

STATE OF MINNESOTA  
COUNTY OF CARVER

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FIRST JUDICIAL DISTRICT  
DISTRICT COURT  
PROBATE DIVISION

**Court File No. 10-PR-16-46**  
**Judge Kevin W. Eide**

In re:

Estate of Prince Rogers Nelson,

**DECLARATION OF L. LONDELL MCMILLAN**

Decedent.

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1. My name is L. Londell McMillan. I serve as Petitioners Sharon Nelson, Norrine Nelson, and John Nelson estate and business manager and advisor.
2. I make this declaration in support of Petitioners' Petition to Permanently Remove Comerica Bank & Trust, N.A. as Personal Representative and the reply memorandum filed contemporaneously with this declaration.
3. I am an attorney, but I have not been retained as legal counsel by Petitioners and do not represent them as legal counsel in this matter.
4. I was Prince's attorney then manager and advisor for over a decade.
5. My business success with Prince is widely known. Attached as Exhibit 1 to this declaration is a true and correct copy of a February 22, 2005 Harvard Business School Study discussing my role with Prince and his music.
6. In my role as estate and business manager, I must be able to review certain confidential Estate information to properly advise the Petitioners.
7. Prior to Comerica's appointment, I had positive communications with Comerica and advised the Petitioners to select Comerica as a Co-PR. Comerica indicated that it wanted me to assume a co-personal representative role with the Estate. Shortly after Comerica's

appointment, Comerica became distant and hostile towards Petitioners and me, which made it close to impossible for me to advise the Petitioners.

8. Specifically, under the Court's Orders the Heirs have the ability to object to certain transactions in excess of \$2 million.
9. The Court has directed Comerica to release this confidential information to the Heirs' advisors upon the signing of a non-disclosure agreement ("NDA").
10. [REDACTED] but Comerica refuses to negotiate reasonable terms, thus prohibiting me from signing an NDA.
11. The Order dated May 18, 2017 directed Comerica to permit me to review certain information. It states: "L. Londell McMillan shall enter into an acceptable non-disclosure agreement before being provided the proposed entertainment industry agreement." (Order, p. 2 (dated May 18, 2017)).
12. For example, [REDACTED]  
[REDACTED] (Bruce Dec. Ex. M, p. 1). In light of prior misrepresentations and false claims against me, I do not trust Comerica to not later claim t [REDACTED]. [REDACTED]  
[REDACTED]  
[REDACTED] Comerica has used this issue, among others, to refuse to permit me to review confidential information and advise the Petitioners (who have pleaded with Comerica on numerous occasions to allow me to review confidential information and offer input).
13. My proposed revisions to Comerica's so-called "form NDA" were sent to Comerica's counsel in May 2017 promptly after receipt. There were numerous other restrictions

unrelated to non-disclosure such as a non-disparagement provision. Those revisions are attached to the Bruce Declaration as Exhibit M.

14. Comerica did not meaningfully respond to my draft NDA. In effect, they have consistently blocked me from information, reportedly disparaged me in meetings and hindered my role as Petitioners' advisor.
15. If my pledge and assertion to the Court was not enough to prove I will keep information confidential, [REDACTED], which is attached to the Bruce Declaration as Exhibit N.
16. I have requested certain revisions to Comerica's purported "form NDA," in part, because they asked for inappropriate terms and I do not think that trusting Comerica is advisable. Comerica's actions with respect to me and the Petitioners have eroded any trust I may have had in Comerica.
17. I do not believe Comerica will agree to an NDA with me, in part to stymie the Petitioners and prevent having a knowledgeable individual overlooking their services and work on the Estate. I believe that the Court must take some action that either compels Comerica to resolve the NDA issue or allows me to review confidential information that Comerica has refused to provide.
18. I have also been made aware by the Petitioners and observed from Comerica, that they view Comerica as adverse to them, as they have expressed such frustrations almost daily. I have advised the Petitioners to try and work amicably with Comerica. After a certain number of meetings with Comerica, the Petitioners concluded that working with Comerica was draining, belittling, stressful, and damaging to them and the Estate. Sharon

Nelson raised the issue of physical confrontations and severe headaches resulting from the Heirs' meetings.

19. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

20. Mr. Carter's assertion with respect to his conflicts of interest is false and text records prove it. [REDACTED]  
[REDACTED]  
[REDACTED] These initial communications raised my suspicion that Mr. Carter's Spotify position creates a conflict of interest and that [REDACTED]  
[REDACTED].

21. I have known Troy Carter for many years. I worked with him early in his career, long before Spotify, and even long before his representation of Lady Gaga.

22. As an entertainment industry professional and based on what I have witness in this Estate, it is impossible for me to envision how Mr. Carter can both represent the Estate and Spotify without conflict. Spotify competes in the marketplace with other streaming services, [REDACTED]

23. In addition, I believe that Mr. Carter cannot independently and zealously negotiate on behalf of the Estate in licensing Estate intellectual property to the record labels because

he must, in his position with Spotify, engage in negotiations with those record labels regarding other artists and intellectual property to benefit the business of Spotify.


24. There is too much potential for relationships to interfere in the negotiations, creating a conflict of interest. I believe the proposed terms of the [REDACTED] [REDACTED] is an example of one such conflict of interest. In the alternative, it demonstrated a lack of optimizing the assets and leverage of this very special Estate.
25. Relationship conflicts often lead to the refusal to bring legal claims to protect and leverage the interests of parties (in this case the Prince Estate). These conflicts are certainly what Prince fought against much of his career. These conflicts led to unreasonable controls and limitations which we saw play out with Prince by his scrawling "Slave" on his face.
26. Contrary to another one of Comerica's false assertions, [REDACTED] [REDACTED] [REDACTED].
27. Further, [REDACTED] [REDACTED] [REDACTED].
28. [REDACTED] [REDACTED] [REDACTED].
29. Conversely, during my time as an entertainment advisor to the Estate, [REDACTED] [REDACTED] [REDACTED] [REDACTED].
30. I have witnessed, first-hand, Comerica's lack of knowledge and expertise with respect to the music and entertainment matters, fundamental to the administration of this Estate in numerous ways including, without limitation, music licensing, copyright and trademark

enforcement, contract negotiations, publishing administration, content distribution, digital rights management, litigation and conflict resolution.

31. I do not believe Comerica's continued involvement in the Estate will be beneficial to the Estate or to Petitioners and agree that with Petitioners that Comerica should be replaced as personal representative.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Date: November 16, 2017

Signature: 

Signed in New York County, State of New York



## H A R V A R D | B U S I N E S S | S C H O O L

9-805-084

FEBRUARY 22, 2005

CONSTANCE F. BAGLEY

DREW DIXON WILLIAMS

## L. Londell McMillan (A)

L. Londell McMillan pulled a pair of headphones out of his carry-on bag, as the plane returning him to New York City banked eastward revealing a stunning view of the Minneapolis skyline. He pressed play on his iPod and closed the window, as the landscape disappeared from view. As he flipped indifferently through the pages of the October 2002 issue of *Northwest Airlines' World Traveler* magazine, he focused on the music in his headphones, the latest offering from his friend and longtime client, Prince Rogers Nelson—the artist known as “Prince”. McMillan and Prince had spent several days contemplating a strategy for the release of *Musicology*, Prince’s newest album-length recording. As McMillan reflected on their discussions, the infectious music in his headphones underscored the enormous commercial potential of this project. In order to realize the full value of that potential, however, McMillan would have to work with Prince to craft and execute a carefully developed plan to market and distribute the album.

In the wake of Prince’s highly publicized exit from Warner Bros. Records in 1996, the career of the artist, who had changed his name from Prince to an unpronounceable symbol and painted “slave” on his face, had been followed closely by the popular press and the business media. McMillan had successfully extricated Prince from his multi-year contract with Warner Bros. after numerous other Hollywood and Madison Avenue lawyers had failed to do so. The artist, now known again as Prince, fiercely guarded his independence as an artist and as an entrepreneur. At the same time, he wanted as many people as possible to hear his newest material. Prince was concerned about what he and others perceived as an erosion in the quality of popular music, especially in the light of the widespread panic about the viability of the music business as a whole, in the face of digital piracy as well as exorbitant recording and marketing costs. In short, Prince was eager to make a big splash with his latest release.

Prince was planning the biggest tour in recent music history. But he and McMillan were forced to consider an alliance, however temporary, with a major record label to supplement or “augment” Prince’s efforts. Their dilemma was rich with irony. A handful of outspoken critics, Prince among them, had argued that the business practices of the major labels themselves had undermined the quality of contemporary music and that as a result of the underlying inequities of their business model, the music business itself threatened to implode.

Short of such an apocalypse, however, the major labels remained the only game in town. Given Prince’s interest in influencing the pop culture landscape at what he perceived to be a critical juncture, McMillan and his client could not easily dismiss the incredible marketing and distribution resources of the major labels. A major label release supported by the aggressive press and touring

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Professor Constance F. Bagley and Drew Dixon Williams prepared this case. HBS cases are developed solely as the basis for class discussion. Cases are not intended to serve as endorsements, sources of primary data, or illustrations of effective or ineffective management.

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EXHIBIT

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campaign Prince had planned could restore his client's rightful place as an enormously influential pop icon and revitalize the Prince name as a brand.

McMillan also had the challenge of assuring Prince that the label "world" would, in fact, provide the support necessary to make *Musicology* a smash hit. There was also the potential to leverage that exposure to draw attention to Prince's creative and economic grievances with the pop music industry generally.

At the same time, McMillan wanted to ensure that any alliance with the major label would not dilute the power of Prince's example as an artist who had successfully challenged a major label, who had leveraged his fan base to become a highly profitable e-commerce entrepreneur, and who had realized creative control of his works. McMillan had coined the phrase "multi-delivery model" to describe Prince's ability to remain a free agent when deciding how to release his creative works. As McMillan contemplated the pros, cons and subtleties of a possible major label partnership, the last track on the *Musicology* album faded. He pressed the back button on his iPod to listen to the track again; it was appropriately named *Reflection*.

## The Music Industry in 2002

The environment in which McMillan contemplated the appropriate marketing and distribution strategy for Prince's next album was characterized by great uncertainty. In addition to his client's own fiercely independent and unpredictable inclinations, the music industry was in a state of flux. Record company insiders, music retailers, recording artists and their advocates, new entrants from other industries, outside consultants, and various pundits found themselves scrambling to anticipate the true implications of online music distribution, which, by most accounts, was wreaking havoc on record sales. Multiple players were eager to identify a new business model or, in the case of the record companies, to preserve an existing one, to capture significant economic value for themselves.

The "Big Five" major record companies accounted for more than 80% of all music sold in the United States. Universal Music Group was the largest, with gross sales in 2002 of \$6.3 billion. Sony Music, which posted 2002 revenues of \$4.8 billion, and Bertelsmann's BMG Entertainment announced merger plans in 2003. EMI was ranked fourth, and Warner Music Group, formerly a division of Time Warner, had just been sold to a group of investors led by Edgar Bronfman, Jr. and private equity investor, Thomas H. Lee.

## The Major Labels' Core Competencies

The major labels were very skilled at performing four functions: A&R, finance, marketing, and distribution.

### A&R

A&R (which stands for "artists" referring to the discovery of new talent and "repertoire" referring to the selection of hit songs) remains among the most revered functions in the music industry. The ability to consistently scout and develop talent represents one of the chief capabilities of any competitive record label. Using their cultivated network of relationships, their knack for anticipating which artists will resonate among the fickle but active pre-teen, teenage and early twenty-something



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record buying public, and their ability to predict which songs will be hits, A&R executives cull through legions of would-be stars and song submissions to identify and develop the most promising raw material.

In the first half of the twentieth century, song copyrights drove the music business. A handful of popular recording artists performed "standards" in various styles, generating record sales and, more importantly at the time, sales of sheet music. The term A&R, with its emphasis on repertoire, finds its roots in this early industry business model. In the sixties, the advent of television shows such as *Ed Sullivan* and *American Bandstand* and the simultaneous emergence of rock-and-roll ushered in the era of the rock star. In the eighties, the music video format heightened the potential exposure of a superstar artist or group. A&R executives faced the imperative to find artists who were a "complete package," that is, artists possessing the intangible "star quality" to appear as the featured performer in an endless bevy of music videos; the charisma to charm David Letterman, Jay Leno and MTV on-air personality, Carson Daly; and the talent to record and perform hit songs in front of a live audience.

The pressure was enormous but the payoff was great. Many of the chief executives in office in 2002 and almost all of the record executives of pop culture legend had been described as having "great ears," an industry colloquialism describing the ability to "hear" hits in their preliminary stages and to identify stars in their rawest form. Berry Gordy (founder of Motown Records), Ahmet Ertegun (the legendary president of Atlantic Records in the sixties), Clive Davis (founder of Arista Records and later J Records), and Antonio "L.A." Reid (founder of LaFace Records, former chief executive of Arista Records and now president of Island/Def Jam) were four examples of great A&R executives whose incredible batting averages earned them a place in the chief executive offices of multi-million dollar companies and in the pantheon of "great record men"—the ultimate compliment in the as yet, male-dominated music industry. The major labels concentrated almost entirely on top-line growth. Chief executives focused on making hit records in order to maximize sales, often at the expense of disciplined cost management.

The A&R function included not only the discovery of new artists, but also oversight of the technical aspects of the recording and production process. The A&R department at most labels worked closely with the production department to deliver commercially competitive, technically sound masters, which were subsequently mass-produced in the form of compact discs.

The "master" or "master recording" was the completed "die" or source from which all subsequent versions of a recording were cut. Record companies traditionally generated revenue by copying and selling this intellectual property in the form of compact discs (and cassettes and vinyl records). Record labels also owned the rights to any reproduction of the content embodied in these original master recordings, but would often grant permission for the duplication of the masters in exchange for licensing fees.

In short, A&R determined the content and character of a record company's product and delivered that finished product to be marketed and distributed by other departments at the label. In so doing, A&R represented one of the key drivers of a record company's competitive advantage.

### *Finance*

The labels also performed a critical financing function. The vast majority of new artists did not possess the requisite economic resources to pre-pay the manifold costs associated with making a commercially viable record and launching a career in the ultra-competitive popular music arena. As a consequence, the labels typically advanced these costs. The record companies provided the up-

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front funds to hire music producers and to pay for recording studios in both the recording ("cutting") and post-production ("mixing" and "mastering") phases of the process.

Music producers tended to be musicians and/or studio engineers, who collaborated with the artists to create the "sound" of the finished record. The right producer could effectively capture the sound of the "moment" in pop culture, so they were often quite expensive. "Super-producers," such as Dr. Dre (who produced hits for Eminem, Snoop Dogg, Gwen Stefani, Eve, Mary J. Blige and 50 Cent among others), demanded and received a share of the profits.

The label paid to generate marketing materials ranging from \$10,000 wardrobes, to \$20,000 photo shoots, to a handful of six-figure music videos. The labels also covered the costs of promotional tours, in which an artist traveled across the country (and in some cases internationally) to meet with radio station programmers and to perform for small groups of potential fans to create a "buzz" about their developing brand and to make consumers, programmers, and the media aware of the upcoming release of their newly-recorded material. The label also paid to manufacture and package the CDs themselves, and to distribute the CDs to retailers worldwide.

Throughout this process, the label also absorbed the artist's cost of living in order to permit him or her to work full-time recording, marketing, and promoting each new record. In exchange for this up-front financial support, the labels took a first lien on all revenues generated from sales of the artist's work and extracted stringent profit-sharing terms from the artists. From the artist's perspective, the profit sharing terms agreed upon were often onerous because they were defined at the beginning of an artist's career when he or she had almost no negotiating leverage.

In response to charges that the labels have taken unfair advantage of artists in the structuring of recording agreements, record company representatives have pointed out that the labels bear enormous risk by outlaying cash, often in excess of a million dollars, to launch each and every new artist. The low probability of success, they argued, justified the aggressive profit sharing terms. Furthermore, artists were free to exploit their brand (which the record companies developed at great cost) in other venues (namely touring and advertising) to generate a relatively unfettered source of personal income.

In theory, there was a free market for talent so each artist should have been able to negotiate for the best possible deal at a variety of different record companies before committing to any one label or any unduly rigid set of terms. The consolidation of the major labels over the course of the past decade had undermined the credibility of this position, however.

### *Marketing*

Record companies also performed a critical marketing function. Leveraging their star-studded rosters of artists and their sizable marketing budgets, the major labels facilitated access to promotional outlets across the country. Radio airplay was the most significant of these outlets. Radio programmers determined which songs would be included on the play-lists to receive airplay on their stations. Access to creative decision-makers in the radio industry had become increasingly hierarchical, after a major industry consolidation that resulted in the creation of huge multi-national radio conglomerates, such as Clear Channel and Infinity Broadcasting. In the past, a radio programmer who discovered a compelling new song or an exciting local artist on his or her own would most likely have had the autonomy to add the new record to the play-list. The artist might then have been able to build on the local exposure to create a nationwide following, programmer by programmer and station by station.

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The programming decisions in 2002 tended to be made from the top down. A handful of individuals were likely to determine which artists were going to go the distance and which records were likely to climb the charts. Based on these centralized programming decisions, radio programmers across the country were often compelled to fall in line. As a result, radio stations tended to lose their regional character. The playlist at almost any FM station was likely to be almost indistinguishable from another station in a comparable format (genre) of popular music.

This change made it imperative to have access to the decision-makers at the top of this pyramid. The major labels had this coveted access. They leveraged their own greatest assets, the marquis artists courted by the radio stations to appear on air and at station-sponsored events and their significant radio advertising budgets, to sustain it.

Access to the press, particularly writers at *Spin*, *Rolling Stone*, and *Vibe*, to television celebrities such as David Letterman and Jay Leno, and to the producers of *Saturday Night Live* was also both critical and largely controlled by the major labels.

The cost of producing music videos for MTV, a network that essentially functioned as "the most powerful radio station in the world," had skyrocketed. As MTV devoted less air-time to music videos in favor of original programming, such as *The Real World* and *Road Rules*, the labels (on behalf of their artists) tried to outdo one another with increasingly spectacular "clips," all produced in advance of any firm commitment to play or "rotate" the video on MTV.

From MTV's perspective, the model was brilliant. They received cutting-edge programming cost-free from record companies begging them to use it to increase exponentially the audience for their artists and thus the demand for their music.

This was not only onerous for the record companies, which had to incur the up-front production costs associated with generating content for MTV, but also for the recording artists. The artists had to re-pay (or "re-coup") at least a portion of these costs before they were able to realize any profits from the sales of their albums. Although most artists advocated for large video budgets (as an indication of the label's commitment to their careers), the artist typically had limited control over the budget, content, and promotion of their videos. In some cases, they had to fall in line if record company management decided to "switch singles" (focus on another song from the album as the lead promotional title) or to "scrap a video" and re-shoot another one from scratch for the same song. When this happened, the artist was still left to absorb the cost of an unused video, which could run well into six (and sometimes seven) figures.

Thus, it was highly unlikely that an independent artist or record company could compete with a major label in terms of access to radio or press marketing channels or that they could afford to produce a competitive music video even if access to MTV was somehow attainable. The majors clearly had a monopoly in this area.

### *Distribution*

The major labels also controlled access to traditional brick and mortar distribution channels. Best Buy, Tower Records, Virgin Entertainment, Warehouse Music, Hastings Entertainment, Trans World Entertainment, Anderson and Handelman dominated the market. Not surprisingly, all of these outlets cultivated close relationships with the major labels. In order to ensure consistently stocked shelves and a steady stream of customer traffic, the retailers negotiated orders from the labels months in advance of any given album release. Preliminary orders were placed well before there was any market reaction to a particular album. These orders were driven more by the relationship that existed between the retailer and the record company and by the power of each label's roster of known

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commodities, their superstar brands, than by the popularity of a particular artist. In essence, the labels reserved shelf space or "real-estate" in each record store on an ongoing basis. This real-estate was later allocated by the retailer closer to the actual album release date to given albums once the demand for each particular release became more clear.

The most coveted real-estate in a record store consisted of the "A-Racks" or stand-alone shelves near the entrance to each store and next to the cash registers, featuring "New Releases" or "Top Ten Albums"; the "End Caps," showcasing artists and new-albums at the end of each aisle; listening stations and display kiosks; posters inside the store and in the windows; and other point-of-purchase promotional materials. The major labels secured this real-estate in a number of ways. The labels gave certain retailers discounts on the wholesale price of inventory to provide an incentive to showcase their products in the stores. Co-op or "cooperative" advertising was another way that the major labels were able to leverage their size to ensure access at the point of sale. In the case of co-op advertising, the label and the retailer shared the costs of television commercials, print ads in newspapers and other periodicals, radio spots and other forms advertising to promote both the store and the new music.

Independent labels and artists, however well known, had almost no opportunity to secure coveted in-store positioning. Because of the impulsive nature of music purchases, this access could make or break an album. Consumers often walked into record stores humming the tune of a song but not sure of the name. Or they might remember the chorus of a single without being certain of the artist. Seeing a life-sized poster of the artist or, within a few feet of the store's entrance, seeing the album itself with a prominent sticker noting the name of a current hit single would often jog the consumer's memory.

Thus, even if an independent artist could overcome the enormous challenge at the marketing level and generate awareness through alternative venues, such as college radio, local press, public access television, the internet or some other combination of media, the major label's lock on the distribution channels made it difficult to convert this awareness into meaningful sales. A would-be consumer might walk into a Virgin Mega-store or a Tower Records with the intention of buying a CD released by an independent artist only to find one or two copies of it tucked away behind an alphabetized tab along with music of a similar genre. Less die-hard consumers might not make it that far. The Big Five record labels expended considerable resources to make sure that their customers did not have to work that hard.

## The Economic Model

Not unlike pharmaceutical companies, record labels invested substantial resources developing artists and their repertoire on the off-chance that an artist will hit and become profitable. The vast majority of their investments did not bear fruit.

The albums that "hit" generated incredibly high profit margins for their record companies, in effect covering the costs of all of the losses. The labels were thus given an incentive to swing for the fences in search of multi-platinum successes in order to cover skyrocketing marketing costs in the face of consolidation at radio and the MTV monopoly.<sup>1</sup> As a by-product of the profit-sharing structure, contentious relationships between labels and artists became the norm.

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<sup>1</sup> The term "gold" in the music business refers to unit sales in excess of 500,000 copies. The term "platinum" refers to unit sales in excess of 1,000,000 copies, and the term "diamond" refers to sales of 10,000,000 units or more.

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Artists often received a small percentage of the proceeds from their albums. The labels used opaque accounting practices, and the onus was on the artist to audit label to determine their fair share of the proceeds. The cost of an audit to the artist could range from \$10,000 to \$100,000. The labels often stipulated that no more than seven audits could be conducted per fiscal year. Furthermore, artists were not permitted to spread costs by auditing jointly.

If an audit revealed that the label has underpaid the artist, the label was required to pay the difference, but the standard contracts stipulated clearly that there was no interest owed nor was there any penalty associated with the misrepresentation of the money due. This "catch me if you can" posture was further supported by legal precedent holding that no fiduciary relationship existed between the label and the recording artist. A variety of artist groups were working to place greater accountability on record labels by imposing a fiduciary obligation to the artists on the record labels, but the Recording Industry Association of America (RIAA) continued to object on behalf of the labels.

This explains, in part, the ambivalence of some artists regarding the new distribution channel created by digital downloading. While some artists, including Metallica and Madonna, reacted negatively to this channel as a threat, others like Ani DiFranco and The Beastie Boys leveraged it to circumvent the structural inequities typical in artist/label agreements.

Because it was difficult for artists to realize meaningful revenue from the sale of their music, artists cultivated other revenue streams. Touring, publishing, and product endorsements had become the holy grail of artists fortunate enough to cultivate national and international name-recognition as a by-product of their recording careers. Very few artists were able to build and leverage such a brand, however. Artists like Britney Spears and Beyonce (both of whom secured lucrative deals to promote Pepsi among other products) were the exception, not the rule.

Most artists, even those whose albums broke even or generated profits for their record companies, were not well known enough to secure advertising deals or to sell out concert halls. These artists had an incentive to get back into the recording studio in order to work on a new album, thus triggering their next artist "advance," a recoupable payment to cover their living costs during the recording and promotions phase of a new album.<sup>2</sup>

Consolidation and the attendant bottlenecks created on the production, promotion and distribution sides of the industry increased the leverage of the major labels in negotiating deals with artists, thereby sweetening the returns for the Big Five. The early nineties saw a peak in industry earnings as a result of these converging dynamics. The emergence of the Internet as an alternative distribution outlet in the mid to late nineties threatened to undermine this model. The response of the record companies to this new technology ranged from denial to litigation to cooperation.

Ironically, the Internet-based distribution model would have little currency if the labels discontinued their expensive marketing campaigns to introduce new artists and music. At the same time, it was not likely that the record companies would continue to invest heavily to drive demand if they could not capture the value created by it. If music could be transferred or given away for free, where was the incentive to spend millions of dollars recording and marketing a new album and launching a new star?

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<sup>2</sup> The term "recoupable" refers to any money advanced by a record company in support of an artist that the artist must in turn, repay before he or she can participate in any profits.

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## The Digital Threat and Opportunity

Digital piracy began to shake the foundation of the music industry in the late 1990's with the popularization of Napster's peer-to-peer network. Even before the RIAA sued Napster, Prince and McMillan had filed a lawsuit in 1999 on behalf of Prince in federal court against a number of unauthorized Internet sites that unlawfully pirated his music and image.

In 1994, the director of the technology department at Geffen Records, a man named Jim Griffin, led a team that distributed a song by the mainstream rock band, Aerosmith, online. This became the first full-length song made commercially available on the Internet. Griffin was ahead of his time, five years to be exact. Unfortunately for the music industry, he was not part of the senior management team that guided strategy for Geffen (or any other record company) in those critical years. As such, the record industry sat idly by while outsiders shaped the changing face of their own business model.

Instead, the labels viewed piracy as a legal problem best handled by the lawyers in court. Acting on behalf of a number of labels, the Recording Industry Association of America successfully shut down Napster for contributory and vicarious copyright infringement<sup>3</sup>, but other more resilient peer-to-peer file sharing networks sprang up in its place. These included Grokster, Stream Cast, and KaZaa. Unlike Napster, which maintained a central server that contained an index of available files users could access to connect with other users to obtain a particular song, these other file sharing programs did not maintain a centralized set of servers. As a result, even if the software distributors closed their doors and deactivated all of the computers within their control, users of their software could still continue sharing files with little or no interruption. This difference could cause a court to characterize such programs as being more akin to the Betamax video recorder held not to be an infringing device<sup>4</sup> than the Napster hub-and-spoke system.

The labels had also tried suing some of the largest sharers of copyrighted files but that was a slow and laborious process that had failed to substantially reduce the millions of music files being illegally transferred every day. Efforts to persuade Congress to enact legislation banning the sale or distribution of peer-to-peer file-sharing technology had also faltered.

As legal successes continued to elude the record companies and their advocates, the labels began to explore a variety of strategies to participate in the digital downloading phenomenon in earnest. In January 2000, Time Warner, which counted the Warner Music Group among its key holdings at the time, announced a merger with America Online. One of the stated objectives of this merger was to leverage AOL's online community of 25 million users to deliver music content to its consumers. Sony Music Entertainment and Universal Records launched an Internet subscription service called Pressplay.<sup>5</sup> BMG Entertainment, EMI and Warner joined forces with RealNetworks to launch MusicNet, another subscription based service. None of these salvos bore meaningful fruit for the record companies, however, nor did they stop the proliferation of illegal file sharing services.

### L. Londell McMillan

L. Londell McMillan was founder and chairman of The McMillan Firm and NorthStar Business Enterprises, Inc. where he specialized in business, entertainment and sports law, business operations,

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<sup>3</sup> See Cosntance E. Bagley and Michael Roberts, *Napster, Inc.*, Harvard Business School Case No. 9-801-219.

<sup>4</sup> Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984).

<sup>5</sup> News.com, July, 8 2002

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and public advocacy. McMillan was the recipient of the prestigious MBBA Haywood W. Burns Lawyer of the Year Award in 2001.

McMillan's elite client list included legendary recording artists, professional sports clients, authors, executives and businesses in the communications, media, entertainment, retail and real estate industries. Over the years, he represented icons, such as Prince, Stevie Wonder, D'Angelo, Roberta Flack, Nas, DMX, Wesley Snipes, Spike Lee and many other notables. In addition, McMillan's firm represented media clients such as the New York Times, the Source Magazine and Radio One on entertainment matters.

Before founding his firm on Martin Luther King Day of 1997, McMillan established himself as a leading entertainment and media lawyer with the law firm of Gold, Farrell & Marks. During McMillan's earlier years as an attorney, he practiced corporate law at the law firm of LeBoeuf, Lamb, Greene & MacRae, L.L.P., where he counseled multi-media companies (including Time-Warner Cable and The Discovery Channel), private and publicly-held corporations, and financial institutions. Prior to that time he worked with Athletes and Artists, Inc. as a sports agent, while attending college and law school.

McMillan was born in the Tompkins houses of Bedford-Stuyvesant, Brooklyn in New York. He was an honors graduate of Brooklyn Technical High School, the School for Industrial and Labor Relations at Cornell University, and New York University School of Law. McMillan was an Academic All American mentioned student-athlete on the Cornell University football team. While in law school, McMillan was the Northeast Regional Director of the National Black Law Students Association. He was admitted to practice law in the states of New York and Connecticut.

McMillan had served on the Alumni Council of Cornell Board of Trustees at Cornell University as well as alumni boards at New York University School of Law. In December 1989, McMillan was the co-founder of the New York City Minority Roundtable for large corporate law firms, in association with the Bar Association of the City of New York.

An advocate of human rights generally and artists' rights in particular, McMillan was General Counsel and co-founder of the Artist Empowerment Coalition (AEC), a non-profit coalition of artists, musicians, performers, songwriters, educators and civic advocates, organized to use the gift to create music, art and culture to educate children, revitalize the community, as well as to promote changes in the relationships between artists and companies that exploit their creative works. McMillan regularly appeared on television and radio programs and participated in forums, conferences and government hearings regarding the business and impact of sports and entertainment. McMillan was also the author of "An Overview of the Wide World of Entertainment & Sports Law" and co-author of "Transactions and Aggregation of Capitol Resources for Financial Empowerment and Self-Determination," published in the *National Bar Association Magazine*.

## Prince Rogers Nelson

During the 1980s, Prince emerged as the musical prophet of the era, releasing a series of groundbreaking albums that both defined and captured the spirit of the times. His genre-bending songs sent shock waves through the music industry that were still reverberating twenty years later.

An extraordinarily successful and independent creative force, he grafted together pop, funk, rock, soul and a dash of folk to create an entirely new sound. His "Purple Rain" topped the charts for an astounding 24 weeks.

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With his early albums, Prince added an erotic charge to a mordant music scene, fusing sex, love and music together into a single entity. His subsequent albums pushed the boundaries of taste and imagination to new heights. He even flirted with psychedelia, as he created his own personal brand of intricate and idiosyncratic music, selling more than 100 million copies of his albums along the way. Few artists had been able to rewrite the rules, but Prince had always been a visionary first, and a musician (indeed a highly skilled one) second.

When Prince was a child and his parents split up, his father left the piano behind. Prince began picking out TV theme songs without a single lesson. He expanded his musical universe after teaching himself how to play guitar and bass. At the age of 18 he recorded demos for what would be his first album. The next year, he struck a lucrative deal with Warner Bros. that gave him unprecedented artistic freedom and a six-figure advance. Warner let Prince produce his own albums, making him the youngest producer in Warner's history.

Prince toured relentlessly, while also penning songs and producing albums for other artists. He gave the career of Scottish singer Sheena Easton new life when he composed her US Top Ten hit "Sugar Walls." He also gave Los Angeles girl group the Bangles a No. 2 hit with "Manic Monday," which he wrote under the pen name of Christopher, one of his many pseudonyms. The only reason "Monday" didn't reach the top spot was that Prince was already there with "Kiss," his third Top Ten record.

Prince helped transform Sheila E. from a backup percussionist into a headliner and produced an album for singer Mavis Staples, which took the gospel singer to new heights. During the late '80s, Prince's Paisley Park label was a hotbed of innovation and activity. Besides being a creative outlet for Prince, Sheila E., George Clinton, Mavis Staples and others joined the Paisley Park label, enabling Prince to work creatively with those he considered artistic soulmates.

But Prince the musician was not entirely selfless. He had his own muse to serve. Prince tirelessly recorded songs for himself that still lay slumbering in his prodigious vaults in Minneapolis. Of all of his remarkable accomplishments, perhaps the most seminal moment in Prince's career was when he created and starred in "Purple Rain," the poignant semi-autobiographical story of his own life. The film soundtrack also yielded his first Top Ten hit, "When Doves Cry."

Reaching that high water mark did not alter the musician's output in the least. In fact, after McMillan helped extricate Prince from his relationship with Warner Bros., Prince experienced an exhilarating sense of freedom at his newfound autonomy, which enabled him to release his own music in the manner he saw fit. Pursuing his quest for higher meaning and self-determinism, Prince was now able to blaze even more profound trails without inhibitions. He continued to break new ground through his music in an effort to communicate truths about love and spirituality.

### **The Prince's New Clothes: [www.npgmusicclub.com](http://www.npgmusicclub.com)**

Almost a decade ago, when Prince scrawled the word "Slave" on his face, changed his name to an unpronounceable symbol, and started using the Internet to release the prolific and large volumes of his music recordings, many music industry insiders and media journalists figured that Prince was washed up with Purple Rain. However, Prince was at the forefront of both the artists' rights movement and the technological revolution that would later threaten the major record labels' bottleneck monopoly.

Prince started selling music, clothing and related merchandise, first by 1-800-NewFunk direct-selling telephone hotline in the early 1990's. In 1997, he was the first and only pop star of his stature



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to embrace and utilize the Internet to sell a music product. He sold a five-CD set entitled "Crystal Ball" over the Internet through his website [www.npgmusicclub.com](http://www.npgmusicclub.com). Shortly thereafter, he developed the website into a full-service on-line music community where he could be in direct contact with those who would both understand and appreciate his art. The one-time membership fee of \$25.00 offered its subscribers unlimited access to Prince's revolutionary Internet site, where they could purchase music before and after it was released to the general public. Members could attend online listening parties, view videos months prior to the release, communicate with other fans, and stay current on the activities of such an extraordinary successful and independent creative force. In addition, the Reflection Room gave the Music Club members the right to listen to specifically selected released and unreleased songs from Prince's vast catalog, "The Vault".

But had The Artist née Prince given up the industry power of his brand along with his name? Did even an icon such as he stand a chance of going it alone outside the envelope of the Big Five?

\* \* \* \*

McMillan's thoughts were interrupted, as the pilot advised passengers that the plane was beginning its descent towards New York's LaGuardia airport. He pushed up the window shade and saw the familiar New York City skyline taking focus in the distance. His parting words to his client in Minneapolis had been, "I'll call you when I land to let you know what I think we should do." The flight attendant handed McMillan his coat, as he returned his chair to the up-and-locked position. The plane touched down smoothly. McMillan hoped that after tonight's phone call with Prince, his client would be well on his way to regaining his superstar status.