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Grammy Foundation, The Entertainment Law Initiative (“ELI”), Breakfast with ELI, October 23, 2012

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“What a prosperous looking bunch of lawyers,” was keynote speaker [Scott Borchetta’s](#) opening remark to the assembled group of entertainment lawyers, music industry professionals, and law students at last month’s Breakfast with ELI.

Borchetta is the President and CEO of [Big Machine Label Group](#). Big Machine represents recording artists such as Rascal Flatts, Tim McGraw, and Taylor Swift. Borchetta has been labeled the “[Country Music Anti-Christ](#)” by some country music purists due to his promotion of Taylor Swift, “[the biggest perversion of the term ‘country’ the genre has ever seen.](#)” More recently, in June 2012, Borchetta forged an unprecedented deal with media giant [Clear Channel](#) that entitles Big Machine artists to performance rights for terrestrial radio play, a deal that will likely become the industry model as radio continues to evolve into a digital format. This recording artist-friendly agreement answers, in part, the larger question of [how recording artists make money in the digital age](#).

Pursuant to [U.S. copyright law](#), a song played over terrestrial radio is a public performance of a musical composition. To publicly perform a musical composition, the terrestrial radio station must obtain a license from the composition copyright holder. Online or digital, “interactive” radio is a different story – recording artists have the right to receive licensing fees for songs streamed through websites such as [Spotify](#). Thus, under current copyright law, only composers, through performing rights organizations such as BMI and ASCAP, receive royalties for terrestrial radio play; the recording artists’ only compensation is publicity.

Under the [Big Machine deal with Clear Channel](#), however, Big Machine recording artists receive royalties for terrestrial radio plays on all Clear Channel radio stations. In return, Clear Channel receives a break on the per-song royalty owed for Internet play of Big Machine artists. Both companies are touting the agreement as a win for radio, recording artists, and, ultimately, listeners.

Understandably, the attendees of Breakfast with ELI had many questions for Borchetta regarding his landmark deal and his thoughts on the music industry in general. When asked how the Clear Channel deal could be seen as a win for both sides, Borchetta remarked that the agreement presents advantages for all parties. By “meeting Clear Channel on digital

broadcast," Big Machine "got some love on terrestrial broadcast." Regarding making money in music in the digital age, Borchetta thinks that the music industry's negative response to Napster was a mistake: "is this a flower or a weed?" the industry asked itself, but then "killed Napster before it knew which." Borchetta continued, "we could have done something [profitable] with Napster, meanwhile, look at Spotify – it is essentially Napster. A sea-change is coming, [Apple's] Siri in the car is going to give radio a run for the money, but the [digital play] rates are too high – BMI and ASCAP are lowering rates and giving more back to the artists." Big Machine's deal with Clear Channel is just a logical progression of these developments.

When asked if market response—such as his Clear Channel deal—is sufficient, or if legislation is needed to compensate recording artists in the digital age, Borchetta answered, "we need regulation and legislation, we need a leader, but no more bills like [SOPA/PIPA](#), which tried to please too many." Specifically, the Clear Channel deal does not extend to international performance rights and, Borchetta believes, "that's why we need legislation."

When asked about the future of the music industry, Borchetta forecast that there will be an increasingly important nexus between music, television and film, and promotion. Borchetta cited Taylor Swift's commissioned compositions and recordings for *The Hunger Games*, and the ABC series *Nashville*, as good examples of combining various media. Borchetta said, "if you combine the right audio and the right visual, then people are going to want to own that." When asked about American Idol and other music-oriented reality shows, Borchetta lamented, "we are not going to get the next 'Stones from American Idol. A [sensitive artist such as] 15 year-old Taylor Swift would have been destroyed on that show. If 'I want to be on [American] Idol' is the goal of young artists, we have failed."

Borchetta concluded by remarking that, bottom line, we need a ubiquitous royalty model for terrestrial and digital radio play: "if you [broadcasters] are making a dollar, pay us."

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