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“THERE IS NO PLANET ‘B’”—HOW U.S. MUSIC FESTIVAL PRODUCTION COMPANIES CAN REDUCE THEIR NEGATIVE ENVIRONMENTAL IMPACT BY INCORPORATING AS A BENEFIT CORPORATION

BRYCE BALLARD*

INTRODUCTION

The music festival industry in the United States is growing exponentially each year, both in terms of fan attendance and the money being produced by concession, merchandise, and ticket sales.¹ However, there is also a growing realization that there are several negative externalities associated with the growth of the music festival industry, not the least of which is the environmental damage that follows in the wake of music festivals.²

The scene at most music festivals in the United States today is the same: a caravan of vehicles lined up single-file waiting to enter the campgrounds, camping tents of various sizes littered across the landscape, overflowing trash receptacles, plastic bottles strewn near the performance stages, and single-use food containers left behind as festival attendees leave the festival grounds in yet another massive car caravan.³ Music festivals today constitute a rite of passage of sorts for many of today’s youth, especially considering at least forty-five percent of the “millennial” generation in the United States attended at least one music festival in 2019.⁴ However, today, music festivals have also become synonymous with environmental

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¹ Mahita Gajanan, *How Music Festivals Became a Massive Business in the 50 Years Since Woodstock*, TIME (Aug. 14, 2019), <https://time.com/5651255/business-of-music-festivals/> [<https://perma.cc/49J8-8LLW>].

² Katie Bain, *Trashed: Music Festivals Are Environmental Disasters*, L.A. WKLY. (July 11, 2013), <https://www.laweekly.com/trashed-music-festivals-are-environmental-disasters/> [<https://perma.cc/4MLX-U3ZN>].

³ Richard Gray, *The people fighting the war on waste at music festivals*, BBC MUSIC (June 27, 2019), <http://www.bbc.com/culture/story/20190627-the-people-fighting-the-war-on-waste-at-music-festivals> [<https://perma.cc/NC9A-5KMS>].

⁴ Gajanan, *supra* note 1.

degradation, attendee carelessness, and simply, waste.⁵ As this Note will argue, as environmental activist groups and others continue to pressure music festival organizers to adopt more eco-friendly policies, the solution to the growing list of environmental problems might lie in a policy already being adopted across the country: the incorporation of smaller music festival production companies as benefit corporations.⁶

This Note will argue that while a number of the larger music festivals in the United States have instituted policies to reduce their carbon footprints, the main strategy should be to focus on encouraging smaller music festivals to incorporate as benefit corporations. First, there will be a discussion of the historical development of the music festival industry in the United States since the 1950s as well as an overview of what benefit corporations are, how they operate, and why they are distinct from other types of corporations. Second, the issues associated with a music festival production company incorporating as a benefit corporation will be examined.

Third, three examples will highlight how incorporation as a benefit corporation can be successful. Specifically, two U.S. music festivals and one Portuguese music festival will be analyzed. Fourth, two major U.S. music and arts festivals will be highlighted to show how non-benefit corporation-run music festival production companies can successfully operate environmentally sustainable festivals. Lastly, there will be a discussion of recent trends in the music festival industry, including the rise in the number of smaller music festivals incorporating as benefit corporations, the corporate restructuring of existing music festival production companies, as well as what the general public can do to increase awareness of the various environmental issues created by the U.S. music festival industry and how sustained efforts at the grassroots level can lead to systemic change in the future.

I. BACKGROUND

A. *Historical Development of the U.S. Music Festival Industry*

One of the first widely attended music festivals to take place in the United States was the 1954 Newport Jazz Festival, billed as the “First Annual American Jazz Festival,” in which acts such as Billie Holiday,

⁵ *Id.*

⁶ Suntae Kim et al., *Why Companies Are Becoming B Corporations*, HARV. BUS. REV. (June 17, 2016), <https://hbr.org/2016/06/why-companies-are-becoming-b-corporations> [<https://perma.cc/YV5S-BT6H>].

Ella Fitzgerald, and Eddie Condon performed their hit songs over the course of two days to roughly 13,000 spectators.⁷ In 1959, the Newport Folk Festival was introduced as the counterpart to the original Newport Jazz Festival.⁸ Over the course of the Newport Folk Festival’s early history, acts such as Bob Dylan and Joan Baez were introduced to the world.⁹ However, beginning in the late 1960s, the music festival industry boomed in tandem with the “Summer of Love” movement.¹⁰

Festivals such as the Monterrey Pop Festival, Woodstock, and the Altamont Free Concert drew crowds, which frequently exceeded 500,000 people, that would gather to watch the biggest musical acts of the era: The Who, The Rolling Stones, and the Jimi Hendrix Experience, among many others.¹¹ However, after four concertgoers died at the Altamont Free Concert in 1969, both the “Summer of Love” movement and the burgeoning music festival industry declined in popularity.¹² Yet, the urge to host festivals did not end with the tragedy at Altamont.¹³

In 1970, organizers attempted to host the Powder Ridge Rock Festival in Middlefield, Connecticut, including headlining acts such as Janis Joplin and the Allman Brothers Band.¹⁴ Even though a legal injunction was issued by the local court, which prematurely ended the festival and bands were instructed not to arrive to perform, the promoters still sold nearly 30,000 tickets to spectators.¹⁵ The spectators arrived to find no food, no entertainment, and no plumbing.¹⁶ Days after the festival’s scheduled end date, the promoters were hit with a \$204,000 tax levy by the IRS and \$400,000 to \$1 million disappeared as ticket holders never received a refund.¹⁷ The effect of the disaster at Powder Ridge led to a “chilling effect” on the U.S. music festival production industry that would last until 1991, when the first Lollapalooza festival was held.¹⁸

⁷ *Newport Jazz Festival Celebrates 50 Years*, NPR (Aug. 13, 2004), <https://www.npr.org/2004/08/13/3850650/newport-jazz-festival-celebrates-50-years> [<https://perma.cc/F6BQ-XECS>].

⁸ CJ Baker, *The History and a List of Important Music Festivals*, SPINDITTY (Nov. 10, 2019), <https://spinditty.com/concerts/The-History-of-Music-Festivals> [<https://perma.cc/F6YL-K2GL>].

⁹ *Id.*

¹⁰ Tyler Clark, *Why Did American Music Festivals Almost Disappear in the 1970s and '80s?*, CONSEQUENCE OF SOUND (July 18, 2018), <https://consequenceofsound.net/2018/07/american-music-festivals-1970s-and-1980s/> [<https://perma.cc/Z89K-WAMC>].

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Clark, *supra* note 10.

¹⁷ *Id.*

¹⁸ *Id.*

The inaugural Lollapalooza festival was the brainchild of Jane's Addiction lead singer Perry Farrell.¹⁹ Farrell created the festival as an opportunity for Jane's Addiction to play one final time before the band officially broke up.²⁰ However, due to the success of the first iteration of the festival, it continued annually until 1997, once again in 2003, and has been held every year since 2005.²¹ Today, U.S. attendance figures typically reach over 300,000 people.²² Lollapalooza is also now hosted in countries such as Chile, Brazil, Germany, and Sweden.²³

The success of Lollapalooza led to the development of other major music festivals, such as Bonnaroo, Coachella, South by Southwest, and the Austin City Limits Music Festival.²⁴ These major music festivals comprise a large part of the \$20 billion global concert industry.²⁵ Additionally, corporate sponsors are a major reason why the "music festival ecosystem" is as strong as it is today, especially considering that "sponsorship dollars [are] the third largest revenue stream for festivals, behind only ticket sales and concessions."²⁶ According to Nielsen Music, in 2014, \$1.34 billion was spent by corporate sponsors to have a presence at major music festivals.²⁷ In fact, "[o]ver 27% of music festivals arise from partnerships with Coca-Cola alone."²⁸

However, in addition to these major music festivals, there are numerous smaller festivals that tend to be more genre-specific, such as the Nelsonville Music Festival, Planet Bluegrass, and Treefort Music Festival.²⁹ Across the world, so-called "micro festivals" attract crowds ranging in size from 2,000 to 10,000 people, cost between \$150 and \$500 for a full

¹⁹ *Id.*

²⁰ *Id.*

²¹ Kelly Neenan, *The Story Behind Lollapalooza, One of the World's Largest Music Festivals*, IEXPLORE, <https://www.iexplore.com/experiences/festivals-events/lollapalooza-history-culture> [<https://perma.cc/TR97-7QAG>].

²² *Id.*

²³ *Id.*

²⁴ See Gajanan, *supra* note 1.

²⁵ Usman Shaikh, *The Business of Music Festivals*, U.S. L. GRP. (Jan. 23, 2020), <http://www.uslawgroupinc.com/the-business-of-music-festivals/> [<https://perma.cc/S5DU-PSGH>].

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Neil Ferguson, *10 Smaller Music Festivals Worth Checking Out*, GLIDE MAG. (Feb. 22, 2015), <https://glidemagazine.com/130690/10-smaller-music-festivals-worth-checking/> [<https://perma.cc/9WYV-CPJB>]; *About NMF*, NELSONVILLE MUSIC FESTIVAL, <https://nelsonvillefest.org/about/> [<https://perma.cc/6FLU-8UYL>] (last visited Mar. 26, 2021); *Colorado Music Festivals & Concerts, Festivals & Concerts*, PLANET BLUEGRASS, <https://bluegrass.com/planet/what-we-do/festivals-and-concerts> [<https://perma.cc/48KW-UJ4H>] (last visited Mar. 26, 2021).

weekend pass, and “offer[] a more intimate experience for fans and a chance to see artists that wouldn’t typically be part of a major festival lineup.”³⁰ It is these smaller and younger music festivals that are more likely to incorporate as benefit corporations and thus more likely to have a positive impact on the environment, the local community, and stakeholders, in general.

Smaller music festivals are more likely to incorporate as benefit corporations for numerous reasons, but particularly because they are not managed by multimillion-dollar production companies, are not sponsored by major corporate sponsors, are shorter in duration, take place in smaller spaces than those of major music festivals, and attract lesser-known musical artists.³¹ Compared to major music festivals, smaller music festivals that incorporate as benefit corporations go to great lengths to minimize their environmental footprints by encouraging recycling, reducing single-use plastics, and even go so far as to save stage building materials for use in future festivals.³²

B. Benefit Corporations: What Are They and Why Do They Exist?

Benefit corporations are, essentially, for-profit corporate entities that also strive to achieve positive impacts on society, workers, the local community, and the environment, in addition to profit.³³ More specifically, benefit corporations are distinct from other types of corporations in three key ways. First, “benefit corporations [are] commit[ted] to creating public benefit and sustainable value in addition to generating profit.”³⁴ Second, “benefit corporations are committed to considering the company’s impact on society and the environment in order to create long-term sustainable value for all stakeholders.”³⁵ Third, “benefit corporations are required to report, in most states annually and using a third party standard, showing

³⁰ Molly Fosco, *When Small Is Mighty: The Rise of the Micro Music Festival*, OZY (June 9, 2019), <https://www.ozy.com/good-shit/when-small-is-mighty-the-rise-of-the-micro-music-festival/94704/> [https://perma.cc/YZ4G-QWUE].

³¹ *See id.*

³² *See* Kamila Rymajdo, *The Impossibility of Running an Eco-Friendly Music Festival*, VICE NEWS (May 30, 2019), https://www.vice.com/en_uk/article/vb9y3y/sustainable-music-festival-environment-single-use-plastic-policy [https://perma.cc/5Y4U-E25R].

³³ B LAB, <https://benefitcorp.net/faq> [https://perma.cc/HP6K-7JD9] (last visited Mar. 26, 2021).

³⁴ *What is a Benefit Corporation?*, B LAB [hereinafter B LAB, *Benefit Corporation*], <https://benefitcorp.net/what-is-a-benefit-corporation> [https://perma.cc/QS7Z-7ZFP] (last visited Mar. 26, 2021).

³⁵ *Id.*

their progress towards achieving social and environmental impact to their shareholders and in most cases the wider public.”³⁶

While there are many questions surrounding the recent emergence of benefit corporations, one of the most frequently asked questions concerns the topic of certification.³⁷ Benefit corporations earn “B Corp certification” after being verified by B Lab, a nonprofit organization which issues certifications “based on how the [benefit corporations] create value for non-shareholding stakeholders, such as their employees, the local community, and the environment.”³⁸ While the certification process and requirements vary based on the size and structure of the particular corporation, there are four general steps that each corporation seeking B Corp certification needs to complete.³⁹

First, the “B Impact Assessment” (“BIA”) must be completed by any B-Corp-certification-seeking entity to begin the performance requirement of certification.⁴⁰ The BIA is a free, online tool that evaluates how a company interacts with its workers, customers, community, and environment.⁴¹ Next, a corporation must use the “Legal Requirement Tool” to determine how it can integrate stockholder consideration into its governance structure.⁴² A company’s legal requirement and timeline will depend on the location and structure of the company.⁴³ After completing the BIA, B Lab works to verify a company’s score to determine if they meet the eighty-point bar for certification.⁴⁴ If the eighty-point bar is met and B Corp certification is obtained, B Corps must update their BIA and verify their updated score every three years.⁴⁵ Lastly, to finalize certification, a company must sign the B Corp “Declaration of Interdependence,” sign a B Corp Agreement, and pay annual certification fees.⁴⁶

The annual certification fees vary by region and the amount of annual sales made by the company, with the annual certification fee amount increasing or decreasing as the annual sales amount increases

³⁶ *Id.*

³⁷ See *Certification*, BLAB [hereinafter BLAB, *Certification*], <https://bcorporation.net/certification> [<https://perma.cc/FUW6-ZB3C>] (last visited Mar. 26, 2021).

³⁸ Kim et al., *supra* note 6.

³⁹ B LAB, *Certification*, *supra* note 37.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ B LAB, *Certification*, *supra* note 37.

⁴⁶ *Id.*

or decreases.⁴⁷ The annual certification fees cover four major areas: verification and standards, technology platforms, licensing fees, and local and global movement building.⁴⁸ Per B Lab, “[m]uch of the annual fee . . . goes to cover costs associated with verification, including expenses related to staff time for the review process”⁴⁹ The surplus from the annual fee goes to covering costs associated with promoting the concept of benefit corporations and the B Corp certification process, specifically.⁵⁰

Benefit corporations were first certified in 2007, and today there are more than 2,600 benefit corporations across thirty-four of the United States and the District of Columbia, and across fifty foreign countries.⁵¹ However, if benefit corporations were authorized in all fifty states, this would allow for greater collaboration between benefit corporations across state lines, lead to wider-spread adoption of eco-friendly legislation to combat the negative environmental impacts of music festivals, and allow for the continued growth of the lucrative music festival industry.

Regular corporations, as opposed to benefit corporations, are expected to focus primarily on profit maximization as the primary lens through which business decisions are made.⁵² While this model serves to create value for the shareholders of the corporation, the stakeholders are often seen as an impediment to creating that value.⁵³ Thus, in regular corporations, a director of a corporation is vulnerable to lawsuits if shareholders feel that the value of their shares is not being maximized.⁵⁴ However, in a benefit corporation, it is the responsibility of the director to determine how a decision will affect profit as well as society and the environment, as a whole.⁵⁵

While the number of benefit corporations in the United States and abroad continues to increase each year, there are many individuals that have various critiques of benefit corporations. In addition to the reasons

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Richard Feloni, *More Than 2,600 Companies, Like Danone and Patagonia, are On Board with an Entrepreneur Who Says the Way We Do Business Runs Counter to Human Nature and There’s Only One Way Forward*, BUS. INSIDER (Dec. 8, 2018), <https://www.businessinsider.com/b-corporation-b-lab-movement-and1-cofounder-2018-11> [<https://perma.cc/FR8M-HN3G>].

⁵² B LAB, *Benefit Corporation*, *supra* note 34.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

that are discussed in the following section, a few of the major reasons for why benefit corporations are not highly regarded by all is due to their relatively recent appearance in the business world, the fact that they are not yet authorized in all fifty states, and because the purpose that they aim to serve is at odds with the profit-driven goals of traditional and non-benefit corporations.

II. PROBLEMS

A. *Critiques of Applying the Benefit Corporation Model to the U.S. Music Festival Industry*

To start, once corporations opt in to the benefit corporation framework, a set of requirements is initiated.⁵⁶ However, one issue is that benefit corporations are voluntary to form and/or join.⁵⁷ This might mean that the many corporations that could opt in, will not do so.⁵⁸ Also, at least in the short term, many benefit corporations suffer financially because not all companies will choose to become benefit corporations.⁵⁹ As such, not all shareholders will accept the initial lower financial returns that are custom for benefit corporations.⁶⁰ This is due to the fact that many shareholders emphasize a business model that ensures quick profits instead of long-term profits.⁶¹

Further, while holding managers of benefit corporations to a higher standard is viewed as a positive, it can also be construed as a negative since it can allow for a dramatic increase in internal activism.⁶² For instance, “[s]hareholders owning just a 2% stake can launch ‘benefit enforcement proceedings’ if they believe managers are failing a public benefit mission.”⁶³ There is also the fear that, over time, “a focus on values other than shareholder profit will appear to be hurtful to a company’s fortunes.”⁶⁴ Lastly, there is a fear that the recent proliferation of benefit corporations

⁵⁶ Kent Greenfield, *A Skeptic’s View of Benefit Corporations*, 1 EMORY CORP. GOVERNANCE & ACCOUNTABILITY REV. 17, 18 (2015).

⁵⁷ *Id.* at 18–19.

⁵⁸ *Id.*

⁵⁹ *Id.* at 19.

⁶⁰ *Id.*

⁶¹ *Id.* at 17, 19.

⁶² Ben Schiller, *Should Your Company Be a Benefit Corporation, a B Corp, or What?*, FAST CO. (Mar. 27, 2017), <https://www.fastcompany.com/3069192/should-my-company-be-a-benefit-corporation-a-b-corp-or-what> [<https://perma.cc/J6LG-3RHU>].

⁶³ *Id.*

⁶⁴ Greenfield, *supra* note 56, at 19.

is just a temporary fix for issues that will require a more permanent change to corporate governance structures in the future.⁶⁵ Per critics, drafting a statute that creates a new framework for a small number of companies (and an even smaller number of companies that actually choose to adopt the framework) is not enough.⁶⁶ Alternatively, efforts can be made, as is done in many European countries, to “require major corporations to include employee representatives on their boards.”⁶⁷

What remains clear is that given the recent increase in the number of benefit corporations throughout the United States and abroad, the law surrounding benefit corporations is unsettled.⁶⁸ For example, if a benefit corporation receives a takeover bid from another corporation, “are the directors of a benefit corporation required to take the highest offer, even if it impinges on the company’s wider social mission?”⁶⁹ Standard corporate law would reply with a resounding “yes,” but benefit corporation law might say “no,” or it might say “yes,” depending on the circumstances.⁷⁰ In short, because the benefit corporation framework is relatively new, the laws surrounding benefit corporations are not well-established.⁷¹ Furthermore, “the extent to which the B [Corp] designation and constituency statutes can preserve a company’s social mission is unclear.”⁷²

There are additional concerns that B Lab—which has raised over \$32 million since its launch in 2007 and receives much of its funding from major organizations and foundations such as Deloitte LLP and Prudential—may speak of pursuing the “highest standards of verified social and environmental performance, public transparency, and legal accountability to balance profit and purpose” while its actions speak otherwise.⁷³ Specifically, B Lab has certified companies that have been accused of avoiding taxes (Etsy), working in the prison sector (American Prison Data Systems, PBC), and busting unions (New Seasons), among other questionable activities.⁷⁴ In fact, one of the earliest certified B Corps,

⁶⁵ *Id.* at 19–20.

⁶⁶ *Id.*

⁶⁷ *Id.* at 20.

⁶⁸ Schiller, *supra* note 62.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Michael O’Regan, *B Corp Certification Won’t Guarantee Companies Really Care for People, Planet and Profit*, THE CONVERSATION (Oct. 7, 2019), <http://theconversation.com/b-corp-certification-wont-guarantee-companies-really-care-for-people-planet-and-profit-124459> [<https://perma.cc/R73P-DFDT>].

⁷⁴ *Id.*

Couchsurfing.com, sought certification from B Lab primarily to pacify angry customers and attract investors.⁷⁵

However, while there are legitimate concerns surrounding the recent proliferation of benefit corporations across the country, there are many positive features of benefit corporations, including two recent music festival production companies established in the United States.

III. NEW DEVELOPMENTS

A. *Benefits of Applying the Benefit Corporation Model to the U.S. Music Festival Industry*

In the United States today, there are roughly 800 music festivals every year.⁷⁶ In 2014, in just the United States alone, 32 million people attended at least one music festival.⁷⁷ As was mentioned previously, when people think of U.S. music festivals, they often recall major music festivals such as Coachella, which, in 2015, had around 500,000 attendees and grossed over \$84 million.⁷⁸ However, there are countless smaller music festivals that, while they lack the corporate sponsorship of larger music festivals, attract diverse musical acts and crowds from around the world while simultaneously maintaining a commitment to environmental stewardship and upholding local community values.

1. Planet Bluegrass

Planet Bluegrass is a registered benefit corporation in the state of Colorado that, for the last two decades, has operated as a music festival production company encompassing three total music festivals: Telluride Bluegrass Festival, RockyGrass, and Folks Festival.⁷⁹ Each festival strives to highlight the natural Colorado environment that acts as the backdrop for each festival, feature some of the world's finest musicians and songwriters, and embraces a "leave no trace" ethic.⁸⁰ Specifically, Planet Bluegrass has taken part in environmental solutions such as providing free filtered water to guests, reducing plastic bottle use, and also purchasing

⁷⁵ *Id.*

⁷⁶ Shaikh, *supra* note 25.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ PLANET BLUEGRASS, <https://bluegrass.com/planet> [<https://perma.cc/QT3C-YEAR>] (last visited Mar. 26, 2021).

⁸⁰ *Id.*

carbon credits to offset the greenhouse gas pollution created by guests and performers traveling to and from the various festival locations.⁸¹ Additionally, based on metrics provided by B Lab, there is physical evidence that Planet Bluegrass is having a positive impact on both the environment and the surrounding community as well.⁸²

A benefit corporation’s overall B Impact Assessment score is determined after factoring in five separate “impact area” scores.⁸³ These impact areas include governance, workers, community, environment, and customers.⁸⁴ Furthermore, “[t]he B Impact Assessment asks questions about how the day-to-day operations of a company create positive impact for the company’s workers, community, and environment.”⁸⁵ Additionally, “[t]he B Impact Assessment is customized to a company’s size, sector, and geographic market.”⁸⁶

Specifically, with the overall “B Impact” score scale ranging from 0–200, Planet Bluegrass received a score of 91.3 in 2015.⁸⁷ Among the five “Impact Areas,” Planet Bluegrass scored the highest in both the “environment” and “community” areas, followed closely by the “workers” area.⁸⁸ This is striking given that the median score for non-benefit corporations is 50.9 and the minimum score required to qualify as a benefit corporation is 80.⁸⁹

2. Treefort, LLC

Treefort, LLC is a music festival production company based in Boise, Idaho that was initially created in 2012 and achieved B Corp certification in 2015.⁹⁰ Since 2012, Treefort, LLC has hosted the Treefort Music Fest, which has grown in size and length each year.⁹¹ In 2012, 137 bands played across thirteen different venues in and around Boise,

⁸¹ *Id.*

⁸² *Planet Bluegrass, B Impact Report*, B LAB [hereinafter B LAB, *Impact Report*], <https://bcorporation.net/directory/planet-bluegrass> [<https://perma.cc/P22H-LA9R>] (last visited Mar. 26, 2021).

⁸³ *About B Lab*, B LAB, <https://bcorporation.net/about-b-lab> [<https://perma.cc/QPC3-T787>] (last visited Mar. 26, 2021).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ B LAB, *Impact Report*, *supra* note 82.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ TREEFORTMUSICFEST, <https://www.treefortmusicfest.com/info/> [<https://perma.cc/8U7N-HQ5U>] (last visited Mar. 26, 2021).

⁹¹ *Id.*

Idaho.⁹² In 2019, 442 bands played across thirty-seven different venues over the course of four days.⁹³ Treefort operates as a “for profit entity ran like a non-profit,” because of the festival organizer’s focus on community values and environmental stewardship, in addition to profit.⁹⁴

In terms of environmental stewardship, Treefort volunteers form “Green Teams,” which ensure that waste is separated properly by garbage, recycling, and compostable waste.⁹⁵ Further, because the city of Boise does not provide a commercial composting service, Treefort works with the city to provide a residential composting bin and enlists the help of local community volunteers to ensure that there is no cross-contamination of the compost.⁹⁶ In terms of energy, Treefort seeks to reduce the use of gas generators to supply power to the many stages and local venues.⁹⁷ Also, Treefort actively keeps track of its carbon footprint so that steps can be taken to reduce it in the future.⁹⁸

In 2015, Treefort, LLC achieved an overall “B Impact” score of 102.2.⁹⁹ Among the five “Impact Areas,” Treefort, LLC scored the highest in both the “community” and “workers” areas, followed closely by the “customers” area.¹⁰⁰

3. International Case Study: Andanças Festival, Portugal

The Andanças Festival in Portugal is a dance and music festival that has been held every August since 1996.¹⁰¹ Incorporation as a benefit corporation is not an option for music festival production companies in Portugal, as well as in many other foreign countries. Instead, the Andanças Festival approaches environmental sustainability with a “four pillar” approach: (1) music/dance, (2) volunteering, (3) community, and (4) environment/sustainability.¹⁰² While pillar (1) is important, pillars (2)–(4) are the most relevant to our current discussion, especially pillar (4).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Sustainability*, TREEFORT MUSIC FEST, <https://www.treefortmusicfest.com/sustainability/> [<https://perma.cc/7JHP-6R9Q>] (last visited Mar. 26, 2021).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Treefort Music Fest, B Impact Report*, BLAB, <https://bcorporation.net/directory/treefort-music-fest> [<https://perma.cc/N4AV-VVK8>] (last visited Mar. 26, 2021).

¹⁰⁰ *Id.*

¹⁰¹ Graça Martinho et al., *Solid Waste Prevention and Management at Green Festivals: A Case Study of the Andanças Festival, Portugal*, 71 *SCIENCE DIRECT* 10, 11 (2018).

¹⁰² *Id.*

Because of the number of attendees who visit over the course of the seven-day festival (an estimated 20,000 per year), roughly 15,000 local community volunteers are hired to reduce the environmental damage wrought by festivalgoers.¹⁰³ For instance, at both the main festival venue and the various camping sites, there are multiple fifty-liter containers to assist visitors with separating out packaging waste (paper/cardboard) from residual waste (food waste/liquids).¹⁰⁴ That residual waste is then treated at a mechanical-biological treatment plant that generates compost and creates materials for recycling.¹⁰⁵

In addition to recycling and composting, there are several rules in place to encourage waste prevention and management: disposable tableware is prohibited, except for compostable materials; metal cutlery is required in the canteens; snack bars pay a deposit to the festival organizers, which is only returned if the area around the snack bar is clean at the end of the festival; and ashtrays are available at all venues at the festival to reduce the littering of cigarette butts.¹⁰⁶

Thus, as the Andanças Festival highlights, it is not exactly necessary to incorporate as a benefit corporation to promote environmental stewardship and stakeholder involvement at music festivals. Furthermore, there are also examples of U.S. music festivals that adopt a strategy similar to the Andanças Festival, specifically Lollapalooza and Burning Man.

IV. ALTERNATIVES TO REGISTERING AS A BENEFIT CORPORATION

A. *How Non-Benefit Corporation-Run Music Festivals Achieve Environmental Sustainability*

While registering as a benefit corporation grants many benefits to smaller, growing music festivals in the United States, there are several larger U.S. music festivals that strive to achieve environmental stewardship without incorporating as a benefit corporation.

1. Lollapalooza

Lollapalooza is currently produced by C3 Presents, a concert promotion, event production, and artist management company based in

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 11–12.

Austin, Texas.¹⁰⁷ Since 2014, Live Nation Entertainment (“Live Nation”) also has a controlling interest in C3 Presents.¹⁰⁸ As such, although Lollapalooza is not operated by a benefit corporation, this has not stopped festival organizers and promoters from advocating increased environmental sustainability and local community involvement.¹⁰⁹

Examples of Lollapalooza’s efforts to reduce their environmental impact include participating in the “BYOBottle” campaign.¹¹⁰ “BYOBottle” was created to encourage festivalgoers to reuse water bottles, which can be filled at “Hydration Stations” located throughout the festival grounds, which provide free, cold, filtered water.¹¹¹ Also, Lollapalooza works alongside Green Mountain Energy to offset carbon dioxide emissions and also encourages “green” forms of transportation to and from the festival.¹¹² Examples include partnering with Divvy to provide bike rental deals to festivalgoers.¹¹³ Lastly, festival organizers have provided incentives for festivalgoers to divert their waste from the landfill through the “Rock & Recycle Program.”¹¹⁴ This program allows festivalgoers to earn a commemorative festival T-shirt as well as chances to win a free bicycle or tickets to future Lollapalooza events if they successfully divert their waste from landfills.¹¹⁵

As a result of these efforts, in 2018, Lollapalooza managed to avoid the use of 1,119,276 plastic water bottles and diverted 145.6 tons of recycled and/or composted material from landfills.¹¹⁶ Additionally, Lollapalooza succeeding in offsetting 2.4 million pounds of carbon dioxide emissions, which is the equivalent to the work of 200,000 young trees over the course of an entire year.¹¹⁷

¹⁰⁷ *C3 Presents, About*, LINKEDIN, <https://www.linkedin.com/company/c3-presents/about/> [https://perma.cc/44DA-NGM5] (last visited Mar. 26, 2021).

¹⁰⁸ Lars Brandle, *Live Nation Completes Deal for C3 Presents*, BILLBOARD (Dec. 22, 2014), <https://www.billboard.com/articles/business/6414053/live-nation-completes-deal-for-c3-presents> [https://perma.cc/GJ2A-QGQY].

¹⁰⁹ *Sustainability*, LOLLAPALOOZA, <https://web.archive.org/web/20200403194230/https://www.lollapalooza.com/sustainability> [https://perma.cc/D6VL-2VPE] (last visited Mar. 26, 2021).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ LOLLAPALOOZA, *supra* note 109.

¹¹⁶ *Lolla’s 2018 Environmental Impact*, LOLLAPALOOZA, <https://web.archive.org/web/20200403213311/https://www.lollapalooza.com/news/2018-environmental-impact/> [https://perma.cc/UF6H-UWQR] (last visited Mar. 26, 2021).

¹¹⁷ *Id.*

In addition to major music festivals, such as Lollapalooza, there are other larger festivals that attract thousands of visitors each year and emphasize environmental stewardship, yet are devoid of any corporate sponsorship whatsoever.¹¹⁸ One such example is the annual Burning Man festival, which is held over the course of one week in Black Rock City, a temporary city erected in the Black Rock Desert of northwest Nevada.¹¹⁹

2. Burning Man

Burning Man is arguably the most environmentally conscious festival in the United States, albeit not strictly a music festival.¹²⁰ There is no stage for musical artists to perform and very little in the way of structure to the art, in general.¹²¹ Instead, festival attendees are allowed to perform their own art, whether that is sculpting, playing music, dancing, or painting, in their own unique ways.¹²² Additionally, Burning Man takes very seriously its own policy of “leaving no trace” when it comes to waste.¹²³

Essentially, the concept of “leaving no trace” refers to the idea that festival attendees should leave the location they visited the same or better than they originally found it.¹²⁴ This can be achieved by bringing fewer packaged materials into the festival, preparing food in sensible quantities to minimize leftovers, and performing MOOP sweeps of the festival area.¹²⁵ MOOP stands for “Matter Out of Place” and consists of anything that is not originally of the land on which the event takes place.¹²⁶ Any MOOP must be removed before leaving the festival site,

¹¹⁸ See, e.g., Katie Warren, *Everything You’ve Been Wanting to Know About Burning Man*, BUS. INSIDER (Aug. 15, 2019), <https://www.businessinsider.com/what-is-burning-man-theme-tickets-dates-outfits-2018-8> [<https://perma.cc/F83K-WE93>].

¹¹⁹ *Id.*; *The Event*, BURNING MAN, <https://burningman.org/event/> [<https://perma.cc/FQ4E-LW4W>] (last visited Mar. 26, 2021).

¹²⁰ Burning Man Project, *Burning Man Project: 2030 Environmental Sustainability Roadmap*, MEDIUM (July 20, 2019), <https://burningman.medium.com/burning-man-project-2030-environmental-sustainability-roadmap-c79657e18146> [<https://perma.cc/CTH8-BB8Z>].

¹²¹ Warren, *supra* note 118.

¹²² *Id.*

¹²³ *Leaving No Trace*, BURNING MAN, <https://burningman.org/event/preparation/leaving-no-trace/> [<https://perma.cc/URT5-WSG5>] (last visited Mar. 26, 2021).

¹²⁴ *Greening Your Burn*, BURNING MAN, <https://burningman.org/event/preparation/leaving-no-trace/greening-your-burn/> [<https://perma.cc/L9LJ-2A8M>] (last visited Mar. 26, 2021).

¹²⁵ *Id.*

¹²⁶ *Matter out of Place (MOOP)*, BURNING MAN, <https://burningman.org/event/preparation/leaving-no-trace/moop/> [<https://perma.cc/ay5w-4R9J>] (last visited Mar. 26, 2021).

including tent stakes, abandoned art, carpet fiber, cigarette butts, plants, and wood debris.¹²⁷ Line sweeps are conducted as part of removing MOOP from the festival grounds.¹²⁸ Line sweeps consist of groups of people standing six feet apart from each other, in a line, who walk forward and pick up any MOOP that they see in and around their camp, art installation, or village.¹²⁹ Therefore, as long as there are promoters, volunteers, and attendees of music festivals who are dedicated to enhancing environmental stewardship, given the examples of both Lollapalooza and Burning Man, perhaps incorporation as a benefit corporation is not necessary to encourage environmental sustainability.

However, while both Lollapalooza and Burning Man serve as examples of two major festivals that successfully and significantly reduce their carbon footprint without incorporating as benefit corporations, they are not representative of the music festival production industry as a whole. As of 2017, there are roughly 110 music festivals that occur each year with over 32 million U.S. citizens attending at least one music festival per year.¹³⁰ However, recently there has been a major consolidation effort in the music festival industry as many of the biggest outdoor festivals have come under the control of a select group of major companies.¹³¹ For example, Live Nation produces over sixty music festivals and has controlling stakes in Bonnaroo, Lollapalooza, and Austin City Limits.¹³² Additionally, the Anschutz Entertainment Group (“AEG”) produces large festivals such as Coachella and Stagecoach.¹³³ Yet this does not mean that all hope is lost for smaller music festivals, as more are created each year.¹³⁴

¹²⁷ *Id.*

¹²⁸ *How to Conduct a Line Sweep*, BURNING MAN, <https://burningman.org/event/preparation/leaving-no-trace/line-sweep/> [<https://perma.cc/96UY-W95R>] (last visited Mar. 26, 2021).

¹²⁹ *Id.*

¹³⁰ Ally Daisa & Beka Breneman, *Festatistics: Festivals by the Numbers*, FEST FORUMS (May 31, 2017), <https://www.festforums.com/new-blog-1/2017/5/31/festatistics-festivals-by-the-numbers> [<https://perma.cc/YB34-LUWN>].

¹³¹ Ben Sisario, *The Music Festival Business: Who Owns What*, N.Y. TIMES (Apr. 28, 2015), <https://www.nytimes.com/interactive/2015/04/28/business/media/The-Music-Festival-Business-Who-Owns-What.html> [<https://perma.cc/9ABT-7MMZ>].

¹³² Jonathan Wynn, *Are There Too Many Music Festivals?*, WASH. POST (Apr. 17, 2017), <https://www.washingtonpost.com/posteverything/wp/2017/04/17/are-there-too-many-music-festivals/> [<https://perma.cc/S5TH-BLEZ>].

¹³³ *Id.*; *Festivals*, AEG WORLDWIDE, <https://www.aegworldwide.com/divisions/music/festivals> [<https://perma.cc/5V4S-MYTB>] (last visited Mar. 26, 2021).

¹³⁴ Fosco, *supra* note 30.

V. MOVING FORWARD

A. *Increasing Both the Number of Smaller Music Festivals Incorporating as Benefit Corporations and the Corporate Restructuring of Existing Music Festivals*

The consolidation of the music festival production industry in recent years has led to financial hardships for even the most revered music festivals, such as the Newport Folk and Jazz Festivals, which were mentioned earlier.¹³⁵ In 2008, the Newport Jazz Festival failed to attract marquee corporate sponsors and, as a result, the organization was restructured into a nonprofit.¹³⁶ However, while Newport is dwarfed in size by festivals such as Lollapalooza and Coachella, its limited brand sponsorships and attendance caps are seen not as challenges, but as opportunities.¹³⁷

These developments have allowed Newport, similar to both Planet Bluegrass and Treefort, LLC, to “mov[e] away from an overly corporate and commercialized model of the contemporary [music] festival.”¹³⁸ Instead, it has allowed Newport and other smaller festivals to focus on offering “eclectic, more locally sourced and modestly branded music experience[s].”¹³⁹ This focus on small-scale, grassroots musical experiences, without interference from large corporate sponsors and musical acts, provides greater opportunities for promoting environmental stewardship, selflessness, and abandoning the wastefulness that pervades the culture of many larger music festivals.

While there are many critics who espouse that the change that benefit corporations inspire is merely superficial, there is evidence that benefit corporations have fostered substantive change since their inception in the 2010s.¹⁴⁰ First, benefit corporations have inspired innovation.¹⁴¹ Benefit corporations have “taken a proven model—the corporation—and tweaked it to solve a stubborn problem: prosperity that doesn’t include enough people and that isn’t always environmentally stable.”¹⁴² Second,

¹³⁵ Wynn, *supra* note 132.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*; *supra* Part III.

¹³⁹ Wynn, *supra* note 132.

¹⁴⁰ Perry Goldschein & Paul Miesing, *How Benefit Corporations Effectively Enhance Corporate Responsibility*, 35 BUS. & PRO. ETHICS J. 109, 112, 119, 124–26 (2016).

¹⁴¹ B The Change, *4 Lessons from Successful B Corps: How to Balance Profit and Purpose, From Those Doing It Well*, MEDIUM (Jan. 15, 2019), <https://bthechange.com/4-lessons-from-successful-b-corps-558bacb5fd31> [<https://perma.cc/RTQ9-DBWE>].

¹⁴² *Id.*

the B Corp certification assessment is rigorous, comprehensive, and bracing.¹⁴³ Poorly managed companies will not pass and will have to rework their corporate structure to successfully attain B Corp certification.¹⁴⁴ Third, benefit corporations are successful in that they are “as profitable and resilient as traditional companies,” especially considering that larger, well-known companies such as Allbirds, Patagonia, and Athleta are all registered benefit corporations.¹⁴⁵ Lastly, incorporating as a benefit corporation has its advantages: “brand identity differentiation, powerful social media appeal, lineups of potential millennial employees and membership in a club whose members seek to do business with each other.”¹⁴⁶

Yet increasing the number of smaller music festivals incorporating as benefit corporations and highlighting the various successes of benefit corporations are not enough to inspire long-term change. Instead, there is a need to educate the younger generation so that they will learn not to make the same mistakes that we and those before us have made, and then transfer their knowledge to the next generation, and so on.

B. Increasing Public Awareness About the Negative Impact of Non-Benefit Corporation-Run Music Festivals Can Lead to Sustained Positive Change

As various smaller music festival production companies have begun incorporating as benefit corporations and major music festivals encourage environmental sustainability through festival-specific policies, there is still a need to inform the public of the growing list of negative environmental impacts associated with the growing music festival industry in the United States.¹⁴⁷ Without doing so, it will be difficult, if not impossible, to take adequate steps to end the problem of environmental degradation altogether.¹⁴⁸ The rhetoric surrounding the campaign to eliminate the “Great Pacific Garbage Patch” is analogous to the campaign to eliminate pollution at U.S. music festivals: while working to remove the garbage polluting the ocean is a noble endeavor, the solution should

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*; Mara Leighton, *B Corps Are Businesses Committed to Using Their Profit for Good—These 14 Make Products We Love*, BUS. INSIDER (Dec. 8, 2020), <https://www.businessinsider.com/b-corp-retail-companies> [<https://perma.cc/KWD2-XHPM>].

¹⁴⁶ B The Change, *supra* note 141.

¹⁴⁷ Stephanie L. Stettler, *Sustainable Event Management of Music Festivals: An Event Organizer Perspective* 106–09 (2011) (M.S. thesis, Portland State University) (PDX Scholar).

¹⁴⁸ *Id.*

actually begin at the source.¹⁴⁹ As steps have been taken recently to educate the public about how preventing plastic waste from ending up in the ocean can reduce pollution and protect marine life, similar educational efforts need to be directed at the growing number of annual music festival attendees in the United States to teach them about how to effectively reduce their carbon footprint.¹⁵⁰ Education, particularly among the younger population, serves as a long-term solution because as those individuals grow older, they will share the lessons they have learned with future generations.¹⁵¹

The solutions to environmental degradation mentioned earlier in this Note, in reality, are mainly retroactive solutions to a seemingly never-ending problem. It would be desirable in the near future to not have to require these environmental sustainability policies, not because they are ineffective, but because of an overall reduction in waste generation and pollution. Specifically, my hope is that in fifty to seventy-five years, this Note will be seen as a relic of a time when the environment was in a state of incomprehensible danger, because those younger than ourselves will have taken the appropriate steps to reduce environmental degradation and rebuild a healthy, sustainable environment that will be continuously cared for by future generations.

CONCLUSION

While there are several critiques aimed at the benefit corporation model, recent examples such as Treefort, LLC and Planet Bluegrass highlight the possibility that music festivals can be produced by benefit corporations that seek to make a profit while respecting both their stakeholders' interests and the environment, too.¹⁵² As such, benefit corporation-produced music festivals could potentially serve as the blueprint of the environmentally sustainable music festival moving forward. This is especially true as every year, new music festivals are created across the country.¹⁵³

¹⁴⁹ *Garbage Patches*, NOAA MARINE DEBRIS PROGRAM, <https://marinedebris.noaa.gov/info/patch.html> [<https://perma.cc/8UJF-WLHZ>] (last visited Mar. 26, 2021).

¹⁵⁰ *Teach #DebrisFree and Become Part of the Solution to Ocean Pollution*, NOAA (Mar. 21, 2018), <https://www.noaa.gov/education/stories/teach-debrisfree-and-become-part-of-solution-to-ocean-pollution> [<https://perma.cc/ZX62-TDGQ>].

¹⁵¹ *Climate Change Education*, UNESCO, <https://en.unesco.org/themes/education-sustainable-development/cce> [<https://perma.cc/BZM5-V7H3>] (last visited Mar. 26, 2021).

¹⁵² See *supra* Part III.

¹⁵³ Fosco, *supra* note 30.

Furthermore, if a concerted effort can be made by the rising number of smaller festivals to incorporate as benefit corporations and resist being consolidated into larger production companies, benefit corporations could truly change the tide of the music festival industry in the United States towards sustainability and away from solely profits. However, it is true that opponents of benefit corporations will likely argue that even if there is a rise in the number of benefit corporations, smaller music festival production companies will still be at a distinct disadvantage when competing with the larger music festival production companies. While it does seem unlikely that, today, a unified group of benefit corporations could challenge the supremacy of major corporations such as Live Nation and AEG, the small victories that benefit corporations achieve today could establish the blueprint for future benefit corporations to incite lasting change into the future.¹⁵⁴

By helping establish the groundwork today, it may be easier in the future for benefit corporation-run music festival production companies to challenge non-benefit corporation-run music festivals, especially if benefit corporation-run music festival production companies are able to ensure sustained financial growth over time. Thus, in conclusion, if the music festival industry continues to grow at a consistent rate, an increasing number of smaller music festival production companies incorporate as benefit corporations, and those same benefit corporation-run music festival production companies are able to achieve sustained economic growth over time, there exists a very real possibility that these combined efforts could improve the environmental sustainability of the U.S. music festival production industry.

¹⁵⁴ See *The Largest Constituency of Businesses Leading on Climate Action: 500+ B Corps Commit to Net Zero by 2030, 20 Years Ahead of Paris Agreement*, B LAB (Dec. 11, 2019), <https://bcorporation.net/news/500-b-corps-commit-net-zero-2030> [<https://perma.cc/VFP5-MLWQ>].