Senza Sordino

Official Publication of the International Conference of Symphony and Opera Musicians

VOLUME 38, NO. 3 *Online Edition* **June 2000**

New Internet Agreement Reached

by Robert Levine, ICSOM Chair

On May 2, 2000, the Electronic Media Forum, a group of symphony, opera and ballet managers, musicians, and AFM officers and staff, reached agreement on terms for a new national agreement covering streaming and downloading of audio music product over the Internet. This Internet Agreement, the first new AFM media agreement covering symphonic musicians in two decades, was the result of over a year of fact-finding discussions and negotiations.

In the summer of 1998, the Managers' Media Committee and the ICSOM Media Committee agreed to establish a task force to examine the future of symphonic electronic media. The first set of meetings of what came to be known as the Electronic Media Forum (which were facilitated by Richard Evans of the Bay Group and underwritten by the Andrew P. Mellon Foundation) were devoted to reaching a shared understanding of the existing and future media environment for orchestras and opera and ballet companies. The EMF looked at data on trends in recording and broadcasting and heard presentations from some of the companies involved in current media activities. It appeared clear that the recording industry no longer had significant interest in the creation of new symphonic and operatic recordings, and that almost no institutions or symphonic musicians were making any real money from media activities, or indeed seeing any real benefit at all. It also became clear to the members of the EMF that things were not likely to get better. The market for classical recordings was glutted with old product, new product wasn't selling, and the recording companies were focusing increasingly on short-term profits at the expense of any long-term commitment to artistic quality.

From that rather discouraging start, the EMF moved on to the possibilities that might exist for symphonic, opera and ballet institutions in the realm of new media, most notably the Internet. The group heard presentations from technical experts, copyright lawyers, media company executives, and entrepreneurs. It quickly became clear that the Internet was soon going to be capable of transmitting audio product of very high quality indeed. It was also obvious that no one—experts, company executives, or entrepreneurs —really knew how that capability could be put to best use, even though there were lots of schemes for putting music on the Internet. But the EMF did conclude that the primary importance of these new media technologies to our industry was to help promote our institutions' core activities: live performance and education, considered in its broadest sense.

The process moved from investigation to negotiation in January of 2000. The EMF (which had more than doubled in size from its original ten members), with the assistance of Paul Boulian of Lodestar Associates and the Symphony Orchestra Institute, held four negotiating sessions of one to two days each. (Fred Zenone, vice-chair of the Symphony Orchestra Institute and former ICSOM chair, joined Boulian as co-facilitator midway through the process.)

The negotiations were both challenging and fascinating. It is, of course, always challenging to negotiate, even over an existing agreement, but there, at least, one has a place to start. And both parties to an existing agreement have some understanding of the nature of production and the market for the product—albeit not always the same understanding. By contrast, this agreement would cover production of a product—Internet recordings and broadcasts of orchestral music and opera—which had barely graduated to its first set of diapers.

Negotiating an agreement to govern production of such an infant product—without knowing what the market for such product would look like, how big it would be, how soon it might develop, or which of the major e-commerce players would be left standing next week—was a task of formidable proportions. And, of course, there were stumbling blocks along the way that had nothing to do with intellectual challenges and everything to do with the lack of trust in our field between employers and musicians.

The fundamental understandings that the members of the EMF came to share during the negotiations were threefold. First came the belief that the best and quickest way to achieve the potential benefits of the Internet for symphonic musicians and their employer institutions was to give the institutions freedom to experiment with different ways to structure Internet recording deals and different ways to use audio product on the Internet. The EMF then agreed

(continued on page 2)

In This Issue

(NEW INTERNET AGREEMENT – continued from page 1)

that such freedom could only be exercised wisely, and for the benefit of employers and musicians both, if the employers and musicians were true partners in *all* aspects of structuring those deals and deciding how to put our product on the Internet. Lastly came the belief that control of product made for the Internet must remain with us and our employers, and not be ceded to a third party. Our shared experience over the past few decades had proven beyond doubt that, once we gave up long-term control of our recorded product—the only permanent record of our institutions' artistic achievements—it would not be used to advance our interests or those of our institutions.

From these beliefs flowed the core concepts of the new Agreement. The EMF decided that, rather than set all the parameters of ownership and compensation at the national level, we would empower musicians and managers at the local level to make many of those decisions. Any institution wishing to make Internet product must form a Local Internet Oversight Committee (LIOC) according to rules set by the Agreement. Those rules specify that the musicians on the LIOC must be elected, and that both management and musicians must agree to *all* aspects of a proposed deal to use audio product on the Internet before such a deal can be made, either within the institution or with a third party. "All aspects" includes, but is not limited to, compensation for musicians (both upfront payments and sharing of downstream revenues) and the content, marketing, and licensing of any product produced under this Agreement. The LIOCs have ongoing responsibilities as well: to monitor existing deals and to report on deals and problems to a national oversight committee, which will share the information with LIOCs in other institutions.

Equally important to realizing these shared beliefs are the limitations that the Agreement places on the licensing to, and control over, our product by third parties. The Agreement is biased towards control and use of product remaining with the institution (with decisions made by the LIOC). Third-party licensing is permitted, but with strict limits that encourage short license terms, and with ownership (and ultimate control) of the product remaining with the institution.

Over the course of the negotiations, the members of the EMF became acutely aware of the problems of negotiating a new media agreement while not undercutting existing AFM agreements. This new agreement supplements, but does not replace, existing AFM electronic media agreements, such as the Symphony, Opera and Ballet Audio-Visual Agreement and the Phonograph Record Labor Agreement. These AFM agreements remain in force and will continue to govern the creation of television programs, as well as the production of physical product (CDs, LPs, DVDs, audio or videotapes), which cannot be manufactured or sold under this Internet Agreement by our employers or any third-party licensees.

Other key points of the Agreement:

Only audio material from rehearsals and concerts may be used as product; ♦ Musicians will receive a 10% pension contribution

(continued on page 8)

Closing Cadence

Polly Jane Curtis Kella, 80, retired Honolulu Symphony violinist of over 30 years, passed away in Seattle on March 10, 2000. She was the daughter of famed photographer of the Pacific Northwest Asahel Curtis. Polly's daughter Kathleen Kella was also a violinist in the Honolulu Symphony, and her son, John (Jake) Kella, played viola with the Metropolitan Opera Orchestra in New York and was a leader in the growth of the music medicine field.

Harvey McGuire, 85, retired oboist and English hornist of the Cleveland Orchestra, died from cancer in Cleveland on April 16, 2000. He is survived by his second wife, Emelia, three sons, eight grandchildren, and four great-grandchildren. Two of his sons, David and Richard, are also professional oboe and English horn players.

Ted Allred, 43, a violist with the San Antonio Symphony, died tragically in an automobile accident on July 21, 1999. He had previously played with the Montreal Symphony, the Santa Fe Opera Orchestra, the New Haven Symphony, the Riverside Quartet, the Soli Chamber Ensemble and the Olmos Ensemble. He was also the founder and artistic director of the Sierra Grande Chamber Music Festival in New Mexico.

Milton H. Carter, Jr., 73, President of the Musicians' Association of Hawaii, AFM Local 677, died of a sudden heart attack on April 25, 2000. Milton ably led the Honolulu Symphony musicians through 15 years of severe labor strife, and his caring leadership is widely credited for having kept the orchestra alive. He was recognized among ICSOM as a true friend and champion of orchestra musicians, and as a model union leader whose administration achieved the harmonious blending of labor union ideology with practical devotion to serving the needs of the members.

Sigrid Fehrenbacher Clark, 59, Oregon Symphony violinist for 37 years, recently retired, died February 12, 2000 of meningitis. Her husband, Bud Clark, was the mayor of Portland. Said Charles P. Duffy, who served as Bud Clark's chief of staff, "When he was mayor, he would sit on the mezzanine at the symphony's Sunday afternoon concerts, and he would watch her. All kinds of things could be happening in the city, but he would go see her play at the Sunday concert."

Edith (Mrs. George) Zazofsky, 84, wife of ICSOM's first chairman, George Zazofsky, died January 6, 2000. According to the Zazofsky's daughter Erika, "without her encouragement and ideas, there would have been no involvement in ICSOM for my dad. It was like she was the bow for his violin—alone, neither accomplishes the task. Besides being a trained cellist herself at Curtis, she devoted her life to dad. And dad was all ICSOM. He thrived on its inception, breathed its development as a father would a child, and excelled at representing its beliefs and ideals." Edith was a member of the Gomberg family—her brothers Ralph and Harold were first oboists with the Boston Symphony and the New York Philharmonic, respectively, and her brother Leo played with the Philadelphia Orchestra.

ICSOM Conference 2000

at the Galt House, Louisville, Kentucky

ICSOM CONFERENCE AGENDA:

Wednesday, August 23

9:00am – **Orientation Breakfast** for new Delegates with Governing Board

1:00pm – **Opening Session**: Officers' Reports; Keynote Address

7:00pm – **ICSOM Mixer**: Dinner cruise on the "Star of Louisville"

Thursday, August 24

10:00am – Nominations for ICSOM Officers; **Workshop: *Financial Analyses and Negotiations*** (moderator: Leonard Leibowitz, with guests Ron Bauers and William Thompson)

2:30pm – **Workshop: *Financial Analyses and Negotiations*** continues

7:30pm – **ICSOM Town Meeting** (closed session – ICSOM Delegates and Governing Board only)

Friday, August 25

10:00am – Committee Reports; **Panel Discussion: *Local Union Democracy*** (moderator: Bill Moriarity, Local 802)

2:30 pm – **Panel Discussion: *Local Union Democracy*** continues

7:00 pm – **Social Event**: Louisville Sluggers baseball game. Louisville Slugger Field is a few blocks from the hotel. This game will be the Battle of the ICSOM Cities, Louisville vs. Columbus.

Saturday, August 26

10:00am – Election of ICSOM Officers; **Panel: *The New Internet Agreement*** (Brad Buckley)

2:30pm – **Panel: *The New Internet Agreement*** continues; Unfinished business; Adjournment

STEPS TO ICSOM CONFERENCE 2000:

1. Make your travel arrangements to Louisville. ICSOM's official travel agent **Susan Levine** is available at

CTS (Cassis Travel Services)
200 West 57th Street, Suite 608
New York, NY 10019
Tel: 212-333-3633 x 515 or 800-726-2757
Fax: 212-333-3572 efax: 425-988-1437
email: suetravel@aol.com

2. Book your hotel room directly with the hotel. Attendees should make hotel reservations with

The Galt House Hotel
140 North Fourth Avenue
Louisville, Kentucky 40202
(502) 589-5200 / 1-800-843-4258
Fax: (502) 589-3444
email: info@GaltHouse.com

Ask for the reservations department between 7 am and 10 pm EDT. Have attendance dates and special roommate requests ready. The special ICSOM room rates per night are $89 for a single, $99 double, $109 triple, $119 quadruple. **Reservations must be made by July 22 to guarantee the special rates.**

About LOUISVILLE:

* Hometown of The Kentucky Derby and the Louisville Slugger baseball bat

* International headquarters for Papa John's Pizza, Pizza Hut, KFC, Taco Bell, Humana and the Presbyterian Church USA

* Home to Ford Motor Company's largest assembly plant and UPS's international air hub

* Consistently ranks among top 10 best U.S. cities to live in by *Places Rated Almanac*

* Metro area population of 1 million

A BIT OF HISTORY – AND ADVICE

by Leonard Leibowitz, ICSOM Counsel

With the recent spate of contract provisions relating to "Community Outreach Programs" (or similar designation), it would be good to remember some of the concerns of ICSOM and AFM a few years ago when the issue *du jour* among orchestra managements was orchestra splitting.

Many of you will recall that one of the issues then was management acting as a "booking agency" for small ensembles which usurped outside paid work which had been done previously by members of the orchestra or other members of the local union.

I am now fearful that, under the guise of an otherwise salutary program, the same usurpation might occur. Please be advised to keep an eye and ear out for such situations and keep in touch with the local union if you suspect that a given assignment of your outreach program may fall into that category. Indeed, if your contract does not already have language to protect against such occurrences, I would recommend trying to insert the following, either in the midterm of the collective bargaining agreement (by way of a side letter) or at the next negotiation:

> **"No musician shall be required to accept an assignment under this Program which would result in depriving any musicians, whether members of this orchestra or not, of paid employment which they have previously enjoyed."**

The Nonprofit Paradigm

by Marsha Schweitzer
Editor, Senza Sordino

"We're only a nonprofit. We depend on the charity of others, so we can't afford to pay you as much as you (or we) would like."

How many times have we heard this, or statements like it? Have we heard this so often that we have bought into it out of the sheer force of repetition? Have we ever looked into the validity of the assumptions behind this rhetoric?

The nonprofit, tax-exempt organization is a distinctly American phenomenon. U.S. society has three sectors: the public sector, which is government; the private, or for-profit, sector; and the nonprofit sector, which straddles the other two. In most other countries there are only two sectors, public and private, with social welfare and support for other public interests handled mostly by government.

Beginning in 1894 and continuing through 1997, the U.S. Congress enacted a progression of laws that provided federal tax exemption for many kinds of nonprofit organizations, often in recognition of what has become known as the "public policy rationale:" relief from taxation is justified by the fact that "the nonprofit sector serves as an alternative to the governmental sector as a means for addressing society's problems." [1] In effect, the operation of nonprofit organizations under the public policy rationale represents the U.S. government's first foray into privatization of government services, which explains why government subsidy of nonprofit activity is legitimate and appropriate, that activity being work that government would have to do all by itself, were the nonprofit sector absent. The public policy rationale clearly applies to the nonprofit arts in America, given the influence of European cultural mores, such as the traditional dependence of the arts on government, on the laws and policies of the United States.

The laws that created tax-exemption for certain organizations added a variation on the capitalistic theme of American business, but they did not create a structural or operational difference between for-profits and nonprofits. The absence of a profit motive does not require an absence of profit. "In fact, it is quite common for nonprofit organizations to generate profits. The definition of nonprofit organization essentially relates to requirements as to what must be done with the profits earned. . . . The U.S. Supreme Court wrote that a 'nonprofit entity is ordinarily understood to differ from a for-profit corporation principally because it is barred from distributing its net earnings, if any, to individuals who exercise control over it, such as members, officers, directors, or trustees.' " [1]

"The legal concept of a nonprofit organization is best understood in comparison with a *for-profit* organization. The essential difference between nonprofit and for-profit organizations is reflected in the private inurement doctrine. Nonetheless, the characteristics of the two categories of organizations are often identical, in that both mandate a legal form, one or more directors or trustees, and usually officers, and both of these types of entities can have employees (and thus pay compensation), face essentially the same expenses, make investments, may enter into contracts, can sue and be sued, produce goods and/or services, and as noted, generate profits." [1]

Making a profit is no more assured in the for-profit sector than in the nonprofit sector, as the high for-profit bankruptcy rate attests. The same forces of law and economics apply to both. In fact, for-profits may be on even more precarious financial footing than nonprofits in the marketplace, because for-profits must sink or swim based on the competitive quality of their products or services. "Because there is no comparable measurement for most nonprofit programming, program failure goes unrecognized. Worse, it goes unpunished. In for-profit environments, the market rewards entities with profit and survival. With financial profit relegated to a lower priority, and with the exit door effectively blocked by a combination of legal, political, and cultural factors, there is no equivalent judge for nonprofits. . . . Large nonprofit groups rarely go out of business because it is usually possible to persuade one more source of capital to contribute." [2]

"The truth of the matter for some nonprofit services is that, from society's perspective, it is enough simply that the services exist and not that they be of some particular level of quality. Halfway houses for former offenders are a good example. The average citizen doesn't care much for the niceties of halfway house performance, just whether the program exists or not." [2] Lew Waldeck, former director of the AFM Symphonic Services Division, describes a parallel to this in the orchestra field, calling it the "Chamber of Commerce" Symphony Orchestra. Many cities have one, often unbeknownst to most of the city's citizens, orchestra patrons, and even musicians. It exists where community leaders are willing to help fund the local orchestra, but not very much—not enough to establish any particular reputation for quality in artistry or community service—just enough to be able to say, for political or business development reasons, that the city has an orchestra of some kind.

"Nonprofits don't sell stock, so they have no owners."

The rationale for the existence of nonprofits tells us who the owners of a nonprofit are. "In the nonprofit public charity world there can be no 'owners' in the legal sense even though the accounting operates the same way. So the surrogate owner of a nonprofit's equity is . . . society. Seems fair. After all, society via its government has voluntarily agreed to refrain from taxing the profits made

---

[1] Bruce Hopkins, *The Law of Tax-exempt Organizations (1998)*

[2] Thomas A. McLaughlin, *Streetsmart Financial Basics for Nonprofit Managers* (1995)

[3] *The Benefactor*, Fidelity Charitable Gift Fund (March 2000)

by this type of corporation with the expectation that it will do some public good in return."[2]

So, the owners of a nonprofit are society. The biggest shareholders are those members of society who are donors to the organization, and particularly those who are donors to the endowment or reserve fund. These donors provide investment capital to a nonprofit much as stockholders, partners, and sole proprietors provide it to for-profits. "In a way, the nonprofit capital campaign is the equivalent of a stock offering for a for-profit company."[2] In both nonprofits and for-profits, the board of directors is elected by and represents the owners, and has the power of the owners' money behind it.

A distinction needs to be made between capital and other forms of organizational income. Investment capital is money available to the organization largely over and above the revenues received directly in association with and required for the production of the organization's products or services. In for-profits, that capital is called stock or owner's equity; in nonprofits it usually takes the form of an endowment, trust, or operating reserve fund. Fixed assets such as real estate, leasable equipment, and other property that can generate income or reduce operating expenses also play a role in capitalization. In any business, capital is a pool of assets that can be invested, borrowed, or used as collateral to position the organization for future growth, diversification, and stability.

In his excellent book *Streetsmart Financial Basics for Nonprofit Managers*, Thomas A. McLaughlin describes three ways of getting capital into any organization: 1) making profits, 2) borrowing, and 3) selling stock (capital fundraising, in nonprofit terms).

One measure of the value of a for-profit corporation is the value of its outstanding stock. Similarly, the value of a nonprofit can be measured by the value of its endowment, cash reserves, and other capital assets. Add to this bedrock of investment capital the value of long-term debt and retained earnings (profits), and you have the total capitalization of the company.

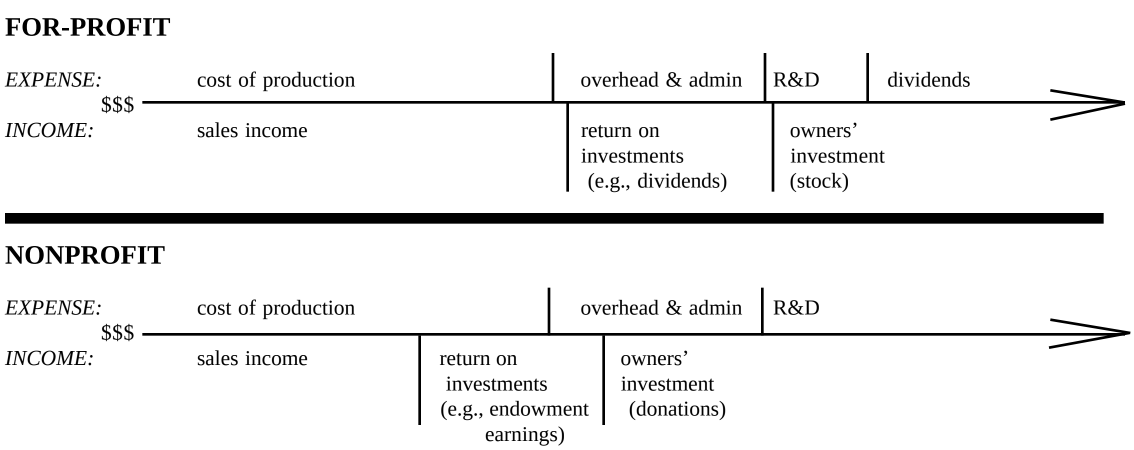
McLaughlin provides marvelous insight into the importance of investment capital, which we in nonprofits usually overlook as we fixate on short-term cash flows and deficits: "Any organization can lose money during a given year and still escape with relatively little damage. It can even do it several years in a row. For any kind of business entity, the real bottom line is the inability to get capital into the organization. For nonprofit corporations, that happens when no bank will loan any more money and no philanthropist will donate any more funds. For for-profits, it means no more credit, but it also means no one is willing to buy the stock anymore."[2]

"Perhaps you can now see the Great Divide among nonprofit organizations, or the line between those with regular access to traditional capital markets and those without. The difference is dimly experienced by the latter as a feeling that their colleagues on the other side of the line are 'different' from them, although in exactly what way other than sheer size is usually not clear. A big reason for this feeling of differentness is the fact that, in capital finance terms, they *are* different."[2] Thus it is clear that the major difference in finances from one company to another is not whether the company is nonprofit or for-profit, but whether it is properly capitalized or not.

A company that has no internal cash resources and does not make a profit has no choice but to borrow to get cash. Stock investment and borrowing are similar in the way they affect a company's operation. If the market value of a company's stock drops 10% in one day, that is akin to 10% of the company's loans being called that day. Where does the money come from to repay the loans, with interest, or to replace the working loan capital? It most often comes from cuts in research and development (R&D) or other "nonessential" projects, workers' salaries and benefits (pay cuts, layoffs, outsourcing and subcontracting), corporate welfare from government, profits (undistributed dividends), or sometimes as a last resort, executive salaries. This formula to address undercapitalization has found the same applicability in nonprofits as in for-profits.

(continued on next page)

ORGANIZATION INCOME RELATIVE TO ORGANIZATION EXPENDITURES



The nature of corporate income and expense in nonprofits and for-profits is almost identical. The differences between nonprofit and for-profit finances are not of kind, but of degree. Both types of organizations depend on capitalization to succeed; in fact, this chart shows that nonprofits are generally more dependent on adequate capitalization than for-profits are.

(THE NONPROFIT PARADIGM – continued from page 5)

To put the nonprofit world in perspective, it should be noted that only one kind of nonprofit routinely relies on charitable donations—literary, scientific, educational, religious, or charitable organizations under IRC Section 501(c)(3). Arts organizations usually fall in this category, but many other kinds of nonprofits do not, including labor unions, trade associations, credit unions, fraternal organizations, employee benefit plans, and social clubs. These organizations may not offer tax deductions for charitable contributions and are expected to survive the same way for-profits do—by making a profit from the sale of products and services.

For-profits, like nonprofits, often do not make enough on sales alone to cover the costs of production and overhead, and routinely resort to McLaughlin's other sources of cash—borrowing and investment—to make up the difference. Just about every business, from the "Mom & Pop" grocery store to the *Fortun*e 500, has had an occasional year or two in which they made no profit and actually took a loss, thus facing the same financial scenario that most nonprofits consider the norm.

But every business must make a net profit, by some definition, over the long term to survive. Any business that doesn't will eventually go under, not so much due to lack of money (which is only a symptom of the problem) as to prospective investors' lack of confidence in the organization's present capacity and future prospects. As McLaughlin says, "For any kind of business entity, the real bottom line is the inability to get capital into the organization." Thus, complete capitalization for most nonprofits means having access to a capital reserve of a size that would enable the organization to break even or better utilizing only operating revenues (ticket sales and fees, in the case of orchestras) plus return on investment (endowment income, for example).

A representative of a major art museum once explained to me that a position of financial strength is a great advantage for fundraising of all kinds, investors responding to the psychology of comfort and confidence in backing a winner—the same psychology that motivates investment in the stock market. By contrast, a desperate organization in desperate need of immediate cash to meet its current budget chases away donors by that very condition, much as a drowning swimmer flailing in the water repels those who might otherwise be able to help. Ironically, organizations that could get by without the money have an easier time raising it than those whose immediate survival depends on it.

Most orchestras lie somewhere between the fully capitalized organization and the drowning swimmer flailing in the water; from a pragmatic point of view, orchestras as charitable nonprofits do depend to a greater or lesser extent on donated funds. We must be careful, however, how we characterize those funds, both to donors and to ourselves. We must not beg for them; they are not handouts. Orchestras and other arts organizations produce valuable services and earn those donations, just as for-profit companies earn the confidence of their investors with good products and good financial performance. (Just as orchestra

How to Capitalize An Orchestra

The Cleveland Orchestra *recently announced the successful completion of its 5-year, $100 million capital drive, and has demonstrated in the process three ways to capitalize an orchestra all at the same time. A lobby display (shown here) includes a placard informing concert-goers that, as of September 28, 1999, the organization had raised $29.3 million in new endowment principal, $33 million for the renovation of Severance Hall (a scale model of the renovated hall and surroundings is shown in the foreground), and $34 million for the operating fund. At the end of 1999 the Orchestra reported having raised $115.9 million, exceeding its goal by $15.9 million and seeing its endowment fund grow from $83 million to $155 million in the process. This new capital will allow the Cleveland Orchestra to enter the 21st Century positioned for sustained artistic and organizational quality.*


Photograph of Severance Hall renovation, August 1999, by Roger Mastroianni

The value of real estate, when well-managed, cannot be overestimated in the capitalization equation. It is not surprising that universities, hospitals, and, among arts organizations, museums, tend to be the most financially stable institutions, in large part because their physical plants give them a tangible identity and focus, and also because their valuable real property assets are perennially available to leverage periodic economic downturns.

If an orchestra owns its own hall, it can, at the very least, control the cost and availability of its performing venue, which has a long-term stabilizing effect on operations. (Many orchestras who are dependent on municipal facilities have discovered in recent years the crippling effects of not having that kind of control.) Also, the property can be used as collateral, providing cash for operations at the more favorable mortgage or equity loan interest rates rather than the higher rates for most other types of loans. A well-planned building can also make money for its owners if space in the building and parking areas can be leased for restaurants, offices, retail shops, or special functions, sometimes even allowing the building to make a profit, potentially reducing the orchestra's production cost for its performing space to $-0-.

musicians work and earn their paychecks; their salaries, even though paid by a nonprofit, are not charity.) That the fees received directly from the sale of services of a nonprofit do not equal or exceed the cost of producing them is not a result of poor quality, mismanagement, or obsolescence of mission, but rather of the public policy rationale behind the organization's reason for existence—pricing the product so as to allow broad public access to vital community services.

Donors give to the arts in gratitude for the beauty artists bring to the world. When such donations are rewarded with continuing and increasing artistic and financial health, and when making such donations becomes a habit, the donor develops a sense of responsibility to and an expectation of value from the organization that fosters that beauty—indeed, the donor becomes an *investor*. The personal attachment to the organization that such donations bring to the nonprofit investor is just as strong as that which comes with for-profit investing. A stock purchase and a contribution to a nonprofit are both demonstrations of an investor's faith in the potential rewards to be gained from the good work of the company.

The language, as well as the mindset, of for-profit investing has entered the world of nonprofit philanthropy. In reporting on a Boston College study that predicted a dramatic increase in philanthropy over the next 50 years, *The Benefactor*, newsletter of the Fidelity Charitable Gift Fund, says, "Some of these new donors have been dubbed 'venture philanthropists.' These donors have a more entrepreneurial approach to philanthropy and expect to see measurable nonfinancial results from their 'investments' in charity." [3] In light of this trend, it makes perfect sense for a mutual fund company like Fidelity Investments, experienced in the business of assisting clients in their for-profit investing, to have moved so seamlessly with their Charitable Gift Fund into helping clients with their nonprofit "investing" as well.

The nature and function of for-profit and nonprofit businesses will likely continue to converge, " . . . particularly when the lines of demarcation between nonprofit and for-profit organizations are blurring. Nonprofit organizations are becoming increasingly reliant on revenue in the form of fees for services. For-profit organizations are more concerned than ever about their public image and the extent to which they can provide assistance to their communities. For-profit organizations are entering domains of producing and providing services that were once the sole province of nonprofit organizations. Laws are changed to promote greater parity between the sectors, such as the Office of Management and Budget regulations, which require tax-exempt organizations pursuing government contracts to calculate tax revenues foregone. Management of nonprofit organizations is becoming more sophisticated." [1]

"Two categories of charitable organizations continue to evolve: those that are supported largely by gifts (donative organizations) and those that are supported principally by exempt function revenue (service provider organizations). As this trend continues, it will force in new pressures on the concept of tax exemption. New rationales for exemption may emerge. The battles that are building over the ground rules for tax exemptions for hospitals and credit unions must be appreciated from this perspective. A sort of 'domino theory' may be in the works in this setting. One commentator is of the view that 'if nonprofit hospitals lose their exemption, federal corporate tax exemption for most or all of the second [commercial] nonprofit sector may then be in doubt.' " [1]

The finances and operations of nonprofit and for-profit hospitals are virtually indistinguishable. A doctor or nurse performs the same procedures under the same professional health care protocols and earns roughly the same wage, whether working at a for-profit or nonprofit hospital. Similarly, a musician might play a nonprofit opera performance or a symphony concert of opera arias one night, and the next night play the same music in the same venue under the same union wages and conditions, sometimes even for the same employer, in a for-profit Pavarotti tour concert.

If the "Grand Ol' Opry" is taxed on the profits it makes on Kenny Rogers, why shouldn't a symphony orchestra be similarly taxed on the profits it makes when presenting him? Why should *Phantom of the Opera* and other Broadway shows be taxed, but not nonprofit musical theater, especially if these productions are presented in the same theatres at similar ticket prices, and sometimes with much the same orchestra in the pit? These are the kinds of questions that could be asked if the reanalysis of federal tax-exemption laws that Hopkins alludes to regarding hospitals and credit unions moves into the arts and entertainment arena.

President Bill Moriarity of Local 802 remarked at last summer's ICSOM Conference that he has participated in negotiations with about equal numbers of nonprofit and for-profit employers, and he couldn't tell the difference between them. The reason is that, in most ways, there is no difference.

Congratulations to those of you who are still with me at the end of this somewhat technical discourse. And for those of you who jumped to the last paragraph hoping for a salient closing line, here it is. If there is one thing that musicians should remember about nonprofits, it is this, from the U.S. Tax Court:

> *One court observed that the "law places no duty on individuals operating charitable organizations to donate their services; they are entitled to reasonable compensation for their efforts."* [1]

This means musicians, too.

MARSHA SCHWEITZER *is a Founder and Incorporator of three nonprofit organizations; a current or former Manager/Executive Director of four nonprofits; a current or former Treasurer/CFO of four nonprofits; a current or former Officer/Director of seven nonprofits; an Administrative Consultant to three nonprofits; the Sole Proprietor of two for-profit businesses; a General Partner in one for-profit partnership; a Fiduciary/Trustee/Donor Advisor of three nonprofit charitable trusts and two for-profit trusts; an Owner of numerous for-profit businesses through investments in the stock market; and an Owner of numerous nonprofits through gifts and loans of charitable investment capital.*

(NEW INTERNET AGREEMENT – continued from page 2)

to the AFM-EPF on all payments under the Agreement; ♦ No disciplinary action may be taken by management against musicians on the basis of product produced under this Agreement; ♦ No product produced under this Agreement may be used to replace musicians in performance; ♦ EMGs may be credited only against upfront payments that are not advances against future shared revenue; and ♦ There must be a minimum upfront payment to each participating Musician of 6% of weekly scale (or 48% of per-service scale) if the project includes any of the following terms: 1) The musicians are not entitled to revenue participation payments; 2) the product is licensed for more than seven years; or 3) the control (i.e. the right to exploit) the product is neither retained by the Employer nor reverts to the Employer at the end of the license period.

The members of the EMF, over the course of 16 months of intensive discussion, came to believe that the Internet represented an historic opportunity for orchestras and opera and ballet companies. But historic opportunities often require us to think differently about how we do business. This agreement both represents such new thinking and allows our institutions—but only with our consent and participation—to maneuver in this new world.

Voicings

I enjoyed working with you at the AFM Western Conference and appreciate your kind words about my presentation. Thank you for sending me *Senza Sordino*. I enjoyed reading it and would be pleased to be placed on its mailing list. ICSOM is certainly involved in some cutting edge issues and the newsletter helps to broadcast that fact.

Paul F. McCarthy
President, Collective Bargaining Associates
labor union consultant to the AFM

I would not usually write in response to reading *Senza Sordino*, but I read "The ICSOM Imprint" [January 2000] and wanted you to know how beautifully you put into words an experience I've had myself. All the best to you, with my thanks.

Wanda Lydon
violist, San Antonio Symphony

I thought the article by Tina Ward in this last issue of *Senza Sordino* was excellent. Empty seats at concerts are a growing concern!!

It is nice to know a bassoon player is the Editor of *Senza Sordino*.

Marcia Blalack
Secretary, AFM Local #1, Cincinnati, Ohio
(and a bassoonist)

"Voicings" graphic design and concept by Michael Gorman and Norman Foster (bass and clarinet, respectively, of the Honolulu Symphony)

International Conference of Symphony & Opera Musicians (ICSOM)

Affiliated with the American Federation of Musicians - AFL-CIO

Senza Sordino is the official publication of the International Conference of Symphony and Opera Musicians and is published four to six times a year. ICSOM is affiliated as a conference of the American Federation of Musicians of the United States and Canada, AFL-CIO.

ISSN 1074-7850

Subscriptions: $10 per year, payable to *Senza Sordino*
c/o Marsha Schweitzer, 905 Spencer Street #404, Honolulu HI 96822