

Hip Hop Turns 50: The End of a Criminal Cartel

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Hip Hop Turns 50: The End of a Criminal Cartel

J. Christopher Hamilton^{1*}

Most people are familiar with superstar rappers like Kanye West, Nicki Minaj, and Drake, who continue to anchor hip-hop in a competitive culture of braggadocio, high fashion, and lethal lyrics. Many are also familiar with the recent deaths of rising stars like King Von, Pop Smoke, PnB Rock, and Takeoff due to gun violence. However, beyond the megastars, melodic music, and the high-profile murders, hip-hop represents a global marketplace valued at over \$15 billion, which is shocking considering the poverty surrounding its birth. On the eve of its 50th anniversary in 2023, hip-hop's position as the dominant form of contemporary music remains unassailable.²

However, hip-hop as a business sector has also been known for shady business tactics, thuggery, unsavory individuals, and a longstanding history of using organized crime and violence to resolve conflict. Issues like these merit real examination from a new perspective such as: "what's the accountability within the music industry and law enforcement community for these events" and "what responsibilities do the media companies funding rap music have when they employ rogue artists engaged in criminality." Simply put, if hip-hop artists are engaged in criminal activity sanctioned and funded indirectly by their music labels, then those companies should also be held criminally

¹ * The author gives special thanks to Zebedayo Masongo, Robert J. Chappell, Jr., Rume Diamreyan, Mattea Vecera and Mahogani Counts for their research support.

² Jordan Rose, *Nas, Sacha Jenkins, Mass Appeal Team for 'Hip Hop 50' on Showtime Ahead of 'the Biggest Birthday in the World'*, Variety (May 19, 2021), <https://variety.com/2021/music/news/hip-hop-50-nas-sacha-jenkins-mass-appeal-showtime-1234976376/>.

responsible for the resulting harm. For that reason, this paper sets forth the legal framework to establish criminal culpability on behalf of the financiers that have been inadvertently or intentionally funding these criminal enterprises in hip-hop over the last 50 years.

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I. INTRODUCTION

Most people are familiar with superstar rappers like Kanye West, Nicki Minaj, and Drake, who continue to anchor hip-hop in a competitive culture of braggadocio, high fashion, and lethal lyrics. Aficionados of the craft know all about the watershed years and major eras like the Golden

Age of hip-hop ('95-97)³, the Shiny Suit/Bling Era ('96-'01)⁴, the Crunk/Snap era ('02-'09)⁵, the Blog Era ('08-'14)⁶, and today's era of Drill music, which started around 2012.⁷ However, beyond the megastars and melodic music, 50 years since its inception, hip-hop continues to be a dominating cultural force, valued at over 15 billion in the global marketplace.⁸ This new form of music and its billion-plus market value seems forged from thin air, which is shocking considering the poverty surrounding its birth.⁹

The originators of the sound and subculture (MCs and DJs like Kool Herc, Grandmaster Flash, and Afrika Bambaataa) were not aiming to get rich but rather create fun music that could also serve as an outlet for their societal frustrations.¹⁰ Although Kool Herc's 1973 "boogie down" in the Bronx began the supplantation of pop culture with hip-hop, his revolutionary contributions to the art form did not amount to any riches.¹¹ That is because the benefits derived from obscure innovators like Kool Herc often skip the first generation to land on the second.¹² Without mature

³ Ben Duinker & Denis Martin, *In Search of the Golden Age Hip-Hop Sound (1986-1996)*, 12 *EMPIRICAL MUSICOLOGY REV.* (2017), <https://emusicology.org/article/view/5410/4799>.

⁴ Alejandro Nava, *Street Scriptures: Between God and Hip-Hop*, Univ. of Chi. Press, 12 (2022).

⁵ Kevin C. Holt, *Get Crunk! The Performative Resistance of Atlanta Hip-hop Party Music*, COLUM. Univ., 1 (2018).

⁶ Tim Larew, *The Blog Era Was Perfectly Imperfect*, *Complex* (Aug. 28, 2020), <https://www.complex.com/pigeons-and-planes/2020/08/music-blogs>.

⁷ Demetrius Green, *Documenting Drill Music: Understanding Black Masculine Performances in Hip-Hop*, Univ. of Kansas, 1 (2018).

⁸ Carl S. Taylor & Virgil Taylor, *Hip-Hop and Youth Culture: Contemplations of an Emerging Cultural Phenomenon*, 12 Bloomington 1 (2004).; Jordan Rose, *Nas, Sacha Jenkins, Mass Appeal Team for 'Hip Hop 50' on Showtime Ahead of 'the Biggest Birthday in the World'*, *VARIETY* (May 19, 2021), <https://variety.com/2021/music/news/hip-hop-50-nas-sacha-jenkins-mass-appeal-showtime-1234976376/>.

⁹ Amanda Onion et al., *Hip Hop is Born at a Birthday Party in the Bronx*, *HIST.*, <https://www.history.com/this-day-in-history/hip-hop-is-born-at-a-birthday-party-in-the-bronx>.

¹⁰ *The Birth of Hip-Hop*, NAT'L MUSEUM OF AFR. AM. MUSIC (Aug. 7, 2020), <https://nmaam.org/2020/08/07/the-birth-of-hip-hop/>.

¹¹ *Id.*

¹² Pamela Rosario Perez, *14 Black Inventors You Probably Didn't Know About*, *THINKGROWTH*, (Feb. 26, 2017), <https://thinkgrowth.org/14-black-inventors-you-probably-didnt-know-about-3c0702cc63d2>; *Top Ten Black Inventors (You Didn't Know About)*, CONG. BLACK CAUCUS FOUND. (Feb. 27, 2015), <https://www.cbcfinc.org/blog/top-ten-black-inventors-you-didnt-know-about/>.

markets and consumer awareness, groundbreaking ideas tend to fail. The '80's and '90's musicians that inherited hip-hop were bequeathed a goldmine. Unlike their predecessors, they instinctively understood the need to bankroll the art form to benefit from its "bottom line." Industry icons catapulted hip-hop from the fringes of the music industry to the main stage. Their music franchises span the four distinct markets and subgenres of this sound in the United States. In New York City, Russell Simmons and Sean "P Diddy" Combs became titans within the industry, creating record labels that forever changed the art form. In New Orleans, Bryan "Birdman" Williams and Percy "Master P." Miller made similar strides with Cash Money Records and No Limit Records. In Houston, J. Prince, the founder of Rap-A-Lot Records, helped elevate southern hip-hop to a much larger audience and acted as the blueprint for music executives for years to come. Finally, in Los Angeles, Suge Knight's work within the industry, and creation of Death Row Records, changed the course of music history forever. These six industry icons ushered in the commercial success of hip-hop and then bled it for billions.¹³

Today, hip-hop's position as the dominant form in contemporary music is unassailable.¹⁴ It has transformed the musical foundation of every other genre.¹⁵ From country music to rock & roll, hip-hop has made its way into all corners of this industry.¹⁶ The stylized rhythm of the genre has become increasingly mainstream; however, its roots contain much deeper meanings. For hip-hop purists, the musical content also reflects the socio-political struggles of traditionally marginalized black and brown communities.¹⁷ Popular lyrics critical of our great nation have served, at times, as a virtual "call to arms" for disenfranchised communities.¹⁸ Thus, also making the music a vehicle for social commentary and progressive politics.¹⁹ These messages not only impacted the people growing up within these communities, but also their reach spanned the country. However, not

¹³ 25 *Influential Black Music Execs*, BET, <https://www.bet.com/photo-gallery/wfxmd4/25-influential-black-music-execs/b8t2tw>.

¹⁴ Josh Hall, *From the Bronx to the World: The Birth and Evolution of Hip-Hop*, REDBULL (June 2, 2020, 4:25 AM), <https://www.redbull.com/ca-en/history-of-hip-hop>.

¹⁵ *Id.*

¹⁶ Marcus K Dowling, *How Hip-hop's influence is Inspiring Country Music's Future*, CMT (Feb. 9, 2021), <https://www.cmt.com/news/pq1ifb/hip-hop-influence-inspires-country-music-future>.

¹⁷ Becky Blanchard, *The Social Significance of Rap & Hip-Hop Culture*, ETHICS OF DEV. IN A GLOB. ENV'T (July 26, 1999), https://hiphoparchive.org/sites/default/files/the_social_significance_of_rap_hip_hop_culture.pdf.

¹⁸ *Id.*

¹⁹ *Id.*

everyone supported this growing cultural movement. The older generation, at the time of its ascendance, resisted it.²⁰ Nevertheless, even if suburban Baby Boomers thought that hip-hop artists were weird, their children recognized their cultural power.²¹ To them, the music was the ultimate quotient for measuring what is “cool,” and “coolness” remains sacrosanct in childhood.²²

Despite the socio-political hurdles, many hip-hop oligarchs²³ continue to achieve commercial and economic success in addition to their social prowess. These men started out as underground artists and regional influencers of the sound during the early ‘90s and later became oligarch-entrepreneurs. Innovators like No Limit’s “Master P,” Cash Money’s “Lil Wayne,” Bad Boy’s “Sean ‘Diddy’ Combs” (formerly known as “Puff Daddy”) and Death Row’s “Suge Knight,” were reborn as household names through hip-hop culture. Their multi-platinum statuses twenty years later would make them multi-millionaires (in Diddy’s case, a billionaire).²⁴ No Limit Records sold over 100 million albums to date, and Master P is estimated to be worth \$200 million.²⁵ Cash Money (with iconic artists like Birdman, Lil Wayne, Drake, and Nicki Minaj) has sold over 130 million albums from 1998 to 2022, with a total gross revenue of \$1.8

²⁰ Charisse Jones, *Critics fear hip-hop is eroding kids’ morals and touching off violent episodes like the recent rampage at Magic Mountain. Are these entertainers truly poisoning young fans’ minds? Or is that just a bum rap? : Rap’s Bad Rep*, LOS ANGELES TIMES (May 2, 1993), <https://www.latimes.com/archives/la-xpm-1993-05-02-vw-30114-story.html>.

²¹ Blanchard, *supra* note 17.

²² Laura Blumenfeld, *Black Like Who? Why White Teens Find Hip-Hop Cool.*, WASHINGTON POST (July 20, 1992), <https://www.washingtonpost.com/archive/lifestyle/1992/07/20/black-like-who-why-white-teens-find-hip-hop-cool/85f66bb6-07db-475e-b266-002f5443f95b/>.

²³ Through our modern understanding, an oligarch is a businessman who “controls sufficient resources to influence national politics.” However, in the music industry context, hip-hop oligarchs are artists turned moguls whose artistic and entrepreneurial contributions have created a multi-billion-dollar business, shaping society, culture and politics.

Guriev, Sergei, & Andrei Rachinsky, *The Role of Oligarchs in Russian Capitalism*, 19 J. Econ. Perspectives 131 (2005).

²⁴ Stacey Leasca, *What is P. Diddy’s Net Worth? Here’s What We Know About Sena Combs’ Massive Earnings*, MENS HEALTH (Feb. 12, 2019), <https://www.menshealth.com/entertainment/a26304058/diddy-net-worth/>.

²⁵ Tatyana Jenene, *Master P Talks Starting No Limit Records With \$10,000, Vibe*, (Dec. 15, 2021, 11:46 AM), <https://www.vibe.com/news/business/master-p-no-limit-records-investment-1234640860/>; Bernadette Giacomazzo, *Exactly How Much Is Rap Mogul Master P Worth Today?* AFROTECH (July, 9, 2021), <https://afrotech.com/master-p-net-worth-2021>.

billion.²⁶ Diddy founded Bad Boy Records in 1991 and sold over 12 million albums in three years, including five platinum and ten gold albums.²⁷ As of 2007, Diddy's liquor partnership with Diageo's Cîroc is estimated to be worth \$100 million, while his majority ownership stake in Revolt TV (a cable network launched in 2013 distributed to 55 million homes) is estimated to be valued at \$200 million.²⁸

These men and others like "Jay-Z," "Snoop Dogg," and "Dr. Dre" have become household names. Dr. Dre earned an estimated \$500 million in 2014 when he sold his company "Beats By Dre" to Apple for \$3 billion.²⁹ As of 2022, Snoop, Dre's former protege, has amassed a net worth of \$150 million.³⁰ The Dog Pound crooner has had a cooking show with Martha Stewart, a cannabis business, and a liquor brand.³¹ He also owns a gaming league, mobile application, and recently acquired his former label, Death Row Records.³² In 2020, Snoop inked a deal to

²⁶ Zack O'Malley Greenburg, *Can Cash Money, The Label That Launched Drake and Nicki Minaj, Strike Platinum again?*, FORBES (Feb. 28, 2019), at 6 AM, <https://www.forbes.com/sites/zackomalleygreenburg/2019/02/28/can-cash-money-the-label-that-launched-drake-and-nicki-minaj-strike-platinum-again/?sh=dca18bd39749>.

²⁷ ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/people/literature-and-arts/music-popular-and-jazz-biographies/diddy#:~:text=Producer%2C%20song%20writer%2C%20and,platinum%20and%22ten%20gold%20album>.

²⁸ Bernard Smalls, *Diddy's Revolt TV Launches Digital Streaming App, Could Be a Game Changer for the Network*, HIP HOP WIRED (Nov. 8, 2021), <https://hiphopwired.com/1058782/diddy-revolt-tv-digital-streaming-app/>; See *Diddy Inks Deal To Develop Vodka Brand*, BILLBOARD (Oct. 24, 2007), <https://www.billboard.com/music/music-news/diddy-inks-deal-to-develop-vodka-brand-1047716/>; See also Zach O'Malley Greenburg, *Diddy Talks Cable Deal; Will It Make Him a Billionaire?*, FORBES (Jun. 20, 2013), <https://www.forbes.com/sites/zackomalleygreenburg/2013/06/20/diddy-talks-cable-deal-will-it-make-him-a-billionaire/?sh=63acaf3b6a0e>.

²⁹ Zack O'Malley Greenburg, *Hip-Hop's Next Billionaires: Richest Rappers 2019*, FORBES (Jun. 13, 2019 at 6:32 AM), <https://www.forbes.com/sites/zackomalleygreenburg/2019/06/13/hip-hops-next-billionaires-richest-rappers-2019/?sh=7b83a81b2edd>.

³⁰ Jamie Lynn Ryan, *How Rich is Snoop Dogg?*, YAHOO (Feb. 14, 2022), https://www.yahoo.com/now/rich-snoop-dogg-195550142.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAE-RSht9EQpyt6bmrGFkbac5f3Sc26dDbxMdl4UKFe1jGu7-rFwrWkOph5eDyAn9iYsJrr0811TBSKAZAuW1tY-lxwSPZqtzU3yYdHp8Gcwglb1oJmBK FZ5qfr6U1Mv0YRM8cW_SL76A7OHfGqEkeiXaKhP5G-BH33LtOocuUfeA.

³¹ *Id.*

³² *Snoop Dogg Acquires Death Row Records*, BBC (Feb.10, 2022), <https://www.bbc.com/news/entertainment-arts-60330421#:~:text=His%20other>

announce for and create his own boxing league with Triller.³³ Moreover, Jay-Z, hip-hop's first billionaire, is estimated to control \$1.4 billion in assets with his wife, Beyoncé.³⁴ Jay-Z is also a part owner of D'Ussé cognac and partnered with the NFL.³⁵ His investment with D'Ussé is reportedly worth at least \$100 million.³⁶ Understanding the accumulation of wealth, power, and global influence among the hip-hop oligarchs reflects a new cohort of black bourgeoisie ascendance in today's marketplace.

II. WEALTH & POWER: MADE IN AMERICA

So, how did talented, aspirational, and innovative pioneers from urban ghettos become heir apparent to the kind of wealth, power, and prestige that would rival the robber barons of the 19th century? Most want to believe it was through the conduits of a free-market economy or a byproduct of American exceptionalism. Unfortunately, that is not the case. Wealth and power at that level are barely accessible for "legacies" entering the Ivy League or bootstrappers who earn a seat in the boardroom of a blue-chip company.³⁷ Jay-Z and his peers are today's Rothschilds, Morgans, Vanderbilts, and Rockefellers – and the real-life parallels of the literary portrayals within the *Great Gatsby*.³⁸ They are viewed as gods

%20business%20ventures%20include,creating%20the%20Gangsta%20Gaming%20League.

³³ Michael Rothstein, *Snoop Dogg, Triller to Start New Boxing League The Fight Club*, ESPN (Dec. 2, 2020), https://www.espn.com/boxing/story/_id/30439462/snoop-dogg-triller-start-new-boxing-league-fight-club.

³⁴ Greenburg, *supra* note 29.

³⁵ Elva Ramirez, *A Rare Bottle Of Jay-Z's D'Usse Cognac Is Going Up For Auction*, FORBES (Feb. 25, 2021), <https://www.forbes.com/sites/elvaramirez/2021/02/25/is-this-the-most-expensive-bottle-of-jay-zs-dusse-cognac/?sh=7736e74c215a>; See also *Jay-Z's Roc Nation Entering Partnership With NFL*, NFL (Aug. 13, 2019), <https://www.nfl.com/news/jay-z-s-roc-nation-entering-partnership-with-nfl-0ap3000001041162>.

³⁶ Zack O'Malley Greenburg, *Artist, Icon, Billionaire: How Jay-Z Created His \$1 Billion Fortune*, Forbes (June 3, 2019), <https://www.forbes.com/sites/zackomalleygreenburg/2019/06/03/jay-z-billionaire-worth/?sh=112d5ca13a5f>.

³⁷ Eva Pereira, *Malcolm Gladwell On Why Income Inequality is the Next Big Issue Facing America*, Forbes (Feb. 16, 2011), <https://www.forbes.com/sites/evapereira/2011/02/16/malcolm-gladwell-on-why-income-inequality-is-the-next-big-issue-facing-america/?sh=6ca8e694f844>.

³⁸ Julius Bailey, *Jay-Z: Essays on Hip Hop's Philosopher King*, McFarland 124 (2011).

amongst men shaping modern society.³⁹ However, instead of using the steel, banking, or oil industries to transform the world as their forebears once did, these oligarchs used hip-hop to transform culture.⁴⁰ However, operating on that level of power in any marketplace requires a willingness to get one's hands dirty and at least one of two tools: an abundance of wealth or lots of goons with guns.⁴¹

For instance, before his ascendance as the “father” of modern finance, J. P. Morgan made business transactions that would be criminal by today's standards. Take for instance when he bought five thousand defective rifles for \$3.50 each and sold them to the army for \$22.00 apiece during the Civil War.⁴² It wasn't the steep markup that was criminal but the fact that defective rifles resulted in shooting off the thumbs of the soldiers using them.⁴³ But a federal judge validated the transaction, which was likely the result of his father's power and influence in the banking industry.⁴⁴ The Morgan family would eventually gain control of the US gold supply through its syndicate of bankers based on deep pockets and monopolistic business practices.⁴⁵ On the surface, these tactics may seem unsavory but not enough to pose any danger to the opposition's life or liberty. However, during this time, strikes, boycotts, and labor unions were not protected by law as they are today, and when the government intervened, it was usually on the side of the employer.⁴⁶ “Strikes were deemed unlawful conspiracies, or anti-competitive cartel action [and on behalf of the employers were] subject to massive legal repression by state police, federal military power, and federal courts.”⁴⁷ Therefore, protesting labor

³⁹ Jeff Chang, *It's a Hip-Hop World*, FOREIGN POL'Y (Oct. 12, 2009), <https://foreignpolicy.com/2009/10/12/its-a-hip-hop-world/>.

⁴⁰ Bria J. Fuller, *Hip Hop's Impact On America*, JUST ANOTHER TRINITY COLL. COMMONS (Dec. 15, 2019), <https://commons.trincoll.edu/briahiphopportfolio/2019/12/15/hip-hops-impact-on-america/>.

⁴¹ Benjamin Roberts, *Capital and Violence*, HARV. POL. REV. (2020), <https://harvardpolitics.com/capital-and-violence/>.

⁴² HOWARD ZINN, A PEOPLE'S HISTORY OF THE UNITED STATES, 255 (1st ed. 1995).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ JP Morgan: *Everything You Want To Know About The Most Influential Banker In History*, CAPITALISM.COM (Oct. 11, 2021), <https://www.capitalism.com/jp-morgan/>.

⁴⁶ Diana S. Reddy, *There Is No Such Thing as an Illegal Strike*: Reconceptualizing the Strike in Law and Political Economy, 130 YALE L.J. 421 (2021). Available at: <https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy>.

⁴⁷ *Id.*

abuses by management under these circumstances often resulted in management sending “goons with guns” to stifle the opposition as in the Pullman Strike of 1984.⁴⁸ Such abusive tactics in response to labor disruptions eventually led to the passing of the Clayton Antitrust Act of 1914.⁴⁹

The Rockefeller family founded Standard Oil in 1870 and controlled 90% of American oil pipelines and refineries through a system of shell railroad companies,⁵⁰ which drove competing railroad companies out of business and their employees out of work.⁵¹ The Rothschild family helped finance the war effort against Napoleon and withheld news of Napoleon’s defeat at Waterloo to buy undervalued assets in the stock market,⁵² thereby capitalizing off the carnage.⁵³ In 1877, poor working conditions and wage cuts led to a series of strikes by railroad workers in dozens of cities that left hundreds dead and a thousand in jail – all at the hands of the “Coal and Iron Police” of the railroad companies.⁵⁴ These companies built National Guard armories, which were essentially private armies legally armed with guns.⁵⁵ The robber barons of yesterday were not concerned about exploiting people or using abusive tactics to build their empires, just the result. Their fortunes, families, and fatalistic impact continue to shape our world today.⁵⁶ Hip-hop oligarchs use similar methodologies to build their empires — continuing the practices of capitalism, which often leads to the exploitation and commodification of modern-day society. However, unlike the tycoons of the industrial revolution, the ‘90’s artists’ use of

⁴⁸ U.S. House of Representatives *The Clayton Antitrust Act*, HIST., ART & ARCHIVES, <https://history.house.gov/HistoricalHighlight/Detail/15032424979>.

⁴⁹ Zinn, *supra* note 42, at 281

⁵⁰ David Mislin, *How a 1905 Debate About ‘Tainted’ Rockefeller Money is a Reminder of Ethical Dilemmas Today*, THE CONVERSATION (Oct. 2, 2019), <https://theconversation.com/how-a-1905-debate-about-tainted-rockefeller-money-is-a-reminder-of-ethical-dilemmas-today-124068>.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Nathan Mayer Rothschild and ‘Waterloo,’* THE ROTHSCHILD ARCHIVE, https://www.rothschildarchive.org/business/n_m_rothschild_and_sons_london/nathan_mayer_rothschild_and_waterloo (“Nathan himself is said to have described it as ‘The best business I ever did’ and The Times, in December 1823 reported that ‘Mr Rothschild played so important a part in the history of the present generation that it is most probable that his proceedings will never be forgotten.’”).

⁵⁴ Zinn, *supra* note 42, at 251.

⁵⁵ *Id.*

⁵⁶ Alicia Phaneuf, *Top 10 Biggest US Banks By Assets in 2022*, INSIDER INTEL. (Jan. 2, 2022), <https://www.insiderintelligence.com/insights/largest-banks-us-list/>.

disagreeable methods in wealth-building was often necessary survival tactics to escape impoverished communities designed for their destruction (i.e., death, imprisonment, or eternal poverty).⁵⁷

III. MUSIC. MONEY. THE MOB.

The unsavory, abusive, and exploitative tactics that occurred during the industrialization of our nation are paralleled within the music industry. That is because the music industry and its luminaries have been bedfellows with organized crime syndicates for decades.⁵⁸ This is evidenced by the thuggery, money laundering, and extortion often used during rudimentary business transactions.⁵⁹

In the 1980s, Sal Pisello (fondly known as “Sal the Swindler”), a Gambino crime family racketeer, ran an illegal cutout business through MCA Records.⁶⁰ “Cutouts” are the record industry’s remainders and overstock; deleted from a label’s catalog, they are sold to dealers for anywhere from ten cents to a dollar.⁶¹ At the time, MCA was one of the six companies that controlled ninety percent of the music industry in the U.S., and Sal, who had no title or salary at the company, was secretly netting “three to five cent per album” through off-the-books cash payments from buyers of the cutouts, which amounted to millions.⁶² The Justice Department’s Organized Crime Strike Force investigated Sal along with MCA’s business practices.⁶³ The investigation resulted in Sal’s conviction of tax evasion, the federal prosecutor being fired, and a cease

⁵⁷ Steve Yates, *The sound of capitalism*, PROSPECT (Sept. 1, 2011), <https://www.prospectmagazine.co.uk/magazine/hip-hop-bling-capitalism-business>; Angela Y. Davis & Cassandra Shaylor, *Race, Gender, and the Prison Industrial Complex: California and Beyond*, 2 MERIDIANS 1,3 (2001), <http://www.jstor.org/stable/40338793>.

⁵⁸ William K. Knoedelseder Jr., *Morris Levy: Big Clout in Record Industry: His Behind-the-Scenes Influence Is Felt Throughout The Industry*, LOS ANGELES TIMES (July, 20, 1986), <https://www.latimes.com/archives/la-xpm-1986-07-20-fi-17146-story.html>.

⁵⁹ *Id.*

⁶⁰ Richard Harrington, *Making Music With The Mob*, WASHINGTON POST (Apr. 11, 1993), <https://www.washingtonpost.com/archive/entertainment/books/1993/04/11/making-music-with-the-mob/615b947e-ef2c-40e7-b53d-9cfe0d56f42f/>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Prosecutor Benched After Getting His Man: He Convicted Suspected Mob Figure Twice; MCA Said Rudnick Made Unfair Accusations*, LOS ANGELES TIMES (Jan. 22, 1989), <https://www.latimes.com/archives/la-xpm-1989-01-22-mn-1443-story.html>.

of any further inquiry into MCA's criminal culpability.⁶⁴ However, the incident left a looming suspicion that MCA exerted political pressure to halt the investigation while smaller players became scapegoats.⁶⁵

Since the 1960s, mob affiliate Morris Levy (a mentor to Sony's former CEO Tommy Mottola) made millions as a major player in the music industry.⁶⁶ Convicted of extortion in 1990, Levy was the focal point of an FBI investigation into organized crime.⁶⁷ Levy had strong ties to Vincent Gigante of the Genovese Crime Family due to his friendship with the boss of that family, Tommy Eboli.⁶⁸ Levy would steal publishing from artists on his label by listing himself as the publisher and also sell counterfeit copies of records he pirated.⁶⁹ He was even suspected of connection to the murder of his bodyguard Nate McCulloch.⁷⁰

Buddha Records, one of MGM's record labels, was mob-controlled through a silent partnership by Colombo underboss John "Sonny" Franzese.⁷¹ The label released records for groups like Ohio Express, the Lemon Pipers, the 1910 Fruitgum Company, Melanie, the Shangri-Las, Gladys Knight & the Pips, Bill Withers, Jay and the Americans, the Isley Brothers, and Captain Beefheart.⁷² Even several black music labels and artists were under the mob's influence in the '60s and '70s.⁷³ Jimmy Hendrix's former manager, Michael Jeffery, had ties to organized crime and was believed to have been funneling money from Hendrix's account into dummy real estate investments in the Bahamas.⁷⁴ Both Jeffery and Hendrix's deaths were under dubious circumstances, and some were believed to be tied to the criminal underworld.⁷⁵ As one can see, corporate corruption, organized crime, and illegal business practices are not new to

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Phoebe Eaton, *Tommy Mottola Faces The Music*, N.Y. MAG. (Feb. 21, 2003), https://nymag.com/nymetro/news/features/n_8387/.

⁶⁷ *Id.*

⁶⁸ William K. Knoedelseder Jr., *Morris Levy: Big Clout in Record Industry: His Behind-the-Scenes Influence Is Felt Throughout The Industry*, LOS ANGELES TIMES (July, 20, 1986), <https://www.latimes.com/archives/la-xpm-1986-07-20-fi-17146-story.html>.

⁶⁹ *Id.*

⁷⁰ Dawoud Kringle, *How Organized Crime Shaped Our Business*, DOOBEDOOBEE DOO NY, <https://doobeedoobeedo.info/2020/12/12/commentary-the-music-industry-and-the-mafia/>.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

the music industry.⁷⁶ Since its inception, the music industry has struggled with these issues and bad characters infiltrating its executive ranks,⁷⁷ and extortion and dubious contracts have been a staple since the beginning.⁷⁸ That kind of sanctioned criminal behavior will become abundantly clear in this paper, and in defense of that practice, is inevitable when doing business on a scale tantamount to the financial sector. However, when a parent company of a subsidiary deliberately turns a blind eye to such criminality to further their profits, such an act merits accountability at the most senior ranks of the organization.

a. *Cartel-Like Contracts & Tactics*

Beyond blatant criminality, the music industry is known for its predatory contracts and unfair business practices. In 2006, Universal Music Group, the largest music company at the time, settled a \$12 million case brought by the New York attorney general for “payola.”⁷⁹ Merriam-Webster’s dictionary defines “payola” as: “undercover or indirect payment (as to a disc jockey) for a commercial favor (as for promoting a particular recording).”⁸⁰ This is usually done because radio play is the most effective way to increase music sales.⁸¹ The practice is not illegal; only the failure to disclose to listeners that you are “paying for plays” is illegal.⁸² “[M]ore songs are produced than can be heard by the public [and] a song that fails to get airplay cannot compensate for that by running advertisements in magazines or on billboards.”⁸³

Payola payments can take many forms. For instance, Universal bribed music programmers with laptops and luxury hotel stays. In 2006, “Universal gave Yankees tickets to get Brian McKnight on the radio and paid a website maintenance bill to get airplay for Lindsay Lohan and

⁷⁶ Richard Harrington, *Making Music With The Mob*, WASHINGTON POST (Apr. 11, 1993), <https://www.washingtonpost.com/archive/entertainment/books/1993/04/11/making-music-with-the-mob/615b947e-ef2c-40e7-b53d-9cfe0d56f42f/>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Jeff Leeds, *Universal Music Settles Big Payola Case*, N.Y. TIMES (May, 12, 2006), <https://www.nytimes.com/2006/05/12/business/12payola.html>.

⁸⁰ MERRIAM-WEBSTER’S DICTIONARY, <https://www.merriam-webster.com/dictionary/payola>.

⁸¹ James N. Dertouzos, *Radio Airplay and the Record Industry: An Economic Analysis*, NAT’L ASS’N OF BROAD. (2008), https://www.nab.org/documents/resources/061008_dertouzos_ptax.pdf.

⁸² K. Segrave, *Payola in the Music Industry: A History, 1880-1991*, U.S. DEP’T OF JUST.: OFF. OF JUST. PROGRAMS (1994), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/payola-music-industry-history-1880-1991>.

⁸³ *Id.*

others.”⁸⁴ The prior year, Warner Music Group settled a payola case for \$5 million and Sony BMG for \$10 million.⁸⁵

The music industry is also notorious for predatory contracts, which limit artist’s ability to build wealth, while simultaneously generating capital for labels and distributors.⁸⁶ The fact that an artist’s label can profit from their work while being left in debt reflects a fundamental issue in this business model.⁸⁷ “Russ,” a successful rap artist who chose the independent route and frequently criticizes music labels and their archaic business practices, said during an interview with TMZ that labels are greedy and becoming obsolete.⁸⁸ Russ thinks the fees that labels take for “digital marketing” is a sham and calls out labels for overcharging artists for services “that they can do on their own.”⁸⁹ “[He] would rather use [his] own money for a \$300,000 video than have a label use his money for a \$300,000 video — and then charge interest.”⁹⁰

Another business practice unique to the music industry is the treatment of master recordings (masters). Music deals are often structured so that labels own the masters of all songs – giving only an advance and a royalty percentage of music profits to artists.⁹¹ To make matters worse, artists only receive payment once the label recoups the artist’s advance payment.⁹² This predatory-like business practice has been debated for years, and artists throughout the industry have raised their concerns. As late Senator Orrin Hatch aptly put it: “[music] is the only industry in which after you pay off the mortgage, the bank still owns the house.”⁹³

⁸⁴ Jeff Leeds, *Universal Music Settles Big Payola Case*, N.Y. TIMES (May, 12, 2006), <https://www.nytimes.com/2006/05/12/business/12payola.html>.

⁸⁵ *Id.*

⁸⁶ Drew Schwartz, *Bad Deals Are Baked Into the Way the Music Industry Operates*, VICE (Oct. 21, 2020), <https://www.vice.com/en/article/y3gmjw/bad-deals-are-baked-into-the-way-the-music-industry-operates>.

⁸⁷ *Id.*

⁸⁸ *Russ Says Record Labels Will Die When ‘Lazy’ Artists Stop Signing Contracts*, TMZ (Jun. 2, 2022), <https://www.tnz.com/2022/06/02/russ-record-labels-will-die-when-lazy-artists-stop-signing-contracts/>.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Ann Herman, *You Belong with Me: Recording Artists’ Fight for Ownership of Their Masters*, 18 NW. J. TECH. & INTELL. PROP. 239 (2021).

⁹² Amanda Prah, *Taylor Swift is Fighting the Battle Over Her Masters, and Here’s Why It’s So Important*, PopSugar (Nov. 15, 2019), <https://www.popsugar.com/entertainment/What-Does-Mean-Own-Your-Masters-Music-46337890>.

⁹³ Phillip W. Hall Jr., *Smells Like Slavery: Unconscionability in Recording Industry Contracts*, 25 HASTINGS COMM. & ENT. L.J. 189 (2002). Available at: https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1746&context=hastings_comm_ent_law_journal.

The '80's hip-hop group De La Soul has been fighting for decades to profit from their first six albums.⁹⁴ However, they would need to relinquish 90% of the profits to Tom Silverman, the CEO and founder of the label that released that music.⁹⁵ Although public sentiment and recording artists like Nas and Questlove agreed that these terms were unfair considering their contribution to the music industry, the potential cost of clearing the samples they used to create the music overshadows the value of their catalog.⁹⁶ In essence, their paperwork in connection with the music was shoddy, so they lacked any leverage to reclaim their rights.⁹⁷ Another example of music corporations operating in bad faith would be its failure to pay artists their appropriate royalties.⁹⁸ Universal Records didn't pay artists, and settled with approximately 7,500 artists like Chuck D and Public Enemy for \$11.5 million.⁹⁹ Unfortunately, many of these legal issues continue to be a problem today, and streaming platforms have only exacerbated them. In 2018, Spotify agreed to settle with songwriters for \$112 million in royalties.¹⁰⁰ The songwriters argued that the Spotify failed to obtain proper licenses for their work and committed copyright infringement.¹⁰¹ Similarly, Apple settled a lawsuit for "allegedly selling 'bootleg' digital versions" of artists' music.¹⁰² Clearly, music labels are not the only corporate entities that fail to compensate artists adequately.

While artists were formerly paid per "song sale" or per "album sale," they are now only paid "per stream" on streaming services. For example,

⁹⁴ Elijah C. Watson, *Decades Since '3 Feet High & Rising' & De La Soul Still Isn't In Control Of Its Legacy*, OKAYPLAYER, <https://www.okayplayer.com/music/breakdown-de-la-soul-fight-tommy-boy-records-3-feet-high-rising.html>.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Eriq Gardner, *Universal Music Agrees to Pay \$11.5 Million to Settle Digital Royalties Class Action*, THE HOLLYWOOD REP. (Apr. 14, 2015), <https://www.hollywoodreporter.com/business/business-news/universal-music-agrees-pay-115-788553/>.

⁹⁹ *Id.*

¹⁰⁰ Ben Beaumont-Thomas, *Spotify to pay out \$112m in royalties to songwriters after settlement*, THE GUARDIAN (May 24, 2018), <https://www.theguardian.com/music/2018/may/24/spotify-to-pay-out-112m-in-royalties-to-songwriters>.

¹⁰¹ *Id.*

¹⁰² Blake Brittain, *Apple settles with Tin Pan Alley heirs, ending string of tech company lawsuits*, REUTERS (Sept. 1, 2022), <https://www.reuters.com/legal/litigation/apple-settles-with-tin-pan-alley-heirs-ending-string-tech-company-lawsuits-2022-09-01/>.

Apple Music pays artists \$0.01 per stream,¹⁰³ Spotify pays artists \$0.0033 per stream,¹⁰⁴ and Tidal pays artists \$0.013 per stream.¹⁰⁵ It is not entirely clear how these tech platforms calculated the worth of a stream, but then one day, Billboard decided that 1250 streams equals one album sale.¹⁰⁶ These tech companies calculate artist payments on a “pro rata” basis.¹⁰⁷ After totaling all the money generated per month, it is “then divided proportionally by listening time in order to determine how much each artist on the service should be paid.”¹⁰⁸ Consequently, “all the money collected from subscribers or ads for a given month goes into a single pot, which is then divided by the total number of streams.”¹⁰⁹ Streaming platforms then pay the labels and publishers, who distribute the money to the artists. For example, in 2021, Kendrick Lamar received 5.1 billion streams on Spotify and in return made \$12,507,753 in total earnings. The same year, Drake received 21.5 billion streams and made \$52,546,150 in earnings.¹¹⁰ Spotify asserts that this system ensures large payouts for prominent and smaller artists.¹¹¹ However, this kind of system actually disempowers smaller artists. During the height of COVID-19, Nadine Shah, a British singer-songwriter, only received a few dollars here and there, leaving her

¹⁰³ Samantha Hissong, *Apple Music Pays \$0.01 Per Stream*, ROLLING STONE (Apr. 16, 2021), <https://www.rollingstone.com/pro/news/apple-music-artist-payment-penny-streaming-1156932/>.

¹⁰⁴ Jefri Yonata, *How Much Do Spotify and Other Streaming Platforms Pay Per Stream*, HEADPHONESTY (May 17, 2022), <https://www.headphonesty.com/2021/11/how-much-does-spotify-pay-per-stream/#:~:text=In%20the%20case%20of%20streaming,of%20the%20platform's%20total%20revenue.>

¹⁰⁵ *Id.*

¹⁰⁶ Ben Sisario, *The Music Industry's Math Changes, but the Outcome Doesn't: Drake Is No. 1*, THE NEW YORK TIMES (July 9, 2018), <https://www.nytimes.com/2018/07/09/arts/music/drake-scorpion-streams-billboard-chart.html>.

¹⁰⁷ Nate Day, *Spotify: How much money do artists make streaming music on the platform?*, FOXBUSINESS (Feb. 2, 2022), <https://www.foxbusiness.com/lifestyle/how-much-money-do-artists-make-streaming-music-on-spotify>.

¹⁰⁸ *Id.*

¹⁰⁹ Ben Sisario, *Musicians Say Streaming Doesn't Pay. Can the Industry Change?*, THE NEW YORK TIMES (May 7, 2021), <https://www.nytimes.com/2021/05/07/arts/music/streaming-music-payments.html>.

¹¹⁰ Mikaela Sullivan, *Which Artists Have Earned the Most From Spotify?*, ACCREDITED DEBT RELIEF (March 1, 2021), <https://www.accrediteddebtrelief.com/blog/which-artists-have-earned-the-most-from-spotify/>.

¹¹¹ Bobby Owsinski, *Spotify Justifies Its Payouts With Royalty Data Site 'Loud&Clear'*, FORBES (Mar. 21, 2021), <https://www.forbes.com/sites/bobbyowsinski/2021/03/21/spotify-justifies-its-payouts-with-loudclear/?sh=7c17dbc2690e>.

“financially crippled.”¹¹² She was unable to buy groceries or make rent payments with the money she received from these streaming platforms.¹¹³ Damon Krukowski, an American folk musician said that “[f]rom an individual perspective of musicians, it has just been a downward trend of the rewards for our labor.”¹¹⁴ While these platforms may claim that this system is the most equitable option, it only benefits wealthy and established artists. This kind of system is not designed to highlight smaller artists, which in turn diminishes the impact of fan engagement. Additionally, “[t]here are indie labels that, as opposed to the majors and Merlin members, receive no advance, receive no minimum per stream, and only get a 50% share of ad revenue on a pro-rata basis (which so far has amounted to next to nothing).”¹¹⁵

Consequently, musicians have always had contentious relationships with these streaming services due to their treatment of smaller artists. Singer-songwriter India Arie proposed the question: “[w]here else in the world is a person paid a fraction of a penny for their real life’s work?”¹¹⁶ Others have compared the streaming revolution to Uber’s takeover of the taxi industry, eliminating an artist’s ability to make a livelihood off of album sales.¹¹⁷ Finally, according to Mat Dryhurst, a teacher at NYU’s Clive Davis Institute of Recorded Music in Berlin, “[o]ne-size-fits-all is a very crude, barbaric approach to music.”¹¹⁸ With the advent of these platforms, streaming numbers have become among the most valued gauges of a musician’s success and value. Even though smaller acts do not reach streaming numbers like Drake, they still deserve an equitable flow of money from these platforms. If Spotify wishes to uphold its promise of “music for everyone,” it must ensure that musical artists can live sustainably.¹¹⁹ Fortunately, there are alternative pricing models available to artists and platforms like Spotify and Apple Music should adopt them.

¹¹² Ben Sisario, *Musicians Say Streaming Doesn’t Pay. Can the Industry Change?*, THE N.Y. TIMES (May 7, 2021), <https://www.nytimes.com/2021/05/07/arts/music/streaming-music-payments.html>.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Helienne Lindvall, *Behind the music: The real reason why the major labels love Spotify*, THE GUARDIAN (August 17, 2009) <https://www.theguardian.com/music/musicblog/2009/aug/17/major-labels-spotify>.

¹¹⁶ Travis M. Andrews, *Spotify backlash offers rare insight into reeling music industry — and struggles of working musicians*, THE WASHINGTON POST (Feb. 14, 2022), <https://www.washingtonpost.com/arts-entertainment/2022/02/14/spotify-young-rogan-music-industry/>.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

First, instead of distributing money on a pro-rata basis, these platforms could, alternatively, base their prices on direct streams. In doing so, artists would be paid a predetermined amount per stream. Second, similar to Soundcloud's current payment model, they could adopt fan-powered royalties.¹²⁰ Fan-powered royalties is "a system where independent artists can get paid more because they have dedicated fans streaming their music."¹²¹ The money these artists receive is based on the subscriber's behavior.¹²²

Another seemingly unconscionable label business practice is the label's administration of an artist's international royalties. In standard contracts, labels "will not pay [artists for] albums sold outside the United States if the label receives payment for those sales in non-U.S. currency."¹²³ For the artist to receive this payment, they have to do so in writing and provide a foreign bank account for the labels to deposit the royalties at the artist's expense.¹²⁴ Considering most artists' typical age and inexperience, this can be an overly burdensome administrative obligation for the artist. In addition, if an artist wants to audit the label, the contracts often contain clauses limiting such revenue examinations.¹²⁵ Under the standard contract, an artist may only object to a royalty statement within one year of the date the label should have rendered the statement.¹²⁶ So, if a label's royalty statement is three hundred days, the artist only has sixty-five days to prepare for and audit the label.¹²⁷ Furthermore, some contracts prohibit the auditing process altogether.¹²⁸

Lastly, there is the label "360 deal," which could be considered an adhesion contract due to the broad rights it gives labels over an artist's revenue. Artists signed to "360 deals" are obligated to give their label a

¹²⁰ SonoSuite, *Why is SoundCloud's new 'fan-powered' payout model so revolutionary?*, SONOSUITE (March 26, 2022), <https://sonosuite.com/en/blog/soundcloud-fan-powered-payouts/>.

¹²¹ *Id.*

¹²² *Id.*

¹²³ Phillip W. Hall Jr., *Smells Like Slavery: Unconscionability in Recording Industry Contracts*, 25 HASTINGS COMM. & Ent. L.J. 189 (2002). Available at: https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1746&context=hastings_comm_ent_law_journal.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

portion of their revenue – even if the money is not based on album sales.¹²⁹ This includes revenue from merchandise, shows, brand deals, and endorsements.¹³⁰ Other non-record income sources that an artist must share with their label are earnings from songwriting, fan clubs, motion pictures, modeling, and even additional categories depending on their deal.¹³¹ This arrangement where the employer profits off ancillary income that is not tied to the employee’s direct job function would likely be implausible in most industries. Some consider label 360 deals and the label’s perpetual ownership of an artist’s work as an example of “labels reaping where they have not sown.” Conversely, others might see it akin to the sharecropping labor system of the nineteenth and twentieth centuries by creating guaranteed and perpetual labor for the labels through a business model designed to place their artists in continuous debt.¹³² Regardless of how anachronistic the concept is, “360 deals [and labels owning master recordings] are here to stay because record companies like making more money (as do most of us),” says music lawyer Donald Passman.¹³³

b. From the Streets to the Main Stage

Notwithstanding certain dubious business practices within the music industry, aspiring entrepreneurs continue to emerge from impoverished communities with a bridge over barricades they would not encounter in other business sectors. For instance, imagine a three-time felon with a rap sheet full of violent crimes or narcotics trafficking convictions afforded the opportunity of (i) a \$10 million loan to start a fast-food restaurant, (ii) being invited to invest in a professional sports franchise or (iii) having access to private equity funds to grow their wealth. That all sounds inconceivable because it is, due to the inaccessibility of wealth-generating

¹²⁹ Tom Cole, *You Ask, We Answer: What Exactly Is a 360 Deal?*, NPR (Nov. 24, 2010), <https://www.npr.org/sections/therecord/2010/11/24/131574836/you-ask-we-answer-what-exactly-is-a-360-deal>.

¹³⁰ *Id.*

¹³¹ DONALD S. PASSMAN, *ALL YOU NEED TO KNOW ABOUT THE MUSIC BUSINESS* 102 (Simon & Schuster, 10th ed. 2019).

¹³² In sharecropping, a landowner would provide their tenant with resources like food, clothing, and medical expenses. In return, the tenant would repay the landowner with a share of the tenant’s crops or cash profits. But the tenant couldn’t freely benefit from any crops they produced, as the system was designed to keep the tenant in perpetual debt to the landowner. James C. Giesen, *Sharecropping*, NEW GEORGIA ENCYCLOPEDIA, <https://www.georgiaencyclopedia.org/articles/history-archaeology/sharecropping/> (last modified Sep. 29, 2020).

¹³³ Passman, *supra* note 128.

opportunities for the lower rung in society.¹³⁴ Unless, of course, you are a rising star in hip-hop, like Jay-Z, who has reportedly made “Warren Buffet”-level gains from his investment in the Brooklyn Nets basketball team.¹³⁵ In essence, if you fit the profile of Jay-Z’s (i.e., a rap impresario with a marketable rap sheet), your opportunities are endless. In those instances, your prior criminal history becomes negligible at worst or adds to your marketability, at best.

Ushered in from the street corner to the main stage, hip-hop has given countless creatives the means to earn legitimate income while positively impacting the communities they came from. An artist’s use of social and economic capital to invest in the neighborhoods that nurtured them is essential due to our country’s historical record of blatant inequity among the racial and social classes. Our country’s business sectors, political platforms, and educational systems notoriously eliminate moderate and low-income Americans from “wealth-generating opportunities provided by private markets.”¹³⁶ Therefore, the wealth of resources at the disposal of hip-hop oligarchs have critically contributed to these underprivileged communities and helps remove their exclusion from “cross-racial or economic ties,” thus leading to wealth creation.¹³⁷

However, it is no secret that, while pursuing a path that would improve their lives, many of these artists had one foot “in street life” and the other foot in the studio. The myriad of physical altercations, murders, arrests, investigations, trials, and criminal convictions during their rise through the ranks in the ‘80’s, ‘90’s, and 2000’s lends credence to that reality. Case in point, 50 Cent’s ascension in hip-hop was largely based on his lyrical talent and credibility as an active gangster.¹³⁸ The success of his label G-Unit, merchandise business, television shows, and Vitamin Water deal

¹³⁴ Thaya Brook Knight, *Your Money’s No Good Here: How Restrictions on Private Security Harm Investors*, CATO INST. (Feb. 9, 2018), <https://www.cato.org/policy-analysis/moneys-no-good-here-how-restrictions-private-securities-offerings-harm-investors>.

¹³⁵ Zack O’Malley Greenburg, *Jay-Z Sells Nets Stake, Earns Warren Buffett-Like Return*, FORBES (Apr. 19 2013), <https://www.forbes.com/sites/zackomalleygreenburg/2013/04/19/jay-z-sells-nets-stake-earns-warren-buffett-like-return/?sh=722fee707ac8>.

¹³⁶ J. Christopher Hamilton, *Crowdfunding & Cryptocurrency - A New Conduit to Film Finance*, 16 Rutgers Bus. L.J. 94 (2020).

¹³⁷ Benjamin P. Bowser and Chelli Devadutt, *Racial Inequality in New York City Since 1965*, ALBANY: STATE UNIV. OF NEW YORK PRESS (2019).

¹³⁸ Andre Gee, *50 Cent Is Still an Ever-Present Force in Rap Without Much Rapping*, COMPLEX (Feb. 10 2021), <https://www.complex.com/music/50-cent-still-ever-present-force-rap>.

substantiates that 50's potential far exceeded his early station in life.¹³⁹ There is no denying his aptitude for business, use of creative instincts, tactful leadership, and street cred. On the other hand, 50 is a victim of gun violence, and getting shot nine times in front of his grandmother's house gave him tremendous legitimacy as a gangster in an industry full of "wanksters" (i.e., fake gangsters).¹⁴⁰ That kind of professional profile where your "murder game" or "bullet-riddled body" is actual currency, only one exists in one marketplace, hip-hop. The murderer-stickup man from Brooklyn that 50 named himself after (Kelvin Darnell Martin, July 24, 1964 – October 24, 1987) could never leverage his felonious credentials as a contract killer in any legal business sector.¹⁴¹ Then again, if the real 50 Cent was a lyrical genius in hip-hop and actually lived to leverage those killer credentials, his legitimate options would be limitless. This culture of violence and criminality has continued up to the present day, with artists like Migos rapper Takeoff being shot and killed in 2022,¹⁴² the alleged shooting of female rapper Megan the Stallion by rapper/singer Tory Lanez, and the murder of Pop Smoke in 2021.¹⁴³

When considering the pop culture icons that launched their artistic careers through gangster rap, Jay-Z is the poster child for that success story. As the first billionaire rapper, Jay-Z was a frequent guest at the White House (during the Obama administration), made \$300 million from the sale of his tech platform TIDAL and owns an elite French Champagne (Armand de Brignac, known as Ace of Spades) valued at \$640 million.¹⁴⁴

¹³⁹ Bernadette Giacomazzo, *How Curtis '50 Cent' Jackson Went From Filing For Bankruptcy To A \$40 Million Empire*, AFROTECH (Nov. 4, 2021), <https://afrotech.com/50-cent-businesses-net-worth?item=4>.

¹⁴⁰ Kameron Virk, *50 Cent's Story: From Shootings to Million-Dollar Deals*, BBC (Oct. 12, 2018), <https://www.bbc.com/news/newsbeat-45836061>.

¹⁴¹ Sir Lloyd, *Meet Kelvin Darnell Martin The "Real 50 Cent"; A Gangster Who Was Gunned Down In October 1987*, OPERA NEWS, <https://ng.opera.news/ng/en/society/99226cd58eb011f2016b13fb6cbff5b0>.

¹⁴² Lisa Respers France et al., *Takeoff, member of rap group Migos, fatally shot outside private party in Houston, police say*, CNN (Nov. 2, 2022), <https://www.cnn.com/2022/11/01/entertainment/takeoff-migos-dead>.

¹⁴³ Riyah Collins, *Megan Thee Stallion, Tory Lanez and Drake: The story so far*, BBC (November 11, 2021), <https://www.bbc.com/news/newsbeat-63512342>; See Matthew Ormseth, *A rising rapper, an ill-fated Instagram post and a killing in the Hollywood Hills*, LOS ANGELES TIMES (May 13, 2021), <https://www.latimes.com/california/story/2021-05-13/pop-smoke-death-latest-hearing-reveals-lapd-gang-details>.

¹⁴⁴ Madeline Berg, *Billionaire Jay-Z's Net Worth Jumps 40% With Sales Of Streaming Service Tidal, Champagne Brand*, FORBES (Mar. 4, 2021), <https://www.forbes.com/sites/maddieberg/2021/03/04/billionaire-rapper-entrepreneur->

Along with a slew of savvy investments, brand partnerships (Reebok, Cherry Coke, Cohiba, and Budweiser), and an expansive art collection estimated to be worth \$70 million, Jay-Z has clearly transcended hip-hop.¹⁴⁵ However, as told through his colorful rap lyrics, his rise to riches started as a crack dealer in the ghettos of NYC. Again, another rags-to-riches story that could not have happened in any other industry. Moreover, there are countless others like Jay-Z and 50 Cent (e.g., Fat Joe, T.I., and Snoop Dogg) that rose from obscurity as crack-cocaine dealers to the cover of Forbes magazine for their wealth and power.

IV. THE RISE OF THE HIP-HOP OLIGARCH

Unlike the robber barons of the 19th century, hip-hop's oligarchs did not rise from wealth or influential family names.¹⁴⁶ Their base of operations was not an office on Wall Street or a summer home in Newport, Rhode Island. They held court in the gutter-like conditions of housing projects in NYC, gang-infested communities of East Los Angeles, and trap houses of the Dirty South.¹⁴⁷ These circumstances would yield a unique reality for hip-hop oligarchs and operate as the primary attrition factor for their inner circle of family and friends.¹⁴⁸ Their path to success was not trade school, community college, or an advanced degree in business administration. On the contrary, hip-hop's oligarchs had to navigate through deadly circumstances like homicidal killers in the neighborhood, drug addiction within the family, and the constant threat of criminal

[jay-zs-net-worth-jumps-40-with-sales-of-streaming-service-tidal-champagne-brand/?sh=13647e70cc2c](https://www.masterclass.com/articles/hip-hop-guide#what-is-hiphop-music).

¹⁴⁵ *Id.*

¹⁴⁶ *Hip-Hop Music Guide: History of Hip-Hop and Notable Artists*, MASTERCLASS (Feb. 24, 2022), <https://www.masterclass.com/articles/hip-hop-guide#what-is-hiphop-music>.

¹⁴⁷ *Hip-Hop: A Culture of Vision and Voice*, The Kennedy Center, <https://www.kennedy-center.org/education/resources-for-educators/classroom-resources/media-and-interactives/media/hip-hop/hip-hop-a-culture-of-vision-and-voice/>; See *Trap house*, DICTIONARY.COM, <https://www.dictionary.com/browse/trap-house>, (“A place where illicit drugs are bought, sold, or used”); See also *Dirty South: Its Meaning And Influence*, VFMA (May 6, 2021), <https://vmfa.museum/connect/dirty-south-meaning-influence/>, (“Dirty south is an expression that endearingly refers to the southern part of the United States - from Virginia to Florida, to Texas, and the states in between - whose Black traditions and artistic expressions have shaped the culture of the region and the nation.”).

¹⁴⁸ Benjamin P. Bowser & Chelli Devadutt, *Racial Inequality in New York City Since 1965*, ALBANY: STATE UNIV. OF N.Y. PRESS(2019).

prosecution or state-sponsored persecution.¹⁴⁹ A self-described “young savage with a loaded firearm in [his] hand” that robbed “modest, honest, hardworking citizens” at the age of 14, is how rap artist Fat Joe describes his early life in the Bronx (under the tutelage of a nefarious family member).¹⁵⁰ His reputation in the Bronx made the Trinity Ave artist public enemy number one in the eyes of cops that patrolled his neighborhood.¹⁵¹ That will power, strength and sheer grit, would eventually make him a rap icon and elder statesman of his former community.

Jay-Z also started selling drugs at 14, and at some point, he is claimed to have been moving a kilogram of cocaine a week.¹⁵² In his debut album “Reasonable Doubt,” the impresario chronicles some of those early days in the streets when he shot his brother and robbed at gunpoint.¹⁵³ Even Bad Boy billionaire “Diddy” has a sordid criminal history before the birth of his successful producing career and the rise of his label “Bad Boy Records.” In his early days, in an attempt to secure street protection or gangster credibility, he got “jumped into” (i.e., initiation through fisticuffs) the street gang “Same Gang,”¹⁵⁴ which was composed of legendary bank robbers Eric Von Zip and Chaz Williams.¹⁵⁵ A few years

¹⁴⁹ “[H]igh incarceration rates of African Americans have shaped the functioning and structure of African American families through decreased availability of marriageable mates, the removal of African American fathers from homes and neighborhoods, and increased economic disparities, all of which have implications for developmental outcomes of African American young people.” J. Christopher Hamilton III & Donovan R. Roy, *When They See Us: An Unshaken History of Racism in America*, 12 J. FAM. THEORY REV. 100-107 (2020) (citing James et al., *The central roles of race and racism in reframing family systems theory: A consideration of choice and time*, 10(2) J. FAM. THEORY REV. 419, 433 (2018).; See Alexander, M., *The New Jim Crow: Mass incarceration in the age of colorblindness*, NEW YORK, NY:

NEW PRESS (2010).

¹⁵⁰ See Fat Joe & Shaheem Reid, *The Book of Jose: A Memoir*, 249-256 (2022).

¹⁵¹ *Id.* at 61-73 (2022).

¹⁵² Marlow Stern, *Jay-Z’s ‘Drug Dealers Anonymous’: How True Are The Rapper’s Drug-Dealing Claims*, DAILY BEAST, <https://www.thedailybeast.com/jay-zs-drug-dealers-anonymous-how-true-are-the-rappers-drug-dealing-claims?ref=scroll>.

¹⁵³ *Reasonable Doubt*, GENIUS, <https://genius.com/albums/Jay-z/Reasonable-doubt>.

¹⁵⁴ VladTV, *Gene Deal on Puffy Running 20 Blocks While Getting Jumped In to “Same Gang” (Part 2)*, YOUTUBE (Jul. 30, 2021), <https://www.youtube.com/watch?v=UH0AsRfEtTw>.

¹⁵⁵ Vlad TV, *Chaz Williams on Robbing 60 Banks, Doing 15 Years While Still Bank Robbing*, YOUTUBE (Mar. 19, 2016), <https://www.youtube.com/watch?v=ADPkXztbXg&t=21s>.

later, on his journey as an event promoter, Diddy hosted a celebrity basketball game that ended tragically with nine people dying due to negligence in the management of the event.¹⁵⁶ Considering the greater context of these unfortunate events, it's clear that rising out of the ghetto can be viewed as a bloodsport. That path is inundated with complications, sacrifices, and dire consequences. However, the criminal negligence, illegal drug dealing, and gun violence that occurred before a rapper or producer entered the '80's and '90's hip-hop did not always stop once they crossed that threshold. In many cases, it continued and intensified. For example, Harlem rapper Cam'ron (of the group Dipset) was shot in Washington, D.C., on Oct. 23, 2005, during an attempted carjacking of his Lamborghini; Philly rapper Beanie Sigel (formerly of Roc-A-Fella Records) lost a lung after being shot outside his home in New Jersey; Brooklyn rapper Troy Ave was shot three times within twelve consecutive months in 2016; and XXXTentacion was fatally shot on June 18, 2022, during a robbery in Deerfield Beach, Florida.¹⁵⁷

In 2001, Jay-Z was sentenced to three years probation for the 1999 stabbing of music executive and producer Lance "Un" Rivera in the stomach for illegally bootlegging one of his albums.¹⁵⁸ In 1999, Diddy was involved in a nightclub shooting while attending a party with his girlfriend, Jennifer Lopez, at the time. The melee left at least one person shot, three injured and Diddy's new protégé, "Shyne," in prison for the gun violence.¹⁵⁹ Suge Knight, who is presently serving 28 years in prison for vehicular homicide during an altercation outside the set of "Straight Out of Compton," is known to have had countless physical altercations and was once considered the boogiemaster of the music industry.¹⁶⁰ His violent behavior is legendary, and his criminal history includes assault, robbery,

¹⁵⁶ *Puffy Found Partly Responsible In Fatal Concert Stampede*, MTV (Jan. 12, 1999), <https://www.mtv.com/news/1427354/puffy-combs-found-partly-responsible-in-fatal-concert-stampede/>; See *Childs v. City University of New York*, N.Y.L.J., Jan. 21, 1999 at 30, col 4 [1st Dep 1986, Benza, J.].

¹⁵⁷ Aleia Woods, *Tory Lanez's Lawyer Lays Out Defense Against Megan Thee Stallion*, XXL MAG. (December 15, 2021), <https://www.xxlmag.com/tory-lanez-megan-thee-stallion-lawyer-defense/>.

¹⁵⁸ Christina Saraceno, *Jay-Z Gets Probation*, ROLLING STONE (Dec. 7, 2001), <https://www.rollingstone.com/music/music-news/jay-z-gets-probation-244400/>.

¹⁵⁹ Jessica Pressler, *Puffy Pow Pow!*, N.Y. MAG. (Mar. 30, 2012), <https://nymag.com/news/features/scandals/p-diddy-2012-4/>.

¹⁶⁰ Lisa Respers France & Stella Chan, *Suge Knight Sentenced to 28 Years in Prison*, CNN (Oct. 8, 2018), <https://www.cnn.com/2018/10/04/entertainment/suge-knight-sentencing/index.html>.

and drug possession.¹⁶¹ Most of these events happened while Suge was an active music executive.¹⁶²

This criminal atmosphere of hip-hop's early days was mainly due to an industry full of gangsters, thugs, and drug dealers as its gatekeepers. Breaking into a world like that requires comfort and familiarity with the streets, a tough guy persona, and gangster friends surrounding you for protection. The case of former hip-hop manager James Rosemond (a/k/a "Jimmy Henchman") is another perfect illustration of this paradox.¹⁶³ While managing major artists like Game and Gucci Mane, he was sentenced to life in prison for "running a multi-million dollar cocaine ring."¹⁶⁴ Testimony during his trial revealed a two year violent dispute with 50 Cent and G-Unit that resulted in the attempted murder of G-Unit members, shooting up the entrance of Violator Records, a company managing G-Unit at the time, assaulting the brother of 50 Cent's manager (Chris Lighty) with a razor to his face, shooting up the house of G-Unit's road manager (Baja Walters), shooting up the Bentley of G-Unit member Tony Yayo as he sat idle on Madison Avenue in Harlem, and the assassination of a G-Unit associate, Lowell Fletcher, for assaulting Rosemond's fourteen-year-old son.¹⁶⁵ This is just one of countless violent disputes that has taken place amongst artists, entourages, and business associates in the hip-hop community. Therefore, the rise of the hip-hop oligarchs was not a result of luck, the right timing, or even amazing talent. Laboring against unattainable conditions such as these to ascend to multi-millionaire status requires all of the above, cash from contraband, and the willingness to employ deadly tactics to maintain a foothold in the business. Otherwise, poverty or powerlessness is inevitable, certainly not peerage with the likes of an English noble.¹⁶⁶

a. Washing Dirty Money With Clean Hands

It's no secret there were countless dark deeds and innumerable amounts of dirty money tied to hip-hop's royalty. But it has all been pasteurized by their patronage to cooperate with the cartels responsible for

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ James C. McKinley Jr., *Witnesses Recount Long-Running Feud During Hip-Hop Manager's Murder Trial*, THE NEW YORK TIMES (March 2, 2014), <https://www.nytimes.com/2014/03/03/nyregion/witnesses-recount-long-running-feud-during-hip-hop-managers-murder-trial.html>.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Peerage*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/peerage>.

their fortunes (not dissimilar to the traditions and principles found among all great empires). Jay-Z or Master P's alleged funneling of drug proceeds through record labels should not be judged more harshly than the opium regimes of the Dutch, Spanish and French — which stabilized their economies.¹⁶⁷ The thuggery or barbarism attributed to Death Row, Cash Money, or Bad Boy's record labels when carving their place in hip-hop history would pale in comparison to the exploitative or abusive tactics of the 20th-century robber barons.¹⁶⁸ Therefore, the legacies of hip-hop oligarchs should not be stained by the criminal deeds facilitating their rise. Hip-hop oligarchs built dynasties while grappling with a torrent of violent opposition. They had to contend with forces, barriers, and principalities unique to their market sector and demographic, like systemic racism, gun-wielding goons, and socio-economic conditions designed to keep them in a subservient class.¹⁶⁹ Consequently, if not for the intestinal fortitude, sheer grit, and business instincts needed to survive in the streets, they likely would not have survived in the music business.

Furthermore, these artists' catalogs stuffed the coffers of their corporate parents and business partners, and heavily contributed to hip-hop raking in billions of dollars.¹⁷⁰ Three major media empires control the global music market today,¹⁷¹ and it is estimated that hip-hop music accounts for 31% of that market.¹⁷² In 2021, Sony Music Entertainment generated \$7.5 billion in overall revenue.¹⁷³ Sony owes much of its dominance to the money it earned with rappers like the late Big L, Wu-

¹⁶⁷ Hans Derks, *History of the Opium Problem. The Assault on the East ca. 1600-1950* (Brill) (2012).

¹⁶⁸ Gus Lubin, et al., *Meet The 24 Robber Barons Who Once Ruled America*, BUS. INSIDER (Mar. 20, 2012), <https://www.businessinsider.com/americas-robber-barons-2012-3>.

¹⁶⁹ James et al., *The Central Roles of Race and Racism in Reframing Family Systems Theory: A Consideration of Choice and Time*, J. OF FAM. THEORY & REV., 419–433 (2018).

¹⁷⁰ Bernadette Giacomazzo, *How an NYC Street Sound Became The Multi-Billion Dollar Industry Known as 'Hip-Hop,'* AFROTECH (Aug. 11, 2021), <https://afrotech.com/hip-hop-birthday-rap-hip-hop-net-worth>.

¹⁷¹ Heather McDonald, *How the Big Four Record Labels Became the Big Three*, THE BALANCE CAREERS (July 29, 2019), <https://www.thebalancecareers.com/big-three-record-labels-2460743>.

¹⁷² Bernadette Giacomazzo, *How an NYC Street Sound Became The Multi-Billion Dollar Industry Known as 'Hip-Hop,'* AFROTECH (Aug. 11, 2021), <https://afrotech.com/hip-hop-birthday-rap-hip-hop-net-worth>.

¹⁷³ Ed Christman, *Sony Music Rolls to \$7.7B in Annual Revenue Following 37% Jump in Streaming*, BILLBOARD (May 10, 2022), <https://www.billboard.com/pro/sony-music-earnings-2021-q4-profit-streaming-publishing/>.

Tang Clan, Nas, and Three 6 Mafia.¹⁷⁴ In 2021, Warner Music Group was valued at about \$27 billion.¹⁷⁵ Warner owes some of its recent dominance to money it earned with 300 Entertainment, which is the home to Young Thug and Gunna (who both were recently indicted on RICO charges), YNW Melly (charged with two counts of first-degree murder), and Megan Thee Stallion (who allegedly suffered a gunshot wound that implicated rapper/singer Tory Lanez).¹⁷⁶ Universal Music Group is the third of the big three, and when it began to be publicly traded, it was valued at over \$50 billion.¹⁷⁷ Universal owes some of its success to the contributions of Def Jam (Jay-Z), Interscope (Dr. Dre and Suge Knight), Shady (50 Cent), Cash Money (Birdman, Drake, and Nicki Minaj), and rappers like 21 Savage and Kendrick Lamar. These corporate entities are part of an interconnected network that makes up the foundation of modern commercial music. Sony Group Corporation, worth around \$135 billion based on some reports and founded in 1946,¹⁷⁸ is the parent of Sony Music.¹⁷⁹ There are also companies like Access Industries (parent of Warner Music Group, founded in 1958, worth 13.5 billion) and Vivendi, a partial owner of Universal Music Group, which has a market cap of \$12.9 billion.¹⁸⁰ Notwithstanding the vast wealth and market dominance of hip-hop artists in business with these conglomerates, it's abundantly clear that

¹⁷⁴ *List of Sony Music Artists*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_Sony_Music_artists.

¹⁷⁵ Tim Ingham, *Warner Music Is Worth \$10BN More Than It Was A Year Ago*, MUSIC BUS. WORLDWIDE (Oct. 22, 2021), <https://www.musicbusinessworldwide.com/warner-music-group-is-worth-10bn-more-than-it-was-a-year-ago/>.

¹⁷⁶ Trace William Cowen, *Warner Group Has Acquired 300 Entertainment; Roster Includes Young Thug, Megan Thee Stallion, and More*, COMPLEX (Dec. 16, 2021), <https://www.complex.com/music/300-entertainment-acquired-by-warner-music-group>.

¹⁷⁷ Murray Stassen, *Universal Hits Massive Valuation of \$54BN As It Lists On Amazon Stock Exchange*, MUSIC BUS. WORLDWIDE (Sep. 21, 2021), <https://www.musicbusinessworldwide.com/universal-hits-massive-valuation-of-54bn-as-it-lists-on-amsterdam-stock-exchange/>.

¹⁷⁸ Stefan Jackson, *Sony Net Worth 2022: Assets, Income, Revenue, PE Ratio, CEO*, CAKNOWLEDGE (Apr. 8, 2022), <https://caknowledge.com/sony-net-worth/>.

¹⁷⁹ *Who We Are*, Sony, https://www.sony.com/en_us/SCA/who-we-are/overview.html.

¹⁸⁰ *Vivendi*, FORBES, (May 12, 2022), <https://www.forbes.com/companies/vivendi/?sh=7e8b270d1c6b>; See also *Warner Music Group Net Worth 2010 - 2022 | WMG*, MACROTRENDS, <https://www.macrotrends.net/stocks/charts/WMG/warner-music-group/net-worth#:~:text=How%20much%20a%20company%20is,15%2C%202022%20is%20%2412.81B>.

rappers are the “middle management” amongst the web of vertically integrated media empires that are their benefactors.

V. LEVERAGING THE LAW AGAINST CORPORATE CRIMINALITY

Should these media juggernauts be able to generate any portion of their wealth from blood money or the ill-gotten gains of their artists? The public sentiment (when the public is aware) towards criminals, cartels, and crime in general, would suggest otherwise, as would the “black letter of the law.” Therefore, big businesses should not be shielded from prosecution when implicated in a crime any more than a co-conspirator should be able to evade prosecution just because they were not the actual perpetrator. Yet somehow, music companies have not been prosecuted for activities that would make the everyday citizen culpable (or, at the very least, “a person of interest” in a criminal investigation). It is unclear if that outcome is due to a lack of legal precedent or prosecutorial motivation. Nevertheless, a legal framework clearly exists to address both issues, if government officials take their duty to hold corporate goons just as accountable as gangsters, drug traffickers, and white-collar criminals.

Corporations in the music industry traffic their wares using one of the most valuable natural resources, the electromagnetic spectrum (i.e., the public radio waves) and thus owe a duty to the “public trust” to place our interests above their own.¹⁸¹ This fiduciary obligation extends beyond the radio waves and includes expectations of corporate social responsibility (CSR) and corporate moral responsibility (CMR).¹⁸² Corporations are

¹⁸¹ The Electromagnetic spectrum is an invaluable natural resource – one that should receive the full protection of the public trust doctrine. However, the spectrum is under the control of the Federal Communications Commission (FCC). For Television broadcasters, it commands the use of certain frequencies only for television broadcasting – and this extends to radio waves. Due to the value of the electromagnetic spectrum, access to it should be guaranteed in order for the public to enjoy its full potential.

Patrick S. Ryan, *Application of the Public-Trust Doctrine and Principles of Natural Resource Management to Electromagnetic Spectrum*, 24 Mich. Telecomm. & Tech. L. Rev. i (2018).

¹⁸² Corporate Social Responsibility (CSR) is a concept whereby companies integrate social and environmental concerns into their business practices. Companies seek to achieve a balance of economic, environmental, and social imperatives while addressing the expectations of shareholders and stakeholders. Corporate moral responsibility (CMR) deals with the corporate moral course of action. The meaning of a responsible company is that one behaves well – wisely,

collective agents that should serve the good of society which empowers them. However, they often make decisions for their shareholders' benefit to the detriment of society at large. Even if corporations are innately capitalistic with aims rooted in profit rather than social mobility, that does not give them the right to circumvent their social and moral obligations.

Historically speaking, these obligations are evidenced by corporations held to standards of social and moral responsibility when their profits compete with progressive agendas such as climate change, human rights violations, or corporate corruption. For example, corporate accountability and the leveraging of sanctions against corporations have spurred corrective action in the past, as seen in the sanctioning of Exxon after the Valdez Oil Spill and the social boycotting of Goya products after its public approval of then President Donald J. Trump.¹⁸³ But corporations have never been held accountable for their criminality in hip-hop music. Most of the onus falls on their artists, even when they have lent aid to a criminal act or are the ones actually holding the "smoking gun" (symbolically speaking).

Therefore, this paper seeks to remedy that issue by illustrating the legal basis and public policy considerations on this matter based on the legal theories of "corporate criminal liability," "criminal negligence," and "successor liability." Each will provide the legal basis for imposing criminal liability on record labels, music distributors, and/or media parent companies (i.e., "financiers") that employ recording artists or music producers engaged in criminal activity.

a. *Corporate Criminal Liability*

Corporate criminal liability is a legal theory that was applied in the case of Massachusetts, the *Commonwealth v. Angelo Todesca Corp.*¹⁸⁴ In this case, a jury found a corporate defendant guilty of homicide by a

prudently, and morally. Moreover, CMR is concerned with holding corporations responsible for their actions.

Stephen Wilmot, *Corporate Moral Responsibility: What Can We Infer from Our Understanding of Organisations?*, 30 J. Bus. Ethics 161 (2001).; What is CSR?, UNIDO, <https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr>.

¹⁸³ Reuters Staff, *U.S., Alaska end quest for damages against Exxon over 1989 spill*, REUTERS (Oct. 15, 2015), <https://www.reuters.com/article/exxon-mobil-alaska-valdezspill/u-s-alaska-end-quest-for-damages-against-exxon-over-1989-spill-idUKL1N12F0RN20151015>.; See Derrick Bryson Taylor, *Goya Foods Boycott Takes Off After Its President Praises Trump*, THE NEW YORK TIMES, (July 10, 2020), <https://www.nytimes.com/2020/07/10/business/goya-boycott.html>.

¹⁸⁴ See *Commonwealth v. Angelo Todesca Corp.*, 446 Mass. 128, 134 (2006).

vehicle.¹⁸⁵ The case is pivotal due to the fact that the court found the Angelo Todesca Corporation liable for the homicide even though their employee committed the crime.¹⁸⁶ Their employee killed someone while driving in reverse in one of their trucks that was not equipped with backup alarms.¹⁸⁷ The court's ruling established the following elements for illustrating the criminal liability of a corporation through the acts of its employees: (i) the employee committed a criminal offense, (ii) at the time of the offense, the employee was engaged in some particular corporate business or project and (iii) the employee was vested by the corporation with the authority to act for it, and on its behalf, carrying out that particular corporate business or project when the offense occurred.¹⁸⁸ It is noteworthy to mention that "knowledge" of the employees' criminal acts was not a required element to establish the company's liability under this legal theory.¹⁸⁹

The application of this legal theory to music labels hinges on the ability to establish an "employer and employee" relationship between the artist and their label to hold the record labels (i.e., employers) criminally liable for the behavior of the artists signed to them (i.e., the employees). Although holding corporations criminally liable for the behavior of their employees is uncommon, the Massachusetts court provides a workable and reasonable rationale to apply the legal theory to artists and labels in the music industry. Additional case law that supports this legal precedent of holding a corporate employer responsible for the crimes of its employee are as follows: (1) *United States v. Bainbridge Management, Inc.*, in which the court denied a corporation's motion to dismiss an indictment, stating that a company may be held liable for the criminal activity of an employee or agent; and (2) *Commonwealth v. L. A. L. Corp.*, where the Supreme Judicial Court of Massachusetts held that a company could be held liable using the same legal theory.¹⁹⁰

i. The Employment Relationship

Many will resist the notion that recording artists are employees of their record labels. Beyond the philosophical dissonance on this issue between the community of recording artists and their label parents, both parties

¹⁸⁵ *Id.* at 129.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 131.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *See United States v. Bainbridge Mgmt., Inc.*, No. 01 CR 469 - 1, 6, 2002 U.S. Dist. LEXIS 6309, at *5 (N.D. Ill. 2002); *Commonwealth v. L.A.L. Corp.*, 511 N.E.2d 599, 603 (Mass. 1987).

would deny the employer and employee implication due to the contractual nature of their business relationship. Recording artists are customarily identified as “independent contractors” in their label contracts and not treated as “employees.”¹⁹¹ This is due to the advantages afforded by the independent contractor status.¹⁹² For instance, the legal designation of “independent contractor” is primarily used by music labels to mitigate the risks, liabilities, and expenses to be incurred if these labels were thought to be employing their recording artists while also being subject to labor laws (medical benefits, employment taxes, etc.) that would govern their business relationship.¹⁹³ For that reason, the practice of media companies, such as music labels, engaging artists as independent contractors is common when contracting for artistic services.¹⁹⁴

An “employee” is defined as an individual who works under the supervision or control of an “employer.”¹⁹⁵ An employee works in the employer’s service under an express or implied contract of hire that gives the employer the right to dictate the employee’s work duties.¹⁹⁶ Under the law, the employer and employee relationship is not defined solely by the terms of the parties’ contractual agreement.¹⁹⁷ Rather, the legal classification of “employer and employee” is established based on the circumstances of the relationship between the two parties.¹⁹⁸ Regardless of the terms in a contract between an individual and a company engaging them for services, if that individual’s duties are delegated and controlled by the company, that company would be considered the employer of that individual.¹⁹⁹ Arriving at this legal conclusion usually requires applying a

¹⁹¹ See David Arditi, *How Record Labels Exploit Musicians and How We Can Fix It* | *Opinion*, THE TENNESSEAN (Nov. 24, 2020, 6:19 PM), <https://www.tennessean.com/story/opinion/2020/11/24/kanye-west-right-record-labels-exploit-musicians-how-fix/6062315002/>.

¹⁹² *Id.*

¹⁹³ *See id.*

¹⁹⁴ *See id.*

¹⁹⁵ *Employee*, Cornell L. Sch.: Legal Info. Inst. (June 2021), <https://www.law.cornell.edu/wex/employee#:~:text=An%20employee%20is%20an%20individual,dictate%20the%20employee's%20work%20duties.>

¹⁹⁶ *Id.*

¹⁹⁷ See *How to Apply the Common Law Control Test in Determining an Employer/Employee Relationship*, Soc. Sec. Admin., https://www.ssa.gov/section218training/advanced_course_10.htm#:~:text=The%20common%20law%20control%20test%20is%20the%20basic%20test%2C%20using,where%20to%20do%20the%20job (last visited Feb. 3, 2023).

¹⁹⁸ *See id.*

¹⁹⁹ *Id.*

common-law factor test to a set of facts and circumstances.²⁰⁰ Factors such as the “exercise of control,” “the right to quit” the engagement, and the “amount of supervision” are key elements considered in the analysis of whether a person is an employee or an independent contractor.²⁰¹ But the primary consideration is determining who has the right to control two basic elements: what must be done and how it must be done.²⁰² Even though there have been countless attempts for companies in the entertainment business to evade that reality due to identifying their service providers as freelancers, independent contractors, or temporary staff, the court has often ruled otherwise.²⁰³

Applying this legal criterion in the context of a recording artist and record label, the label controls and supervises several of the artist’s key activities, such as studio recordings, artist development, and publicity campaigns.²⁰⁴ The actual production, development, and distribution of the music created by the artist is all funded and controlled by the label.²⁰⁵ This control even extends to the timing of the music’s release²⁰⁶ and its promotion by the artist on social media.²⁰⁷

Unfortunately, the severe violence associated with many recording artist disputes in the ‘90’s and 2000s provides ample basis for achieving the willful and malicious standard required under California law while also reflecting fact patterns that would establish the employer-employee relationship. For instance, the gunfight between rapper Lil’ Kim and the group Capone-N-Noreaga during a promotional appearance at the NYC radio station Hot 97 would undoubtedly be a malicious criminal offense in

²⁰⁰ *See id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *E.g.*, Ridenhour v. UMG Recordings, Inc., Nos. C 11–5321, C 11–1613, 2012 WL 463960 (N.D. Cal. Feb. 13, 2012) (Chuck D’s lawsuit against Universal Music Group); Dwayne Michael Carter, Jr. v. Cash Money Records, Inc. (Lil Wayne’s lawsuit against his record label).

²⁰⁴ *See* Heather McDonald, *The Record Label’s Role in the Music Industry*, LiveAboutDotCom (Oct. 27, 2019), <https://www.liveabout.com/what-is-a-record-label-2460614#:~:text=Record%20labels%20typically%20set%20the,cover%20art%20in%20most%20instances>.

²⁰⁵ *See id.*

²⁰⁶ *See* Aylin Zafar, *What It’s Like When a Label Won’t Release Your Album*, BuzzFeed (May 12, 2013), <https://www.buzzfeed.com/azafar/what-happens-when-your-favorite-artist-is-legally-unable-to>.

²⁰⁷ *See* Sonia Rao, *Record Labels Want Viral TikToks. Artists Are Pushing Back*, Wash. Post (May 25, 2022, 6:00 AM), <https://www.washingtonpost.com/arts-entertainment/2022/05/25/record-labels-want-viral-tiktoks-artists-are-pushing-back/>.

furtherance of their work.²⁰⁸ Due to an ongoing beef and competition between the two groups, they both sought to either disrupt each other's promotional activities that day and/or eliminate the other party as a threat (creative or otherwise) by engaging in a gun battle.²⁰⁹ At the time of the shooting, Lil' Kim was a marquee talent signed to Bad Boy Records, and Capone-N-Noreaga were a platinum-selling rap group signed to Tommy Boy Records.²¹⁰ Whether these artists were acting on behalf of their labels as agents or employees is insignificant, considering they were both attending a meeting that day in the furtherance of their label's interest (i.e., promotion of music under the ownership and control of their music labels).²¹¹ This same rationale can be applied to Diddy assaulting the manager of a recording artist over the disparagement of his brand and identity by the unapproved release of a music video featuring him and Nas nailed to a cross like Jesus.²¹² In all of these cases, the artists are attempting to resolve business disputes through violence and in the furtherance of their business enterprises or the interests of their corporate parents.

ii. Mens Rea

Furthermore, even though "mens rea" was not a requirement under *Commonwealth v. Angelo Todesca Corp.*, there is sufficient evidence that the music labels employing these artists were aware of their illegal activity based on all the publicity surrounding their criminal antics (e.g., the gun fights, stabbings, and drug dealing), especially considering how legendary these events were within the hip-hop community at the time. The narratives related to the shootings, stabbings, drug dealing, and murders are captured in their cinematic rhymes, and these true-life accounts have

²⁰⁸ See generally Tara C. Mahadevan, *This Day in Rap History: Lil' Kim and Foxy Brown's Entourages Exchanged Shots Outside Hot 97*, Complex (Feb. 25, 2014), <https://www.complex.com/music/2014/02/this-day-in-rap-history-lil-kim-foxy-brown-shootout-feb-25>.

²⁰⁹ *Id.*

²¹⁰ Sesali Bowen, *Celebrating the Women of Bad Boy Records*, Refinery39 (May 1, 2017, 3:15 AM), <https://www.refinery29.com/en-us/2017/05/152542/female-rappers-cant-stop-wont-stop-bad-boy-story>; See Tom Watson, *Everything You Need to Know About Capone-N-Noreaga*, Highsnobiety (2016), <https://www.highsnobiety.com/p/capone-n-noreaga-supreme/>.

²¹¹ Mahadevan, *supra* note 208.

²¹² See generally *Puffy Breaks Silence on Stoute Attack*, MTV (JUNE 23, 1999, 6:30 PM), [HTTPS://WWW.MTV.COM/NEWS/1427333/PUFFY-BREAKS-SILENCE-ON-STOUTE-ATTACK/](https://www.mtv.com/news/1427333/puffy-breaks-silence-on-stoute-attack/); Joe Dangelo, *Jay-Z Pleads Guilty to Stabbing, Faces Three Years' Probation*, MTV (Oct. 17, 2001, 6:37 PM), <https://www.mtv.com/news/1450090/jay-z-pleads-guilty-to-stabbing-faces-three-years-probation/>.

been widely publicized by major news publications, music journalists, and media bloggers.²¹³

For example, the murder of Tupac Shakur in 1996, resulting from a physical altercation the artist and his entourage had in Las Vegas with a known gangbanger received worldwide attention.²¹⁴ Then, in 1997, “Biggie,” aka the “Notorious B.I.G.,” an iconic artist under Bad Boy’s label, was assassinated in Los Angeles, California, at the height of the East Coast versus West Coast rap beef, which was another highly publicized death.²¹⁵ In 2003, Diddy’s bodyguard, Bronx street legend Anthony “Wolf” Jones, was murdered in a gunfight outside a strip club in Atlanta, Georgia, after a dispute with members of a notorious drug syndicate/music label known as BMF.²¹⁶ The altercation that led to Wolf’s death may have been tied to his alleged murder of Suge Knight’s bodyguard, Jai Hassan (a/k/a Big Jake), in 1995 during a East Coast/West Coast dispute between Diddy and Suge Knight.²¹⁷ These events and the related trials were widely covered by numerous media outlets, including the New York Times, Billboard, and the New York Post.²¹⁸

Most in the music industry have heard about rappers driving around in armored vehicles, adorning bulletproof vests, and being flanked by executive security details like they were state officials in a foreign war zone. However, the third billionaire born out of hip-hop, Curtis “50 Cent” Jackson, who was shot nine times in an assassination attempt on his life,

²¹³ See HesAlwaysWrite, *Hip-Hop Behind Bars: Rappers and America’s Criminal Justice System*, THE SOURCE (Feb. 15, 2022), <https://thesource.com/2022/02/15/hip-hop-behind-bars-rappers-and-americas-criminal-justice-system/>.

²¹⁴ See, e.g., Ian Katz, *Death Wish*, GUARDIAN.CO.UK (Sept. 20, 1996), <https://www.theguardian.com/fromthearchive/story/0,,1871645,00.html>; *Tupac Shakur Dies*, HISTORY (Sept. 13, 2021), <https://www.history.com/this-day-in-history/tupac-shakur-dies>.

²¹⁵ *Rapper Notorious B.I.G. Is Killed in Los Angeles*, HISTORY (Mar. 7, 2022), <https://www.history.com/this-day-in-history/rapper-notorious-b-i-g-is-killed-in-los-angeles>.

²¹⁶ Joseph Patel, *Key Figure in Diddy Gun Trial Slain Outside Atlanta Club*, MTV (Nov. 11, 2003, 6:41 PM), <https://www.mtv.com/news/1480349/key-figure-in-diddy-gun-trial-slain-outside-atlanta-club/>.

²¹⁷ See Peter Noel, *Big Bad Wolf*, The Village Voice (Feb. 13, 2001), <https://www.villagevoice.com/2001/02/13/big-bad-wolf/>.

²¹⁸ E.g., Todd S. Purdum, *Rapper Is Shot to Death in Echo of Killing 6 Months Ago*, N.Y. Times (Mar. 10, 1997), <https://www.nytimes.com/1997/03/10/us/rapper-is-shot-to-death-in-echo-of-killing-6-months-ago.html>; Billboard Staff, *Shyne Sentenced to 10 Years in Prison*, Billboard (June 1, 2001), <https://www.billboard.com/music/music-news/shyne-sentenced-to-10-years-in-prison-79546/>; Murray Weiss, *Diddy’s Gun Pal is Slain*, N.Y. Post (Nov. 12, 2003, 5:00 AM), <https://nypost.com/2003/11/12/diddys-gun-pal-is-slain/>.

provides the most palpable illustration of this lifestyle.²¹⁹ 50 Cent reportedly spent “a little over \$1 million a year” on security at his former Connecticut mansion, surrounding the home with surveillance, and reputedly takes his security very seriously.²²⁰ In 2014, Jay-Z and Beyoncé reportedly “increased staff and addition of two military-grade bomb proof vehicles [costing] them an estimated US \$4 million.”²²¹ Finally, in 2019, rapper Tekashi69 spent \$1.09 million for 24/7 security approaching his federal racketeering case.²²²

The men and women living today who experienced the violent ‘90’s and early 2000’s era of hip-hop did not just rap about it. They lived it “and have the receipts” (i.e., criminal records and battle scars to prove it). Therefore, even if the Navy Seal-like security teams, armored caravans, murders, shootouts, and rumors of violent altercations were somehow unbeknown to the label parents in instances where knowledge was a required element to impose criminal liability, establishing direct “knowledge” of criminality on behalf of the labels still would not be necessary. This is due to the legal theory of “collective knowledge,” which is used when the charge is a statutorily created crime (such as drug possession, sale, or distribution), and the mens rea required is knowledge (as discussed in *Commonwealth v. Martins Maintenance*). Courts have found that knowingly benefiting financially from an employee’s crimes can establish collective knowledge on behalf of the defendant and make them responsible for their failure to act accordingly.²²³

iii. The Financial Benefits of the Fallout

Whether you are a hip-hop consumer or just an onlooker curious about the culture, one should bear in mind that jail, violence, and criminal prosecution equate to great publicity opportunities for artists and record-

²¹⁹ See Jo Piazza, *Celebs Shell Out Big Bucks for Security*, CNN (Nov. 6, 2009, 6:03 PM), <https://www.cnn.com/2009/SHOWBIZ/Music/11/06/celebrity.security.costs/index.html>.

²²⁰ *Id.*

²²¹ Leah Simpson, *Billion Dollar Bodyguards: From Beyoncé and Jay-Z’s Bombproof Cars to Facebook Paying US\$23.4 Million for Mark Zuckerberg’s Safety, Here’s How Much Celebrities Spend on Their Security*, S. China Morning Post (Mar. 3, 2022, 1:00 AM), <https://www.scmp.com/magazines/style/celebrity/article/3168946/billion-dollar-bodyguards-beyonce-and-jay-zs-bombproof>.

²²² Jessica McKinney, *6ix9ine’s ‘Unprecedented’ Security Needs Will Cost Him Millions, Experts Say*, Complex (Oct. 23, 2019), <https://www.complex.com/music/2019/10/tekashi-6ix9ine-security-plan-over-one-million-dollars-experts>.

²²³ See, e.g., *Commonwealth v. Martins Maint., Inc.*, 109 N.E.3d 1099, 1109 (Mass. App. Ct. 2022).

breaking music sales for their labels.²²⁴ Even in dubious cases like R. Kelly, who was signed to Sony/RCA, his music sales increased as a result of his criminal case.²²⁵ His album sales have grown by 500% since his rape allegations and eventual incarceration.²²⁶ Def Jam, which is part of Universal, signed recording artist Shyne to a \$3 million deal while he was serving his 10-year sentence.²²⁷ Then his album, “Godfather Buried Alive,” sold 158,000 copies in the first week and debuted in the top 10 on the Billboard charts.²²⁸ Of course, his label (Bad Boy at the time) did not encourage him to brandish a pistol or shoot up a nightclub; but they certainly knew his criminal history and propensity for violence.²²⁹ Additionally, none of these events resulted in a lack of business opportunities as a jailed artist or convicted felon.²³⁰ That is because violent and criminal-minded artists are valuable assets in a label’s portfolio and undergird its business model.²³¹

The murder or maiming of a rap artist significantly boosts music sales.²³² For instance, take Jimmy Iovine’s alleged comments to Suge Knight immediately following Tupac’s murder: “[y]ou can’t beat a dead

²²⁴ See Sarah Polus, *R. Kelly’s Album Sales Grew by 500 Percent After Conviction*, The Hill (Oct. 10, 2021, 10:09 PM), <https://thehill.com/blogs/in-the-know/in-the-know/576158-r-kellys-sales-grow-by-500-percent-after-conviction/>.

²²⁵ See Amy X. Wang, *R. Kelly Hasn’t Really Been ‘Dropped’ by Anyone in Music*, Rolling Stone (Jan. 22, 2019), <https://www.rollingstone.com/pro/news/r-kelly-sony-universal-music-spotify-782119/>.

²²⁶ See Polus, *supra* note 231.

²²⁷ Joseph Patel, *Shyne Signs Deal with Def Jam from Behind Bars*, MTV (Apr. 16, 2004, 6:52 PM), <https://www.mtv.com/news/rks291/shyne-signs-deal-with-def-jam-from-behind-bars#:~:text=The%20former%20P.,million%20for%20the%20first%20album.>

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² See, e.g., Kevin Rutherford, *Pop Smoke Streams Up 392% as Fans Mourn Rapper’s Death*, BILLBOARD (Feb. 21, 2020), <https://www.billboard.com/pro/pop-smoke-death-streaming-increase/>; Mesfin Fekadu, *After Death, Nipsey Hussle’s Sales and Streams Soar*, AP News (Apr. 3, 2019), [https://apnews.com/article/d3f503e2bbb345e4a0050605c931ed53; Samantha Maine, XXXTentacion’s Music Sees 1,603% Rise in Sales After Death, NME \(June 20, 2018\), https://www.nme.com/news/music/xxxtentacion-music-sales-since-death-2341493.](https://apnews.com/article/d3f503e2bbb345e4a0050605c931ed53; Samantha Maine, XXXTentacion’s Music Sees 1,603% Rise in Sales After Death, NME (June 20, 2018), https://www.nme.com/news/music/xxxtentacion-music-sales-since-death-2341493.)

man's sales."²³³ For example, look at the music sales and social media metrics of PnB Rock. Following the rapper's death in September 2022, his catalog streams saw a 651.9% increase to 30.5 million US streams from 4.1 million the week prior.²³⁴ The value of this business move is evident by the revenue his music generated for the label. Pop Smoke's music received a 392% increase in streams from mourning fans.²³⁵ Similarly, King Von charted on Billboard Hot 100 for the first time only after he died in 2020.²³⁶ A similar trend is expected after the murder of Migos rapper Takeoff in November 2022.²³⁷ There is also the specter of labels profiting directly from their artists' deaths through label life insurance policies on artists.²³⁸ This has been a trending topic in social media, with rappers like French Montana commenting publicly in news interviews.²³⁹ French might be particularly sensitive to the issue due to his barely surviving a gunshot to the head while visiting a music studio in the Bronx in 2003 and almost losing rapper Lil Tjay, a close peer, after he was shot seven times in a botched robbery in 2022.²⁴⁰ In addition to those incidents, French lost his young protege and fellow Coke Boy member Chinx to a drive-by shooting in Queens, NY, in 2015.²⁴¹ Gregory Victoroff, music industry attorney and former "chairman of the Beverly Hills, Calif., Bar Association's Committee for the Art -- an organization which released

²³³ Paul Thompson, *American Dream/American Nightmare Gives Suge Knight the Last Word*, Vulture (Dec. 21, 2018), <https://www.vulture.com/2018/12/american-dream-american-nightmare-showtime-review.html>.

²³⁴ Trevor Anderson, *PnB Rock Streams Surge 652% After His Death & 'Selfish' Returns to Charts*, Billboard (Sept. 22, 2022), <https://www.billboard.com/pro/pnb-rock-death-streams-selfish-charts/>.

²³⁵ Rutherford, *supra* note 239.

²³⁶ Xander Zellner, *King Von Charts on Hot 100 for First Time After His Death, Led by 'Took Her to the O'*, Billboard (Nov. 16, 2020), <https://www.billboard.com/pro/king-von-charts-hot-100-first-time-death/>.

²³⁷ *See generally* France et al., *supra* note 139.

²³⁸ *See* Randy Reiss, *Bushwick Bill Blasts Label over Life Insurance Policy*, MTV (Dec. 11, 1998, 11:38 PM), <https://www.mtv.com/news/noyb5z/bushwick-bill-blasts-label-over-life-insurance-policy>.

²³⁹ Mackenzie Cummings-Grady, *French Montana Accuses Record Labels of Profiting Off Rappers' Deaths with Life Insurance Policies*, Complex (July 20, 2022), <https://www.complex.com/music/french-montana-accuses-record-labels-profiting-off-rappers-deaths-life-insurance-policies>.

²⁴⁰ C. Vernon Coleman II, *Lil Tjay Breaks Silence After Surviving Being Shot Seven Times*, XXL Mag. (August 24, 2022), <https://www.xxlmag.com/lil-tjay-breaks-silence-shot-seven-times/>.

²⁴¹ *Rapper Chinx Drugz Murdered in Drive By Shooting: Member of French Montana's Coke Boys*, (May 17, 2015, 6:56 AM), <https://www.tz.com/2015/05/17/chinx-drugz-shot-killed-coke-boys-drive-by-rapper/>.

‘The Musician’s Business & Legal Guide,’” confirmed this business practice in a news article published by MTV entitled: “Bushwick Bill Blasts Label Over Life Insurance Policy.”²⁴² Per Victoroff, “the clause often is inserted in contracts ‘where the artist may live the lifestyle or participate in recreational practices that are dangerous.’”²⁴³ “Stan Soocher, a music industry attorney and author of ‘They Fought The Law: Rock Music Goes To Court,’ concurred with Victoroff’s assessment that when labels take out a life insurance policy on an artist, it is because they are worried that they won’t be able to make back the money they invested in the artist’s development.”²⁴⁴ Lastly, there is also the age-old practice of labels releasing new music from an artist who has passed away to prolong their revenue stream on the artist’s music.²⁴⁵ It is a business tactic often criticized because the released songs are frequently unfinished and rarely have the artist’s blessing to publish the music.²⁴⁶

Hip-hop music is an art form that, unfortunately, at times, promotes the worst aspects of violent and antisocial behavior.²⁴⁷ As early as the ‘80’s, extortion and bribery have been part of the fabric of the music industry.²⁴⁸ Examples of this kind of bad behavior are almost endless (as demonstrated throughout this paper). On the other hand, there is rarely discussion about how much these criminal acts enrich the coffers of the labels behind the artist that is committing crime. This is eerily like the crack epidemic of the ‘80’s and ‘90’s. That period plagued our society with rampant drug abuse while simultaneously facilitating a “gilded age”

²⁴² See Reiss, *supra* note 245.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ Evan Holden, *The Music Industry is Taking Advantage of Dead Artists*, The Breeze (July 3, 2020), https://www.breezejmu.org/opinion/opinion-the-music-industry-is-taking-advantage-of-dead-artists/article_dd8d91ac-bd2f-11ea-a02c-dfa3531b256d.html.

²⁴⁶ Sara Osei, *Juice WRLD’s New Album & the Ethics of a Posthumous Release*, HIGHSNOBIETY (Oct. 25, 2020), <https://www.highsnobiety.com/p/juice-wrld-posthumous-album-ethics/>.

²⁴⁷ See Jake Tapper & Marie Nelson, *Is Corporate America to Blame for Hip-Hop Violence?*, ABC NEWS (Apr. 22, 2005), <https://abcnews.go.com/Nightline/News/story?id=694982&page=1>.

²⁴⁸ E.g., Daniel Bukszpan, *Rabbis, Rappers and Cold-Blooded Killers: Unusual Extortion Cases*, CNBC (May 28, 2014, 11:33 AM), <https://www.cnbc.com/2014/05/27/rabbis-rappers-and-cold-blooded-killers-unusual-extortion-cases.html> (“In 1984, the FBI began an investigation of Levy After the Music Mogul Was Involved in the Extortion of John LaMonte. A record wholesaler, LaMonte had agreed to buy \$1.25 million worth of LPs from Levy, but refused to pay when the delivery came without any of the best-selling titles.”).

for the profiteers and commercial enterprises benefiting from the illegal narcotic. In essence, crack was certainly an evil plague, but the dirty money stimulated a lot of consumerism.²⁴⁹ Ostentatious crack dealers still inspire much of the hip-hop artist's accouterment.²⁵⁰ Regardless of the crimes being committed in hip-hop or taphouses, the wealth creation and wealth simulation cannot be denied.

Corporate criminal liability has a long legal history, as seen by the case of *Commonwealth v. Angelo Todesca Corp.* However, it has yet to be weaponized to dismantle the illegal business tactics common in hip-hop. Music labels reap from the controversial publicity while sowing seeds of their own criminal liability for seemingly endorsing the bad acts of their artists through non-action. This, coupled with the current criminal case against Young Thug and his label, Young Stoner Life (YSL) Records, could set a dangerous precedent for music labels that have signed rogue artists.²⁵¹ Criminal prosecutors in Georgia suspect that Young Thug founded the street gang Young Slime Life, which they claim has been carrying out criminal activities under the guise of his record label, YSL Records. His indictment alleges that the gang has committed multiple murders, shootings, and carjackings over the last decade, and accounts of these crimes appear in the lyrics of their music, which will be used as evidence of their racketeering and gang activity. The RICO case involving Young Thug and company is ongoing and has yet to conclude, but it can have a possible impact on Thug's label, 300 Elektra Entertainment, if it is shown that they were criminally complicit in handling their artists.²⁵²

²⁴⁹ See generally Eloise Dunlap & Bruce D. Johnson, *The Setting for the Crack Era: Macro Forces, Micro Consequences (1960–1992)*, 24 J. Psychoactive Drugs 307 (1992).

²⁵⁰ See Andrew Barber, *Complex and Nipsey Hussle Break Down Eleven Iconic Rap Tracks Influenced by the 1980s Crack Epidemic in South Central Los Angeles*, Complex (2017), <https://www.complex.com/music/the-national-crack-epidemic-as-told-through-hip-hop-lyrics>.

²⁵¹ Young Stoner Life Records is the brainchild of Young Thug and resides under the umbrella label group, 300 Elektra Entertainment. Joe Price, *Young Thug is Launching His Own Record Label*, COMPLEX (Nov. 17, 2016), <https://www.complex.com/pigeons-and-planes/2016/11/young-thug-record-label>; Young Thug was arrested in May of 2022 and is facing charges of RICO and participation in criminal street gang activity. The Associated Press, *Young Thug Arrested on RICO, Gang Charges*, THE HOLLYWOOD REP. (May 10, 2022, 6:40 AM), <https://www.hollywoodreporter.com/news/music-news/young-thug-rico-gang-charges-1235143784/>).

²⁵² The timing of this case is pivotal given that rap artists such as Jay Z and Meek Mill were championing a bill to have rap lyrics limited from being used as evidence in trials in New York state as it is viewed by some as a violation to free

b. Criminal Negligence

If corporate criminal liability does not serve as a strong enough basis for imposing liability on the labels employing criminally minded recording artists, the label's own "criminal negligence" may be a sufficient cause of action. Questions regarding labels' negligent management of artists were a topic of discussion after the drug overdoses of artists like Amy Winehouse and Michael Jackson.²⁵³ As Russell Brand stated in his tribute to Winehouse: "the "duty of care" the music industry should provide is to truly acknowledge addiction as a disease . . . not a path to greatness."²⁵⁴ Alexa Smith, ex-girlfriend of late rapper Juice Wrld, alleged that record labels gave him illegal drugs while courting the rising artist.²⁵⁵ Other notable hip-hop figures that have recently died as a result of drugs are DMX, Mac Miller, Michael K. Williams, ODB, and Shock G.²⁵⁶

"Criminal negligence" is when an act has "some measure of wantonness, flagrant or reckless disregard for the safety of others, or willful indifference."²⁵⁷ Moreover, an individual will be held criminally negligent if they should have been aware of a substantial risk, and the failure to perceive that risk results in a gross deviation from the standard of care that a reasonable person would observe in the actor's situation. The

speech and expression. On May 16, 2022, the New York Senate passed the bill, which prevents song lyrics from being introduced as evidence in criminal cases. Although the bill protects artists of any genre, it is important for hip-hop artists, namely because they have been disproportionately denied their right to freedom of creative expression and unprotected in the courtroom with their music being viewed as an "autobiographical journal."

Emily Nadal, *NY Senate Passes 'Rap Music on Trial' Bill Preventing Song Lyrics from Being Used as Evidence in Criminal Cases*, MSN (May 17, 2022), <https://www.msn.com/en-us/music/news/ny-senate-passes-rap-music-on-trial-bill-preventing-song-lyrics-from-being-used-as-evidence-in-criminal-cases/ar-AASWVPs>.

²⁵³ See Lindvall, *supra* note 112.

²⁵⁴ *Id.*

²⁵⁵ HHL JT, *Juice WRLD's Ex Says Record Labels Courted Him with Drugs*, Hip Hop Lately (Dec. 10, 2019), <https://www.hiphoplately.com/juice-wrlds-ex-says-the-label-gave-him-drugs/>.

²⁵⁶ Hayley Hudson, *DMX Alleged Overdose and Story of Addiction*, Addiction Ctr. (April 6, 2021), <https://www.addictioncenter.com/news/2021/04/dmx-alleged-overdose-addiction/>; *Drug-Related Deaths - Notable Celebrities*, Drugs.com, https://www.drugs.com/celebrity_deaths.html (last visited Feb. 13, 2023); Victoria Moorwood, *Shock G's Cause of Death Revealed*, Revolt (June 10, 2021), <https://www.revolt.tv/article/2021-06-10/51676/shock-gs-cause-of-death-revealed/>.

²⁵⁷ *People v. Penny*, 285 P.2d 926, 932 (Cal. 1955).

“objective test” is used to determine criminal negligence.²⁵⁸ This test states that if a reasonable person in the defendant’s position would have been aware of the risk involved, then the defendant is presumed to have had such an awareness.²⁵⁹ This raises a few key questions. First, would a reasonable person offer employment, compensation, and benefits worth millions of dollars to a future employee or business partner with a criminal history of trafficking drugs, assault, battery, attempted murder, or illegal gun possession? Second, how could they explain offering such an opportunity while that person was incarcerated for such crimes?

The hip-hop music industry operates outside of the standard of reasonable corporate behavior. Business decisions in the latter community would be patently unethical in other industries, likely because they would leave organizations susceptible to criminal negligence liability. Influential members of hip-hop’s past and present have been both victims and perpetrators of criminal activity. However, the treatment of perpetrators of crime within the industry compared to those outside of it are increasingly disparate. Employers have historically been reluctant to hire individuals with criminal backgrounds, even years after the end of their sentences. According to a New York Times/CBS News/Kaiser Family Foundation poll, “men with criminal records account for about 34 percent of all non-working men ages 25 to 54.”²⁶⁰ However, within the hip-hop industry, some of the most enterprising opportunities have been offered to (i) the rap artist “Shyne,” who was incarcerated for a night club shooting, (ii) the gangster rap-turned FBI cooperating witness “Tekashi69,” (iii) the late “Tupac Shukur” who was murdered during the height of the East vs. West Coast beef, and (iv) “Harry O,” the convicted drug dealer turned-financial investor/business partner to Death Row’s Suge Knight.²⁶¹ These industry

²⁵⁸ Williams v. Garcetti, 853 P.2d 507, 514 (Cal. 1993).

²⁵⁹ *Id.* (quoting People v. Watson, 637 P.2d 279, 296 (Cal. 1981)).

²⁶⁰ Binyamin Appelbaum, *Out of Trouble, but Criminal Records Keep Men Out of Work*, N.Y. TIMES (Feb. 28, 2015), <https://www.nytimes.com/2015/03/01/business/out-of-trouble-but-criminal-records-keep-men-out-of-work.html>.

²⁶¹ See L.A. Stories Staff, *Michael ‘Harry-O’ Harris: The Untold Story of Death Row Records*, SPECTRUM NEWS 1 (July 18, 2022, 5:00 AM), [https://spectrumnews1.com/ca/la-west/la-stories/2022/07/17/michael-harry-o-harris-the-untold-story-of-death-row-records#:~:text=Later%20the%20victim%20recanted%2C%20and,my%20part%2C%E2%80%9D%20he%20said; Tapper & Nelson, *supra* note 254; Joe Price, *Six9ine Reportedly Signs Record Deal Worth More than \\$10 Million from Prison*, COMPLEX \(Oct. 10, 2019\), <https://www.complex.com/music/2019/10/six-nine-signs-record-deal-10-million-from-prison>; Sha Be Allah, *Today In History: Tupac Shakur Signs to Death Row Records 26 Years Ago*, THE SOURCE \(Sept. 16, 2021\),](https://spectrumnews1.com/ca/la-west/la-stories/2022/07/17/michael-harry-o-harris-the-untold-story-of-death-row-records#:~:text=Later%20the%20victim%20recanted%2C%20and,my%20part%2C%E2%80%9D%20he%20said;Tapper&Nelson,supra%20note%20254;Joe%20Price,%20Six%20Nine%20Reportedly%20Signs%20Record%20Deal%20Worth%20More%20than%20$10%20Million%20from%20Prison,COMPLEX%20(Oct.%2010,%202019),https://www.complex.com/music/2019/10/six-nine-signs-record-deal-10-million-from-prison;Sha%20Be%20Allah,%20Today%20In%20History:%20Tupac%20Shakur%20Signs%20to%20Death%20Row%20Records%2026%20Years%20Ago,THE%20SOURCE%20(Sept.%2016,%202021),)

icons are just a small sample of individuals who conducted business deals with major labels while in prison.²⁶² However, these business practices go beyond wantonness, flagrant, or reckless disregard for the public's safety, especially when they involve willingly engaging in these business deals during an artist's incarceration.²⁶³

Music labels and their parent companies' have demonstrated a continued disregard for the public's safety by maintaining a business relationship with outlaw artists engaged in violence and destructive behavior. However, that begs another question: would a reasonable person continue to employ a person who engages in unlawful shootings, stabbings, and brawls during business hours, in business settings, or the furtherance of business activities? They most definitely would not unless they run a hip-hop music company and can further their own financial interests through this type of malfeasance. Throughout the industry's history, artists have been engaged in acts of violence and criminal activity, not only within their private lives but also during business. Some instances that lend credence to this point would be the criminal convictions of major rap figures such as YFN Lucci, Casanova 2x, Bobby Shmurda, Tekashi69, and AR-Ab.²⁶⁴ In addition to the foregoing criminal convictions, a number of recent violent altercations and murders involving notable hip-hop figures such as the deaths of Young Dolph, King Von, MO3, FBG Duck,

<https://thesource.com/2021/09/16/today-in-hip-hop-history-tupac-shakur-signs-to-death-row-records-26-years-ago/>.

²⁶² *Id.*

²⁶³ See generally Eli Schwadron, *20 Rappers Who Released Projects While in Prison*, XXL MAG. (June 10, 2016), <https://www.xxlmag.com/rappers-released-projects-from-jail/>.

²⁶⁴ See Kate Brumback, *Rapper YFN Lucci Among a Dozen Charged in RICO Indictment*, AP News (May 4, 2021), <https://apnews.com/article/indictments-entertainment-arts-and-entertainment-a32deceb2a575bcbb96765a75c4b023>; Sha Be Allah, *Casanova Pleads Guilty to Drug and Racketeering Charges*, The Source (May 12, 2022), <https://thesource.com/2022/05/12/casanova-pleads-guilty-to-drug-and-racketeering-charges/>; Rodney Carmichael & Sidney Madden, *Bobby Shmurda Is Coming Home. What Happens Next?*, NPR (Feb. 22, 2021, 3:30 PM), <https://www.npr.org/2021/02/22/969404434/bobby-shmurda-is-coming-home-what-happens-next>; Kelly McLaughlin, *Tekashi 6ix9ine was Sentenced to 2 Years in Prison After Snitching on His Gang*, Insider (Dec. 18, 2019, 3:19 PM), <https://www.insider.com/tekashi-6ix9ine-sentenced-nine-trey-blood-gang-2019-12>; Aleia Woods, *Ar-Ab Sentenced to 45 Years in Prison for Drug Trafficking – Report*, XXL Mag. (Apr. 16, 2021), <https://www.xxlmag.com/ar-ab-45-years-prison-drug-trafficking/>.

and Chinx, and shootings of Nipsey Hussle, Troy Ave, Boosie Badazz, Sheff G, Waka Flocka, and Kodak Black have occurred.²⁶⁵

In 2021, rapper YFN Lucci was charged with a 105-count RICO indictment, including “racketeering, aggravated assault, murder, gun, armed robbery, property damage, theft, and gang-related charges.”²⁶⁶ Similarly, rapper Casanova pleaded guilty to drug and racketeering charges in May 2022.²⁶⁷ Prosecutors alleged that he ran a drug gang conspiracy, and Casanova allegedly confessed to a shooting, robbery, and marijuana trafficking.²⁶⁸ Bobby Shmurda has also faced criminal liability, as he spent six years in prison for illegal firearm and conspiracy charges.²⁶⁹ Likewise, Tekashi69 was sentenced to two years in prison for racketeering, illegal firearms possession, and aiding in an attempted murder.²⁷⁰ Finally, in 2021, rapper Ar-Ab was sentenced to an astonishing 45 years in prison for drug trafficking, and the murder of Robert Johnson, “a supposed drug rival.”²⁷¹

This criminal behavior of artists, and by extension, the criminal negligence that can be leveraged against their labels, is not exclusive to hip-hop music or the industry at large. R. Kelly, known for his hits “Ignition Remix,” “I Believe I Can Fly,” and “Trapped In the Closet,” has had a questionable past with sexual abuse claims against minors which were highlighted in Lifetime’s documentary “Surviving R. Kelly.”²⁷²

²⁶⁵ See *Rapper Nipsey Hussle Shot Dead Outside His Los Angeles Store*, REUTERS (Mar. 31, 2019, 9:08 PM), <https://www.reuters.com/article/people-nipsey-hussle/rapper-nipsey-hussle-shot-dead-outside-his-los-angeles-store-media-idUSL1N21J00P>; C. Vernon Coleman II et al., *The Current Status of Every Murdered Rapper’s Case*, XXL Mag. (Nov. 6, 2022), <https://www.xxlmag.com/current-status-murdered-rappers-cases/>; Lauren del Valle, *Brooklyn Rapper Troy Ave Shot Again*, CNN (Dec. 26, 2016, 9:46 PM), <https://www.cnn.com/2016/12/26/entertainment/troy-ave-rapper-shot-trnd>; *Boosie Badazz Video Shoot Ends in Gunfire . . . Suspect Arrested for Murder*, TMZ (May 30, 2021, 10:45 AM), <https://www.tMZ.com/2021/05/29/boosie-badazz-video-shoot-erupts-in-gunfire-one-person-shot/>; Michael Saponara, *Shooting During Waka Flocka Flame Recording Session in Atlanta Leaves 1 Injured*, Billboard (Apr. 12, 2019), <https://www.billboard.com/music/rb-hip-hop/waka-flocka-flame-recording-studio-shooting-8506958/>; *Kodak Black Shot in the Leg at Justin Bieber After-Party amid Super Bowl*, TMZ (Feb. 12, 2022, 2:12 PM), <https://www.tMZ.com/2022/02/12/justin-bieber-shooting-after-party-the-nice-guy/>.

²⁶⁶ Brumback, *supra* note 271.

²⁶⁷ Allah, *supra* note 271.

²⁶⁸ *Id.*

²⁶⁹ Carmichael & Madden, *supra* note 271.

²⁷⁰ McLaughlin, *supra* note 271.

²⁷¹ Woods, *supra* note 271.

²⁷² *Surviving R. Kelly*, (Lifetime 2019).

Nevertheless, the law eventually caught up with “Mr. Bump and Grind,” who is currently serving a 30-year sentence for racketeering and sex trafficking his young fans.²⁷³ He was also recently convicted in federal court for three counts of child pornography and three counts of child enticement.²⁷⁴

However, there is no surprise that his label or corporate business partners were never the focus of any criminal investigation or held liable for being aware of his proclivities while continuing in their business relationship of funding his music, placing him close to minors during his music performances, and not investigating the rumors about his sexual acts with underage females.²⁷⁵ This inaction would undoubtedly qualify as a “reckless disregard” for the safety of others or a “willful indifference,” which is representative of how the music labels dealt with or failed to deal with the criminal actions of their artists, thus making them liable under criminal negligence. Regardless of their level of culpability, the outcome is clear. A reasonable person would not place a potential sex offender in close and intimate proximity to a child or provide a business opportunity to a convicted felon serving time in prison for drugs or violence.

In summation, the objective test for criminal negligence is clear-cut. If a corporation hires a person with a history of misconduct and a reasonable person (corporation) in the same position would have known about this person’s history of misconduct, the corporation stands to be liable for criminal negligence. As previously evidenced, the music corporations that lead the hip-hop industry thrive on the publicity of their artists. The shock value of their criminal behavior garners the attention for the artist and label music sales. Thus, the music industry is disincentivized to hold an artist accountable for their illegal behavior. However, their inaction amounts to a tacit endorsement of these illegal acts, thereby making them criminally negligent and complicit in these crimes.

²⁷³ The Associated Press, *R. Kelly Sentenced to 30 Years in Sex Trafficking Case*, Hollywood Rep. (June 29, 2022, 12:18 PM), <https://www.hollywoodreporter.com/news/music-news/r-kelly-sentenced-30-years-sex-trafficking-1235173842/>.

²⁷⁴ The Associated Press, *R. Kelly Convicted On Many Counts, Acquitted of Trial Fixing*, Hollywood Rep. (Sep. 14, 2022, 2:50 PM), <https://www.hollywoodreporter.com/news/general-news/r-kelly-convicted-child-pornography-enticement-1235220823/>.

²⁷⁵ See Michael Hein, *R. Kelly Investigators Allegedly Found 20 Sex Tapes with Minors*, Pop Culture (July 13, 2019, 2:58 PM), <https://popculture.com/celebrity/news/r-kelly-investigators-allegedly-found-20-tapes-with-minors/>.

VI. SUCCESSOR LIABILITY

Black's Law Dictionary defines a "successor" in successor liability as "[a] corporation that, through amalgamation, consolidation, or other assumption of interests, is vested with the rights and duties of an earlier corporation."²⁷⁶ This doctrine was first considered by the United States Supreme Court in the case *John Wiley & Sons, Inc. v. Livingston* back in 1964, where a merger between two publishing firms, Interscience Publishers, Inc., and John Wiley & Sons, Inc., presented a question of the rights retained by the employees. The Supreme Court affirmed the lower court's decision and determined that "the disappearance by merger of a corporate employer which has entered into a collective bargaining agreement with a union does not automatically terminate all rights of the employees covered by the agreement, and that, in appropriate circumstances, present here, the successor employer may be required to arbitrate with the union under the agreement."²⁷⁷

The key reasoning for applying the doctrine was "because it promoted the well-established national policy of 'extending protection to and providing relief to the victims of prohibited employment practices.'"²⁷⁸ In the case of *Musikiwamba*, the Seventh Circuit went on to distinguish key elements from *EEOC v. MacMillan* that make a corporation subject to successor liability: (1) whether the successor company had notice of the charge or pending lawsuit prior to acquiring the business or assets of the predecessor; (2) the ability of the predecessor to provide relief; (3) whether there has been a substantial continuity of business operations.²⁷⁹

In applying the legal framework of successor liability to the crimes committed by music companies through their relationships with artists, Def Jam Recordings would be the successor entity liable for any crimes committed by Jay-Z's Roc-A-Fella Records after its acquisition of the company.²⁸⁰ The same analysis would apply to Warner Music Group based on the crimes committed by Young Thug's label YSL through its purchase

²⁷⁶ *Successor*, BLACK'S LAW DICTIONARY (11th ed. 2019).

²⁷⁷ *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 548 (1964).

²⁷⁸ *Musikiwamba v. ESSI, Inc.*, 760 F.2d 740, 746 (7th Cir. 1985) (quoting *EEOC v. MacMillan Bloedel Containers, Inc.*, 503 F.2d 1086, 1091 (6th Cir. 1974)).

²⁷⁹ *See id.* at 750-51.

²⁸⁰ *See generally* Rashaun Hall, *Jay-Z, Dame Dash Sell Roc-A-Fella Records; Jay Named Def Jam Prez*, MTV (Dec. 8, 2004, 1:46 PM), <https://www.mtv.com/news/1494616/jay-z-dame-dash-sell-roc-a-fella-records-jay-named-def-jam-prez/>.

of YSL's imprint 300 Entertainment.²⁸¹ Prior to 1989 when business entities dissolved, the criminal liability dissolved with them.²⁸² Today, a corporation cannot escape punishment by merging or consolidating in any way with another company.²⁸³ *United States v Polizzi* made it clear that corporations resulting from mergers are liable for the crimes of their predecessors²⁸⁴ as it would be for that corporation's business liabilities (pursuant to the Model Business Act).²⁸⁵

These laws have the potential to create a tense business climate if applied to the matrix of corporate mergers and acquisitions between the music labels, publishing companies, and management companies owned by artists that are vertically incorporated within the major media companies (as subsidiaries or otherwise) due to the three elements set forth in Musikiwamba. The courts would look at these business deals through the lens of whether the succeeding company is substantially continuing the prior business operations after a change in ownership, if the succeeding company had prior knowledge of the dealings that gives way to the cause of action, and if the previous company can resolve the ordeal. This may inconvenience record companies that have been complicit with their artists' crimes or made business purchases with record companies that have been caught up in legal issues before the business deal because they will absorb their predecessor's liabilities. For example, in 2004, Roc-A-Fella Records was purchased by its parent company Def Jam Recordings.²⁸⁶ Universal Music Group purchased Def Jam Recordings in 1999.²⁸⁷ Diddy's Bad Boy Entertainment entered a partnership with Epic Records, which is a subsidiary of Sony Music.²⁸⁸ Sony Music is a

²⁸¹ See generally Nicolaus Li, *Warner Music Reportedly Purchases 300 Entertainment for Approximately \$400 Million USD*, HYPEBEAST (Dec 16, 2021), <https://hypebeast.com/2021/12/warner-music-group-purchases-300-entertainment-400-million-usd-sale-info>.

²⁸² See, e.g., *Okla. Nat. Gas Co. v. Oklahoma*, 273 U.S. 257, 259 (1927) ("It is well settled that at common law and in federal jurisdiction a corporation which has been dissolved is as if it did not exist, and the result of the dissolution cannot be distinguished from the death of a natural person in its effect.").

²⁸³ See *United States v. Alamo Bank of Tex.*, 880 F.2d 828, 830 (5th Cir. 1989).

²⁸⁴ *United States v. Polizzi*, 500 F.2d 856 (9th Cir. 1974).

²⁸⁵ See MODEL BUS. CORP. ACT § 11.07 (Am. Bar Ass'n 2016).

²⁸⁶ Hall, *supra* note 291.

²⁸⁷ *UMG Finally Obtains Def Jam*, ROLLING STONE (Mar. 2, 1999), <https://www.rollingstone.com/music/music-news/umg-finally-obtains-def-jam-98866/>.

²⁸⁸ *Puff Daddy's Bad Boy Entertainment Partners with Epic Records*, BILLBOARD (Oct. 5, 2015), <https://www.billboard.com/pro/puff-daddy-bad-boy-partnership-epic-records/>.

subsidiary of Sony Corporation.²⁸⁹ In each of these instances, the predecessors originally obtained much of their funding and advanced their musical and business agenda by engaging in criminal activities. Any criminal liability of Roc-A-Fella Records or Bad Boy Entertainment could have implicated their successors, Universal and Sony, in that exact liability. For example, the 28 individuals associated with YSL Records, whose charges rack up to 65 counts, distribute their music through 300 Entertainment.²⁹⁰ Under this rationale, the alleged criminal activity of YSL Records may implicate Warner Music Group through successor liability, placing the company in jeopardy.

VII. OTHER BUSINESS RELATIONSHIPS

Furthermore, the legal framework of successor liability also has the potential to impute liability in other types of business relationships such as “partnerships” and “distributions deals.” A partnership deal in the music industry involves a profit-split arrangement.²⁹¹ The respective parties negotiate the split, which can be 50/50 depending on the terms.²⁹² In comparison, a distribution deal in the music industry is where a label or artist signs with a company that is responsible for making the music available to the public via record stores, digital streaming platforms, and any online platform that may be using the music.²⁹³ The legal definition of a “partnership” is defined as “a for-profit business organization comprised of two or more persons.”²⁹⁴ “Persons” can include individuals, groups of individuals, companies, and corporations.²⁹⁵ Each partner shares directly in the organization’s profits and shares control of the business operation.²⁹⁶ Through this arrangement, they become jointly and severally liable for

²⁸⁹ Sony, *supra* note 179.

²⁹⁰ Zoe Guy, *Everything We Know About YSL’s RICO Case*, Vulture (Jan. 26, 2022), <https://www.vulture.com/2022/08/ysl-young-thug-gunna-arrest-charges-explained.html>.

²⁹¹ See Rhian Jones, *Partnership Deals Are the Future of the Music Business* (July 14, 2021), MUSIC BUS. WORLDWIDE, <https://www.musicbusinessworldwide.com/partnership-deals-are-the-future-of-the-music-business/>.

²⁹² *See id.*

²⁹³ Heather McDonald, *What Is Music Distribution?*, LIVEABOUT (Aug. 13, 2020), <https://www.thebalancecareers.com/music-distribution-defined-2460499>.

²⁹⁴ *Partnership*, CORNELL L. SCH.: LEGAL INFO. INST., <https://www.law.cornell.edu/wex/partnership#:~:text=A%20partnership%20is%20a%20for,such%2C%20partnerships%20vary%20in%20complexity> (last visited Feb. 23, 2023).

²⁹⁵ *Id.*

²⁹⁶ *Id.*

each other's debts.²⁹⁷ Partnership deals are the current trend in the music industry, per Sarah Scott, managing partner at LaPolt Law (who represents clients such as Cardi B, Offset, and 21 Savage).²⁹⁸ The music industry has a long history since the '90's of distribution and partnership agreements with artists: Priority Records was a prolific hip-hop label and distribution company in the '90's, working with Ice-T, Roc-A-Fella, Mos Def, and Rawkus Records.²⁹⁹ NWA released their first album under the record label and distribution company in 1988,³⁰⁰ and the label was also responsible for signing J. Prince's Rap-A-Lot records and Geto Boys in 1991.³⁰¹ Their dominance ended once they were purchased by Capitol/EMI in 1999.³⁰² In 2004, Roc-A-Fella Records was purchased by its parent company Def Jam Recordings.³⁰³ In 2015, Diddy's Bad Boy Entertainment entered a partnership with Epic Records, a Sony Music subsidiary.³⁰⁴ Bad Boy Entertainment started in the music industry through a distribution deal with Arista Records.³⁰⁵ Death Row Records began as a partnership with Interscope Records.³⁰⁶ After building a street buzz, Cash Money signed a distribution deal with Universal Records.³⁰⁷ In 2021, Warner Music Group paid \$400 million to acquire 300 Entertainment.³⁰⁸ Furthermore, these

²⁹⁷ *Id.*

²⁹⁸ See Jones, *supra* note 302.

²⁹⁹ See Soren Baker, *Hip-Hop Label 101: Priority Records*, ROCK THE BELLS (July 1, 2020, 2:51 PM), <https://rockthebells.com/articles/hip-hop-label-101-priority-records/>.

³⁰⁰ Justin Kautz, *N.W.A.*, BRITANNICA (May 3, 2018), <https://www.britannica.com/topic/NWA#ref1248420>.

³⁰¹ Baker, *supra* note 310.

³⁰² *Id.*

³⁰³ Rashaun-Hall, *Jay-Z, Dame Dash Sell Roc-A-Fella Records; Jay Named Def Jam Prez*, MTV (Dec. 8, 2004), <https://www.mtv.com/news/1494616/jay-z-dame-dash-sell-roc-a-fella-records-jay-named-def-jam-prez/>.

³⁰⁴ BILLBOARD, *supra* note 299.

³⁰⁵ Gerrick D. Kennedy, *Bad Boy For Life: A Look Back at the Rap Empire that Sean 'Puff Daddy' Combs Built*, L.A. TIMES (Nov. 5, 2016, 6:00 AM), <https://www.latimes.com/entertainment/music/posts/la-et-ms-sean-p-diddy-combs-bad-boy-entertainment-retrospective-20151005-story.html>.

³⁰⁶ See Peter Silverton, *Death Row Records and Interscope Records*, BRITANNICA (Jan. 12, 2001), <https://www.britannica.com/topic/Death-Row-Records-and-Interscope-Records-1688340>.

³⁰⁷ See Shawn Setaro, *Baby Money: Inside the Early Years of Birdman's Cash Money Records*, FORBES (May 5, 2015, 9:45 AM), <https://www.forbes.com/sites/shawnsetaro/2015/05/05/baby-money-inside-the-early-years-of-birdmans-cash-money-records/?sh=954ccablcd63>.

³⁰⁸ Tim Ingham, *Confirmed: Warner Paid \$400M in Cash to Acquire 300 Entertainment*, MUSIC BUS. WORLDWIDE (Dec. 18, 2021), <https://www.music>

acquisitions, partnership agreements, and distribution deals throughout the business' history may impute liability on the successor. The criminal activity of these predecessors does not dissolve during the transfer of ownership. With the doctrine of successor liability, organizations like Capitol, EMI, Sony, and Warner could be burdened by the criminal jeopardy of their predecessors.

VIII. SUCCESSOR LIABILITY FROM THE CRIMINAL LAW PERSPECTIVE

As articulated above, the hip-hop oligarchs were engaged in criminal activity prior to and during their music careers.³⁰⁹ Therefore, the media companies incorporating these artists' businesses into their conglomerate organizations may be just as liable as those tied to the perpetrators of the original crimes. Under the laws that govern successor liability, either through consolidation, merger, or acquisition, the artists' liability and legal duties may be assumed by the company acquiring their business. While some criticize the breadth of this doctrine, successor liability successors ostensibly share the "criminal identity" of their predecessors.³¹⁰

In *Commonwealth v. Lavelle*, an individual was convicted on racketeering charges in violation of the state's corrupt organizations statute. However, the commonwealth also charged a corporation for investing income from the individual's racketeering. Moreover, Lavco became the successor and continuation of Wm. A. Lavelle and Son.³¹¹ The court questioned "whether a de facto successor corporation can be held criminally liable for acts of its predecessor in interest."³¹² The court held that any claim or action pending might be prosecuted against a successor.³¹³ Consequently, the corporation was liable for the criminal acts of the individual, which were committed prior to incorporation.³¹⁴

However, even if successor liability is not sufficient to establish criminal standing against a parent company for the crimes of the entity it acquired, the "due diligence" of the parent company should have posed a

businessworldwide.com/confirmed-warner-paid-400m-in-cash-to-acquire-300-entertainment/.

³⁰⁹ *Id.*

³¹⁰ See Mihailis E. Diamantis, *Successor Identity*, 36 Yale J. on Reg. 1 (2019).

³¹¹ Ingham, *supra* note 319.

³¹² *Pennsylvania v. Lavelle*, 555 A.2d 218, 228 (Pa. 1989).

³¹³ *Id.* at 225.

³¹⁴ *Id.*

barrier to such transactions.³¹⁵ Examining litigation risks and liabilities is essential to assessing any merger and acquisition opportunity in the business community.³¹⁶ The latter is as relevant as analyzing problematic contracts or intellectual property issues.³¹⁷ Obviating the risks associated with the criminal activity surrounding a potential business acquisition seems like a gross oversight at best unless those risks pale in comparison to the revenue that such a business endeavor could generate.

A primary goal of corporate criminal law is “provid[ing] just punishment, adequate deterrence, and incentives for organizations to maintain internal [compliance and reporting] mechanisms.”³¹⁸ Consequently, successor liability has been applied to many other industries. In both *United States v. Polizzi* and *Commonwealth v. Lavelle*, the courts used the doctrine of successor liability to establish the transfer of liability to corporations. There are also a growing number of countries internationally that are adopting corporate successor criminal liability, such as France’s recent 2020 Supreme Court decision, in which the country made “a U-Turn” on its policy regarding liability.³¹⁹ The French court decided “public limited liability companies may now be held criminally liable for the prior criminal conduct of the companies they acquire through ‘mergers by acquisition.’”³²⁰ Furthermore, by applying this doctrine, partnerships and distribution deals may transfer responsibility to record labels for the criminal activities of its artists’ businesses. Although media companies have never been prosecuted under successor liability, these cases act as a roadmap for potential litigation in this industry.

IX. PROSECUTORIAL DISCRETION

One of the key players in holding major record labels accountable is the federal prosecutor, who represents the public’s interests in exercising

³¹⁵ See generally Richard Harroch, *A Comprehensive Guide to Due Diligence Issues in Mergers and Acquisitions*, FORBES (Mar. 27, 2019, 1:11 PM), <https://www.forbes.com/sites/allbusiness/2019/03/27/comprehensive-guide-due-diligence-issues-mergers-and-acquisitions/?sh=2690f22a2574>.

³¹⁶ *Id.*

³¹⁷ See *id.*

³¹⁸ Diamantis, *supra* note 321.

³¹⁹ Antoine F. Kirry, et al., *France Makes U-Turn on Corporate Successor Criminal Liability*, N.Y.U. SCH. L.: PROGRAM ON CORP. COMPLIANCE & ENF’T (Dec. 1, 2020), https://wp.nyu.edu/compliance_enforcement/2020/12/01/france-makes-u-turn-on-corporate-successor-criminal-liability/.

³²⁰ *Id.*

the state's sovereign power.³²¹ A federal prosecutor has the unique discretion to pursue criminal charges against individuals and organizations that have committed crimes. Prosecutorial discretion is the government's power "to decide a course of action when weighing the circumstances of an event that may result in criminal prosecution."³²² Prosecutors can pick and choose the cases they want to pursue criminally, which discretion is rooted in English criminal law.³²³

The prosecutorial discretion originates from the prosecutor's power of "nolle prosequi."³²⁴ This power, beginning around the sixteenth century, allowed the Attorney General to dismiss prosecutions they regarded as "frivolous or in contravention of royal interests."³²⁵ The power of nol pros in the American criminal procedure system allowed public prosecutors to terminate prosecutions they had initiated. Similar to the English nolle prosequi, the American nol pros, once invoked by either the President or the prosecutor, barred the court from exercising judicial review.³²⁶

The power of nol pros expanded to the prosecutor's power to charge in the nineteenth century with Justice John Marshall's opinion in *United States v. Hill*. Justice Marshall, in declining to quash the prosecutor's use of nol pros, concluded that the prosecutor's power of nol pros was convenient as it avoided wasting the courts' time in determining if they had jurisdiction over the offense.³²⁷ In the twentieth century, the federal district court in New York illustrated how immune the powers of prosecutorial discretion were from judicial review. In *Milliken v. Stone*, the court dismissed the suit of American shipping companies seeking to enjoin liquor nuisances and prosecute offenders under the National Prohibition Act because "the federal courts are without power to compel the prosecuting officers to enforce the penal laws, whatever the grounds of their failure may be."³²⁸

³²¹ *People v. Hill*, 952 P.2d 673, 682 (Cal. 1998).

³²² Carrie Mesrobian, *What Is Prosecutorial Discretion? A Key Criminal Justice Concept Explained*, RASMUSSEN UNIV. (May, 9, 2022), <https://www.rasmussen.edu/degrees/justice-studies/blog/what-is-prosecutorial-discretion/>.

³²³ See Jonathan Keim, *Prosecutorial Discretion, Part One: Indisputably There, but Disputably from Where?*, NAT'L REV (Aug. 26, 2014, 8:20 PM), <https://www.nationalreview.com/bench-memos/prosecutorial-discretion-part-one-indisputably-there-disputably-where-jonathan/>.

³²⁴ See Rebecca Krauss, *The Theory of Prosecutorial Discretion in Federal Law: Origins and Development*, 6 Seton Hall Cir. Rev. 1, 16 (2009).

³²⁵ *Id.*

³²⁶ See *id.* at 18-19.

³²⁷ *United States v. Hill*, 26 F. Cas. 315, 316 (C.C.D. Va. 1809).

³²⁸ *Milliken v. Stone*, 7 F.2d 397, 399 (S.D.N.Y. 1925).

By 1961, the modern term of prosecutorial discretion appeared in the Supreme Court's opinion of *Poe v. Ullman*. Justice Harlan opined that the prosecutor's claim of enforcing a Connecticut anti-contraception statute against a couple was "unbounded prosecutorial discretion."³²⁹ At the end of the twentieth century, the phrase "prosecutorial discretion" appeared countless times in federal and state. Prosecutorial discretion has since become solidified in criminal procedure, thus giving them the authority to evaluate evidence, determine culpability, and select the criminals they want to pursue while also prioritizing criminal prosecution among multiple caseloads.³³⁰ Through this system, prosecutorial discretion was born, and the ability to "decline" a crime was given.³³¹

Consequently, prosecutors have a lot of power, which is often used discriminatorily.³³² Statistics have shown that black and brown people are charged significantly more than their white counterparts for the same crimes.³³³ In San Francisco alone, Black people make up 6% of the population but made up 38% of the cases filed by prosecutors between 2008 and 2014.³³⁴ In Wisconsin, white defendants were 25% more likely to have charges dropped or reduced than Black defendants.³³⁵ This statistic also shows "similar trends in poor versus middle- and upper-class" offenders.³³⁶ In reality, prosecutors are riddled with conflicts of interest when attempting to exercise their broad discretion to prosecute.³³⁷

Prosecutors' conflicts, which contribute to their use of discretion, can arise not only out of personal and professional relationships and financial interests but also out of any personal belief, ambition, or institutional interest that undermines the prosecutor's ability to pursue justice in a

³²⁹ *Poe v. Ullman*, 367 U.S. 497, 530 (1961) (Harlan, J., dissenting).

³³⁰ See Rebecca Krauss, *supra* note 335, at 26.

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

³³⁴ Timothy Williams, *Black People Are Charged at Higher Rates than Whites. What If Prosecutors Didn't Know Their Race?*, N.Y. TIMES (June 12, 2019), <https://www.nytimes.com/2019/06/12/us/prosecutor-race-blind-charging.html>.

³³⁵ *Id.*

³³⁶ Mesrobian, *supra* note 333.

³³⁷ For example, in Baltimore, State Attorney Marilyn J. Mosby decided in 2021 that they will decline prosecution of all drug possessions, prostitution, and minor traffic and misdemeanor cases. Tom Jackman, *After Crime Plummeted in 2020, Baltimore Will Stop Drug, Sex Prosecutions*, WASH. POST (Mar. 26, 2021, 8:00 AM), <https://www.washingtonpost.com/dc-md-va/2021/03/26/baltimore-reducing-prosecutions/>. Prosecutors in Los Angeles in 2021, also stopped prosecuting low level misdemeanors and drug possession. *Id.*

disinterested way.³³⁸ Consider Wall Street's misdeeds that resulted in the 2008 financial crisis. "\$29 trillion was paid in bailouts from the Fed, FDIC and other regulators (in addition to the \$700 billion taxpayer dollars available under the TARP program)...".³³⁹ The six megabanks comprising Bank of America, CitiGroup, Goldman Sachs, JPMorgan Chase, Morgan Stanley, and Wells Fargo engaged in illegal activity before and in connection with the crash without any officers from these institutions going to prison for wrongdoing.³⁴⁰ Instead, they have paid "tens of billions of dollars in penalties, civil judgements, and other monetary sanctions."³⁴¹ This could be largely explained by the government's temperament at the time on prosecuting big banks. In his 1999 memorandum Eric Holder, deputy attorney general at the time, "warn[ed] of the dangers of prosecuting big banks—a variant of 'too big to fail.'"³⁴² His memo addressed the "'collateral consequences' from prosecutions—including corporate instability or collapse—should be taken into account when deciding whether to prosecute a big financial institution."³⁴³ In 2012, Lanny Breuer, head of the Justice Department's criminal division stated "in a speech at the New York City Bar Association that he felt it was his duty to consider the health of the company, the industry, and the markets in deciding whether or not to file charges."³⁴⁴

However, these specific conflicts of interest, political motivations, or governmental agendas are often hard to pinpoint since they are frequently tied to subjective motivations.³⁴⁵ Moreover, when looking at prosecutorial misconduct from a legal perspective, many conflicts are excluded because the applicable law has limited reach, and the conflicts within reach are often technical, trivial, or idiosyncratic.³⁴⁶ All of this offers a glimpse into why prosecutors are not going after major record labels but are choosing to go after the artists. Personal relationships, public perception, racial

³³⁸ See generally Bruce A. Green & Rebecca Roiphe, *Rethinking Prosecutors' Conflicts of Interest*, 58 B.C. L. Rev. 463 (2017).

³³⁹ Nick Jacobs, *Report: The Rap Sheet for Wall Street's Biggest Banks' Crime Spree*, BETTER MARKETS (Apr. 9, 2019), <https://bettermarkets.org/newsroom/report-rap-sheet-wall-streets-biggest-banks-crime-spree/>.

³⁴⁰ See *Id.*

³⁴¹ *Id.*

³⁴² William D. Cohan, *How Wall Street's Bankers Stayed Out of Jail*, *The Atlantic* (2015), <https://www.theatlantic.com/magazine/archive/2015/09/how-wall-streets-bankers-stayed-out-of-jail/399368/>.

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ Jacobs, *supra* note 350.

³⁴⁶ *Id.*

motivations, and time considerations are considered before a prosecutor decides to prosecute a case.

X. THE YSL CASE STUDY

The Young Thug and Gunna case is illustrative of this unpredictable prosecutorial discretion. In May of 2022, rappers Young Thug, Gunna, and 27 other associates were arrested and charged with conspiracy to violate the state Racketeer Influenced and Corrupt Organizations Act (RICO).³⁴⁷ RICO is normally used to indict organized crime (not gangster rappers).³⁴⁸ The alleged crimes date back to 2015.³⁴⁹ The gang YSL was charged, but not the label YSL (that distinction undergirds the purpose of this article).

YSL Records is currently in a label imprint deal with 300 Entertainment that began in 2016.³⁵⁰ 300 Entertainment was purchased by Warner Music Group (i.e., one of the three biggest music conglomerates) in December 2021.³⁵¹ This dynamic perfectly exemplifies the way that labels, distribution companies, and media conglomerates that employ artists benefit from this illegal activity (through a spike in sales), even though they are never impugned with any criminal liability. They become enriched from an artist's propensity to commit a crime while simultaneously being exculpated from the criminal penalties. Cases like these (and others soon to come) give context to the disproportionate treatment of a community seemingly empowered with a voice yet marginalized and outmaneuvered through archaic business models and the powerful political relationships of their employers.

The charges against Young Thug, Gunna, and their associates raise the inquiry of past criminal liability of record labels. In 2005, Irv and Christopher Gotti, co-founders of Murder Inc. Records were prosecuted under charges of money laundering and conspiracy to launder money.³⁵²

³⁴⁷ Richard Fausset, *Young Thug, Atlanta Rap Star, Is Arrested on Gang-Related Charges*, N.Y. TIMES (May 9, 2022), <https://www.nytimes.com/2022/05/09/us/young-thug-arrested-gang.html>.

³⁴⁸ *See id.*

³⁴⁹ *See id.*

³⁵⁰ Sidney Madden, *Young Thug Launches YSL Records*, XXL Mag. (Nov. 16, 2016), <https://www.xxlmag.com/young-thug-ysl-records/>.

³⁵¹ *300, an Independent Entertainment Company, Co-Founded by Lyor Cohen, Kevin Liles, and Roger Gold, Sells to Warner Music Group*, WARNER MUSIC GRP. (Dec. 16, 2021), <https://www.wmg.com/news/300-independent-entertainment-company-co-founded-lyor-cohen-kevin-liles-and-roger-gold-sells>.

³⁵² *Feds Detail Murder Inc. Money Laundering*, Billboard (May 14, 2003), <https://www.billboard.com/music/music-news/feds-detail-murder-inc-money-laundering-71086/>.

The case resulted from a year-long investigation and the following raid on the brothers.³⁵³ The prosecution alleged that the two ran a “covert” money laundering operation through Murder Inc. Records and its corporate accounts.³⁵⁴ The prosecuting attorney also alleged that the two received money from Kenneth “Supreme” McGriff’s criminal drug operation.³⁵⁵ Further, they believed that the brothers launched the record label with the allegedly illegally acquired funds.³⁵⁶ After the proceedings, Irv and Christopher Gotti were found not guilty of either of the charges.³⁵⁷ Throughout the case, notable figures in the music industry criticized the trial – like rapper Ja Rule, who stated the case was a “war against hip-hop.”³⁵⁸ In many ways, this case is exemplary of prosecutorial discretion at its worst. “The brothers [c]ould have faced up to 20 years in prison if convicted.”³⁵⁹ However, many jury members found that the prosecutions had no evidence against the two.³⁶⁰ One compared the evidence to “a cartoon,” and another stated the case “should never have been brought in the first place.”³⁶¹ Moreover, since the case against Murder Inc., the record label has never fully recovered – with key corporate partners distancing themselves from the company.³⁶² Many believe that the prosecutors sole reason for pursuing the record label was to neutralize their ability financially to help the real criminal, Supreme McGriff.³⁶³

³⁵³ *See id.*

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ Chris Harris, *Prosecutor Alleges Drug Ties to the Inc. in Gotti Trial Opening*, MTV (Nov. 17, 2005, 9:34 AM), <https://www.mtv.com/news/8lldlg/prosecutor-alleges-drug-ties-to-the-inc-in-gotti-trial-opening>.

³⁵⁷ Alex Mar, *Gotti Brothers Found Not Guilty*, Rolling Stone (Dec. 5, 2005), <https://www.rollingstone.com/music/music-news/gotti-brothers-found-not-guilty-99649/https://www.rollingstone.com/music/music-news/gotti-brothers-found-not-guilty-99649/>.

³⁵⁸ Zach Haberman, *Murder Inc. Duo Washed \$1 Million in Drug Loot by the Bag: Feds*, N.Y. POST (Nov. 17, 2005, 5:00 AM), <https://nypost.com/2005/11/17/murder-inc-duo-washed-1-million-in-drug-loot-by-the-bag-feds/>.

³⁵⁹ William K. Rashbaum & Matthew Sweeney, *Hip-Hop Producers Get Acquittal, Then Hugs, from Jurors*, N.Y. Times (Dec. 3, 2005), <https://www.nytimes.com/2005/12/03/nyregion/hiphop-producers-get-acquittal-then-hugs-from-jurors.html>.

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *See id.*

³⁶³ VladTV, *Irv Gotti: The Feds Tried to Destroy Murder Inc to Convict Supreme McGriff (Flashback)*, YOUTUBE (May 7, 2022), <https://www.youtube.com/watch?v=DcoHt2zg490>.

While Irv and Christopher Gotti were acquitted of all criminal liability, this case raises a much larger question: if regular individuals can be held criminally liable for a specific action, why are the record labels that operate similarly unaccountable? It is widely understood that when an individual meets the requisite elements, they can easily face charges of aiding and abetting or conspiracy to commit a crime.³⁶⁴ However, this is not true for record labels in relation to the activities of their artists. Prosecutors have historically chosen not to proceed with charges against record labels or distribution companies. In a society in which justice is distributed evenly, record labels would face the same civil or criminal liability consequences as average citizens when they are aware of the unlawful activities of their artists and supply these individuals with money. Moreover, when these companies reap the financial benefits of the criminal activities of their artists, they should certainly be faced with criminal penalties due to their enrichment.

XI. CRIMINAL CARTEL

When people think of a cartel, they immediately think of violence, drug smuggling, and crime. However, in economics, a cartel is defined as a group of independent corporations or other entities that join to fix prices, rig bids, allocate markets, and conduct other kinds of illegal activities.³⁶⁵ Individual defendants may also face incarceration without any evidence of physical violence or drug dealing.

While hip-hop, and the music industry at-large, may not expressly mirror the infamous drug cartels of Central and South America, their business practices often align with the anticompetitive and violent nature of a cartel in the world of economics. Approaching the commemoration of hip-hop's 50-year reign within the music industry, labels are nearing the end of their rule as potential criminal cartels. Music labels have seemingly committed innumerable crimes as co-conspirators of the illegal activity of their artists. These corporations often appear to have facilitated offenses by providing their artists with resources, knowing the intention to commit crimes – or by acquiring companies owned by artists already engaged in illegal activity. If any private individual took these actions, they would qualify as crimes based on the criteria for conspiring, aiding, abetting, or racketeering. But a largely endowed corporation can conceal criminality

³⁶⁴ See 18 U.S.C. § 2(a); 18 U.S.C. § 371.

³⁶⁵ *Cartel*, CORNELL L. SCH.: LEGAL INFO. INST., <https://www.law.cornell.edu/wex/cartel#:~:text=A%20cartel%20is%20a%20group,conduct%20other%20similar%22illegal%20activities> (last visited Feb. 7, 2023).

and/or be immune from criminal prosecution, at least if such bad acts are perpetrated in certain industries, namely hip-hop.

Under a closer examination of cartels, §1 of the Sherman Antitrust Act of 1890 states, “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.” Further, §2 felonizes monopolization and attempts at monopolization. The Sherman Antitrust Act (“the Act”) protects the benefits of competition.³⁶⁶ The Act utilizes a three-part framework to analyze the anticompetitive effects an action has on specific markets: (1) the per se rule, (2) the rule of reason, and (3) the quick look analysis.

The first part of the framework is the per se rule. According to guidelines by the FCC and US Dept. of Justice, “[a]greements of a type that always or almost always tends to raise price or reduce output are per se illegal.” Courts can find these agreements without further inquiry. Under this rule, a restraint is seen as unreasonable without looking at the market context in which the restraint operates.³⁶⁷ Horizontal price fixing and output limitation are examples of things that are considered anticompetitive per se.³⁶⁸

Second is the Rule of Reason.³⁶⁹ The guidelines state further, “the central question is whether the relevant agreement likely harms competition by increasing the ability or incentive profitably to raise price above or reduce output, quality, service, or innovation below what likely would prevail in the absence of the relevant agreement.” “Under the Rule of Reason analysis, the plaintiff carries the burden of showing that an agreement or contract has an anticompetitive effect on a given market within a geographic area.”³⁷⁰ Moreover, the test “requires a[n] . . . analysis of (i) the definition of [the] relevant product and geographic market, (ii) [the] market power of the defendant(s) in the relevant market, (iii) and the existence of anticompetitive effects.”³⁷¹ If the plaintiff meets this burden, the defendant must show that the restraint in question has a pro-competitive effect.³⁷²

³⁶⁶ *Agnew v. NCAA*, 683 F.3d 328, 335 (7th Cir. 2012).

³⁶⁷ *Id.* at 336 (citing *NCAA v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85, 100 (1984)).

³⁶⁸ *Id.* (citing *Bd. of Regents*, 468 U.S. at 100).

³⁶⁹ *Id.* at 335.

³⁷⁰ *Id.*

³⁷¹ *Antitrust Standards of Review: The Per Se, Rule of Reason, and Quick Look Tests*, Bona Law, <https://www.bonalaw.com/insights/legal-resources/antitrust-standards-of-review-the-per-se-rule-of-reason-and-quick-look-tests> (last visited Feb. 7, 2023).

³⁷² *Id.*

Third is the quick look analysis.³⁷³ This approach is used when an observer with a basic understanding of economics can conclude that the arrangement in question would have an anticompetitive effect on customers and markets.³⁷⁴ An abbreviated, or ‘quick look,’ rule of reason analysis is “designed for restraints that are not per se unlawful but are sufficiently anticompetitive on their face that they do not require a full-blown rule of reason inquiry.”³⁷⁵

Applying this criterion to the music industry, we find that it has a long legacy of anticompetitive behavior, as seen in the quick look analysis. But it is also an industry that is highly monopolized by a handful of companies, and many consider the domination in this sector to be an oligopoly. According to the Organisation for Economic Co-operation and Development, “an oligopoly is a market characterized by a small number of firms who realize they are interdependent in their pricing and output policies.”³⁷⁶ The big three record labels, Universal Music Group, Sony Music Entertainment, and Warner Music Group, make up 68% of the market share of music recording. These three companies also make up 58% market share of music publishing.³⁷⁷ Moreover, these corporations are often horizontally and vertically integrated, leading to a 360° business model and complete control over the entire operation.³⁷⁸ In addition to the oligopolistic hold these three companies have on the traditional music market, the same can be said of streaming platforms. In 2020, Forbes found that Spotify had 286 million monthly users, Apple Music 60 million, and Amazon Music 55 million.³⁷⁹ Their dominance within the streaming market and their interdependence with each other is a clear example of an oligopolistic marketplace.

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *Cal. Dental Ass’n v. FTC*, 526 U.S. 756, 763 (1999) (quoting *Cal. Dental Ass’n v. FTC*, 128 F.3d 720, 727 (9th Cir. 1997)).

³⁷⁶ R. S. Khemani & D. M. Shapiro, *Glossary of Industrial Organisation Economics and Competition Law* 63 (2002), <https://www.oecd.org/regreform/sectors/2376087.pdf>.

³⁷⁷ See Jimmy Stone, *The State of the Music Industry in 2020*, TOPTAL: FINANCE, <https://www.toptal.com/finance/market-research-analysts/state-of-music-industry> (last visited Feb. 7, 2023).

³⁷⁸ See generally Rémy Guichardaz et al., *Music Industry Intermediation in the Digital Era and the Resilience of the Majors’ Oligopoly: The Role of Transactional Capability*, *Indus. & Innovation* (Jan. 8, 2019).

³⁷⁹ Benjamin Laker, *The Economics of Music Streaming and the Role of Music Streaming Platforms*, *Forbes* (Oct. 28, 2020, 10:00 AM), <https://www.forbes.com/sites/benjaminlaker/2020/10/28/heres-how-lockdown-has-shown-that-spotify-has-a-sustainability-problem/?sh=1b80fe13599b>.

To further illustrate this point of monopolistic, cartel-like oligarchs in the music business: first, the music industry has a history of antitrust law litigation regarding accusations of price fixing. In 2000, five major companies settled in an antitrust suit, in which the FTC found that “the companies used illegal marketing agreements to end a price war, inflate the prices of compact discs and sharply restrict the ability of retailers to offer discounts.”³⁸⁰ These companies included Time Warner, the Sony Corporation of America, the Bertelsmann Music Group, EMI Music Distribution, and Universal Music and Video Distribution. Following the settlement, these companies were prohibited from “linking future financing of advertising with pricing of CD’s for seven years,” and from “imposing pricing conditions in advertisements that are paid for by the retailers, for the subsequent 13 years.” Six years later, the music industry became embroiled again in a price fixing scandal that resulted in governmental oversight.³⁸¹

Second, as established, there are only three main labels.³⁸² These three labels have engaged in practices of payola.³⁸³ Payola is the “illegal practice of paying commercial radio stations to broadcast particular recordings without disclosure to listeners of the pay-for-play, at the time of the broadcast.”³⁸⁴ During the 2006 Universal Music investigation, the New York attorney general found the company utilized numerous tactics to increase artists’ plays on various platforms for payola.³⁸⁵ As previously discussed, these tactics included “bribing programmers with laptop computers, tickets to sporting events, and luxury hotel stays.”³⁸⁶ Moreover, in the year prior, Warner Music Group paid a \$5 million

³⁸⁰ Stephen Labaton, *5 Music Companies Settle Federal Case On CD Price-Fixing*, N.Y. TIMES (May 11, 2000), <https://www.nytimes.com/2000/05/11/business/5-music-companies-settle-federal-case-on-cd-price-fixing.html>.

³⁸¹ In 2006, the U.S. Dept. of Justice launched an investigation into potential price fixing in the online music industry. *The Marketplace Report: Online Music Price Fixing?*, NRP (Mar. 3, 2006, 1:00 PM), <https://www.npr.org/templates/story/story.php?storyId=5243896>.

³⁸² McDonald, *supra* note 171.

³⁸³ See Leeds, *supra* note 80; Segrave, *supra* note 83; Leight, *supra* note 87.

³⁸⁴ Peter J. Schildkraut et al., *Recording and Broadcast Radio Industries Put on Notice: FCC Shows Renewed Interest in Payola*, Arnold & Porter (Nov. 13, 2019), <https://www.arnoldporter.com/en/perspectives/advisories/2019/11/recording-and-broadcast-radio#:~:text=Payola%2C%20also%20known%20as%20pay,%2C%20as%20amended%2C%20prohibits%20payola>.

³⁸⁵ Leeds, *supra* note 80.

³⁸⁶ *Id.*

settlement, and Sony BMG Music Entertainment a \$10 million settlement for similar charges.³⁸⁷

Third, the artists signed to these labels, including the hip-hop oligarchs, have engaged in illegal behavior to further advance their music agendas.³⁸⁸ Media companies like Universal have Codes of Conduct Policies and statements about their core values, often contradicting what or whom they support or finance through their business ventures. An organization's core values should be reflected consistently throughout its business affairs. Alternatively, a company that prohibits illegal substances in the office should apply that standard in their music studios. Furthermore, a company that does not object to violence as a means of conflict resolution should not reprimand an employee who goes "fisticuffs" with a colleague during a heated exchange at the watercooler. This paradox or double standard has become apparent in many instances. For example, Universal Music Group's Code of Conduct states, "Universal Music demand[s] that we are free from any substances—including drugs and alcohol."³⁸⁹ However, drug and alcohol use is highly documented and often encouraged through lyrical composition and social media presence. Similarly, Warner Music Group's Code of Conduct requires that employees treat colleagues with "dignity and respect. They will, therefore, not use corporal punishment, threats or violence, or other forms of physical, sexual, psychological, or verbal harassment or abuse."³⁹⁰ Although this code is enumerated, lyrics and references made by artists under the label directly violate this standard. Furthermore, many artists' business endeavors have been entrenched in violence for financial gain. When these subsidiaries are conglomerated under major labels, like Universal or Warner Music Group, they should reap not only the financial benefits but also the legal consequences befitting such activity.

With the evidence presented in this paper, a reasonable person can see that the music industry has explicit and implicit anticompetitive effects on the customers and markets. Although media companies and record labels are not often characterized as the type of cartels that customarily receive lots of media attention (i.e., drug cartels of Central and South America), the oligopolies within the industry certainly have a history of operating

³⁸⁷ *Id.*

³⁸⁸ See, e.g., *Puffy Breaks Silence On Stoute Attack*, *supra* note 212; Dangelo, *supra* note 212.

³⁸⁹ UNIVERSAL MUSIC GRP., *Our Code of Conduct: Setting the Right Tone* 11 (2018), <https://www.universalmusic.com/wp-content/uploads/2018/03/Code-of-Conduct.pdf>.

³⁹⁰ WARNER MEDIA GRP., *Code of Conduct for Suppliers 2019* (2019), <https://investors.wmg.com/static-files/2641cbf1-cab6-4be2-a6b5-2814a0f8e291>.

like one. Price fixing, bid rigging, and other anticompetitive behavior that we have historically seen within the industry may fall under this rare category – thus categorizing the industry as a cartel from an economic standpoint. However, the music business’s history of reaping the financial benefit of the criminal activity of their artists is not just an illegal cartel but also criminal. As rap impresario Nas stated in his historical masterpiece “*Illmatic*”: “*somehow the rap game reminds me of the crack game.*”³⁹¹

XII. CONCLUSION

Fortunately (or unfortunately, depending on where one nets out in the equation), the murder, drugs, and violence surrounding hip-hop artists can operate like an algorithm multiplying the value of a music catalogue. Whether labels are innocent or complicit in those underlying crimes, they are certainly banking lots of “bread” on the outcome, while simultaneously being exposed to criminal liability. Although it is not a legal trend today, labels could easily find themselves in the crosshairs of aggressive law enforcement tactics that could target them as criminals tomorrow. The legal principles examined above such as “criminal negligence,” “corporate criminal liability,” and “successor liability” also have the potential to be leveraged against vertically integrated media conglomerates owning music labels connected to illegal drugs or violence. That is because when a crime is committed by artists, the money and motivation shared between artists and their label partners are key factors that can draw a label’s parent entity within the criminal dragnet.

Therefore, artists and their labels should spend less time focusing on who’s snitching and more time on what business practices are putting them within arm’s reach of the law. Even if credibility as an affiliate of gangsters is currency in the music industry and inextricably tied to authenticity as a hip-hop artist, it is not worth a RICO charge. Accordingly, labels are experts in monetizing this kind of cognitive dissonance among their artists, which creates their legal (and moral) dilemma. Are labels encouraging, sanctioning, and even facilitating felonious deeds during their ordinary course of business by using methods that will result in their company’s criminal culpability? It certainly seems that way, at times.

As Hip-Hop turns 50, it’s time to leave its bondage to the streets behind. Its true legacy is cemented in a rich history of creativity, social change, and wealth creation. Artists wanting to embody the “bad guy” persona need to remember that you can’t be a tax-paying, law-abiding

³⁹¹ Nasir bin Olu Dara Jones, *Represent, on Illmatic*, (Columbia Records 1994).

business and simultaneously live like a criminal. You will inevitably fail at one or the other. As for record labels, they should remember the long arm of the law has tentacles too: There may be enough mitigating factors to distance corporations from an artist's crime today, but public sentiment, new legislation, and hip-hop related homicides are slowly closing that gap. Therefore, as Hip-Hop turns 50, today's industry icons and their corporate confederates should consider ditching the felonious façade and craft a culture worth boasting about even 50 years from now.