Electronic Media Strategy

League of American Orchestras 2017 Conference

Michael Bronson and Joe Kluger
Electronic Media Consultants
League of American Orchestras and Employers’ Electronic Media Association (EMA)
Electronic Media Strategy Agenda

• Background Context
• Electronic Media Strategic Planning
• Rights Clearances
• Electronic Media Project Examples
• EMA-AFM Integrated Media Agreement
• Q&A
Electronic Media Background Context
Orchestral Mission

• Historical:
  • Live music performances “in person”
  • For audiences in concert halls
  • Electronic media: secondary role for some (but not part of core mission)

• Today:
  • Live music performances for widest possible audiences
  • Digital capture/distribution should be core strategies for:
    o Bringing more people to hear music in concert hall and
    o Bringing music to more people outside concert hall
Value of Electronic Media

• Potential organizational benefits:
  • Artistic (archiving/showcasing high quality performances)
  • Marketing (building/engaging audiences for performances)
  • Expanding the audience (beyond hall to students, elderly)
  • Institutional branding/promotion/pride
  • Stimulate contributions
  • Generating incremental net revenue for artists
  • Generating incremental net income for the institution
Traditional Product/Distribution Definitions

- **Digital**
  - Cable TV
  - Satellite radio
  - Internet streaming
  - Internet downloads

- **Collectible**
  - CDs
  - DVDs
  - Downloads

- **Ephemeral**
  - Terrestrial radio (Standard TV)

- **Analog**
  - LPs
  - (Audio cassettes)
  - (Videocassettes)
Changing Product/Distribution Definitions

• Changes in technology and customer expectations:
  • Blurring lines between “ephemeral” and “collectible”
  • Customers demanding more control
• “On demand” (temporary customer control of access to content via device under distributor’s control):
  • Time shifting: Podcasts, DVRs
  • “On-demand:” Internet streaming, digital cable TV
  • Cloud storage of collectible customer owned content
• “Social media” (customer control of content/distribution):
  • YouTube
  • Facebook
  • Twitter
  • Pinterest
  • Tumblr
  • Reddit
  • Google+
  • Instagram
  • Snapchat
Current Electronic Media Trends

- Less demand for full performance content; increased opportunity to exploit excerpts and value-added content for promotion
- Declining costs of capture/distribution (lower entry barriers)
- Internet disintermediation (retain distribution control)
- Digital broadcast spectrum expansion (audio and audio-visual)
- “Long-Tail” economic value in products with limited individual mass market value, but large aggregate value:
Audio Recording Sales Units All Genres

In Millions of Units (1985 to 2012)

- CDs
- Digital Singles
- Digital Albums

Product Types:
- CD
- Cassette
- SACD
- DVD Audio
- LP/EP
- Download Album
- Download Single

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21\textsuperscript{st} Century Social/Electronic Media Principles

• Tapscott and Williams: “Wikinomics”

• The differences between successful businesses and failures:
  • The losers built websites.
  • The winners launched vibrant communities.
  • The losers built walled gardens.
  • The winners built public squares.
  • The losers innovated internally.
  • The winners harnessed the innovation and effort of their users.
  • The losers jealously guarded their content and software.
  • The winners shared them with everyone.
21\textsuperscript{st} Century Media Content Guidelines

- Most content will be consumed on a mobile device.
- Social media is the most influential channel for 30 and under.
- Content needs to be shareable, short and interesting.
- Mobile, Social, and “smart” content is critical to reach and engage audiences.
Electronic Media Project Planning
Project Planning Steps

S.M.A.R.T. Goals
Activity Strategies
Target Markets
Distribution Strategies
Cost/Benefit Analysis

Specific, Measurable
Ambitious, Realistic
Time-based

Media Activities that
Achieve Goals

Distribute To Whom
and Where

How to Reach
Target Markets

Worth It
(Time and Money)?
Project Implementation Steps

Take Initiative → Production/Distribution Plan → Business Agreements → Rights Clearances → Financial Plan

- Proactive vs. Reactive
- Assign Responsibility
  - Outsource vs. Insource
- Production/Distribution Contracts
- Performers/Composers Venues
- Core Budget vs Incremental Funding
Electronic Media Goals

• Before undertaking any electronic media activity, each arts group must be clear about the goals and objectives of its electronic media activities:
  • Artistic (archiving/showcasing high quality performances)
  • Marketing (building/engaging audiences for performances)
  • Expanding the audience (beyond concert hall)
  • Institutional branding/promotion/pride
  • Stimulating contributions (direct/indirect)
  • Generating incremental net revenue for artists
  • Generating incremental net income for the institution
# Audio Goals and Strategies (SAMPLE)

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<thead>
<tr>
<th>ELECTRONIC MEDIA PLANNING WORKSHEET</th>
<th>GOALS AND OBJECTIVES</th>
<th>TARGET LOCATION</th>
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<th>COST/BENEFIT</th>
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NOTES/CONTENT
- Discuss Pops quality issues
- Expand station carriage
- Would Sirius take our content?
- Except for specials
- Expand to all 18 classical weeks
- Premium for subscribers and donors?
Audio-Visual Goals & Strategies (SAMPLE)

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| NOTES/CONTENT                      |                       |                 |                 |              |                 |                 |

17
Rights Clearance Overview

• Obtaining agreements with:
  • Musicians
  • Conductors
  • Soloists
  • Chorus
  • Stagehands
  • Performance Venues
  • Composers/Publishers

• Process:
  • Shared goals + strategies
  • Collaborative decision making =
  • Consensus agreements
### Composers and Publishers

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<tr>
<th>Copyright</th>
<th>Reproduction</th>
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<th>Analog Performance</th>
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<td>Non-Dramatic (Small Rights)</td>
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| Sound Recordings: | Master License: Record Company or Artist | N.A. | Statutory: Sound Exchange | Voluntary: Copyright Holder |

- Small Rights: musical compositions; Grand Rights: opera, ballet, musical theater
- Sync Rights: musical works with visual images
- U.S. Copyright Sound Recordings = post-1972 (some states pre-1972)
- Currently no U.S. copyright: analog performance of sound recording
- Blanket/compulsory licenses ONLY for:
  - **Small rights on analog radio and TV stations**
  - **Statutory digital rights for sound recordings (SoundExchange)**
- All other uses require explicit permission from copyright holder
Musician Media Agreements Options

• Orchestras with AFM Local CBAs:
  • Local Radio, TV, News and Promotion:
    o AFM Local CBA
    o Other AFM Local Agreement
    o AFM National Agreement
  • Internet, CDs and Regional, National, International Media:
    o Multi-Employer EMA Integrated Media Agreement (EMA-IMA)
    o Single Employer AFM Integrated Media Agreement (AFM-IMA)
    o Individual Employer AFM Agreement

• Non-AFM and Non-Union Orchestras:
  • Written agreement/permission required for media activities
  • Include scope and terms in annual employment agreement OR
  • Obtain per project approval
  • Specify:
    o What rights are covered
    o What should musicians be paid (if anything) upfront + revenue sharing
Recent Audio Examples

• Audio streaming of concerts:
  • Local radio website, simultaneous with broadcasts: all
  • On-demand concert streaming: St. Paul, Milwaukee, Philadelphia

• Audio recordings:
  • Orchestra CD labels: Chicago, San Francisco
  • Orchestra produced downloads: Many
  • Donor CDs: Omaha, Sarasota, many others

• Orchestra website excerpts: many
Recent Audio-Visual Examples

• Video streaming of live concerts
  • Berlin Philharmonic: Digital Concert Hall (paid)
  • Movie Theaters: Met Opera, LA Philharmonic
  • Orchestra website: Detroit Symphony; St. Paul Chamber
  • Facebook Live: New York Philharmonic, Philadelphia Orchestra (tour)
  • Baseball/football stadiums: (San Francisco and Dallas Operas)
  • Outdoor mall (Opera Philadelphia)

• Facilities with in-house robotic television systems
  • Kimmel Center (Philadelphia)
  • Detroit Symphony
  • San Francisco Opera
  • Berlin Philharmonic

• Promotional activities:
  • Flash mobs: Opera Philadelphia
  • Short videos of musicians (Boston, NY Philharmonic, St. Paul Chamber)
#DSOLive
Live from Orchestra Hall
Discussion Questions

• What electronic media projects would you like to do that you don’t think are possible?

• What are the primary goals and objectives of those projects?

• What barriers do you face to implementing those electronic media projects?

• What strategies can be pursued to overcome the barriers?
EMA – AFM
Integrated Media Agreement
April 2, 2015 – June 30, 2017
EMA Overview

• Organization:
  – Symphony, Opera and Ballet Employers Electronic Media Association (EMA), a 501(c)(6) non-profit business league organization.

• Members:
  – Any dues-paying, non-profit symphony, opera or ballet institution in the United States that employs musicians under the terms of a collective bargaining agreement with an AFM Local union
  – Currently 80+ members

• Mission:
  – Representation of EMA Members in the negotiation and administration of multi-employer electronic media collective bargaining agreements with the AFM (and possibly other unions).

• Services:
  – Representation in negotiation of electronic media CBAs
  – Advice and counsel on contract interpretation
  – Advice and counsel on dispute resolution with AFM/musicians
  – Representation (in some cases) of contract grievances
EMA Leadership Team

- Mark Volpe*, Boston Symphony Orchestra
- Bill Thomas, New York Philharmonic
- Jeffrey Alexander, Chicago Symphony
- Marie-Hélène Bernard, St. Louis Symphony
- Deborah Bora, Los Angeles Philharmonic
- David Devan, Opera Philadelphia

- Gary Ginstling, Indianapolis Symphony
- Jonathan Martin, Dallas Symphony
- Nick Martin, Lyric Opera of Chicago
- Peter Gistelinck, Kalamazoo Symphony
- Nathan Newbrough, Colorado Springs Philharmonic

*President

- Marilyn Pearson, Legal Counsel (DLA Piper)
- Consultants:
  - Joe Kluger: jkluger@artsEmedia.com
  - Michael Bronson: mconbrio@mindspring.com
- Please contact EMA consultants:
  - In advance of planning any electronic media activity
  - Before you or your musicians contact the AFM on any issue
IMA Scope

- Musicians employed by symphony, opera or ballet orchestras under terms of AFM Local CBA

- Included:
  - Audio recordings from live performances
  - Audio-visual recordings from live performances or special calls
  - Audio or audio-visual recordings from archival tapes of live performances

- Excluded:
  - Local radio & television
  - Audio studio session recordings
  - National Standard commercial television (e.g. “Olympics-type programs”)
  - Per-Service Orchestras < 50% “core” musicians: project approval required
  - “Non-Classical Featured Artist” programs > “historic” number or 1 per year
News, Promotion and Donor Gifts

• Within Article VIII limits, no payment to musicians required

• Relationship to CBA:
  – More liberal CBA news/promotion capture/use terms grandfathered
  – More restrictive CBA news/promotion capture/use terms should be trumped by IMA (proactive clarification needed)

• Capture for news, promotion and donor gifts:
  – Per service limit increased from 30 to 40 minutes
  – Additional capture with Orchestra Committee OK
News and Promotion Use

• Use for News:
  – Use of material limit increased from 3 to 10 minutes
  – OK to complete work or movement up to 3 minutes
  – Up to 10 minutes on broadcaster website (no time limit)

• Use for Promotion:
  – Limit increased from 3 to 5 minutes; (15 min in 3 five min segments)
  – Up to 6X per year, can use up to 15 continuous minutes

• On Employer website, full concert; 45 days on-demand streaming:
  – One free to public performance per season (no Orch Comm OK)
  – One not free to public performance per season (with Orch Comm OK)

• Volunteer Promotional Recordings:
  – Use of audio or audio-visual interviews/activities in which musician(s) voluntarily perform on musical instruments without compensation
  – Maximums: Recording, 45 min; Use, 15 min; Exhibition, 2 years
Donor/Subscriber Gifts

• Guidelines for Gifts to Donors, Corporate Sponsors, Subscribers:
  – One CD, DVD, Audio or A-V Download, or streaming access via secure portal may be offered annually to donors as a gift
    • Donor minimum: Greater of $250 or program recognition level
    • Maximum: 1,000 units or more with Orch Comm OK
    • Orch Comm OK of project
  – With AFM approval, a CD or DVD gift may be offered annually to a major corporate sponsor or underwriter
  – 2X per year, subscribers or Multi-Ticket Buyers may receive free 10 minute download (or 2-week access to donor portal) with Orch Comm OK
Local Radio

- Local Radio broadcasts excluded from IMA scope
  - OK to simultaneous streaming of local radio broadcasts with no additional payment to musicians. This does not include streaming on demand which is covered by provisions in Article X.
  - If no local station has classical music format, station nearest to Local’s jurisdiction deemed a “local” station.
  - Expand definition of local to include repeater stations within the state.
Audio Program Content

• Upfront Radio Rates:
  – 4% Weekly Scale (32% per performance) per broadcast [$53.05 floor]
  – 3% Weekly Scale (24% per performance) ≥4 broadcasts [$42.44 floor]
  – 3 years unlimited broadcasts + streaming

• Live Audio Recordings (Article X Default Option)
  – CD or CD + download
    • 5.5% of weekly/44% per performance [floor of $84.87]; + $10 per 1K > 15K for up to 80 min of music
    • OR 7.5%/60% [floor of $84.87]; + No Tier payment
    • Employer must retain ownership of copyright
    • 3rd party license max 5 years (10 years with Orch Comm OK)
  – Downloads + Streaming (no CDs): 1% weekly/(8% per performance) per 45 minutes [$15.91 floor]
  – Revenue share: 60% of Employer’s Net Revenue (direct costs)
  – Project approval: only if musician costs < 35% of budget
Live Audio Recording: Article X-A

• NEEDS EMPLOYER ELECTION & ORCHESTRA APPROVAL; THEN SET FOR IMA TERM
• CD or CD + download:
  – 3rd party license max 5 years (10 years with Orch Comm OK)
  – 6.0% of weekly/48% per performance [floor of $84.87]; + $10 per 1K > 15K
  – OR 8.0%/64% [floor of $84.87]; + No Tier payment
• Downloads + Streaming (no CDs):
  – Employer must retain ownership of copyright and control
  – 3rd party license max 7 years
  – Orchestra Committee must agree on up-front payment, if any
  – No patch sessions permitted
• Revenue share: 60% of Employer’s Gross Revenue
• Orchestra approval required for all projects
Regional Television

• Emanating from within Local and expanded:
  – Statewide in Employer’s home state, or
  – Including Designated Market Areas (“DMA”), defined by Nielsen Company on August 1 annually, contiguous to Employer’s DMA

• $37.13 per hour or established local rate
• 2 hour minimum payment
• Three (3) years unlimited broadcast on regional television
A-V Educational Release

• Educational programming for Pre-K through 12 Classroom Use:
  – Via close-circuit, password protected internet, Internet2, DVD (not for sale) and other technologies for classroom use
  – Capture limited to one or two performances
  – Rights period limited to ten (10) years

• Two projects during term:
  – Programs ≤45 minutes distributed without payment
  – Programs > 45 minutes require 2% of weekly (16%/per perf) [$37.13 floor]

• Additional educational programs:
  – 45 min program: 2% weekly/16% per performance) [$37.13 floor]
  – 60 min program: 2.5% weekly/20% per performance [$42.44 floor]
  – 90 min program: 3% weekly/24% per performance [$50.92 floor]
Other Provisions

• National and Foreign Television: per minute rates
• Non-Television Audio-Visual:
  – % of minimum scale (if Employer controls product)
  – Per minute rates (if Employer does not control product)
• Documentary, Clips, Compilations
  – ≤3 minutes: no payment to musicians; 30 min of capture at one service
  – 3+ up to 30 minutes at Standard TV “multi-capture” rate
• Audio Buffet:
  – 3% of base annual wage
  – Capture: all concerts and one rehearsal
  – “Basket” of material released
General Provisions

• Pension:
  – Increased to 12%
  – Inclusive of current rehabilitation plan contributions

• Revenue Participation:
  – Based on % of Net Revenue (net of direct costs only) for all projects EXCEPT:
    • Article X-A audio streaming/downloading without CDs
    • Audio-Visual Streaming of Single Program Where There Is One Capture or
    • Optional Theatrical Release Rate Where There Is One Capture
  – Symphony projects: 60% of Net Revenue or Gross Revenue
  – Opera and Ballet projects will be 22% of Net Revenue or Gross Revenue
  – Revenue Participation includes pension

• Health and Welfare
  – Payment of $18 per day (maximum of $90 per week)
  – Paid to any employee not covered under an Employer plan.
General Provisions

• **EMG**
  – Subject to Local CBA, EMG can be used to pay up-front & per-minute fees
  – EMG cannot be used to make tier or revenue participation payments.

• **Musicians to be Paid**
  – All current members of the orchestra (or for per-service orchestras all musicians on the roster) shall be paid for audio and audio-visual recordings
  – In the case of symphony orchestra members performing sub-contracted services for an opera or ballet company, only those musicians actually performing shall be paid for audio and audio-visual recordings

• **Labor Management Committee:**
  – EMA/AFM representatives to discuss contract interpretation; financial consultation and reporting; and recommendations for consideration in the bargaining for a successor Agreement
Potential Problem Areas

• Opera companies that subcontract to symphony orchestras
• Non-Classical Featured Artists
• Promotion definition
• Star Spangled Banner – Sports Events
• Commercial Television
• EMG
• CBA-IMA conflicting language
• Jurisdiction over “local” media projects, not specified in CBA
• Project Approval Protocols (Orch Comm, Full Orch, AFM)
Potential Problem Areas

• To minimize problems, please contact EMA consultants:
  – In advance of planning any electronic media activity
  – Before you or your musicians contact the AFM on any issue

• Consultants:
  – Joe Kluger: jkluger@artsEmedia.com
  – Michael Bronson: mconbrio@mindspring.com
“Some men see things as they are and ask why. Others dream things that never were and ask why not.”

George Bernard Shaw