Have you ever wondered why some songs get played on the radio and some don’t? Have you ever wondered why some talented musicians get ignored while others with less talent become superstars? At least part of the answer lies in the practice of payola. Payola has long been a part of the music business, dating back to the early days of song pluggers hocking their wares to music publishers. It continues to this day. Of course, the major record labels have always had more money to give and more favors to lend than the indies. So, their artists get more airplay on the bigger, mainstream radio stations. But payola happens at all levels and has for years.

In 1960, on the heels of an investigation by the House Special Committee on Legislative Oversight into a national quiz-show scandal, Congress also began to investigate the practice of payola. The primary target? Disc jockeys who promoted African-American performers. Ultimately, those who took money or favors from the major record labels and played white, mainstream music were unscathed by the scandal. And though the practice was legal, folks like Alan Freed had their careers ruined (see chapter 2). The payola scandal is often seen as a factor in the late 1950s “death of rock ‘n roll.” This is perhaps evidenced by the fact that Dick Clark, the new face of a cleaner, whiter rock ‘n roll, managed to escape any serious repercussions from the investigation (see chapter 3).

The following article explores the history, ethical dilemmas, and contemporary reality of payola.

I’VE GOT SOME BAD NEWS. Every pop hit you’ve ever loved has reached you via some kind of payola. Whether it was “Jailhouse Rock” by Elvis Presley or “Hungry Like the Wolf” by Duran Duran or “Don’t Speak” by No Doubt, there was a little pay-for-play convincer attached. A hundred dollar bill tucked in a record sleeve. An all-expense paid vacation to the Bahamas. A new flat-screen plasma HDTV.

It can make you feel kind of queasy about even listening to the radio when you dwell for too long on this sordid little fact. So, imagine how Eliot Spitzer feels. The attorney general of New York, a hawk for corporate scandal, has been living and breathing the greasy machinations of payola for the past five years.

At a press conference on July 25, 2005, Spitzer announced that Sony BMG Music Entertainment had agreed to pay a $10 million fine as part of a settlement in an ongoing payola investigation.

The music conglomerate had been overly generous to various radio stations, providing entertainers for

station-affiliated concerts, paying for station equipment, and lavishing station employees with vacations, sports tickets and electronic goodies. With backs properly scratched, the label got what it needed in return—airplay for their acts. After reviewing several years' worth of incriminating memos, e-mails and contracts between Sony and radio stations, Spitzer declared, "This is not a pretty picture; what we see is that payola is pervasive. It is omnipresent. It is driving the industry, and it is wrong."

The Good Old Days

If you were to throw the attorney general into a time machine and send him back 100 years, his suit and haircut might look a little jarring, but his message would sound just as topical. Payola—coined in the early 20th century, the word is a hybrid of "pay" and "Victoria"—has been a fact of the music business ever since vaudeville star Tony Pastor clutched his breast dramatically and sang "My Bonnie Lies Over the Ocean" in 1881.

Late 19th century music publishers routinely plied itinerant vaudeville performers with gifts to spread the latest songs across the country. The bigger the performer, the bigger the gifts. New clothes, a case of liquor, the services of a prostitute, even a piece of the royalties. When audiences from Schenectady to Sacramento heard the featured songs, it would result in increased sheet music sales, then the industry's main source of revenue.

The industrial age pay-for-play didn't stop there. Non-musical vaudeville acts such as jugglers, dancers and magicians all needed music, and publishers were only too glad to help them select appropriate accompaniment. Then there were the shills in the vaudeville houses, paid by publishers to applaud a little louder for particular songs. And let's not forget the guys in charge of stockling the song rolls inside coin-operated player pianos in saloons and arcades. Even the busker on the corner who was winding the crank on a curbside barrel organ was on the take.

As the new medium of silent movies flourished in the early 1900s, publishers cozied up to theater pianists and organists, paying them to add specific melodies to their cinematic repertoires. Today, we all complain about the 20 minutes of commercials before big-screen fare. But a hundred years ago, payola-supported entertainers called "illustrated slide sinners" projected still photos with song lyrics before a movie and invited audiences to "follow the bouncing ball." The prospect of a forced sing-a-long with "In the Good Old Summertime" makes a dewy promo spot for Amy Grant's new reality show seem a little more tolerable.

By the early 1920s, payola was an accepted fact of the business. The major music firms of Tin Pan Alley (a term coined in 1904 by songwriter Monroe Rosenfeld to describe the clattering wares for sale by these companies) were gambling as much as $20,000 on the promotion of every hoped-for hit song.

When radio became widespread in the 1920s (Pittsburgh's KDKA was the first station to have regular programming, in 1920), it was greeted by the industry with the same enthusiasm that today's labels initially had for the Internet. Publishers and songwriters complained that radio would overexpose and speed up the lifespan of hits before they could reach their money-making prime. But radio turned out to be a better form of promotion than the music industry ever dreamed possible. Shorter life cycle for hits meant more songs could be turned into moneymakers. Competition for airplay quickly increased, and it wasn't long before everybody jacket that arrived at a radio station had a $20 bill tucked inside.

So rampant was the practice that in the early 1930s, the National Broadcasting Corporation even proposed bringing it above board, by charging music publishers and record companies a flat rate for each exposure of a new song (a foreshadowing of how independent promoters would work 50 years later). The problem was, this would've interfered with the individual deals that the era's singing stars and big band leaders already had in place (a common scam was the sharing of co-writing credits, a practice that Colonel Tom Parker would later use with Elvis Presley).

In the mid-1940s, performers began sharing the payola pie with a newly emerging class: disc jockeys. Martin Block, an early pioneer of the individual DJ format, later said that the money that came along with a new record was merely the equivalent of a head waiter's tip for a good table in a nightclub.

Hail! Hail! Rock 'n' Roll

Payola became a household word in the 1950s. The decade's music scene was the convergence of a number of seismic factors—the rise of rock 'n' roll and R&B (which coincided with the rise of small labels), the introduction of the inexpensive 45 rpm single, radio's shift to Top-40 music (once television took over dramatic programming), post-war prosperity and the emergence of the teenager as an economic force. Records began to replace live performance as the main way to hear—and sell—music. And labels recognized that popular disc jockeys could influence sales.

In 1950, there were approximately 250 disc jockeys in the U.S. By 1957, the number had grown to over 5,000. The increase was partially due to the sheer amount of new records being produced, both by major and indie labels. As the name suggests, a disc jockey was responsible for sorting through all these releases (naturally, the sorting was influenced by payola). These on-air
personalities had so much clout with younger listeners, *Time* magazine called them the “poo-bahs of musical fashion and pillars U.S. low-and middle-brow culture.”

Aware of their rising status, jocks established flat rate deals with labels and record distributors. A typical deal for a mid-level DJ was $50 a week, per record, to ensure a minimum amount of spins. More influential jocks commanded percentages of grosses for local concerts, lavish trips, free records by the boxful (some even opened their own record stores), plus all the time-honored swag. As Cleveland DJ Joe Finan later described the decade, “It was a blur of booze, broads and bribes.”

As payola escalated, *Variety* and *Billboard* did lengthy features, calling for reform and government intervention (to its credit, *Billboard* wrote, “The cancer of payola cannot be pinned on rock ‘n’ roll”). ASCAP was also vocal in their opposition to payola, using it as a means to lambaste their competitor BMI. At the time, the larger ASCAP represented the old guard of mostly white composers from the Tin Pan Alley days. BMI was associated with the young, racially mixed writers of R&B and rock ‘n’ roll, as well as indies labels such as Aladdin, King and Chess. By the mid-’50s, BMI single releases outnumbered ASCAP’s by almost two to one. The older organization cried foul, accusing BMI of promoting payola.

Fingers pointed and words flew over payola, but it wasn’t until the TV quiz show scandals of 1958 (most famously, the show *Twenty One* was found to be fixed) that the government got seriously involved. Once the “Do you now or have you ever . . .?” questions began, the jig was up.

With the threat of losing their licenses, some radio stations took the precaution of firing disc jockeys who might put them at risk. In November 1959, in closed and open sessions before the U.S. House Oversight Committee, 335 disc jockeys from around the country admitted to having received over $263,000 in “consulting fees.” That figure was only the tip of the payola iceberg (before the hearings, Phil Lind, a DJ at Chicago’s WGN had confessed that he had once taken $22,000 to play a single record). The trial heated up when the two most influential jocks in the country took the stand.

Alan Freed and Dick Clark both played important parts in the rise of rock ‘n’ roll. (Freed embodied the incendiary spirit of the music more than Clark, refusing to play white cover versions of black songs, such as Pat Boone’s “Tutti Frutti.”) And though they both denied ever accepting payola, it’s almost impossible to imagine two young, popular jocks not succumbing to a little temptation. Guilty or not, it was Freed who ended up taking the fall for DJs everywhere.

Why did the committee single him out? Freed was abrasive. He consorted with black R&B musicians. He jive talked, smoked constantly and looked like an insomniacl. Clark was squeaky clean, Brylcreemed, handsome and politic. At least on the surface. Once the grilling started, Freed’s friends and allies in broadcasting quickly deserted him. He refused—“on principle”—to sign an affidavit saying that he’d never accepted payola. WABC fired him, and he was charged with 26 counts of commercial bribery. Freed escaped with fines and a suspended jail sentence. He died five years later, broke and virtually forgotten.

Previous to the trial, Dick Clark had wisely divested himself of all incriminating connections (he had part ownership in seven indies labels, six publishers, three record distributors and two talent agencies). He got a slap on the wrist by Committee chairman Oren Harris, who called him “a fine young man.” As Clark told *Rolling Stone* in 1989, the lesson he learned from the payola trial was: “Protect your ass at all times.” Surprisingly candid words from the eternal teenager.

After Freed went down in 1960, Congress amended the Federal Communications Act to outlaw “under-the-table payments and require broadcasters to disclose if airplay for a song has been purchased.” Payola became a misdemeanor, with a penalty of up to $10,000 in fines and one year in prison.

The loophole in the legislation was that it didn’t say anything about “undisclosed payments.” And so payola joined the cockpit and the fart joke on the list of things that, despite changing times, always manage to survive.

**From Cocaine to Clear Channel**

The post-Freed decades have spawned a few sure-fire ways to avoid detection. Most basic is the falsified expense account. Say an A&R guy spends $500 on cocaine (and in the 1970s, drugs became the most common payola currency) and sends it to a disc jockey. The A&R guy would then write it off as “hospitality” on an expense report. Or maybe a label purchases airline tickets to Acapulco from a travel agency. The tickets may end up in the hands of a DJ, who then cashes them in. The tickets are written off as a company travel expense. Untraceable, safe, easy.

Next, and more significant, is the independent promoter. A conduit between the record companies and radio stations, the indic is paid by the labels to push their music, and he in turn pays the stations (more on how this works later). The indic started out in the mid-1960s as a small-time phone hustler, cajoling jocks and programmers to add a song to a playlist. He occasionally showed his appreciation with under-the-table gifts. Three decades later, after the FCC deregulation law was passed in 1996, independent promotion exploded into big business. Raking in six-figure salaries, indies were emperors of the air, deciding what got played and what didn’t. In the last five years, as payola investigations
have begun, record labels have severed ties with indies. Clear Channel and Infinity have made a show of washing their hands of these middle men, too. A 2003 Clear Channel press release declared that the company would “begin working directly with the recording industry on specific group-wide contesting, promotions and marketing opportunities.”

The latest of those specific marketing opportunities is the “spot buy.” Example: A DJ announces, “Here’s Avril Lavigne’s latest, ‘Don’t Tell Me,’” then quickly adds, “Presented by Arista Records.” The song is essentially a four-minute infomercial. And it is not in violation of any laws against payola. How successful is this method? During one week in May 2004, a station in Nashville played Lavigne’s song 109 times. One Sunday, they played the song 18 times, with as little as 11 minutes between airings. The following month, the song went Top 10. Songs like “Don’t Tell Me” and there are many examples—are essentially musical blunt objects that beat listeners into submission. It gives a whole new meaning to the concept of a hit.

Getting back to the long and winding road of payola, the 1970s was a decade of hash instead of cash. Partly because of the drug trafficking and suspected mob connections within the industry, another major investigation began in 1973. This time the Justice Department and the FCC teamed up, digging into all kinds of unsavory transactions. A director of artist relations at Columbia Records, David Wynshaw, testified that the label spent over $250,000 on payola to black radio stations alone (again, the amount was probably much higher). The money was concealed within Columbia’s promotion budget. Wynshaw was fired, as was the man to whom he was assistant, uber-exec Clive Davis. Columbia made a show of conducting their own inter-company investigation, and firing Davis was surely done to deflect more payola charges.

The reference to black radio stations opened up another can of worms. There had always been a notion that payola was worse in the R&B world. It’s part truth, part racism, but in the ‘70s, it seemed like black music became the main target of federal investigations. Only three major indictments were made in that decade. One brought down Chicago soul label Brunswick Records, another was against Philly soulmeisters Kenny Gamble and Leon Huff (who got off with small fines) and the last was against program director Frankie Crocker of New York’s black-oriented WBLB (his conviction of perjury was later overturned).

In 1976, FCC commissioner Nick Johnson admitted, with obvious exasperation, “Hell, there’s payola in every industry. It’s common knowledge that most products and services are sold not just on their interest quality. I mean, payola is just an American business practice.”

He’s right. Supermarkets and drug stores take billions of dollars a year in “sloting fees” to position products at the end of an aisle or at eye level. Bookstores sell space on the tables at the front near the registers. Record stores accept advertising dollars from labels to push certain albums. Like it or not, the wheels of every business need grease to run smoothly. Why should the music industry be any different? You might argue that the product being sold is—at least, ideally—art, not a bag of potato chips or an allergy medicine. But that’s a debate for another article.

The story of payola in the ’80s and ’90s is the rise and fall and rise of the aforementioned independent promoter. Labels had created these guys in the late ’60s, paying them and trusting them to cultivate relationships with radio stations. By the mid-1980s, indies had become Frankenstein’s monster.

In February 1986, the same week as the Grammy Awards, NBC Nightly News aired a two-part special on payola, which began with the charge that “record companies pay Mafia-connected independent promoters almost $80 million a year to do the dirty work of the industry.”

The focus of the special was on “The Network,” a group of about 30 important indies who demanded as much as $300,000 from labels to get a track added at the country’s 27 top radio stations. The Network had such a stronghold on the labels, that when Columbia experimented in trying to break singles by Pink Floyd, Loverboy and the Who without the Network’s help, the songs stalled in the upper reaches of the Top 40, then plummeted off the charts.

In the wake of the NBC report, there was a flurry of indignation and finger-pointing. Legitimate independent promoters, who worked album-oriented rock to college radio and smaller commercial stations, resented having their reputations tainted by the dirty deeds of the Network. Major labels made a show of severing ties with indies. Indies connected with the Network tried to sue NBC for slander, and the labels for conspiring against them. Radio stations said it was all a witch hunt and that the charges were exaggerated. Rudy Giuliani, then district attorney in New York, launched a federal grand jury investigation. Tennessee senator Al Gore announced a federal probe into payola (then quietly abandoned it when he launched his 1988 presidential campaign). The FCC made noise about new inquiries. But none of this amounted to much, except humbling the indies into lowering their fees for a few years.

FCC enforcer Charles Kelley illuminated the ongoing problem of prosecuting against payola when he said, “It’s a very elusive matter. We have received complaints about payola activities of independent promoters on a regular basis, but when we run them down, they don’t bear fruit. It’s very difficult to find people to go on the record with allegations.”

The indies rose again in the ’90s, especially after the Telecommunications Act of 1996, which opened
the gates for Clear Channel and Infinity to monopolize radio. The stakes got higher. Indies were paying annual fees of between $100,000 and $400,000 per radio station. Once their deal was in place, the indies would invoice the record labels for every song added to a station’s playlist. Since the indies were paying the station—rather than specific station employees—to play a specific song, this wasn’t technically payola.

Those invoices added up. The fee was roughly $800 per song in middle-size markets, and $1,200 in larger markets. It could reach $5,000 per song for the biggest stations in the biggest markets.

In the ’90s, it cost a record company roughly $250,000 just to launch a single at commercial radio. And that only guaranteed access to the airwaves, not chart success. If the song caught on and crossed over to Top 40, costs might reach more than $1 million per song (the game hit its zenith in 2001, when Mercury Nashville crossed Shania Twain over to pop radio, spending $1.5 million on indic promotion for one song).

Record companies recouped these costs from their artists’ CD royalties. And, ironically, the radio stations ended up paying as well, since money that might’ve been used for promotion and operating costs was instead diverted into programmers’ and jocks’ personal bank accounts. So, if you’re talking about payola from 1980–2001, the winner was the independent promoter.

Which brings us back to Eliot Spitzer. Since he has subpoenaed three other major labels and is eyeing several radio stations as well, ties with independent promoters are once again being cut.

Can the attorney general stamp out payola? No more than the pest control guy can get rid of cockroaches. And Spitzer would do well to remember that over the last century, no one has ever gone to jail for payola.

But there are other changes that may have a greater affect on payola than a court case and a fine. Most significantly, satellite radio, Internet radio and podcasts have all taken a healthy bite out of the commercial radio market. That’s not to say that the new alternative mediums won’t be—or aren’t already—susceptible to payola, but because the labels are still caught up in outmoded thinking, so too are most of the payola dollars. Also, exposure on commercial radio is no longer the be-all end-all for artists. Younger listeners routinely find out about new music through P2P networks, free downloads, iTunes and other Internet-based means. The days of traditional radio being able to break a record may soon be a thing of the past.

Despite its sleazy reputation, payola isn’t completely evil (Jessica and Ashlee Simpson notwithstanding). It has often nurtured musical diversity. In the 1950s, when the business was dominated by a few labels, payola—and those who accepted it—helped the revolutionary smaller labels such as Atlantic and Chess get their music on the air.

With payola currently in one of its duck and cover phases, it’s hard to predict its future. What form will it take next? Maybe it’s best to give the final word to a Sony BMG employee, who in trying to break a new single by Audioslave three years ago, said this in an e-mail to a radio station: “WHAT DO I HAVE TO DO TO GET (the song) ON WKSS THIS WEEK?!?! Whatever you can dream up, I can make it happen.”