

# Digital Update

Remember CDs? In the last ten years, the once ubiquitous discs were overtaken by digital downloads. And in the last few years, downloads have given way to streaming. How to keep up? Here's a look at developments in how consumers listen to recorded music, with insights into the technologies and recent legislation that will affect how orchestras record and disseminate their music.

By Michael Bronson and Joe Kluger

In 2011, we wrote an article for *Symphony* magazine outlining ways in which orchestras could take advantage of digital technology innovations to bring their music to more people—and bring more people to their music. For orchestras to maximize the benefits of these technological advancements, we recommended that they:

- Identify strategies to use technology to distribute their recorded music that support clearly defined goals and objectives;
- Make electronic media strategies a core part of their mission and budget; and
- Take the initiative to make electronic media projects happen, rather than reacting to the initiatives of others.

While these key ingredients for success are still valid today, there have been dramatic changes in the last few years in the ways that consumers use technology to listen to music. Those changes are having a profound impact on the digital strategies that orchestras use:

- According to data collected by the Recording Industry Association of America (RIAA), there have been seismic shifts in the proportion of U.S. recorded-music revenues generated by various recording formats (see chart):
  - ◇ CDs, which generated \$12.9 billion

in 2001 (94% of the total), and had dropped to \$3.1 billion in 2011 (43.5% of the total), fell to \$700 million (7% of the total) in 2018;

- ◇ Downloads, which generated \$2.6 billion in 2011 (36.6% of the total), fell to \$990 million (10.1% of the total) in 2018; and
- ◇ Streaming, which, in its infancy in 2011 generated \$654 million (9.2% of the total), rose to \$7.4 billion (75% of the total) in 2018 and now dominates the industry.

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- PBS now broadcasts only a handful of orchestral programs nationally each year, many of which—including the pioneering *Live from Lincoln Center* series—feature orchestras accompanying pop artists;
- Commercial classical music stations have virtually disappeared from the radio dial, although the audiences for non-commercial, public radio stations (which mostly feature talk shows and

news) have remained steady;

- There were more than 3.5 billion Facebook Live broadcasts in the first two years after the technology's 2016 launch;
- 1.9 billion logged-in users visit YouTube every month; and
- Up to 70% of web traffic happens on a mobile device.

Several orchestras have adapted their digital distribution strategies in light of these industry trends:

- The Detroit Symphony Orchestra launched its *Live from Orchestra Hall* webcast series in 2011, making it the first—and so far only—U.S. orchestra to distribute audio-visual recordings of all of its programs annually;
- Since 2016, as a result of PBS's diminishing presentation of classical music, the New York Philharmonic has broadcast four of its concerts on Facebook Live and distributes many concert excerpts and behind-the-scenes videos on a wide range of digital and social media platforms;
- The low cost of Facebook Live and other streaming platforms, plus the availability of inexpensive but sophisticated technology, has enabled smaller orchestras, among them the Austin Symphony Orchestra, California Symphony, Charleston Symphony Orchestra, and St. Paul Chamber Orchestra, as well as conservatories and music schools, to live-stream some concerts and events;
- Several orchestras—including the Atlanta Symphony Orchestra, the Chicago Symphony Orchestra, and the San Francisco Symphony—have been releasing audio recordings on in-house labels, outsourcing distribution of physical CDs and downloads, as well as making the recordings available on Spotify, Apple Music, and other audio streaming platforms; and
- Dozens of U.S. orchestras continue to broadcast many of their concerts on local radio stations, all of which routinely simultaneously stream their content on their websites, enabling orchestras

of all budget sizes in every corner of the country to bring their music to worldwide audiences.

As orchestras develop their digital music distribution strategies, they should also be aware of several recent and pending relevant legislative policy changes:

- The Music Modernization Act (MMA) was signed into law in late 2018 to modernize copyright law relating to audio recordings, arising from new forms of technology like digital streaming. The MMA is a consolidation of three separate bills:
  - ◊ Title I - Music Modernization Act: Creates a new nonprofit entity to collect and distribute compulsory digital mechanical license royalties on behalf of composers and music publishers, and revamps the process by which copyright royalty judges resolve disagreements over royalty rates;
  - ◊ Title II – “CLASSICS” Act: Cre-

ates a U.S. copyright for pre-1972 sound recordings, which existed previously only in some states (“CLASSICS” stands for Compensating Legacy Artists for their Songs, Service, and Important Contributions to Society); and

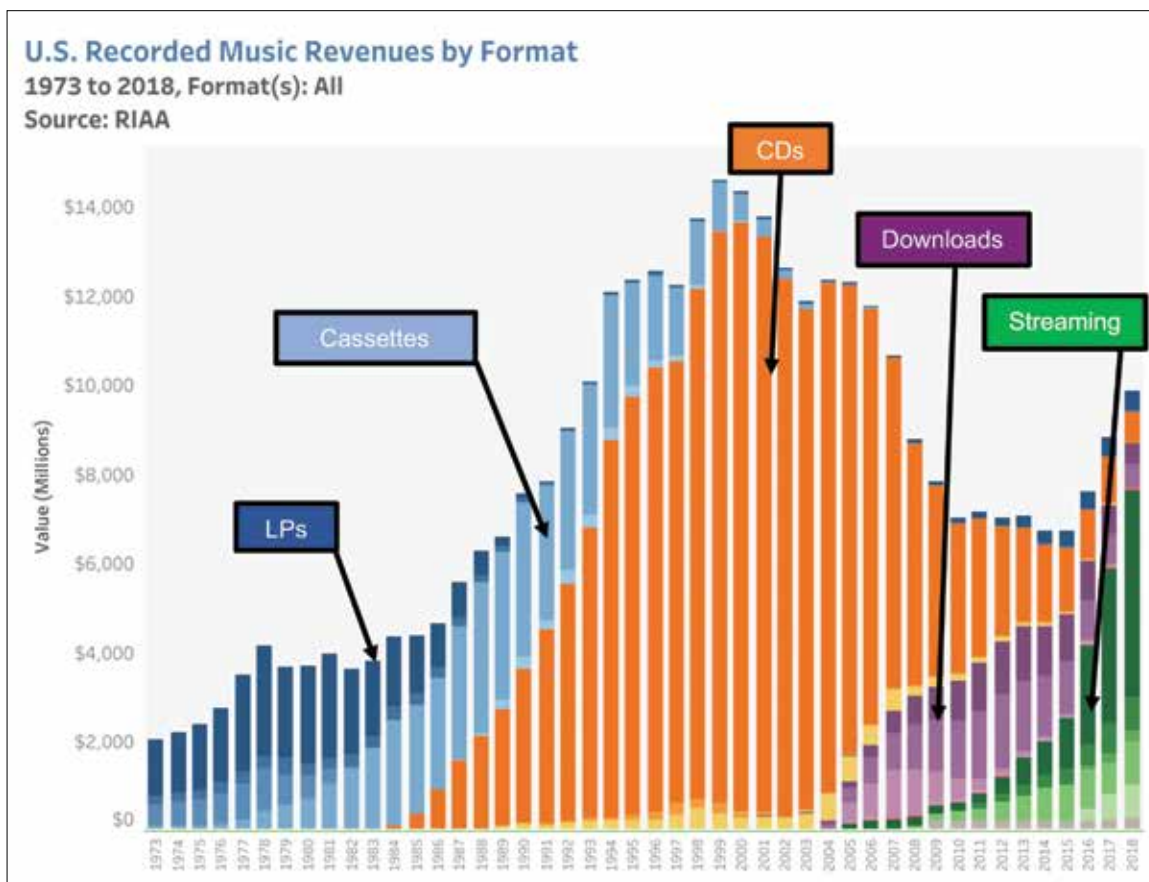
- ◊ Title III – Allocation for Music Producers (AMP) Act: Requires SoundExchange (the agency designated by U.S. copyright law to collect non-interactive digital royalties from sound recordings) to distribute a portion of royalties due to featured artists to a producer, mixer, or sound engineer who was part of the creative process that created the sound recording.

- One proposed component of the MMA that was not included in the final bill, due to pressure on Congress from radio broadcasters, would have created a U.S. copyright for the public performance of sound recordings on analog, terrestrial radio stations. The

intent of the proposed legislation was to fill a gap in U.S. copyright law, which provides royalties to composers and publishers when their music is played on radio stations, but not to the performers and copyright holders of sound recordings. It is unclear whether attitudes in Congress will change enough to permit this change in copyright law, which would benefit orchestras that make audio recordings.

- ASCAP and BMI, which collect royalties on behalf of music composers and publishers from live, analog, and digital performances, have been governed since 1941 by Department of Justice (DOJ) “Consent Decrees” to reduce anticompetitive tendencies in the publishing sector. Although the MMA requires the DOJ to consult Congress before making any changes to the Consent Decrees, Makan Delrahim, assistant attorney general for the Antitrust Division of the DOJ, has asked publicly whether Consent Decrees are

A chart from the Recording Industry Association of America (RIAA) documents the shifts in the proportion of U.S. recorded-music revenues generated by various recording formats over time.



“still relevant in marketplace.” DOJ’s options for the ASCAP and BMI Consent Decrees include:

- ◇ Keep them as is, as they may not be perfect, but are functioning effectively for licensors and licensees;
- ◇ Modify them, so that they are modernized to reflect a rapidly changing digital world; or
- ◇ Eliminate them, as they do more harm than good, based on the premise that markets should be left to operate freely.

Since orchestras rely, directly or indirectly, on ASCAP and BMI blanket license agreements for the performance of music on radio, television, and the internet (as well as live in concert), they could be negatively affected by the elimination of Consent Decrees that balance the bargaining power between the licensors and licensees of copyrighted music.

While the primary mission of a symphony orchestra should continue to be performing great music live for people in a communal setting, we believe that technology should play a central, secondary role for every orchestra, as a means of expanding the audience beyond those who can be physically present to experience the

excitement of the live performance. Realizing this objective and other institutional benefits will come only to those orchestras that develop digital distribution strategies carefully and proactively, and in consideration of the accelerating pace of change in technology and consumer behavior. **S**

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Bronson and Kluger are recognized experts in the use of technology to accomplish strategic objectives in the arts and are consultants in this area to the League of American Orchestras and OPERA America and their members. Find more information on the League’s Electronic Media Services at <https://www.americanorchestras.org/knowledge-research-innovation/electronic-media.html>.

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A close-up photograph of a hand reaching towards a drum head. The hand is positioned in the upper right quadrant, with the index finger pointing towards the center. The drum head is visible at the bottom of the frame, showing a row of metal rivets. The background is dark and out of focus, with a soft light source creating a glow around the hand and the drum head.

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