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The 1969 Creedence Clearwater Revival Recording Contract and How it Shaped the Future of the Group and its Members

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By 1969, the record business had been around in some way, shape, or form for nearly eighty years. For an octogenarian, it had never been healthier. A study commissioned by John Wiley of Columbia Records said that the business had grown 250 percent in the decade between 1955 and 1965. It predicted the record business would double in size again within the next decade. “The end of the upward trend is not yet in sight,” added Wiley. “Our future has never held more promise” (Rood 1965).

With the passing of rock and roll into just rock, the day of the music business robber barons had begun to fade. The previous decade saw musicians with massive hit records living in poverty, contracted to virtual slavery as recording artists. As Etta James once said, “I...started my show business life living in a private hotel where you could cook.

Other entertainers were there, like Curtis Mayfield. Everybody lived in this one hotel. I was the one who had the kitchen. We used to put all our money together to eat. At that time, we would get two cents, three cents, five cents for bottles and at the end of the day we would get our money together and we’d get some food and cook it. I remember us putting together and not having much, just enough to get some corn meal. And I learned that whenever you get hungry—I’ve told my kids this—if you’ve got enough money, you get some yellow corn meal and you get some sugar. You can always get some sugar somewhere, even if you have to walk into a McDonald’s someplace, and steal some of the sugar. Take sugar and cornmeal and fry it. Boy, is that good. Then, if you’ve got enough money, you get a little syrup. I remember we ate that for two days. (James 1988)

James recorded for Chess Records at the time, and had enormous crossover hits like *At Last* that continued to make money for *someone*, but certainly not for James (except, perhaps when she would perform in concert). The fact that such famous and popular musicians could be living in relative poverty on Chicago's South Side spoke to both legalities within the music business and race relations of the times, but only in terms of the degree to which they were exploited. James further recalled, "I remember going to Chess records and Leonard Chess had a check on his desk.

He said, 'I want you with Chess records. You will be really good. I'll get you out of the deal with Modern'¹... He picked up this check and said, 'Let me show you what kind of royalties my artists make.' He lifted this check up to me and it was for ninety some thousand dollars, and it was made out to Chuck Berry and Alan Freed.² I was about to faint, there were so many zeros there. And he said, 'This is just for six months payment for *Maybelline*.' I had one hit record, *All I Do Is Cry*, and then I had *Stop The Wedding* and then I had, *My Dearest*... They were going in layers. So, it was about a year later, when it would be time for me to receive some royalties, I went down there. I was rubbing my hands together. I knew I was going to look down there and see a nice fat figure. I saw that it was written in red. And I said, '\$14,000! All right!' And Leonard said, 'Hold it, hold it. Don't get all bent out of shape.' And I was kind of confused, like what is he saying that for. And he says, 'Look Etta, don't worry about what that says. What do you need?' Now, I'm really confused. 'Here's what I need, in big red numbers.' I said, 'Wait a minute. You're saying I don't have this coming?' 'Hell no, you don't have this coming,' he said. 'You owe me this. Just tell me what you need.' I received a check for \$10,000. I took that \$10,000 straight to Los Angeles and put \$8,000 down on a house. (James 1988)

She passed on in that house in 2012. Fellow Chess recording artist and rock and roll pioneer Elias "Bo Diddley" McDaniel's feelings about Chess were more succinct: "They made me a mean dude" (McDaniel 1996).

In part due to the low maintenance paid to the artists, and in part due to the giddy advent of youth culture, the music business would continue to live up to Wiley's predictions until the very late 1970s and early 1980s, when it would experience its first major dip since prior to World War II. The advent of rock had been a boom time for all aspects of the music business—people lined up around the block to get into the Fillmore Ballrooms on both coasts, musical instruments sold well, especially after the Beatles appeared on *The Ed Sullivan Show*. It seemed as if everyone wanted an electric guitar. At the apex of this boom, perhaps half a million people gathered in the exurbs of New York City and Albany to see several dozen bands over the course of about three days at the 1969 Woodstock Music and Art Festival. In many ways it was a legendary time for both music and the business that thrived off of the music.

One of the bands that performed at Woodstock was Creedence Clearwater Revival (CCR). The band's leader, John Fogerty, refused to let Woodstock's producers use the band's musical performance for the Woodstock records and did not allow their images to be displayed on the screen when the film came out; Fogerty was neither happy with the band's performance nor the circumstances of that performance. They followed fellow Bay Area denizens The Grateful Dead, taking the stage at 3 AM. Fogerty said, "Wow, we get to follow the band that put half a million people to sleep...I look out past the floodlights and I see about five rows of bodies just intertwined—they're all asleep...It was sort of like a painting of a Dante scene" (Henke 1987).

The band's bassist Stu Cook added, "I'm still amazed by the number of people who don't even know we were one of the headliners at Woodstock" (Cook 1996).

By the late sixties the Wild West nature of music business legalities were waning, at least in terms of issues between recording companies and artists.³ Some attorneys at the time had started to learn the basics of the music business. For attorneys who did not practice in the music business, even the language of the music business contract seemed strange. What exactly were "statutory rates," "compulsory licenses," and "controlled compositions?" What effect did the determination of gross and net sales have on a musician's royalties? Why should I object to having a non-compete clause in the contract? What the heck is music publishing? What do ASCAP, BMI, and SESAC actually *do*? These concepts were mysteries to the lawyer who did not practice in this specialty during the 60s, and even

before. Still, a growing number of artists had the foresight, or forewarnings from other musicians like James and McDaniel, to hire lawyers literate in these issues. Generally, these attorneys either practiced some form of intellectual property law or were previously contract attorneys who drafted music business documents for the record, publishing, and management companies. However, there continued to be many artists who were just happy to have a contract proffered to them. This was the case for CCR, who were overjoyed to find that they did not have to go to Los Angeles to explore making records. They had Fantasy Records right across the Bay Bridge in San Francisco, a fact that they discovered when a program called *Anatomy of a Hit*, dealing with Vince Guaraldi's 1962 top ten, Grammy-winning song *Cast Your Fate to the Wind*, aired on the local NET Station.

Creedence Clearwater Revival actually had a quasi-entertainment attorney in their camp; Stu Cook's father worked for a law firm that was counsel to the Oakland Raiders. However, even Herman Cook, Esq. was unprepared for the agreement Fantasy President Saul Zaentz extended to the band in 1967. Even the elder Mr. Cook was unfamiliar with some of the aspects of the contract and, therefore, not equipped to save his son and cohorts from years of grief.

Fantasy, like Chess, was an independent record company. This meant that it had to count on other companies for the distribution of its product, as opposed to the major record companies that had their own affiliated distribution networks. The Bay Area company had a long history of putting out phenomenal jazz records by artists like Dave Brubeck and John Coltrane, spoken word albums by Allen Ginsburg and Lawrence Ferlinghetti, and comedy albums featuring Lenny Bruce. While cutting edge and in keeping with the tastes of the Weiss Brothers, owners of the company even before they made records,⁴ these were not powerhouse sellers, albeit slow and steady catalog albums. Fantasy was certainly not used to having huge hit records. This is illustrated by a scene from the NET documentary showing everyone who is not pressing copies of the single loading boxes of the single into trucks, including the artist Guaraldi. At one point Guaraldi wipes his face with a handkerchief and says, "As you can see, we're not ready for success" (Moore 1963).

While not as onerous as the rarely vetted Chess contracts (which were often—as in the James story—ameliorated by Leonard's genuine fondness for his artists), the Fantasy boilerplate contract contained many clauses that would help the company recover the money they spent on

small press runs, such marketing as they were able to do, and the notorious financial practices and demands of the independent record distributors. For example, most recording contracts continue to contain a passage contained in the CCR contract, which states, “Any recordings made by the Artists or any of them during the Term hereof and all reproductions made therefrom and performances embodied therein and the copyrights and/or copyright renewal rights therein and thereto are and shall be entirely the property of Galaxy⁵ free and clear...” (CCR Recording Contract 1969, 8). Very few artists had—or have today—the forethought and leverage to retain their master recordings. The master recordings, which are the actual recordings of the songs, generally become the record company’s property under an exclusive recording artist agreement.

In 1964, Stu Cook, Doug Clifford, and the Fogerty brothers, John and Tom, initially signed to Fantasy as the Blue Velvets. When the former head of sales, Saul Zaentz, bought the company in 1967, he offered the band a new contract and instructed them to pick a new name. They chose Creedence Clearwater Revival.⁶ The company offered CCR the 1969 contract—or more correctly CCR demanded it—because over the course of the previous year they had become the number one American band. The following year, with the dissolution of the Beatles, CCR would briefly become the world’s most popular band (Bordowitz 2007, 105).

After comparing notes with bands on other labels, CCR realized that their 10.5 percent contractual royalty was a mere pittance (CCR Recording Contract 1969, 18). While Zaentz would not raise their royalty rate (although it would escalate to 12 percent within two years), he had a plan. The contract would no longer be with Creedence Clearwater Revival. It would be with a Bahamian company *owned* by Creedence Clearwater Revival, but not subject to U.S. taxes (CCR Recording Contract 1969, 1). This way, Zaentz told them, they would receive 35 percent more than they had before, which made their royalty more like 13 percent, and it would escalate to the 15 percent that most of their successful contemporaries were earning. Thus, as a corporate entity, Creedence Clearwater Revival became “King David Distributors Limited, a Bahamian corporation” (CCR Recording Contract 1969, 1).

Despite the changes, much of the contract remained boilerplate. Fantasy retained the right to buy the artists out of the contract if they wanted to cut them loose (CCR Recording Contract 1969, 14-15) by paying \$100 to \$400 per contracted master based on the minimum number of masters

required in the contract (CCR Recording Contract 1969, 18). The boilerplate also allowed Fantasy to reduce the statutory mechanical royalty rate to 2/3 on all singles, 5/6 for original songs on albums, and 2/3 of 5/6 (or 5/9) for recordings and new arrangements of compositions that were out of copyright, i.e., in the public domain; this is still a fairly common practice. The contract actually didn't require the 10% "breakage allowance," built into the boilerplate of contracts even today,⁷ over sixty-five years after the last glass and lacquer disc of recorded music left a factory. However, the 100% was based on the net sales rather than the gross sales (CCR Recording Contract 1969, 3). In the movie business, percentages of the net proceeds from a film in actors' or directors' contracts are referred to as "monkey points," because one would have to be a monkey to take them. Theoretically, a clever accountant, using such clauses as the CCR contract's Section 3.4, which allows the company to maintain a reserve account of 25 percent against returns (CCR Recording Contract 1969, 7), can make it so a project never achieves a net, rendering that 100% royalty on net returns virtually worthless.

The contract also gave CCR 1/2 of that 100% of the net rate on cassettes, which escalated to 2/3 of the rate on music released after 1970. The rate on cassettes also applied to "any device utilizing a new medium of sound and/or sight and sound reproduction..." (CCR Recording Contract 1969, 4). Even more so than the previous boilerplate, this clause would come back to haunt the band members when CDs became the prevailing medium for sound recordings.

The 1969 contract revised several aspects of the previous contract, reflecting the band's learning curve over the previous three years. For one thing, John Fogerty hated his masters being included on compilation albums. The main culprit in that arena was a company called K-Tel that licensed original recordings of six-month-old hits from the record labels and put them together on one album (Jaffee 1986). You might find songs like *Dizzy* by Tommy Roe; Henry Mancini's *Love Theme from Romeo and Juliet*; *Sugar, Sugar* by the Archies; Simon and Garfunkel's *Bridge Over Troubled Water*; and *Ain't No Mountain High Enough* performed by Diana Ross—all of whom had number one records that kept CCR's then number two song off the top of the singles charts—compiled on one of the company's mail-order albums. Thus, Fogerty negotiated into the new agreement clause 4.3, which rendered Fantasy unable to, "without prior written consent of King⁸ produce or release records comprised of masters recorded by

Artists hereunder with other masters” (CCR Recording Contract 1969, 9).

More importantly, Fogerty also finally realized what he had given away in Article VII of the contract. This was a lot more delicate. Article VII is sub-headed “Musical Compositions.” Within that article, the band originally agreed to assign its music to “any publishing companies designated by Galaxy with statutory fees applying unless otherwise agreed to” (CCR Recording Contract 1969, 13).

To understand just how important these fourteen words are, one needs to understand the vast returns that can be generated by a hit song. Briefly, a song theoretically makes “public performance royalties”⁹ every time it gets played on the radio, every time someone performs it for money, and every time it gets played on television. Every time a song is recorded or copied onto a medium of musical delivery (i.e., a “mechanical” device like a CD), and then is distributed to the public, that song generates mechanical royalties at a statutory rate established under the Copyright Act of 1976 and set by the United States Copyright Office. When a film or television show uses a piece of music, the users need to negotiate a synchronization license.¹⁰ This can be worth hundreds of thousands of dollars to the songwriter and publisher, and even something for the recording artist. For example, when Microsoft used the Rolling Stones’ *Start Me Up* to introduce Windows 95, it reportedly paid the Stones an estimated fee of \$8 million to \$15 million for those rights. The owner of two holiday songs heard throughout November and December in venues ranging from churches to television advertisements told me that those two songs alone, with all these streams of revenue, made roughly \$4 million every year.

Proud Mary (one of CCR’s major hits) alone has been covered on one “medium of sound and/or sight and sound reproduction” or another by well over five hundred artists, including performers ranging from Elvis Presley to New York Yankee Nick Swisher (*All Music Guide* n.d.). It is also performed thousands of times a month by bar bands around the world. All performances of *Proud Mary* by Ike and Tina Turner, Elvis, or even Swisher—all airplay, all live performances, any time it is played over the public address system of a ballpark—theoretically meant money generated for both Fogerty as the songwriter and Fantasy (actually its Jondora Music Publishing subsidiary) as the publisher.

So, as much as Fantasy was making from selling actual Creedence recordings, it didn’t hold a candle to the money it was raking in as the publishers of Fogerty’s songs. It is postulated that somewhere in the world at

any given time, someone is broadcasting or playing a Creedence Clearwater Revival song. The amount of performance royalties paid to the songwriter and the publisher for music that gains sizable amounts of airplay, cover versions, and other legal performances is phenomenal. Additionally, the contract allowed Jondora to keep the publisher's half of the mechanical royalties, a nice little kickback. This is where much of the money that allowed Zaentz to produce the movie *One Flew Over the Cuckoo's Nest* came from (Bordowitz 2007, 159). It was the predominant source of funds for the Saul Zaentz Film Center that occupies the better part of a square block in Berkeley, California. Fogerty and his bandmates had signed a contract that assigned the songs to Jondora, and Fantasy was loathe to lose this income as part of this new contract. Fogerty hated the fact that he had been duped out of his publishing through his own ignorance and impatience to sign a recording contract. So, negotiations ensued.

Eventually, CCR and Fantasy agreed to split Article VII into two sections. Until midnight on December 31, 1970, about eighteen months after they signed the contract, the then-current situation would remain in place. Starting with the New Year in 1971, songs written by the band "may be assigned by Artists or their respective successors in interest to a publishing company or companies of their choice" (CCR Recording Contract 1969, 13).

If signing away his publishing rights angered Fogerty, another series of agreements would prove far more onerous. A recording contract, by its legal nature, is a personal services contract. Indeed, most recording contracts *specify* this, as it says on the second page of the CCR contract:

- 1.1 Grant of Exclusive Rights. King hereby agrees to furnish Galaxy the exclusive *personal services*¹¹ as performers of each Artist in connection with the production of phonograph records and/or sight and sound recordings during the period commencing on the date hereof and ending December 31, 1974 or such later date as any suspensions or extensions of this Agreement may require.¹²

The date is important, as it is seven years after the initial contract was signed. In many states, including California where the CCR contract was signed, there is a strict limitation on personal services contracts. "[The]

California State Labor Code has a ‘7 Year Rule’ (as referred to in the music industry) stating that personal service contracts which last more than seven years cannot be specifically enforced,” write attorneys Ira Scot Meyerowitz and Jon Jekielek (2009). “Many record companies may define the contract’s term as, say, a two-year initial period plus three one-year option periods to protect themselves against California’s seven-year rule.” This rule was instituted in the 1930s to allow stars caught up in the Hollywood studio system the ability to renegotiate their contracts or go out as free agents after seven years (Hoffman 2006). This statute—California Labor Code Section 2855—should have prevented the contract CCR signed from holding the band and its members for only seven years.

Fantasy finessed this in several moves within the contract. On the second page of the contract, in Section 1.2, Number of Recordings, it reads:

King agrees to cause Artists to record for Galaxy a minimum number...of masters...embodying performances by the Artists...in each year of the term hereof...and such additional number of masters (not to exceed ten (10) as Galaxy may elect upon written notice to King no later than three (3) months from the end of each year in which such election is made by Galaxy, and such additional number of masters as required under Article XI...All material shall be subject to Galaxy’s approval as commercially satisfactory. (CCR Recording Contract 1969, 2-3)

While a cursory explanation of what Fantasy meant by a “master” is included in this paragraph, to get the official definition of how the contract views a master, one must turn to page 24, under article XIV, Section (b):

“Master” means an original recording whether sound only or sight and sound and embodying the performance of the Artists delivered to Galaxy by King and accepted as commercially satisfactory for the production of records...If the selection performed has a playing time of five (5) minutes thirty (30) seconds or less, it shall be deemed to be one master. If the selection has a playing time in excess of five (5) minutes thirty (30) seconds, but less than ten (10)

minutes and thirty (30) seconds it shall be deemed to be two (2) masters...and so forth. (CCR Recording Contract 1969, 24-25)

Article XI, Section 11.1 establishes the Minimum Number of Masters the band had to record for Fantasy (and the advance royalty per master) (See Figure 1.)

Period	Minimum Number of Masters to be Recorded	Advance Royalty Per Master
Date of Agreement to Dec. 31, 1969	12	\$100
Jan. 1, 1970 to Dec. 31, 1970	12	\$100
Jan. 1, 1971 to Dec. 31, 1971	24	\$200
Jan. 1, 1972 to Dec. 31, 1972	24	\$200
Jan. 1, 1973 to Dec. 31, 1973	24	\$400
Jan. 1, 1974 to Dec. 31, 1974	24	\$400

Figure 1. Article XI, Section 11.1: minimum number of masters (CCR Recording Contract 1969, 18).

After doing the math, one discovers that the contract called for the band to record 120 masters, plus the ten additional masters each year of the contract called for in Section 1.2, for a grand total of 180 masters owed to Fantasy during the term of the contract.

This brings us back to Article V, Section 5.1, a paragraph labeled Failure to Perform:

Should there be a failure to perform on the part of King under this Agreement and should such failure to perform not be corrected to the satisfaction of Galaxy, Galaxy in addition to all other rights and remedies available to it,

shall have the absolute right in its sole discretion to extend the then current year and/or the term of this agreement until such failure to perform is corrected... (CCR Recording Contract 1969, 9)

While this would seem to fly in the face of the seven-year statutory limitation in California, it was tough to fight for several reasons. The film industry honored these seven-year limitations to the degree that “contract players,” once the lifeblood of the business, had become a quaint anachronism. Actors are no longer employees under long-term contract to the film companies. At this point, producers accept that actors, no longer bound by long-term film company contracts, are hired and paid by the project. While not employees of the record company, many recording contracts—like this one—bind the artist for terms of many years. However, the music business has not challenged the seven-year statute, so, as attorney Stan Soocher (2011) says, “There’s not a lot of case law.”

Part of the reason no one has challenged the law is that no one wants to risk the upshot of pursuing a case and losing it, setting a legal precedent. *The Harvard Law Review* (2003) notes that the California statute left “record companies wary of the possibility that a section 2855” ruling favorable to the artists, granting them free agency, might irrevocably change the way they do business. This led the industry to “renegotiate dissatisfied artists’ contracts, often providing more generous terms and large advances” (California Labor Code Section 2855 and Recording Artists’ Contracts 2003).

Indeed, the closest court case that dealt with these provisions, in terms of their personal services, was litigated several years after CCR broke up, when Olivia Newton John fought an injunction that prevented her from recording for any company besides MCA. This ruling would not have helped Fogerty regarding the “Seven Year Statute.” While the court had “grave doubts that defendant’s failure to perform her obligations under the contract could extend the term of the contract beyond its specified five year maximum,” they would not rule on the statute, *per se* (John 1979).

“According to the original contract between CCR and Fantasy, it seems that they contracted for the members of the band to remain obligated under the terms of the contract, should the band break up,” noted music business attorney Jeffrey Jacobson (2011) points out. He continues:

Under Article 10(g), if the group disbanded, a new agreement could be entered into by each member for a term not less than the remaining time left on this agreement, but the agreement could be extended if there were masters that still needed to be provided (Article 5). Since Fantasy released the other members of CCR from their contracts, it seems that Fogerty entered into a solo artist agreement that branched off of and incorporated the terms of this contract. Therefore, a new contract would have been entered into and triggered a new time period, and avoided the ‘seven year statute,’ California Civil Code §2855. (Jeffrey Jacobson 2011)

Or, as John Fogerty described it about a decade after he was finally cut loose from that provision of the contract, “I owed so much product...I felt like I was chained in a dungeon” (Selvin 1985).

Over the course of nearly five decades the members of CCR continue to feel the legal ramifications of this 1969 agreement. The terms of the contract continue to be binding as regards the band’s output from that time, even after the parties to that contract had moved on. Some of the repercussions from this contract were severe. The personal services issue, combined with the betrayal John felt from Zaentz not negotiating in good faith, and the “loss” of his publishing ultimately caused severe writer’s block. After two post-Creedence albums that were released, and one that was not, John became a rock and roll recluse. He did not put out any music, nor perform for a paying audience, for over a decade. He wouldn’t play any of his CCR songs for just shy of two decades.

In 1975, David Geffen’s Asylum Records bought John out of his indentured servitude to Fantasy, at least in North America. He was still recording for Fantasy everywhere else in the world. “I think [Fantasy] proposed a number that Asylum wasn’t ready to pay,” John’s brother Bob, who has served as his aide-de-camp for more than forty years, noted (B. Fogerty 1997).

John’s first, eponymous album for Asylum met with mixed criticism and lukewarm sales. His next record for Asylum, *Hoodoo*, was never commercially released (though because of press advances one can find a bootlegged copy fairly easily). John spent the next decade “working on a solo LP...,” said Tom Fogerty. “Nobody gets to hear it. He gets about halfway

through it, then he scraps the whole thing and starts over” (T. Fogerty 1981).

In addition to his indentured servitude to Fantasy, and its subsequent ownership of the non-American rights to his music, there was more that led to his creative paralysis and withdrawal from the public eye. He (and the rest of the band members) suffered from the upshot of the tax-dodge at the heart of the 1969 contract rewrite.

When Asylum Records President Joe Smith told Fogerty he was not going to put *Hoodoo* out, he suggested John take some time off. This reduced his sources of income to his performance royalties so he decided to take some of his King David Distributors money out of the bank in the Bahamas. He sent his attorney down to the Islands to make the withdrawal. When his attorney got there, he found the door to the bank chained. A look in the window revealed nothing but a few trash cans and shredders. All the money had disappeared. “Rumors are that it’s either the Mafia or the CIA,” Tom Fogerty said, “or the officers of the bank offed with it. We got left holding the bag. The *Wall Street Journal* printed a couple of stories on it, and it was on *60 Minutes* twice” (T. Fogerty 1981).

Whoever took it (as far as can be determined, no one ever found out), the band’s nest egg, some six million dollars, had disappeared. Fogerty, and later, in 1980, the rest of the group, joined in a lawsuit against the people that had fiduciary responsibility for the band—the law firm in which Stu’s father had been a partner (specifically, attorney Barry Engle, who oversaw the account), the Chicago-based law firm that promoted the Bahamian bank in the United States, and the group’s accountants. The two attorneys settled with the band but the accountants did not. So the band was often together in Bay Area law offices getting deposed. The case didn’t conclude for over ten years, with a federal appeals court finding the accountants liable.

By the time the case finally got settled, John had done a bold and perhaps foolish thing: he decided that the royalties he actually did receive from Fantasy for the CCR recordings, the worldwide, non-North America sales of all his music, and his share of the mechanical royalties for his songs owned by Jondora, now that they were not getting sent to the Bahamas, really didn’t amount to much. Fantasy owed him much of the foreign royalties accrued for his more recent music. He told Zaentz that Fantasy and Jondora could keep those royalties, and any other monies they would owe him in the future. In return, Fantasy would no longer have the non-

North America rights to his recordings from that point forward. Essentially, Fogerty traded his past music for his future. For the first time in his professional career, he was no long financially beholden to Fantasy.

Even as John abrogated his fiscal rights to masters and the royalties, that money became a major issue for the rest of the band. On August 17, 1982 Philips introduced a new medium for sound recording, the digital compact disc, or the CD (Beschizza 2007), and by the middle of the decade, it had all but replaced the vinyl record. People rushed to record stores to replace their popping, skipping vinyl LPs with this new medium.

Historically, the recorded sound industry makes a large percentage of its money selling through the catalog.¹³ Some people discover older music and want to own it. Some people wear out music in an older medium and want to replace it with a shiny new one. Certain people have to have the latest technology and purchase music they might already own in a new format for their new technology.

As previously mentioned, under the terms of their contract, the greater portion of the music recorded by Creedence earned a 1/2 royalty tape rate, somewhere between five and six percent of the net profit earned by Fantasy, as per Article II, Section (b). This is because, per Section (c) of the same article, that rate also covered new technology—which included the CD and the download. So, as the vinyl record sailed off into the sea of dead media (to rise from the dead some years later), the royalties the band earned on its catalog began to shrink considerably from the time when the LP reigned. They needed to renegotiate.

As noted, John insisted on adding an article to the 1969 contract that prevented Fantasy from combining masters without the group's permission. A majority vote of the band was needed to override this article. By 1988, Cook and Clifford had negotiated an override on this clause for the trio masters, i.e., the masters recorded after Tom left the band. When Tom signed on, the override was achieved for all the other masters. In exchange, the band got a significant increase in their royalties for CD sales. John did not participate in these royalties, and was further outraged when his songs started turning up on compilation albums.

Of course, the biggest issue for John was the music publishing rights. John's music fueled Jondora in a way Vince Guaraldi, Lenny Bruce, or John Coltrane could not. CCR was selling millions of albums worldwide, and continue to sell perhaps a million catalog items each year. CCR songs are featured in films and other media. As the majority of the band regularly

outvoted John on contractual issues, he became angrier. While Fantasy retained the rights to CCR's masters and his publishing rights, at least the songwriter share of the public performance royalties and other royalties generated by his songs' usages continued to belong to him. However, for two decades he would not play any of his CCR songs, nor would he give Fantasy the satisfaction of collecting more royalties that may have emanated from his works. Eventually, it took the legendary Bob Dylan to break this self-enforced moratorium. During an after-hours jam session in the spring of 1987, Dylan requested that they play *Proud Mary*. John demurred. Dylan scowled at him and said, "If you don't start playing it, people are going to think that it was a Tina Turner song." So, by the time CCR was inducted into the Rock and Roll Hall of Fame, he had been playing his CCR heritage for about a decade.

Jondora's ownership and control of Fogerty's music led to one of the most bizarre court cases in the annals of the music business. When John broke ten years of musical silence following the shelving of *Hoodoo*, the first single from the new album *Centerfield* was *The Old Man Down The Road*. It sounded enough like the CCR track *Run Through The Jungle* that Jondora sued Fogerty for copyright infringement on his own song. The case went to trial during the fall of 1988. While the jury eventually found John not guilty, it took a lot of money to prepare his defense ("Frisco Jury clears John Fogerty of Charge He Copied CCR Song" 1988). After the case, he sued for legal costs. The courts initially found for Fantasy, owing to a legal tenet that only the plaintiff in the case could receive court costs, and only if they won. The defendant would receive court costs only if the plaintiff's case was found "frivolous" (Fantasy v. Fogerty 1996).

John was able to convince the U.S. Supreme Court that Fantasy's case was, in fact, frivolous. In March of 1994 it overturned the lower court's ruling, voting 9-0 in favor of Fogerty. John became part of a legal precedent (Greenhouse 1994).

Still, the anger rankled. John remained upset with the rest of the band members, so much so that he nearly did not visit his dying brother Tom in 1990. He certainly did not grant his dying brother's wish to play together one last time. Indeed, at the Hall of Fame event, John refused to play with Cook and Clifford. This led them to form their own version of CCR. While they had the majority needed to call the group Creedence Clearwater Revival, they decided, instead, to call it Creedence Clearwater Revisited. Even that name caused John to get a legal injunction against

his former bandmates—for several months, early in their new career, they were known as Cosmos Factory, after one of the band's most successful albums and Doug's long-standing nickname. Ironically, they have now been playing together as Creedence Clearwater Revisited for over a decade, twice as long as the original CCR existed.

Toward the end of November, 2004 Concord Records bought Fantasy's musical assets from Zaentz. In 2005 Fogerty re-signed with the Zaentz-less, under-new-management Fantasy Records. To celebrate, the new owners gave him the back royalties he gave up in the early 80s, about a quarter century's worth. They were not prepared, however, to give him back his publishing. "...We can't do that, because we just paid a lot of money for (it)," said one of the company's new owners, Glen Barros (DeCurtis 2005). The publisher's half of the songwriter royalties from the CCR catalog was still one of the company's biggest assets, and certainly one of the key reasons for purchasing the company.

When teaching about the music business, it's useful to go through an actual recording contract or two. Creedence Clearwater Revival's 1969 contract works as a cautionary document for any artist or manager who might be too anxious to sign a contract with a record company. In the four-and-a-half decades since the group signed it, this document has served as a catalyst to destroy a friendship that predated high school. Because of the contract, two brothers didn't talk to each other for many years. It caused one of the most prolific, exciting songwriters of the rock era to become a virtual hermit, going decades between album releases. In an era where bands that went through hurtful, seemingly irreparable splits reunite successfully, the upshot of this agreement makes John Fogerty, Stu Cook, and Doug Clifford the least likely to join that fray. While the contract has never been challenged in court, it has caused three musicians to spend years in court over other related matters. It pays to remember that artists might have to live with the terms of their contracts for the rest of their lives.

Endnotes

1. Modern Records was the Los Angeles based company with which James had her earliest hits, like *Roll With Me Henry*.
2. This was probably a publishing check. It was not unusual for DJs to become songwriters as incentive to play the records, as they got performance royalties ostensibly every time the song was played. This was a thorn in Berry's side until he started (with the help of attorney William "This Business of Music" Krasilovsky) to reclaim his copyrights during the 1970s.
3. The Wild West in music business legalities between the recording companies and *fans* would evolve sometime later.
4. Like many early independent record companies, The Weiss Brothers started out manufacturing plastic novelty items in the late 1940s, when plastic *was* a novelty.
5. While CCR's recordings were and are released via Fantasy, they were actually signed to Fantasy's Galaxy affiliate.
6. Creedence Nubal was a friend of Tom's and they liked the way it sounded—it played on credence, and they very much wanted to be believed. Clearwater came from a beer commercial, but also fit in with their ecological concerns. Revival was the most important word—the new contract and new name gave the band a chance to reboot.
7. Before the advent of vinyl, records were made of glass and lacquer. Being made of such fragile material, many broke during shipment, so in recording contracts the ten percent breakage allowance was, and often still is, passed on to the artist who receives ninety percent of the actual royalties based on units shipped. It has become so ingrained into the accounting practices of record companies that they often would rather increase the royalty rate than excise this clause from a contract.
8. The new corporation, King David Distributors was known as "King" in the contract.
9. In the U.S. these are distributed by ASCAP, BMI, and SESAC, the performing rights agencies of the United States.
10. Synchronization (or synch) licenses allow for the use of music in media that moves, i.e., television, video, and movies.
11. Italics are mine.

12. More on this anon.
13. Catalog music is generally regarded as any recordings that are not being actively promoted. These sound recordings include music that falls under the rubric of “Classic Rock,” “Classic Jazz,” or “Classic Pop,” often sold at a discount from “current” product.

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