music consumption may reflect consumer fashions and preferences, such as the resurgence of traditional vinyl and cassettes.

#### 9) The need to offset

A company trying to be carbon neutral (i.e., to release net zero emissions into the atmosphere) may become as efficient as possible and even make direct purchases of renewable energy, yet still not be able to avoid some use of fossil fuel. The company may thus buy renewable energy credits (“RECs”) to offset its actual use of fossil fuel.<sup>29</sup> RECs (also known as renewable energy certificates or green tags) are market-based instruments that “represent[] the property rights to the environmental, social and other non-power attributes of renewable electricity generation.” A REC is created when each megawatt-hour of renewable energy (from wind, solar, biomass, geothermal, or certain hydropower sources) is generated and delivered to the power grid.

RECs, like reforestation schemes, can be problematic,<sup>30</sup> yet at this time may be better than doing nothing about emissions that cannot be avoided.

#### 10) Consumer price sensitivity

The cost of addressing climate impacts may result in costs that cannot easily be passed on to consumers. Getting listeners to pay for recorded music has obviously been an evolving challenge over recent years. Fans might not want (or be able) to pay extra for optional eco-friendly goods or services. Of course, fan bases differ between artists.

#### 11) Jevons paradox

Writing about coal in the 1860s, William Jevons observed that technological efficiency gains actually resulted in increased production and consumption. This “Jevons paradox” notion of a “rebound” effect can be applied to virtually any resource. In *Decomposed*, Professor Devine writes about the digitalization of music that “...as the Jevons effect predicts,

the miniaturization of music formats and their increased energy efficiency are offset by massifications of devices and listening.”<sup>31</sup>

Going forward, in attempting to lessen the environmental impacts of the music industry, care should be taken that energy efficiency gains aren’t cancelled out by ever-higher levels of production and consumption.

#### 12) Growing numbers of consumers

Regardless of Jevons paradox effects, with human population rising it appears that the number of music consumers will continue to increase in the near future. With respect to streaming, growth is expected to be strongest in emerging markets.

#### 13) Regional/national versus global

The climate crisis is a global threat, but many aspects of our legal systems are national or regional. Environmental regulations, for example, are more stringent in some countries (or, for example, U.S. states) than others. Corporate law, securities law, advertising regulations and other area of law pertinent to climate concerns vary across and sometimes within countries.

#### 14) Lawyers’ duties and pressures

Lawyers eager to help make the music industry more sustainable might represent clients who are uninformed about or disinterested in the climate crisis, or opposed to change. Lawyers might be restricted by their fiduciary duties to their clients.

## IV. Opportunities

Despite the many potential challenges, there are also many potential opportunities for those seeking to green the recorded music industry and fight climate change. Here are some steps that could be or are already being taken.

#### 1) Artists take action

Artists could speak out about the climate crisis, either through their music (as Billie Eilish, Grimes and others are doing),<sup>33</sup> or more directly. For example, in the U.S., a couple dozen musical artists have signed the We Are Still In declaration regarding the Paris Agreement.<sup>34</sup> Artists could donate to or serve as spokespeople for environmental groups. They could

“Companies assessing their own carbon footprints is arguably necessary but not sufficient.”

invest in environmentally-friendly businesses; for example, FEAT. in Australia is an artist-initiated platform that allows artists to invest in Australian solar farms.<sup>35</sup> Artists could work collectively through climate-focused groups such as Music Declares Emergency, Julie’s Bicycle, Green Music Australia,<sup>36</sup> and Creative Carbon Scotland,<sup>37</sup> or through industry organizations such as performance rights organizations and record industry trade groups. For example, artists could collectively pressure the companies they work with (such as streaming platforms and the companies those platforms rely on for their data storage and transmission needs) to press for a faster transition to all-electric power, and for regulations for a 100% green renewable electric grid.

## 2) Companies speak out

Companies assessing their own carbon footprints is arguably necessary but not sufficient. Like artists, companies could take an advocacy role and push for international engagement,<sup>38</sup> a price on carbon, regulations for a 100% green renewable grid, etc.

In a 2018 article, Thomas P. Lyon and co-writers called for companies to become as transparent about their “corporate political responsibility” (CPR) as their corporate social responsibility (CSR), and for rating systems to demand CPR information when assessing a company’s CSR.<sup>39</sup> Companies, they wrote, should fully disclose their corporate political activity, align their political activity with their public pronouncements and CSR efforts, and support public policies that will enable the private sector to better pursue sustainability efforts and commitments.<sup>40</sup>

## 3) Governments promote sustainability

Governments - national or other - can of course address climate concerns in myriad ways - by taxing emissions, setting emissions targets (including committing to net zero emissions by a specific date),<sup>41</sup> establishing green building codes, requiring companies to disclose climate risks, passing right-to-repair laws,<sup>42</sup> etc.

Legislation intended to drive a “circular economy” (one that reduces reliance on virgin materials), reduce the impact of packaging, require products to contain minimum percentages of recycled materials or make companies responsible for end-of-life disposal could result in the music industry lessening its environmental impacts.

In a 1995 article, Wharton School professor Eric Orts advocated for the idea of “reflexive environmental law” which “attempts...to encourage ethical environmental behavior by providing positive incentives.”<sup>43</sup> A model of environmental regulation is needed, Orts argued, “that encourages businesses to adopt environmentally proactive policies” and allows them to prosper in doing so; the model must also “discourage businesses that are environmentally irresponsible.”<sup>44</sup>

## 4) Companies use voluntary standards

Companies can use voluntary management standards to improve their environmental performance, such as the ISO 14001 standard regarding environmental management systems. ISO 14000 is a family of voluntary international standards developed by the International Organization for Standardization (ISO) that “provides practical tools for companies and organizations of all kinds looking to manage their environmental responsibilities.”<sup>45</sup> ISO 14001 is the key standard of the 14000 series and establishes the requirements for an environmental management system; users of the standard can be certified by a third party through an optional accredited certification process.<sup>46</sup>

The EU Eco-Management and Audit Scheme (EMAS) is a voluntary management instrument which incorporates the ISO 14001 requirements and adds other requirements as well.<sup>47</sup>

However, international standards like ISO 14001 (and ISO 20121, which applies to sustainable events<sup>48</sup>) are likely most useful to large companies, and ISO 14001 has not been widely taken up in the U.S. Organizations in Finland, Norway and Sweden manage and develop national environmental management standards which are based on ISO 14001 and EMAS but are geared more to small and medium-sized enterprises.<sup>49</sup> Julie’s Bicycle in the U.K. has developed the Creative Green Framework, an “environmental certification scheme designed specifically for the creative and cultural industries.”<sup>50</sup>

## 5) Companies broaden obligations

The benefit corporation movement, started by nonprofit group B Lab, allows companies in certain U.S. states to voluntarily expand the obligations of their corporate boards, “requiring them to consider environmental and social factors, as well as the financial interests of shareholders.”<sup>51</sup> Although it is primarily privately-held corporations that have chosen to become benefit corporations, benefit corporations can go public. Since the benefit corporation

“Companies can commit to specific climate-related initiatives, on their own or preferably through established programs.”

structure is a legal tool, the Benefit Corporation website has a section of detailed information for attorneys, and also provides a list of attorneys “interested in working with businesses to explore whether benefit corp status makes sense for them and how it could be most useful.”<sup>52</sup> The benefit corporation concept has also been introduced into a few other countries.

B Lab also certifies “B Corporations.” B Corp Certification “measures a company’s entire social and environmental performance.”<sup>53</sup> Certified B Corporations “are legally required to consider the impact of their decisions on all their stakeholders”; they “make this legal change by updating their articles of incorporation, reincorporating as benefit companies, or making other structural changes.”<sup>54</sup> There are now Certified B Corporations in more than 50 countries; most Certified B Corps are small businesses. In December, 2019, over 500 B Corps from around the world publicly committed “to accelerate the reduction of their greenhouse gas emissions to reach a 1.5 degree trajectory leading to net zero by the year 2030—20 years ahead of the 2050 targets set in the Paris Agreement.”<sup>55</sup> It appears that so far only a couple of music production companies have become Certified B Corporations.<sup>56</sup>

The Economy for the Common Good, a movement for an alternative economic model that started in Austria and has spread across Europe and to other continents, has developed a three-step system called the Common Good Balance Sheet.<sup>57</sup> The Balance Sheet system examines a company’s contribution to the common good across numerous factors including environmental sustainability. Over 500 companies have published a Common Good Balance Sheet.

#### 6) Companies commit to specific initiatives

Companies can commit to specific climate-related initiatives, on their own or preferably through established programs. For example, We Mean Business is a global coalition of seven international nonprofit organizations that “work(s) with the world’s most influential businesses to take action on climate change.”<sup>58</sup> Interested companies can contact We Mean Business about committing to one or more initiatives designed by the coalition partners. One of those initiatives is RE100, led by nonprofit group The Climate Group in partnership with the nonprofit CDP. Companies joining RE100 must match 100% of the electricity they use with electricity produced from renewable sources; they can generate renewable electricity themselves or procure it from the market, including as energy attribute certificates.<sup>59</sup> Joining companies must disclose their third party-verified electricity data each year, and RE100

reports on their progress. Music industry-related companies Alphabet, Facebook, Panasonic, Rackspace Hosting, and Sony are among the companies who have joined RE100. Chinese technology company Baidu has committed to another initiative, the EV100 initiative; to join EV100 companies are “invited to make a public commitment” to one or more of several electric vehicle actions “with a 2030 target date.”<sup>60</sup>

#### 7) Companies disclose climate risks

Whether or not required to by applicable law, companies could disclose the climate risks (and opportunities) they face. Some companies already do so. The Task Force on Climate-related Financial Disclosures, convened by the international Financial Stability Board, is developing “voluntary, consistent climate-related financial risk disclosures” for companies to use;<sup>61</sup> the Task Force has also launched an e-learning platform to help companies “enhance their disclosures of climate-related information.”<sup>62</sup>

#### 8) Companies give sustainability bonuses

Companies could pay employees - executives or entire workforces - for meeting sustainability targets, and could offer better financial terms to suppliers who meet sustainability goals.

#### 9) Financing approaches

Music companies and others could borrow innovative financing approaches from other industries. For example, in October, 2019, PepsiCo announced that it was offering \$1 billion in green bonds to fund its sustainability agenda.<sup>63</sup> An October, 2019 article about the shipping industry mentioned several financing concepts that could potentially transfer to the music industry - lease-financing packages to minimize upfront costs for companies seeking to install new sustainability technology; pay-as-you-use subscription models for companies using new sustainable tech services; and a global industry carbon fund that would impose a tax on industry participants’ emissions, then apply the funds to emissions reduction efforts.<sup>64</sup>

Companies could also take advantage of sustainability-linked loans that let borrowers lower the cost of debt if they meet specified sustainability metrics.

“The moment is ripe for the global music industry to come together to share information, set goals, develop best practices, and establish a framework for effective action.”

## V. What Could Lawyers Do?

Empirically, music industry lawyers do not seem to have played a large role in the music industry’s climate change efforts so far. However, it seems there are various things that music industry lawyers could do, depending on their skill sets and circumstances, and whether in their roles as lawyers or as concerned individuals, including:

- Green their own offices and activities
- Normalize eco-friendly practices in the industry
- Review, draft, and/or negotiate specific kinds of contracts or contract provisions
- Encourage clients to adopt eco-friendly practices, both in their professional and personal lives
- Support clients’ environmental efforts
- Do basic due diligence about clients’ potential projects and partners
- Work with clients to ensure compliance with environmental laws
- Assist corporate clients with broadening their obligations to include sustainability considerations
- Help clients avoid actions that would lead to charges of hypocrisy or greenwashing
- Take action against greenwashing by others
- Support and help fund research into music industry impacts
- Donate to or invest in environmental causes and green services and technologies
- Encourage trade organizations to become informed about and proactive on sustainability issues, and to establish sustainability guidelines and standards
- Press for government action and investment into energy efficiency and truly clean renewable energy sources

The first item above - lawyers greening their own offices and activities - is an obvious first step. Useful advice about greening offices is available from a variety of sources such as local bar associations and organizations seeking to help small businesses.<sup>65</sup> Julie’s Bicycle published a guide for greening offices in all the creative industries; it touches on travel practices as well.<sup>66</sup> The Music Declares Emergency website suggests actions for people in various roles in the music industry -- not specifically including lawyers, but many of the suggestions, such as switching to or generating 100% renewable electricity for the office, banking with ethical banks that don’t invest in fossil fuels, and divesting pension funds from fossil fuels, could be applied to law firms.<sup>67</sup>

## VI. Conclusion

Many people and organizations are already working to address the environmental impacts of the music industry and the climate crisis in general. However, much more needs to be done, and time is of the essence. The moment is ripe for the global music industry to come together to share information, set goals, develop best practices, and establish a framework for effective action. Artists may be the first or the most visible to speak out or take action, yet companies’ efforts are crucial, and there is a role for everyone, including lawyers, to play. Rather than remain in our professional niches, each one of us can use our specialized skills and our industry experience to transform our industry and our world.

- [1] See, e.g., *UN emissions report: World on course for more than 3 degree spike, even if climate commitments are met*, *UN News* (November 26, 2019) <<https://news.un.org/en/story/2019/11/1052171>>.
- [2] See, e.g., *Melanie May, David Gilmour guitar auction raises \$21m for Climate Change*, *UKFundraising* (June 26, 2019) <<https://fundraising.co.uk/2019/06/26/david-gilmour-guitar-auction-raises-21m-for-climate-change/>>; *James Hanley, UK music industry declares climate and ecological emergency*, *Music Week* (July 12, 2019) <<https://www.musicweek.com/labels/read/uk-music-industry-declares-climate-and-ecological-emergency/076773>>; *Music Declares Emergency website*, <<https://www.musicdeclares.net/>>; *Coldplay to pause touring until concerts are 'environmentally beneficial'*, *BBC News* (November 21, 2019) <<https://www.bbc.com/news/entertainment-arts-50490700>>; *Helen Pidd, Massive Attack to help map music industry's carbon footprint*, *The Guardian* (November 28 2019) <<https://www.theguardian.com/music/2019/nov/28/massive-attack-to-help-map-music-industrys-carbon-footprint>>; and *A collective of some of Australia's most beloved artists have announced they are coming together for Down To Earth - A Fire and Climate Relief Concert*, *Arts Centre Melbourne* (visited February 12, 2020) <<https://www.artscentremelbourne.com.au/whats-on/2020/contemporary-music/down-to-earth>>. See, e.g., *Green Highway - Bonnie Raitt (2002)* <<https://greenhighway.net/on-tour/#bonnie-raitt-2002>>;
- [3] *David Gilmour's "On An Island" Is First CarbonNeutral CD Release On Columbia Records*, *Music Industry News Network (mi2n)* (March 27, 2006) <[http://www.mi2n.com/press.php3?press\\_nb=88385](http://www.mi2n.com/press.php3?press_nb=88385)>; *Pearl Jam donates green for environment*, *USA Today* (July 12, 2006) <[https://usatoday30.usatoday.com/life/people/2006-07-11-pearl-jam\\_x.htm](https://usatoday30.usatoday.com/life/people/2006-07-11-pearl-jam_x.htm)>; *A medley of music-related eco-news*, *Grist* (February 17, 2007) <<https://grist.org/article/i-like-the-sound-of-that/>>; *15 Green Musicians and Bands*, *Grist* (June 22, 2007) <<https://grist.org/article/musicians/>>; and *The Groove House Story* <[http://www.groovehouse.com/company\\_history](http://www.groovehouse.com/company_history)>. See <<https://reverb.org/about/>>.
- [4] See *Why We Exist > Story, Julie's Bicycle* (visited January 9, 2020) <<https://juliesbicycle.com/why-we-exist/story/>>.
- [5] See *Music Declares Emergency*, *supra*, note 2; see "About" section.
- [6] *UN*, *supra*, note 1.
- [7] *Kyle Devine, Decomposed: The Political Ecology of Music* (2019).
- [8] *Devine, supra*, note 8, at 134.
- [9] *Devine, supra*, note 8, at 156.
- [10] *Devine, supra*, note 8, at 158.
- [11] *Devine, supra*, note 8, at 156-58.
- [12] *Devine, supra*, note 8, at 158-60 and see chart at 159. Devine's calculations regarding streaming used an estimate of the amount of electricity required to download a gigabyte of data (see 156 and 236 n.84). He then "average[d] the amount of data required for downloading and streaming songs and albums" (236 n.84), which let him "approximate both the amount of data transmitted and the amount of electricity used in the transmission of streamed and downloaded music(in the U.S.) around the years 2015-2016" (237 n.84). Then, using information from Greenpeace's Click Clean Scorecard (<<http://www.clickclean.org/usa/en/>>) about "what types of power sources are used to generate electricity for services such as Spotify" (i.e., coal, nuclear, natural gas or clean energy), he was "able to convert electricity usage into approximate carbon dioxide equivalents" (236-237 n.84). Note that Devine's total figure of 205 - 350+ million kilograms corresponded just to GHG emissions associated with data transmission, not "data processing and storage infrastructures (e.g., data centers and undersea cables) as well as on-site networking equipment and user devices" (236 n.84). Devine's study was obviously limited in scope, and limited by the data available. He concedes that his figures are estimates and that "it is almost impossible to calculate, with accuracy and certainty, how much energy is used by the internet in general - let alone music streaming in particular," since there are "simply too many variables" (160). Those variables include the length of the song or album, its file resolution, the "type of server...used to store, process, and transmit the data," the means by which the electricity that powers a given server is generated, whether the listening device is a computer or a phone, etc. (237 n.85). His figures also don't account for "the electricity used in powering various playback devices, which would add further variables" (237 n.85). The one thing Devine says we can be sure about is that "storing and processing music online uses a tremendous amount of resources and energy" (160).
- [13] *Sharon George and Deidre McKay, The environmental impact of music: digital, records, CDs analysed*, *The Conversation* (January 10, 2019) <<https://theconversation.com/the-environmental-impact-of-music-digital-records-cds-analysed-108942>>.
- [14] *Devine, supra*, note 8, at 187.
- [15] *Skype interview with Kyle Devine* (October 29, 2019).
- [16] *Science Direct* (visited January 9, 2020) <<https://www.sciencedirect.com/topics/earth-and-planetary-sciences/life-cycle-assessment>>.
- [17] *Jon Blistein, Is Streaming Music Dangerous to the Environment? One Researcher Is Sounding the Alarm*, *Rolling Stone* (May 23, 2019) <<https://www.rollingstone.com/music/music-features/environmental-impact-streaming-music-835220/>>.
- [18] See, e.g., *Zoya Teirstein, Thousands of Amazon employees walk out for climate strike*, *Grist* (September 20, 2019) <[https://grist.org/article/hundreds-of-amazon-employees-walk-out-for-climate-strike/?utm\\_medium=email&utm\\_source=newsletter&utm\\_campaign=daily](https://grist.org/article/hundreds-of-amazon-employees-walk-out-for-climate-strike/?utm_medium=email&utm_source=newsletter&utm_campaign=daily)>, and *Google Workers for Action on Climate, Open Letter on Climate Action at Google*, *Medium* (November 4, 2019) <<https://medium.com/@googworkersac/ruth-porat-497bb841b52>>.
- [19] *About Christiana, Global Optimism* (visited January 3, 2020) <<http://globaloptimism.com/aboutchristiana/>>.
- [20] *Amazon co-founds The Climate Pledge, setting goal to meet the Paris Agreement 10 years early*, *Amazon* (visited January 9, 2020) <<https://sustainability.aboutamazon.com/sustainable-operations/amazon-co-founds-the-climate-pledge-setting-goal-to-meet-the-paris-agreement-10-years-early>>.
- [21] *An Amazon representative confirmed in a November 20, 2019 email that there were no "updates" available about The Climate Pledge other than what had been published in the September announcement on the Amazon website* (*supra*, note 21), but did not provide any later updates as requested. A representative of Global Optimism, which appears to be just a three-person organization, responded in an email dated January 11, 2020, that there was no other information to share "beyond what's readily available online." As of February 12, 2020, no additional information had appeared on either website.
- [22] See, e.g., *Kirstin Ridley and Simon Jessop, Villains or visionaries? Hedge funds short companies they say 'greenwash'*, *Reuters* (December 15, 2019) <<https://www.reuters.com/article/us-global-hedgefunds-sustainable-analysis/villains-or-visionaries-hedge-funds-short-companies-they-say-greenwash-idUSKBN1YJ097>>.
- [23] See, e.g., in the U.S., *Green Guides, Federal Trade Commission* (16 CFR Part 260) (visited January 3, 2020) <<https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/green-guides/>>; in Europe, *Guidance on the Implementation/Application of Directive 2005/29/EC on Unfair Commercial Practices* (Commission Staff

- Working Document), European Commission (May 25, 2016) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0163&from=NL>>; and in the UK, *Make an environmental claim for your product, service or organization*, Department for Environment Food & Rural Affairs (December 21, 2016) <<https://www.gov.uk/government/publications/make-a-green-claim/make-an-environmental-claim-for-your-product-service-or-organisation>> and *Environmental claims: General, ASA* (December 3, 2013) <<https://www.asa.org.uk/advice-online/environmental-claims-general.html>>.
- [25] *Canalys: smart personal audio devices set for strongest year in history, TWS the largest and fastest growing category, Canalys* (December 30, 2019) <<https://www.canalys.com/newsroom/canalys-smart-personal-audio-devices-Q3-2019?ctid=1060-d95dda51587f732b73de504ab50bf6b2>>.
- [26] *Chris Foresman, The resurrection of an obscure, niche vinyl format: The 3-inch record*, *Ars Technica* (March 30, 2019) <<https://arstechnica.com/gaming/2019/03/the-possible-curious-comeback-of-3-inch-vinyl-records/>>.
- [27] *See HD Vinyl* (visited January 9, 2020) <<https://hdvinyl.org/>>.
- [28] *Boone Ashworth, Cut Your Own Vinyl Records With This \$1,100 Machine*, *Wired* (October 10, 2019) <<https://www.wired.com/story/phonocut/>>.
- [29] *United States Environmental Protection Agency* (visited December 30, 2019) <<https://www.epa.gov/greenpower/renewable-energy-certificates-recs>>.
- [30] *See, e.g., Nicole Kobie, Apple and Google are fighting climate change. And sorta winning*, *Wired* (May 2, 2019) <<https://www.wired.co.uk/article/microsoft-renewable-energy-data-centre>>; and *RP Siegel, Can this company build a better carbon offset?*, *Grist* (October 22, 2019) <<https://www.wired.co.uk/article/microsoft-renewable-energy-data-centre>>.
- [31] *Devine, supra*, note 8, at 134.
- [32] *See, e.g., Mark Mulligan, Music Subscriber Market Shares H1 2019*, *MIDiA Research* (December 5, 2019) <<https://www.midiaresearch.com/blog/music-subscriber-market-shares-h1-2019>>.
- [33] *See, e.g., Miyu McGinn, Pop music and the climate apocalypse — how 2019 changed everything*, *Grist* (September 20, 2019) <[https://grist.org/article/billie-eilish-lil-nas-x-lana-del-rey-climate-pop/?utm\\_medium=email&utm\\_source=newsletter&utm\\_campaign=daily](https://grist.org/article/billie-eilish-lil-nas-x-lana-del-rey-climate-pop/?utm_medium=email&utm_source=newsletter&utm_campaign=daily)>; and *Will Richards, Grimes' new album 'Miss Anthropocene': release date, tracklist and everything we know so far*, *New Musical Express (NME)* (October 17, 2019) <<https://www.nme.com/blogs/nme-blogs/grimes-new-album-miss-anthropocene-release-date-tracklist-everything-know-far-2531642>>.
- [34] *Who's In?, We Are Still In* (visited January 6, 2020) <<https://www.wearstillin.com/signatories>>.
- [35] *See Andrew Stafford, Australian musicians band together to invest in solar farms*, *The Guardian* (June 3, 2019) <<https://www.theguardian.com/environment/2019/jun/04/theres-no-reason-why-this-couldnt-go-global-australian-music-industry-invests-in-solar-farms>>; and *FEAT.* (visited January 7, 2020) <<https://www.feat.ltd>>.
- [36] *See Green Music Australia* (visited January 8, 2020) <<https://www.greenmusic.org.au/>>.
- [37] *See Creative Carbon Scotland* (visited January 4, 2020) <<https://www.creativecarbonscotland.com/>>.
- [38] *In the U.S., over 2,000 businesses and investors, including law firms and both large and small music and music-related companies, have signed the We Are Still In declaration. See We Are Still In, supra*, note 34.
- [39] *Thomas P. Lyon, Magali A. Delmas, John W. Maxwell, Pratima (Tima) Bansal, Mireille Chiroleu-Assouline, Patricia Crifo, Rodolphe Durand, Jean-Pascal Gond, Andrew King, Michael Lenox, Michael Toffel, David Vogel, and Frank Wijen, CSR Needs CPR: Corporate Sustainability and Politics*, *California Management Review* (2018), available at <[https://www.hbs.edu/faculty/Publication%20Files/Lyon\\_et\\_al\\_2018\\_CMR\\_f4406d48-0511-4f2a-a83f-7ee1e2952c8c.pdf](https://www.hbs.edu/faculty/Publication%20Files/Lyon_et_al_2018_CMR_f4406d48-0511-4f2a-a83f-7ee1e2952c8c.pdf)>. Thanks to the Wharton School's Professor Eric Orts for recommending this article.
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- [41] *See, e.g., Somini Sengupta and Nadja Popovich, More Than 60 Countries Say They'll Zero Out Carbon Emissions. The Catch? They're Not the Big Emitters*, *New York Times* (September 25, 2019) <<https://www.nytimes.com/interactive/2019/09/25/climate/un-net-zero-emissions.html>>.
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- [43] *Eric W. Orts, A Reflexive Model of Environmental Regulation*, *Business Ethics Quarterly*, Vol. 5, No. 4, *The Environment* (Oct., 1995), at 788.
- [44] *Id.*
- [45] *ISO 14000 Family - Environmental Management*, *International Organization for Standardization* (visited January 4, 2020) <<https://www.iso.org/iso-14001-environmental-management.html>>.
- [46] *ISO 14001 Key benefits*, *International Organization for Standardization* (visited January 4, 2020) <[https://www.iso.org/files/live/sites/isoorg/files/standards/docs/en/iso\\_14001\\_key\\_benefits.pdf](https://www.iso.org/files/live/sites/isoorg/files/standards/docs/en/iso_14001_key_benefits.pdf)>.
- [47] *See What Is EMAS?*, *European Commission* (visited January 4, 2020) <[https://ec.europa.eu/environment/emas/index\\_en.htm](https://ec.europa.eu/environment/emas/index_en.htm)>; and *From ISO 14001 to EMAS: mind the gap*, *EMAS Info*, Office of the German EMAS Advisory Board (August 2014) <[http://www.emas.de/fileadmin/user\\_upload/06\\_service/PDF-Dateien/UGA\\_Infosheet\\_From-ISO-14001-to-EMAS.pdf](http://www.emas.de/fileadmin/user_upload/06_service/PDF-Dateien/UGA_Infosheet_From-ISO-14001-to-EMAS.pdf)>.
- [48] *See ISO 20121 Sustainable Events*, *International Organization for Standardization* (visited January 4, 2020) <<https://www.iso.org/iso-20121-sustainable-events.html>>.
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- [51] *FAQ, Benefit Corporation* (visited January 2, 2020) <<https://benefitcorp.net/faq>> (see *Legal* section).
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- [54] *Legal Requirements, Certified B Corporation* (visited January 2, 2020) <<https://bcorporation.net/certification/legal-requirements>>.
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