

league sanctions in light of the basic purposes of the enterprise and, in particular, to recognize the differential impact of penalties during the regular season and the playoffs. The tension is between the pursuit of deterrent effectiveness and the desire not to have the chosen remedy affect the ability of any team to play at its best. Articulation of a perfect or optimal design is, of course, not possible, and an acceptable plan may vary among different sports. However, a desirable structure should meet identifiable criteria. A system sensitive to the objectives of sport would aspire to serve the competition-centered interests of the athletes, fans, and the activity itself and would seek, to the extent possible, to avoid remedies which are likely to affect the outcome of the contest. In particular, suspension, it should be recognized, is a poor remedy at any time—one disruptive of central values—and its defects are dramatically heightened in the playoff setting. It should be treated as a last resort and should be utilized only when the league has demonstrated the exhaustion of other less damaging possible responses.

SINGING MACHINES: BOY BANDS AND THE STRUGGLE FOR ARTISTIC LEGITIMACY

MARIA A. SANDERS*

INTRODUCTION

In the 1894 novel *Trilby*, French author George Du Maurier introduced to the popular consciousness a character so sinister that even today his name evokes notions of control, greed, and exploitation.¹ Du Maurier's evil Svengali was a middle-aged, unsuccessful musician who captured a beautiful young model, Trilby, through a disguised induction and then hypno-trained her into a brilliant singer. Though out of trance she could not sing in tune, under Svengali's control, Trilby sang with the voice of an enchanted princess out of a fairytale. Combining Trilby's perfected voice and his own musical genius, Svengali used his creation to achieve the material and artistic success he himself never could, putting her into an amnesic trance before each performance and renaming her "la Svengali." Once his hypnotized doll became an international musical sensation, the puppeteer supported his luxurious lifestyle with the wealth bestowed upon his blessed artist through concert sales. When Svengali died of a heart attack, his mind-controlled victim lost her musical gift and soon died as well, unable to survive without her master.² Only after Trilby's death did the truth behind her talent become known, when Svengali's assistant, Gecko, explained that the hypnotized Trilby was little more than Svengali's "singing machine."³

Though the character Svengali survives as a cultural metaphor for a manipulative, exploitative individual, few have actually read Du Maurier, and less is known of Trilby, her talent, or her feelings towards her master. As little as we know of Trilby, even less was

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¹ GEORGE DU MAURIER, *TRILBY* (Oxford Univ. Press 1998) (1874).

² See Carla Emery, *Svengali: Unethical Stage Hypnosis in Literature and Life*, at <http://www.hypnoism.org/hypnotism/Svengali.htm> (last visited Apr. 10, 2002).

³ *Bohemianism and Counter-Culture: Trilby*, at <http://mtholyoke.edu/courses/rschwartz/hist255/bohem/trilby.html> (last visited Apr. 10, 2002); see also Steven Connors, *Soul Subtlety*, at <http://www.bbk.ac.uk/eh/eng/skc/svengali> (presenting a review of DANIEL PICK, *SVENGALI'S WEB: THE ALIEN ENCHANTER IN MODERN CULTURE* (New Haven and London: Yale Univ. Press 2000)).

known by her fictional fans, for they never knew of her domination under Svengali's hand. His control was kept a secret, such that audiences perceived her as a phenomenal artist, singing with the voice of an angel. Upon Gecko's revelation, Trilby's friends sympathized with her as a victim of a wicked tyrant. Had they known the secret all along, it is uncertain whether they or her fans would have so fervently received her or so generously remembered her. This paper tells a story of what might have happened had they known.

Du Maurier's tale of an artist created and controlled by a looming master has been repeatedly brought to life, but with three salient differences. The real-life masterminds most reminiscent of Svengali have exercised power not over a female subject, but small groups of teen boys, and not by hypnosis, but by contract. Most importantly, these puppeteers did not keep their control a secret from the singers' audiences—a variation from *Trilby* that created as complex a narrative with a far different outcome. In the following pages, I report the stories of four pop music "boy bands," the Monkees, the New Kids on the Block, the Backstreet Boys, and 'N Sync,⁴ and their makers, detailing how these groups would not have existed but for their creators' designs, and how their popularity came at the price of the boys' artistic egos, making inevitable their ultimate separation from their makers.

A "boy band" can best be identified by four characteristics: 1) a manufactured genesis; 2) the exercise of complete control over the band's composition, music, and performance by the adult(s) responsible for the group's formation, training, and image; 3) a predominantly female pre-teen and teen fan demographic; 4) and occurrence of hyper-marketing and promotion once the bands become sufficiently popular.⁵ Manufactured pop music is nothing

⁴ I believe the Beatles constitute the primary model for the modern pop group, and therefore begin my exploration of the boy band genre shortly after the Beatles' arrival, with their most blatant copycats, the Monkees. I then discuss the New Kids on the Block because I find them to be the next group to capture the pop market with the same awesome intensity as the Monkees. The demise of the New Kids in the early 1990s was viewed (and indubitably hoped by some) at the time as a sign of the death of bubble-gum pop, drowned beneath the surging force of alternative, grunge, and hip hop. The pop genre was resuscitated, however, just a few years later upon the emergence of the Backstreet Boys. The Backstreet Boys and their little brothers, 'N Sync, swept on to the charts with unstoppable momentum, becoming the top-selling bands of the new millennium and inducting a new generation of girls into the decades-old sorority of boy band devotees. Today, these two boy bands, their trendy sisters Britney Spears and Christina Aguilera, and a litter of boy and girl band wannabes dominate the charts. Pop is back on top in the music industry, causing musicians and fans of other genres to not so silently seethe and pray that the next backlash against pop is imminent.

⁵ Though this paper focuses on boy bands, other groups have been synthesized in the same way and exhibit similar traits. For example, in 1977, mastermind Jacques Morali conceived the idea of a group aimed at gay men and recruited the cast of characters to

new, in the sense that the images and music of esteemed artists like Frank Sinatra and Elvis Presley were shaped for mass consumption.⁶ Boy bands, however, can be distinguished by the fact that they did not exist until conceived of and assembled by their creator.

In the traditional band/manager relationship, the real or "organic" band forms and has some idea of its musical style, material, and image before seeking the manager's participation. Though the manager may help mold the group into a more marketable or better quality artistic entity, the band members themselves usually determine how they are sold to the public and control the content of their own product. In the boy band context, the creator-manager conceives the idea and image for the group before knowing its members, seeks each boy's participation separately through some form of audition,⁷ and trains them to perform a predetermined set of songs and dances prepared for, not by, the boys. With minimal input from the boys, the creator and members of his production and management team control everything from songwriting and selection of songs to wardrobe choices to the timing of releases. For current bands, the Internet and MTV are key parts of marketing, as are extensive commercial sponsorship and tie-ins (e.g., McDonalds' sponsorship of and commercials featuring 'N Sync, and the Backstreet Boys' tie-in with Burger King), nearly infinite types of licensed merchandise and substantial "face time" with fans (e.g., performing before high school assemblies, signing auto-

appeal specifically to them: an army GI, a construction worker, a biker, a cowboy, an Indian, and a policeman. The group, named the Village People, became a mainstream hit in America only after their song, "Macho Man," became a surprise sensation on AM radio. More recently, in 1993, British promoter Bob Herbert recruited five women through a newspaper ad to constitute the Spice Girls. The girls eventually fired Herbert and hired manager Simon Fuller. Fuller, dubbed "Svengali Spice" by the British press, has been credited with shaping the group's "girl power" aesthetic and the girls' individual brand identities: Baby Spice, Scary Spice, Posh Spice, Sporty Spice, and Sexy Spice. The group's first album, *Spice*, sold 20 million albums. In a tale not unlike those told in this paper, the Spice Girls sought independence in late 1997 by firing Fuller and claiming songwriting credits on their next album. See Charles Passy, *Hey Spice Girls Fans: Make Your Own Pre-Fab Pop Supergroup!*, PALM BEACH POST, June 14, 1998, at 1J.

⁶ See *id.*

⁷ Edgardo Diaz, the creator-promoter of the Puerto Rican boy band Menudo, says that calling boy band auditions "talent searches would be a misnomer. Since the groups are largely conceptual, image is everything." Diaz explains that the band members are only one part of a larger creative scheme—though they sing and dance well, their lack of ability to write songs requires that songwriters be a separate part of the team. Diaz conceived the idea of his teen group in 1977. Menudo had a tremendously long career of twenty-one years and thirty-one albums, yet Diaz maintained their perpetual youth by replacing members once their voices matured with new, younger members. The group's musical style also changed with the trends, switching from Spanish pop, to rock, to hip-hop. See *id.*

graphs, and rewarding lucky contest winners with dates with the band).

The boy band creator specifically tailors the group's membership, music, image, and promotional efforts to the target audience already in mind: pre-teen and teenage girls. These fans are particularly desirable consumers because of their highly predictable tastes and virtually insatiable appetites for not just boy band music, but also affiliated merchandise (posters, clothing, backpacks, etc.). Their boy band adulation generally occurs during a stage somewhere between cuddling teddy bears and having actual boy-friends—a phase they might look back upon with a blush. Since the 1960s, the formula for clean cut male teen idols has remained generally the same, calling for nice young men, songs that promise endless sublimated love, mild mannered music, an attitude that does not worry parents, and maximum television exposure. So-called "bubble-gum pop" is a perfect niche item, as parents can buy products without fearing their daughters' corruption, while the girls' allegiance is reliable and undiscriminating. Top-selling singles drive the market, and bands are virtually interchangeable. Perhaps as important, the boy band members themselves are malleable and eager, ripe for exploitation by the managers and producers upon whom they depend.⁸

As blossoming music consumers, pre-teen and teenage girls also have what communications professor Joe Gow terms the "right naïve attitude. They don't have the concept of guilt . . . They can unabashedly embrace something the rest of the world is calling garbage."⁹ Unfortunately for the bands, most critics, artistic elitists, and large sections of the general public judge far more harshly the quality of the bands' music and disapprove especially of the groups' artificiality. Labeling them puppets and denying them the status of true artists, opponents attack boy bands for their manufactured genesis, absence of creative genius, and lack of control. The passionate hatred with which so many regard boy bands leaves the distinct impression that more is at issue than just pretty boy singers and syrupy love songs, and suggests some much deeper conflict within the collective cultural psyche.

As intrigued as I am by the creators' plots, the boy bands' manufactured origins, and overwhelming popular success, I find most fascinating the seemingly inevitable phenomenon of the boys' re-

⁸ See Jon Pareles, *When Pop Becomes the Toy of Teenyboppers*, N.Y. TIMES, July 11, 1999, § 2, at 1.

⁹ Passy, *supra* note 5.

volt—their eventual effort to cut the strings of their puppeteer and pursue their group career independent of his control. Though conflict, exploitation, and litigiousness are endemic traits of the music industry, I suggest the disputes between boy bands and their creators are distinctive, and the psychology underlying their divorce more complicated. Boy bands are motivated to separate from their creators not simply due to the types of financial claims and personality conflicts that commonly cause dissension between artists and their producers or managers. Rather, the unique brand of criticism levied at them for their assembled beginnings and domination at the hands of a creator impels boy bands to try to prove their artistic legitimacy by establishing independence. The very fact that they are so maligned and sense the need to validate themselves establishes two things about American culture: the glorified, desirable, elite status accorded to true artists, and an ongoing struggle to define the attributes required to earn that title.

This paper seeks to identify and explain two phenomena of conflict: 1) the boy bands' disputes with their creator-managers, and 2) the struggle among various cultural entities to define the true artist and determine who has claim to that status and its entitlements. Parts I-IV provide "behind-the-music" type biographies of the Monkees, the New Kids on the Block, the Backstreet Boys, and 'N Sync. After synthesizing the four stories in Part V through analysis of their common episodes and themes, I devote the remainder of the paper to two theories of cultural conflict that at least partially explain the hostility directed at boy bands and the boys' consequent desire to legitimate themselves as artists. While I report the details of these conflicts and attempt to explain their occurrence, I will not attempt to adjudicate them. As I sketch the positions of the relevant parties to the conflicts, I do not profess to advance their complete arguments and defenses, nor do I take a particular side or advocate a particular outcome. My stance is agnostic, though not always neutral, as my tone may intermittently denote sympathy, reproach, admiration, amusement, or derision. My aim is to be critical, objective, intellectually provocative, and entertaining.

I. THE MONKEES

Like an illegitimate child in a respectable family, the Monkees are destined to be regarded forever as rock's first great embarrassment . . . A group of middle-aged Hollywood businessmen had actually assembled their concept of a profitable rock group

and foisted it upon the world.¹⁰

A. Idea and Creation

A classified advertisement in the pages of the September 8, 1965 issues of *Variety* and the *Hollywood Reporter* has become infamous within the entertainment industry:

Madness!!
Auditions
Folk & Roll Musicians-Singers
for acting roles in new TV series.
Running parts for 4 insane boys, age 17-21
Want spirited Ben Frank's¹¹ types . . .¹²

The ad marked the birth of the brilliant idea of two television programming gurus seeking to cash in on the burgeoning youth scene by translating the Beatles' popularity into television ratings. In the early 1960s, Bob Rafelson, a thirty year old producer on the fringes of the film industry, had begun conceptualizing a musical drama series based on a fictional folk singing group.¹³ Rafelson teamed up with Bert Schneider, the financial vice president of Screen Gems Television¹⁴ and son of Columbia Pictures president Abraham Schneider, to form Raybert Productions.¹⁵ Together, they devised the plan for a show about four members of a music group living on their own in a California beach house.¹⁶ The group was to resemble an American version of the Beatles, composed of four improvisational, footloose, zany guys, while the show would combine pop music with a radical new style of filmmaking.¹⁷ The show aimed to capture the ten to fifteen year old fan demographic, an age group too young for the Beatles but too old for cartoons.¹⁸

¹⁰ GLEN BAKER ET AL., *MONKEE-MANIA: THE TRUE STORY OF THE MONKEES* 5 (St. Martin's Press 1986) (from the preface).

¹¹ Ben Frank's was a 24-hour diner in Hollywood known for its longhaired, beatnik, "weirdo" clientele.

¹² BAKER, *supra* note 10, at 8.

¹³ Rafelson's previous work included the creation of the *Hootenanny* series for ABC Television, and being an associate producer for the shows *The Wackiest Ship in the Army*, *Channing*, and *The Greatest Show on Earth*.

¹⁴ Screen Gems also produced the notable 1960s television hits, *Gidget* and *Bewitched*.

¹⁵ See MICKY DOLENZ & MARK BEGO, *I'M A BELIEVER: MY LIFE OF MONKEES, MUSIC, AND MADNESS* 7 (Hyperion 1993).

¹⁶ See *E! True Hollywood Story: The Monkees* (E! Channel television broadcast, Aug. 1, 1999) (recording on file with author).

¹⁷ See *Hey, Hey, We're the Monkees* (The Disney Channel television broadcast, Nov. 11, 1997) (recordings on file with author).

¹⁸ See DOLENZ & BEGO, *supra* note 15, at 84.

Rafelson and Schneider ran their idea by Screen Gems executive Jackie Cooper and ultimately received \$25,000 to produce the pilot episode. With Rafelson and Schneider as co-producers and Rafelson as director, the pair assembled a production team including associate producer Ward Sylvester, two record producer-songwriters, Tommy Boyce and Bobby Hart, and a band of studio musicians.¹⁹ In addition to seeking talent through the informal channels of industry contacts and contract talent, Rafelson and Schneider ran the aforementioned ad in the entertainment industry trade magazines and held a cattle-call audition for more than 437 applicants.²⁰ From this massive group, the creators chose four young men: Davy Jones, Micky Dolenz, Peter Tork, and Michael Nesmith. The four members were skillfully chosen to each fill a particular personality niche—Davy the cute balladeer, Micky the funny one, Peter the goofy poet, and Michael the serious one—and there was significant variation in their level of experience and talent.

Davy Jones was a former stage actor who was discovered by Hollywood executives in London and taken to Broadway where he rendered a Tony-nominated performance in the production *Oliver*. Thereafter, in 1963, Davy was taken to Hollywood where he signed a long-term contract with Screen Gems and Columbia Pictures.²¹ Interestingly, Davy has always disagreed with the accepted story of the Monkees origination, though his own two accounts contain contradictions. According to Davy, there was a song in a show he had previously performed in which he sang "I'm as clever as a monkey in a Banyan tree."²² He thought it would be a good idea to form a group called the Monkeys, within which he would sing with a monkey on his shoulder like a barrel-organ operator. About that time, Screen Gems came up with an idea for a show where Davy would play two cousins. It was going to be called *The Monkeys*, but instead became *The Patty Duke Show*. In another account, Davy describes seeing the Byrds on the Sunset Strip during 1965, and thinking, "I want that group to back me, I wanna be in a group."²³ At the same time, Davy claims, Ward Sylvester took to Rafelson and Schneider an idea for a show to be called *The Monkees*.²⁴ When they jumped at the idea, Sylvester, Rafelson, Schneider, and Davy

¹⁹ See *id.* at 7.

²⁰ See *E! True Hollywood Story*, *supra* note 16.

²¹ See *id.*

²² BAKER, *supra* note 10, at 17.

²³ *Id.*

²⁴ See *id.*

himself began frequenting Los Angeles clubs to experience new music groups and seek three other young men for the show. They found Micky playing with a band and Mike through the press ad.²⁵

By all other accounts, including those of the producers, the other three Monkees members, and music biographers, Davy was brought on board by Rafelson and Schneider after Screen Gems, eager to get some use out of their contracted actor, suggested him for their new show. Though they considered him a risk because of his lack of familiarity with rock and roll, Rafelson and Schneider appreciated Davy's acting and comedic talents, and he became the first band member.²⁶ Davy received \$15,000 and (without an agent or lawyer) signed a contract to receive a flat \$450 per week, including, in Davy's words,

all sorts of 'you can't talk to these people, you can't do this or appear there without our consent' clauses. All this stuff that I didn't read inside a twenty-five page contract. All I had in mind was home, sisters, dad. I used the money to get back to Manchester for Christmas, buy a car for my sisters, and a house for my dad.²⁷

The other three members were chosen shortly thereafter. Micky Dolenz had some name recognition in the industry from being a child star in the show *Circus Boy* on NBC. Through his existing industry contacts, Micky received a private audition for *The Monkees*. He was recognized as a true comedian and soon landed his part.²⁸ When Stephen Stills, an eventual member of Crosby, Stills, Nash & Young, was turned down during his own *Monkees* audition, he graciously suggested the producers seek out his look-alike pal. Stills described Peter Tork as a bohemian musician who had recently moved from Greenwich Village to Los Angeles to play in local clubs. Rafelson responded immediately to Peter as the "funniest stupid person [he] had ever seen,"²⁹ and soon cast him in *The Monkees*. Michael Nesmith, a former Air Force cadet and musician from San Antonio, Texas, had already recorded two singles on the Colpix label when he first saw the Madness! ad in *Variety*. The only Monkees member to actually be cast as a result of the ad in *Variety*, Michael impressed the creators with his devil-may-care attitude and memorable knit cap.³⁰ Despite having no previous acting

²⁵ See *id.* at 17-18.

²⁶ See *id.* at 18.

²⁷ *Id.* at 12.

²⁸ *E! True Hollywood Story*, *supra* note 16.

²⁹ BAKER, *supra* note 10, at 27.

³⁰ Between his first interview and screen test, Raybert executives actually had to bail

experience and knowing only three chords on the music scale, Michael was chosen as the final member of the Monkees in the fall of 1965.³¹

The four band members met for the first time at a costume fitting. Rafelson and Schneider informed Micky that he would play drums (though he had never played them before) because Peter and Michael already knew how to play the guitar and Davy was clearly best suited to be the cute lead singer.³² The band members were given a brief opportunity to generate music content for the show, but, according to Peter, their initial efforts were directionless and musically unproductive.³³ Time was of the essence in preparing the pilot, yet the band members were busy with acting lessons,³⁴ photo sessions, costume fittings, promotions, and audition sets before major record distributing companies. Raybert therefore employed songwriters Hart and Boyce to create the show's theme song and initial soundtrack, including the band's first big hit, *Last Train to Clarksville*.

After auditioning the band members' voices, songwriter Boyce described the situation:

It was obvious that Micky had the Paul McCartney voice, he could really sing. Davy had a passable ballad voice, Michael thought he was Merle Haggard, and Peter had no voice at all. Now when you put all that together it wasn't the rock image that the show was supposed to have, so I told them that the truth of the matter was that they were hired as actors and there wasn't much we could do with all their peculiar talent.³⁵

Though this did not bother Micky and Davy, Michael seemed quite ruffled, such that Boyce let him record a couple tracks just to calm him down.³⁶ By the time the pilot was filmed, studio musi-

Michael out of jail after he fell into debt and had his car repossessed. Despite his financially stricken early years, Michael eventually became the wealthiest member of the band after inheriting over \$25 million from his deceased mother. Mrs. Nesmith, a secretary, invented the product known as Liquid Paper to mend her own typographical errors while on the job. Her invention became popular among her secretary friends, and word soon spread about the product. She ultimately sold her invention to Gillette for \$50 million! See *E! True Hollywood Story*, *supra* note 16.

³¹ See Patricia Brennan, *The Monkees: Davy Jones, Looking Ahead*, WASH. POST, Oct. 26, 1986, at Y8.

³² See DOLENZ & BEGO, *supra* note 15, at 66.

³³ See BAKER, *supra* note 10, at 30.

³⁴ Rafelson and Schneider trained the Monkees by having them watch old television episodes and film of Laurel & Hardy, the Marx Brothers, the Three Stooges, and the Beatles. The young men were told not to emulate these performers, but to learn from them and develop their own style. Additionally, the creators hired acting coaches to give the Monkees voice and improvisation lessons. See DOLENZ & BEGO, *supra* note 15, at 70.

³⁵ BAKER, *supra* note 10, at 32.

³⁶ See *id.*

cians had already recorded the soundtrack and the Monkees only had to lip sync along with it.³⁷

The young band members were generally overwhelmed by the entire experience of their making and their sudden placement at the center of such an enormous business venture. Micky described the awesome experience: "When we first came face to face with the big men behind the scenes we felt pretty damn nervous. They talked so fast and so dynamically that we felt what we probably were—greenhorn kids suddenly in the middle of a million dollar deal."³⁸ Once chosen, the band members were expected to stand unobtrusively off to the side until they were issued instructions to obey. Still reeling from the entire process, they made few objections.³⁹ Rafelson, Schneider, and Ward Sylvester talked Micky into releasing his former agent, as "they put their collective arms around [his] innocent shoulders and said, through toothy smiles, 'Don't worry, kid. We'll take care of you.'"⁴⁰ The producers made sure that none of the band members had outside agents or managers, such that nothing would come between them and their creations.

After significant last minute re-cuts by Rafelson and Schneider, the pilot finally aired to sensational ratings. NBC ordered a full season's worth of episodes in January 1966 and the show went into full production at Screen Gems.⁴¹ Just eight weeks before the start of the season, however, the band bombed before an audience of television station executives at a promotional press event, and five stations refused to pick up the show. In a panic, Raybert called upon legendary music producer and president of Screen Gems/Columbia Music, Don Kirshner, and pleaded for a miracle. All tapes of the show were sent to the thirty-two year old millionaire music-publishing magnate, who arguably knew more about hit making than anyone in the industry.⁴²

To the surprise of Boyce and Hart, who had written *The Monkees* theme song and *Last Train to Clarksville*, Kirshner was selected to be the music director and producer for the show. In this role, Kirshner was responsible for finding songs for each episode,

³⁷ See BAKER, *supra* note 10, at 12.

³⁸ *Id.*

³⁹ *See id.*

⁴⁰ DOLENZ & BEGO, *supra* note 15, at 107.

⁴¹ *See E! True Hollywood Story*, *supra* note 16.

⁴² Kirshner's music publishing company, Aldon Music, had fostered renowned pop writers including Carole King, Gerry Goffin, Neil Sedaka, Howie Greenfield, Neil Diamond, and Bobby Darin. Kirshner was also responsible for providing the theme songs to the television hits *Bewitched* and *Gidget*. *See* BAKER *supra* note 10, at 31.

supervising the music recording, managing album production, negotiating all of the show's music-related contracts, and wielding creative control over the entire project. As Kirshner was able to tap his extensive base of esteemed songwriters, including Carole King, Neil Diamond, Harry Nilsson, Paul Williams, David Gates, and Carole Bayer Sager, his involvement with the project is considered a huge part of the Monkees' success.⁴³

Kirshner is credited with being the greatest influence on the creation of the Monkees' sound and initial musical image. His instructions to musicians, producers, and engineers carried enormous weight, and he reserved the right to fine-tune all songs to suit his requirements. In rewriting or rearranging songs, Kirshner would simply explain to the befuddled songwriter or musician: "I know you are artistically correct, but this is how it will sell."⁴⁴ Kirshner took control of Colgems, the Columbia Pictures/Screen Gems Television and Music record label, and signed the Monkees to a distribution deal with RCA Records ("RCA"). He conceived an advance promotional campaign costing RCA \$100,000—twice what Capitol Records had spent on the Beatles in the American market just two years earlier.⁴⁵ After the success of the first album, the Monkees members presented Kirshner with a mounted photograph of the band with the inscription, "To the man who made it all possible."⁴⁶ Ironically, this man who made it all possible would eventually be fingered by the rebelling band members as their creative nemesis.

B. *Monkees Mania*

Immediately after their debut, the Monkees became a pop phenomenon. The television show and the first album premiered on September 12, 1966 and the band members were instant celebrities.⁴⁷ The debut album sold more than six million copies. By November 1966, *Last Train to Clarksville* had reached number one on the pop charts. Next, *I'm a Believer* (penned by Neil Diamond) hit number one and stayed there for seven weeks.

The Monkees gave their first concert before a wild, screaming crowd in Honolulu in December 1966. Despite the fact that they were not playing their own music, performing live made the Monkees members feel like a true rock band, as Micky describes:

⁴³ *See Hey, Hey, We're the Monkees*, *supra* note 17.

⁴⁴ BAKER, *supra* note 10, at 33.

⁴⁵ *See id.*

⁴⁶ BAKER, *supra* note 10, at 37.

⁴⁷ *See* Brennan, *supra* note 31.

"It's like Leonard Nimoy really becoming a Vulcan. That's what happened."⁴⁸ For a time in the 1960s, the "Pre-Fab Four" sold more records than the Beatles and the Rolling Stones combined. Their second album, *More Monkees*, held the number one spot on *Billboard* for eighteen consecutive weeks.⁴⁹ Monkees Mania was in full force across America and by 1967 took effect overseas as well.

Meanwhile, music critics relentlessly berated the Monkees for being phony. Though other bands also used studio musicians (e.g., the Mamas and the Papas, the Byrds, and the Beach Boys), the Monkees' blatantly manufactured beginnings made them an easy target.⁵⁰ The Monkees were deemed a disgrace to the pop music industry—bogus non-musicians who had no right to be where they were because they did not write or perform their own music.⁵¹

Despite bypassing the traditional industry mechanisms for getting hit records radio airtime, the Monkees achieved success that threatened the role of some music industry executives. A few television and recording producers had managed to make a coordinated, concerted assault on the consumer and generate music market demand via a television show. Radio stations and record stores had no choice but to meet demand and stock Monkees music and some industry members were hostile as a result.⁵² Their ire was aggravated when fans did not seem to care what the critics said and continued to believe that the Monkees were a real band living the life portrayed in their television show.⁵³

The merchandising of the Monkees was as much a part of the phenomenon as their music. NBC and Columbia made enormous profits by emblazoning the Monkees logo and images across T-shirts, lunch boxes, calendars, cups, rings, puzzles, books, posters, cars, cards, puppets, corn flake ads, cologne ads, beach towels, and jewelry.⁵⁴ The band members did not share in the profits from this marketing bonanza, as their contracts did not contain a merchandising clause. When Micky brought this to Rafelson and Schneider's attention, he describes, "they once again put their collective arms around [my] shoulders and said, 'Don't worry, kid. There's

⁴⁸ Hey, Hey, We're the Monkees, *supra* note 17.

⁴⁹ See DOLENZ & BEGO, *supra* note 15, at 109.

⁵⁰ See *E! True Hollywood Story*, *supra* note 16.

⁵¹ See Hey, Hey, We're the Monkees, *supra* note 17.

⁵² See DOLENZ & BEGO, *supra* note 15, at 90.

⁵³ See Hey, Hey, We're the Monkees, *supra* note 17.

⁵⁴ See DOLENZ & BEGO, *supra* note 15, at 109; see also *E! True Hollywood Story*, *supra* note 16; Hey, Hey, We're the Monkees, *supra* note 17.

enough to go around."⁵⁵

During the second highly successful season of *The Monkees* television series, the producers made some attempt to keep the band members content by bumping their salaries from \$450 to \$750 per episode, giving them more control over their wardrobe, allowing them to direct a few episodes, and replacing the original *Monkees* theme song (which the band hated) with *For Pete's Sake*, sung by Micky.⁵⁶ By this time, the band members were splitting 30% of live performance profits, 10% of Raybert's take from merchandising profits, and 5% of record royalties. This was considered generous on the part of the producers, as the band members contributed only vocals to the music recordings.⁵⁷

By the end of the 1967, the Monkees had accumulated six American Gold Discs (the Beatles and Rolling Stones had only five each).⁵⁸ Their four albums had sold three million, five million, two and one-half million, and one million copies, respectively. Collective global disc sales had reached thirty million copies.⁵⁹ The band received roughly 80,000 letters per week of fan mail. The total Monkees industry earnings for this time period were estimated at \$200 million, with performance revenue in the area of \$5 million. Screen Gems/Columbia emerged as one of the key publishing outfits on the contemporary pop music scene, becoming the top money earner under their parent company, Broadcast Music Inc. ("BMI").⁶⁰

C. *The Long Road to Break-up*

The seeds of resentment that would ultimately cause the Monkees to rebel against their creators were present from the beginning. Michael and Peter considered themselves real musicians before they became members of the Monkees, and were stung by the criticism that labeled them artistic imposters. Michael, in particular, expressed great concerns about musical integrity and creative control. According to Michael:

There was a feeling generated by the producers that we were in the driver's seat, which was mythical. Their attitude seemed to be, 'We know how to make the film and do the deals and maybe we can trust the sense these twenty-year olds have about what's

⁵⁵ DOLENZ & BEGO, *supra* note 15, at 109.

⁵⁶ See BAKER, *supra* note 10, at 78.

⁵⁷ See *id.* at 49.

⁵⁸ See *id.* at 85.

⁵⁹ See *id.*

⁶⁰ See *id.*

hip. Let's let them do their own clothes, pick their own instruments, and sort of ad-lib along.' What they really wanted was a show that mirrored the times without actually being part of it.⁶¹

After the success of the first album, Michael began demanding that Colgem release as singles songs he had written but Kirshner refused. Michael then threatened not to appear on the next Monkees album unless his compositions were used as B-sides on the group's singles. Apart from the artistic achievement of having his songs recorded and released, Michael apparently understood the economic potential of piggybacking songs on the B-side of the group's multi-million selling singles to reap substantial songwriter royalties.⁶²

To appease Michael, the producers ultimately conceded, causing some resentment from the other band members towards Michael. Davy, for instance, claims that he, too, had written songs but simply was not demanding that they use his material. He felt Michael was poisoning the atmosphere with his "every man for himself" attitude just to make money.⁶³ Micky later explained the situation from the executives' and Michael's likely points of view:

They must have thought, 'His records are selling like Hula-Hoops. What the hell does this guy want?' Of course that was the problem. They weren't his records. If anything, they were my records or Davy's records . . . Here he was, raking in the dough, basking in the fame, and he must have felt that he hadn't done a lot to deserve it. To his way of thinking, it must have felt very illegitimate.⁶⁴

Tensions mounted after the 1967 release of *More of the Monkees* when Michael angrily confronted Kirshner during a meeting to award each of the band members a \$250,000 royalty check.⁶⁵ Waging a battle for artistic freedom and "active participation," Michael perceived the executives at RCA and Screen Gems Music as the "common enemy, and everything that was wrong with the picture, all the Machiavellian manipulation was personified in one man . . . Donnie Kirshner."⁶⁶

⁶¹ *Id.* at 42.

⁶² See DOLENZ & BEGO, *supra* note 15, at 86. Michael was not the only songwriter keenly aware of the economic opportunity in writing for the group. After the success of the first album, Kirshner was flooded with samples from the industry's best songwriters, who jockeyed to get on the second album and secure instant wealth. See BAKER, *supra* note 10, at 46.

⁶³ *E! True Hollywood Story*, *supra* note 16.

⁶⁴ DOLENZ & BEGO, *supra* note 15, at 111.

⁶⁵ See *E! True Hollywood Story*, *supra* note 16.

⁶⁶ DOLENZ & BEGO, *supra* note 15, at 110.

Soon, Michael took public his battle with the musical director. He first expressed his frustration in the *Saturday Evening Post*:

The music has nothing to do with us. It is totally dishonest. Do you know how debilitating it is to sit up and have to duplicate somebody else's records? . . . The music happens in spite of the Monkees. It's what Kirshner wants to do. Our records are not our forte. I don't care if we never sell another record.⁶⁷

A few weeks later, Michael called a news conference to announce that the band was a fake and did not play their own music. He stated: "We're being passed off as something we aren't. We all play instruments but we haven't on any of our records. Furthermore, our company doesn't want us to and won't let us."⁶⁸

While the other band members did not play as forceful a hand as Michael did, they saw Kirshner's refusal to let them play their own instruments as a threat to their artistic legitimacy. Peter described his position on the creative control issue:

Kirshner has to be given all the credit in the world. He certainly knew what hit tunes were and how to make them hits . . . All I wanted was to be allowed to play instruments on the records—given the same producers, the same arrangements, the same writers, the same studio . . . What I really needed was to be an instrumentalist so that when the press said 'You guys don't play on your records,' I could say 'We do too!' I mean, I could play, you know.⁶⁹

Ultimately, Kirshner would lose the battle to the insurgent Michael Nesmith and his band mates. After yet another dispute over the B-side content of their singles release, Michael furiously announced his intention to quit the band.⁷⁰ Schneider attempted to patch up the controversy by granting the Monkees 50% input on material for their third album and beyond, and asked his father, Columbia Pictures president Abraham Schneider, to fire Kirshner as the head of Colgem Records on the ground that he had released

⁶⁷ BAKER, *supra* note 10, at 45.

⁶⁸ *Id.* at 50.

⁶⁹ *Id.* at 47.

⁷⁰ Michael later regretted his behavior, but defended his motives:

It was an arrogant and ridiculous thing for me to have done and it was probably terribly offensive to Bert. I mean here was this guy who had worked real hard on this great idea, putting it all together when people were telling him he was crazy. He made it tremendously successful, made me an eventual millionaire, and I come along and say, 'Well, that's it, now it's all gonna be done my way.' But I was not impelled by a feeling of self-aggrandizement or a play for more cookies, it was an artistic impulse.

Id. at 48.

an unauthorized disk.⁷¹ In response, Kirshner resigned as president of Screen Gems Music and filed a lawsuit, claiming that Columbia had instituted a program of harassment designed to force him out of the music division and destroyed the rights due to him under his contract.⁷² Once Kirshner was out, Colgem re-released the group's latest single to include one of Michael's songs on the B-side.⁷³ The band's victory over their musical master was complete.

The Monkees third album, *Headquarters*, produced by a friend of Michael, was composed almost entirely of songs written and played by the band members themselves. Upon release in May 1967, *Headquarters* achieved less than stellar sales. Within the industry, the album was considered "self-indulgent" with "little musical significance" and noticeably lacking in Kirshner's commercial polish.⁷⁴ Unlike the previous two chart-toppers, *Headquarters* was number one for just one week before being wiped out by the Beatles' *Sgt. Pepper's Lonely Hearts Club* album.⁷⁵ Though record sales plummeted once the band had wrested control over the content and release of their music, Micky says that the band members "didn't care because [they] were doing what [they] wanted to do [They] were determined to play every stinking note on every little track."⁷⁶

In retrospect, the band members conceded that they were not ready to make their own music.⁷⁷ Even Michael eventually acknowledged the album's failure and the newly independent band's shortcomings:

As soon as we took over, the record sales plummeted. They just kept going down, right to rock bottom, because we weren't that good I can't deny that everything that that Schneider/Mazursky/Rafelson/Kirshner regime concocted . . . worked perfectly and was immensely successful on a monetary level So these guys all stood around shaking their fingers and saying 'we told you guys and you wouldn't listen' and they were right.⁷⁸

⁷¹ Some believe that Schneider discharged Kirshner not only because of Michael's demands, but also because of the hefty 15% commission Kirshner received of Colgem's profits. Schneider was perhaps most disturbed by the fact that someone was making more money off of his brainchild than he was. See *id.* at 50.

⁷² See *id.* at 56. Kirshner's lawsuit ultimately resulted in the biggest settlement in the history of Columbia Pictures/Screen Gem Television. See *E! True Hollywood Story*, *supra* note 16.

⁷³ See BAKER, *supra* note 10, at 56.

⁷⁴ *Id.* at 57.

⁷⁵ See *E! True Hollywood Story*, *supra* note 16.

⁷⁶ See *Hey, Hey, We're the Monkees*, *supra* note 17.

⁷⁷ See *id.*

⁷⁸ BAKER, *supra* note 10, at 57.

Their fourth album, *Pisces, Aquarius, Capricorn, and Jones*, also released in 1967, was completed in just nine days and did worse in record sales than *Headquarters*. The band had to recognize that they were a far cry from their model, the Beatles, and that they would "have to be content to produce music that makes people happy while the Beatles create[d] music to make people think."⁷⁹

The Monkees' slow demise progressed with the cancellation of their television series and the failure of their first and only feature film. Despite the success of their program's second season, the band members sought to do an entirely new, different format resembling a variety show rather than musical situation comedy. NBC rejected their idea. The band refused to continue under the old format and the show was cancelled after only two seasons.⁸⁰ Their film, *Head*, over which the band acquired complete control of concept, content, and script,⁸¹ premiered in November 1968 only to disappoint fans with its surreal and somewhat experimental style, lack of a central story, and incomprehensibility.⁸² Thereafter, record sales continued to drop off for the band's next album and four singles, *Pleasant Valley Sunday*, *Daydream Believer*, *Words*, and *Valleri*, and the band's television specials flopped.⁸³

Then, in early 1969, Peter quit the band. Tired of trying to convince people that the Monkees were the real deal, Peter decided to go out on his own. Still close friends with Stephen Stills and other "real" musicians, Peter desired to be a part of their realm rather than the manufactured pop group.⁸⁴ The remaining three Monkees were determined to persevere, and made statements such as:

It's not a question of us now being in control of our destinies. It wasn't our destinies that we had to worry about in the past, it was our souls. A lot of people have used us in the last three years. There have been many who have bettered their own personalities by taking credit for our success. We've known where we've been since the beginning and the fact that we're now one less makes us much tighter.⁸⁵

⁷⁹ *Id.* at 67.

⁸⁰ See *E! True Hollywood Story*, *supra* note 16.

⁸¹ See DOLENZ & BEGO, *supra* note 15, at 148.

⁸² *Head* was conceived during a few drug-hazed brainstorming sessions by the Monkees, Rafelson, and Schneider. The band members determined that the "last thing [they] wanted was a ninety minute Monkees episode," and instead turned out a story about the four band mates trying to escape their manufactured teenybopper image. They handed over script writing to an unknown screenwriter named Jack Nicholson. *Id.*

⁸³ DOLENZ & BEGO, *supra* note 15, at 154.

⁸⁴ See *E! True Hollywood Story*, *supra* note 16.

⁸⁵ BAKER, *supra* note 10, at 114.

The Monkees trio went on to release another album, *Instant Replay*, in February 1969 and then a greatest hits album. In April 1970, when their next album, *The Monkees Present*, reached only number 100 on the charts, Michael admitted defeat and quit the group.⁸⁶ Micky and Davy carried on briefly, hoping that NBC's airing of *Monkees* reruns on Saturday mornings might generate a new fan base. When their album, *Changes*, bombed, Davy decided to give up too. Though the last remaining Monkee, Micky, never officially quit, there was no doubt that the band and Monkees Mania were indeed dead. "The Monkees really didn't exist outside the auspices of the series," Micky conceded years later in his autobiography, "and we were kidding ourselves to think that they did. Without the [powers that be] and the Magnificent Monkees Machine to guide and direct our activities, we started to wobble around like a top that's just about ready to fall over."⁸⁷

D. *The Aftermath*

The Monkees (minus Michael) reunited in 1985 at the instigation of concert promoter David Fishof as the headline act for a tour of 1960s rock groups. The act was successful beyond anyone's expectations, and the reunited Monkees were the highest grossing concert tour in 1986. Unfortunately, dissension between the band members and issues of creative control once again undermined the group, as the tour organizers became more frustrated with the band's increasing demands. Each member insisted on singing his own individual songs, making for a very disjointed performance. The Monkees became whole once more when Michael joined the tour. Nevertheless, bitter about the royalty rate they received for revived record sales, exhausted, and irritated with each other and the tour, the group broke up again at the end of 1989.⁸⁸ In 1997, another reunion tour by Peter, Micky, and Davy failed, and the members parted ways on less than friendly terms.⁸⁹

The band members recall their Monkees experience with varying degrees of awe and residual hostility toward their creators and critics. Davy reminisces, "Even now I hear our songs on the radio

⁸⁶ See *E! True Hollywood Story*, *supra* note 16.

⁸⁷ DOLENZ & BEGO, *supra* note 15, at 171.

⁸⁸ See *E! True Hollywood Story*, *supra* note 16.

⁸⁹ After their final break-up, Davy returned to be an amateur jockey in England, declaring he was through with the Monkees for good. Micky became a television producer for ABC's *Boy Meets World* sitcom. Peter began playing in a blues band in Los Angeles. Michael founded a documentary production company that ultimately won \$47 million in damages from a contract battle with PBS. Michael also published his first novel in 1999. See *id.*

... There must have been something to it."⁹⁰ In his autobiography, *I'm a Believer: My Life of Monkees, Music, and Madness*, Micky maintains his vision of the group as a positive event in his life:

I did very well out of the Monkees and I am grateful. I'm still getting jobs today based on the success and prestige I accrued by my association with that project. But it would have been nice to get a fair deal. And, quite simply, I didn't . . . I was very proud of my participation in all this: I still am. And to all those that criticized, condemned, berated, lambasted, denounced, defamed, defiled, or otherwise desecrated the Monkees . . . Go fuck yourselves.⁹¹

Peter, likewise, has no regrets about his Monkees heritage, though he remains insistent: "We did play, we did perform; we did make music, and we've made music recently. It's not like we weren't anything. We weren't nothing; we were something."⁹² Whatever the memories and regardless of whether one considers the Monkees magical, deplorable, or fraudulent, no one can deny that they were a true pop sensation, outselling even the most decorated rock groups of their era. As such, the Monkees became a model for shrewd, enterprising business and music moguls in the decades to come.

II. THE NEW KIDS ON THE BLOCK

"America has been waiting for this for years, ever since the Monkees."

—Maurice Starr, creator of the New Kids on the Block⁹³

A. *Idea and Creation*

Roughly thirty years after Monkees Mania, the next overwhelming boy band sensation arrived on the music scene in the form of five white teenagers from the rough Boston, Massachusetts neighborhoods of Dorchester and Roxbury. Similar to the Monkees, the group was assembled by a business mastermind who had conceived a detailed idea of the band long before its members ever met. Maurice Starr had started out as a musician himself decades before, cutting two albums of his own that failed to capture

⁹⁰ *Hey, Hey, We're the Monkees*, *supra* note 17.

⁹¹ DOLENZ & BEGO, *supra* note 15, at 109-10.

⁹² *Hey, Hey, We're the Monkees*, *supra* note 17.

⁹³ Nathan Cobb, *The Man and the Kids: The Hottest Pop Group in America, New Kids on the Block, is the Complete Creation of Maurice Starr, From Concept to Look to the Songs They Sing*, BOSTON GLOBE, Apr. 29, 1990, Magazine, at 17.

an audience. The middle-aged black music producer, operating out of his home studio in Roxbury, went on to produce low budget talent shows in his Boston neighborhood before achieving his first success in the early 1980s with a vocal group called New Edition.

Starr met the black teen singing group in the housing projects, and soon placed New Edition in local talent shows and sent them to his recording studio to cut an album. By the time the group debuted at New York's Copacabana nightclub in February 1983, Starr was acting as their record producer, songwriter, principle back-up musician, master of ceremonies, and all around puppeteer. For their first album in 1983, New Edition's record label paid Starr \$60,000 in royalties, while it paid the five group members collectively only \$41,000.

By the end of that year, New Edition, led by lead singer Bobby Brown, fired Starr because the singers' parents thought he was receiving too much of the group's money. Starr began a five-year legal battle with New Edition over the rights to the group's name and his entitlement to profits. Starr argued that he had paid all of New Edition's production costs out of his royalties, the members' own lawyers had negotiated the contract with the record label, and the concept of New Edition's 1980s black bubble-gum pop music was his own. By the time the lawsuit settled in 1988,⁹⁴ Starr was deeply scarred, refusing to return as the group's record producer when asked by an executive at their new record label, MCA. Instead, Starr vowed to seek revenge by creating a group even bigger than New Edition.⁹⁵

Starr planned to take black music beyond the black marketplace by having white kids sing it, but his troubles with New Edition left him wary of getting involved with an existing singing group.⁹⁶ He believed the safer route would be to build a group from the ground up, thereby limiting potential legal challenges in the future.⁹⁷ His plan was "generally the same as the creators of the Monkees," explains Starr. "They had to have some sort of gimmick, then we could build the talent as time went on. In the beginning, the guys didn't have to be the greatest singers in the world,

⁹⁴ By the terms of the settlement, New Edition had to pay Starr \$100,000 to legally retain their name.

⁹⁵ See Cobb, *supra* note 93.

⁹⁶ Starr's greatest fear was to go through an ordeal similar to his bout with New Edition. "It was like getting hit in the face with 100 pies," he says. *Id.* By all accounts, Starr is unselfish, dogged, and hard working. He labors twenty or more hours each day, answering his own phone and overbooking himself, even during the height of the New Kids success. *See id.*

⁹⁷ See Cobb, *supra* note 93.

but they needed an attitude and a look."⁹⁸ That look, he decided, had to be urban, street-smart, cute, wholesome, and white.⁹⁹ He sought to take the type of sound that drove black girls wild (like New Edition) and introduce it to white girls, who composed a substantially larger market. Starr's operations manager and project engineer, Sidney Burton Jr., explains how his boss worked:

He's not just a record producer. He creates concepts that are marketable. And the records, the videos, and the concerts promote the concept. Maurice develops the look and the personality first. The music is secondary. Of course, there has to be a group to go along with the concept, because the people want to see something.¹⁰⁰

Starr began looking for the group to go along with the concept, scouring Boston neighborhoods for talent and posting a cattle-call audition ad in local papers reading, "Wanted: Young kids." After his talent scouting forays for young boys in local neighborhoods led to an FBI investigation of Starr as a potential child molester or pornographer, he sought the assistance of a white female friend, Mary Alford, to recruit boys for auditions.¹⁰¹

After auditioning fifty boys, Starr discovered the first member of his group, Donny Wahlberg, a fifteen-year old part-time shoe store clerk from Dorchester.¹⁰² Donny recommended that Starr and Alford contact three boys from the neighborhood that he knew had some rapping and break-dancing abilities. Starr did, and Danny Wood (age fifteen), Jordan Knight (age fifteen), and Jonathan Knight (age sixteen) were added to the group. Adding a fifth member was a virtual obsession of Starr's, and he believed the boy had to be young and small, reminiscent of Michael Jackson in the Jackson Five. He ultimately found his precious lead singer in Joey McIntyre, a twelve year old enrolled in the gifted student program at a public school in Boston's Jamaica Plain.¹⁰³ Dazzling the boys and their parents, promising they would be the biggest thing since the Beatles, Starr signed the boys to a contract and began molding his young puppets into wholesome, hip-hop performers.

Starr describes his philosophy about the young boys he hoped to make into stars: "I was looking for kids who could catch on and

⁹⁸ David Silverman, *Another Chip Off That Old Rock: New Kids on the Block Puts Its Mark on a Pop Tradition*, CHI. TRIB., Nov. 19, 1989, Arts, at 4.

⁹⁹ *See id.*

¹⁰⁰ Cobb, *supra* note 93.

¹⁰¹ *See id.*

¹⁰² *See Silverman, supra* note 98.

¹⁰³ *See Cobb, supra* note 93.

learn real quick. The Kids weren't singers, and they weren't dancers See, a person doesn't have to have talent. I can give them talent. It's like a doctor doing a heart transplant."¹⁰⁴ In the earlier years of their success, the boys echoed Starr's description of their initial degree of talent and peppered him with gratitude. Donny stated:

I wasn't even a performer when I met Maurice He found me because he had spread the word in the neighborhood that he was looking for white kids to form a group. I was interested We're very close to him. He's been a very good teacher. I know when I started out I had never sung before. I was scared. I had no confidence in my singing. But he gave me confidence. He built us all up. He made us feel like we could do anything.¹⁰⁵

Only two of the five boys had ever been on stage before, and none had performed professionally. Fancying himself the "Berry Gordy of Boston,"¹⁰⁶ Starr began teaching them dance moves, vocal tricks, and stage patter.

Starr's role with the boys did not end at their concept and assembly; he acted as the group's manager, record producer, songwriter, chief recording engineer, and all around head coach. He personally wrote the songs and recorded the lead and background vocal tracks to guide the boys in the studio. Playing the drums, bass, guitar, and synthesizer himself, Starr laid down most of the rhythm for and mixed each of the instrumental tracks. The singers would then individually record their vocal parts, accompanied by Starr's instrumental work and guided by his voice. Their "studio" was frequently Starr's house or a hotel suite when the group was on the road.¹⁰⁷

The music prepared by Starr was a mix of black musical genres, including rhythm and blues, rap, and Motown. The group's ensemble dance moves were choreographed by Starr to mimic the Temptations and the aerobic dancing of Michael Jackson. Surrounded by black business managers, black bodyguards, black road managers, and black musicians, the boys began speaking in a black urban dialect¹⁰⁸ and exhibiting the kind of "soul"

¹⁰⁴ *Id.*

¹⁰⁵ Dennis Hunt, *Young, Gifted and Sounding Black: New Kids on the Block Are the Osmonds With Soul Sings Their Creator*, L.A. TIMES, June 4, 1989, Calendar, at 8.

¹⁰⁶ Michael Saunders, *The Producer's New Creation is a Classic Example of his Technique*, BOSTON GLOBE, Nov. 21, 1992, Living, at 29.

¹⁰⁷ See Cobb, *supra* note 93.

¹⁰⁸ For instance, Donny opened one concert by making rap hand gestures and announcing, "We wants to show all our fans what we likes to call, The Right Stuff!" *Id.*

Starr considered intrinsic to his concept of the group. Originally named Nynuk by Starr, the group changed its name to the New Kids on the Block ("New Kids") at the insistence of their record label, Columbia.¹⁰⁹

B. *The New Kids Rise to the Top*

The New Kids' performing career began in March 1985 with a show at the Joseph Lee School in Dorchester, where they lip-synced their songs before a pre-teen and teen audience. Believing that a black audience would be a tougher crowd and better training ground, Starr staged most of the New Kids' early shows before primarily black crowds, who often booed and generally dismissed the group. The New Kids were initially signed to the black music division of CBS Records, Inc., and marketed to black radio stations. Three singles and a debut album were unsuccessful, and Starr and his Kids began hoping for a crossover to a white fan base.¹¹⁰

Finally, in March 1988, the New Kids got their big break when WRBQ-FM, a pop station in Tampa, Florida, began airing their fourth single, *Please Don't Go Girl*, from their second album, *Hangin' Tough*. Other white radio stations began picking up the song. After Starr borrowed \$12,000 from his mother to finance a video and promote the song, *Please Don't Go Girl* landed in the Top Ten of the *Billboard* pop chart. After four subsequent hits, *Hangin' Tough* began a sales boom, peaking at number one on *Billboard* in September 1989 and selling more than seven million copies. The group's self-titled debut album, which had initially sold only 5,000 copies, had sold two million copies by 1990.¹¹¹

The New Kids had officially arrived by 1989, when *Billboard* pronounced the group the top-selling recording artists of the year. They sold twenty million units between 1989-90, including six Top Ten singles, two Top Ten albums, and two Top Ten videos.¹¹² *Forbes* reported that the group made \$115 million in 1990 and 1991, more than any other entertainers.¹¹³ Their 1990 North American tour made \$74.1 million, second, at that time, only to

¹⁰⁹ See *id.* But see Steve Dougherty, *The Heartthrobs of America: Teenage America Hasn't Seen Anything Quite This Screaming Since 1964, When the Beattles Were the New Kids on the Block*, PEOPLE, Aug. 13, 1990, at 76 (explaining that Donny Wahlberg claims that he originated the name "New Kids on the Block" in a rap he wrote for their first album).

¹¹⁰ See Cobb, *supra* note 93.

¹¹¹ See *id.*

¹¹² See *id.*

¹¹³ See *In MA, New Kids on the Block Sue Producer for Defamation*, ENT. LITIG. REP., Mar. 24, 1992.

the Rolling Stones' \$89 million *Steel Wheels* tour.¹¹⁴ An estimated \$400 million worth of New Kids merchandise was sold in 1990,¹¹⁵ and the New Kids' images appeared in an animated television series, a Coca-Cola commercial, and as a line of Hasbro dolls.¹¹⁶ Unlike many artists, wary of being corporately co-opted, the New Kids embraced commercial sponsors. They considered the sponsors' interest evidence of their success, as indicated by Donny's statement: "McDonald's offering us endorsements—to me, that's big. I mean, I came here from food stamps and nothing. I'm not going to look at that and be, like, 'Oh get out of here McDonald's.' I'm like, 'You want to work with me?'"¹¹⁷

The boys and their families enjoyed the group's financial success, as Kidsmania "elevated [their] lives to the level of a fairy tale," according to Marlene Putnam, mother of Jordan and Jonathan Knight. Jordan and Jonathan purchased their mother her dream house in the Boston suburbs, while Donny bought a new home for his parents and cars for his siblings. The boys' parents themselves became quasi-celebrities, as their mothers made special appearances on the boys' behalf at JC Penney stores around the country, and their fathers were frequently asked for autographs by hordes of excited girls along the group's tour.¹¹⁸

Not surprisingly, Starr received the lion's share of the New Kids profits. As a 50% partner in Dick Scott Entertainment, Inc., Starr received half of the 20% management fee the company took from the New Kids. Starr also co-owned Big Step Productions, which received 50% of all revenues derived from licensing New Kids merchandise. Under contract with Columbia as the group's record producer, Starr earned the same royalties as the five singers collectively. As the group's principal songwriter, Starr culled the title of *Billboard's* 1989 Songwriter of the Year, and earned 4 cents per song per record sold, plus compulsory license fees for radio airplay, jukebox play, and sheet music sales. Starr's name appeared ten times in the credits on the jacket of the New Kids' second and best-selling album, *Hangin' Tough*, whereas the boys'

¹¹⁴ See Michael Saunders, *A New Block to Conquer: Performers Pursue Transition from Teen Stars to Adult Singers*, BOSTON GLOBE, Jan. 11, 1994, Arts & Film, at 1.

¹¹⁵ See Jay Cocks, *Pop Stardom for Fun and Profit: The New Kids on the Block Ride a Hot New Trend: Success and Salesmanship as Part of the Act*, TIME, July 30, 1990, at 68. The array of New Kids merchandise included T-shirts, buttons, calendars, towels, key chains, nightshirts, patches, jackets, watches, pillow case, postcards, mugs, trading cards, pajamas, lunch kits, and sleeping bags. See Cobb, *supra* note 93.

¹¹⁶ See Cobb, *supra* note 93.

¹¹⁷ Cocks, *supra* note 115.

¹¹⁸ See Dougherty, *supra* note 109.

names did not appear at all.¹¹⁹

C. Seeds of Resentment

Despite monstrous sales and popularity among their young female audience, the New Kids suffered the barbs of criticism from the music industry. "We're real people," complained Donny, "and if people compare us to groups like the Monkees because we don't play any instruments or sing songs we've written, or because we're popular, that's fine. But I think that's where the comparison ends."¹²⁰ In the same year that *Billboard* named the New Kids the top-selling recording artists of the year, a reader poll by *Rolling Stone* awarded the group the dubious achievements of 1989's Worst Band, Worst Single, Worst Album, and Worst Tour.¹²¹

The boys' frustration with such criticism soon became evident. They made clear they resented imputations that their show was canned, that they were merely playing Pinocchios to Starr's Gepetto, and that they were a made-to-order commercial fad.¹²² "I think we have a lot of spontaneity, if there is such a word," insisted Jonathan.¹²³ Donny, the apparent spokesman of the group, was more defensive, claiming the group was getting "lynched"¹²⁴ and arguing: "People don't give us credit. Janet Jackson sat down with her producers and came up with the concept of *Rhythm Nation*. That's the same thing we did on our album."¹²⁵

The New Kids came to resemble children itching to break away from a domineering parent, stung by criticism that they were nonmusical robots controlled by a looming Svengali.¹²⁶ By April 1990, Starr had resorted to giving most advice to the recalcitrant Kids via long distance telephone. Donny made sure to emphasize the group's newfound independence: "[Starr] will come out and see us maybe once a month now. Usually he doesn't say too much. Usually he just says 'nice job'. He still has ideas, but we have ideas too."¹²⁷ Determined to exhibit their own artistic talent, some of the boys began dabbling in songwriting and production.¹²⁸ Before long, when the boys' parents began questioning him about his

¹¹⁹ See Cobb, *supra* note 93.

¹²⁰ Silverman, *supra* note 98.

¹²¹ See Cobb, *supra* note 93.

¹²² See Cocks, *supra* note 115.

¹²³ Dougherty, *supra* note 109.

¹²⁴ *Id.*

¹²⁵ Cocks, *supra* note 115.

¹²⁶ See Cobb, *supra* note 93.

¹²⁷ *Id.* at 17.

¹²⁸ See *id.*

hefty share of the profits, Starr agreed to bow out of the scene. Though he remained a partner in the New Kids' management company, Dick Scott Productions, Starr surrendered creative control and management, and ceased involvement as a day-to-day presence.¹²⁹

D. *Image Troubles and the New Kids' Demise*

Beginning in 1990, the New Kids' and their creator's image suffered attacks on numerous legal fronts. First, in a federal bankruptcy suit, a Brookline businessman, Jeffrey Furst, claimed that his business partner and reputed Mafia member, James Martorano, had lent Starr \$50,000 in exchange for a 25% stake in the New Kids. Starr denied the claim, saying that while he borrowed \$175,000 from Furst to build a recording studio, he paid the loan shark back within a year at 30% interest.¹³⁰ In August 1990, a man claimed that a New Kids bodyguard had beaten him in a Quincy pub. A month later, a Harvard student alleged that Donny attacked him on an airline for refusing to give up his seat.¹³¹

The most damaging charge came in January 1992, when Greg McPherson, producer of the *Hangin' Tough* album, told the *New York Post* that Starr and brother Michael Johnson were the real voices behind the New Kids in concerts and on albums, and that the boys had provided only 20% of the vocals on *Hangin' Tough*. McPherson also filed a creative infringement and breach of contract lawsuit against the group,¹³² claiming he was owed \$21 million for creative contributions and royalties.¹³³ McPherson's lawsuit made his charges more explicit, saying that the New Kids' recordings were augmented in the studio by a process called "masking," whereby their vocals were covered by Starr and Johnson, who mimicked the New Kids to bolster their tone, hit the right pitches, and add virtuosity where there had been none. He said that the boys did not sing in their 1990 Coke commercial, that they took an 8-track tape on concert tour, and were once stranded on stage and halted performance when the tape broke at a June 1989 concert at Disneyland. The New Kids were utterly unaccomplished musicians, McPherson claimed, adding, "Donny is supposed to be the drummer. He can't roll over and play dead, let alone play an

¹²⁹ See Saunders, *supra* note 114.

¹³⁰ *Kids' Manager Denies Mob Link*, L.A. TIMES, Oct. 15, 1990, Calendar, at 10.

¹³¹ See *id.*

¹³² See *In MA, New Kids on the Block Sue Producer for Defamation*, *supra* note 113 (discussing *McPherson v. Johnson*, No. 91-0525G (Mass. Super. Ct. filed Jan. 24, 1990)).

¹³³ See David Landis, *Lip-Syncing Charge*, USA TODAY, Jan. 30, 1992, at 1D.

instrument."¹³⁴

Others soon backed McPherson's claims. Florida songwriter James Capra, who co-wrote the group's song *Angel*, said that Starr told him many times that the New Kids' vocal tracks were so bad that he had to redo them himself, and that the boys were "completely aware" of what Starr was doing.¹³⁵ Next, Bernard Thomas of Sugarhill Records claimed he was in the studio during a taping of the group's 1990s hit album, *Step by Step*, and stated, "Maurice Starr is the New Kids on the Block. The Kids do sing, but the voice you hear on the hits is Maurice. I've seen him sing over in the studio—he's a musical ventriloquist. He's so exceptionally talented he can sound like five different guys."¹³⁶ A class action lawsuit was then brought by fan Michael Seigel in Chicago Cook County Circuit Court, demanding \$75 million in reparations for fans who bought the albums that Seigel contended contained little singing by the quintet.¹³⁷ The District Attorney of Yolo County, California, launched a state consumer fraud investigation into the New Kids' alleged scam, just as he had done during the Milli Vanilli lip-sync fiasco a few years prior.¹³⁸

Starr and the New Kids soon responded. Starr issued press statements denying that he did anything more than sing background vocals on *Step by Step* album and saying that he had no vocal part on *Hangin' Tough*.¹³⁹ The New Kids flew back to the United States from a tour in Australia to sing live on *The Arsenio Hall Show* to disprove the lip-syncing charges. On the show, Donny admitted the group had used recordings of their voices to augment concert performances, but insisted that they had stopped that practice in 1987. He also admitted that they used an Emulator, a complex synthesizer, to duplicate some backing tracks on a 1989 *Arsenio* show appearance. "We're not saying we sing good," Donny clarified, "but we sing."¹⁴⁰ In February 1992, the New Kids countersued against McPherson,¹⁴¹ saying his "false and defamatory" state-

¹³⁴ *In MA, New Kids on the Block Sue Producer for Defamation*, *supra* note 113.

¹³⁵ Chuck Philips, *Suit Still on the Block: New Kids' Lawsuit Against Its Former Music Director Continues Even Though He Has Retracted Charges That They Lip-Synced*, L.A. TIMES, May 4, 1992, at F1.

¹³⁶ *In MA, New Kids on the Block Sue Producer for Defamation*, *supra* note 113.

¹³⁷ Steve Hochman, *New Kids on the Block Let Singing Do the Talking: Quintet Performs on 'The Arsenio Hall Show' to Disprove Charges of Lip-Syncing*, L.A. TIMES, Feb. 6, 1992, at B1.

¹³⁸ See Philips, *supra* note 135.

¹³⁹ See *In MA, New Kids on the Block Sue Producer for Defamation*, *supra* note 113.

¹⁴⁰ Hochman, *supra* note 137.

¹⁴¹ See *In MA, New Kids on the Block Sue Producer for Defamation*, *supra* note 113 (discussing *New Kids On The Block v. McPherson*, No. 92-0891C (Mass. Super. Ct. filed Feb. 10, 1990)).

ments in *The New York Post* had damaged the group's good name and business reputation, and were made for private gain.¹⁴²

In April 1992, McPherson retracted his allegations and said they were untrue, then dropped his \$21 million lawsuit against Starr. Though McPherson said the dispute was resolved, he would not say whether his retraction resulted from an out of court settlement. Sources close to the case reported that the two settled, with Starr agreeing to pay McPherson a six-figure amount along with a cache of recording gear and a promise to use McPherson on Starr's upcoming projects. James Capra, likewise, withdrew his statement in March 1992 after he too reportedly received a six-figure settlement.¹⁴³

Though the New Kids' legal problems were resolved, the damage had clearly been done. After completing a world tour in 1992, the New Kids disappeared from the music scene, as the members expressed a need to regain control of their lives. Though taking a break would almost certainly kill the group's momentum, they felt they had no choice because they were already on the brink of breaking up. The boys admitted that they had not been getting along and that they were suffering from the stress of constant publicity.¹⁴⁴ After fading from the scene, the New Kids became a quickly and deliberately forgotten foible of the pop music scene.

E. *Aftermath*

In January 1994, three years after their last concert tour, the New Kids released their fourth album, *Face the Music*, using the abbreviated name NKOTB. Praying for a NKOTB come-back, the boys' record company, Columbia, enlisted three of the industry's most high-priced, high-profile producers: Teddy Riley, who had worked with Bobby Brown and Michael Jackson, Narada Michael Walden, who had sculpted songs by Whitney Houston and Mariah Carey, and Walter Afanasieff, producer for Mariah Carey and Michael Bolton.¹⁴⁵ Despite the album's high production price tag, *Face the Music* was a complete failure. It seemed that Starr's chart-topping puppets were doomed to be regarded as a pop embarrassment like the Monkees, or, even less generously, another great pop hoax like the ill-fated duo from the New Kids own era, Milli Vanilli.

During the later years of the New Kids phenomenon, Starr had been assembling other pre-fabricated pop acts, including the

¹⁴² See *In MA, New Kids on the Block Sue Producer for Defamation*, *supra* note 113.

¹⁴³ See Philips, *supra* note 135.

¹⁴⁴ See Saunders, *supra* note 114.

¹⁴⁵ See *id.*

Perfect Gentlemen (a black group in the style of Boys II Men), Rick Wes (intended to be the next Elvis Presley), a three-person "girl group" named Lady Soul, and a five-person adult contemporary group named Classic Example.¹⁴⁶ By 1993, after these groups failed to attract an audience and folded, Starr moved to Atlanta, Georgia, to concentrate on performing and producing gospel music, and essentially vanished from the pop music scene.¹⁴⁷

Starr emerged in 2000 to attempt to cash in on the boy band resurgence led by the Backstreet Boys and 'N Sync by forming a six-person boy band in Atlanta named Six Piece. Retracing the steps he took in forming the New Kids, Starr handed out fliers to recruit boys and held auditions in his Atlanta home. Under the deal forged with the new group members, Starr receives 20% of their profits as manager, the boys split 10% of the profits between them, and the remainder goes to Starr's independent label, Starr-Works, for promotion and marketing. The pop group manufacturing business is comfortable territory for Starr. "It's like baking a cake," he says of his latest creation. "New Kids on the Block were a cake . . . Everything starts from a vision, an embryo . . . This is my recipe for cooking up a boy band."¹⁴⁸

III. THE BACKSTREET BOYS

I wish it could always be a family without lawyers. It's a shame it has to happen, but it's inevitable. Success breeds people getting in your ear. Lawyers, financial advisors, parents, all these people. The boys are growing up . . . but the Backstreet Boys are all multimillionaires now, and they can never forget that.

—Lou Pearlman, creator of the Backstreet Boys¹⁴⁹

A. *Idea and Creation*

A business tycoon's eye not for talent, but for profit-making opportunity, inspired the creation of the next boy band to take the nation by storm nearly a decade after New Kids hysteria. In the late 1980s, Louis Pearlman, a multi-millionaire entrepreneur in Florida, owned a business empire that included a string of pizza restau-

¹⁴⁶ See Saunders, *supra* note 106.

¹⁴⁷ See Saunders, *supra* note 114.

¹⁴⁸ Miriam Longio, et al., *The Making of an Atlanta Boy Band: Step 1: Find 6 Cute Guys*, ATLANTA CONST., Mar. 17, 2000, at 1C.

¹⁴⁹ Geoff Boucher, *The Making of Heartthrobs, Inc.: First Came the Backstreet Boys, Then N'Sync, and Now a Fleet of More Contenders for Pop Idolization, but the Man Who Has Launched Them All*, Louis J. Pearlman, *Success Isn't All Sweetness and Light*, L.A. TIMES, Jan. 24, 1999, Calendar, at 4.

rants, the Chippendales entertainment chain, and a highly successful aviation company operating a fleet of corporate jets and blimps. His greatest business idea came in 1989, when Pearlman chartered a flight for the then explosive New Kids. Amazed that a group of singing boys could afford such luxurious transportation, Pearlman contacted his cousin, famed musician Art Garfunkel, to learn more about the New Kids. Garfunkel explained that the New Kids were the hottest pop act on the music scene, and their bubble-gum pop music and merchandise were selling in the high millions. Intrigued, Pearlman attended a New Kids concert. Witnessing the screaming young fans and parents that packed the sold out concert arena, Pearlman perceived the potential of the wholesome, young boy band, and believed he could replicate the formula for success.¹⁵⁰

Pearlman approached making a boy band like any other of his commercial endeavors, investigating the music industry and drafting a business plan in 1990. In addition to further discussions with Garfunkel, Pearlman's "education" in how to build a hit factory consisted of consultation with music legend Smokey Robinson about the behind-the-scenes workings of Motown in its heyday. Pearlman looked at the New Kids as a blueprint, learning from their failure that one necessity was to make sure the enlisted boys could actually sing.

Pearlman began to put his idea to work in Orlando, Florida, where the Disneyworld theme park and film studios guaranteed a dependable stream of available young talent. In a quiet, suburban industrial park, Pearlman built Trans Continental Records (nicknamed "O-Town"), an 80,000 square foot rehearsal and recording complex where he would mold his group with classes in vocal strength, personal training, stage presence (how to hold a microphone, work a crowd, and catch teddy bears thrown from the audience), media interview skills (don't chew gum, don't lose eye contact, don't talk over one another), and personal styling. After auditioning over sixty candidates, Pearlman selected five boys, ranging from age twelve to twenty: Nick Carter, Howie Dorough, Brian Littrell, A.J. McLean, and Kevin Richardson. Pearlman signed the boys to a contract with himself as their producer and business manager, and named his group the Backstreet Boys.¹⁵¹

Recognizing that forming the necessary contacts and shaping the boys into stars would require someone with more hands-on ex-

¹⁵⁰ See Boucher, *supra* note 149.

¹⁵¹ See *id.*

perience in the pop music industry, Pearlman hired Johnny Wright to be the Backstreet Boys' personal manager. Prior to signing on with Pearlman in 1992, Wright had been a driver for New Kids creator Maurice Starr, and had participated in the group's management during their tremendously successful tours.¹⁵²

B. A Slowly Emerging Sensation

Small-time gigs at local restaurants, junior high schools, and malls habituated the Backstreet Boys to singing before an audience, but the group was slow to make a name for itself. The group performed its first large public show at Seaworld in May 1993, where they did not impress the crowd. The group's first single, *We've Got It Going On*, was ignored amidst the currently popular glut of hip-hop and alternative rock music, only reaching number sixty-nine on the charts.¹⁵³ Pearlman shopped the group to ten record companies before finally securing a deal with then-small label, Jive Records.¹⁵⁴ By this time, Pearlman had invested over \$1 million in the group itself and \$2 million in the entertainment company infrastructure required to support and promote the band.¹⁵⁵ In 1995, when two high profile blimp crashes and increased competition caused his aviation company's stock to drop from \$6 per share to just \$.03 per share, Pearlman decided to turn his attention to show business full-time. Recognizing that the European market might be more receptive to teen acts, Pearlman and Wright sent the group abroad to hone their skills for three years.

The plan worked and by the time the Backstreet Boys returned to the United States to release their self-titled album in August 1997, they had sold over eight million copies in Europe and made an impression upon fans that would carry them into the American market.¹⁵⁶ *Quit Playing Games*, the group's first single to get attention in the United States, topped the charts at number one, and after releasing four singles in America, the Backstreet Boys were a \$200 million success story.¹⁵⁷ Critics were not kind, however,

¹⁵² See Andrew Essex & Dave Karger, *Bubble Gum Blows Up! Chew on This: 'N Sync and Britney Spears Are the Current Whiz Kids of a Half-Billion-Dollar Teen-Pop Explosion. It'd Be All Fun and Games If Not for Some Icky Grown-ups and Sticky Lawsuits*, ENT. WKLY., Mar. 5, 1999, at 20. Of Wright, Starr commented: "Johnny was a good learner. He was under my wing, and right now I'd like to be under his!" *Id.*

¹⁵³ See LAUREN ALISON, BACKSTREET BOYS: NOW AND FOREVER! 10 (Scholastic Inc. 1999).

¹⁵⁴ See Boucher, *supra* note 149.

¹⁵⁵ See Bruce Handy & Timothy Roche, *Big Poppa's Bubble Gum Machine: Boys Who Can Sing and Dance and Look Supercute! It's an Old Formula, and It Still Drives Girls Crazy - Just Ask Svengali Louis ("Big Poppa") Pearlman*, TIME, Feb. 1, 1999, at 56.

¹⁵⁶ See Boucher, *supra* note 149.

¹⁵⁷ See ALISON, *supra* note 153, at 11.

branding the boy band a saccharine sweet, bubble-gum pop nightmare. The Backstreet Boys responded only somewhat defensively, with curt quips like Howie's: "We're not trying to please critics; we're trying to please ourselves and our fans."¹⁵⁸

C. *The Backstreet Boys Sue For Their Freedom*

Despite their success, the boys' relationship with Pearlman began to sour. The notorious micromanager ruffled the band and manager Wright by routinely commanding changes to the act's videos, song titles, and promotion.¹⁵⁹ Far more injurious, however, was Pearlman's decision to create a second boy band, 'N Sync, with Wright as their personal manager. The cost of launching the Backstreet Boys, including studio, training, and touring expenses, had continued to mount, and Pearlman evaluated the situation from his typical business-minded outlook: "You can't make money on an airline with just one airplane."¹⁶⁰ He applied a marketing perspective and opted to seize the opportunity to expand his boy band empire. "It was starting to work with Backstreet," he explained, "so I knew it would work with 'N Sync because you have Pepsi and you have Coke, you have McDonald's and you have Burger King. And if I didn't do it, somebody else would."¹⁶¹

The decision personally offended the boys and the new band posed a significant threat to Backstreet's rule over the teen pop kingdom. Pearlman's creation of their most serious competitor "hurt [their] feelings," said the oldest member of the Backstreet Boys, Kevin. In *Rolling Stone*, Kevin explained, "for awhile, it was like, 'We're a family.' Then all of the sudden, 'It's business, guys, sorry.'"¹⁶² Sharing the same managers, production team, and songwriters frustrated the Backstreet Boys, as they now felt they had to vie for attention and material in order to distinguish themselves. "Sometimes you hear a song on the radio and think, 'If there wasn't an 'N Sync, we could have had that for our next album.' Now there's all these different groups and with success comes popularity People are throwing themselves at [our producers] and trying to get a piece of everything," carped Backstreet's Brian.¹⁶³

¹⁵⁸ *Id.* at 9.

¹⁵⁹ See Boucher, *supra* note 149.

¹⁶⁰ *Id.*

¹⁶¹ Peter Carlson, *Music Machine: "Big Poppa" Pearlman Takes Kids and Turns Them Into Stars. Then They Sue Him*, WASH. POST, Nov. 6, 1999, at C1.

¹⁶² ALISON, *supra* note 153, at 11.

¹⁶³ Interview by John Norris with Backstreet Boys, in *Backstreet Boys: Still Larger Than Life, Part I*, at <http://www.mtv.com/bands/archive/b/bsb01> (last visited Jan. 26, 2002).

When the newly created 'N Sync made the *Billboard* Top 10 in July 1998, the Backstreet Boys fired Wright and sought freedom from Pearlman. After signing with a new management team, the band initiated a lawsuit against Pearlman and Trans Continental Records, disputing the distribution of \$200 million in revenues.¹⁶⁴ The legal battle took the form of a corporate proxy struggle,¹⁶⁵ while the various parties took their case before the court of public opinion.

Characterizing themselves as "indentured servants," the boys openly charged Pearlman,¹⁶⁶ Wright, and Wright's co-managing wife, Donna, with carving up \$10 million in profits from their first album while only allotting \$300,000 to the band.¹⁶⁷ "The contracts weren't fair," insisted Kevin to *Rolling Stone*, "and we were kept on the road, and before you know it, two or three years and millions of dollars go by."¹⁶⁸ Their parents echoed the boys' cries of exploitation. "[Pearlman] should be fair to these boys and their families. Making the wealth is one thing, sharing the wealth is another Don't just be a greedy person because you had this idea," said Nick Carter's mother to the press. She insisted that Pearlman had not been forthcoming about the amount of money generated by assorted ventures cashing in on the act's worldwide success.¹⁶⁹

Pearlman put his own spin on the lawsuit, downplaying it as a "paperwork suit" without any real animosity between him and the boys. Noting that he had invested \$3 million in the group before they made him a dime, Pearlman recalled Backstreet's formative years when he bought the boys their meals and haircuts, paid for their vocal coaches, wrote their first song, and made mortgage pay-

¹⁶⁴ See Boucher, *supra* note 149.

¹⁶⁵ See *Court: Annual Meeting Better Than Proxy Action to Decide Voting Rights*, THE ENT. LITIG. REP., July 31, 1998. According to court documents, the Backstreet Boys purported to vote Pearlman out of power in the band's corporation, Backstreet Boys Inc., for siphoning off revenue from concerts and album sales. Pearlman's legal team argued that while the band members owned stock in the corporation, an irrevocable proxy in the charter prevented them from using proxy votes to depose him. The clause was justified, Pearlman contended, because he was the founder of the corporation and group, and had made considerable investments of time and money to the business. The band members spawned more litigation in New York and Florida courts when they purported to elect themselves new Backstreet Boys, Inc. directors, and made merchandising deals without Pearlman's consent. Ultimately, the Delaware court vice chancellor declared that the central issue in the dispute was interpretation of an ambiguous proxy clause in the band's contracts. Only if the band members called an annual shareholder meeting to vote Pearlman out of power would the Delaware court's interest in resolving the corporate governance dispute trump the contract's arbitration clause. *Id.*

¹⁶⁶ The Backstreet Boys' suit claimed that Pearlman had devoured 43% of their profits, taking \$ 7.5 million from the profits of their first album. See Essex, *supra* note 152.

¹⁶⁷ See Carlson, *supra* note 161.

¹⁶⁸ ALISON, *supra* note 153, at 11.

¹⁶⁹ See Boucher, *supra* note 149.

ments, on one singer's family's house when times were tough.¹⁷⁰ Others close to both Pearlman and the band characterized the problem as the boys having too many "people talking in their ear," such as parents, would-be managers and agents, and lawyers combined with plenty of money and a growing tendency to chafe under the hand of their father figure.¹⁷¹

The Backstreet Boys and Pearlman officially parted ways in October 1998 when their lawsuit settled. Though the precise settlement terms are confidential, industry insiders reported that the agreement deemed Pearlman the invisible "sixth Backstreet Boy," entitling him to retain the Backstreet Boys name and receive one-sixth of the group's profits after Trans Continental and Jive Records took their cut. The band members' attorney, Judith Segelin, declared that the boys were satisfied with the settlement and their greater share of money and control.¹⁷²

D. Continued Legal Troubles for the Boys and Their Maker

Though free of Pearlman and Wright, the Backstreet Boys could not escape their little brother band, 'N Sync, and found themselves in more contract controversy. In October 1999, when their long-time record company, Jive, signed 'N Sync to the label, the Backstreet Boys began shopping for a new home, filing a breach of contract suit against Jive. Jive insisted that the Backstreet Boys were bound to them by their existing long-term contract, and negotiations between the two commenced. Within a month, their differences were evidently resolved, as the Backstreet Boys successfully renegotiated a new \$60 million, five album deal with Jive and dropped their lawsuit.¹⁷³ Industry insiders characterized the Backstreet Boys versus Jive squabble as an example of a fairly common technique used by recording artists of going public with complaints about their record contract in order to renegotiate a better deal. Boy band disputes were notable, however, because of the money at stake; between the Backstreet Boys and 'N Sync, hundreds of millions of dollars in record sales had been generated in just the previous two years.¹⁷⁴

Pearlman and Trans Continental, meanwhile, remained em-

¹⁷⁰ See *id.*

¹⁷¹ See *id.*

¹⁷² See *id.*

¹⁷³ See Tina Johnson, *Backstreet Boys Sign New \$60 Million Deal with Jive*, at http://www.mtv.com/news/articles/1425191/19991109/backstreet_boys.jhtml (Nov. 9, 1999).

¹⁷⁴ See Eric Boehlert, *Backstreet Boys Quit Playing Games*, at <http://www.rollingstone.com/news/newsarticle.asp?mid=9353> (Oct. 6, 2001).

broiled in legal disputes with Jive Records and its parent company, Zomba Records, over each entity's share of Backstreet Boys royalties, ownership of the group's trademarks, and other control issues.¹⁷⁵ To enhance his public profile, Pearlman hired an in-house press agent to orchestrate a public relations campaign. In 1999, *Time*, the *Los Angeles Times*, and the *Wall Street Journal* ran stories about Pearlman, touting his net worth of \$950 million and titling him the "Sixth Backstreet Boy" and "mastermind" behind 'N Sync. Claiming his beloved boys commonly referred to him as "Big Poppa" and "Big Dawg," Pearlman crowned himself the Berry Gordy of the O-Town operation.¹⁷⁶

Pearlman's self-aggrandizement angered Johnny Wright, who soon filed suit against Pearlman for money owed to him for managing the Backstreet Boys.¹⁷⁷ While acknowledging that Pearlman's \$6 million investment brought O-Town into existence, Wright dished that the business mogul's creative skills were suspect at best, and that Wright had called the creative shots and arranged all the necessary industry contacts in launching Trans Continental's two superstar boy bands. "Lou's very good at writing checks," claimed Wright, "[but] I'm the artist-development person I can call [Sony Music chairman and CEO] Tommy Mottola right now and get him on the phone My thing is this: If you have to tell somebody how much you do, you really don't do anything."¹⁷⁸ Today, Wright indeed remains a force to reckon with in pop music as the personal manager of mega-selling 'N Sync and teen diva Britney Spears.¹⁷⁹

Since being deserted by 'N Sync as well, Pearlman doggedly continues developing other teen pop groups, hoping for the next sales miracle. His largest recent project combined the popularity of boy bands and reality television. With his latest boy vocal group, O-Town, Pearlman turned the auditioning and training process into its own mini-drama, depicted in weekly installments on *Making the Band*, a reality television series on ABC and MTV. For O-Town and his other fledgling groups, Innosense, C Note, Take 5, and the Lyte Funkie Ones, Pearlman maintains the Trans Continental recording compound as the groups' virtual living quarters and pays the group members \$500-\$1000 per week until their group begins

¹⁷⁵ See Sorelle Saidman, *Backstreet Boys File for Divorce from Jive Records*, CDNow ALLSTAR News, at <http://bsbtrain7181.tripod.com/cdnnews.html> (Oct. 6, 2001).

¹⁷⁶ See Essex & Karger, *supra* note 152.

¹⁷⁷ See Carlson, *supra* note 161.

¹⁷⁸ Essex & Karger, *supra* note 152.

¹⁷⁹ See *id.*

making money.¹⁸⁰ Pearlman also stays busy hosting focus groups, offering media training courses, creating online chat rooms, and providing any other business services intrinsic to selling records.¹⁸¹ All the while, Pearlman attempts to keep up the persona of the young performers' benign "Big Poppa" with grandiose displays of generosity—throwing elaborate pool parties, taking the youngsters out for field trips on his racing boat, and flying group members and their parents to New York for dinner.

After parting with Pearlman, the Backstreet Boys continued to befuddle critics by dominating the pop music scene. Released in May 1999, their second album, *Millennium*, debuted at number one on the *The Billboard 200* Album Chart, and sold 1.3 million copies in its first week, shattering Garth Brooks' 1.08 million record for single week album sales. Four weeks after its release, *Millennium* had sold over five million copies, and sat firmly in the number one spot on the charts. When the Backstreet Boys appeared at MTV's Times Square studio to hype the album, 10,000 fans flooded the streets, forcing the police to set up road blocks in the neighborhood and constituting MTV's largest street crowd ever.¹⁸² The album dominated the worldwide charts as well, receiving gold and platinum awards in forty-five countries.¹⁸³ Certified twelve-times platinum in the United States, *Millennium* spent more than seventy-seven weeks on *The Billboard 200* and garnered five 1999 Grammy nominations, including "Album of the Year." The band again made history in August 1999 when all 765,000 tickets for their greatly anticipated 11-week, 39-city North American arena tour sold out as soon as they went on sale—the vast majority within an hour.¹⁸⁴

The Backstreet Boys third and most recent album, *Black and Blue*, released in November 2000, has, so far, sold over eight million copies. The album features five songs co-written by members of band, as well as two songs written solely by the five boys. The Boys drew upon renowned producers such as hit-masters Max Martin and Babyface. In the first week of its release, the album's first single, *Shape of My Heart*, achieved the number one spot on all but

¹⁸⁰ See Handy & Roche, *supra* note 155.

¹⁸¹ See Essex & Karger, *supra* note 152.

¹⁸² See ALISON, *supra* note 153, at 7.

¹⁸³ *Millennium* landed at the number one spot in Austria, Belgium, Canada, Denmark, Germany, Greece, Holland, Hong Kong, Iceland, India, Indonesia, Italy, Korea, Malaysia, Mexico, New Zealand, Norway, Philippines, Portugal, Singapore, Spain, Sweden, Switzerland, Taiwan and Thailand. Backstreetboys.com, at http://www.backstreetboys.com/hot_stuff/faq/default.asp (last visited Apr. 21, 2001).

¹⁸⁴ See *id.*

one of the 171 United States Top 40 stations, while overseas, the song immediately jumped into the Top 5 in Sweden (#1), Norway (#1), Canada (#1), Germany (#2), Switzerland (#4), Austria (#5), and Holland (#5).¹⁸⁵ Despite these seemingly impressive numbers, many consider *Black and Blue* a commercial disappointment. The album's less-than-anticipated sales may officially mark a pop music coup, as 'N Sync has emerged from the shadow of Pearlman's first-born, the Backstreet Boys, to seize the precious boy band throne.

IV. 'N SYNC

Rolling Stone: Anything you want to say to your older fans?

Justin: Yeah. Thanks for thinking we don't suck.¹⁸⁶

A. A Somewhat Organic Origin

The examination of conflicts between boy bands and their creators would be incomplete without resuming the tale of dissed Svengali Lou Pearlman and the boys of America's presently most successful pop group, 'N Sync. As mentioned, Pearlman had been seeking to assemble a second boy band to realize the economy of scale created when two groups, rather than just one, could make use of his production company infrastructure, and to fill the niche of the Backstreet Boys' counterparts. When Chris Kirkpatrick, a twenty-four year old doo-wop singer at Orlando's Universal Studios, heard that Pearlman was looking to sign another group, he decided to contact friends and other local performers to try to form a group.¹⁸⁷ Chris first reached out to former co-worker Joey Fatone, a tough kid from Brooklyn performing in local theater. A recommendation from his agent led Chris to Justin Timberlake, the peppy heartthrob of the group, and Justin's former *Mickey Mouse Club* castmate, soft-spoken lead vocalist, J.C. Chasez. Once Justin's vocal coach referred the boys to Mississippi choirboy Lance Bass, the group was complete.¹⁸⁸

After a series of discussions in 1996, Pearlman, Wright, the group members, and the boys' parents signed a long-term contract,

¹⁸⁵ See *id.*

¹⁸⁶ David Wild, *People of the Year: 'N Sync: They Came. They Saw. They Sold 2.4 Million Records in a Week*, ROLLING STONE, Dec. 14-21, 2000, at 135.

¹⁸⁷ See Fred Schruers, *'N the Driver's Seat with a Record-Breaking Smash Album and 52 Sold-Out Road Dates, 'N Sync Are a Pop Tour De Force. But Do These Hip-Swiveling Boys of Summer Have Legs?*, ENT. WKLY., May 19, 2000, at 20.

¹⁸⁸ See Essex & Karger, *supra* note 152.

officially making the band a Trans Continental act.¹⁸⁹ Pearlman would act as the boys' business manager and producer, while Wright, as personal manager, would attempt to groom them in the style of their predecessors, the Backstreet Boys. Though trained and polished at Pearlman's O-Town complex, the boys have been quick to point out their autonomous beginning. "We put the group together ourselves We were friends before we got a management team and before we got a record deal," explained Justin.¹⁹⁰ As with the Monkees and the New Kids, the band and their creator have given diverging stories about the origin of the name 'N Sync. While Pearlman claims that he arrived at the name by adding together the last letter of the first names of the group members,¹⁹¹ the boys insist that they decided upon the name after Justin's mother commented that they "sounded really good, really in sync."¹⁹² Such debate was far from discussion at the outset, however, as Pearlman and the group began developing their act and looking for a record deal.

B. *Fast Track to Stardom*

As he had experienced with the Backstreet Boys, Pearlman found little interest among American record companies when he first introduced them to his new band. Following the formula that seemed to be working with Backstreet, Pearlman initiated the boys with a tour of Europe, signing them to a record deal with Ariola, BMG's German affiliate.¹⁹³ For their debut album, 'N Sync, Pearlman again tapped the songwriting and production talents of dependable hit-makers, Max Martin and Denniz Pop. Before long, RCA's international A&R director, Vince Degiorgio, viewed the boys in concert in Stockholm, Sweden, and licensed 'N Sync's records from Ariola for release in the U.S.¹⁹⁴

Though it had taken five years for Pearlman to make the Backstreet Boys a success, 'N Sync became a sensation before the American audience in half that time. The group's big break came in July 1998 when the Disney Channel asked them to fill a slot left vacant

¹⁸⁹ See *id.*

¹⁹⁰ 'N SYNC: NO STRINGS ATTACHED: THE UNOFFICIAL FAN GUIDE 13 (Triumph Books 2000). After their split with Pearlman, Chris was especially emphatic about his role in the group's formation: "Lou said, 'I'll put money behind you.' Now, somehow, this has turned into 'He started us.' You can take it however you want, but I started the group." See Essex & Karger, *supra* note 152.

¹⁹¹ See Boucher, *supra* note 149.

¹⁹² See Essex & Karger, *supra* note 152.

¹⁹³ See Eric Boehlert, 'N Sync and Trans Con Settle, Rolling Stone, at <http://www.rollingstone.com/news/newsarticle.asp?nid=9946> (Dec. 29, 1999).

¹⁹⁴ See Essex & Karger, *supra* note 152.

by the Backstreet Boys' withdrawal from a concert special. Immediately after that appearance, 'N Sync's first singles, *I Want You Back* and *Tearin' Up My Heart*, leapt into the Top 40.¹⁹⁵ As their album rocketed up the charts, the boys tried to ignore the ominous troubles arising between Pearlman and the Backstreet Boys, and denied any problems of their own with their producer-manager. "In our heads, we're going, 'Whoa, we gotta be careful,'" explained Chris, "but the fact of the matter is we've never had a problem. We're very trusting. If you give us the shirt off your back, we're gonna give you the shirts off our backs, plus our pants."¹⁹⁶

Beginning with a small venue tour, playing places such as Chicago's House of Blues and various state fairs, 'N Sync soon found itself opening for Janet Jackson's *Velvet Rope* tour and singing the national anthem before the crowds at an Orlando Magic basketball game and a Philadelphia Phillies baseball game. They crooned before thousands of their biggest fans at the Miss Teen USA pageant, and made guest appearances on *The Tonight Show* and *Live! With Regis and Kathie Lee*.¹⁹⁷ Within four months of its American release, the group's debut album achieved much-coveted diamond status, selling over ten million copies and yielding four number one singles. After scoring again with their November 1998 Christmas album, *Home for Christmas*, 'N Sync received the coveted 1999 American Music Award for Best New Pop/Rock Group.¹⁹⁸

C. 'N Surrection

When their royalty receipts from American sales turned out smaller than the group members had anticipated, their suspicions were aroused and they asked J.C.'s uncle, an attorney, to look at their contracts.¹⁹⁹ The boys discovered that because their record deal was with German record company Ariola, and their relationship with American company RCA consisted only of a license agreement for United States album release rights, the band was being paid in Deutsche marks and were subject to fluctuations in the currency exchange rate. Because 'N Sync was signed internationally, moreover, their United States album sales were calculated as sales in a "foreign territory," leaving them a third smaller and slower in coming than if the group were signed with a U.S. com-

¹⁹⁵ See *id.*

¹⁹⁶ Essex & Karger, *supra* note 152.

¹⁹⁷ See 'N SYNC: NO STRINGS ATTACHED: THE UNOFFICIAL FAN GUIDE, *supra* note 190, at 12.

¹⁹⁸ See Essex & Karger, *supra* note 152.

¹⁹⁹ See Schruers, *supra* note 187.

pany.²⁰⁰ Realizing just how drastic the original contracts with Trans Continental were in their allocation of money and control to Pearlman, the group decided to seek relief elsewhere, and began quietly shopping for a new record deal and production company.²⁰¹

In the fall of 1999, at the height of their newfound success and with their next album in its finishing stages, 'N Sync's next move shocked the music industry and threatened their own viability. Buttressed by promises of support from Clive Barker, the president of Jive Records, the boys and their personal manager, Wright, announced that the group was signing on with Jive and no longer considered themselves affiliated with RCA or Trans Continental. In an industry where contract disputes are commonplace and business relationships highly fluid, 'N Sync's jump to Jive was considered an unprecedented defection. Insiders followed the drama with interest, curious to see how the band would justify their move in the inevitable legal confrontation with Trans Continental, Pearlman, and RCA.²⁰²

Observers did not have to wait long for the abandoned puppeteer and RCA to react. In October 1999, Trans Continental Media, Trans Continental Records, Pearlman, and BMG (parent company of RCA) filed a contract action against 'N Sync and Zomba Recordings (the parent company of Jive Records). They sought \$150 million in damages and an injunction to prevent the defendants from using the 'N Sync name, touring, performing, rehearsing, recording, or releasing any new products.²⁰³ Terming 'N Sync's move a "renegade act, wholly improper in the music business,"²⁰⁴ Pearlman's legal team released the following statement:

Louis Pearlman and Trans Continental Records created, developed, financed, and groomed 'N Sync, and arranged, among other things, a very lucrative recording and distribution agreement with BMG that has been enormously beneficial to the group. They guided 'N Sync every step of the way through the often-arduous process that led to the group's success. Mr. Pearlman and Transcontinental have always acted in the best interests of the group and have tried for many months to resolve any

²⁰⁰ See *id.*

²⁰¹ See Boehlert, *supra* note 193.

²⁰² See Boehlert, *supra* note 174.

²⁰³ See Chris Willman, 'N Surrection?: When 'N Sync Announced Their Plan to Ankle RCA for Jive Records, *Nipper Cried Foul—and Jive May Have Fatally Crossed Its Own Stars, the Backstreet Boys*, ENT. WKLY., Oct. 22, 1999, at 19; Carlson, *supra* note 161.

²⁰⁴ Eric Boehlert, 'N Sync 1, Pearlman 0, *Rolling Stone*, at <http://www.rollingstone.com/news/newsarticle.asp?nid=9801> (Nov. 29, 1999).

differences amicably. They have abided by the mutually agreed upon terms of their contracts, as they believe 'N Sync should, on legal and also ethical grounds It is absurd to think that now that the members of 'N Sync have been made rich and famous, they can just turn their backs on Mr. Pearlman and Trans Continental and go somewhere else.²⁰⁵

Trans Continental and BMG attorneys went on to insist that the plaintiffs had been more than willing to enrich the group's contract to reflect their superstar status by increasing their royalty rate and giving larger advances for each album.²⁰⁶ Despite claims of meek earnings, they pointed out, the greedy and ungrateful band members had received \$7 million in payments to date. The boys' complaints regarding their American record deal were irrelevant, the defendants argued; as Trans Continental had secured approval letters from all members of the group and some of their parents.²⁰⁷ Pearlman himself reminded the press and the court of the paternal role he played during the group's struggling days: "I paid the bills. I gave them a house. I paid their living expenses, for vocal coaches, choreography. I didn't hear anybody talking back then that [the deals] were unfair. For the next three years they weren't unfair. I was out \$3 million." By Pearlman's account, the group became disgruntled with the deal he had arranged for them with BMG only after the money began rolling in.²⁰⁸

'N Sync fired back with a \$25 million counter-suit, terming Trans Continental's conduct "the most glaring, overt, and callous example of artist exploitation that the music industry has seen in a long time."²⁰⁹ Charging Pearlman with fraud, the boys claimed that he had, through a web of deals, pocketed the group's advances from the record company, 80% of the group's merchandising money, 71% of its touring money, and all of its publishing income. They complained that Pearlman had also taken control over their name and 50% of royalties, while simultaneously earning a commission of band profits as their manager.²¹⁰ 'N Sync's expert witness, music attorney Jill Berliner, filed court papers on the group's behalf arguing that the Trans Continental deals were "classic contracts of adhesion imposed upon an uncounseled and unskilled, highly susceptible group of teenagers" that no reputable U.S. mu-

²⁰⁵ 'N Sync, *Trans Continental Clash Over Lawsuit*, at http://www.mtv.com/news/articles/1432536/19991013/n_sync.jhtml (Oct. 13, 1999)

²⁰⁶ See Boehlert, *supra* note 193.

²⁰⁷ See Willman, *supra* note 203; Schruers, *supra* note 187.

²⁰⁸ See Boehlert, *supra* note 193.

²⁰⁹ Johnson, *supra* note 173.

²¹⁰ See Boehlert, *supra* note 193.

sic industry executive would have allowed to exist.²¹¹ The countersuit also alleged that Pearlman had breached their 1996 agreement specifically calling for Trans Continental to secure an American record deal, within eighteen months of signing the group.²¹²

The venomous accusations and legal filings would come to naught, guessed many jaded industry insiders, as the warring parties would resolve their differences for the sake of business and money. 'N Sync's personal manager, Wright, predicted a settlement in time for a fall 1999 release of the group's newest single and the debut of their next album in early 2000. "In the scheme of things," Wright reasoned, "this is business, and great businessmen are at work right now, and they'll figure out a way to do business together."²¹³ Tying the group up in litigation would serve no one's interests, as evidenced by the devastating outcome that a lengthy legal battle spelled for the career of an earlier teen pop king, George Michael.²¹⁴ Ultimately, Wright and the other business realists proved correct, as 'N Sync, Pearlman, and the record and production companies settled for undisclosed terms in December 1999. 'N Sync was allowed to complete its move to Jive Records, while RCA swallowed the loss of its licensed rights.²¹⁵ The settlement terminated Pearlman's relationship with 'N Sync, liberating the boys from his control and influence, though the band's former mastermind retained a (presumably) sizable piece of the their future profits.²¹⁶

D. 'N Sync's Ongoing Success

With their legal problems resolved, 'N Sync released its next album in March 2000 to even more astronomical sales.²¹⁷ Not so subtly entitled *No Strings Attached*, the album sold 1.13 million copies in the first day of its release, 2.4 million copies in its first week, and five million copies within five weeks.²¹⁸ Jive arranged songwriting and production for two of the album's number one singles, *Bye*

²¹¹ *Id.*

²¹² *See id.*

²¹³ Willman, *supra* note 203.

²¹⁴ *See id.*

²¹⁵ Interestingly, Jive Records and RCA Records were both affiliates of American recording industry giant, BMG. The dispute between the two record companies therefore resembled an inter-family squabble, as their common parent, BMG, essentially compelled RCA's surrender of 'N Sync to Jive. The adoption of 'N Sync proved a true coup for Jive and president Clive Barker, as it ensured the record label's position as the ultimate power in teen pop, given that its roster already included the genre's other two biggest earners, the Backstreet Boys and Britney Spears.

²¹⁶ *See* Schruers, *supra* note 187.

²¹⁷ *See* Johnson, *supra* note 173.

²¹⁸ *See* Carlson, *supra* note 161.

Bye Bye and *It's Gonna Be Me*, by Max Martin and his team at Cheiron Productions, and songwriting for its hit sentimental ballad, *This I Promise You*, by renowned artist Richard Marx.²¹⁹ With this credibility-enhancing pedigree, *No Strings Attached* became the most successful album of 2000, selling ten million copies by January 2001.²²⁰

In promoting the album, the band members made sure to note their artistic contributions and emphasized the importance of their newfound creative control.²²¹ "It's definitely nice to have some creative freedom and to really express ourselves," Justin commented. "When you listen to the new album in comparison to our debut album, you'll say to yourself that we took our sound to the next level."²²² Disowning their previous work and attempting to further distance the group from puppeteer Pearlman, Lance insisted, "We feel like this is our first album because we actually independently did this one."²²³

Since splitting with Pearlman, the boys are also eager to talk about their independent, creative projects outside the band. Lance made his acting debut on television's *Seventh Heaven* and started his own management company, Freelance Entertainment. Joey produced an acting handbook for students written by his former drama coach.²²⁴ J.C. has written and produced tracks for other girl and boy bands like Wild Orchid and Boyz and Girlz United, while Chris started his own clothing, visual art, and music production company, FuMan Skeeto.²²⁵ Not to be outdone, Justin appeared in a Disney feature movie and started the Justin Timberlake Foundation, a charitable organization for music education awareness.²²⁶

Despite these efforts and the boys' vows to "whatever happens . . . keep creative control" and "control of their own destinies,"²²⁷

²¹⁹ *See* Schruers, *supra* note 187.

²²⁰ Joe D'Angelo, 'NSYNC, Britney, Backstreet Boys Ruled in 2000, at <http://www.mtv.com/news/articles/1435375/20001220/story.jhtml> (Dec. 20, 2000).

²²¹ According to the album credits, J.C. penned four songs for the album and co-produced one. Justin co-wrote and produced one song, and wrote the rap portion of another.

²²² 'N SYNC: NO STRINGS ATTACHED: THE UNOFFICIAL FAN GUIDE, *supra* note 190, at 6.

²²³ *Id.*

²²⁴ In 2001, Lance and Joey starred in the teen romantic comedy *On the Line* to poor reviews and lukewarm audiences. Joey later performed in a well-received supporting role in the 2002 hit, *My Big Fat Greek Wedding*.

²²⁵ For more information, see <http://www.fumanskeeto.com>

²²⁶ *See* The *NSYNC Official Website (last visited Mar. 17, 2002), at <http://www.nsync.com> ("Involved tab states: "Information on the Justin Timberlake Foundation coming soon").

²²⁷ Roger Coletti, 'nsync: Orlando five-o (last visited Mar. 17, 2002), at <http://www.mtv.com/bands/archive/n/nsync2000/index2.jhtml>.

'N Sync has not convinced music aficionados of their autonomy. In a CD review grading *No Strings Attached* a C-, one music critic noted that the boys' proclaimed "independent" efforts are "indistinguishable from the preprogramming It's clear there are still strings attached, but the robotic maestro Jive hired to pull them has been left anonymous."²²⁸ Indeed, just as the Monkees, New Kids, and Backstreet Boys have struggled to distinguish themselves as legitimate artists, 'N Sync has not yet managed to make people forgive or forget their assembly-line origin.

V. BOY BAND EVOLUTION

After considering the stories of pop music's four most sensational boy bands, certain trends in their evolution become apparent. First, the groups are each a replication of another, as the Monkees were to resemble the Beatles, the New Kids to repeat the success of the Monkees; the Backstreet Boys to right the mistakes made by Starr and the New Kids, and 'N Sync to compose a nearly perfect reproduction of the Backstreet Boys. Unlike many bands that attempt through some bit of ingenuity to distinguish themselves from other bands of their genre, the boy band creators shamelessly construct their bands to fit the pre-existing mold of a successful predecessor.

In selecting the boys through auditions, the creators follow a formula so rigid that only a ten-year old girl can distinguish one group from the next. "Each group needs a blond, some brunettes, and one moderately swarthy type; someone, usually the swarthy one, has a little facial hair to designate him as the group's sensitive rebel. Each guy has a single identifying attribute—he's an ex-Mouseketeer, or a basketball player, or secretly shy The rest is smiles, harmony, and promises."²²⁹

Carefully crafting the boys to exhibit certain marketable traits—to appear innocent, cute, white, and non-threatening to parents—the creator then trains the boys (who have usually never before performed together) to dance, sing, interact with crowds, give interviews, and project a fun, vanilla image.

The bands' albums usually follow as simple a formula. They start with a couple of the most aggressive or suggestive tracks—the closest impressions of adult pop. The remainder of the album is then dedicated to the sappy, sweet harmonies of teen romance or

²²⁸ Michael D. Clark, *Too Much 'N Sync, No Strings Attached 'N Sync Jive*, HOUSTON CHRON., Mar. 26, 2000, at 6.

²²⁹ Pareles, *supra* note 8.

angst—the "you're the one" songs, after the breakup songs, self-esteem songs, and "dreaming of you" songs. Also, the groups often have a number praising God, parents, or both.²³⁰

In the bands' nascent years, the rhetoric spouted by the boys and their manager-producers characteristically depicts them as family, with the creator resembling a loving father. For instance, just as the New Kids expressed the utmost gratitude for their maker's encouragement and guidance,²³¹ describing their relationship with each other and their manager as "more of a family than a business,"²³² Starr said of the boys "[t]hese are like my own kids. I practically raised these guys. I couldn't feel any closer to my own kids."²³³ Similarly, 'N Sync member J.C. detailed the group's sweet pre-show ritual: "We all hug before every show. I may sound corny, but we're a family."²³⁴ Meanwhile, Pearlman told interviewers of the hurt he felt at the prospect of being viewed as a Colonel Tom Parker figure,²³⁵ noting that the boys in his bands adored him, playfully nicknaming him "Big Dawg." Unmarried with no children of his own, Pearlman said, "I have a lot of kids already. More than I can handle."²³⁶ Such rhetoric is interesting when contrasted with the battery of accusations that always accompany the bands' defection from their maker and attempts by the creators to maintain their reputation by casting the dispute as a type of "no hard feelings" amicable divorce or exhibiting a painful sense of betrayal.

After varying lengths of "rough time," during which the bands struggle to convince record companies (or in the Monkees case, television stations) of their potential while "training" in less profitable niche or overseas markets, the bands break through to an audience whose composition is foreseen by the creators from the beginning. Once embraced by mainstream American record companies and radio stations, the boy bands can rely on astronomical, record-setting sales as their pre-teen and teenage female audience, the ideal pop consumers, buy up not only albums and concert tick-

²³⁰ See *id.*

²³¹ Recall Donny's sentiments:

I wasn't even a performer when I met Maurice We're very close to him. He's been a very good teacher. I know when I started out I had never sung before. I was scared. I had no confidence in my singing. But he gave me confidence. He built us all up. He made us feel like we could do anything.

Hunt, *supra* note 105.

²³² Dougherty, *supra* note 109 (quoting Jonathan Knight).

²³³ Hunt, *supra* note 105.

²³⁴ Schruers, *supra* note 187.

²³⁵ Colonel Tom Parker was Elvis Presley's personal manager, a man notorious in the music industry for exploiting his prized artist and unjustly enriching himself through a variety of shady contracts and management schemes.

²³⁶ Boucher, *supra* note 149.

ets, but the plethora of posters, stickers, dolls, and other chintzy merchandise emblazoned with the boys' intense gazes and bedazzled denim outfits.

The girls' unflagging loyalty and inattention to the music's creative merit also make them particularly suited to boy bands. As MTV Networks CEO, Tom Freston, explained,

If you look at kids under seventeen . . . the music they first became aware of has been largely in these perfectly handcrafted pop bands, and it kind of resonates with their life. It's not like they're walking around saying, 'Boy, I wish there were more singer-songwriters.' I think that day will come, but right now what they're interested in is a kind of soundtrack for their lives.²³⁷

Typically, the bands can also anticipate a shadow market of adult contemporary music fans (often the parents of the younger fans) for whom the music's synthetic essence is attractive for its calming yet peppy banality. These fans make the albums linger in the charts long after the first rush of the grade school set. For adults, the music serves as an intermission between adult crises, far less troublesome than genuine introspection or rejuvenation could be.²³⁸

As certain as the adulation of these fans is the vitriolic contempt for boy bands of music critics, many male listeners, and most others who consider themselves discerning in terms of artistic quality, inventiveness, and style. As music critic and *GQ* magazine editor-at-large David Kamp lamented of the entire genre:

Boypop seems to be crippled by a compulsory lameness, an inbred notion that this . . . is what pop music must sound like. It's the musical analogue to the malling of America It doesn't represent the end of Western civilization as we know it, but it's pretty damn parched terrain artistically, and it's disturbing that people want to make more of it than it is. When you hear the Backstreet Boys' A. J. McLean publicly say, 'The Beatles . . . were actually the first boy band, and then nowadays, in this whole '90s genre, it was us'—well, that sort of thing can't go unchecked The music the boy bands make is so bland and predigested, it almost isn't music.²³⁹

The reflexive prejudice exhibited by music hipsters is also reflected in the labels applied to the groups and their music. "Boy

²³⁷ Schruers, *supra* note 187.

²³⁸ See Pareles, *supra* note 8.

²³⁹ David Kamp, *It Came From Orlando*, *GQ*, July 28, 2000, at 57-60.

band" and "bubble-gum pop" indict the group members for their own youth and lack of sophistication, while suggesting that the presence of child fans renders the music tame and wimpy.²⁴⁰ Also, the groups' obligatory cuteness and sentimentality, as well as their affiliation with young girls, generally elicits a homophobic response from many men and boys, as the band members and their male fans are presumed necessarily effeminate or gay.²⁴¹

Nevertheless, radio station executives and television music networks like MTV succumb to consumer demand,²⁴² permitting the groups to dominate the airwaves. This precedes the arrival of an inevitable series of less successful boy band replicas, eager to cash in on the phenomenon. Predictably, these events only intensify the loathing of the bands' opponents.

Such denigration elicits a defensive reaction by the groups and ultimately causes friction between the boys and that individual who symbolizes their artificial origins, immaturity, and lack of creative autonomy. The band's defection is typically preceded by the boys' increasingly irritated responses to critics (i.e., "We're not just a quote-unquote boy band. We're artists just like everybody else out there. We just want respect from the industry as well as the audience out there.")²⁴³ and an emphatic downplay of their creator's role in the group's design, performance, and success. As the boys' rhetoric about creative control and artistic freedom amplifies, the creators often make some concessions to the band members by allowing them to contribute more material²⁴⁴ or taking a more hands-off role in the day-to-day supervision of the band.²⁴⁵

²⁴⁰ Pareles, *supra* note 8. The presence of child fans can spell doom for an artist seeking a more elite music consumer, such that steps are sometimes taken to estrange them. To illustrate, Madonna, in the early days of her career, made a concerted effort to sex-up her image when she believed she was attracting too youthful an audience.

²⁴¹ During an appearance on *The Howard Stern Show*, for instance, the Backstreet Boys were mercilessly interrogated about their sexual preferences, and their song, *I Want It That Way*, was parodied by Stern's make-shift band, The Backside Boys, in *Could I Go The Gay Way?* The band had to walk a fine line in responding to such joshing, careful not to offend their sizable following in the gay community by their denials. Simultaneously, the boys could not over-emphasize their heterosexual prowess or compromise their innocent boy-next-door image for fear of alienating their young female fans or threatening their parents.

²⁴² MTV originally refused to play Backstreet Boys or 'N Sync videos. Ultimately, viewer demand required the network to abandon such selectivity. "Whether it's cool or not, it's what the viewers want," conceded Tom Calderone, senior vice president of music at MTV. Handy & Roche, *supra* note 155.

²⁴³ Johnson, *supra* note 173 (quoting the Backstreet Boys' Howie Dorough).

²⁴⁴ Particularly, Rafelson and Schneider's attempts to appease Michael Nesmith and Peter Tork took the form of promises to include their original work on subsequent albums or on the B-side of singles.

²⁴⁵ Starr and Pearlman both took a more back seat role with their recalcitrant bands by keeping their distance during the bands' tour and advising them via long distance telephone or through an intermediary co-manager, choreographer, or stylist.

Such compromises fail in the long run, however, as the bands continue to face attacks on their creativity and originality and must struggle to prove their maturity and artistic legitimacy. Respect can only come from complete independence from the perceived puppeteer, yet he is understandably averse to surrendering his total control over and financial stake in his creation. Consequently, the band's rebellion necessarily takes the form of some dramatic maneuver to oust its maker from power.²⁴⁶

The language surrounding the boy band and creator disputes grows more rancorous, as the parties put their particular spin on the conflict and reinterpret the relationship through the lens of either exploitation or betrayal. In an affidavit filed in his group's suit against Pearlman, for instance, J.C. describes "Big Poppa" as "an unscrupulous, greedy, and sophisticated businessman who posed as an unselfish, loving father . . . [who] while hugging us and calling us 'family' was picking our pockets."²⁴⁷ Pearlman, meanwhile, attempted to save face, insisting that the dispute was between lawyers and the record companies, not him and the boys. Classifying the conflict as merely "standard operating procedure" in the get-rich-quick music industry, Pearlman claimed that he remained a friend to his boy bands. "I think if you talked to the boys," he implausibly predicted, "you'd find there's no animosity between them and me."²⁴⁸

For conflicts that dissolve into litigation, Trans Continental attorney J. Cheney Mason blames the situation on "some lawyer who comes in and wants to get something from a contract that he didn't have a goddamn thing to do with in the first place."²⁴⁹ An

²⁴⁶ Recall that for the Monkees, resistance came in the form of repeated tantrums by Michael and, eventually, his threat to quit the band if Kirshner was not removed as musical director. The group used similar threats of strike to obtain creative control over album content and their movie, *Head*. Starr withdrew from his active role with the New Kids only after the boys' parents began inquiring into the financial imbalance of their contracts and the boys themselves suggested the imminence of the group's break-up. The Backstreet Boys sought redress from the courts, as did 'N Sync after their startling jump to Jive Records.

²⁴⁷ Carlson, *supra* note 161. Band member Chris echoed J.C.'s tale of manipulation with references to family that clearly no longer included Pearlman:

[Before realizing the extent of our exploitation], we were all buddy-buddy with everybody in the music business, we all five were like, "Oh yeah, come on into our group, yeah, come on into the clan, come on into our party, join us, we love everybody, everything is great." Then, suddenly to have a knife in your back—that's when we all turned around and linked arms . . . and said "You know, it's the five of us against the world." This was a bond that was bigger than family. We felt we were closer than blood.

Id.

²⁴⁸ *Id.*

²⁴⁹ Di Mari Ricker, *Bonkers for Backstreet*, CAL. L. WK., available at <http://bsbtrain7181.tripod.com/calilawweek.html> (Oct. 25, 1999).

O'Melveny & Myers entertainment attorney, observing the boy band conflicts, gives a similar explanation: "Like teenagers, [the bands] feel it's not fair. So they go out and find some lawyer who doesn't blush easily . . . Lawyers convince their clients that they have a constitutional right to renegotiate [a contract]. There isn't one that I know of."²⁵⁰

These battles of interpretation are important because they shape the public's view of the conflict, potentially determining whether the bands succeed in portraying themselves as abused but genuine artists, or whether they continue to be regarded as manufactured frauds whose success results not from creative merit but their creator's ingenious molding and marketing. Music industry insiders most carefully monitor the clashes, as the success or failure of these immensely profitable bands to escape their contractual obligations might set a precedent for other acts dissatisfied with their current deals, and thereby alter the power dynamics between artists and their production and recording companies.

In each of the four boy band conflicts examined, as well as in most of the manifold contractual disputes between artists and their managers, producers, and record companies, some compromise or legal settlement was arranged.²⁵¹ The groups and their creators

²⁵⁰ *Id.*

²⁵¹ The music industry is notorious for its trends of exploitation and subsequent litigation. Contracts are typically signed before the artists have achieved commercial success, when they are desperate to get their foot in the door of the industry. Consequently, artists often have little bargaining power in negotiations with personal managers, production companies, or record companies who dictate terms so unbalanced that they might be considered unconscionable in other industries or contexts. Personal managers and record companies often justify such favorable stipulations as a 10-55% share of profits for managers or a lengthy contract term by noting the tremendous risk of the industry (16-20% or less of all records produced recover their costs, for a failure rate of 80-84%) and the need to recover their own financial investment in the fledgling band. William A. Birdthistle, *Contested Ascendancy: Problems With Personal Managers Acting As Producers*, 20 LOY. L.A. ENT. L. REV. 493, 507-09 (2000).

Due to a lack of statutory regulation and the hesitancy of courts to get involved, such exploitation has become an industry custom. When courts review contracts, they do so by reference to their commercial setting and standard industry norms. Considering the historical manipulation and victimization of recording artists, this general rule does little to alter the common occurrence of artist exploitation. Hal I. Gilenson, *Badlands Artist-Personal Manager Conflicts of Interest in the Music Industry*, 9 CARDOZO ARTS & ENT. L.J. 501, 501-02 (1991).

Artist versus manager or artist versus recording company lawsuits are typically predicated on the traditional contract law claims of breach or unconscionability, or the tort law claim of breach of fiduciary duty. Breach of contract claims require a showing of specific conduct and are extremely difficult for artists to prove. Artists rarely succeed on unconscionability claims because of the court's deference to industry norms, which insulate even one-sided contracts lacking negotiation or legal representation. So long as the contract term is within the statutory limits placed on all personal service contracts, the lengthy duration of the contract usually does not sway courts. *See id.* at 515.

Fiduciary duty claims are rare since courts in two major cases, *Croce v. Kurnit*, 565 F. Supp. 884 (S.D.N.Y. 1982), *aff'd*, 737 F.2d 229 (2d Cir. 1984), and *Laurel Canyon, Ltd. v.*

are well aware of the relatively short window of opportunity enjoyed by teen pop acts,²⁵² and both are therefore eager to resolve their differences fairly quickly so as not to "kill the goose laying golden eggs." As important to the group members as a speedy settlement is the secrecy of its terms. In order for the public to recognize the band's proclamations of artistic legitimacy and newfound

Springsteen, N.Y.L.J., Aug. 25, 1976, at 6 (N.Y. Sup. Ct. 1976), *aff'd*, 55 A.D. 2d 882 (1977), refused to hold personal managers to strict fiduciary duties and upheld artist-manager contracts despite their lopsided terms. In the most famous case, *Croce*, the court held that a personal manager does not breach his fiduciary duties by controlling both the artist's publishing and recording income, then went on to evaluate the contract for unfair or unconscionable terms. The court stated its conclusion:

The contracts were hard bargains, signed by the artist without bargaining power, and favored the publishers, but as a matter of fact did not contain terms which shock the conscience or differed so grossly from industry norms as to be unconscionable on their terms. The contracts were free from fraud and although complex in nature, the provisions were not formulated so as to obfuscate or confuse the term Because of the uncertainty involved in the music business and the high risk of failure of new performers, the contracts, though favoring the defendants, were not unfair.

Croce, 565 F. Supp. at 893. Since *Springsteen* and *Croce*, artists who litigate to a verdict have not fared well in persuading the courts to ignore industry custom or nullify their contracts. See Gilenson, *supra* note 251, at 505, 528.

Despite the likelihood that they would be defeated in court, many artists (e.g., the Beatles, the Who, Fleetwood Mac, the Kinks, Sting, Elton John, Tiffany, TLC) initiate litigation as a means of compelling renegotiation of their contracts. See *id.* at 501. Though the fairly limited case law favors the personal manager or record company, artists can typically introduce sufficiently complicated questions of law and fact to survive a motion to dismiss or immediate summary judgment. Knowing that a drawn-out legal battle disadvantages all parties because of the ephemeral nature of a group's popularity, personal managers and record companies have a strong motivation to make some concessions and settle rather than risk destroying the entire income stream from the band. The artists are as interested in settlement, not only for the sake of sustaining their career, but also because the chance that they would actually emerge victorious from a litigated outcome is so slim.

In the boy band context, the creator-manager's case is arguably much stronger than the typical personal manager or producer's because of his more substantial investment of money and personal services in the group. Moreover, because the boy band creator generates the concept, image, and actual constitution of the band; he could conceivably make compelling arguments based on intellectual property law concepts such as labor-desert theory, personality theory, and the necessity of economic incentives for creation. See Justin Hughes, *The Philosophy of Intellectual Property*, 77 *Geo. L.J.* 287 (1988) (discussing the philosophical bases of the labor-desert theory and personality theory justifications for intellectual property rights); William M. Landes & Richard A. Posner, *An Economic Analysis of Copyright Law*, 18 *J. LEGAL STUD.* 325, 325-33, 344-53 (1989) (explaining the economic incentives for creation generated by intellectual property protection). Though contemplating the formulation of such legal arguments and counter-arguments and predicting their likely reception by courts, legal scholars, and the public might indeed constitute a fascinating study, those exercises are beyond the scope of this paper.

²⁵² A boy band, by its very nature, capitalizes on a fleeting trend, as its core audience ages fast and almost certainly loses interest within just a few years. Pearlman predicts a three to five year lifespan for his teen acts, knowing that their current fan base will soon outgrow them and that the successive fan base (the little sisters of current fans) may or may not find the group appealing. Handy & Roche, *supra* note 155. Moreover, as the band members themselves age, they outgrow their own youthful image. Once age transforms the band into an entirely different entity, the group loses the attraction of the teen market, yet fails to catch on with a sizable adult audience because of the boys' historically maligned reputation as impish, artistic lightweights.

autonomy, it must be convinced that the group's severance from its maker is complete. Were the exact terms of the settlement or the sizable share of profits retained by the creator disclosed, the band would risk being perceived as still a part of the same corporate machine, dependent on or controlled by their original Gepetto.

Except in the case of the New Kids, parting with their creator did not immediately spell the demise of the liberated boy bands. Fans continued to avidly consume the albums of the Monkees after Kirshner's firing, though not in the same impressive amounts as those discs released under Kirshner's direction. The Backstreet Boys and 'N Sync broke their own sales records after separating from Pearlman, and 'N Sync, particularly, continues to dominate the pop charts with little abatement in sight. The successive albums by all of the boy bands contain a number of songs written or produced by the band members themselves. Through these contributions and other independent creative projects (such as self-started production companies), the boys attempt to convince critics that their latent artistic genius had simply been temporarily smothered under the heavy hand of their domineering exploiters.

In the long run, however, presuming the Monkees and the New Kids are an indication, boy bands cannot sustain the mania that characterizes their phenomenal success. Music industry insiders have observed that teen pop tidal waves are almost always followed by a backlash against pop, as radio stations grow tired of screaming young girls calling in requests, and emerging "real" rock groups differentiate themselves from the unabashed commercialism of teen pop.²⁵³ Self-conscious rockers deliberately define themselves as against the teen pop recipe, doing their best to live up to parental worries by shunning boy-band-style sweet love songs in favor of noisy, rebellious songs laden with foul language and angst.²⁵⁴

Well aware of their almost inevitable demise, boy band members prepare themselves and one another for their fate. 'N Sync's J.C., for instance, recalls a lesson learned from a conversation with New Kids' Jordan:

We spoke briefly, but it's embedded in my head This guy

²⁵³ Note how 1970s classic rock groups, such as the Rolling Stones, the Steve Miller Band, Aerosmith, and Tom Petty, overtook the Monkees and the schmaltzier doo-wop scene of the 1960s, or how "grunge" and hip-hop drowned out peppy groups like the New Kids in the early 1990s. Currently, edgier rap and rock acts, including Eminem, Korn, and Limp Bizkit, define themselves by their difference from and hostility toward teen pop wonders like the Backstreet Boys, 'N Sync, Britney Spears, and Christina Aguilera, and battle with them almost daily for the top spots on the charts and MTV's *Total Request Live*.

²⁵⁴ See Pareles, *supra* note 8.

went from being one of the biggest pop stars in the world to everybody just absolutely hating him [He was] torn up; [he was] still a kid. And he's had to grow up, and he's had to put it behind him. He said, "You've just got to believe in yourself, to know what you're made of, and you have to be willing to lay it out there. If people don't like it, as long as you're satisfied and proud of what you did, nobody can take that away."²⁵⁵

In addition to such self-esteem building affirmations, the embattled boy band members have likely learned another lesson from their battle for independence: Keep an eye on your bank account, get a good lawyer, and watch your back.

VI. THE PHENOMENON OF BOY BAND-CREATOR DIVORCE

The completed exploration of the stories of the four boy bands and their common elements permits consideration of what provokes these pre-fabricated groups to (inevitably?) separate from their respective creator, and what cultural forces contribute to these motivations. Money and the experience of exploitation undeniably influence the boys, as suggested by the shockingly unbalanced profit shares between boy band and creator, and the involvement in the disputes of parents, lawyers, and other beneficiaries of the band's successful separation. The preponderance of the rhetoric surrounding the disputes, aired in the pages of the popular press and court documents, addresses their financial aspect and the propriety of the parties' behavior towards each other. As the boys espouse themes of manipulation, victimization, and robbery at the hands of a greedy, domineering oppressor, the creator justifies his large financial stake by emphasizing his immense investment in the group and locating the source of their popular and economic success in his own masterful conception and management.²⁵⁶

Though one might cynically limit the explanation for these conflicts to the parties' financial motives, the bands' collective narrative suggests an additional interpretation. Each group suffers the merciless condemnation of critics, peers in the industry, and many music consumers. The worst indictments levy accusations of fraud and lip-syncing. Uniformly, the groups' opponents deny the boys

²⁵⁵ Schruers, *supra* note 187.

²⁵⁶ Another plausible motivation might simply be personality conflict between the band and its creator, though the stories and participants give little indication of such irreconcilable personal differences. Where references to one another's character or comportment occur, they can generally be attributed to the larger issues of financial conflict and/or the group's battle for self-determination.

the status of "true artists" because of their assembled genesis, micro-managed production, pre-pubescent fan base, bubble-gum pop musical style, and packaged, teen-dream image.

The more popular the boys grow, the more scathingly they are disparaged and the more indignant the boys become at this maltreatment. The singers' remarks in the press become increasingly defensive, trumpeting language of "creative control" and "self-determination," and asserting a greater degree of independence from their creator than is popularly perceived. Regardless of how deeply held these notions are by the boys, the rhetoric's external resonance is its most relevant aspect, as it initiates a dialogue between boy band and critics that will ultimately determine how the boys are culturally defined.

Whether the boys are taken seriously as artists or forever stand to be ridiculed as cookie-cutter embodiments of all that is wrong with popular music depends upon the boys' ability to establish their creative legitimacy. Because many of their critics' insults center around the group's assembled origin and dependence on its maker, the boys' ability to counter this attack with proof of some independent artistic ability and autonomy from the creator's control becomes intrinsic to their struggle for acceptance. Ultimately, when the rhetoric fails to convince their challengers, the boys resort to divorcing their creator to demonstrate their legitimacy as true artists, deserving of the trophies and accolades that accompany such status.²⁵⁷

Based on this hypothesis, an intriguing line of inquiry ponders why boy bands are so objectionable in the first place. Why does their pre-fabrication, hyper-production, fanatical audience, and wholesome, pretty-boy packaging render impossible their legitimacy as artists? What is it about boy bands that make them so threatening and to whom or what? Are they alone in their castigation or are they a subset of other maligned individuals or entities? Who might rise to their defense and what might they say?

The following sections of this paper attempt to answer these questions. Part VII proposes that boy bands are so maligned be-

²⁵⁷ Whether this additional explanation is as important to the bands as the financial motive is indeterminable, and its significance likely varies among not only each of the bands, but among each of their individual members. Tracing the band members' comments may provide the best estimation of the relative weight of these two rationales for the individual band and/or member. Some of the singers, such as Michael and Peter of the Monkees, Donny and Jordan of the New Kids, and Chris of 'N Sync, repeatedly emphasize such concepts as creative control, artistic merit, and independence from their creator. Other individuals, such as Micky of the Monkees and J.C. of 'N Sync, from their comments, seem primarily disgruntled with their relatively small financial share of profits and unfair treatment by their creator.

cause they threaten our ability to distinguish the mechanical from the organic—true art from manufactured product. Next, Part VIII posits that the animosity directed towards boy bands reflects a residual, elitist resistance to the popularization of aesthetics and commodification of art that characterizes postindustrial, consumer society.

VII. THE ROMANTIC CONCEPTION OF THE ARTIST AND THREAT OF THE MECHANICAL

The title of "true artist," that treasured designation at stake in the boy band controversies, derives its value from the persistent "romantic conception of authorship" that arose in the eighteenth century. Before then, neither popular nor elite culture in Europe or North America accorded much worth to the individual artist, as tradition, skill, and connection with the past were of higher priority than originality. Several factors, including Romanticism, the political theory of possessive individualism, self-interest of English book publishers, scheming by French monarchs, and the rapid emergence of technology capable of mass production of artistic works, combined to bring about a vast transformation in society's attitude towards art and the artist.²⁵⁸

The Romantic view of art as transcendent and the artist as a superior being evolved as an attempt to prevent mass production technologies from reducing art to simply another industrial product. In response to the threat of commodification, the Romantics elevated the artist, celebrating his genius and identifying him as the embodiment of certain human values, capacities, and energies that society's development into an industrial civilization seemed to be threatening or even destroying.²⁵⁹ The artist and his work came to represent the antithesis of mass-produced products, and, therefore, were seen as sacred vestiges of a purer humanity.²⁶⁰

The elaboration of Romantic concepts, such as originality, or-

²⁵⁸ See William W. Fischer III, *The Growth of Intellectual Property: A History of the Ownership of Ideas in the United States, in EIGENTUMSKULTUREN IM VERGLEICH* 265, 272 (1999).

²⁵⁹ See JANE M. GAINES, *CONTESTED CULTURE: THE IMAGE, THE VOICE & THE LAW* 59-60 (U.N.C. Free Press 1991).

²⁶⁰ Photography posed the most notable threat to this concept of art, presenting the problems of how to cope with the machine's connection to the work (the photograph), and the possibility of mass reproduction. Because a physical apparatus and mechanical process necessarily separated the photographer from his work, the creative process had to be reformulated to accommodate the photographer as an author. Ultimately, the idea that the photographer's conception of the work, rather than the process or means of its physical embodiment, gave the work his "imprint of personality," and restored the photographer his art. This understanding then came to justify the inclusion of photographic works in the list of copyrightable subject matter. See *id.* at 66-71.

ganic form, and the work of art as an expression of the unique personality of the artist, became relevant to the law and economy through their embodiment in copyright doctrine. By granting proprietary rights to artists as reward and incentive for creation, copyright law imbued with economic consequence and popularized the Romantic mystification of the original creation and the creative process as organic rather than mechanical.²⁶¹

Having inherited the legacy of this Romantic glorification of the artist and his work, cultural elitists (a.k.a., music snobs) vilify boy bands and deny them the title of artist because the groups represent the threat of the mechanical and challenge their ability to distinguish the organic from the manufactured. The boys are mechanical because they are assembled, polished, and programmed by their Svengali as vessels for the delivery of certain consumer goods: catchy, though fairly insipid music, minutely choreographed song and dance performance, and the carefully crafted image of innocuous, fresh-faced heartthrobs. Lacking originality, organic development, and the creative impulse that brought the group, its music, dance, and image into existence, the boys fail to meet the very definition of the artist as composed during and developed since the eighteenth century.

As this definition denies the possibility that one can "create" an artist, boy bands represent a dual threat to the Romantic conception: manufactured "artists" generating manufactured "art." By conflating the mechanical and the artistic, boy bands incite a panic within American art culture by exposing its participants to the possibility that they cannot differentiate between the two. Comprehending the menace these groups represent, one can explain (even if he cannot intuitively comprehend) why boy bands might be met at their hotels not only by thousands of adoring teenage fans but by as impressive a number of protestors.²⁶² By protesting, discrediting, or merely ridiculing boy bands, their critics seize the opportunity to ritually vent about the difference between the mechanical and artistic, while demonstrating to themselves and their elitist peers that they have not been fooled by these "imposters."

²⁶¹ See Mark Rose, *The Author as Proprietor: Donaldson v. Becket and the Genealogy of Modern Authorship*, *REPRESENTATIONS*, Summer 1988, at 51, 59-60.

²⁶² Donny of the New Kids related such occurrences: We've pulled up to hotels before and had 10,000 girls waiting outside, and then we'd have 5,000 protestors. I mean, protesting what? Pop love songs? People are dying all around the world. Let's get real, this is just music, this is just entertainment. Take it for what it is.

Saunders, *supra* note 114.

In the face of such cultural anxiety, the boys' challenge is to prove, via separation, original contribution to their work, sustained success, and that they are not a mechanical product reliant on a corporate maker. Regardless of how adamantly the boys insist that they qualify as "true artists," they are denied the opportunity to bask in the reverence corresponding with that status unless and until they convince enough art culture participants of their legitimacy.²⁶³ They are perhaps most likely to persuade those individuals who are already fans of their music, yet describe their enjoyment as a "guilty pleasure" to make plain that they can still tell the difference between the artistic and the mechanical. These individuals might be the most eager to reconcile their appreciation of boy band music with their notion of art and the artist, such that they are willing to entertain the boys' attempts to substantiate themselves. If the boys ultimately demonstrate themselves as legitimate artists, then these fans can vindicate themselves as more progressive art connoisseurs.

Though the Romantic conception of the artist dominates popular thought and is made manifest in American copyright law, the model is not exempt from criticism. Labeling it little more than a modern myth, some scholars charge that the notion of authorship as individual, original, and wholly organic is out of touch with how works are actually accomplished. According to these critiques, prior to the Romantic period, the artist was considered just another participant in the production process, no more deserving of status than editors, printers, publishers, and other entities necessary to the making and delivery of artistic works. Moreover, the Romantic notion that significant artists break altogether with tradition to create something utterly new, unique, and original is as unrealistic, given the collaboration involved not only in the

²⁶³ The boy band creators could conceivably argue that they are deserving of the status and accolades accorded to the Romantic artist, rather or in addition to the bands themselves. The statements of Starr, Pearlman, and Wright evince elements of such a contention, as each emphasizes his creative conception of the boy band and/or his role in generating the creative products—the band, their performance, image, and music. These ideas and efforts will probably not earn the creators the title of "artist" unless some reformulation of the creative process occurs to include such men in the definition of the author, similar to the reclassification that occurred to embrace the photographer as artist. Under such a reformulation, the band and its image would constitute the artwork, with emphasis on the creative conception of the group rather than membership in it. Such acceptance of the boy band creator as artist is not likely to occur, however, given the hostility demonstrated towards the bands and their music, and the fact that such acceptance would require admitting that artists themselves can be manufactured! Furthermore, given the creators' profit motive and borrowing from or replication of extant music groups, they are not likely to be given credit for the artistic inspiration or innovation implicit in the Romantic definition of the author.

production of artwork, but its idea and expression as well.²⁶⁴

The general art community and law have yet to be affected by this "critique of authorship," initiated by Foucault and developed in the post-structuralism research that dominated literary studies for the past two decades. Ironically, as creative production becomes more corporate, collective, and collaborative, art culture participants and the law seem to insist all the more obstinately upon the Romantic vision of the artist and authorship.²⁶⁵ Cultural elitists remain married to the notion that art must be a consequence of individual creative genius and continue to reject corporate, collaborative production as unoriginal and industrial.

Boy bands continue to suffer from the popular perception that their origination and success are due not only to their creators, but also teams of songwriters, producers, choreographers, and promoters. The involvement of these players makes it highly difficult for the boys to establish identities separate from them, such that the boys are seen as either components or products of one gargantuan business machine—exact opposites of the creative genius glorified by Wordsworth²⁶⁶ and the Romantics. Nevertheless, it is worth noting that many of the characteristics for which boy bands are so vilified may not be so anomalous as their critics perceive. Indeed, many individuals already accorded "true artist" status may only be the visible façade of a larger, corporate collection of participants in the creative process.

VIII. THE CULTURAL ELITIST (MODERNIST) CLASH WITH "POP"

The perceived division between "high" art and "pop" art is nearly as old as music itself, readily traceable through the history of music and its gradual commercialization in Europe and America. In the West, music originally reached people through the Christian Church and then by minstrels, supported by troubadours, who roamed medieval England performing songs about unrequited love, political satire, and other secular topics considered crass by some at the time. Great talents, whether in the church or roaming the countryside, were sought by royalty and powerful lords and kept on generous retainers. The nurturing of artistic talent soon became a sign of accomplishment among royal and wealthy

²⁶⁴ See Peter Jaszi, *On the Author Effect: Contemporary Copyright and Collective Creativity*, 10 CARDOZO ARTS & ENT. L.J. 293, 314 (1992).

²⁶⁵ See *id.* at 292.

²⁶⁶ See WILLIAM WORDSWORTH, *Essay, Supplementary to the Preface*, in LITERARY CRITICISM OF WILLIAM WORDSWORTH (Paul M. Zall ed., 1966).

benefactors.²⁶⁷

This patronage system diminished once musicians and composers, inspired by the ideology of the French Revolution, became unwilling to subjugate themselves by writing and performing music upon demand for their royal or wealthy masters. Having rejected private benefactors, nineteenth century artists struggled to remain financially viable and necessarily began husbanding their talents with an eye toward commercial worth. Skeptical about the tastes of the masses, the more privileged tiers of society soon became concerned that normal market forces would not support the type of art they deemed to possess the most civilizing, cultivating influence.²⁶⁸

Fearing such high art would be lost to society's detriment, royalty, wealthy connoisseurs, and, later, governments began subsidizing some forms of music and particular musicians that had not found a mass audience.²⁶⁹ The wealthy and ruling class perpetuating this new system of patronage for high art often looked down upon those types of music and musicians whose popular following enabled them to be self-supporting. The patron class assumed that these genres and musicians' very popularity demonstrated their lack of true artistic merit that only more refined listeners could perceive.²⁷⁰

The industrialization of nineteenth and twentieth century Western society expanded exponentially the commercial possibilities of popular music, spawning the complex music industry that exists today. As the emergence of mass production technologies made musical works widely available to the public in previously unfathomable quantities, the Romantics worried that such production and accessibility would transform art into simply another industrial product. As mentioned, the Romantics and their cultur-

²⁶⁷ See David F. Partlett, *From Victorian Opera to Rock and Rap: Inducement to Breach of Contract in the Music Industry*, 66 TUL. L. REV. 771, 813 (1992).

²⁶⁸ See *id.* at 813-14.

²⁶⁹ The acquisition or "ownership" of artists by other individuals or entities is not a new phenomenon, but one that dates back to medieval times and has since persisted in various forms. In fact, those art forms or artists most dependent on the patronage of the wealthy class or government are often deemed the most "cultured" by the elite audience. From this, we might conclude that the Romantic idea of the totally autonomous artist has never existed, as even the most esteemed artists have been in some way possessed by others and their work dictated by the preferences of their benefactors. This historical fact suggests that boy bands are not vilified simply because they are "owned" or have shaped themselves according to the demands of their master, because most artists have, in some way or another, been required to do the same. Boy bands are disrespected because they are mechanically generated, not acquired, by their master, and their act entirely dictated by him rather than simply adapted to his tastes. Society permits its musicians to be owned by and dependent upon a benefactor, but requires that they are artists *before* they became enslaved.

²⁷⁰ See Partlett, *supra* note 267, at 813-14.

ally elite progeny countered this perceived commodification of the work by glorifying the artist. Hence, within high culture, the title of "artist" necessarily placed that individual in opposition to the stultifying forces of industrialization and defined his work by its distinction from mass-produced products.²⁷¹

The aversion to popular products was based in a distrust of the common masses. As art became accessible to more than a narrow upper class, art elitists perceived that quantity had transmuted the quality and that the greatly increased number of participants in art consumption brought about a fundamental change in the mode of participation. Whereas elitists believed that their appreciation of art was rooted in their ability to devote concentration to the work, they believed that the masses lacked this ability to concentrate on the work, and instead, sought only to be distracted by it. The most popularly preferred art, therefore, comprised that which brought the greatest level of superficial entertainment to the greatest number of people, whereas high art was restricted to those works demanding the spectator's utmost attention yet rewarding him with the highest aesthetic experience. "Pop" is therefore problematic because it takes art out of the hands of experts, places it before the public, and encourages "reception in the state of distraction." Pop entrusts the public with the critic's task of examination, but because the public observes absent-mindedly, their choices cannot be trusted to truly discern artistic value.²⁷²

According to high art culture participants, advances in technology, insofar as they permitted dissemination and use of art products by a substantially wider audience, led to vulgarity. As new invention enhanced public education and relatively high wages allowed more people to afford and enjoy musical and artistic material, a sizeable industry emerged to supply these commodities. By the mid-twentieth century, some elitists believed the proportion of trash to the total artistic output was greater than ever. Scholar Aldous Huxley described this state as a virtual mathematical inevitability:

Artistic talent is a very rare phenomenon The proportion of trash in the total artistic output is greater now than at any other period. Prosperity, the gramophone and the radio have created an audience of hearers who consume an amount of hearing matter that has increased out of all proportion to the increase of

²⁷¹ See GAINES, *supra* note 259, at 59.

²⁷² See Walter Benjamin, *The Work of Art in the Age of Mechanical Reproduction*, in ILLUMINATIONS 217, 240-41 (Hannah Arendt ed., 1968).

population and the consequent natural increase of talented musicians. It follows from all this that in all the arts the output of trash is both absolutely and relatively greater than it was in the past; and that it must remain greater for just so long as the world continues to consume the present inordinate quantities of . . . hearing matter.²⁷³

The popularization of art thus threatened the death of high art through the slow suffocation of its socially enriching influences by the superficial banality and ubiquity of pop art distraction.

Understanding the historical antagonism felt by the high art community towards popular art and considering that community's perception of mass production as a force of cultural pollution provides an explanation for the persistent hostility and division between "highbrow" or select music and popular music. Modern day descendants of the Romantic period's music benefactors need not be royal or especially wealthy to rank among the cultural elite, and may as often be found combing through the dustier bins of smaller, independent record stores as seated in the prime rows at the symphony. They resemble the medieval lords and nineteenth century patrons in their belief that they have a more refined ear than pop music fans. They take pride in their perceived special capacity for "discovering" uncommon styles of music or unknown bands they deem superior to those that dominate the charts. Should their unheard-of music group find an audience among pop fans, these music elitists might withdraw their approval, accusing the band of "selling out."

Like the Romantics, the present day artistic snobs assess a band's artistic quality as inversely related to its commercial success, as they too believe that the common mass of listeners cannot distinguish high art from kitsch. To such individuals, boy bands must represent the very worst of American popular music, and indeed, popular culture. From their dominance of the *Billboard* charts to the youth and fanatical behavior of their audience to their saturating promotion and merchandising and their inescapable, glossed appearance on the cover of every teen magazine in the grocery store checkout line, boy bands irritate artistic elitists with their omnipresence and aggravate their loathing with every album sold.

Boy bands are in some ways the epitome of the threat that industrialization and capitalism represent to art, as their creators unabashedly custom-craft the groups to seduce an audience of relatively unrefined, immature, and indiscriminating masses. No at-

²⁷³ ALDOUS HUXLEY, *BEYOND THE MEXIQUE BAY* 249, 255-56 (Harper & Bros. 1934).

tempt is made to conceal the fact that the boy band and its image are commercial products, designed to be devoured by as many people as possible in as many forms as they can be manufactured and packaged. Not even a pretense is made that the groups mean to convey any high aesthetic expression requiring concentration, education, or refinement to appreciate. That boy bands dare portray themselves as "true artists" offends musical elitists, for by doing so, the bands shamelessly flout the essential classic modernist definitions of art as the opposite of commodity, and high art as the opposite of pop kitsch.

Boy bands also fail to meet the classic modernists' requirement that artists oppose industrialism, commercialism, business, and mainstream society. Art should serve society by being "critical, negative, contestatory, subversive, [and] oppositional,"²⁷⁴ as art thereby challenges and aids society in examining itself, identifying its own shortcomings, expunging its polluting elements, and ultimately restoring its Romantic, humanistic essence. Art should be one of the last vestiges of rebellion and progressive creative innovation, proud of its existential alienation. Boy bands not only disregard the role of artist as radical but contradict it. By deliberately catering to the popular market as is, rather than heralding an angst-ridden message of how society should be, these bands shamelessly reflect and exploit popular culture's conscienceless stagnation.

Similar to the "critique of authorship" that offered some defense of boy bands' mechanical character, the postmodernists' effacement of the boundary of distinction between high culture and pop culture suggests a mode of reply to the boy bands' modernist and elitist enemies. Rather than attempting to preserve the realm of high culture from the surrounding environment of pop "philistinism,"²⁷⁵ postmodernists attempt to make the line between high art and commercial forms increasingly difficult to draw. By correlating the emergence of new formal features of culture with those of a new type of social life and economic order, postmodernists observe late capitalist, consumer society and all its totems with an intent to interpret their inner truths.²⁷⁶

The postmodern approach fundamentally undermines the modernist aesthetic tradition, mocking it for taking its cultural products so seriously and snobbishly. First, it rejects the modernist

²⁷⁴ FREDERIC JAMESON, *Postmodernism and Consumer Society*, in *THE ANTI-AESTHETIC, ESSAYS ON POSTMODERN CULTURE* 125 (Hal Foster ed., Bay Press 1985) (1983).

²⁷⁵ *Id.* at 112-13.

²⁷⁶ *See id.*

folklore surrounding the bourgeois individual author, denying that such a person ever existed and classifying it as a mere cultural mystification aimed at persuading people that they possess some unique personal identity.²⁷⁷ Next, in opposition to modernism's critique of the commodity and effort to make it transcend itself, postmodernism embraces commodification as a process and views the "fetishism" of commodities as the most basic form of idol worship.²⁷⁸ Depthlessness and a diminished sense of emotion characterize postmodern society²⁷⁹ such that artists exhibiting the anxiety and alienation so prized in the modernist construction might seem out-of-date, peculiar throw-backs to a time past.²⁸⁰

Adherents to the postmodern school impart a brand of aesthetic populism, obliterating the frontier between elite art culture and commercial art culture, and finding fascination in the "degraded" landscape of "schlock and kitsch, of TV series and the *Reader's Digest* culture, of advertising and motels, of the late show and the grade-B Hollywood film"²⁸¹ Indeed, in the postmodernists' world, boy bands constitute not only "true artists" (assuming that label retains any meaning whatsoever) but cultural icons. Awesome and interesting, boy bands represent the convergence of aesthetic creation and commodity production, or art and media capitalism.²⁸² Those very traits inspiring the fervid antipathy of believers in the modern aesthetic tradition add color to the bands when perceived through the postmodernist lens. The amazing simplicity and predictability of boy bands' concept, manufactured embodiment, and popular reception might cause the postmodernist not to wretch in contempt, but simply to sit back, absorb them, and wonder: "Fantastic! What next?"

CONCLUSION

One Saturday morning, as the sun rose over the frigid streets, I crouched nearly frozen on a sidewalk outside of a record store, roosting in the puffs of my purple down jacket, averting my eyes from passers-by, and wondering what had possessed me to camp out for 'N Sync concert tickets. Later in the day, after the triumphant purchase of two premium seats had erased all memory of the

²⁷⁷ See *id.* at 115.

²⁷⁸ See FREDERIC JAMESON, *POSTMODERNISM, OR, THE CULTURAL LOGIC OF LATE CAPITALISM* 6 (Duke Univ. Press 1991).

²⁷⁹ See *id.* at 6, 10.

²⁸⁰ See *id.* at 14.

²⁸¹ *Id.* at 2-3.

²⁸² See *id.* at 4.

cold, sleep deprivation, and general misery immediately preceding their acquisition, I mentioned to a friend that I had spent the night in line for concert tickets. My friend asked which concert I was so excited to attend, then laughed sharply at my truthful answer. "No, seriously," he replied. "Who are you going to see?"

I receive a similar reaction when I tell people that I have written a thesis centering on boy bands. "You're kidding, right?" they say. More traditional topics of law review or journal articles—the confidentiality provisions of the Uniform Mediation Act, theories of judicial review, the contrasts between immigration law form and practice—reliably elicit approving nods and the occasional "Wow," or "Hmm, sounds interesting." From these dissimilar reactions, it seems my fascination with and "deep" treatment of boy bands render me as suspect in legal academic circles as the boys are to their music industry peers

To convince others that boy band versus creator conflicts are worth studying, I might mention the millions of dollars at stake or describe how their outcomes could monumentally influence the music industry's cycle of contract formation, dispute, and renegotiation. On a more philosophical note, I might remind people of the peculiar cultural resistance witnessed upon each incarnation of the boy band and suggest that when such a clash so predictably recurs, it is useful to ask who the contestants are, what they are fighting over, and why. Pop culture phenomena, including boy bands, are indeed worth investigating; those who reflexively brand such studies a trivial pursuit may simply need someone to explain their more substantial implications.

An article in *Time* declared, "Pop is powerful because it takes its very simple ideas very seriously."²⁸³ This boy band opus makes clear that I take pop quite seriously too. Pop culture products reflect as much of our society, history, and selves as any legal case or statute. By writing about some of them, I hope to have proven that a study of pop culture can be as thoughtful and contribute as much to the learning environment as a more traditional study of law.

²⁸³ Kurt Andersen, *Pop Goes the Culture*, *TIME*, June 16, 1986, at 68, 69.