Copyright + Technology Conference 2025

Panel 3

WHAT'S PAST IS PROLOGUE: LESSONS FOR AI FROM THE FILE-SHARING ERA

With Bill Rosenblatt[1] Annemarie Bridy,[2]
Gary Greenstein,[3] Bobby Rosenbloum,[4] and Howie Singer[5]

Napster's launch in 1999 disrupted the copyright landscape, leading to more than a decade of innovation in laws, technologies, and business models as industries struggled to adapt. Today, AI technologies are poised to disrupt at least as much as file-sharing did. What lessons can we learn from the file-sharing experience – both positive and negative? We hear from attorneys, technologists, and policy wonks who lived through the post-Napster era as they offer their thoughts on how to navigate the decade to come.

Bill Rosenblatt: So, I'm back here because I like to moderate a panel that I think is fun and interesting. How many of you were professionally active in the mid-2000s? Okay, so a few of you. So, I was. This is the third tech bubble that I'm living through. The first one was dot-com when I was a dot-com CTO.[6] The second one, at least in my opinion, was blockchain eight to ten years ago.[7] And now we're in the AI situation, call it a bubble if you want, maybe you don't agree with that. But there are people around, and here's four of them, who were active in a very big way during that time in the 2000s who saw things happen and were part of it in many cases, and they're still doing stuff that's relevant, very relevant today.

Tracey [Armstrong, in her keynote] alluded to the blockchain blip regarding rights management applications, and yes that sort of flew by, but AI is not just flying by, obviously.[8] It's having a lot of profound effects on things, just as internet technology when it first was introduced, and then file sharing and so on had lots of effects. So, I thought it would be really interesting to look into what happened then, what are the lessons that we could learn for today about how technology affects the world of copyright and the industries that copyright supports, or choose your own verb, is relevant to. And so I gathered this group of people, who I think are all amazing and accomplished in their different ways, to talk about this topic.

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[7] *See, e.g.,* Bill Rosenblatt, The Future of Blockchain Technology in the Music Industry. *Journal of the Copyright Society of the USA*, Vol. 66, No. 2, Spring 2019.
[8] Tracy Armstrong, Keynote Address, 72 J. Copyright Soc'y 1043 (2025).

I'm going to introduce them very briefly, because their bios are all accessible to you, and just have them spend a couple minutes talking about their background their perspective on this topic, and then we're going to go into some questions that I've prepared for them, and then I want to make sure to leave plenty of time for audience Q&A. So, we'll start with Gary. Gary Greenstein, who is a partner at Wilson Sonsini, was in-house counsel at the RIAA, founding General Counsel of SoundExchange, et cetera, unless I got some of that wrong.

Gary Greenstein: Nope, that's all accurate. So, I've been working in copyright since 1996. Started off for the first 10 years representing copyright owners, the Office of the Commissioner of Baseball, as Bill mentioned, the Recording Industry Association of America, Universal Music Group. I don't know if anyone from UMG is here. They've probably disclaimed that I ever represented them. And then I was the first General Counsel of SoundExchange. For the last 18 plus years I've been on the other side of the table representing DSPs[9] and users of copyrighted works. And so, I've been on both sides, and was at the RIAA at the time of the Napster litigation,[10] which is part of the retrospective here, not as a litigator but as a transactional attorney.

So, in parallel with the litigation against the file sharers, it was a time when the record companies and the RIAA were licensing what were then non-interactive webcasters[11] and establishing precedent, going into the first webcaster proceeding before a Copyright Arbitration Royalty Panel,[12] which were predecessors to the CRB, the Copyright Royalty Board.[13] And I think some of what happened then is probably relevant to our discussion today about what happens when a new technology is introduced, when you're trying to establish licensing models, when you're trying to figure out what is the economic value, what permissions are required or are not required, and I think those are all issues that are being discussed here today.

Bill Rosenblatt: Thank you, Gary. Next, we have Annemarie Bridy, who has been a noted and prolific copyright scholar, a law professor at the University of Idaho, among other places, and now works in-house as senior copyright counsel at Google, so is involved in all kinds of very interesting activities.

Annemarie Bridy: My team is like the Swiss Army knife for copyright at Google. We do all kinds of legal work. We do product counseling for product launches. We work hand in glove with our public policy team on new and emerging legislation in the copyright space. We work on litigation. We are in the midst of some active generative AI litigation, and I work now on that legal team. We also do copyright removals escalations for conflicts that arise in the course of DMCA notice and takedown.

I'd like to make a bridge between Napster and AI using a quote that I saw the other day in the New York Times when I was reading an article on the recent class action settlement in the *Bartz* v. *Anthropic*[14] case. The reporter said that "[t]he settlement in

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[9] Digital [music] service providers, e.g., Spotify, Apple Music, Pandora.
[10] A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001).
[11] Early "internet radio" providers such as Live365, SonicNet, and Spinner.
[12] *CARP Structure and Process*, U.S. COPYRIGHT OFFICE, https://www.copyright.gov/docs/regstat061302.html (last visited Nov. 21, 2025).
[13] COPYRIGHT ROYALTY BOARD, https://www.crb.gov/ (last visited Nov. 21, 2025).
[14] Bartz v. Anthropic PBC, 3:24-cv-05417, (N.D. Cal. 2025).

Bartz v. Anthropic is generative AI's Napster moment." And I thought, oh, this is totally fortuitous because we're about to talk about Napster on this panel.

Bill Rosenblatt: Not sure I agree with that…

Annemarie Bridy: I think it's not a great metaphor. It's a good sound bite, but I think it's not a great metaphor. From a copyright point of view, we need to be careful not to over-index on the similarities between these two disruptive moments in the history of copyright, meaning between peer-to-peer file sharing and the development and deployment of generative AI models. There are three important differences that I'd like to highlight as we go into the conversation.

The first difference is that peer-to-peer file sharing software was and is a *non-transformative*[15] technology in the fair use[16] sense of the word. It completely transformed the market for recorded music over time, but it didn't have a compelling claim to fair use, and the case law bore that out fairly quickly.[17] Generative AI systems, on the other hand, are highly transformative in their use of copyrighted works, and the fair use case for training the models that power them is strong–as we've seen in the recent summary judgment decisions in the *Kadrey*[18] and *Bartz* cases. *Kadrey* is the Meta case and *Bartz* is the Anthropic case. Both of them are making their way through courts in the Northern District of California.

I think it's important to point out, in light of some confusion around the recent settlement in *Bartz*, what the summary judgment decision in that case actually was. Judge Alsup held in *Bartz* that Anthropic's unlicensed use of copyrighted works to train its generative large language model was a "quintessentially" and "spectacularly" transformative fair use. Those are quotes from the decision. The open question in the *Bartz* case going into trial, and the question that provoked the settlement, related to copies that Anthropic retained as a library for future uses that may not have included training. I just want to be very clear about what the summary judgment decision in that case was because I think some of the reporting got it a little wrong, saying that there was a huge settlement because there was no fair use, but that is absolutely not what that opinion held.

All right, back to peer-to-peer file sharing and how it differs from generative AI. Peer-to-peer file sharing is also a *non-generative* technology. In terms of promoting the progress, which is what the Constitution tells us copyright is supposed to do–"promote the progress of science and the useful arts"[19]–file sharing didn't give us any net new creativity. It was a more efficient way to move existing stuff around, but it didn't give us a way to make new stuff. Generative AI, by contrast, puts new creative tools in the hands of artists, and I think we've just scratched the surface of that newness and of all of the applications that we will have for it.

The third difference is that file sharing is an *application*, but AI is a *platform*. Peer-to-peer file sharing has had some different architectures over time. It got more decentralized through a series of evolutions, but they all serve one very limited use case. AI, by contrast, is a general-purpose technology that will spawn many thousands,

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[15] *See* Pierre Leval, *Toward a Fair Use Standard*, 103 HARVARD LAW. R. 1105 (1990).
[16] 17 U.S.C. § 107.
[17] *See, e.g.,* A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001).
[18] Kadrey v. Meta Platforms, Inc., No. 3:23-cv-03417-VC, (N.D. Cal. June 25, 2025).
[19] U.S. CONST. art. 1, § 8, cl. 8.

probably hundreds of thousands of new applications with many different use cases. It will change many more industries than recorded music, though I think it will change that one too in ways that we can talk about, because the folks on this panel are very deep into the music industry. I think the key for AI developers and users both is to focus on collaboration and not displacement, to build tools that let human artists be more experimental and expansive in their creativity.

As we get into talking about what the peer-to-peer file sharing era can teach us about the disruption we're now experiencing in the creative industries because of AI, it's important to bear in mind that the technologies underneath these disruptions are, from a copyright point of view, very importantly different.

Bill Rosenblatt: Okay, thank you. I actually skipped over the showing of slides. So, could we go to the first slide? Yeah. So, this is a diagram that I derived from RIAA recorded music revenue data, and the RIAA has tracked this for half a century going back to 1973. And the point here is that you can see how formats have driven phases of, in this case the recorded music industry, and what happened in the wake of the Napster phenomenon, which is at the peak of that graph there.

So, this is just to give you an idea, you know, how do we think of this? We think of this in terms of phases brought on by disruptive technologies, of which file sharing was one. Next, we'll go to the next slide. I made a table for another talk that I gave a little while ago on the length of time between the introduction of a disruptive technology to the music industry and the time at which the laws settled around that technology, however they settled. And what I found was that for file sharing, the length of time was 11 years between the launch of Napster and the court-ordered shutdown of the last P2P file sharing service LimeWire in 2010. So, that's 11 years. That was the minimum.

Every other disruptive technology to, again we're focusing on recorded music here, took longer than 11 years. And we're in maybe year three since let's say the launch of ChatGPT to the public, or I forget how I counted that, since the first generative AI lawsuit was filed. So, we're still in fairly early days here, but I think enough time has passed. We're starting to get windows into what courts have been saying about it as Annemarie pointed out. There's a long way to go, but we're starting to get into that era where decisions are coming out that will in turn influence other decisions, appeals, and whatnot.

So, with that interruption out of the way I'd like to turn over to our next panelist, Bobby Rosenbloum from Greenberg Traurig. And so, when I was working for an early music DSP in the late 2000s, one of the very few people you could turn to help you make a deal with the major record labels was this man, which he did admirably. And so, it's my pleasure to welcome Bobby Rosenbloum.

Bobby Rosenbloum: Thanks Bill. So, I am with the law firm Greenberg Traurig, and for about 30 years now my practice has really revolved around representing DSPs and helping them navigate the licensing space, not just in music but I would say principally in music just because music content has been so ingrained in all sorts of other businesses, whether it's fitness or social media or gaming, et cetera.

And what I would say, and Annemarie kind of touched on it but we'll talk a little bit more about this, but I think that when we look at some of these other disruptive technologies, one thing that I think is really important to think about as we're going through this discussion is that most of the other technologies that have inserted

themselves into the content industry have done so in a way that have jeopardized or threatened a distribution medium. So, when Betamax[20] or home video came into the world of television and film content, it basically threatened the way that the content got to the consumer and introduced a new mechanism. Same thing when CDs and digital media developed and then digital audio tape and then downloads and then streaming.

But with AI the thing that's fundamentally different, and we'll talk about it, because when we talk about AI there's so many different things that it can mean. And when we're talking, for example, most of the discussion today has been about generative AI, and it's not that it threatens the distribution medium, it threatens the content itself. It really goes more to the creation and in fact what it means to be an artist, and what it means to compete with other content, and what it is that users are looking for, and I think depending on the medium it could be a variety of different things and we'll talk a little bit about that. But I think it's really important to keep that in mind, that most of the other things and the things that we can look at as precedent, are fundamentally different than what's happening in the world of AI and how that kind of intersects with the world of music and other forms of content.

Bill Rosenblatt: All right, thank you very much, Bobby. And then our panelist to the left here, Howie Singer, is my book co-author and fellow NYU music business faculty member. But Howie's background goes quite a bit back in technology. He was at AT&T Bell Labs along with another person in the audience here, Larry Miller,[21] in inventing or starting one of the very first digital music systems to deliver music to the public digitally in the mid-1990s.[22] And then Howie was at Warner Music for, what was it? Fifteen years?

Howie Singer: Yes.

Bill Rosenblatt: During which time every startup who had some technology that they wanted to involve the music industry in, he got to look at under the hood. So, he got to see all the deals, including the one that I was involved with. I had to supplicate him as part of that process. And Howie is now also a consultant in the music technology area who works with a lot of different entities in the field.

Howie Singer: So, just building on that, and thanks Bill; took most of the stuff I was going to say about my background. But I'll just add we heard the name Beatdapp mentioned in the streaming fraud case. I'm on their advisory board. They build machine learning models to detect fraudulent streaming. That's – they use AI for good in this case. And I am also consulting for the RIAA on generative AI issues. And we heard some about the content authenticity initiatives, and that's one of the areas I've been consulting for the RIAA on. I want to build on something that Bobby started with and Annemarie started with, that this technology is different.

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[20] The original consumer videocassette format, which Sony released in 1975. It drew the lawsuit that led to the landmark Sony v. Universal Supreme Court decision in 1984, during the pendency of which Sony lost a format war to JVC's VHS videocassette format. *See Video Guidance: Identifying Video Formats*, NATIONAL ARCHIVE, https://www.archives.gov/preservation/formats/video-identify-formats.html (last visited Nov. 24, 2025).

[21] Professor & Executive Director, Sony Audio Institute of Music Business and Technology, NYU. *See Larry S. Miller*, NYU STEINHARDT, https://steinhardt.nyu.edu/people/larry-s-miller (last visited Nov. 24, 2025).

[22] The A2B Music system at AT&T. *See generally AT&T to spin off music division?*, FORBES, https://www.forbes.com/1999/02/08/mu6.html (last visited Nov. 24, 2025).

However, the distribution means and the remuneration of artists in terms of how streaming works today, for the most part, is a soft target, shall we say, for AI generated music to grab revenues. Because we operate on a data analytics basis of looking at songs and their characteristics, in order to identify what goes on a playlist and what gets recommended, we have a system that's geared for artists who are not necessarily real, songs that were created by a machine that may be good or not, to grab more revenues out of the pool because the systems, if the songs get good enough – and they will – will be able to take advantage of the distribution platforms that are in place. Which is why it is so urgent to get a handle on all this.

Whether that means identifying what is AI generated or not, identifying whether this Japanese version of a particular song sung by Adele was authorized by her label and by her for the voice model, it becomes so crucial because the system we have in terms of how we distribute the money and how we decide what gets put in front of you, whether we're talking TikTok or Spotify or Apple or whatever, is all based on characteristics of the music, which by the way AI is built to do a good job of imitating, of copying.

Bobby Rosenbloum: By the way, just to note, I think that's a really important point. And I know I kind of take it for granted and some of you may not understand this as well; one of the really important things to understand about the way that the music industry works today is that on most services today, there's a pool of money that gets divided up based on usage and access, which was never the case before streaming. And so, if there's content that's generated by AI on many of these platforms, it will effectively take revenue away from other forms of content that may be human-created. In the old days, if it was transactional when you bought a CD or you bought a download, that wouldn't have been the case. So, I think that's a really important point, that now all of this content is competing for attention and also competing for the same dollars. So, it's important to think about that.

Gary Greenstein: Although one caveat to what Bobby said is when you have a pool of money, sophisticated licensors will say the pool of money will be allocated on a pro-rata share, the numerator being the licensor's amount of usage. So, number of plays for example. And then the question is –

Bill Rosenblatt: You mean the licensee's amount of usage?

Gary Greenstein: The licensee's usage of a licensor's works. So, in the pro rata calculation, the numerator is always the number of instances of use; streams, whatever, of the licensor's works. It's the denominator that's the key number, because the bigger the denominator, if you remember your math – and we're lawyers so we may not remember math – but the bigger the denominator, the smaller the fraction. And a sophisticated licensor will say that the denominator can only be royalty-bearing music. But if they say the denominator cannot include AI created music, what does that mean?

How much AI creation involved in a work means that it is not to be included in the denominator? And you will have situations where – just take background music, so the Muzaks[23] of the world. If you're a provider of background music, you may go and create sound recordings. You hire college musicians to create a recording of a musical work. You add that to the denominator. You're paying yourself. It's arguably not royalty bearing,

[23] Now known as Mood Media, *see* MOOD MEDIA, https://us.moodmedia.com/ga/muzak-background-music/ (last visited Nov. 24, 2025).

but you're paying out less money to licensors. In an AI generated world where major labels may start using AI or the artists they record with are using AI to supplement or be involved in the creation of music, that becomes a more difficult analysis or negotiation as to what that fraction should be to divide that pool of money that Bobby was talking about.

Bill Rosenblatt: Did you want to say anything on this thread before I move on?

Annemarie Bridy: Well, I think it's going to be interesting over time for us to try to draw lines in the way that Gary's talking about between what is AI generated and what is human generated with the help of an AI tool. What percentage of humanness will we require to meet some threshold for compensation?

Bill Rosenblatt: That's the next panel.

Annemarie Bridy: I think this transition is going to be generational, in much the same way the transition to peer-to-peer file sharing was, in terms of people getting accustomed to different ways of *consuming and interacting* with music. Now, it's going to be about people getting accustomed to different ways of *creating* music. This is a problem for us now because we might have an intuitive sense that what's AI generated is somehow suspect or inauthentic or problematic. I think over time consumers will decide what music they want to listen to, and it may not seem so important to say exactly how that music was constructed on a micro level.

We're in a very interesting moment now, and having these conversations is fascinating for me, because it *does* remind me of when we were back in the days of Napster, and we were fixated on unbundling and what consumers should want. It's a marker of the disruption we're in that we're trying to draw a definitive line that over time will probably just fade away.

Bill Rosenblatt: Okay, so thank you all for that. So, here's a question I want to throw out, and I originally intended it for Gary, but it can be for anybody, as can any of these questions. Gary, when we were discussing this panel, you said that there's an element of rights holders wanting to remain in control in all these discussions, and discussions that you've had, and that others have had. So, how did you see that manifest itself 20 years ago and if at all, how does that differ now from what you're seeing? What's the difference in the attitudes about rights holders trying to keep control?

Gary Greenstein: So, 20 years ago, and as I mentioned earlier, the parallel; you had the litigation and then you had the licensing. And when you first started seeing internet streaming, copyright owners essentially were making up provisions to include in licensing. And there were obvious things; the types of control that they would require, the license grant, the license limitation. The economics were truly pulled out of thin air. It was, okay, a penny a stream. Then a penny a stream didn't work and then it was half a cent a stream, and then whatever the numbers were. But there is this concept of, as Bobby talked about earlier, the means of distribution and the control. You wanted to be consulted every time there is a change or was a change in how someone would use music.

So, if you were launching a streaming service you would get a license for a very specific type of use, and then if you wanted to do something new, if you wanted to do a bundle deal with a carrier or you wanted to embed music on a mobile device so that when the person bought the mobile device and they launched the app, maybe they didn't have a good connection, but they can start hearing music immediately and then as streaming connectivity improved they could get streaming. All of those activities required that you went back to the licensor, and you had to negotiate, and you had to pay more money. I

think now the issue is with AI, and when we use the term AI you can talk about whether it's creation of music, whether it's the application of an algorithm for delivering music to an individual; there are going to be certain issues that involve more surrendering of control by a copyright owner.

But anytime you are asking a copyright owner to surrender control or anytime a copyright owner believes they are giving up control, it's the job of a lawyer for a copyright owner to not give that up willingly or easily because giving up control is potentially giving up revenue, both current revenue and future revenue. And so, I think the issues alluded to by Tracey were what are the economic deals going to be? If you're doing a license for training or you're doing a license for output, is it going to be a flat fee deal? Which is a form of giving up control, because if you get a flat fee deal, you're not sharing in a potential upside. And that's something that as a copyright owner you typically want to share on the upside. You negotiate deals so you get a floor of a minimum payment, and then you have the upside as, say, revenues grow for your licensee.

There's also the issue of if you are, let's say, an entrenched copyright owner with a large market share; let's say your market share is approximately 30% today, you may say I need to get a share of all of the revenue. So, pick a number; 20% of all of your revenue will be used to create a pool. And I as a current 30% owner may need a minimum of 27% of that pool. You give yourself a little leeway. But five years from now, what's to say that you're still going to be at 27%? Maybe you're only going to be at 15%. But as a copyright owner, if you have power today you can entrench yourself by guaranteeing a certain minimum market share, and that's a very common provision that you would see in streaming deals. And so, how does that work when you've got a situation where existing copyright owners may be losing control and losing market share? New means of creation of content, which also leads to a reduction in market share, creates this type of content that is not human-created, or maybe it's supplemental to human creation, and that is also going to result in decreased market share.

I have sympathy for the lawyers on the other side of the table. I used to be one, and your job is to zealously represent your client. Representing the DSPs, though, you want maximum flexibility. You do not want the constraints to have to go back to the licensors every time you want to iterate on a product or come up with a new type of solution or new type of music creation that would be involved. And there is this tension that, Bill, I don't think it's been figured out, and I don't think it will be figured out. I think that part of the job for the people in this room is to always engage in that push and pull between your clients, whether it's a licensor or a licensee. So, it's not resolved and I don't think it will be anytime soon.

Bill Rosenblatt: So, before I ask others to jump in, I just want to note one thing. We do have a heavy representation of music people on our panel, and Napster was about music. And so, anyone who was involved in that was involved with music. But I would like to encourage our panelists to think more broadly than – I mean, music is kind of easy to talk about because you have these atomic units of licensing, as it were – songs, compositions – but let's try and broaden it out as much as we can. So, who else would like to chime in? Howie?

Howie Singer: Yeah. I think one of the biggest differences to today from the Napster era goes back to your graph, Bill, that you showed, which is that the industry made the

most money ever during the CD era. So, money was getting printed. It was being used to pay for trashed hotel rooms and drugs and executive bonuses of private jets, whatever you want to pick. And so, the industry was fat and happy. So, then when people like me and Larry Miller showed up in the mid-90s and said, "You need to distribute music over the internet," and we played the music for them, the answer we got, this is a quote, "No one's going to listen to that shit," right? And every company that makes money hand over fist, one could argue that deals are there to be made on AI with the movie studios and animation because the movie business is suffering right now. And the [music] industry, although streaming has returned it to growth, not to the levels if you count for inflation of where it was at the peak of the CD era, but we've had a decade of progress in the music industry. Good news for our music business students at NYU.

There has been that progress, but all the music companies know something that they didn't know at the height of Napster and how much damage was going to be done in terms of losses of revenue, is that growth is slowing. In the developed markets, growth of streaming is slowing. And they're all aware of this. They know the growth is coming from places like sub-Saharan Africa and Asia and other territories, but in Germany, in the U.S., U.K., it's slowing, and that consciousness of weakness is no different than any other business that's successful. They're going to be more apt to move to the next thing, whatever that next thing is, when the business is suffering. It was true when MTV came around. It was true when the CD started, and it's going to be true today that deals are more apt to be made on licensed uses of AI with, I would argue, probably fewer restrictions than Gary cited in the past, because they know they need to make that deal and move to the next thing because of the weakness in the business itself.

Bobby Rosenbloum: See, I would like to think that's true, but there are a few things when it comes to some of these use cases that have made it, just as a practical matter, very difficult and challenging to license. One is that, so with music in particular, and not to dwell on music but I think it's an interesting use case because of how complicated it is, is that, as you all know, you have two copyrights in any piece of music; you have the sound recording and you have the musical work. The challenge is that as long as I've been doing this, and it's still true today, I mean there's been literally no progress, in fact it may have gone backwards, at no point is there agreement between the labels and the music publishers that control those two rights as to how much each one of them should be worth. And depending on who you're talking with you're going to get different answers and different perspectives.

One of the reasons why all of these other formats that we've talked about have been able to survive is because there's been a statutory royalty, a statutory license that you can get on the publishing side. And so, as complicated as it was to get some of the rights that you need, primarily on the sound recording side for these new services, whether it's been digital, like CD, DAT,[24] et cetera, downloads, or streaming, they've all been licensable under Section 115[25] when we're talking about audio. The thing with these AI uses, if you're talking about if a license is required for training an AI model, for example, that's

[24] Digital Audio Tape, a format that Sony launched in 1987. DAT was never popular as a consumer music format but was used in recording studios and as a computer data backup medium. *See History of the Brilliant Digital Audio Tape (DAT) Format*, VINTAGE DIGITAL, https://www.vintagedigital.com.au/blog/digital-audio-tape/ (last visited Nov. 24, 2025).

[25] 17 U.S.C. § 115, the compulsory license for reproduction of musical works.

not going to be susceptible to any current statutory license. And so, one of the challenges is figuring out within the industry how do you allocate the pie?

And that's something that has been challenging with most use cases, and with many of them what has to happen is you have to launch a business where you don't need everybody because it's almost impossible to get everybody. It's why if you go to Peloton or to certain gaming platforms, et cetera, there might be a good amount of music but it's not ubiquitous. It's not like Spotify. And one of the challenges with AI is, is there going to be a world – and this gets back to what one of the earlier panels was talking about, and the challenge, the difference between either a compulsory license that's administrable through a collective or a fair use determination, or requiring direct arm's-length licenses, is whether it's even viable to get all of the rights that are required to have ubiquity.

And so, I think that – and you know, the challenge for that, interestingly, is that one rights holder is beholden to many others. If you're the label and you want your content to be available, unless the service can license all of the publishing rights you may not even be able to let your content be accessible on that platform. So, those challenges – so theoretically I think it's really interesting to think about what we might be able to do and what are the solutions, but practically we're going to need to think about how that works from a rights standpoint, because to try to get everyone to agree in this space has been really challenging over the years.

Bill Rosenblatt: All right. I'd like to shift the focus a little bit now.

Gary Greenstein: Bill, can I just –

Bill Rosenblatt: Sure.

Gary Greenstein: One comment to Howie. Do you think that the slowing of revenue growth is at all a result of copyright owners being too restrictive and not allowing innovative models to develop and flourish? In the DSP space you have consolidation with a handful of companies, some of the largest companies on the planet. And I think one can hypothesize that because copyright owners require extensive negotiations, often large MGs, minimum guarantees, to be paid upfront, it is very hard for new entrants, for startups to enter the space, and they may be threatened with being sued out of existence. And if copyright owners had less control, would you have more innovation, new products, new services, that might ultimately result in greater revenues?

Howie Singer: I mean, it's possible. I do not perceive that the current wave of streaming services and alternatives to that have been stymied as much as you might imply, right? I think that they've been able to get other features there. I mean, there have been issues. We can go to the bundling side and publishing and talk about that side of things where the publishers are upset about how the rates are set for Spotify, but I don't think that's it. I was really focusing on these AI models, and I don't think it's necessarily the case that the labels are standing in the way of those. You have to have somebody on the other side of the table that wants to negotiate with you, and at the moment some of these parties do not believe that they need licenses because they are arguing that it is all fair use and transformative.

And to Annemarie's point, one judge said yes but one judge – two judges said yes but there are 50 cases at the moment, not just on music but authors and others. And so, we don't know how it's going to turn out. I could remind you that there were a whole bunch of cases where the music industry lost on file sharing until we got all the way to the Supreme Court and new theories were brought to bear.

Annemarie Bridy: They won right away in *Napster*. It was an injunction in the district court.

Howie Singer: Yes, and then there were a whole bunch of other cases that led to Grokster.[26] I'm the non-lawyer here, but it took a long time until the Supreme Court said that there was this concept of encouraging people to infringe[27] that didn't exist before. There were lots of cases where the music industry lost and they said that it is the users who were guilty and not the software companies, right? During that intervening decade. That's why it took 11 years for that to be resolved. So, yes, we have decisions one way but we're going to have other decisions the other way. I mean, in the Midjourney case[28] they published pictures of Batman that the model was producing. I don't know how you say that you're not interfering with the marketplace when you're producing images of copyrighted material out of the model. So, that's what I think. I'm not a lawyer but we'll see what the other cases rule on those cases. And we don't know yet how it's all going to turn out.

Annemarie Bridy: No, we don't. One of the distinguishing factual points that will maybe matter legally in these cases is that some of them involve infringing outputs and others do not.

Howie Singer: Yeah.

Annemarie Bridy: Right? Whereas in some of these cases –

Howie Singer: And those two that were just decided did not.

Annemarie Bridy: Did not, right. The question was just is training a fair use? And there were no outputs in the record to reflect any copyright actionable stuff.

Howie Singer: Right. And the judge said you should have presented that if you had them.

Bill Rosenblatt: You should have presented evidence of –

Howie Singer: Evidence of the outputs, yeah.

Annemarie Bridy: Yeah. No, and certainly the parties would have. But there are outputs in other cases too, not just image cases. There are outputs in some of the news publisher cases against OpenAI.

Howie Singer: Yeah.

Bill Rosenblatt: All right. So, I wanted to shift the focus. We've been talking about licensing deals. We've been talking about label-publisher [royalty] splits and compulsory licenses, things like that. When we were discussing this panel, Annemarie, you talked about the industry navigating changes by learning what the public wants, what the user wants. So, how would you say that happened back 20 years ago or so, and how do you kind of see any lessons that might be drawn, positively or negatively, for how that's going to happen now? Because we're not there yet with AI, obviously.

Annemarie Bridy: I think of Napster as a grassroots, bootstrap technology. It was two kids in their dorm room at Northeastern University in Boston who just came up with this technology. It was immediately appealing. It was software that could be freely distributed. You could run it on your home computer. It was like a tsunami overnight. It was viral. And it obviously filled a consumer need. It would not have taken off in the way

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[26] Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd., 545 U.S. 913 (2005).

[27] The inducement theory in *Grokster* that Justice Souter borrowed from patent law, 35 U.S.C. § 271(b).

[28] Warner Bros. Entertainment Inc. v. Midjourney, Inc., Case No. 2:25-cv-08376.

it did if it hadn't spoken to something that was really profound in what music consumers were experiencing at the time. And part of that experience was not wanting to buy CDs for $21.00 or whatever they were going for[29] at the time when you only really wanted to hear one song.

The unbundling aspect was a source of great market demand that had been pent up. Also, there was a social sharing aspect. Part of the joy of Napster and all of those peer-to-peer file sharing systems was that you were swapping songs with your friends, and you could make mixtapes so much more easily than you could when you were using a cassette recorder and your vinyl albums. It just allowed people to interact with music a lot more intimately and casually. It allowed sharing. It allowed the single track access to music that you wouldn't otherwise have had. I mean, remember in the days of vinyl there were 45s; you could get singles. But on CDs you couldn't really get many singles. They were a very rare thing, right?

With vinyl singles, consumers had access to something that then got taken away from them with CDs. So the MP3 file format was like a miracle. That compression algorithm–the dawn of MP3–changed everything. But I think it took Apple and Steve Jobs actually to really bring the music industry around, because he convinced the music industry to say, okay, we're getting killed by piracy. What if we could just allow downloads for $0.99, right? And you could put them on your iPod, and Oh My God, you could have 2500 songs in the palm of your hand. I mean, that is just so appealing. And so, it was really the intervention of Steve Jobs and the iPod that brought the music industry into the age of portability for music. And then there were all of the questions around DRM, digital rights management, and crises in the music industry over that. And digital rights management for music didn't really take.

Apple was also instrumental in convincing the labels to drop DRM.[30] We can probably have arguments about whether that was good for the industry or not. But the industry also had the self-inflicted wound of the Sony rootkit incident,[31] which made DRM arguably criminal. So, that was also a problem. The music industry didn't handle that so well. Apple was the catalyst that really helped the music industry survive what might otherwise have been a real cataclysm. You all are much closer to the business than I am, and so you might have a different sense of that.

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[29] CD retail prices averaged $19.23 in 1999, when Napster launched, or about $38 in 2025 dollars. *See* Marc Hogan, *How Much Is Music Really Worth?*, PITCHFORK, https://pitchfork.com/features/article/9628-how-much-is-music-really-worth/ (last visited Nov. 24, 2025).

[30] Apple phased out DRM in its iTunes download service between 2007 and 2009. *See Apple ends DRM on iTunes and revises prices*, WHAT HI-FI?, https://www.whathifi.com/news/apple-ends-drm-itunes-and-revises-prices (last visited Nov. 24, 2025).

[31] In 2005, a researcher discovered that certain CDs from Sony BMG Music, then one of the major record label groups, contained a form of DRM software that installed a "rootkit" (piece of software hidden inside a PC's operating system kernel) that compromised the security of the user's PC in order to inhibit copying music from the CD onto the PC's hard drive. This led to a scandal regarding the invasiveness of DRM technologies for CDs, which led to the major labels withdrawing all such technologies from the market. *See Sony BMG Litigation Info*, ELECTRONIC FRONTIER FOUNDATION, https://www.eff.org/cases/sony-bmg-litigation-info (last visited Nov. 24, 2025).

But I also remember Steve Jobs saying the solution to peer-to-peer file sharing and piracy was not going to be coercive; it was going to be behavioral, and over time there would be change. If you give consumers what they're wanting and what they're demanding, and they can get it for a reasonable price, and it's accessible, then the behavior will change.[32]

Bill Rosenblatt: So, you know, I find this kind of analysis fascinating, because I'm parenthetically a big fan of Larry Lessig's four factors [of regulation], the Pathetic Dot Theory, which I'm sure you're familiar with: the market, the technology, behavior, and the law.[33] And he uses different terminology, but those four factors and how they interrelate to one another I think is fascinating. So, what I hear you saying, Annemarie, is that Steve Jobs and his people kind of figured out what the public really wanted and figured out how to get it to them in a way that rights holders were comfortable with after a certain point in time.

So, my question to the panelists is, and I'm going to open it up to the audience, any ideas on what that looks like for AI, given that, as we've all been saying, AI is a much broader set of technologies than file sharing? It's transformative versus not transformative and so on. What kind of shape might that take, someone coming along and figuring out what users want with AI technology and making it work in a way that rights holders can get comfortable with? What does that look like? Or maybe the answer is I don't know yet, it's too early. But any thoughts on that?

Howie Singer: I'll take a crack at it.

Bill Rosenblatt: Howie?

Howie Singer: I think that one of the things that fans want is a connection with the artist, right? They want to know that the artist had something to do with this, right? And to me, the best use case that one can point to about AI is Randy Travis, who a decade ago lost his voice.

Bill Rosenblatt: Country [music] star, for those of you who don't know.

Howie Singer: Do A Google lookup, CBS News. You can see a news story about him working in the studio with his engineer to recreate his voice so that he could record new music.[34] Now, by the way, his band is touring again. He couldn't tour because he cannot speak in sentences. He can say yes and no, he can answer questions, but he can't perform any longer, and now his band can make a living because they're on tour with that. I think fans will go for that. One of the keys, and we heard some of it earlier about this whole issue of authenticity and so on, I don't think the key question is, is this song AI or not or where do you draw that line?

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[32] *See* Steve Jobs, "Thoughts on Music" (Open Letter), MACDAILYNEWS (Feb. 6, 2007, 2:59 PM), https://macdailynews.com/2007/02/06/apple_ceo_steve_jobs_posts_rare_open_letter_thoughts_on_music/ (last visited Jan. 9, 2026) (stating that "DRMs haven't worked, and may never work, to halt music piracy").

[33] LAWRENCE LESSIG, CODE AND OTHER LAWS OF CYBERSPACE 85-90 (Basic Books, 1999).

[34] Lee Cowan, *More than a decade after a stroke, Randy Travis sings again, courtesy of AI*, CBS NEWS, https://www.cbsnews.com/news/randy-travis-sings-again-courtesy-of-ai-where-that-came-from/ (last visited Nov. 24, 2025).

As I agree with Annemarie, it's going to be really hard to know. I want to know, "does the artist approve," right? I wanna know if this version of Billie Eilish singing in one of the Indian dialects, that she's okay with it, that she was okay in the studio or her label was. So, I think this issue of "Is this authorized?" is almost going to be more important than whether it is [AI] or not. So, that gets to something about labeling, right? That Spotify or Deezer or Apple or YouTube Music has to be able to say, "This is the AI stuff that artists have said is okay with them."

Gary Greenstein: One of the – AI is a very broad topic obviously.

Bill Rosenblatt: I consider it to be an almost meaningless term.

Gary Greenstein: If you're saying what does AI mean for the future? Is it generative AI for creating new works? Is it playlisting? Is it providing information for facilitating making of movies, ease of adding characters, et cetera? One thing that I think would be interesting is for the creator economy, particularly for younger people who get inspired by music and want to do something with music, so rather than just creating a dance video or lip syncing, would be can they create something new and novel by using AI to say, take this lyric and change the speed or do whatever the equivalent of having to study to be an audio engineer, creating something new and having that go viral, either just with their friends or their family or more broadly on the internet. So, adding to creativity I think may be an opportunity of the way we're thinking about well, what's the impact going to be on music?

Bobby Rosenbloum: Yeah. I would say I agree with that. I think that one of the interesting things we talk about AI, because Howie's talking about for example, voice manipulation and voice skinning, and that was a big area. Grimes, you probably all saw, authorized one of the first artist-sanctioned vocal skins, that you could record your own song and then make it sound like it was her singing.[35] And that's one use of AI. You also could think of uses that allow users to create their own remixes or new versions of existing songs, and there are things like that and then there are generative AI.

So, for the uses that are playing off of an existing recording or composition, it's easy to think of business models around that and we're working on some things in those spaces. But I think the challenging area is the world of generative AI, because from what we've understood from a lot of the companies in the space, you really can't tell when you form an AI model, when you're creating the model, if there's an output, did it use one song or another or which were the components that went into making it? So, how do you then divide up royalties? Is it only based on – does everyone who licensed their content for the model get a piece?

And then how is that done? Is it based on market share? Is it based on relevance? In other words, is it based on volume of songs that you've licensed, or does it matter what the market share of those songs you licensed? There's so many different ways you could think about it, but I think invariably it's going to have to, Bill, be somewhat – there's going to be an abstract connection. It's not going to be scientific. Like you can't say this label gets this much out of it based on the use of their content, just given the nature of the technology. And then the bigger challenge is the fact that the outputs of these tools, at least under current law, are not copyrightable. So, if the service that is the licensee says

[35] Vanessa Romo, *Grimes invites fans to make songs with an AI-generated version of her voice*, NPR, https://www.npr.org/2023/04/24/1171738670/grimes-ai-songs-voice (last visited Nov. 24, 2025).

all right, well I'm going to share revenue with the industry, that's one thing. But if that song then gets used by somebody else, it could be in the public domain and not protectable and then no one may get paid from it. So, I think those are a lot of interesting questions that we're going to have to grapple with.

Bill Rosenblatt: Yeah. And I think you've hit upon a topic for next year's panel at next year's conference, the whole attribution thing.[36] So, I want to open it up to the audience now. If you have any questions, please go up to the mic. Yes, please. I want to make sure we get time for the audience Q&A.

Audience Member 2: Hi. I'm Gisele Ayala.[37] Thank you for being here. I have a comment probably to invite you to comment on it. I was thinking about the uses of AI, and I think people have gotten very excited when they can make a video of themselves. So, I've seen a lot of Instagram, the versions of Ariel, right? How Ariel will look if she was a teenager or how one of these princesses will look if they were rappers or things like that. So, that got me thinking. I feel like in the world of creativity and AI, the companies have been very scared about losing control.

They want to be the ones deciding how the story will go, what you would like to see users [do]. So, perhaps for purposes of copyright and keeping control, what we need is [to] invite the user to interact. So, they want to be part of the creative process. So, perhaps the issue is not we're losing our rights, but perhaps the issue is what about inviting the consumer to be part of the creative process and perhaps with contracts and terms of conditions? We keep our rights, but now the consumer who wants to have part of that creative process and will get involved. And maybe there's going to be better administration of rights of having your own versions of different movies or having your own versions – and I've seen that a lot in the toy industry.

There's been different companies that have developed AI tools to invite children to be part of the creative process, and they invite the children to create. So, that was kind of like my comment because you say how the public, what the public may want and how that maybe it's related with copyright.

Bill Rosenblatt: Any responses to that?

Annemarie Bridy: I mean, I think it goes back to what Gary – I think Gary, it was you who was talking about control and sort of the anxiety that right holders have in letting go of control of their IP. And there are also issues around the worry that you will not just get the innocent, sweet versions of Elsa; you'll get other stuff that a rights holder would reasonably be concerned about in terms of the quality of the brand and that kind of thing. But responsible AI developers also have safeguards around adult content. But I do agree that generative AI puts so much more power in the hands of consumers who really do want to interact creatively with these characters.

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[36] "Attribution" in this context means attributing AI training data to the output of a generative AI in proportion to the training data's influence on the output, so that, for example, holders of rights in that training data can be compensated accordingly. *See* Cherie Hu, Alexander Flores, Yung Spielburg, *How Music Ai Attribution Actually Works*, WATER & MUSIC, https://www.waterandmusic.com/music-ai-attribution/#:~:text=Attribution%20—%20or%20the%20linking%20of,elements%20were%20borrowed%20or%20transformed? (last visited Nov. 24, 2025).

[37] OFICINA LEGAL DE GISELE AYALA, https://giselleayala.com/ (last visited Nov. 24, 2025).

And it does seem like there could be really productive ways to loosen the reins a little bit, to have sandboxes or playgrounds that have parameters and some restrictions on them, but that still allow a greater degree of experimentation than currently is envisioned when it's just like, "Here's the movie. You watch it," right?

Bill Rosenblatt: Okay.

Audience Member 3: Hi. I'm Kashi Shamsi. I'm a 3L at Brooklyn Law School. So, I guess my question surrounds Timbaland recently, he has an AI entertainment company called Stage Zero, and he signed an artist named Tata. And there's a clip around going where he shows us what Tata kind of can do. And in that clip, you can hear Tata singing, but it's a combination of a lot of voices. And I personally can tell as a singer that Katy Perry's voice is there, Ariana Grande's lick is there. Like I can tell what Tata has gotten from, and that's not necessarily a right that artists have to their vocal licks and style. So, how do we combat that type of thing with generative AI in this industry? Because that's part of the industry.

That's part of the fan connection is you know, Ariana Grande has a specific riff that we all know. She says "yeah." She does like – I can't do it, but you know what I'm saying. She can do those things, and we all know that's Ariana Grande, almost like a trademark of hers. And there are other artists who attempt to and add to and stylize, and that's part of the culture of creation. And if we start restricting that too much and saying now you can copyright these amazing styles, then you restrict other artists from adding to the style. So, now it kind of restricts the creation aspect with generative AI, and how can we combat that, I guess is my big question?

Bill Rosenblatt: So, one thing to recognize is that this is a copyright conference –

Audience Member 3: Yeah, right.

Bill Rosenblatt: And this is a copyright panel, and some of what you're talking about goes outside of the realm of copyright. But beyond that, does anyone want to –

Annemarie Bridy: Well, there's the NO FAKES Act[38] which would create in Title 17, which is the Copyright Act, an intellectual property right (that's not a copyright) in digital likenesses, including voice likenesses. And I think actually the RIAA is a great supporter of this bill. And so, there is a sense in the policy world that people do need to have control over their likeness. Not styles of singing or something like that, but their actual digital likeness, whether it's a visual likeness or their voice likeness. But it really does live more appropriately in the zone of the right of publicity.

I think it doesn't really belong in the Copyright Act because your likeness is just a fact about you, and facts are outside the scope of copyright. We do know that as copyright lawyers. So, I think it does more appropriately belong to the right of publicity, but there is consensus growing in this space that there does need to be control over that with exceptions, right? With certain exceptions for parody and the First Amendment, because anytime you're giving people control over other people's expression there are First Amendment interests there.

Gary Greenstein: But again, I think that's the copyright industry trying to grab too many rights, and I'd be very careful about extending rights to style or the form of singing. I think that's a terrible idea, personally. Maybe I would have thought differently 19 years

[38] S.1367 - 119th Congress (2025-2026): NO FAKES Act of 2025, S.1367, 119th Cong. (2025), https://www.congress.gov/bill/119th-congress/senate-bill/1367.

ago when I was on the other side of the table, but now I just think that's a mistake. So, the way that Ariana Grande sings I don't think should be protectable, and if she can do it and people want to hear her, that's great. But if other people want to sing like Elvis and mimic him or they want to sing like Bruce Springsteen, they should be able to do so.

Audience Member 3: But in terms of generative AI, it's like they're taking her style and then making it a new artist and then saying that's the new artist but it's not.

Gary Greenstein: Yeah. But then the question is, is there a violation of a 106 right?[39] So, did they reproduce a copyrighted sound recording or did they do something else that enabled them to either mimic or reflect a style of someone else? Could you do that through coding that didn't use a copyrighted work?

Howie Singer: Or are copies of her recordings still in their model? Which we heard earlier said yes, there's a discussion whether that's a true statement or not since it's been transformed into parameters. Although I could argue every coding scheme transforms audio into parameters that get stored differently.

Bill Rosenblatt: All right, thank you for that. We need to stop now. But thanks to Gary, Annemarie, Bobby, and Howie for being with us this afternoon.

[39] 17 U.S.C. § 106.