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## Can't Hold Us Down"1: How to Use Inclusion Riders to Increase Gender Diversity in the Music Industry

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## **ABSTRACT**

Despite improvements in female visibility and a number of movements pushing for equality in recent years, gender imbalance continues to plague the world of entertainment. While strides have been made to achieve parity in the film industry, little progress has been made to achieve the same in music where the disproportionality of females is even worse. Females are chronically underrepresented across virtually all aspects of music, both on-stage and off-stage, whether it be as musicians or as executives, which subsequently effects the amount of nominations, as well as awards that females in music receive. The implementation of inclusion riders in Hollywood has demonstrably improved female representation in popular films, but until now inclusion riders have not been applied to the music industry. This paper explores the application of inclusion riders to the music industry in order to remedy a long-standing history of female exclusion, as well as increase visibility for the vast number of talented females in the music industry that deserve the same opportunities and recognition, but until now have remained invisible.

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# “CAN’T HOLD US DOWN”<sup>2</sup>: HOW TO USE INCLUSION RIDERS TO INCREASE GENDER DIVERSITY IN THE MUSIC INDUSTRY

## INTRODUCTION

In 2017, females were at the forefront of national conversation – spearheading powerful cultural movements such as #MeToo, followed by #TimesUp in January of 2018.<sup>3</sup> With such colossal Hollywood dialogues, designed in-part to highlight female inequality in entertainment, how could it be that 2017 simultaneously marked a “six-year low for female artists in popular music?”<sup>4</sup> Although more than half of the United States’ music streaming audience is female, this number stands in stark contrast to female representation within the music industry itself.<sup>5</sup>

From 2012 to 2017, only 22.4% of artists and 12.3% of songwriters included on the *Billboard* Hot 100 were female.<sup>6</sup> Even worse, “the ratio of male to female producers” amongst 300 chart-topping songs was 49 to 1, with an even smaller number of women coming from underrepresented racial or ethnic backgrounds.<sup>7</sup> Perhaps the most prominent showing of gender disparity in music is the exclusion of females from music award shows, both as nominees and as

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2. *Id.*

3. Ashley Hodge, *Every Feminist Hashtag You Need to Know, From #MeToo to #TimesUp*, YOUR DREAM BLOG (Feb. 5, 2018), <https://yourdream.liveyourdream.org/2018/02/feminist-hashtags-metoo-timesup/>.

4. *In music industry, female songwriters and producers are outnumbered by men*, USC NEWS (Jan. 25, 2018), <https://news.usc.edu/135288/in-music-industry-female-songwriters-and-producers-are-outnumbered-by-men/>.

5. RIAA.com, Music Consumer Profile – 2017, <http://www.riaa.com/wp-content/uploads/2018/05/MusicWatch-Consumer-Profile-2017.pdf> (last visited December 27, 2018).

6. Stacy L. Smith et al., USC ANNENBERG INCLUSION INITIATIVE, *Inclusion in the Recording Studio? Gender and Race/Ethnicity of Artists, Songwriters & Producers across 600 Popular Songs from 2012-2017* (2018), available at <http://assets.uscannenberg.org/docs/inclusion-in-the-recording-studio.pdf>.

7. *Id.*

winners.<sup>8</sup> Considered one of most coveted music accolades in the world, the Grammy Awards have a troubled history of flagrant gender inclusion issues, with “only one female performer winning a major solo award” in 2018.<sup>9</sup> While the 61<sup>st</sup> Annual Grammy Awards in February 2019 provided a glimpse of hope for a more promising future of female acknowledgment, including “Cardi B, making history as the first solo woman to win for rap album,” other prestigious music award shows still demonstrate blatant inequality.<sup>10</sup>

Behind the scenes, females working in the music business accounted for only 17% of the 2018 *Billboard* Power 100 List.<sup>11</sup> Of the “13 frontline major record label groups operating in the United States,” only one label is currently “run by a female [...], [and] one of them [...] is co-run by a woman.”<sup>12</sup> In the live performance sector, based on a survey of the 19 biggest festivals from

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8. Chris Richards, *The Grammys just tried to fix its diversity problem. Will we end up with more of the same?*, Style – Perspective (Dec. 7 2018), [https://www.washingtonpost.com/search/“The Grammys just tried to fix its diversity problem”](https://www.washingtonpost.com/search/“The%20Grammys%20just%20tried%20to%20fix%20its%20diversity%20problem”/)); Emily Yahr, *The AMC Awards were another glaring spotlight on the lack of opportunities for women in country music*, Pop Culture (April 9, 2019), [https://www.washingtonpost.com/arts-entertainment/2019/04/09/acm-awards-were-another-glaring-spotlight-lack-opportunities-women-country-music/?utm\\_term=.721325e2d94d](https://www.washingtonpost.com/arts-entertainment/2019/04/09/acm-awards-were-another-glaring-spotlight-lack-opportunities-women-country-music/?utm_term=.721325e2d94d).

9. Kate Feldman, *Grammys point spotlight at women and diversity following 2018 debacle*, Music/Entertainment (Feb. 11, 2019), <https://www.nydailynews.com/entertainment/music/ny-ent-grammy-awards-2019-diversity-inclusion-20190210-story.html>.

10. Lorraine Ali, *Was this year’s Grammys the beginning of the end for a white, male music industry?*, Music/Entertainment (Feb. 11, 2019), <https://www.latimes.com/entertainment/music/la-et-ms-grammys-diversity-race-women-20190211-story.html>.

11. Bonnie Marcus, *The Music Industry Remains a Boy’s Club: How Do Women Break In?*, Forbes (Apr. 3, 2018), <https://www.forbes.com/sites/bonniemarcus/2018/04/03/the-music-industry-remains-a-boys-club-how-do-women-break-in/#5f790f5bd3f7>.

12. Tim Ingham, *The Major Record Companies Have a Big Gender Problem – But There are Positive Signs for the Future*, Music Features (Apr. 15, 2019), <https://www.rollingstone.com/music/music-features/the-major-record-companies-have-a-big-gender-problem-but-there-are-positive-signs-for-the-future-821037/>.

2017 to 2018, “seven out of 10 artists on festival bills [were] men or all-male bands.”<sup>13</sup> These statistics demonstrate that although important discussions may have begun and some progress has been made, real, workable solutions to remedy such inequalities remain to be seen.

But on March 4, 2018, Frances McDormand closed her Oscar acceptance speech for Best Actress with two words that have the power to not only alter the landscape of diversity in film, but also effectuate critical change in the music industry.<sup>14</sup> Those two words were: “Inclusion. Rider.”<sup>15</sup> Although this concept, first proposed by Dr. Stacy L. Smith in 2014, is gaining momentum in the film industry, it remains practically non-existent in music.<sup>16</sup> An inclusion rider is a legal provision that can be added to a musician, actor, or content creator’s contract which guarantees a certain amount of diversity among a project’s participants, including based on gender and race.<sup>17</sup> While performers can request to have inclusion riders included in their agreements, the reality is that this demand is typically reserved for only the most prominent entertainers who harbor superior bargaining power.<sup>18</sup> Moreover, although inclusion riders are actively being implemented in film to increase diversity amongst actors on-screen, as well as

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13. Rob Mitchum & Diego Garcia-Olano, *Tracking the Gender Balance of This Year’s Musical Festival Lineups*, Festival Report (May 1, 2018), <https://pitchfork.com/features/festival-report/tracking-the-gender-balance-of-this-years-music-festival-lineups/>.

14. *Why an ‘inclusion rider’ is the answer we need now*, USC Annenberg School for Communication and Journalism (Mar. 5, 2018), <https://annenberg.usc.edu/research/why-inclusion-rider-answer-we-need-now>.

15. *Id.*

16. *Id.*

17. Colin Dwyer, *What’s An Inclusion Rider? Here’s The Story Behind Frances McDormand’s Closing Words*, NPR (Mar. 5, 2018), <https://www.npr.org/sections/thetwo-way/2018/03/05/590867132/whats-an-inclusion-rider-here-s-the-story-behind-frances-mcdormand-s-closing-wor>.

18. *Id.*

development, production, and post-production employees off-screen, its application to the music industry has yet to receive in-depth exploration.<sup>19</sup>

Part I of this paper provides a brief overview of current inequalities in four sectors of the music industry. Part II breaks down the background and application of inclusion riders in the film industry. Part III explores three ways that inclusion riders can be used to remedy gender inequality in the music industry. Part IV acknowledges potential limitations to the efficacy of inclusion riders in music, as well as obstacles to their implementation. Part V serves as the conclusion.

## I. GENDER INEQUALITY IN THE MUSIC INDUSTRY

“The overall level of female representation in music is [...] lower than in the much-maligned film industry.”<sup>20</sup> Women are noticeably absent from effectively all aspects of music, and the number of “women from underrepresented racial or ethnic groups” is even lower.<sup>21</sup> Females are routinely absent from the popular music charts, whether as singers, producers, or songwriters.<sup>22</sup> At music festivals across the globe, artist lineups continue to be predominantly

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19. Kalpana Kotagal et al., USC ANNENBERG SCHOOL FOR COMMUNICATION AND JOURNALISM, *Inclusion Rider Template* (2018), available at <http://assets.uscannenberg.org.s3.amazonaws.com/docs/inclusion-rider-template.pdf>.

20. Zack O’Malley Greenburg, *For Women In Music, Grammy Debacle Is Just The Tip Of The Iceberg*, *Forbes* (Feb. 2, 2018), <https://www.forbes.com/sites/zackomalleygreenburg/2018/02/02/for-women-in-music-grammy-debacle-is-just-the-tip-of-the-iceberg/#2ee001a72a3f>.

21. Stacy L. Smith et al., USC ANNENBERG INCLUSION INITIATIVE, *Inclusion in the Recording Studio? Gender and Race/Ethnicity of Artists, Songwriters & Producers across 600 Popular Songs from 2012-2017* (2018), available at <http://assets.uscannenberg.org/docs/inclusion-in-the-recording-studio.pdf>.

22. *Id.*

male.<sup>23</sup> Further, the number of females who receive nominations or awards at music award shows is markedly low in comparison to male winners and nominees.<sup>24</sup> At the helm of the most powerful record labels in the world are male executives who generally receive higher pay and more opportunities than their female colleagues.<sup>25</sup> But in order to repair this extensive gender inequality, it is crucial to understand how deep the inequality actually goes.

#### A. Gender Inequality in Popular Music

Females are grossly underrepresented amongst popular music. Popular music, by definition, is “music written and marketed with the intention of achieving mass distribution and sales.”<sup>26</sup> Therefore, songs which amass commercial success on popular music charts are an indication of the songs that are arguably the most listened to by the general public. Though a focus on popular music may exclude less mainstream, or indie artists, which likely face the same,

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23. Rob Mitchum & Diego Garcia-Olano, *Tracking the Gender Balance of This Year’s Musical Festival Lineups*, Festival Report (May 1, 2018), <https://pitchfork.com/features/festival-report/tracking-the-gender-balance-of-this-years-music-festival-lineups/>.

24. Stacy L. Smith et al., USC ANNENBERG INCLUSION INITIATIVE, *Inclusion in the Recording Studio? Gender and Race/Ethnicity of Artists, Songwriters & Producers across 700 Popular Songs from 2012-2018* (2019), available at <http://assets.uscannenberg.org/docs/aai-inclusion-recording-studio-2019.pdf>.

25. Tim Ingham, *The Major Record Companies Have a Big Gender Problem – But There are Positive Signs for the Future*, Music Features (Apr. 15, 2019), <https://www.rollingstone.com/music/music-features/the-major-record-companies-have-a-big-gender-problem-but-there-are-positive-signs-for-the-future-821037/>; Murray Stassen, *Revealed: What Major Labels Are Paying Women Compared To Men In The UK*, Music Business Worldwide (Apr. 4, 2019), <https://www.musicbusinessworldwide.com/revealed-what-major-labels-are-paying-women-compared-to-men-in-the-uk/>; Ange McCormack, *By the numbers 2018: The gender gap in the Australian music industry*, Hack (Mar. 8, 2018), <https://www.abc.net.au/triplej/programs/hack/by-the-numbers-2018/9524084>.

26. “popular music.” *Merriam-Webster Online Dictionary*. 2019. [www.merriam-webster.com](http://www.merriam-webster.com) (last visited Apr. 26, 2019).

if not greater gender disparity, popular songs have the widest audience and thus, the power to push the agenda of music.<sup>27</sup>

In the United States, the gold standard of music record charts which reflect popular music is the *Billboard* Hot 100.<sup>28</sup> In a landmark study published in 2018 by the *USC Annenberg Inclusion Initiative*, based on an examination of “600 popular songs” across five years, females represented only a marginal number of artists, songwriters, and producers when considered against their male colleagues.<sup>29</sup> In 2017, females accounted for only 16.8% of artists in popular music, and the male to female ratio of artists on the *Billboard* Hot 100 from 2012 to 2017 was 3.5 to 1.<sup>30</sup> Regardless of genre, the number of employment opportunities available to male artists are considerably greater than for female artists.<sup>31</sup>

During the same period, males accounted for 87.7% “of the 2,767 songwriters credited.”<sup>32</sup> Demonstrating sizable control over the market, “nine male songwriters [...] have been responsible for almost one-fifth of the top songs in the last six years.”<sup>33</sup> While “the top male writer has 36 credits, the top female writer has 15 credits.”<sup>34</sup> A mere 2% of producers were

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27. Stacy L. Smith et al., USC ANNENBERG INCLUSION INITIATIVE, *Inclusion in the Recording Studio? Gender and Race/Ethnicity of Artists, Songwriters & Producers across 600 Popular Songs from 2012-2017* (2018), available at <http://assets.uscannenberg.org/docs/inclusion-in-the-recording-studio.pdf>.

28. Chris Molanphy, *How The Hot 100 Became America's Hit Barometer*, All Things Considered (Aug. 1, 2013), <https://www.npr.org/sections/therecord/2013/08/16/207879695/how-the-hot-100-became-americas-hit-barometer>.

29. Stacy L. Smith et al., USC ANNENBERG INCLUSION INITIATIVE, *Inclusion in the Recording Studio? Gender and Race/Ethnicity of Artists, Songwriters & Producers across 600 Popular Songs from 2012-2017* (2018), available at <http://assets.uscannenberg.org/docs/inclusion-in-the-recording-studio.pdf>.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

females, and “only 2 out of 651 producers were females from an underrepresented racial/ethnic group” making underrepresented females virtually “invisible as producers.”<sup>35</sup>

In the most recent version of the *USC Annenberg Inclusion Initiative* study from February 2019, which analyzed “700 popular songs” across six years, the male to female ratio remained stagnant at 3.6:1.<sup>36</sup> With a two-point increase from the previous study, “the ratio of male to female producers across 400 popular songs is 47 to 1.”<sup>37</sup> The percentage of female songwriters increased only 0.7% to 12.2% from 2017 to 2018.<sup>38</sup> The survey also demonstrated a rate of only 2.1% female producers, while “[w]omen of color [remained] invisible as producers,” with only “4 out of 871 producers [being] women of color.”<sup>39</sup> Overall, only 21.7% of artists and 12.3% of songwriters present amongst the “700 popular songs” were female.<sup>40</sup> Aside from mainstream music, country music suffers from a similar plight when it comes to chart representation, with only 4% female songwriters.<sup>41</sup> Of “Billboard’s top country 10 music artists of all time,” Reba McEntire is only female included on the list, and in 2017, “Billboard reported no solo female artist ranked in the top 10 for country airplay.”<sup>42</sup>

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35. *Id.*

36. Stacy L. Smith et al., USC ANNENBERG INCLUSION INITIATIVE, *Inclusion in the Recording Studio? Gender and Race/Ethnicity of Artists, Songwriters & Producers across 700 Popular Songs from 2012-2018* (2019), available at <http://assets.uscannenberg.org/docs/aii-inclusion-recording-studio-2019.pdf>.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. Laura Santhanam, *How female musicians amplify each other when the industry won't*, PBS News Hour – Arts (Mar. 22, 2019), <https://www.pbs.org/newshour/arts/how-female-musicians-amplify-each-other-when-the-industry-wont>.

## B. *Gender Inequality at Music Festivals*

The global music festival industry is one of the largest, most blatant displays of female inequality in music. At the same time, music festivals offer massive opportunities to equal the playing field and provide an optimal platform for the implementation of inclusion riders. In 2019, the United States alone will host over 240 music festivals, many of which will offer sizable lineups, including upwards of 60 artists per day.<sup>43</sup> But while as of 2014, “[w]omen make up 51 percent of the 32 million people who attend festivals annually,” musical festival lineups fall significantly short in reflecting the same gender parity.<sup>44</sup>

Beyoncé made international news with her headlining performance at the 2018 Coachella Valley Music and Arts Festival.<sup>45</sup> Described as both a “legendary” and “historic” performance, there are disconcerting statistics underlying what made her performance so historic that received minimal recognition.<sup>46</sup> Not only did Beyoncé become the first black woman to ever headline Coachella, but she was only the second solo female headliner in a decade.<sup>47</sup> As one of the largest festivals in the country, Coachella featured just one female headliner in 2019—Ariana Grande—who has now become only the “fourth female headliner in the festival’s nearly 20-year

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43. Music Festival Wizard, *Music Festivals: US Festivals*, <https://www.musicfestivalwizard.com/festival-guide/us-festivals/> (last visited Apr. 26, 2019).

44. Nina Ulloa, *32 Million People in the U.S. Attend Music Festivals*, *Breaking News* (Apr. 14, 2015), <https://www.digitalmusicnews.com/2015/04/14/32-million-people-in-the-u-s-attend-music-festivals/>.

45. Yelena Dzhanova, *Coachella dubbed ‘Beychella’ after historic Beyoncé set*, NBC News (Apr. 15, 2018), <https://www.nbcnews.com/pop-culture/music/coachella-dubbed-beychella-after-historic-beyonc-set-n866126>.

46. *Id.*

47. Valerie Lee, *Coachella Hits A Record High of Female Headliners in 2018*, *Mixmag* (Jan. 5, 2018), <https://mixmag.net/read/coachella-hits-a-record-high-of-female-headliners-in-2018-news/>; Valentina Zarya, *Coachella Has No Female Headliners For the Ninth Year in a Row*, *Fortune* (Apr. 18, 2016).

history.”<sup>48</sup> But Coachella, which generated “more than \$114 million in profits in 2017” is just one out of the “more than 800 music festivals in the U.S. alone”<sup>49</sup>

The gender imbalance of the live performance sector is not limited to American festivals, with research studies in the United Kingdom and Australia revealing similar exclusionary patterns.<sup>50</sup> A study by *BBC News*, which analyzed the posters of the nine largest festivals in the United Kingdom in 2018, revealed that “of 756 acts advertised on the posters of [the] nine festivals” only 23% were female.<sup>51</sup> When London’s Wireless Festival first released its 2018 lineup, singer-songwriter Lily Allen tweeted a redacted version of the poster, which, after eliminating all of the names of the male acts, left only three female acts remaining.<sup>52</sup> Meanwhile, in 2017, the “most gender-diverse festival” in Australia offered a lineup with 44% “female-identifying acts (or acts featuring both men and women),” while other Australian festivals had as low as 31% female representation.<sup>53</sup>

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48. Claire Dodson, *Ariana Grande Is Only the Fourth Woman Ever to Headline Coachella*, *Music* (Jan. 3, 2019), <https://www.teenvogue.com/story/ariana-grande-only-fourth-woman-ever-to-headline-coachella>.

49. Renée Fabian, *Music Festivals 2017: Coachella Hauls In Record \$114 Million In Profit*, *News* (Oct. 18, 2017), <https://www.grammy.com/grammys/news/music-festivals-2017-coachella-hauls-record-114-million-profit>; *The Rising Trends of Music Festivals in the U.S.*, Special Events (June 13, 2018), <https://deployedresources.com/blog/special-events/the-rising-trends-of-music-festivals-in-the-u-s/>.

50. *Festivals 2018: The gender gap in music festival line-ups*, *Reality Check* (July 3, 2018), <https://www.bbc.com/news/entertainment-arts-44655719>; Ange McCormack, *By the numbers 2018: The gender gap in the Australian music industry*, *Hack* (Mar. 8, 2018), <https://www.abc.net.au/triplej/programs/hack/by-the-numbers-2018/9524084>.

51. *Festivals 2018: The gender gap in music festival line-ups*, *Reality Check* (July 3, 2018), <https://www.bbc.com/news/entertainment-arts-44655719>.

52. Lily Allen (@lilyallen), *Twitter* (Jan. 23, 2018, 10:54am), <https://twitter.com/lilyallen/status/955816079363919876>.

53. Ange McCormack, *By the numbers 2018: The gender gap in the Australian music industry*, *Hack* (Mar. 8, 2018), <https://www.abc.net.au/triplej/programs/hack/by-the-numbers-2018/9524084>.

To combat this global disparity, Keychange, an organization dedicated to female inclusion in music, announced an initiative in 2018 in which it obtained pledges from 45 international music festivals to implement “a 50/50 gender split on their respective lineups, conference panels, and more by 2022.”<sup>54</sup> Since its inception, the number of pledges has increased to over 150 festivals.<sup>55</sup> Festivals that remain noticeably absent from the initiative are not only some of the major United States festivals, including Coachella, but also massive overseas festivals, such as Glastonbury in the United Kingdom, which is considered the “largest green-field music and performing arts festival in the world” and is attended by approximately 200,000 people per day.<sup>56</sup>

In November 2018, Iceland Airwaves became the first music festival to achieve the target of an at least 50% female lineup.<sup>57</sup> While the 2018 Primavera Sound festival in Barcelona had a “50/50 gender split on its main stage,” males still occupied 70% of the lineup for the festival overall.<sup>58</sup> Although absent from the official Keychange pledge list, the Pitchfork Music Festival in Chicago achieved a 2018 lineup that was over 50% female, as did Panorama in New York

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54. Amanda Wicks & Jazz Monroe, *45 Music Festivals Pledge Gender-Equal Lineups by 2022*, Festivals (Feb. 26, 2018), <https://pitchfork.com/news/30-music-festivals-pledge-gender-equal-lineups-by-2022/>.

55. Keychange PRS Foundation, *Full List of Festivals Signed Up To Keychange* (2019), available at <https://keychange.eu/blog/full-list-of-festivals-signed-up-to-keychange/>.

56. *Id.*; Lena Felton, *Music festivals have a gender problem. So these friends plotted to fix it.*, Music (Oct. 1, 2018), <https://www.thelily.com/music-festivals-have-a-gender-problem-so-these-friends-plotted-to-fix-it/>; *Music festivals: What’s the world’s biggest?*, Reality Check (July 4, 2018), <https://www.bbc.com/news/world-44697302>.

57. Alex Marshall, *Some Music Festivals Balk at Booking 50% Female Acts. One Just Did It.*, Music (July 26, 2018), <https://www.nytimes.com/2018/07/26/arts/music/women-music-festival-iceland-airwaves.html>.

58. *Id.*

City.<sup>59</sup> Pitchfork went on to meet the same gender threshold again in 2019.<sup>60</sup> But while these few festivals have demonstrated that progress is being made, the majority of music festivals still have “a long way to go.”<sup>61</sup>

An annual study conducted by *Pitchfork* revealed that based on a 19 festival survey from 2017 to 2018, female representation only “increased from 14 to 19 percent,” and “the percentage of groups with at least one female or non-binary member, held relatively steady at 11 percent.”<sup>62</sup> Other mainstream music festivals, such as Firefly Music Festival in Dover, Delaware, Bottlerock Napa Valley, and Bunbury Music Festival in Cincinnati, “barely clear[ed] the 20-percent mark when it [came] to female and mixed gender acts in 2018.”<sup>63</sup> Bunbury had only one female artist in 2017, in 2018 it doubled this number to two, and in 2019 it has increased to 10 acts that have at least one female out of 45 total acts.<sup>64</sup> Unfortunately, the gender disparity in music festivals is just one facet of a much larger degree of inequality across the entire music industry.

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59. Keychange PRS Foundation, *Full List of Festivals Signed Up To Keychange* (2019), available at <https://keychange.eu/blog/full-list-of-festivals-signed-up-to-keychange/>; Rob Mitchum & Diego Garcia-Olano, *Tracking the Gender Balance of This Year’s Musical Festival Lineups*, Festival Report (May 1, 2018), <https://pitchfork.com/features/festival-report/tracking-the-gender-balance-of-this-years-music-festival-lineups/>; Scott Russell, *Panorama NYC Unveils 2018 Lineup: The Weeknd, Janet Jackson, The Killers to Headline*, Music News (Jan. 31, 2018), <https://www.pastemagazine.com/articles/2018/01/panorama-2018-lineup.html>.

60. *Pitchfork Music Festival 2019 Announces Full Lineup*, Pitchfork (Mar. 6, 2019), <https://pitchfork.com/news/pitchfork-music-festival-2019-announces-full-lineup/>

61. Rob Mitchum & Diego Garcia-Olano, *Tracking the Gender Balance of This Year’s Musical Festival Lineups*, Festival Report (May 1, 2018), <https://pitchfork.com/features/festival-report/tracking-the-gender-balance-of-this-years-music-festival-lineups/>.

62. *Id.*

63. *Id.*; Jeffrey Greenblatt, *Firefly Music Festival Announces 2019 Lineup*, Festival Lineups (Dec. 11, 2018), <https://www.jambase.com/article/firefly-music-festival-2019-lineup>; Scott Bernstein, *BottleRock Confirms 2019 Lineup*, Festival Lineups (Jan. 7, 2019), <https://www.jambase.com/article/bottlerock-confirms-2019-lineup>; Scott Bernstein, *Bunbury Music Festival Announces 2019 Lineup*, Festival Lineups (Feb. 1, 2019), <https://www.jambase.com/article/bunbury-festival-2019-lineup>.

64. Rob Mitchum & Diego Garcia-Olano, *Tracking the Gender Balance of This Year’s Musical Festival Lineups*, Festival Report (May 1, 2018), <https://pitchfork.com/features/festival->

### C. Gender Inequality at Music Award Shows

Females are strikingly absent as both music award show nominees and winners. Not only do coveted music award shows, such as the Grammy Awards, serve as recognition of artist achievement, but they often also result in a subsequent boost in artist sales.<sup>65</sup> Therefore, when females are disproportionately nominated in comparison to their male colleagues, females are not receiving the same acknowledgement for their accomplishments. As a result, females do not receive the same opportunities and benefits derived from being nominated for or winning a music award.

At the forefront of music award shows, the Grammy Awards have had chronic and highly transparent gender inequality issues.<sup>66</sup> Out of 1,064 individuals nominated for Grammys, “10.4% of Grammy nominees from 2013-2019 were female. 89.6% were male.”<sup>67</sup> Over that same period, while Best New Artist had the highest percentage of female nominees at 41.1%, three major categories had over 90% male nominees, including Producer of the Year, which had only 2.6% female nominees.<sup>68</sup> Of all female nominees, 36.9% were women of color.<sup>69</sup>

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report/tracking-the-gender-balance-of-this-years-music-festival-lineups/; Scott Bernstein, *Bunbury Music Festival Announces 2019 Lineup*, Festival Lineups (Feb. 1, 2019), <https://www.jambase.com/article/bunbury-festival-2019-lineup>.

65. Digvijaya Singh, *10 Most Popular Awards In The World*, Culture (Apr. 19, 2018), <https://topyaps.com/top-10-famous-awards/>; Carl Wiser, *Why The Grammys Matter More Than Ever*, Song Writing Blog (Jan. 11, 2018), <https://www.songfacts.com/blog/writing/why-the-grammys-matter-more-than-ever>.

66. Stacy L. Smith et al., USC ANNEBERG INCLUSION INITIATIVE, *Inclusion in the Recording Studio? Gender and Race/Ethnicity of Artists, Songwriters & Producers across 700 Popular Songs from 2012-2018* (2019), available at <http://assets.uscannenber.org/docs/aii-inclusion-recording-studio-2019.pdf>.

67. *Id.*

68. *Id.*

69. *Id.*

That is not to say progress has not been made. In fact, the 2019 Grammy Awards received praise from critics for finally shining a spotlight on diversity.<sup>70</sup> Cardi B was in winning female company with Dua Lipa, who accepted best new artist; H.E.R., who accepted best R&B album; and Lady Gaga, who took home best pop solo performance.<sup>71</sup> Not only did the opening dialogue of the Grammys include host Alicia Keys alongside Lady Gaga, Jennifer Lopez, Jada Pinkett Smith, and Michelle Obama, but 15 of the 18 performances throughout the evening also included female artists.<sup>72</sup> But while the Grammys have increased the number of nominees across the four major categories from five to eight in an attempt to increase diversity, top artists, including Ariana Grande and Kendrick Lamar, still refused to attend the Grammys, in light of “[t]he Recording Academy’s fraught relationship with women and artists of color.”<sup>73</sup>

Gender inequality at music award shows is not limited to those showcasing mainstream music. At the 54<sup>th</sup> Annual Academy of Country Music Awards held on April 7, 2019, out of five nominees for Entertainer of the Year not a single nominee was female.<sup>74</sup> Those who watched the

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70. Kate Feldman, *Grammys point spotlight at women and diversity following 2018 debacle*, Music/Entertainment (Feb. 11, 2019), <https://www.nydailynews.com/entertainment/music/ny-ent-grammy-awards-2019-diversity-inclusion-20190210-story.html>.

71. *Id.*

72. *Id.*; Andrew Unterberger, *All the 2019 Grammys Performances, Ranked From Worst to Best*, Grammys (Feb. 11, 2019), <https://www.billboard.com/articles/news/grammys/8497559/grammys-2019-performances-ranked>.

73. Ben Sisario, *Can the Grammys Please Anyone?*, Music (Feb. 7, 2019), <https://www.nytimes.com/2019/02/07/arts/music/grammy-awards-diversity.html>; Lorraine Ali, *Was this year’s Grammys the beginning of the end for a white, male music industry?*, Music/Entertainment (Feb. 11, 2019), <https://www.latimes.com/entertainment/music/la-et-ms-grammys-diversity-race-women-20190211-story.html>.

74. Laura Santhanam, *How female musicians amplify each other when the industry won’t*, PBS News Hour – Arts (Mar. 22, 2019), <https://www.pbs.org/newshour/arts/how-female-musicians-amplify-each-other-when-the-industry-wont>; Emily Yahr, *The ACM Awards were another glaring spotlight on the lack of opportunities for women in country music*, Pop Culture (Apr. 9, 2019), <https://www.washingtonpost.com/arts-entertainment/2019/04/09/acm-awards->

Awards, found that “it took about two and a half hours [before] a female country star finally collected a trophy.”<sup>75</sup> That star was Kacey Musgraves, who won album of the year and then over thirty minutes later went on to win female artist of the year.<sup>76</sup> The only other woman to receive an award during the three-hour award show was songwriter Nicolle Galyon.<sup>77</sup> Galyon won song of the year for the song “Tequila,” performed by Dan + Shay, which she co-wrote with Dan Smyers and Jordan Reynolds.<sup>78</sup> At least six other categories “each had only one female nominee [and] [t]he songwriter category was all men.”<sup>79</sup> Out of “45 singers who performed” at the Country Music Awards, only 13 were women.<sup>80</sup>

#### *D. Gender Inequality Amongst Music Industry Executives*

In addition to the creative side of the industry, gender inequality is also evident amongst music executives in the corporate world. In the United States, Berklee College of Music and Women in Music formulated a landmark study on female industry professionals.<sup>81</sup> Based on survey responses from nearly 2,000 women in 2018, “[n]early half of respondents felt they should be further ahead in their careers,” with 41% of executive women sharing the same opinion.<sup>82</sup>

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were-another-glarng-spotlight-lack-opportunities-women-country-music/?utm\_term=.721325e2d94d.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. Becky Prior et al., BERKLEE INSTITUTE FOR CREATIVE ENTREPRENEURSHIP, *Women in the U.S. Music Industry: Obstacles and Opportunities* (2019), available at <https://www.berklee.edu/sites/default/files/Women%20in%20the%20U.S.%20Music%20Industry%20Report.pdf>.

82. *Id.*

Such opinions are not unfounded, as Universal Music Group, the largest record label in the world, “currently has no women running any of its Stateside frontline labels.”<sup>83</sup> Out of the “most prominent 26 major labels in the U.S. and U.K. (all owned by Universal, Sony or Warner)”–only four are run or co-run by female executives.<sup>84</sup> More favorably, one sector that contains a “far healthier split of male and female executives in its most influential positions” is music publishing, where “two of the three biggest music publishing firms on earth are now run by female executives.”<sup>85</sup>

Overseas, Universal Music UK employs “one female frontline label President (Rebecca Allen at Decca) and one female co-President (Jo Charrington at Capitol)”, but neither Sony Music UK nor Warner Music UK have a single frontline label head.<sup>86</sup> Based on a legal requirement not yet mandated in the United States, all United Kingdom companies with more than 250 employees must disclose their annual gender pay gaps.<sup>87</sup> Based on the government report released April 4, 2019, the average gender pay gap across the three major labels’ United Kingdom divisions is 29.6%.<sup>88</sup>

At Universal Music UK, while there is a 42% female staff, 73% of employees in the top-earning quartile are male.<sup>89</sup> Though roughly the same percentage of males and females at

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83. Tim Ingham, *The Major Record Companies Have a Big Gender Problem – But There are Positive Signs for the Future*, Music Features (Apr. 15, 2019), <https://www.rollingstone.com/music/music-features/the-major-record-companies-have-a-big-gender-problem-but-there-are-positive-signs-for-the-future-821037/>.

84. *Id.*

85. *Id.*

86. *Id.*

87. Murray Stassen, *Revealed: What Major Labels Are Paying Women Compared To Men In The UK*, Music Business Worldwide (Apr. 4, 2019), <https://www.musicbusinessworldwide.com/revealed-what-major-labels-are-paying-women-compared-to-men-in-the-uk/>.

88. *Id.*

89. *Id.*

Universal Music UK receive bonus pay, “the average hourly rate of pay across the whole business is 29.1% lower for females vs. males.”<sup>90</sup> At Sony Music UK, despite a 45.9% female workforce, only 39.8% of the top-earning quartile are female and females earn a 20.9% lower average hourly rate than men.<sup>91</sup> Lastly, at Warner Music UK, 69.8% of the top-earning quartile are male, and females on average earn 38.7% less than males in hourly pay.<sup>92</sup> While the difference between males and females who receive bonus pay at Warner Music UK is only 4.8%, female executives on average receive 67.5% less bonus pay than their male colleagues.<sup>93</sup> In a non-label capacity, out of a 42% female workforce, Spotify UK’s “mean gender pay gap was 11.6%.”<sup>94</sup> Lastly, PRS for Music, a United Kingdom collection society, while paying out bonuses to roughly the same percentage of male and female employees, based on a 59.8% male team, the “mean hourly pay gap [...] was 16.8%,” “the median hourly gender pay gap was 9.7%,” and “the mean bonus gap [...] was 63%.”<sup>95</sup>

Despite more females in Australia studying “a music-related subject in their final year” of high school than males, and near-equal gender levels amongst undergraduate music students, the same gender representation quality is not present amongst Australian music industry professionals.<sup>96</sup> “[I]n the past three Australian censuses, women have only made up 29 [percent] of people who listed “music professional” as their job.”<sup>97</sup> Not only does the Australian

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90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. Ange McCormack, *By the numbers 2018: The gender gap in the Australian music industry*, Hack (Mar. 8, 2018), <https://www.abc.net.au/triplej/programs/hack/by-the-numbers-2018/9524084>.

97. *Id.*

Recording Industry Association not have a single female board member, more generally, “for the third year running, there were more men than women on public boards for music organisations, managing artists, and managing independent record labels.”<sup>98</sup> As Australia’s equivalent to the Billboard Power 100 list, “women have only made up about a quarter of the people listed in AMID’s annual *Power 50* list.”<sup>99</sup>

The lack of female representation in popular music on the *Billboard* Hot 100 for not only artists, but also songwriters and producers, is indicative of the larger problem that affects virtually all areas of the music industry.<sup>100</sup> Women continue to be left out of musical festival lineups, despite an attendee population that is more than half female.<sup>101</sup> Males routinely dominate the award show landscape, as well as run the show at the top record label offices around the world.<sup>102</sup> So, in the face of international gender disparity on both the creative and corporate sides of the music industry, what can be done to close the gap?

## II. INCLUSION RIDERS IN FILM

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98. *Id.*

99. *Id.*

100. Stacy L. Smith et al., USC ANNENBERG INCLUSION INITIATIVE, *Inclusion in the Recording Studio? Gender and Race/Ethnicity of Artists, Songwriters & Producers across 700 Popular Songs from 2012-2018* (2019), available at <http://assets.uscannenberg.org/docs/aii-inclusion-recording-studio-2019.pdf>.

101. Nina Ulloa, *32 Million People in the U.S. Attend Music Festivals*, *Breaking News* (Apr. 14, 2015), <https://www.digitalmusicnews.com/2015/04/14/32-million-people-in-the-u-s-attend-music-festivals/>.

102. Stacy L. Smith et al., USC ANNENBERG INCLUSION INITIATIVE, *Inclusion in the Recording Studio? Gender and Race/Ethnicity of Artists, Songwriters & Producers across 700 Popular Songs from 2012-2018* (2019), available at <http://assets.uscannenberg.org/docs/aii-inclusion-recording-studio-2019.pdf>; Tim Ingham, *The Major Record Companies Have a Big Gender Problem – But There are Positive Signs for the Future*, *Music Features* (Apr. 15, 2019), <https://www.rollingstone.com/music/music-features/the-major-record-companies-have-a-big-gender-problem-but-there-are-positive-signs-for-the-future-821037/>.

Despite research proving that a leading role's gender has no demonstrable effect on a film's pecuniary success, "less than a third of all roles with at least one word of dialogue are given to women and girls."<sup>103</sup> After the nominal number of women in film remained stagnant for years, inclusion riders were developed as a direct response to increase the visibility of females and underrepresented ethnic and racial groups in popular films.<sup>104</sup> By adding contractual provisions that require producers to achieve certain levels of diversity across all roles in any given production, movies better reflect "the world we actually live in – not a small fraction of the talent pool."<sup>105</sup> But film inclusion riders are not the first of their kind to successfully change the landscape of an entertainment-related industry.

Before there were inclusion riders in film, there was the "Rooney Rule," a policy introduced by the National Football League in 2003 in order to promote racial equality in hiring practices.<sup>106</sup> The Rooney Rule, "requires every team with a coach or general manager opening to interview at least one minority candidate."<sup>107</sup> Overall, the Rooney Rule has had demonstrable success. Prior to implementing the Rooney Rule, "just seven head coaches of color were hired" in the league's 80-year history.<sup>108</sup> By the ten-year anniversary of its implementation, "17 teams

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103. Abigail Hess, *Oscar-winner Frances McDormand encourages actors to push for 'inclusion riders' – here's what that means*, Closing the Gap (Mar. 5, 2018), <https://www.cnbc.com/2018/03/05/frances-mcdormand-encourages-actors-to-push-for-inclusion-riders.html>.

104. *The Inclusion Rider: Legal language for ending Hollywood's epidemic of invisibility*, USC Annenberg School for Communication and Journalism (2019), <https://annenberg.usc.edu/admin/nodes/text-box/inclusion-rider-legal-language-ending-hollywoods-epidemic-invisibility>.

105. *Id.*

106. Luke Knox, *NFL hires in the Rooney Rule era*, (Jan. 10, 2019), <https://theundefeated.com/features/nfl-hires-in-the-rooney-rule-era/>.

107. Mike Freeman, *The Rooney Rule 10 Years Later: It's Worked... Usually, and We Still Need It*, NFL, <https://bleacherreport.com/articles/1822988-the-rooney-rule-10-years-later-its-worked-usually-and-we-still-need-it>.

108. *Id.*

[...] had either an African-American or Latino head coach or general manager,” and “[t]hree teams [...] had more than one head coach of color.”<sup>109</sup> Teams who do not follow the Rooney Rule are subject to penalties, including a \$200,000 fine.<sup>110</sup>

A report by Stacy L. Smith and the *USC Annenberg Inclusion Initiative* found that only “40 films featured a female in the leading or co leading role across the 100 top films of 2018,” which was an increase of 8% from 2017, and 20% from 2007.<sup>111</sup> Based on 1,200 films from 2007 to 2018, 28% contained female leads.<sup>112</sup> Moreover, of the 40 female leads or co leads represented in 2018’s top 100 films, only 11 were from an underrepresented racial or ethnic group.<sup>113</sup> Referred to as the “Hollywood Rooney Rule,” Stacy L. Smith designed inclusion riders to increase the number of females, including women of color, cast in supporting roles in theatrical motion pictures and television shows.<sup>114</sup> Further, inclusion riders aim to induce studios to commit to interviewing and hiring females for off-screen positions, including directors.<sup>115</sup>

While ideally film studios would commit to diverse casting and hiring practices of their own volition, typically prominent actors and content creators must request the addition of an

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109. *Id.*

110. Adam Stites, *NFL’s Rooney Rule: What is it and how does it work?*, NFL (Jan. 6, 2018), <https://www.sbnation.com/2018/1/6/16856550/rooney-rule-nfl-explained-how-it-works-coaches>.

111. USC ANNENBERG INCLUSION INITIATIVE, *Inequality Across 1,200 Popular Films: Examining Gender and Race/Ethnicity of Leads/Co Leads from 2007 to 2018* (2019), available at [http://assets.uscannenberg.org/docs/inequality-in-1200-films-research-brief\\_2019-02-12.pdf](http://assets.uscannenberg.org/docs/inequality-in-1200-films-research-brief_2019-02-12.pdf).

112. *Id.*

113. *Id.*

114. Stacy L. Smith, *Hey, Hollywood: It’s Time to Adopt the NFL’s Rooney Rule – for Women* (Guest Column), *Business* (Dec. 15, 2014), <https://www.hollywoodreporter.com/news/hey-hollywood-time-adopt-nfls-754659>; Stacy L. Smith et al., USC ANNENBERG INCLUSION INITIATIVE, *Inclusion in the Recording Studio? Gender and Race/Ethnicity of Artists, Songwriters & Producers across 600 Popular Songs from 2012-2017* (2018), available at <http://assets.uscannenberg.org/docs/inclusion-in-the-recording-studio.pdf>.

115. *Id.*

inclusion rider to their contract.<sup>116</sup> Similar to most contractual provisions, the terms of inclusion riders are negotiable, however, USC Annenberg has designed an inclusion rider template that can be used as a starting point.<sup>117</sup> Accordingly, the template provides for the actor or content creator requesting that the film studio include the inclusion rider “as part of the contract between ACTOR/CONTENT CREATOR and STUDIO on the theatrical motion picture or series/web content now entitled [blank].”<sup>118</sup> In doing so, the director and casting director shall agree to “audition at least one female and one person from any other under-represented group for all supporting roles.”<sup>119</sup> Underrepresented groups includes “people who identify themselves as females, people of color, disabled, [LGBTQ]” or any combination thereof.<sup>120</sup> The same commitment applies to interviews for off-screen positions, including for development and production roles, such as cinematographers, designers, and assistant directors, and for post-production positions, such as editors and composers.<sup>121</sup>

The director and casting director also agree to consider in good faith the “casting of a female in a role scripted for a man or one whose gender is unspecified,” as well as, “affirmatively seek opportunities to cast [under-represented persons] in all supporting roles.”<sup>122</sup> In casting in accordance with the “expected demographics of the film’s setting,” the studio shall

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116. Colin Dwyer, *What’s An Inclusion Rider? Here’s The Story Behind Frances McDormand’s Closing Words*, NPR (Mar. 5, 2018), <https://www.npr.org/sections/thetwo-way/2018/03/05/590867132/whats-an-inclusion-rider-here-s-the-story-behind-frances-mcdormand-s-closing-wor>.

117. Kalpana Kotagal et al., USC ANNENBERG INCLUSION INITIATIVE, *Inclusion Rider Template* (2018), available at <http://assets.uscannenberg.org.s3.amazonaws.com/docs/inclusion-rider-template.pdf>.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

strongly consider working with industry advocates to determine appropriate targets.<sup>123</sup>

Considerations for establishing casting thresholds include, “the geographical location and time period in which the story is set,” whether the film is based on a true story, and any relevant legal concerns.<sup>124</sup> Off-screen, the studio agrees to “make all reasonable efforts” to hire “qualified and available individuals who have been under-represented in that position and where those roles were not filled prior to the involvement of [the] actor/content creator.”<sup>125</sup>

Following production, the producer reports the results of the auditions and interviews, as well as the subsequent casting and hiring.<sup>126</sup> Should the studio be found to have not complied with the terms of the inclusion rider within a pre-determined confidence interval, then the studio may face monetary damages.<sup>127</sup> More specifically, the studio will be required to make a financial contribution that “will be used establish and endow a scholarship fund for filmmakers from underrepresented backgrounds, including females [...]”<sup>128</sup> By implementing inclusion riders, film studios ultimately “facilitate employment and create a stronger pipeline for more diverse representation.”<sup>129</sup>

The average film portrays approximately 45 characters, the majority of which are not leading or secondary roles.<sup>130</sup> Therefore, this leaves ample tertiary roles that can be given to female actors or actors from under-represented backgrounds.<sup>131</sup> By adding as few as “five female

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123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. Stacy L. Smith, *Hey, Hollywood: It’s Time to Adopt the NFL’s Rooney Rule – for Women (Guest Column)*, Business (Dec. 15, 2014), <https://www.hollywoodreporter.com/news/hey-hollywood-time-adopt-nfls-754659>.

131. *Id.*

speaking roles,” studios can “cut out bias without affecting the story” and generate employment for women “without taking parts away” from men.<sup>132</sup> In comparison to the \$70 to \$90 million average that it takes to make a feature film, which can include costly casting budgets, adding five females to a film is estimated to cost around only \$4,400 per movie.<sup>133</sup> This marginal cost can have an enormous impact on on-screen gender parity. According to Stacy L. Smith, “[i]f notable actors working across 25 top films in 2013 had made this change to their contracts, the proportion of balanced films (about half-female) would have jumped from 16 percent to 41 percent.”<sup>134</sup> While such provisions would not “necessarily mean more lead roles for females, [...] it would create a diverse onscreen demography reflecting a population comprised of 50 percent women and girls. In other words, reality.”<sup>135</sup>

### III. HOW INCLUSION RIDERS CAN IMPROVE EQUALITY IN MUSIC

Similar to filmmaking, it takes a great number of people in order to make music successful. Consequently, there are ample opportunities to include women in music, which artists can provide for in an inclusion rider. In doing so, it is crucial to recognize the existence of structural similarities and differences between film production and music production, such as the scope of production. For instance, the blockbuster film “Avatar” required 2,984 crew members to film.<sup>136</sup> In contrast, Cardi B’s *Invasion of Privacy*, for which she became the first female artist to

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132. *Id.*

133. *Feature Film Budget Breakdown*, The Take (Feb. 23, 2017), <http://parlaystudios.com/blog/feature-film-budget-breakdown/>; Stacy L. Smith, *Hey, Hollywood: It’s Time to Adopt the NFL’s Rooney Rule – for Women* (Guest Column), *Business* (Dec. 15, 2014), <https://www.hollywoodreporter.com/news/hey-hollywood-time-adopt-nfls-754659>.

134. *Id.*

135. *Id.*

136. Evan Luzzi, *The Size of a Hollywood Film Crew*, *Behind the Lens* (Mar. 21, 2014), <http://theblackandblue.com/2014/03/21/size-hollywood-crew/>.

have “all songs [...] certified gold or higher,” has less than 80 unique credits.<sup>137</sup> But with a few industry-specific alterations, the underlying provisions of the original USC Annenberg Inclusion Rider template can be easily transformed into provisions that will shape the music industry.<sup>138</sup>

#### *A. Inclusion Riders Can Increase the Presence of Female Songwriters*

When it comes to songwriting, a *Music Week* study of the Top 100 Singles of 2016 found that it takes an average of 4.53 songwriters to create the top songs, and 4.67 people to make the Top 30.<sup>139</sup> “Furthermore, 13% of 2016’s biggest 100 hits were credited to eight or more songwriters,” while three singles had 11 songwriting credits, and one single even listed twelve.<sup>140</sup> Thus, even when the artists themselves are involved in songwriting, that leaves on average at least three other spots that can be filled by women.

Beyoncé’s “Single Ladies (Put a Ring on It)” was hailed as one the best songs of 2008, “designed to get the women out on the dance floor.”<sup>141</sup> However, apart from Beyoncé, the

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137. Wandera Hussein, All songs on Cardi B’s *Invasion of Privacy* are now certified gold or higher, Hip-Hop (Dec. 20, 2018), <https://www.thefader.com/2018/12/20/cardi-b-invasion-of-privacy-all-tracks-certified>; *Invasion of Privacy*, AllMusic, <https://www.allmusic.com/album/invasion-of-privacy-mw0003166060/credits> (last visited Apr. 17, 2019).

138. Kalpana Kotagal et al., USC ANNENBERG INCLUSION INITIATIVE, *Inclusion Rider Template* (2018), available at <http://assets.uscannenberg.org.s3.amazonaws.com/docs/inclusion-rider-template.pdf>.

139. Mark Sutherland, *Songwriting: Why it takes more than two to make a hit nowadays*, Music Week (May 16, 2017), <http://www.musicweek.com/publishing/read/songwriting-why-it-takes-more-than-two-to-make-a-hit-nowadays/068478>.

140. *Id.*

141. *The 100 Best Singles of 2008*, Rolling Stone (Dec. 25, 2008), [https://web.archive.org/web/20090113082236/http://www.rollingstone.com/news/story/24947047/singles\\_of\\_the\\_year](https://web.archive.org/web/20090113082236/http://www.rollingstone.com/news/story/24947047/singles_of_the_year); Adam Mazmanian, *Beyoncé’s two faces*, The Washington Times (Nov. 18, 2008), <https://www.washingtontimes.com/news/2008/nov/18/beyonces-two-faces/>.

songwriters for this female anthem were entirely male.<sup>142</sup> Similarly, aside from Ariana Grande, the three additional songwriters credited on her popular track “God Is a Woman” are all men.<sup>143</sup> By contrast, on Halsey’s 2018 single “Without Me,” which has been certified Platinum by the Recording Industry Association of America (“RIAA”), three of the seven songwriters were female.<sup>144</sup>

Songwriting powerhouse Julia Michaels has written for top artists including Justin Bieber, Demi Lovato, and Ed Sheeran.<sup>145</sup> Colombian superstar Shakira has written or co-written some of the world’s top-selling songs, including one of the best-selling songs of the 21st century.<sup>146</sup> Singer-songwriter Alicia Keys, who was awarded the 2018 Songwriter Icon award by the National Music Publishers Association (“NMPA”), has written songs for many popular artists including Mario and Christina Aguilera.<sup>147</sup> These influential women demonstrate that, despite only 12.3% of *Billboard* Hot 100 songwriters being female, women are just as talented and just as capable of the same songwriting success as their male peers.<sup>148</sup> While out “of over

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142. American Society of Composers, Authors & Publishers, ACE Repertory, *Single Ladies*, <https://www.ascap.com/repertory#ace/search/workID/496106737>.

143. American Society of Composers, Authors & Publishers, ACE Repertory, *God Is A Woman*, <https://www.ascap.com/repertory#ace/search/workID/895190683>.

144. *Halsey, Without Me*, RIAA (Dec. 12, 2018), available at [https://www.riaa.com/gold-platinum/?tab\\_active=default-award&ar=Halsey&ti=Without+Me#search\\_section](https://www.riaa.com/gold-platinum/?tab_active=default-award&ar=Halsey&ti=Without+Me#search_section); American Society of Composers, Authors & Publishers, ACE Repertory, *Without Me*, <https://www.ascap.com/repertory#ace/search/workID/895686318>.

145. Tatiana Cirisano, *10 Songs You Didn’t Know Julia Michaels Co-Wrote*, *Billboard* (Aug. 8, 2017), <https://www.billboard.com/articles/columns/pop/7890227/julia-michaels-songs-you-didnt-know-wrote-justin-bieber-selena-gomez>.

146. *Shakira*, Latin Music USA, available at <http://www.pbs.org/wgbh/latinmusicusa/legends/shakira/> (last visited Jan. 2, 2019).

147. *Alicia Keys to be given NMPA Songwriter Icon Award*, Sony/ATV Music Publishing (May 3, 2018), <https://www.sonyatv.com/en/news/2095/alicia-keys-to-be-given-nmpa-songwriter-icon-award>; MARIO, *2 Train*, on MARIO (J Records 2002); CHRISTINA AGUILERA, *Impossible*, on STRIPPED (RCA Records 2003).

148. Stacy L. Smith et al., USC ANNENBERG INCLUSION INITIATIVE, *Inclusion in the Recording Studio? Gender and Race/Ethnicity of Artists, Songwriters & Producers across 600*

380 members of the Songwriters Hall of Fame, just two are black women,” women of all backgrounds have proven that they can create music for everyone,” and they deserve the same opportunities as men to do so.<sup>149</sup>

Adding even a single female to each writing team will help mend the needless gender disparity in songwriting. Thus, when entering into recording agreements, artists should require an inclusion rider with songwriter requirements. In doing so, the rider should require that at least one female songwriter and one songwriter from an underrepresented group be included on every track.

#### *B. Inclusion Riders Can Improve the Visibility of Female Producers and Engineers*

The second area with ample chances for gender inclusion is music production, which generally includes tasks such as arranging, tracking, editing, and mixing and mastering songs.<sup>150</sup> Depending on the project, the producer(s) may either complete these responsibilities themselves, or they may select people to carry out different duties.<sup>151</sup> Regardless, every song provides at least one opportunity for a female producer. In the event that producers choose to shop out the required tasks, even more opportunities arise to employ women in music.

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*Popular Songs from 2012-2017* (2018), available at

<http://assets.uscannenber.org/docs/inclusion-in-the-recording-studio.pdf>.

149. Carl Wiser, *Black Women Songwriters*, Songfacts Blog (Jan. 14, 2009), <https://www.songfacts.com/blog/writing/black-women-songwriters>.

150. Yoni Leviatan, *Making Music: The 6 Stages of Music Production*, Waves (July 27, 2017), <https://www.waves.com/six-stages-of-music-production>.

151. Cliff Goldmacher, *Producers: What They Do & Why You Should Consider Using One*, Songwriter 101 (Oct. 29, 2009), [https://www.bmi.com/news/entry/Producers\\_What\\_They\\_Do\\_Why\\_You\\_Should\\_Consider\\_Using\\_One](https://www.bmi.com/news/entry/Producers_What_They_Do_Why_You_Should_Consider_Using_One).

In the last ten years, “only two women, Lady Gaga and Taylor Swift, have landed on *Billboard*’s year-end Top Producers chart for their own songs.”<sup>152</sup> But other females have already proven their capabilities as successful producers. Katy Perry has enthusiastically reported that “her studio is run by a female engineer.”<sup>153</sup> WondaGurl, as a teenager, produced chart-topping singles including Travis Scott’s, “Antidote,” and received a Grammy for her contributions to Jay-Z’s *Magna Carta Holy Grail*.<sup>154</sup> Talented female producers are there, and they deserve not only visibility, but to be taken seriously.

Considered “the ultimate boys club of the music industry,” artists should request inclusion riders in recording agreements to increase the presence of female producers.<sup>155</sup> The new initiative proposed by the Recording Academy Task Force on Diversity and Inclusion provides a music perspective to the traditional Rooney Rule by asking “any entity or individual responsible for or involved in selecting and hiring producers and engineers to commit to making hiring decisions only after considering [...] at least two women.”<sup>156</sup> If only one producer is to be

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152. Melinda Newman, *Where Are All the Female Music Producers?*, *Billboard* (Jan. 19, 2018), <https://www.billboard.com/articles/business/8095107/female-music-producers-industry-grammy-awards>.

153. Dee Lockett, *The Grammys Are Trying to Bring Inclusion Riders to the Music Industry*, *Diversity* (Feb. 1, 2019), <https://www.vulture.com/2019/02/grammys-trying-to-bring-inclusion-riders-to-music-industry.html>.

154. Ebonie Smith, *Ebonie Smith: Why Are Female Music Producers Everywhere, Yet So Invisible?* (Guest Column), *Business* (Mar. 1, 2018), <https://www.billboard.com/articles/business/8221814/ebonie-smith-female-music-producers-everywhere-guest-column>.

155. Melinda Newman, *Where Are All the Female Music Producers?*, *Billboard* (Jan. 19, 2018), <https://www.billboard.com/articles/business/8095107/female-music-producers-industry-grammy-awards>.

156. *Recording Academy Task Force on Diversity and Inclusion Announces Industry-wide Inclusion Initiative to Expand Opportunities for Female Producers and Engineers*, (Feb. 1, 2019), <https://www.grammy.com/press-releases/recording-academy™-task-force-diversity-and-inclusion-announces-industry-wide>.

used, artists can require that at least one female and one member of an underrepresented group receive good-faith consideration for the position.

Alternatively, artists could request that multiple producers be used for the entire project, in which case the Recording Academy suggestion of considering at least two female producers could be implemented.<sup>157</sup> Otherwise, artists can specify that different producers should be utilized across different tracks, with two female producers being considered for each track. Artists might also consider requiring that a certain percentage or number of female producers actually be utilized across the designated number of tracks. In the event that separate mixers, editors, or other professionals be used, the inclusion rider should contain the same requirements for those roles.

These provisions would provide more opportunities for female producers, and help repair the significant gender imbalance amongst producers. To facilitate such practices, record labels, or any interested party, can easily reference “The EQL Directory, powered by SoundGirls, made possible by Spotify,” where female audio professionals can register with their name, resumé, location, skills, and work samples.<sup>158</sup> The EQL Directory currently has at least 332 female producer, 461 female recording engineer, and 392 female mix engineer profiles, which encompasses women located all around the globe.<sup>159</sup> Other female professionals that can be located on the EQL Directory include composers, songwriters, and DJ’s, as well as those who specialize in production positions such as sound design, vocal production.<sup>160</sup> It also allows users

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157. *Id.*

158. *Introducing The EQL Directory: A Database for Women and Gender Non-Conforming Audio Professionals*, News – Stories (Nov. 13, 2018), <https://artists.spotify.com/blog/introducing-the-eql-directory>.

159. *Breaking the sound barrier.*, EQL, <https://makeiteql.com> (last visited Apr. 17, 2019).

160. *Id.*

to search by location or by general or specific skills.<sup>161</sup> Soon, there will also be a Grammys “database of female producers and engineers, so men can’t say they didn’t know where to find them.”<sup>162</sup>

### *C. Inclusion Riders Can Improve the Lack of Females in Festivals and on Tours*

Lastly, inclusion riders can be applied to both touring and festival agreements. Many top artists participate in major, multi-million-dollar tours and festivals which present countless opportunities for females both on and off-stage. On-stage, artists are supported musically by both instrumentalists and backup vocalists. As one of the world’s highest-paid musicians, Bruno Mars makes a significant amount of his earnings from international tours.<sup>163</sup> Most recently, his 24K Magic World Tour was the fourth-highest-grossing tour of 2018.<sup>164</sup> But the eight-member band that accompanied Bruno Mars on tour did not include a single female backup vocalist or instrumentalist.<sup>165</sup> Similarly, on Taylor Swift’s Reputation Stadium Tour—the highest grossing

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161. *Id.*

162. Dee Lockett, *The Grammys Are Trying to Bring Inclusion Riders to the Music Industry*, Diversity (Feb. 1, 2019), <https://www.vulture.com/2019/02/grammys-trying-to-bring-inclusion-riders-to-music-industry.html>.

163. Ed Christman, *Billboard’s 2018 Money Makers: 50 Highest-Paid Musicians*, Billboard (July 20, 2018), <https://www.billboard.com/photos/8465835/highest-paid-musicians-money-makers>.

164. Eric Frankenberg, *The Year in Touring Charts: Ed Sheeran Claims 2018’s Top Tour; Taylor Swift, Beyoncé & Jay-Z Do Big Business*, Billboard (Dec. 5, 2018), <https://www.billboard.com/articles/events/year-in-music-2018/8488851/touring-charts-year-ed-sheeran-tops-taylor-swift-beyonce>.

165. *Everything you need to know about Bruno Mars’ band the Hooligans*, Food and Funk (May 2, 2017), <https://www.foodandfunk.com/home/everything-you-need-to-know-about-bruno-mars-band-the-hooligans>.

tour in United States history—while there were four female backup vocalists, all six instrumentalists were men.<sup>166</sup>

Headlining artists are also supported by opening acts on both personal tours as well as at music festivals. According to the *Huffington Post*, 51% of the 32 million people that attend United States music festivals annually are female.<sup>167</sup> But in a survey of the “artists booked across 23 of the summer’s biggest fests” of 2018, only 25% “were female or groups with at least one female member.”<sup>168</sup> At the same time, these elaborate shows often require hundreds of workers behind the scenes, including audio engineers, recording engineers, tour managers, production managers and assistants, stage managers, and instrument technicians.<sup>169</sup> Thus, tours and festivals have the potential to provide one of the largest opportunities for female employment in music.

Between instrumentalists, backup vocalists, and opening acts on-stage, and the extensive positions available off-stage, artists should require that any touring or festival agreements contain an inclusion rider. Such riders should mandate that at least one female and one person from an underrepresented group be auditioned, and consider good-faith consideration for each instrumental and backup vocal position. For opening acts and festival lineups, artists can condition involvement on a certain number or percentage of participants being female and from an underrepresented background. Lastly, at least one female and one underrepresented person

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166. Brittany Hodak, *Taylor Swift Breaks U.S. Record With ‘Reputation’ Stadium Tour*, *Forbes* (Nov. 30, 2018), <https://www.forbes.com/sites/brittanyhodak/2018/11/30/taylor-swift-breaks-u-s-record-with-reputation-stadium-tour/#4a67b501348e>; *The Swift Agency Blog*, available at <https://theswiftagency.com/profiles/>.

167. Alanna Vagianos, *Music Festivals’ Glaring Woman Problem*, *The Huffington Post* (May 25, 2016), <http://data.huffingtonpost.com/music-festivals>.

168. Rob Mitchum and Diego Garcia-Olano, *Tracking the Gender Balance of This Year’s Music Festival Lineups*, *Pitchfork* (May 1, 2018), <https://pitchfork.com/features/festival-report/tracking-the-gender-balance-of-this-years-music-festival-lineups/>.

169. *Find Your Next Gig*, *Tour Ready*, <https://www.tourready.com/get-hired/> (last visited Jan. 2, 2019).

should be interviewed in good-faith for each off-stage role. Overall, the entity responsible for running the tour or festival should be required to use all reasonable efforts to hire “qualified and available individuals who have been underrepresented in that position and where those roles were not filled prior to the involvement of” the artist.<sup>170</sup> In making these demands, artists will help achieve equality for female tour and festival participants.

#### IV. POTENTIAL OBSTACLES OF IMPLEMENTING INCLUSION RIDERS IN THE MUSIC INDUSTRY AND THE LIMITATIONS OF THIS RESEARCH

One potential obstacle to the implementation of inclusion riders is the likely reluctance of major record labels to agree to such provisions. Recognizing both industry shortcomings, as well as its own deficiencies, the Grammys recently established an initiative which “asks that anyone responsible for hiring producers and engineers – be it a record label, artist, or A&R person – only make their final decision after considering a pool of candidates that includes at least two women.”<sup>171</sup> But the fact that this initiative is purely a recommendation, and not a binding legal provision, is indicative of a likely roadblock to the employment of inclusion riders in the music industry.<sup>172</sup>

Record labels stand to gain substantial benefits from adopting inclusion riders, such as increased creativity or positive public relations. But convincing them that such benefits outweigh voluntarily subjecting themselves to potential monetary damages for non-compliance could be an

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170. Stacy L. Smith et al., USC ANNENBERG INCLUSION INITIATIVE, *Inclusion in the Recording Studio? Gender and Race/Ethnicity of Artists, Songwriters & Producers across 600 Popular Songs from 2012-2017* (2018), available at <http://assets.uscannenberg.org/docs/inclusion-in-the-recording-studio.pdf>.

171. Dee Lockett, *The Grammys Are Trying to Bring Inclusion Riders to the Music Industry*, Diversity (Feb. 1, 2019), <https://www.vulture.com/2019/02/grammys-trying-to-bring-inclusion-riders-to-music-industry.html>.

172. *Id.*

uphill battle in an industry where artists are routinely required to sign away the rights to their own recordings.<sup>173</sup> Musical festivals and tour productions companies have expressed similar reluctance to commit to inclusion riders.

When approached about joining the Keychange initiative, a Glastonbury festival co-organizer tried to reason that, “it’s impossible to make a pledge like this.”<sup>174</sup> Meanwhile Roskilde representatives refused to commit to “quotas” but would “[present] inspiring “role models” on stage.”<sup>175</sup> Other various reasons cited for the opposition of music inclusion riders include that there are not as many female musicians, producers, or songwriters. While “the BBC Proms [...] has pledged to ensure half of the classical pieces it commissions each year are from female composers,” it will not commit to achieving the same targets for its performers.<sup>176</sup>

To that end, the introduction of inclusion riders into music alone is also not likely to be an automatic solution to gender inequality. Such contractual provisions, without more, might not foster “an environment where women [feel] welcome.”<sup>177</sup> Therefore, inclusion rider policies should also be accompanied by other tactics designed to “foster systematic change,” such as “mentorship programs.”<sup>178</sup> Many various reasons cited for the opposition of music inclusion

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173. Awal, *Why Owning Your Master Recordings Means Everything*, (Sept. 19, 2018), <https://www.awal.com/blog/maintaining-ownership-rights-as-an-artist>.

174. Alex Marshall, *Some Music Festivals Balk at Booking 50% Female Acts. One Just Did It.*, Music (July 26, 2018), <https://www.nytimes.com/2018/07/26/arts/music/women-music-festival-iceland-airwaves.html>.

175. *Id.*

176. Alex Marshall, *Some Music Festivals Balk at Booking 50% Female Acts. One Just Did It.*, Music (July 26, 2018), <https://www.nytimes.com/2018/07/26/arts/music/women-music-festival-iceland-airwaves.html>.

177. Stacy L. Smith et al., USC ANNENBERG INCLUSION INITIATIVE, *Inclusion in the Recording Studio? Gender and Race/Ethnicity of Artists, Songwriters & Producers across 700 Popular Songs from 2012-2018* (2019), available at <http://assets.uscannenberg.org/docs/aii-inclusion-recording-studio-2019.pdf>.

178. *Id.*

riders highlight the importance of providing education to record labels, music publishers, and touring companies on the facts.<sup>179</sup> Some of the general misconceptions evident in the industry include that there are not as many female artists, that female artists do not sell, “a lot of bands with women in them just aren’t as good,” and that giving slots to women would take away spots from deserving males.<sup>180</sup> But even a brief glance of the facts contained herein serves to dispel these troubling misconceptions. Many people both inside and outside the music industry remain unaware of the relevant statistics, and should receive the proper education to become more informed.

Another inadvertent problem that could potentially arise in relation to inclusion riders for both the music and film industries is that while successful implementation might increase gender equality, it could simultaneously produce financial inequalities. Because inclusion riders do not address the financial compensation of any females or people from underrepresented racial or ethnic groups, the possibility arises “that the biggest increase in diversity will happen at the lowest level of influence (and income).”<sup>181</sup> Another harsh criticism of inclusion riders are that it is merely a quota system.<sup>182</sup> By pushing organizations to achieve certain idealistic benchmarks, a concern arises that to meet contractual obligations, those responsible for hiring could resort to quantity over quality.

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179. Megan Seling, *In which I address every bad argument I’ve heard against booking more women at music festivals*, Festival Fits (Apr. 9, 2015), <https://www.nashvillescene.com/arts-culture/vodka-yonic/article/13058734/in-which-i-address-every-bad-argument-ive-heard-against-booking-more-women-at-music-festivals>.

180. *Id.*

181. Tess S. Skadegard Thorsen, *7 Problems with Inclusion Riders*, (Mar. 21, 2018), [https://medium.com/@tess\\_thorsen/7-problems-with-inclusion-riders-891f92e2cdc3](https://medium.com/@tess_thorsen/7-problems-with-inclusion-riders-891f92e2cdc3).

182. Christine Rosen, *‘Inclusion Riders’ Are Just Quotes (And They’re Never Going to Happen)*, (Mar. 5, 2018), <https://www.weeklystandard.com/christine-rosen/inclusion-riders-are-just-quotas-and-theyre-never-going-to-happen>.

Lastly, it is important to note that while other underrepresented groups are beyond the scope of this research, inclusion riders can and should be used similarly to increase equality for other frequently discriminated against groups, such as members of the LGBTQ community, as well as individuals with disabilities.<sup>183</sup> In addition, although only male and female biological sexes are addressed herein, gender identities, such as trans and gender nonconforming, must also be considered.<sup>184</sup> Limitations to the scope of this research presented must also be acknowledged, as there are minimal official research studies that have analyzed gender inclusion in the music industry. Since there has yet to be actual implementation of an inclusion rider in music, any predictions about its success, although informed by the success of inclusion riders in film, should be considered merely speculative.

## CONCLUSION

Artists must demand inclusion riders in order to increase gender diversity in the music industry. While the past year has been marked with noticeable instances of organizations attempting to implement reparations for a long history of female exclusion, the majority of statistics still demonstrate a huge gender gap in the music industry. Four years ago, a “radio consultant encouraged stations to play fewer female singers for higher ratings.”<sup>185</sup> It was just last

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183. Julie Moreau, *Most LGBTQ Americans experience harassment, discrimination, Harvard study finds*, Out News (Nov. 26, 2017), <https://www.nbcnews.com/feature/nbc-out/most-lgbtq-americans-experience-harassment-discrimination-harvard-study-finds-n823876>; Shaun Heasley, *Workplace Disability Discrimination Complaints Decline*, (Apr. 16, 2019), <https://www.disabilitycoop.com/2019/04/16/workplace-disability-discrimination-complaints-decline/26424/>.

184. Courtney E. Smith, *Will Any Music Awards Shows Get Representation For Women Right? None Have Yet.*, Music (Oct. 10, 2018), <https://www.refinery29.com/en-us/2018/10/213585/ama-awards-women-political-statements-taylor-swift-cardi-b>.

185. Emily Yahr, *The ACM Awards were another glaring spotlight on the lack of opportunities for women in country music*, Pop Culture (Apr. 9, 2019), [https://www.washingtonpost.com/arts-entertainment/2019/04/09/acm-awards-were-another-glaring-spotlight-lack-opportunities-women-country-music/?utm\\_term=.721325e2d94d](https://www.washingtonpost.com/arts-entertainment/2019/04/09/acm-awards-were-another-glaring-spotlight-lack-opportunities-women-country-music/?utm_term=.721325e2d94d).

year, when Alessia Cara was the only female presented a solo award at the 2018 Grammys, and Neil Portnow the then-President/CEO of the Recording Academy proclaimed, “women who [...] want to be musicians, who want to be engineers, producers, and want to be part of the industry on the executive level... [They need] to step up.”<sup>186</sup>

Although the new Recording Academy President/CEO is female, which could signify the potential for a dawn of inclusionary change, the statistics herein demonstrate that there is still a long road to gender equality in music.<sup>187</sup> But, as Julie Greenwald, Chairman/COO of Atlantic Records, proclaimed in her 2017 *Billboard* Women in Music Executive of the Year acceptance speech, “[f]or a long time [the music] industry has been a male-dominated sport. Now more than ever, it is incumbent on every one of us to raise up the next generation of female leaders.”<sup>188</sup>

Within mere hours after Frances McDormand’s igniting speech, Brie Larson became the first “high-profile actress” to publicly commit to inclusion riders.<sup>189</sup> Shortly thereafter, numerous Hollywood A-listers, including Michael B. Jordan, Ben Affleck, and Matt Damon, also “publicly

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186. Michele Amabile Angermiller, *Grammys So Male? ‘Women Need to Step Up,’ Says Recording Academy President*, Awards (Jan. 28, 2018), <https://variety.com/2018/music/news/grammys-so-male-women-recording-academy-president-neil-portnow-1202679902/>.

187. Dave Brooks & Gail Mitchell, *Deborah Dugan Selected to Succeed Neil Portnow as Recording Academy President/CEO: Sources*, (Apr. 12, 2019), <https://www.billboard.com/articles/business/8506967/deborah-dugan-succeed-neil-portnow-recording-academy-president-ceo>.

188. Taylor Weatherby, *Atlantic Records’ Julie Greenwald Accepts Executive of the Year Award at Billboard Women in Music 2017*, *Billboard* (Nov. 30, 2017), <https://www.billboard.com/articles/events/women-in-music/8054803/atlantic-records-chairman-julie-greenwald-executive-of-the-year-award-speech>.

189. *Why an ‘inclusion rider’ is the answer we need now*, USC Annenberg School for Communication and Journalism (Mar. 5, 2018), <https://annenberg.usc.edu/research/why-inclusion-rider-answer-we-need-now>; Brie Larson (@brielarson), Twitter (Mar. 5, 2018, 12:05am), <https://twitter.com/brielarson/status/970525707553030144>.

pledged to adopt inclusion riders going forward.”<sup>190</sup> Brie Larson went on to star in *Captain Marvel*, “Marvel Studios’ first woman-led superhero movie” which “brought in \$455 million worldwide” in its opening weekend alone.<sup>191</sup> Taking her commitment beyond just her on-screen contract, Brie Larson was also committed to “equal representation for female, BAME, and disabled journalists, stylists, social media teams, photographers, designers and hair and makeup artists,” in connection with the press tour.<sup>192</sup>

Thereafter, Brie Larson filmed *Just Mercy* alongside fellow inclusion rider advocate Michael B. Jordan.<sup>193</sup> Commencing with the production of *Just Mercy*, “Warner Bros [became] the first major Hollywood studio to adopt a company-wide policy meant to increase diversity on and of screen [...] which will also apply to sister companies HBO and Turner.”<sup>194</sup> Overall, “[*Just Mercy*] was made with more than 70% people of color,” showing that A-list stars have the power to directly influence inclusion in entertainment.<sup>195</sup> Additionally, prominent Hollywood talent agency, William Morris Endeavor Entertainment, has been working directly with Stacy L. Smith to further the development and implementation of inclusion riders, vowing to introduce the

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190. Sarah Spellings, *These Actors Are Making Equality Part of Their Contracts*, The Cut (Mar. 13, 2018), <https://www.thecut.com/2018/03/who-has-an-inclusion-rider.html>.

191. Alex Abad-Santos, *Captain Marvel has made \$760 million worldwide. \$1 billion is in its sights.*, (Mar. 18, 2019), <https://www.vox.com/culture/2019/3/18/18270034/captain-marvel-box-office-760-million>.

192. Hannah-Rose Yee, *Brie Larson is using inclusion riders in the most inspiring way on Captain Marvel*, People (Dec. 4, 2018), <https://www.stylist.co.uk/people/brie-larson-inclusion-rider-captain-marvel-diversity/240623>.

193. *Id.*

194. Sam Levin, *Warner Bros to launch ‘inclusion rider’ diversity policy with Michael B Jordan film*, Film – Warner Bros (Sept. 5, 2018), <https://www.theguardian.com/film/2018/sep/05/warner-bros-adopts-company-wide-inclusion-policy-to-boost-diversity>.

195. *Id.*

concept in all of its client negotiations.<sup>196</sup> Now, the time has come for the music industry to follow suit.

Like Michael B. Jordan and Brie Larson did in film, musicians like Taylor Swift have similarly proven that artists have the power to change the music industry.<sup>197</sup> In 2014, “[Taylor] Swift famously removed all [of] her music from Spotify.”<sup>198</sup> When signing her latest recording agreement with Universal Music Group’s Republic Records, Taylor Swift required a contractual provision that would cause the largest record label in the world to distribute millions of dollars to its artists on a non-recoupable basis in the event that Universal Music Group ever decides to sell its Spotify shares.<sup>199</sup> Taylor Swift also induced her label to allow her to retain ownership of any master recordings she creates going forward, a move virtually unheard of in traditional recording agreements with major labels.<sup>200</sup> One can only imagine what changes an artist with superior bargaining power like Taylor Swift could effectuate by demanding inclusion riders so that the voices of women in music can be heard.

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196. Rebecca Sun, *Ari Emanuel: “It is Imperative That WME Supports Inclusion Rider,”* The Hollywood Reporter (Mar. 14, 2018), <https://www.hollywoodreporter.com/news/ari-emanuel-it-is-imperative-wme-supports-inclusion-rider-1094349>.

197. Hannah-Rose Yee, *Brie Larson is using inclusion riders in the most inspiring way on Captain Marvel*, People (Dec. 4, 2018), <https://www.stylist.co.uk/people/brie-larson-inclusion-rider-captain-marvel-diversity/240623>; Rachel England, *Taylor Swift ensures UMG artists will profit from Spotify Shares*, Engadget Blog (Nov. 20, 2018), <https://www.engadget.com/2018/11/20/taylor-swift-umg-artists-profit-spotify-shares/>.

198. Luke Morgan Britton, *Spotify boss explains how he convinced Taylor Swift to return to the streaming service*, Music News (Apr. 3, 2018), <https://www.nme.com/news/music/spotify-boss-daniel-ek-talks-taylor-swift-streaming-return-2280169>.

199. Constance Grady, *What Taylor Swift’s new record deal means for the music industry – and for her image*, Vox (Nov. 19, 2018), <https://www.vox.com/culture/2018/11/19/18102856/taylor-swift-record-deal-republic-records>.

200. *Id.*; Awal, *Why Owning Your Master Recordings Means Everything*, (Sept. 19, 2018), <https://www.awal.com/blog/maintaining-ownership-rights-as-an-artist>.