

“Why the Music Business Should Not Throw Eliot Spitzer Under the Bus”

By Bob Donnelly, Esq.

The estate of one hit wonder Tommy Edwards received \$230,000 in back due artist royalties. The Future Of Music Coalition is conducting a study aimed at improving the careers of professional musicians. PBS just aired a program called “Absolutely Irish” which features the best Irish-American musicians. Music artists are no longer obligated to perform for free at concerts sponsored by radio stations for fear that those stations will stop playing those artists’ recordings.

What do all of these things have in common? Eliot Spitzer. Before he became the disgraced former Governor of the State of New York, Eliot Spitzer was the New York State Attorney General and music artists have rarely had someone in government who fought so successfully for their rights.

Before I proceed any further, and in the interest of full disclosure, I want you to know that Eliot Spitzer was...and is...my friend. I have what now appears to be the ignominious distinction of giving him his first job in politics. I hired a 17-year old Eliot Spitzer to serve as an intern on a congressional race, which I was overseeing in 1976. Even then he had all of the characteristics, which fueled his meteoric career: a first-rate intellect, a driving ambition and an extraordinary work ethic.

As a music attorney for three decades I had become aware of the fact that the major record labels and publishing companies had created a slush fund containing artist royalties, which they had euphemistically referred to as “suspense accounts.” I believed that the only suspense was whether the artists who were entitled to that money would ever receive it. The music companies’ rationale for holding on to these funds was that they did not know how to reach these individuals in order to pay them.

In 2002 I approached Attorney General Spitzer with a novel legal theory that might be used to force the

record and publishing companies to disgorge this money. I recommended that Spitzer use New York’s Abandoned Property laws, which require entities to turn over to the State after three years any property, which does not belong to them. In the past these so-called “escheat” laws were primarily applied to banking funds, insurance money and real estate security deposits. Spitzer assigned two of his senior deputies to investigate this matter. When it was clear that these companies were holding tens of millions of dollars which didn’t belong to them, Eliot Spitzer pursued the record companies with the same vigor that he prosecuted Wall Street securities fraud violators.

Not surprisingly, the Sonys, Warners and other targets of this investigation hired some of America’s most prestigious law firms to fight back. They knew that if the Attorney General were able to open this door – they would never be able to close it again. Over the course of 18 months, Spitzer’s office refused to succumb to their considerable legal and lobbying pressures. In April of 2004 Eliot Spitzer announced that he had entered into settlements with all of the majors. The result was that \$55 million would be made available to the artists who were rightfully entitled to these royalties.

And when the music companies finally released the names of the artists who were owed these royalties (and who they supposedly couldn’t locate), the list contained such difficult-to-find musicians as Elton John, Dolly Parton and Dave Matthews. Just as importantly the list was replete with blues artists, singers from the 1950’s and other artists who were now senior citizens and for whom a check of a few thousand dollars was a very meaningful sum. One of the beneficiaries was the daughter of one of the Fontane Sisters (a vocal group popular in the 1950’s) whose mother had died just a few years before the settlement was achieved. (The Fontane Sisters were owed almost \$107,000). She told me “This would have meant so much to my mother –

not because of the money, but rather because it would have convinced her that her fans were still buying her records.”

Eliot Spitzer wasn't merely satisfied to recapture the funds to which music artists were entitled, he wanted to reform the entire royalty process so that this couldn't happen again. And he did. Those ads that you see in music publications like Rolling Stone and Billboard where record companies announce the location of websites, which artists can use to locate their royalties, are a direct result of Spitzer's intervention. And so is the requirement that labels and publishing companies reach out to groups like the AF of M, AFTRA, ASCAP, BMI, and others to request their assistance in locating artists who are owed royalties.

The protection of artists' rights was not Eliot Spitzer's only significant contribution to helping to clean up the music industry. In 2002 the Attorney General embarked upon a major payola investigation. The practice of “pay-for-play” had not disappeared despite previous investigations, but it had merely become much more sophisticated. Whether it was being obligated to pay independent promotion “consultants” to get and keep a song on the radio or buying “spin programs” which were allegedly blocks of “advertising” airtime or paying for the costs of radio station events (so-called “non-traditional revenues”), Eliot Spitzer recognized these practices for what they were – illegal and unfair. The Attorney General's office entered into settlements with Sony/BMG, Universal, CBS, Entrecorn, Warner and EMI, which required those companies to abandon such policies. The net result was to open the public airwaves to all record companies including the independents.

In the decade prior to the Spitzer investigation, the FCC had only levied one \$8,000 fine. FCC Commissioner Jonathan Adelstein credited Spitzer's tenacity with embarrassing that agency to finally take action against offending radio conglomerates. As Eagles' superstar Don Henley said at that time, “There is no question that payola hurts recording artists.” This FCC

investigation led to additional reforms including a settlement, which required radio stations to provide 8,200 half hours of free programming to smaller indie labels.

Part of the Spitzer settlement also required the offending music companies to contribute \$40 million to a fund which he established to capitalize worthy music related projects. This fund, which is administered by the Rockefeller Philanthropy Advisors, has been responsible for sponsoring many important projects such as those that I mentioned in the first paragraph of this commentary.

Attorney General Eliot Spitzer used arcane statutes, improper money laundering allegations and discovery of company emails to reform the music business. The irony that these same tactics led to his recent demise is not lost on me. We could all agree that Eliot Spitzer is a flawed human being. Just like many in the history of rock music. But these human flaws do not negate the extraordinary body of music which these executives and artists were able to gift to the popular culture. In this same manner I hope and believe that the personal failings of Eliot Spitzer will not diminish what he accomplished for music artists, in particular and for the music business at large. Artists have rarely had a better friend and protector in government than the courageous and tragic Eliot Spitzer.