

Chokepoint Capitalism: How Big Tech and Big Content Captured Creative Labour Markets and How We Will Win Them Back

Book Review

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Giblin and Doctorow (2022) argue that we are in a new era of what they call 'chokepoint capitalism' whereby Big Tech, Big Content and Big Media create barriers to competition, what US investor Warren Buffett calls 'moats', which enable them to capture value that would otherwise go to others such as music artists. While Giblin and Doctorow focus on creative labour markets, this trend towards denying small businesses direct relationships with their customers extends well beyond the music business to many different facets of the modern economy. Chokepoint capitalist models are widespread and are the result of decades-long trends towards both monopolies (where sellers have power over buyers) and monopsonies (where buyers have power over sellers), with Amazon being a prime example.

Within the music business, Giblin and Doctorow argue that Live Nation have 'chickenized' live music. By pursuing both vertical and horizontal integration, Live Nation have been able to develop what Giblin and Doctorow term 'the anti-competitive flywheel' to eliminate competition to capture the lions-share of value that artists create from live music – just as only three poultry processors have been able to control nearly every chicken sold in the United States by buying up everything to do with chicken production.

Giblin and Doctorow are critical of the record business as well. They cite the case of the artist Prince in the early 1990s, changing his name to an unpronounceable symbol in protest of the fact that he did not own his own master copyright in his recordings due to the recording agreement he signed in 1977, when he was 18-years-old. They also work through several examples of low royalties in recording agreements and argue that the way the royalty stream is used to recoup advances paid by labels for recording costs was – and is – unfair.

They note that if artists did recoup their advance from their trickle of income – up until recently this was somewhere between 2% and 12% of net earnings from record sales – the label often still owns the master copyright in their recordings. While some artists can leverage licence deals instead of assigning their copyright to labels nowadays, Giblin and Doctorow note that *"With few exceptions ... contracts signed from the 1970s to the 2000s, when major labels were at their peak power and abuses against artists were most rife, still govern use of that music today"* (p. 57).

Indeed, when some record labels professed support for the Black Lives Matter movement in mid-2020, Giblin and Doctorow cite professor and author Josh Kun who called out the hypocrisy by suggesting they *"start with amending contracts, distributing royalties, diversifying board rooms, and retroactively paying back all the black artists, and their families, they have built their empires on"* (Kun cited in Giblin and Doctorow, 2022, p. 59). Influential independent label Beggars Group began forgiving heritage artists' recoupment debt after 15 years, and Sony announced in 2021, that they would do something similar (ibid). Universal Music Group (UMG) and Warner followed suit in 2022. The Chief Executive Officer (CEO) of Beggars Group, Martin Mills, also called for a minimum royalty rate of 15% in 2016 (Giblin and Doctorow, 2022, p. 59).

The one-sided record deals of the past are being undone in these ways, and new artists can negotiate higher royalties now too. This is a positive trend with Giblin and Doctorow (2022) positing that in the past American R&B

act, Tionne, Lisa, and Crystal (TLC) received 2% of the \$175 million generated by their music; in the 1950s and 1970s, a 4% royalty was common; during the Compact Disc (CD) boom in the late 1990s/early 2000s, the average royalty was 7%; while Radiohead's deal signed in 1991 featured a 12% royalty (pp. 55–59). Nowadays, because recorded music is cheaper to produce and distribute and the internet has led to there being more competition, “*Twenty-five percent is becoming standard. Some labels will pay 50 percent, especially if they don't pay an advance*” (p. 58). Artists can now have a more equal relationship with labels, partnering with them to access capital, marketing support and distribution, etc. Yet despite this ability for music artists to leverage better deals in the era of music streaming, when it comes to both heritage and new artists, the streaming system that major record labels had a major role in designing is essentially a winner-takes-all one that disproportionately benefits the most successful international artists and the most powerful multinational major record labels (Giblin and Doctorow, 2022, p. 79).

So, what does Giblin and Doctorow suggest that music artists and their representatives such as managers and lawyers and representative associations such as the International Music Managers Forum and the Featured Artists' Coalition do about this? Giblin, who is a legal scholar, and Doctorow, who is a science fiction author and activist, have an idea that could arguably facilitate more fluidity in deal-making for artists. This idea involves an automatic reversion of copyright to the artist 25 years after transfer. This would involve legislative change, so it would be no easy feat. They chose 25 years because, according to them, this would maintain incentives for the initial investment from record labels etc., although after 25-years, the artist could re-exploit their recordings in new ways with new partners, or they could agree to new terms with their original investors. This would also mean that major record labels would no longer have the monopoly-building advantage stemming from their deep catalogue. In this way, more artist-friendly business models could emerge (see Giblin and Doctorow, 2022, pp. 190–195).

While it is possible to obtain a licence deal from a major label for a set period, if an artist has enough leverage, rather than transferring the copyright to them for the full period of copyright in perpetuity, what Giblin and Doctorow propose would make shorter term control of copyright automatic. This would involve a radical change in current copyright law given that, for example, the full period of copyright in the United States and Australia is for the life of the author plus 70 years, and in Canada and New Zealand, it is life of the author plus 50 years (Giblin and Doctorow, 2022, p. 193). The first modern copyright law was the 1710 Statute of Anne, and this gave the authors exclusive rights for 14 years and then, if they were alive after this period, they were granted exclusive rights for another 14 years (ibid, p. 182). Ultimately, Giblin and Doctorow's argument here is a strong and convincing one, and I therefore highly recommend this book to those who have a serious interest in the music business; at its core, this book concerns the sustainability of music artists' careers, and these careers form the generative core of this business.

Reference

Doctorow, C., & Giblin, R. (2022). *Chokepoint Capitalism: How Big Tech and Big Content Captured Creative Labour Markets and How We'll Win Them Back*. Beason Press.