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## **JAY Z 4:44 HIGHLIGHTS RACIAL DISPARITY IN COPYRIGHT & ENTREPRENEURSHIP IN THE ENTERTAINMENT FIELD**

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IN THE ENTERTAINMENT FIELD

Nathacha Bien-Aime\*

I. INTRODUCTION

Historically, there has been disparity between White-Americans (“Whites”) and Black-Americans (“Blacks”) throughout all aspects of life in the United States. Even today, Whites are still more financially secure than Blacks.<sup>1</sup> Some have even been suggested that property law was never created to protect the black community.<sup>2</sup> “At the time of the enactment of the first intellectual property statutes, most Blacks in America remained in slavery, unable to own any type of property.”<sup>3</sup> Consequently, such deprivation of Blacks’ property rights has now transcended into areas of Copyright Law & Entrepreneurship.”<sup>4</sup>

In the entertainment industry, a significant difference remains between entrepreneurship roles and copyright ownership among Blacks versus those among Whites.<sup>5</sup> Despite the large proportion of Blacks in the music and sports industries, Blacks nevertheless remain the minority in leadership roles at major record labels, sports associations, and in defending intellectual property rights.<sup>6</sup> An underlying issue seems to be causing this racial inequality—notwithstanding a vast

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<sup>1</sup> Peter Coy, *The Big Reason Whites Are Richer Than Blacks in America*, BLOOMBERG (Feb. 8, 2017, 5:00AM), <https://www.bloomberg.com/news/articles/2017-02-08/the-big-reason-whites-are-richer-than-blacks-in-america> (stating that whites are wealthier than blacks in America); *see also* David Brancaccio & Jana Kasperkevic, *Millennials of Color Are Worse Off Financially*, MARKET PLACE (Jun. 28, 2017, 6:00AM), <https://www.marketplace.org/2017/06/28/your-money/financially-secure-white-millennials-feel-held-back> (arguing that millennials of color are worse off financially than white millennials).

<sup>2</sup> Michael Pollak, *Determining the Legal Rights of Slaves*, NY TIMES (Mar. 27, 2014, 6:00AM), <https://www.nytimes.com/2014/03/30/nyregion/determining-the-legal-rights-of-slaves.html> (discussing slaves’ lack of legal rights); *see also*, *The Dred Scott Decision*, DIGITAL HISTORY, [http://www.digitalhistory.uh.edu/disp\\_textbook.cfm?smtid=2&psid=3282](http://www.digitalhistory.uh.edu/disp_textbook.cfm?smtid=2&psid=3282) (Updated 2016) (reiterating the Supreme Court’s then-holding that slaves considered property).

<sup>3</sup> K.J. Greene, *Article: Copyright, Culture & Black Music: A Legacy of Unequal Protection*, 21 HASTINGS COMM. & ENT. L.J. 339, 346 (1999) (stating that intellectual property rights were not originally intended to protect blacks).

<sup>4</sup> K.J. Greene, *Intellectual Property at the Intersection of Race and Gender: Lady Sings the Blues*, 16 AMER.UNIV. L.J. 365, 366 (2008) (discussing how the treatment of indigenous peoples shares a commonality with the IP deprivations of blacks and women); *See* Cecillia Kang, Krissah Thompson & Drew Harwell, *Hollywood’s Race Problem*, THE WASHINGTON POST (Dec. 23, 2014), [https://www.washingtonpost.com/business/economy/hollywoods-race-problem-an-insular-industry-struggles-to-change/2014/12/19/d870df04-8625-11e4-9534-f79a23c40e6c\\_story.html?utm\\_term=.871129bc81f1](https://www.washingtonpost.com/business/economy/hollywoods-race-problem-an-insular-industry-struggles-to-change/2014/12/19/d870df04-8625-11e4-9534-f79a23c40e6c_story.html?utm_term=.871129bc81f1) (explaining that black-made films struggled to obtain financing from major movie studios); *see also* Laura Santhanam & Megan Crigger, *Out of 30,000 Hollywood Film Characters, Many Were White*, PBS (Sep. 22, 2015, 11:09 AM), <http://www.pbs.org/newshour/rundown/30000-hollywood-film-characters-heres-many-were-white/> (reflecting on the disproportion in film and television with few minorities as characters); *see generally* Connie Evans, *Black Entrepreneurs Are The Key to Reducing Wealth Inequality*, HUFFINGTON POST (May. 1, 2017, 1:50 PM) (updated May 4<sup>th</sup>), [http://www.huffingtonpost.com/entry/black-entrepreneurs-are-the-key-to-reducing-wealth\\_us\\_59076bf8e4b084f59b49fb5a](http://www.huffingtonpost.com/entry/black-entrepreneurs-are-the-key-to-reducing-wealth_us_59076bf8e4b084f59b49fb5a).

<sup>5</sup> Greene, *supra* note 4.

<sup>6</sup> Paul Resnikoff, *The Music Industry: It’s Still a White Boy’s Club*, DIGITAL MUSIC NEWS (Jan. 20, 2014), <https://www.digitalmusicnews.com/2014/01/20/whiteboysclub/>; *see generally* Jim Edwards, *CHARTS: White People Are No Longer Relevant In Pop Music Sales*, BUSINESS INSIDER (Mar. 10, 2012, 1:08 PM),

amount of wealth accumulated by some of the most prominent Blacks, leadership positions remain difficult to come by in the entertainment industry.<sup>7</sup>

### A. DISPARITY IN SPORTS ENTERTAINMENT

Like the music and entertainment industry, there are gaps between Blacks' and Whites' leadership and position roles within sports. In one example, National Football League (NFL) player, Colin Kaepernick, lost an offer in 2017 after his girlfriend posted a picture on Twitter insinuating that Kaepernick's former coach, Steve Bisciotti, was a slave master.<sup>8</sup> As shocking as the tweet may have been, the aftermath and its ensuing results emphasized the inconsistencies in the NFL's execution of punishment.<sup>9</sup>

Currently, approximately 70% of American athletes in sports such as basketball and football are black males.<sup>10</sup> Each league is a multi-billion-dollar business;<sup>11</sup> however, those who profit the most in each respective league are often a select number of white team-owners.<sup>12</sup>

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<http://www.businessinsider.com/charts-white-people-are-no-longer-relevant-in-pop-music-in-terms-of-sales-2012-3>; H.A. Goodman, *70 Percent of NFL Players Are Black Men. Colin Kaepernick Should Be Praised, Not Condemned*, HUFFINGTON POST (Sept. 1, 2016, 1:19 AM), [http://www.huffingtonpost.com/entry/70-of-nfl-players-are-black-men-colin-kaepernick\\_us\\_57c7b12be4b07addc4114047](http://www.huffingtonpost.com/entry/70-of-nfl-players-are-black-men-colin-kaepernick_us_57c7b12be4b07addc4114047) (stating that majority of NFL players are blacks).

<sup>7</sup> See Johnnie L. Roberts, *Music's Racial Divide: An Industry Built on Black Talent Still Lacks Executives*, THE WRAP (Jun. 14, 2011, 8:48 PM) (updated 10:30PM), <http://www.thewrap.com/looming-appointments-will-end-disappearance-top-black-label-executives-28159/> (contending that despite contributions made by blacks, top label executives are mostly white; see also Lindsey Jones, *The Entertainment Industry and Racism*, SCIENCE LEADERSHIP (Nov. 9, 2014, 7:41 PM), [https://scienceleadership.org/blog/the\\_entertainment\\_industry\\_and\\_racism](https://scienceleadership.org/blog/the_entertainment_industry_and_racism) (stating that the entertainment industry is inherently racist).

<sup>8</sup> Jay Busbee, *Ray Lewis: Colin Kaepernick's Girlfriend Cost Him a Job in Baltimore*, YAHOO SPORTS (Sep. 6, 2017, 9:07 AM), <https://sports.yahoo.com/ray-lewis-colin-kaepernicks-girlfriend-cost-job-baltimore-130747089.html>; see also Jamison Hensley, *Ray Lewis Said Ravens Would Have Signed Colin Kaepernick If Not For Girlfriend's Tweet*, ESPN (Sept. 6, 2017), [http://www.espn.com/nfl/story/\\_id/20597810/ray-lewis-said-baltimore-ravens-sign-colin-kaepernick-girlfriend-racist-tweet](http://www.espn.com/nfl/story/_id/20597810/ray-lewis-said-baltimore-ravens-sign-colin-kaepernick-girlfriend-racist-tweet).

<sup>9</sup> Jordan Raanan, *Josh Brown on Allegations of Domestic Violence: 'I never hit her'*, ESPN (Feb. 2, 2017), [http://www.espn.com/nfl/story/\\_id/18604215/former-new-york-giants-kicker-josh-brown-admits-domestic-violence-denies-hitting-wife](http://www.espn.com/nfl/story/_id/18604215/former-new-york-giants-kicker-josh-brown-admits-domestic-violence-denies-hitting-wife) (discussing Kicker Josh Brown who admitted to physically abusing his wife, but received only received a one game suspension).

<sup>10</sup> See Goodman, *supra* note 6; Charles Mudede, *Why The Overrepresentation of Black Americans in Professional Sports Is Not A Good Thing*, THE STRANGER (Sep. 25, 2017), <https://www.thestranger.com/slog/2017/09/25/25432524/why-the-over-representation-of-black-americans-in-professional-sports-is-not-a-good-thing> (stating that 65 percent blacks in basketball and 70 percent in football).

<sup>11</sup> See Mike Florio, *NFL Will Reach \$14 Billion in 2017 Revenue*, PRO FOOTBALL TALK (Mar. 6, 2017, 11:29 AM), <http://profootballtalk.nbcsports.com/2017/03/06/nfl-will-reach-14-billion-in-2017-revenue/> (stating that the NFL has a revenue of fourteen billion dollars); Kurt Badenhausen, *NBA Team Value 2018: Every Club Now Worth \$1 Billion*, FORBES (Feb. 7, 2018), <https://www.forbes.com/sites/kurtbadenhausen/2018/02/07/nba-team-values-2018-every-club-now-worth-at-least-1-billion/#648aa9d71558> ("The average [NBA] team is worth a record \$1.65 billion, 22% more than last year, and every team is worth at least \$1 billion for the first time[.]" and that "the average NFL franchise is worth \$2.5 billion.").

<sup>12</sup> See *supra* Roberts note 7 (stating that white people profit the most in the entertainment industry); *Id.* (stating that majority of entertainment executives are white); Mona Chalabi, *Three Leagues, 92 Teams And One Black Principal*, FIVETHIRTYEIGHT (Apr. 28, 2014), <https://fivethirtyeight.com/features/diversity-in-the-nba-the-nfl-and-mlb/> ("[2] percent of the league's majority owners (of the NBA's 49 majority owners, Michael Jordan of the Charlotte Bobcats was the only person of color. . . .) and the majority owners in the NFL were all white).

## B. JAY-Z'S 4:44 ALBUM ON COPYRIGHT AND ENTREPRENEURSHIP

Rapper Jay-Z recently released his thirteenth studio album titled 4:44, where he discusses the lack of black entrepreneurship in the music industry.<sup>13</sup> Jay-Z suggests various ways in which Blacks may obtain the same financial freedom as their white counterparts: through investments, entrepreneurship, and internally, by putting money back into their communities.<sup>14</sup> Jay-Z also addresses his own personal copyright issues in the entertainment industry by describing the current legal dispute between his music streaming service, Tidal, and the late Prince's estate, over who has the legal rights to Prince's music.<sup>15</sup> Prior to the iconic musician's unfortunate death, Prince gave Jay Z the exclusive rights to his catalog of music because he believed in the purpose of Tidal: giving artists a large percentage of their royalties as opposed to record labels reaping most of the benefits from an artist's work.<sup>16</sup>

Statistically, there is a significant difference in the rates Whites and Blacks register their copyrights.<sup>17</sup> The amount of work Blacks put in compared to the amount of wealth White leaders reap from capitalizing on that work is vastly disproportionate.<sup>18</sup> Minorities often do not know their rights when they first sign deals, which leaves them in more vulnerable positions than their white counterparts.<sup>19</sup>

Jay Z discusses several factors that contribute to these issues, such as lack of knowledge in the black community, lack of solidarity and unity, and many years of slavery and systematic

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<sup>13</sup> See Elias Leight, et. al., *Jay-Z's '4:44': A Track-by-Track Guide*, ROLLING STONE (Jun. 30, 2017), <http://www.rollingstone.com/music/lists/jay-zs-444-a-track-by-track-guide-w490408> (referencing the artist's discussion on issues facing blacks).

<sup>14</sup> See Courtney Connley, *3 Money Lessons From Jay-Z's 4:44*, CNBC (Jun. 30, 2017, 4:15 PM), <https://www.cnbc.com/2017/06/30/3-money-lessons-from-jay-zs-444.html>; Spencer Kornhaber, *Jay-Z's Pitch for Generalizational Wealth*, THE ATLANTIC (Jun. 30, 2017, 4:15 PM), <https://www.theatlantic.com/entertainment/archive/2017/06/jay-zs-pitch-for-generational-wealth/532383/>

<sup>15</sup> See Elias Leight, et. al., *supra* note 21; Anna Gaca, *Prince's Estate Sues Jay-Z*, SPIN (Nov. 16, 2016) <https://www.spin.com/2016/11/prince-estate-jay-z-tidal-lawsuit/>

<sup>16</sup> See Todd Spangler, *Prince Lauded as Genius by Jay Z's Tidal*, VARIETY (Apr. 21, 2016, 1:51PM), <http://variety.com/2016/digital/news/prince-tidal-streaming-1201758524/> (stating that Tidal pledges more artist-friendly economic terms than competing services); Abigail Tracy, *Prince Yanked His Music From Every Streaming Service Except Tidal*, FORBES (Jul. 2, 2015, 10:52PM), <https://www.forbes.com/sites/abigailtracy/2015/07/02/prince-yanked-his-music-from-every-streaming-service-except-tidal/#6bfb71593990> (noting that Prince took his music off every streaming service except Tidal).

<sup>17</sup> Greene, *supra* note 4; See also Robert Brauneis and Dotan Oliar, *An Empirical Study Of The Race, Ethnicity, Gender and Age of Copyright Registrants*, 86 GEO. WASH. L. REV. 101, 126 (2018) (suggesting "black individuals register music at significantly higher rates than that of members of any other race. . . [and] suggests that whites register textual works at a rate significantly higher than that of either blacks or Hispanics.").

<sup>18</sup> See Todd Spangler, *supra* note 28 ("Prince said in a November 2015 interview with the Guardian, 'Tell me a musician who's got rich off digital sales. Apple's doing pretty good though, right?'); See Greene, *supra* note 4 at 373 ("This cultural appropriation of black art set a long-standing pattern wherein 'large financial gains were made by white musicians playing black music to essentially white audiences.'").

<sup>19</sup> See Roger Schuelter, *White Singers Paid The Fees, But Black Singers Didn't Get The Money*, BELLEVILLE NEWS-DEMOCRAT (Feb. 23, 2017 9:00 AM), <http://www.bnd.com/living/liv-columns-blogs/answer-man/article134070984.html> (discussing the corruption in the entertainment field);

inequalities targeting Blacks.<sup>20</sup> However, a deeper issue is the lack of equal protection of rights,<sup>21</sup> or more specifically, the lack of equal protection in intellectual property rights and economic liberty.<sup>22</sup> By acknowledging that there is a fundamental right in a person's economic liberty subject to constitutional protection, a solution may be implemented to help close the disparity. This ultimate goal may be attained by Congress using its power under the Commerce Clause to regulate Interstate Commerce and implement an affirmative action plan similar to plans Congress has implemented with education.<sup>23</sup>

## II. BACKGROUND

For many years there have been “systematic takings of [the intellectual] property of [B]lacks.”<sup>24</sup> Although property laws in the United States have been “preoccupied with preventing ‘takings’ of property,”<sup>25</sup> Blacks have not been protected to the same degree as their White counterparts regarding property rights.<sup>26</sup>

Black music artists created genres such as Jazz, Rock and Roll, and Hip Hop. Eventually, Hip Hop became mainstream with artists like Mariah Carey, who helped bridge the music gap in the early nineties.<sup>27</sup> However, despite the popularity and profitability of artists such as Michael Jackson, Whitney Houston, Prince, and Mariah Carey in the nineties, they were still signed onto record labels majority-owned by Whites instead of being independent or owning their own label.<sup>28</sup>

Soon after, artists such as LA Reid, Sean “P. Diddy” Combs, and Jay Z began to assume roles previously inaccessible to Blacks—those of music executives and record label owners. While these artists' step into the next level was an improvement toward entrepreneurship in the Entertainment Industry, black and other minority record label executives were still outnumbered

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<sup>20</sup> See Elias Leight, et. al., *supra* note 23 (stating that Jay Z mentions if blacks work together they will be more successful economically); *Id.* (stating blacks need to support each other).

<sup>21</sup> See Marie Claire, *The Truth About Racism In The Music Industry*, MARIE CLAIRE (Feb. 2, 2016), <http://www.marieclaire.co.uk/news/the-truth-about-racism-in-the-music-industry-61640> (stating that the music industry is racist); *Id.* (stating that blacks do not get treated equally to whites).

<sup>22</sup> See George Thomas, *Economic Liberty in the Courts*, NATIONAL AFFAIRS (2015), <http://www.nationalaffairs.com/publications/detail/economic-liberty-in-the-courts> (stating that the framers intended to protect economic liberty); *Id.* (contending that economic liberty can be protected under the Fourteenth Amendment).

<sup>23</sup> *Id.*

<sup>24</sup> See Alan Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049 (1978).

<sup>25</sup> See U.S. Const. *amend.* V..

<sup>26</sup> See *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978) (finding “during most of the past 200 years, the Constitution as interpreted by this Court did not prohibit the most ingenious and pervasive forms of discrimination against the Negro . . . the position of the negro today in America is the tragic but inevitable consequence of centuries of unequal treatment.”).

<sup>27</sup> See Brannon Smith, *Hip Hop and High Notes*, EBONY (Aug. 19, 2015), <http://www.ebony.com/entertainment-culture/hip-hop-and-high-notes-25-years-of-mariah-carey-532#axzz4v42Uq4Jy> (stating that Mariah Carey was one of the artists that created the transition of hip hop to mainstream music).

<sup>28</sup> See Emily Barker, *The 20 Biggest Recording Contracts of All Time*, NME (Nov. 1, 2013), <http://www.nme.com/photos/the-20-biggest-recording-contracts-of-all-time-1409997> (discussing the record label contracts of world-famous artists such as Michael Jackson, Whitney Houston, Prince, and Mariah Carey).

by a large percentage of Whites.<sup>29</sup> In 2015, Billboard released a list of the Top 100 Powerful Music Executives in the field wherein only twelve Black music executives graced the list, some of which were listed together, such as LA Reid and Sylvia Rhone.<sup>30</sup>

Statistics within the realm of sports are eerily similar, where there has existed a glaring disparity for much of sports' history.<sup>31</sup> Since the NFL's existence, only one minority owner has owned a football team.<sup>32</sup> When one reconciles this remarkable disparity with the fact that approximately 70% of NFL players are black men,<sup>33</sup> it is evident that an underlying, fundamental problem persists.

### COPYRIGHT & ECONOMIC LIBERTY

Article 1, Clause 8 of the Constitution states that Congress has the power "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."<sup>34</sup> However, the impact of copyright laws appear to protect the rich rather than the poor.<sup>35</sup> Because Black entertainers often come from a lower socioeconomic class than their White counterparts or executives, most cases that involve copyright infringement are resolved to the benefit white individuals or those with more financial resources.<sup>36</sup> That is not to say, however, that a black artist will not occasionally be vindicated, as in *Estate of Smith v. Cash Money Records, Inc.*, which resulted in rapper Drake winning a copyright infringement.<sup>37</sup> In that case, Drake argued fair use of the song when he used the voice-over of a jazz artist in the beginning of his song *Poundcake/Paris Morton Music 2*.<sup>38</sup> Although Drake is a black rapper, Drake's access to limitless funds in defending the lawsuit proved yet again that the copyright laws' impacts generally favor the party with more financial resources.

Nevertheless, lessening the disparity between Black and White entrepreneurship within the entertainment industry consistently proves difficult.<sup>39</sup> Blacks often do not have the assets or family

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<sup>29</sup> See Scott Shane, *More African-Americans Are Becoming Entrepreneurs But Gap Remains*, SMALL BIZ TRENDS (Nov. 1, 2017), <https://smallbiztrends.com/2015/11/african-american-entrepreneurs-survey.html> (stating "the ratio of the average sales of businesses headed by White Americans to those led by African-Americans actually increased between 2007 and 2012 from 6.4% to 8.3%"); See also Billboard Staff, *Billboard's 2015 Power 100 List Revealed*, BILLBOARD (Feb. 5, 2015, 8:00 PM), <http://www.billboard.com/biz/6458403/billboards-2015-power-100-list-revealed>.

<sup>30</sup> *Id.*

<sup>31</sup> See CNN Wire, *These Are The Only Two Owners of Color In The NFL*, FOX43 (May 21, 2018), <https://fox43.com/2018/05/21/these-are-the-only-two-owners-of-color-in-the-nfl/>.

<sup>32</sup> See Goodman, *supra* note 6.

<sup>33</sup> *Id.*

<sup>34</sup> See 17 U.S.C. § 102 (1947).

<sup>35</sup> Greene, *supra* note 4.

<sup>36</sup> *Id.*

<sup>37</sup> *Estate of Smith v. Cash Money Records, Inc.*, 253 F. Supp. 3d 737 (S.D.N.Y. 2017) (holding that there was no copyright infringement).

<sup>38</sup> *Id.*

<sup>39</sup> See Tanasia Kenney, *Number of Black-Owned Businesses Grow But Still Lags Behind Growth of Other Groups*, Mickey, *Can Black Entrepreneurship* ATLANTA BLACK STAR (Sep. 5, 2016) (stating the difficulties of blacks owning businesses); *Id.* (stating that blacks are taking longer to catch up).

contributions for startup funding that many of their white counterparts enjoy.<sup>40</sup> This leads not only to difficulties in starting a business, but hardships in securing loans and investors since the risks are significantly higher.<sup>41</sup> This systematic inequality in wealth only prolongs the cycle of Blacks being stifled with little to no way of becoming business owners or chief executive officers of major companies in the entertainment field.<sup>42</sup> Individuals have a constitutional right to economic liberty.<sup>43</sup> Economic liberty gives an individual the right to freely bargain, trade, and purchase goods or services without the interference of others or the government.<sup>44</sup> Accordingly, because Blacks are often negatively affected by their disproportionate lack of wealth as compared to their White counterparts, their right to economic liberty is arguably being infringed.<sup>45</sup>

### III. DISCUSSION

#### A. COPYRIGHT IN THE ENTERTAINMENT FIELD

“Copyright is the right of an author to control reproduction of his intellectual creation.”<sup>46</sup> Copyright is a form of protection for an individual’s “books, music, sculpture, movies, and even computer programs.”<sup>47</sup> Copyright has been said to protect an individual’s First Amendment right of freedom of expression.<sup>48</sup> Unfortunately, however, it appears “[b]lack artists as a class consistently receive[] inadequate compensation, credit, and recognition for original works.”<sup>49</sup>

Those who are unfamiliar with copyright law or its requirements are generally unable to assert their rights.<sup>50</sup> Thus, unaware of their rights, artists often enter into binding contracts by

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<sup>40</sup> See Emily Fetsh, *Does Racial Wealth Disparity Hinder Entrepreneurship*, KAUFFMAN (Jan. 1, 2016), <http://www.kauffman.org/blogs/growthology/2016/01/does-racial-wealth-disparity-hinder-entrepreneurship>; Jeffrey Close, *the Black-White Wealth Gap*, BLACK ENTERPRISE (Oct. 9, 2017, 11:48PM), <http://www.blackenterprise.com/small-business-featured/black-entrepreneurship-close-black-white-wealth-gap/>.

<sup>41</sup> *Id.*

<sup>42</sup> See Maurita Coley, *Bridging the Gap*, BROADBAND AND SOCIAL JUSTICE (Apr. 11, 2014), <http://broadbandandsocialjustice.org/2014/04/bridging-the-gap-the-correlation-between-african-americans-broadband-usage-and-the-success-of-the-telecom-industry/>.

<sup>43</sup> See Dana Berliner, *How the Constitution Protects Economic Liberty*, INSTITUTE OF JUSTICE (Jun. 2000), <http://ij.org/ll/june-2000-volume-9-number-3/how-the-constitution-protects-economic-liberty-part-three/>.

<sup>44</sup> See *The Moral Basis for Economic Liberty*, HERITAGE (Jun. 13, 2010), <http://www.heritage.org/political-process/report/the-moral-basis-economic-liberty>.

<sup>45</sup> *Id.*; Maurita Coley, *Bridging the Gap: The Correlation Between African Americans, Broadband Usage*, BROADBAND AND SOCIAL JUSTICE (Apr. 11, 2014, 10:52PM) <http://broadbandandsocialjustice.org/2014/04/bridging-the-gap-the-correlation-between-african-americans-broadband-usage-and-the-success-of-the-telecom-industry/>.

<sup>46</sup> See Robert A. Gorman & Jane C. Ginsburg, *Copyright For The Nineties*, 13 (4th Ed. 1993) (citing Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law 3-6 (1961).

<sup>47</sup> See Wendy Gordon, *An Inquiry Into the Merits of Copyright: The Challenges of Consistency, Consent, and Encouragement Theory*, 41 STAN. L. REV. 1342, 1365 (1989); See also Greene, *supra* note 4.

<sup>48</sup> Jay Drattler, Jr., *Intellectual Property Law: Commercial, Creative, And Industrial Property* 1.02[2] (1993); See Greene, *supra* note 4.

<sup>49</sup> See Anthony Decurtis & James Henke, *The Rolling Stone Album Guide* 600 (1992) (discussing disparity); See Greene, *supra* note 4.

<sup>50</sup> See, e.g. *Durham Indus. Inc. v. Tomy Corp.*, 630 F.2d 905, 908 (2d Cir. 1980) (reasoning that before asking a court considers the question of infringement, “a party must demonstrate the existence and the validity of its copyright, for

signing documents that later reveal themselves as mere transfers of their copyright ownership to publishing companies and record labels.<sup>51</sup> Aware of this, in his song *Moonlight*, Jay Z references “ya’ll n\*\*\*\*s still signing deals? Still? After all they done stole for real? After what they done to our Lauryn Hill?”<sup>52</sup> Even music scholars note “that Black artists, as a class of performers, [have] always found their works appropriated and exploited by publishers and managers.”<sup>53</sup>

## B. ENTREPRENEURSHIP IN THE ENTERTAINMENT FIELD

In the song *Smile* on his 4:44 album, Jay Z states, “[W]e know the system don’t work. Take a young n\*\*\*\*’s freedom over some dirt, yet it’s legal in Colorado. Yet we deny black entrepreneurs, free enterprise.”<sup>54</sup> This alludes to the fact that when it comes to entrepreneurship, Blacks generally fail at higher rates than Whites.<sup>55</sup> Although Blacks are often seen as business-oriented and more likely to start a business, they have difficulty doing so.<sup>56</sup> Statistically, of over 1.7 million firms still in business after four years, 3,200 of those firms will be owned by minorities—this constitutes only 1% of the total number of firms.<sup>57</sup> To further emphasize, the only group of business owners to decline from 2007 to 2012 is black men.<sup>58</sup> Despite the fact that they make up approximately 11% of the United States population, only 1% of funded startups were Blacks in 2010, which is unfortunate because black-owned businesses do not only provide economic growth but also help reduce community violence.<sup>59</sup>

One man who became an entrepreneur and found continuing success in the entertainment industry is Russel Simmons.<sup>60</sup> Simmons opines that the fundamental problem underlying the

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in the absence of copyright [] protection, even original creations . . . may be freely copied.”); See Greene *supra* note 4.

<sup>51</sup> See Marc Eliot, ROCKONOMICS (1989); Theresa E. Van Beveren, *Aricle: The Demise of the Long-Term Personal Services Contract in the Music Industry: Artistic Freedom Against Company Profit*, 3 UCLA ENT. L. REV. 377, 382–83 (discussing the unconscionable contracts artists have been given).

<sup>52</sup> See *Moonlight*, GENIUS, <https://genius.com/12281950> (Updated 2017).

<sup>53</sup> See Thomas J. Hennessey, *From Jazz to Swing: African-American Jazz Musicians and Their Music* 149 (1994) (“[M]anagers deprived [blacks] of their freedom of movement, legal rights to intellectual property, and pay guaranteed by contract. Musicians were most victimized, perhaps, when promoters and [band] leaders systematically deprived them of royalties from their own compositions.”).

<sup>54</sup> *Smile*, GENIUS, <https://genius.com/Jay-z-smile-lyrics> (Updated 2017).

<sup>55</sup> See Amos Maki, *Black Entrepreneurs*, BIZ JOURNALS (May 23, 2014, 11:00PM), <https://www.bizjournals.com/memphis/stories/2004/05/24/story4.html> (“African-Americans are very entrepreneurial oriented, yet they are failing at very high rates.”).

<sup>56</sup> See *Id.* (stating that black men and women are 50% more likely to attempt a business start-up than their white counterparts but their businesses never get off the ground).

<sup>57</sup> See Maki *supra* note 56.

<sup>58</sup> See <http://globalpolicysolutions.org/report/color-entrepreneurship-racial-gap-among-firms-costs-u-s-billions/> (explaining that black businesses contribute intangible benefits besides economic benefits to America); See Tanvi Misra, *How Black-Owned Businesses Help Reduce Youth Violence*, CITY LAB (Mar. 16, 2015), <https://www.citylab.com/life/2015/03/how-black-owned-businesses-help-reduce-youth-violence/387847/> (stating that black-owned businesses help reduce youth violence).

<sup>59</sup> *Id.*

<sup>60</sup> See Jeffrey McKinney, *45 Great Moments In Black Business*, BLACK ENTERPRISE (Jul. 24, 2018), <https://www.blackenterprise.com/45-great-moments-in-black-business-no-9-the-birth-of-hip-hop/> (stating Russell Simmons the leader of hip hop and the hip hop business being recognized as a global economic force and cultural



disparity between Blacks and Whites in this area is the “lack of a real integration” in the entertainment industry.<sup>61</sup> According to Simmons, “no effort was made by the ‘old boys club’ or by African-Americans to truly integrate.”<sup>62</sup> Even a senior white executive with one of the Big Four music companies has acknowledged that despite the immense success of black performers and industry efforts at recruitment and internships, diversity in the entertainment industry is still lacking.<sup>63</sup>

A 2015 study showed that film executives, who rank among Hollywood’s most powerful decision makers, were primarily white males. Additionally, the study revealed that 96% of members in the executive branches of each entertainment’s business are white.<sup>64</sup> Although Blacks contributed to 46% of the movie ticket sales in 2014,<sup>65</sup> only 5% of Hollywood’s award recipients were black.<sup>66</sup> By contrast, upwards of 97% of Hollywood-rewarded directors have been white.<sup>67</sup> The 2017 Oscars Awards Ceremony illustrated this problematic reoccurrence when the director of

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phenomenon); see Hip-Hoppreneur, *Russell Simmons*, ENTREPRENEUR (Oct. 10, 2008), <https://www.entrepreneur.com/article/197696> (stating that “Simmons has been able to parlay his success in the music industry into other equally successful businesses.”).

<sup>61</sup> See Cynthia Littleton, Russell Simmons Blasts Hollywood’s Racial “Segregation,” VARIETY (Jan. 21, 2015), <https://variety.com/2015/biz/news/russell-simmons-blasts-hollywoods-racial-segregation-1201411227/> (“[He’s] seen ample evidence of bias in the development process that tends to keep black creatives from working in an organically integrated way with white talent.”); see also Brennan Williams, Russell Simmons Says “Hollywood Is Segregated,” and It’s “Costing Money,” HUFFINGTON POST (Aug. 24, 2016), [https://www.huffingtonpost.com/entry/russell-simmons-hollywood-incredibly-segregated\\_us\\_57bdcf44e4b0c6301ca0e1b3](https://www.huffingtonpost.com/entry/russell-simmons-hollywood-incredibly-segregated_us_57bdcf44e4b0c6301ca0e1b3).

<sup>62</sup> Roberts, *supra* note 7, (“[E]ven though music is deeply rooted in the black experience, African-Americans have had a tough time historically infiltrating the higher echelons of the music business.”); see Brent Lang, *Hollywood Is a Straight, White, Boys’ Club, Blistering Study Finds*, VARIETY (Feb. 22, 2016), <https://variety.com/2016/film/news/movie-tv-diversity-study-hollywood-straight-white-male-1201711586/>; Harwell *supra* note 121 (stating Hollywood is very exclusive to white people) (The USC report, which faults the film business for being a “straight, white, boys’ club,” should add fuel to the fire. It finds that only 3.4% of film directors were female, 17.1% of broadcast directors, 15.1% of cable directors and 11.8% of streaming directors. Minorities were similarly excluded from directing work. Under-represented ethnic or racial groups directed only 12.7% of films, 9.6% of broadcast programs, 16.8% of cable series and 11.4% of streaming shows.”).

<sup>63</sup> Roberts, *supra* note 7 (stating white “old boys’ clubs” make it hard for blacks to integrate and blacks do not want to either); see Drew Harwell, *The Staggering Numbers that Prove Hollywood Has A Serious Race Problem*, WASHINGTON POST (Feb. 23, 2016), [https://www.washingtonpost.com/news/the-switch/wp/2016/02/23/its-too-loud-and-other-reasons-oscar-voters-ignore-black-movies/?utm\\_term=.562158edd268](https://www.washingtonpost.com/news/the-switch/wp/2016/02/23/its-too-loud-and-other-reasons-oscar-voters-ignore-black-movies/?utm_term=.562158edd268) (“[A]ll 20 Oscar acting nominations, for instance, have gone to white actors for two years in a row.”).

<sup>64</sup> See Joana Adkins, *Racism In Hollywood*, MOVIE PREDATORS (Sept. 30, 2018), <http://www.moviepredators.com/movie-articles/racism-in-hollywood/> (“[T]he executives on the other hand, and its studio chiefs, executive producers, investors etc. are instrumental behind making the important financial decisions which keep the industry alive and financially viable. Data on these two important branches reveal a complete lack of diversity. Approximately 96% of the more than 450 members in the executives are white”).

<sup>65</sup> See Joana Adkins, *Racism In Hollywood*, MOVIE PREDATORS (Sept. 30, 2018), <http://www.moviepredators.com/movie-articles/racism-in-hollywood/>.

<sup>66</sup> *Id.* (“[W]hen it comes to sharing the important positions in Hollywood like America’s most rewarded and popular directors, they are on the peripheries. Among the 400 members of the branch, only 6% are Hispanics, 5% are black and 4% are Asians.”).

<sup>67</sup> *Id.* (“[T]he academy members who constitute the jury and decide on the nominations and the winners are also dominated by white. Such group consists of 89% male and 84% white members. Since 1927, out of the 435 nominations, 423 have gone to the white directors which is a whopping 97% of the total nominations.”).

*La La Land*, Damian Chazelle, won Best Director over *Moonlight*'s director, Barry Jenkins.<sup>68</sup> Although both productions were captivating, Oscar viewers raised many concerns following confusing at awards, where for the first time in the Oscar's eighty-nine year history, *La La Land* was accidentally named the winner of Best Picture over the movie *Moonlight*. When this occurred, an approximately two-minute delay followed while the situation was rectified.<sup>69</sup> Jay Z highlights this moment in his song *Moonlight*, "[Y]a'll stuck in La La Land, even when we win, we gon' lose."<sup>70</sup>

#### IV. THE SOLUTION TO THE ECONOMIC DISPARITY IN THE ENTERTAINMENT FIELD

One practical solution to the disparity of black entrepreneurship in the entertainment field is to encourage movie and business leaders to film or fund a more diverse range of stars, storytellers and ideas.<sup>71</sup> Another solution has been suggested by Robert Johnson, who argues that the key to remedy such lack of diversity is access to capital.<sup>72</sup> Johnson argues that if Congress apportioned more funds into the hands of black-owned businesses, and allowed American companies to repatriate nearly \$2 trillion in overseas profits (contingent on their investment in minority-owned businesses) that U.S. economy would bolster while simultaneously adding capital into minority communities.<sup>73</sup>

The First Amendment of the Constitution states that "Congress shall make no law . . . abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble."<sup>74</sup> In the same corollary, a large number of entrepreneurs sell information protected by the First Amendment's right to commercial speech, and its consequential economic liberty.<sup>75</sup> Entrepreneurship in the entertainment field essentially constitutes commercial speech regardless of whether it is a director directing a movie or a record label executive signing a new artist; the art or music being produced is generally for profit.<sup>76</sup> Acknowledging this correlation, there is a

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<sup>68</sup> See Natalie Robehmed, *The Full Story Behind the La La Land and Moonlight Oscars Mix Up*, FORBES (Feb. 27, 2017, 8:00AM), <https://www.forbes.com/sites/natalierobehmed/2017/02/27/the-full-story-behind-the-la-la-land-and-moonlight-oscars-mix-up/#5e15c69c2298>.

<sup>69</sup> See Robehmed *supra* note 70 ("[S]unday night's 89th Academy Awards were marred by one major mistake: The erroneous announcement of *La La Land* as Best Picture over *Moonlight*. . . Unfortunately for all involved, the error was not fixed instantly. A full two and a half minutes passed between *La La Land*'s announcement and the correction, which was issued by a *La La Land* producer, rather than a show manager or even Kimmel.").

<sup>70</sup> See *Moonlight*, GENIUS, <https://genius.com/12281950> (Updated 2017).

<sup>71</sup> See Drew Harwell, *The Staggering Numbers that Prove Hollywood Has A Serious Race Problem*, WASHINGTON POST (Feb. 23, 2016), [https://www.washingtonpost.com/news/the-switch/wp/2016/02/23/its-too-loud-and-other-reasons-oscar-voters-ignore-black-movies/?utm\\_term=.562158edd268](https://www.washingtonpost.com/news/the-switch/wp/2016/02/23/its-too-loud-and-other-reasons-oscar-voters-ignore-black-movies/?utm_term=.562158edd268) ("[I]f the American film industry truly hopes to be more inclusive, members said, this is where it'd need to start: By encouraging movie and business leaders to film or fund a more diverse range of stars, storytellers and ideas.").

<sup>72</sup> See *supra* Roberts note 7.

<sup>73</sup> Andy Medici, *BET's Founder on Why There Aren't More Black-Owned Startups*, BIZ JOURNALS (Jul. 18, 2016, 2:54PM), <https://www.bizjournals.com/washington/news/2016/07/18/bets-founder-on-why-there-aren-t-more-black-owned.html>.

<sup>74</sup> US CONST., amend I

<sup>75</sup> See Berliner *supra* note 44 ("We successfully represented entrepreneurs who publish books, newsletters, software, and although our causes of action fell under the First Amendment, the ultimate right vindicated was the right of these publishers to pursue the occupation of their choosing.").

<sup>76</sup> See Berliner *supra* note 44.

fundamental right in the Constitution for black entrepreneurs in the entertainment field to have access and opportunities equal to that of their white counterparts.<sup>77</sup>

As Simmons stated in his interview with The Wrap, real efforts have not been made to fully integrate blacks into the entertainment field.<sup>78</sup> As in *Brown v. Board of Education of Topeka, Kansas*, where the Court held that actual efforts and policies must be put in place to ensure public schools non-discriminately integrate the races, a similar process and policy must be implemented to generate non-discriminatory integration in the entertainment industry's copyright and entrepreneurial aspects.<sup>79</sup> Acknowledging that businesses in the entertainment field are private entities, the Constitution's Thirteenth Amendment<sup>80</sup> and Commerce Clause<sup>81</sup> gives Congress the power to prohibit discrimination against minorities by private entities when affecting interstate commerce.<sup>82</sup>

Further, Congress, under the Commerce Clause, can regulate economic activity that has a substantial impact<sup>83</sup> or a substantial economic effect<sup>84</sup> on interstate commerce. In *Heart of Atlanta v. United States*, the Supreme Court upheld the constitutionality of Title II of the Civil Rights Act of 1964<sup>85</sup>. The Court reasoned that because a hotel served interstate travelers, Congress may regulate the local hotel by virtue of its substantial effects on interstate commerce.<sup>86</sup> Similarly, businesses in the entertainment field involve artists who travel interstate and move through commerce. For example, major record label Sony has signed artists such as Beyoncé, Michael Jackson and Mariah Carey. These artists travel nationwide to perform shows that generate revenue in every state in which they perform.<sup>87</sup> Some examples include Beyoncé, who performed in numerous states including Florida, Texas, California, and North Carolina throughout her 2016 Formation Tour, which sold over two million tickets and grossed over \$250 million.<sup>88</sup> Another

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<sup>77</sup> See *Id.* (“[E]conomic liberty is deeply ingrained in our Constitution, and the Founders intended many overlapping sections to provide protection for occupational freedom.”).

<sup>78</sup> See *supra* Roberts note 7.

<sup>79</sup> *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294, 300–01 (1955) (“[W]hile giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling”).

<sup>80</sup> U.S. CONST. amend. VIII.

<sup>81</sup> U.S. CONST. art. I, § 8, cl. 3.

<sup>82</sup> See *Prohibiting Private Discrimination*, UBALT, [https://home.ubalt.edu/shapiro/rights\\_course/Chapter8text.htm](https://home.ubalt.edu/shapiro/rights_course/Chapter8text.htm) (Updated 2017) (stating ways that Congress can regulate discrimination in private businesses); *The Reach of Congressional Power*, EXPLORING CONSTITUTIONAL CONFLICTS, <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/congpowers.htm> (Updated 2017) (discussing the reach of Congress power on private business).

<sup>83</sup> *Wickard v. Filburn*, 317 U.S. 111 (1942) (expanding Congress' power under the Commerce Clause to regulate private economic activity that substantially impacts or affects interstate commerce).

<sup>84</sup> See *Substantial Effect on Commerce Power*, LAWSHELF, <https://lawshelf.com/courseware/entry/substantial-effect-commerce-clause-power> (Updated 2017) (explaining that Congress can control anything that has a substantial effect on commerce).

<sup>85</sup> *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964).

<sup>86</sup> *Id.*

<sup>87</sup> See *What does a Singer Do?*, Sokanu, <https://www.sokanu.com/careers/singer/> (Updated 2017); Jacob Shamisian, *Musicians Who Travel the Most*, INSIDER (Feb. 15, 2017, 8:00AM), <http://www.thisisinsider.com/musicians-who-travel-the-most-2017-2> (describing a list of musicians who travel the most).

<sup>88</sup> See Ray Wadell, *Beyonce's Formation Tour Sold Over \$2 Million*, BILLBOARD (Oct. 14, 2016), <http://www.billboard.com/articles/business/7541993/beyonce-formation-tour-2-million-tickets-250-million-dollars>.

entertainer, actor Dwayne “The Rock” Johnson, was required to travel to different states and countries to promote his movie, *San Andreas*, produced by New Line Cinema.<sup>89</sup> The movie generated \$100 million domestically.<sup>90</sup> With countless numbers of celebrities and entertainers, one may see this occur in the aggregate and thus, one may reasonably infer that artists and entertainers such as actors, producers, and directors traveling to promote, or in support of, the entertainment industry has a substantial economic effect on commerce.

As in *Katzenbach v. McClung*, where the Supreme Court held that Congress acted within its commerce power to extend Title II to restaurants that discriminated against African-Americans when a substantial portion of the food they served moved through interstate commerce, a substantial amount of the music record labels produce, and the films that Hollywood produces, also move through commerce.<sup>91</sup> Currently, distribution companies in the music industry make approximately 22% of all music sales, whereas as retailers make approximately 30%—over 50% of music sales.<sup>92</sup> Over \$1 billion are generated yearly from entertainment alone in the United States; an impact of that magnitude undoubtedly has a substantial economic effect on commerce.<sup>93</sup>

In addition to these objectively measurable effects on commerce, intangible benefits to businesses owned by people of color plays an important part in the U.S. economy.<sup>94</sup> In *Sweatt v. Painter*, the Court found that a segregated law school for African-Americans could not provide Blacks with equal educational opportunities.<sup>95</sup> The Court relied mostly on “qualities which are incapable of objective measurement but which make for greatness in a law school.”<sup>96</sup> In *McLaurin v. Oklahoma State Regents*, the Court required that an African-American be admitted to a white graduate school be treated like all other students.<sup>97</sup> The Court further defined the qualities incapable of objective measurement as intangible considerations: “his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession.”<sup>98</sup>

<sup>89</sup> See Katy Rich, *The Rock’s San Andreas Promotion Tour*, VANITY FAIR (May 26, 2015, 10:44AM), <https://www.vanityfair.com/hollywood/2015/05/the-rock-selfie-record>.

<sup>90</sup> See Anita Busch, *San Andrea Cracks \$100M Plate Domestically*, DEADLINE (Jun. 9, 2015, 2:01PM), <http://deadline.com/2015/06/box-office-san-andreas-100-million-domestic-300-million-worldwide-1201439970/>.

<sup>91</sup> *Katzenbach v. McClung*, 379 U.S. 294 (1964).

<sup>92</sup> See Marshall Brain, *How Recording Contracts Work*, Entertainment, <https://entertainment.howstuffworks.com/recording-contract2.htm> (Updated 2017) (stating how artists contracts are broken down); See Kief, *Record Sales: Where Does the Money Go?*, BANDZOOGL (Jun. 9, 2006) <https://bandzoogle.com/blog/record-sales-where-does-the-money-go>.

<sup>93</sup> See Gwen Burrow, *Not Just a Game: The Impact of Sports on U.S. Economy*, ECONOMIC MODELING (Jun. 9, 2013) <http://www.economicmodeling.com/2013/07/09/not-just-a-game-the-impact-of-sports-on-u-s-economy/>; *Media and Entertainment Spotlight*, SELECT USA, <https://www.selectusa.gov/media-entertainment-industry-united-> (Updated 2017).

<sup>94</sup> See <http://globalpolicysolutions.org/report/color-entrepreneurship-racial-gap-among-firms-costs-u-s-billions/> (arguing that a more inclusive American society would benefit black businesses; See Misra, *supra* note 9).

<sup>95</sup> *Sweatt v. Painter*, 339 U.S. 629 (1950) (holding that blacks did not get equal education by attending segregated law school).

<sup>96</sup> See *Id.* at 634.

<sup>97</sup> *McLaurin v. Oklahoma State Regents for Higher Ed.*, 339 U.S. 637, 642 (1950) (holding that a black graduate student is entitled to the same treatment at the hands of the state as a white student).

<sup>98</sup> *Id.* at 339.; See Butcher, *Diverse Learning Environments Benefit Students*, MICHIGAN STATE UNIVERSITY EXTENSION (Apr. 24, 2015), [http://msue.anr.msu.edu/news/diverse\\_learning\\_environments\\_benefit\\_students](http://msue.anr.msu.edu/news/diverse_learning_environments_benefit_students) (stating that students benefit when learning environments take diversity and inclusion into account).

Between 2007 and 2012, privately held minority businesses contributed 1.3 million jobs to the American economy.<sup>99</sup> With more integration in the entertainment field, “where there was truly equal opportunity for all, there would be more minority-owned businesses contributing even more to America’s [economy].”<sup>100</sup> America is currently foregoing an estimated 1.1 million businesses owned by people of color due to past and present discrimination in American society.<sup>101</sup> Diversity in the entertainment field will allow for businesses to better serve their customer bases, which are also diverse, and assist that same community in better decision-making.<sup>102</sup> “These missing businesses could produce an estimated 9 million more jobs and boost our national income by \$300 billion.”<sup>103</sup>

In *Brown v. Board of Ed.*, the Court emphasized how separating black students “from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”<sup>104</sup> Applying this rationale to areas like copyright and entrepreneurship, where there is an apparent distinction between Blacks and Whites economically, results in a form of inferiority present in the entertainment field.<sup>105</sup> In regards to copyright, black artists can produce similar or better music and still generate less sales than white artists.<sup>106</sup>

<sup>99</sup> See Margarita Hakobyan, *Lost Minority Business Equals Millions of Missing Potential Jobs and Billions in Income*, HUFFPOST (May 9, 2015, 1:06PM), [https://www.huffingtonpost.com/margarita-hakobyan/lost-minority-business-mi\\_b\\_9862416.html](https://www.huffingtonpost.com/margarita-hakobyan/lost-minority-business-mi_b_9862416.html) (contending that investing in minority businesses may generate nine million jobs and \$300 billion income in American worker income).

<sup>100</sup> See Martin Neil, Karen Dynan, and Douglas Elliott, *The Future of Small Business Entrepreneurship: Jobs Generator for the U.S. Economy*, BROOKINGS (Jun. 4, 2010), <https://www.brookings.edu/research/the-future-of-small-business-entrepreneurship-jobs-generator-for-the-u-s-economy/>.

<sup>101</sup> See Chuck Collins, *Wealth of 400 Billionaires Equals Wealth of All 41 Million African-Americans*, Inequality (Jan. 17, 2014), <https://inequality.org/research/wealth-400-billionaires-wealth-41-million-africanamericans/> (alluding to the U.S.’s persistent racial wealth divide rooted in the legacy of discrimination).

<sup>102</sup> See Robyn Showers, *4 Business Benefits of Diversity in the Workplace*, BRAZEN (Mar. 7, 2016), <https://www.brazen.com/blog/recruiting-hr/benefits-of-diversity-in-the-workplace/>; See Vivian Hunt, Dennis Layton, and Sara Prince, *Why Diversity Matters*, MCKINSEY (Jan. 2015), <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters> (stating that diversity helps businesses perform better financially).

<sup>103</sup> See Algernon Austin, *The Color of Entrepreneurship: Why the Racial Gap Among Firms Costs the U.S. Billions*, CENTER FOR GLOBAL POLICY SOLUTIONS (Apr. 20, 2016), <http://globalpolicysolutions.org/report/color-entrepreneurship-racial-gap-among-firms-costs-u-s-billions/>; See *The Trillion Dollar African-American Consumer Market*, BLACK PAST, <http://www.blackpast.org/perspectives/trillion-dollar-african-american-consumer-market-economic-empowerment-or-economic-depen> (stating that the African-American consumer market exceeded the trillion dollar market in 2013 making it a very important market to target) (updated 2017).

<sup>104</sup> *Brown*, 347 U.S. at 493–94 (1954); See *Doctors Kenneth and Mamie Clark and “The Doll Test”*, NAACP LDF, <http://www.naacpldf.org/brown-at-60-the-doll-test> (updated 2017) (describing how the “Doll Test” was used to show the inferiority that had a psychological impact on black children).

<sup>105</sup> See Dr. Lisa Tomlinson, *The Ongoing Economic Exploitation of Black Music*, HUFFINGTON POST (Jan. 8, 2016, 5:12 EST) (“History has shown while black musical genres were initially seen as culturally inferior and marginalized in mainstream popular culture, they later emerged as staples of a capitalist driven market that works hand-in-hand with white supremacy.”); See Yurri Horton, *Portrayal of Minorities in the Film, Media, and Entertainment Industries*, STANFORD (Jun. 9, 1999), [https://web.stanford.edu/class/e297c/poverty\\_prejudice/mediarace/portrayal.htm](https://web.stanford.edu/class/e297c/poverty_prejudice/mediarace/portrayal.htm) (explaining that minorities are usually portrayed in inferior roles in films.)

<sup>106</sup> See *Hip-Hop White Wash: The Impact of Eminem on Rap Music and Music Industry Economics*, SD ONLINE (Apr. 16, 2011), <http://sdonline.org/36/hip-hop-white-wash-the-impact-of-eminem-on-rap-music-and-music-industry->

A prime example of this is Big Mama Thornton's recording of *Hound Dog*, which was overshadowed by Elvis Presley's rendition three years later.<sup>107</sup> Thornton's recording was number one on the Billboard R&B Chart for eleven weeks and sold two million copies.<sup>108</sup> Compare this to Presley's rendition, which sold ten million copies globally, simultaneously topped R&B, Country, and U.S. Pop charts at number one, had a thirty-six-year record for topping the pop charts for eleven weeks, was inducted into the Grammy Hall of Fame in 1988, and was listed as "one of the Rock and Roll Hall of Fame's '500 Songs that Shaped Rock and Roll.'"<sup>109</sup> This was the same song that was sung in a similar fashion by artists who were different in other aspects but most importantly different in race.<sup>110</sup> Presley, who was white, received more recognition and more sales than Big Mama Thornton, a black artist.<sup>111</sup>

### CONCLUSION

Jay Z's 4:44 Album highlights a continuous problem throughout American history: the racial disparity in copyright and entrepreneurship in the entertainment industry.<sup>112</sup> Blacks do not have the same economic benefits as Whites when it comes to copyright and entrepreneurship.<sup>113</sup> To change this, there must be an acknowledgment of a fundamental right in every person's

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economics/ (stating that since more white people are buying rap music it follows logic that a credible white MC provides more sales); See Preston Mitchum, *Dear Miley Cyrus: Hip Hop Culture Never Needed You and It Won't Miss You*, THE ROOT (May 8, 2017 7:30PM), <https://www.theroot.com/dear-miley-cyrus-hip-hop-culture-never-needed-you-and-1795030923> (stating that white artists like Miley Cyrus spent most of their careers exploiting black people for profit).

<sup>107</sup> See Abel Shifferaw, "Hound Dog" and 10 Covers by White Artists of Black Musicians' Songs, OKAY PLAYER, <http://www.okayplayer.com/news/hound-dog-and-10-covers-by-white-artists-of-black-musicians-songs.html> (updated 2016) (stating that Big Mama Thornton was the original recording of "Hound Dog.").

<sup>108</sup> *Id.*

<sup>109</sup> See Meagan Paese, *Best Songs that Shaped Rock n Roll*, THE HISTORY OF ROCK AND ROLL, <http://www.thehistoryofrockandroll.net/best-songs-that-shaped-rock-n-roll-part-one/> (updated 2017).

<sup>110</sup> See Dale Henry Geist, "Hound Dog": Did Elvis Get Rich Stealing from Black Artists?, NO DEPRESSION (Feb. 10, 2014), <http://nodepression.com/article/hound-dog-did-elvis-get-rich-stealing-black-artists> (stating that Elvis Presley got rich "Hound Dog" which was a song first recorded by "Big Mama" Thornton, a black artist); See *Hound Dog by Elvis Presley*, SONG FACTS, <http://www.songfacts.com/detail.php?id=473> (updated 2017) (stating that Elvis Presley was impressed with the song "Hound Dog" and decided to do his own in a similar vein).

<sup>111</sup> See Miss Cellania, *The Story of Elvis Presley's "Hound Dog"*, NEATORAMA, (Oct. 21, 2012, 7:00AM), <http://www.neatorama.com/2012/10/21/The-Story-of-Elvis-Presleys-Hound-Dog/> (discussing how Elvis Presley became known for the song "Hound Dog" and "Big Mama" Thornton hardly received the recognition she deserved); See Rudie Obias, *20 Songs You Might Not Know Were Covers*, MENTAL FLOSS (Oct. 28, 2013), <http://mentalfloss.com/article/53336/20-songs-you-might-not-know-were-covers> (listing Elvis Presley's rendition of "Hound Dog" as a cover song people didn't know about).

<sup>112</sup> See Adam Serwer, *The Story of Jay Z*, THE ATLANTIC (Jul. 7, 2017), <https://www.theatlantic.com/entertainment/archive/2017/07/the-story-of-jay-z/532896/>; See C. Vernon Coleman II, *Prince's Former Attorney Responds to Jay Z's Name Drop*, XXL MAG (Jul. 1, 2017), <http://www.xxlmag.com/news/2017/07/princes-attorney-responds-jay-z-name-drop-444-album/> (stating that Jay Z was sued by Prince's estate over copyright infringement which Jay Z mentions in the 4:44 album).

<sup>113</sup> See Jeremy Quittner, *How African Entrepreneurs Can Power the Economy*, FORTUNE (Aug. 3, 2016), <http://fortune.com/2016/08/03/african-american-startups/> (stating that blacks had a much lower rate of established businesses than whites); See Greene, *supra* 4 (contending that intellectual property rights were not made initially to protect blacks).

*Jay Z 4:44 Highlights Racial Disparity in  
Copyright & Entrepreneurship in the Entertainment Field*

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economic liberty protected by the Constitution. A proposed solution is for Congress to use its power under the Commerce Clause to regulate interstate commerce by forcing private businesses such as record labels and Hollywood production companies to integrate and offer more opportunities to Blacks that are truly equal to their White counterparts. An affirmative action plan similar to that adopted by district courts after *Brown v. Bd of Ed.* may help close the gap of disparity. By fully integrating Blacks in the area of copyright and entrepreneurship, black artists, athletes, and entrepreneurs will genuinely feel part of those respective industries.