



THE SHOW MUST GO ON: Legal Issues Affecting Broadway Due To Covid-19



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PC

Legal issues

- State and local governmental directives (how and when live theater can return)
- Union jurisdiction (streaming performances, Actors' Equity vs. SAG-AFTRA)
- Copyright protection and infringement
- Contractual defenses (force majeure, impossibility, impracticability)
- Insurance coverage for business losses
- Abridgement of constitutional liberties
- Health and safety guidelines
- Financial assistance programs

Economic power of Broadway

- \$1.8 billion in ticket sales in 2018-19 season
- 14.7 million tickets sold in 2018-19 season
- \$33 million in ticket sales in a typical week
- *Hamilton* grossed \$4 million a single week
- \$14.7 billion annual impact on city economy
- The premiere NYC tourist destination



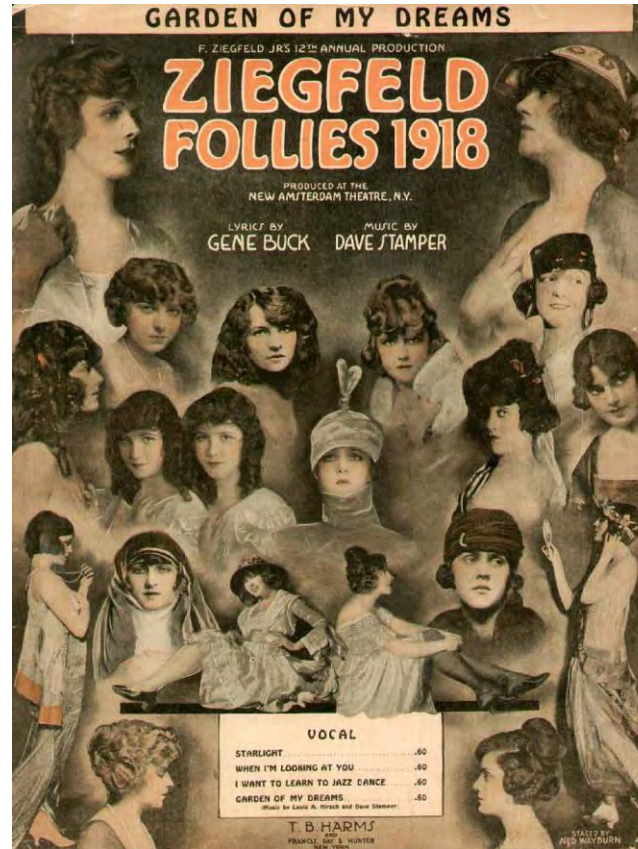
Prior shutdowns of Broadway



- Two-day closure following 9/11
- Strikes in 1975, 2003 and 2007
- This is now the longest shutdown in Broadway history

1918

- Spanish Flu epidemic
- NYC theaters did not close
- 675,000 in the U.S. die



Lead up to March 12, 2020

- March 2, 2020: Broadway League says it is “closely monitoring the evolving situation on behalf of the Broadway community”
- Hand sanitizer dispensers installed in Broadway theater lobbies
- Sick theatergoers encouraged to stay home
- Actors encouraged to stop interacting with fans at stage doors
- Producer Scott Rudin offers heavily discounted tickets for March performances
- Cast members in Moulin Rouge! are falling ill
- March 11, 2020: NY Times reports that Broadway usher tested positive

March 12, 2020

- Cuomo forbids public gatherings of 500 or more people, venues with less than 500 seats can operate at half capacity
- The 41 theaters of Broadway have 500+ seats
- Broadway to shutter through at least April 12, 2020
- Theater producers apparently wanted the order to shut down to come from the State in the hope of triggering their insurance policies, as opposed to a voluntary shutdown
- 31 shows were running at the time of the shutdown
- 16 shows were scheduled to open in the coming weeks through the end of April
- Opening night of Six cancelled
- Major Off-Broadway companies immediately shut down
- A few small theaters try to soldier on at half capacity and with sanitation procedures, later becomes impossible under “New York on Pause” plan

Why are the shutdowns announced in successive increments? Refunds for cancelled performances

- Refunds issued based on incremental shutdown extensions (April 12, 2020, then June 7, 2020, then September 6, 2020, then January 2021)
- New York Arts & Cultural Affairs Law
 - Section 23.08
 - Ticket holders are entitled to refunds for cancelled or rescheduled events
 - Exceptions for event that is rescheduled due to an act of God or catastrophe or if ticket states that remedy is limited to rescheduled performance
- Class action lawsuits against Ticketmaster and Live Nation
- Credits, postponements and/or donations in lieu of refunds

March 13, 2020

- Metropolitan Opera announces it will stream previously filmed operas for free each night for the duration of the closure
- Unlike NYC theater companies, the Met has invested in filming its work for decades (i.e. PBS, movie theaters)
- It has lots of content and the IP rights to display the content

Ways in which theater companies have been streaming content:

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Why were so few shows filmed before the pandemic?

- Much less expensive to film a show in London than New York
- Union requirements to observe
- All professional theater unions must be paid for filming a show
- Filming a Broadway show is considered a special event that is covered by SAG/AFTRA rules rather than the Actors' Equity Production Contract
- (The Business of Broadway, 2016, Allworth Press)
- Equity Production Contract addresses "Recording and/or Broadcast of the Entire Production"
- Visual or sound recording and/or broadcast of the entire production in any medium shall be permitted, provided each actor shall be paid pursuant to the terms of the appropriate SAG-AFTRA contract.
- Additionally, each actor shall be paid no less than 150% of the applicable Production Contract minimum salary
- Traditional belief that filming a Broadway show would result in an audience not willing to pay to see it live
- The right to film/stream a play or musical is distinct from the right to perform it live and must be separately obtained from the creators
- Right of actors to protect their name, image, and likeness against exploitation
- Filming is common among big opera and Shakespeare companies (RSC, Globe, Stratford) doing public domain works

What about shows recorded for the Library for the Performing Arts at Lincoln Center?

- Theatre on Film and Tape (TOFT) archive
- Broadway, Off-Broadway, and regional productions have been filmed since early 1970s
- Unions agreed only to allow the shows to be recorded for TOFT
- TOFT does not have the right to give or sell its recordings to other entities
- Each recording can only be viewed by a person for a valid research purpose

March 18, 2020

- Dramatists Guild of America objects on behalf of its members to theaters asking playwrights to return previously received option and advance payments for shows that were postponed or cancelled due to COVID
- DG claims that playwrights have no contractual obligation to return the upfront money
- DG is a trade association, not a union, due to longstanding antitrust issues



March 18, 2020

- AEA makes temporary streaming agreements available in areas where there is a limit on public gathering
- Capture a performance and make it available for one-time viewing to ticket buyers
- Provide additional weekly salaries and health care contributions
- Example: Off Broadway's Rattlestick Theatre makes filmed version of The Siblings Play available for streaming
- Theater reaches temporary agreement with Actors' Equity
- Actors receive full weekly wages for each week of streaming
- Streaming is limited by number of performances and seating capacity of theater
- This is not an economically feasible model

THE SIBLINGS PLAY

AT HOME

written by
Ren Dara Santiago
directed by
Jenna Worsham

March 23 - April 5, 2020



March 20, 2020

- Theater unions including Actors' Equity and Broadway League reach limited agreement addressing back compensation for week of March 12 and two additional weeks, plus additional health insurance and pension contributions
- Does not cover playwrights due to being independent contractors
- Dramatists Guild is not a labor union and cannot engage in the collective bargaining between the Coalition of Broadway Unions and Guilds and the Broadway League
- The agreement has yet to be supplemented
- Standard Broadway employment contracts (including Equity Production Contract) did not contemplate mass closings due to pandemic
- Notice of one week is traditionally required to close a show

March 22, 2020

- “New York State on Pause” plan takes effect, banning all nonessential gatherings.
- A handful of Off Broadway shows were still trying to operate at half capacity



March 27, 2020

- \$2 trillion federal stimulus package includes \$75 million for National Endowment for the Arts and \$25 million for Kennedy Center for the Performing Arts, prompting outcry from Republican lawmakers
- Theater companies can apply for PPP loans
- Pandemic Unemployment Insurance extends unemployment benefits to independent contractors/freelance workers, including theater workers who accepted a job but were unable to start work due to the shutdown

March 30, 2020

- Off-Broadway's Red Bull Theater cancels its livestream reading of 'Tis Pity She's a Whore at the last minute due to dispute with Actors' Equity
- Using cast from 2015 production
- Actors' Equity demanded the actors receive salaries
- Red Bull disputed whether Equity had jurisdiction over the reading
- Event cancelled and then rescheduled under the jurisdiction of the Theatre Authority

Theatre Authority

- A way for many theater companies to bypass the jurisdictional question
- Nonprofit group that regulates free appearances by Actors' Equity members at benefit performances
- Predated COVID, and now being used for livestreamed events
- Actors receive an honorarium to cover expenses instead of a salary
- Limited rehearsal time is permitted
- Current requirements per Equity website:
- There must be a fundraising component
- Funds may be raised for a third party
- Rehearsals limited to 25 hours
- Fundraiser could be aired live or captured in advance and edited
- Fundraiser could be hosted for additional viewings following initial presentation
- All materials must be removed from the internet within 96 hours of initial presentation
- All material must be newly created, not archival
- Members must participate from their homes, no onsite participation

March 2020

- High schools look into streaming their cancelled spring musicals on Zoom
- Amateur rights licensing organizations (i.e. Music Theatre International, Concord Theatricals) explain that they did not license the right to stream to the schools, but only right of public performance
- Some writers agree to temporarily allow streaming
- These companies are now providing streaming options for some shows, to the extent permitted by the writers/rights holders

April 17, 2020

Free streaming of filmed concert celebrating Disney on Broadway goes forward following dispute with the musicians union over a demand that the musicians be paid for the streaming, as opposed to prior payment for the live performance

April 24, 2020

- Actors' Equity Association, the union representing the actors and stage managers of Broadway and professional theaters throughout the U.S., hires former OSHA administrator David Michaels to draft theater safety protocols
- Equity forbids its actors from returning to work until further notice due to the health and safety risks of COVID-19.

May 1, 2020

- New York Forward Reopening Advisory Board announced
- Broadway is not represented on the board
- Broadway League insists it is working with the State on reopening
- Cuomo allegedly expects Broadway to develop its own health and safety protocols
- New York Forward plan of reopening
- in four phases by region and industry
- lack of clarity on reopening theater

May 14, 2020

- Broadway News: Producers are still receiving rent bills but are not paying them
- Producers are still technically responsible for paying minimum rent to theater owners per theater rental agreements (flat weekly rent plus percentage of show's box office income)
- Potential applicability of contractual defenses: force majeure, impossibility, frustration of purpose
- Depends on language of contract and any force majeure clause
- Likelihood that producers, theater owners, and theater workers will work together in the ultimate hope of Broadway the industry back to its feet
- If theater owners were still insisting on minimum rent payments, wouldn't all shows close down?
- Huge change from recent years, when theater owners held the upper hand
- "Stop clause": contracts state that theater owners can force a show to leave theater due to low weekly grosses (Beetlejuice)
- Theater owners may need to produce shows themselves again
- Will theater sit vacant for extended periods of time?

May 21, 2020

- A \$4 million loan from the Paycheck Protection Program (PPP) enables the Public Theater to delay previously announced staff furloughs, as reported by Broadway Journal.
- The Public did not receive any money from Disney's purchase of the filmed version of Hamilton (which premiered at the Public Theater in 2015 before transferring to Broadway).

May 25, 2020

- Daily Beast interview with Broadway League president Charlotte St. Martin
- Addresses whether Broadway economics can be remade
- “If wages dramatically decreased, if rent for theaters decreased, if fees for all designers decreased, we could come back and socially distance and lower prices.”
- .”The challenge would be to make a scaling down of Broadway equitable and workable, and financially sustainable, for all who work on it.”



May 26, 2020

- Actors' Equity releases a memo laying out four factors that will need to be in place before its members return to work:
 - Control of COVID-19;
 - The ability to readily identify infected individuals;
 - Modifying as necessary theater spaces and procedures for conducting auditions, rehearsals;
 - Performances; and working closely with other theater organizations and professionals on the measures.



May 28, 2020

- Virtual town hall meeting held by the League of Independent Theater
- Several local elected officials (including City Council Deputy Leader Jimmy Van Bramer and State Assembly Members Robert C. Carroll and Harvey Epstein) signal their support for providing small theaters and arts organizations with rent forgiveness or other financial assistance
- Van Bramer: “We cannot allow all of you to be removed from the cultural landscape of the City of New York. There is no City of New York without artists. There is no theater community without small independent theaters.”



July 6, 2020

- Actors' Equity approves plans by two Massachusetts theaters – Barrington Stage Company and Berkshire Theatre
- Group – to present the one-man show Harry Clarke and the musical Godspell respectively over the summer.
- Godspell is staged outdoors for only 96 audience members. The maximum audience is later cut in half due to safety guideline changes.
- Equity noted that it is working with theaters on a daily basis on creating acceptable reopening plans..
- Even after New York theaters are finally allowed to reopen by the government, they may still be waiting for the approval of Actors' Equity Association, which has forbid its actors and stage managers from returning to work until theaters provide detailed health and safety plans.



July 20, 2020

- New York City enters Phase 4 of the state's reopening process on Monday, but it remains unclear when theaters will receive permission to reopen.
- Theater was originally expected to be included in Phase 4.
- Over in England, theaters received permission to reopen beginning Aug. 1 so long as extensive social distancing measures were in place.



July 23, 2020

- Andrew Lloyd Webber and Cameron Macintosh call on the British government to begin the process of allowing theaters to reopen at full audience capacity.
- By comparison, Broadway theaters owners and producers have not taken such a forceful stance in seeking governmental permission to reopen at limited or full capacity seating.



August 5, 2020

- SpotCo (prominent theater industry advertising agency) files lawsuit against mega-producer Scott Rudin (who had multiple shows on Broadway at the time of the shutdown) in New York State Court
- Alleges that Rudin owed more than \$6 million in unpaid fees for work on shows such as To Kill a Mockingbird, The Music Man and West Side Story.
- Complaint: “Rudin and [Scott Rudin Production’s] usual practice is to make partial payments on outstanding invoices on the one hand, while requesting additional services on the other...In other words, while the oldest debts were paid off, new debts were incurred, and the result was that the totality of the debt was never paid in full.”
- Jonathan Zavin, an attorney for Rudin, told Broadway News that “the case has no merits and the defendants intend to contest it vigorously.”
- As of this week, answers have still not been filed on e-Courts (Index no. 653623/2020)



August 12, 2020

- The Princess Diana bio musical *Diana*, which was in previews when the shutdown began, announces that it will be filmed at its theater, without an audience present, for future release on Netflix
- Actors' Equity approves its health and safety plans
- Performers “in a bubble” during rehearsals and filming



August 19, 2020

- Performers involved in virtual production of School Girls at Berkeley Rep allege contract violations and union failures stemming from temporary AEA streaming agreement
- Berkeley Rep and American Conservatory Theater used the temporary streaming agreement put out by AEA in early days of pandemic
- On March 16, 2020, cast was told to report to rehearsal on day off so production could be recorded before lockdown went forward, before previews had even started
- Claim that the streaming agreement does not comply with the AEA collective bargaining agreement on use by a theater of an actor's image, the theater did not have the right to film a rehearsal, and that they were sufficiently compensated for the filming
- Actors filed union grievance, AEA settled for what the cast had already been paid

August 27, 2020

- Jujamcyn, the owner of five prime Broadway theaters, files lawsuit in U.S. District Court against its insurance providers for allegedly failing to fully compensate the company for its heavy financial losses resulting from the pandemic.
- According to the lawsuit, Jujamcyn received only limited coverage under its performance interruption policy and was completely denied coverage under its property damage policy.
- Certain companies and brokers specialize in theatrical coverage packages
- Policy protecting the physical property vs. policy protecting against business interruption and/or performance cancellation
- Any mention of communicable diseases, viruses, or pandemics
- Whether a physical loss or damage must occur
- Even if producers receive remuneration under their prior policies, going forward, it is assumed that it will be next to impossible for Broadway producers to obtain pandemic insurance for future performances



September 9, 2020

- Goodspeed (major regional theater in CT) reaches agreement with theater unions (Actors' Equity, Stage Directors and Choreographers Union, United Scenic Artists) for 2021 season to allow theatergoers to choose between attending a show in-person or watching streaming version at home for a single viewing, at same ticket cost
- Only ticket holders can watch streaming version
- Number of ticket holders limited by theater capacity

October 3, 2020

- Saturday Night Live premieres with what appears to be a live audience, in spite of NYS guidelines prohibiting audiences at live shows
- NY Times: As per NYS Dept. of Health, Saturday Night Live got around the rules by “casting” and paying the audience members \$150 each

October 8, 2020

- Blindness, an immersive sound installation/show, hoping to play Off Broadway
- Daryl Roth Theatre in Union Square has a flexible design
- Pending governmental approval of its proposed health and safety guidelines
- No update since then



October 9, 2020

- Broadway shutdown is extended to May 30, 2021
- Funds and exchanges made available for performances through May 30, 2021
- As of this week, this date remains in effect
- Will shutdown be extended to Labor Day?

October 23, 2020

- Movie theaters in New York State outside of NYC permitted to reopen at up to 25 percent capacity, up to a maximum of 50 people in front of movie screen
- Additional requirements:
- Counties must have COVID positivity testing rate of less than 2 percent on a 14-day average and no cluster zone activity
- Audience members must wear masks
- Assigned seating
- Social distancing between parties
- Enhanced air filtration, ventilation, and purification standards

October 23, 2020

- Group of small Off Broadway theater and comedy club owners file lawsuit in SDNY against Cuomo and de Blasio demanding a reopening date, even if it is only at 25 percent capacity
- Clementine Co. LLC v. Cuomo, Index. No. 1:20-CV-08899
- They allege that there is no legal justification to keep them shut down, since other venues were permitted to reopen (i.e. malls, casinos, churches, restaurants, gyms, schools, catering halls)
- Infringement upon their constitutional rights, including Due Process (liberty and property interests) and Equal Protection(allowing other venues to open) under the 14th Amendment.



- NY Times Article on the lawsuit: “We get sued virtually every day for virtually every action taken during this pandemic, and frankly I’ve lost track of all the frivolous suits filed against us,” said Richard Azzopardi, a senior adviser to the governor. “We are moving heaven and earth to contain this virus and we know some people are unhappy, but New York continues to have one of the lowest infection rates in the nation, and better to be unhappy than sick or worse.”
- The New Yorker describes plaintiffs’ counsel, James Mermigis, as “the anti-shutdown lawyer suing New York on behalf of small businesses”

- 12/11/20 Opinion: SDNY Judge Colleen McMahon addresses plaintiffs' motion for a mandatory permanent injunction that would enjoin Executive Order 202.3 (which compelled NY theaters to cease operation) and allow them to reopen
- Theaters argued that their equal protection rights were violated since Executive Order 202.45 permitted other venues including restaurants to reopen with social distancing
- “The arts have long been recognized to embody expressive speech and are thus protected from governmental overreach by the [First Amendment](#). See, e.g., [Ward v. Rock Against Racism](#), 491 U.S. 781, 790, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989); [Schad v. Borough of Mount Ephraim](#), 452 U.S. 61, 65, 101 S. Ct. 2176, 2181, 68 L. Ed. 2d 671 (1981); [Winters v. People of the State of New York](#), 333 U.S. 507, 510, 68 S. Ct. 665, 92 L. Ed. 840 (1948). The public performance of artistic works represents an exercise of [First Amendment](#) rights.”
- Court refers to the interim injunction by the U.S. Supreme Court in *Roman Catholic Diocese of Brooklyn v. Cuomo*, involving restrictions on houses of worship due to COVID

- “This court accords great deference to the government's exercise of its police powers during a public health crisis of unprecedented proportions. However, if the Governor of New York is not permitted to issue carefully targeted restrictions barring more than a certain number of worshippers from gathering together and engaging in behavior that scientists tell us is inimical to public health, then he may also be unable to issue restrictions that have as their effect the suppression of the free speech of artists and the right of members of the public to assemble for enjoyment of the arts — both of which, under the Executive Order, are not simply limited, but are barred altogether. Roth religion and theatre implicate the exercise of [First Amendment](#) rights, and the prioritization of religious events over secular artistic events that enjoy [First Amendment](#) free speech protection raises potentially thorny questions.”
- “Since *Diocese* has been raised by plaintiffs, the [First Amendment](#) implications of that case for this one (if indeed there are any, given the procedural posture of *Diocese*) need to be fully aired before the court rules on the plaintiffs' application for a preliminary injunction.”
- Sets up briefing schedule for January 2021
- The New Yorker: In December, producer Catherine Russell indicated that she would not reopen *Perfect Crime* until the infection rate goes down again

By comparison

- Over the summer, movie theater chains challenged NJ over closure of movie theaters
- National Association of Theatre Owners et al. v. Murphy et al., case number 3:20-cv-08298, U.S. District Court for the District of New Jersey.
- Alleged violation of rights to free speech, equal protection and due process
- Executive Order upheld
- US District Judge Brian Martinotti: “In closing indoor movie theater operations, (the state is) promoting the significant governmental interest of protecting public health by keeping closed areas that present heightened risks for COVID-19 transmission.”
- Movie theaters "necessitate a large number of individuals congregating together concurrently in one indoor location for an unusually long period of time.”

Meanwhile in New Jersey

- Theaters may technically reopen at 25 percent capacity up to a maximum of 150 people
- Movie theaters are open – but is anyone going?
- Who's Afraid of Virginia Woolf? was produced at a black box theater in Englewood, NJ for just a handful of audience members
- Shakespeare Theatre of NJ produced two outdoor shows in the summer and fall with non-Equity actors

October 2020

- Actors' Equity Association (union for professional stage actors and stage managers) and SAG-AFTRA (union for professional screen actors) battle over which has jurisdiction over streaming theatrical programming
- Many theaters have been presenting digital productions using SAG-AFTRA contracts, which are generally less costly
- Before the pandemic, the Equity Production Contract indicated that filming of Broadway shows was covered by SAG-AFTRA rules
- Equity now objects to theaters using SAG-AFTRA contracts, filed grievances against individual theaters
- SAG-AFTRA objects to Equity 60 productions under its streaming contract
- SAG-AFTRA announces it will investigate Equity's conduct on the issue
- Equity blasts the investigation as a "sham"
- SAG-AFTRA contracts do not cover stage managers
- SAG-AFTRA asks AFL-CIO to mediate the dispute
- SAG-AFTRA had traditionally covered recorded versions of musicals and plays
- Is this really all about money, needed now for health insurance coverage?

November 11, 2020

- Macy's Thanksgiving Day Parade announces that it will feature Broadway casts performing from their theaters
- Segments to be filmed in advance following health and safety protocols



November 15, 2020

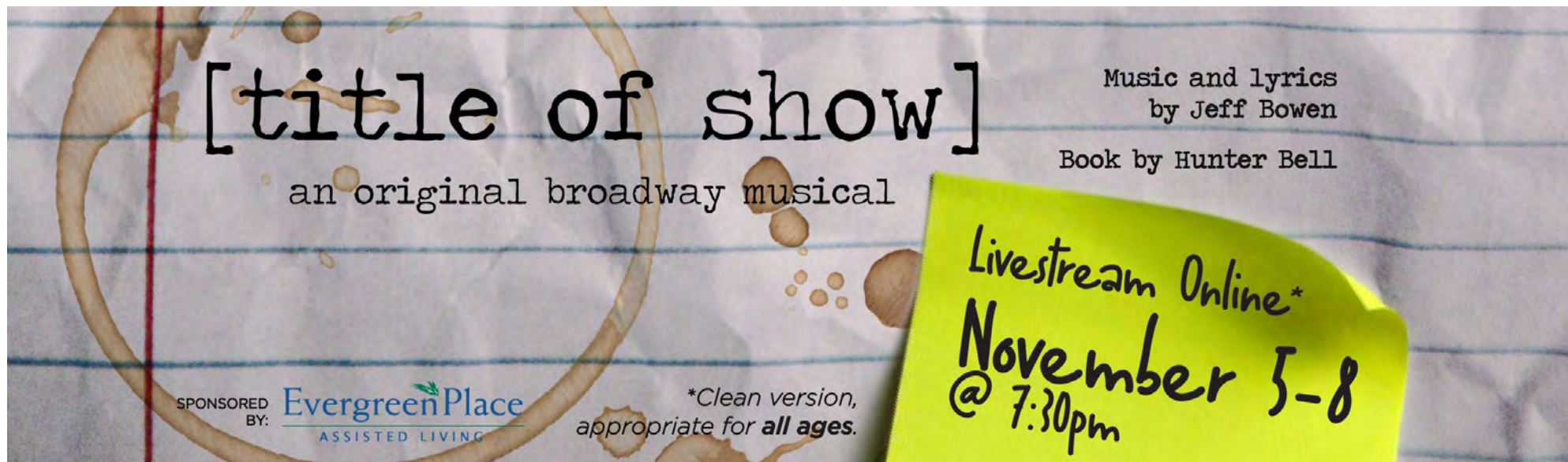
- Broadway actor Chad Kimball (*Memphis, Come From Away*) tweets that he refuses to comply with Washington State Order limiting who can sing during religious services even while wearing a mask
- “Respectfully, I will never allow a Governor, or anyone, to stop me from SINGING, let alone sing in worship to my God. Folks, absolute POWER corrupts ABSOLUTELY. This is not about safety. It’s about POWER. I will respectfully disobey these unlawful orders. [#inslee](#) [#Tyranny](#) [#truth](#)”
- Kimball had COVID in March
- Broadway community quickly unites against him
- Religious services will be limited to whichever is smaller: 25% occupancy indoors or fewer than 200 people. Choirs, bands, and ensembles won’t perform during services, but soloists will be able to. Facial coverings will be required for congregation members, who won’t be allowed to sing.

November 15, 2020

- Broadway League President Charlotte St. Martin: there have been early conversations about union contract changes
- Alleged need to consider changes to wage and work rules in order to reopen
- No one can recoup at limited audience capacity
- Each Broadway show has 16 union contracts involving 14 unions

November 16, 2020

- Infringement issues with streaming content
- Rent in London geographically blocked in the U.S., theater issues refunds to U.S. customers
- Bootleg capture of [title of show] from London is shared online on Reddit, "ProShotMusicals" group shut down



November 19, 2020

- Actors' Equity Association and SAG-AFTRA reach temporary agreement over streaming theater
- Equity will have jurisdiction over shows recorded for digital distribution that replace or supplement a live audience through December 31, 2021
- Viewing is limited to ticketholders, not to exceed 2 to 3 times the seating capacity of the theater
- AEA does not have jurisdiction over streaming content that is more like a film (i.e. editing, visual effects) than a live show
- The unions recognize that under ordinary circumstances, streaming shows would fall under the jurisdiction of SAG-AFTRA
- Irish Rep's Meet Me in St. Louis is produced under the SAG-AFTRA New Media Agreement
- Will it lead to more or less streaming productions?
- Might SAG-AFTRA and Actors' Equity merge in the years ahead (although it took years for SAG and AFTRA to merge)?

December 7, 2020

- Metropolitan Opera announces that it will lock out stagehands after their union (Local One of IATSE) refused to accept pay cuts
- Stagehands' contract expired in July
- Most Met workers on furlough since April
- Met is also seeking pay cuts from other unions whose contracts have not yet expired
- Met is willing to begin paying its furloughed employees again, even before performances resume, if they will accept long-term pay cuts
- Management claims that the pay cuts are needed in order to save the Met
- Employees claim that the Met is taking unfair advantage of the pandemic to obtain pay cuts

December 10, 2020

- “Open Culture” legislation introduced by Councilman Jimmy Van Bramer passed by City Council
- A local law to allow for the temporary use of outdoor space for artistic and cultural events
- Allows arts groups to apply for permits to perform outdoors in city streets and open spaces from March 1, 2021 through October 31, 2021
- Apply for permits through Street Activity Permit Office for \$20 fee
- Enacted on 1/10/21

December 11, 2020

- NY Times: Before indoor dining was banned again in NYC, some venues began offering live music performances including Birdland, the Blue Note, Marie's Crisis (showtune singalongs at the piano)
- Claimed that they complied with the guidelines of the State Liquor Authority, which prohibited music that was not incidental in nature and live and ticketed performances
- Hund v. Cuomo, WDNY
 - Musician sued state over ban
 - 11/13/20: Hon. John L. Sinatra, Jr. issued preliminary injunction preventing state from enforcing the ban
 - Found that distinction between incidental and non-incidental music was arbitrary

December 16, 2020

- London theaters forced to close down again due to increased infection rate
- Some shows had just reopened with social distancing
- London goes to tier 2 to tier 3 to tier 4 in a matter of days
- Holiday shows are cancelled
- Digital productions can still go forward
- Shutdown still in effect today

December 23, 2020

- Actors' Equity releases updated COVID safety guidelines for theaters
- Instructions for four different types of productions:
 - Outdoors with audience
 - Outdoors without audience
 - Indoors with audience
 - Indoors without audience

December 27, 2020

- Save Our Stages Act signed into law
- Part of \$900 billion COVID relief package
- \$15 billion in grants to live venue operators and promoters, theater producers, and performing arts groups, up to \$10 million each
- To be administered by the Small Business Administration
- Funds meant to cover payroll costs, rent, utilities, and other ordinary and necessary business expenses
- Cannot be used real estate purchase, investment, or lending
- Requirements:
 - Company must have been fully operational as of 2/29/20
 - Suffered at least a 25% reduction in revenue compared with corresponding quarter in 2019,
 - Intends to reopen
 - Not owned or controlled by major corporation
 - “Not contain matter of a prurient sexual nature”
- Broadway News: Broadway industry is waiting for clarification from SBA on eligibility requirements

December 31, 2020

- AFM Local 802 issues public statement on the non-union outsourcing of musicians for the Metropolitan Opera's online New Year's Eve Gala, which was performed outside of NYC
- "This is the fourth fundraising event where Met management is unethically outsourcing its musicians while, at the same time, attempting to use the pandemic as an opportunity to gut the regular Met musicians' contract through destructive bargaining."

January 1, 2021

- Ratatouille: The TikTok Musical released for 72 hours of online distribution
- Tickets start at \$5, money goes to The Actors Fund
- An hour-long, tongue-in-cheek digital musical adaptation of the 2007 Pixar film Ratatouille
- With Broadway actors, direction by Lucy Moss (Six), and a 20-piece professional orchestra
- Subsequent free encore “performance” on TikTok
- Raises \$2 million in total

January 1, 2021

- Began as an unlikely social media joke, then a viral trend, with people posting proposed songs, choreography, and theatrical designs on TikTok
- Generally, the creator of a song would automatically own the copyright.
- But unless the song is protected as a parody under Fair Use, it could constitute copyright infringement
- Right to make derivative works lies with the copyright owner
- But Disney (in spite of its litigious reputation for defending its IP) seemed to be okay with the trend
- As part of the Terms of Service of TikTok, users grant to TikTok a non-exclusive license to share their content
- Seaview Productions obtained permission from Disney to produce a one-time digital benefit performance, organized in association with TikTok
- Vox: “Within the span of just a few weeks, TikTok creators worked with Broadway professionals to put on the show, for which all of them were paid. Each will also retain the rights to their songs.”
- End credits: Theatre Authority permitted the artists to appear on the program, musicians performed under an agreement with Local 802 American Federation of Musicians
- Is social media/crowdsourcing a future model for creating theater?
- Bridgerton the Musical
- 2020 the Musical

January 1, 2021

- Happy Public Domain Day
- Artistic works created in 1925 finally enter the public domain, after 95 years of copyright protection
- No works entered public domain from 1999 through 2018 due to 20-year extension from the Sonny Bono Copyright Term Extension Act
- The Great Gatsby/Gatz/Nick
- See also: The Freshman with Harold Lloyd, Virginia Woolf's Mrs. Dalloway, Kafka's The Trial, Ernest Hemingway's In Our Time, Theodore Dreiser's An American Tragedy, Irving Berlin's "Always", Rodgers & Hart's "Manhattan", Gershwin's "Looking for a Boy", the musical No, No Nanette
- Go out and produce The Great Gatsby: A Great Musical on TikTok!

January 3, 2021

- NY1: State Senator Brad Hoylman, who represents the Broadway theater district, emphasizes the need for federal and state aid in order to ensure that Broadway can reopen and that the nearly 100,000 jobs that it supports will be saved.
- Hoylman: “We need a Detroit-style investment and bailout of Broadway, just like what we did for the automobile industry back in 2009.”
- “The investment would be tied to making Broadway shows more accessible and equitable for working-class New Yorkers...The United Kingdom has extended \$2 billion to its small theaters across that country. We should do the same here in the state of New York.”

January 4, 2021

- Off-Broadway's Mint Theater Company launches online theater festival
- Six recordings of prior productions are made available for free viewing
- Email conversation with artistic director, Jonathan Bank:
 - The original recordings were made for archival purposes with AEA permission
 - AEA is now allowing the recordings to be publicly streamed
 - Per agreement with AEA, the actors are receiving a weekly salary while each recording is available for viewing
 - AEA requires the cast be paid twice as much if theater charges for viewing
 - 75 percent of the cast has to agree to the streaming
 - Directors and designers also paid
 - Contractual limits on the total number of viewers
 - The money to do this came from a PPP loan

January 8, 2021

- National Endowment for the Arts releases 48-page “Art of Reopening: A Guide to Current Practices Among Arts Organizations During COVID-19”
- Based on interviews with nine arts organizations
- Key suggestions: identifying a public health professional/team for advice and quarantining artists in bubbles/pods

January 8, 2021

- Broadway Journal: WP Theater is suing the Edison Ballroom in NY Supreme Court for the return of its \$30,000 deposit for cancelled gala
- WP Theater argued that it is entitled to a refund based on the venue rental contract because an “Act of God” made holding the event impossible or impractical
- Edison Ballroom argued that the terms of the contract should be suspended because no one could have envisioned the pandemic
- Court denied WP Theater’s motion for summary judgment in lieu of a complaint and denied Edison Ballroom’s motion to dismiss

January 9, 2021

- Dr. Anthony Fauci (who has offered thoughts on how and when live theater can return throughout the pandemic) advises that a new target reopening date is “sometime in the fall of 2021”
- During an interview with the Association of Performing Arts Professionals
- Predicated on the vast majority of the population getting vaccinated, theaters having effective ventilation systems and audience members continuing to wear masks.
- Fauci: “We’ll be back in the theaters. Performers will be performing. Audiences will be enjoying it...It will happen.”

January 12, 2021

- Cuomo announces New York Arts Revival
- Public-private initiative to support the arts in New York State
- Starry “pop-up shows” in outdoor spaces and indoor spaces with flexible seating to allow for social distancing
- Launches on Feb. 4
- Participating entities: National Black Theatre, Ballet Hispánico, Ars Nova, Park Avenue Armory, St. Ann’s Warehouse, Queens Theater
- Distributing arts grants with the Mellon Foundation
- Daily News: Freelancers Union criticizes plan, suggests raising taxes on the wealthy to create new WPA

January 12, 2021

- Open letter from Equity members and theater community to AEA leadership
- “For those of us in the regions where LORT, Small Professional Theatre, Guest Artist, and Special Agreement contracts form the backbone of our employment at a vast number of not-for-profit theatres, there exists a palpable sense that Equity is not only largely absent but is actually infringing on our freedom to conduct our own strategic decision-making.”
- “Almost nation-wide, a two week-long decrease in numbers of cases, combined with an infection rate of fewer than 5 per 100,000 residents, is wildly unrealistic at the present time and appears certain to remain so well into the future. These draconian strictures effectively bar membership from our workplaces, prohibit us from obtaining the increased number of work weeks required to earn health insurance coverage and, arguably, put us at greater risk of infection as we turn to survival jobs in restaurants, retail businesses, etc.”
- Makes recommendations: AEA should reassess its role in ensuring safety of members, prioritize getting members back to work
- Letter initiated by Jan Neuberger, Georgia Mallory Guy and Kristen Coury
- Signed by hundreds of Equity members and theater professionals

January 14, 2021

- Andrew Yang on Twitter: “My first Broadway show was Phantom of the Opera - my parents brought us to see it for the holidays when I was about 13. 14 million people see Broadway shows each year - and over 87,000 jobs are supported from ushers to actors. Reopening Broadway safely is a big priority.”
- Candidate for Mayor of NYC in 2021
- Will reviving Broadway and NYC theater be a major issue?
- What if anything did de Blasio do for Broadway or after the pandemic?

January 13, 2021

- NY Times article by Jason Farago suggests how Biden Administration can help the arts
- Calls for “a new, federal cultural works project, which treats artists, musicians and writers as essential workers, and sees culture as a linchpin of economic recovery.”
- Looks to the Depression-era Works Progress Administration/Federal Theater Project (The Cradle Will Rock) and high European standards of support for the arts
- “Artists shouldn’t have to prove their ‘social impact,’ shouldn’t have to get a dozen stakeholders to sign off on every note or brush stroke. They should demonstrate what their forebears did in the 1930s — that they are professional artists and they need work.”
- Followed by article by playwright Jeremy O. Harris (Slave Play) for The Guardian calling for a new Federal Theatre Project: “We shouldn’t have to GoFundMe an entire industry, yet we are.”

January 15, 2021

- Supreme Court of London dismisses appeal by insurers regarding scope of business interruption coverage in relation to lockdowns due to COVID
- Court favors Financial Conduct Authority/policyholders over insurers
- Estimated \$1.8 billion must be paid in claims made by businesses
- Reed Smith: “a catastrophic outcome” for insurers that will affect whether businesses can be covered in the future

January 15, 2021

- NY Times article on Averno, virtual world resembling a southern town, that has inspired multiple artistic works including new musicals
- “Marvel Universe for theater, for musicals”
- Work being created by fans/volunteers in addition to the original artists (“canon”)
- Cast albums for Over and Out and Willow on Broadway Records
- Will lead to new considerations for IP and contracts

January 18, 2021

- NY Times: British theaters in Birmingham and Manchester are being leased as courthouses
- Theater artists blast the move as inappropriate and racially insensitive
- Theaters say they need to make some \$\$\$

January 19, 2021

- Cuomo reveals proposed annual state budget
- \$130 million fund to support arts and entertainment sector of economy
- Proposes \$25 million in tax credits for shows (by comparison, Broadway production of Moulin Rouge! alone cost \$20 million)
- Also proposes extending Empire State Musical and Theatrical Production Tax Credit Program (provides 25% tax credit for costs that conduct pre-tour activities, technical rehearsals, and/or performances in Upstate New York) through 2025 and extending credit limit from \$4 million to \$8 million
- Cuomo: contingent on federal government providing \$15 billion in aid to address deficit

January 20, 2021

- Biden sworn in as 46th President
- Trump proposed eliminating the National Endowment for the Arts in each of his budget proposals, rejected by Congress each time
- Trump asked Congress to freeze \$110 million in the 2021 budget from NEA and NEH through rescission during his last days in office
- Annual funding actually increased a bit during the Trump term (\$167.5 million, up \$17.5 million since Trump took office), AEA responds: “We look forward to having a pro-arts, pro-worker president take office this week.”
- Give credit to NEA Chair Mary Anne Carter
- Who will be the new NEA Chair?
- Calls for the creation of an arts leader in the cabinet

January 25, 2021

- Cuomo suggests COVID restrictions could be eased once infection rate falls and vaccination numbers increase
- No specific or substantial promises
- Cuomo: “The indoor dining in New York City is a New York City-specific condition. And we’re not, at this point, contemplating any changes.”

Looking Ahead...

How and when will theaters reopen?

- The vaccine news has injected some optimism for the first time in months
- When will they be permitted by the State and City to reopen at full capacity?
- Will some theaters reopen at partial capacity beforehand?
- When will the theater unions agree to reopening?
- Under what conditions will producers be willing to produce shows again?
 - Will producers demand concessions from the unions?
 - Will investors be willing to pay in money again?
 - Will producers be able to obtain insurance for their shows?
 - Can money from streaming supplement losses?
- When will audiences feel comfortable returning to Broadway theaters?

What health and safety measures will be used to protect theater workers and audience members?

- Proof of vaccination/recent negative testing
- Rapid testing
- Facial coverings
- Deep cleaning
- Contact tracing/emergency contact lists of attendees
- Body temperature checks
- Handling lines of people outside theater and bathroom
- Regulate backstage areas
- Can performers touch each other onstage?
- Liability for negligent transmission of coronavirus?

Will theater receive more stimulus money?

- Companies await guidance on Save Our Stages Act
- Will there be more stimulus funds (federal, state, local)?
- Need for private philanthropy
- The longer the shutdown lasts, the worse financial shape theaters companies and producers will be in

Contemplating Broadway in 2021 and 2022

- Shows begin to reopen, one by one, in the summer and fall of 2021
- Six, slated to reopen on the first day of the shutdown, is the first show to reopen
- Big long-running hits like The Lion King and Wicked reopen prior to the holidays
- Ongoing experiments with, virtual ticket options, health and safety requirements, and sanitation measures
- Extremely variable theater ticket pricing (raised due to reduced seating and/or reduced to attract people to come)
- Pressure on theater unions to renegotiate contracts
- Shows that are both performed live and livestreamed
- Some of the new shows from the time of the shutdown are scrapped altogether
- Big public relations effort to encourage people to attend Broadway shows again and convince them that it is safe to go



THANK YOU

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