

Cooperation and Conflict: The British Musicians' Union, Musical Labour and Copyright in the UK

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Abstract: Using examples drawn from the archives of the British Musicians' Union (MU), this article examines the role of the representatives of musical labour in shaping copyright legislation in the UK. Arguing that this has rarely been acknowledged in the narrative surrounding music copyright, it seeks to show how the recording industry and the MU have worked together to protect very different interests. It notes, however, that this has often resulted in conflict within the union, as it battled to preserve a collectivist philosophy in the face of both internal and external pressures.

Résumé: À partir d'exemples tirés des archives du Syndicat des musiciens britanniques (Musicians Union, MU), cet article examine le rôle des représentants du travail musical dans la formulation de la législation sur les droits d'auteur au Royaume-Uni. Argumentant le fait que cela a été rarement reconnu dans les récits entourant les droits d'auteurs de musique, j'essaie de montrer comment l'industrie du disque et le MU ont travaillé ensemble à protéger des intérêts très différents, tout en remarquant, cependant, que cela a souvent résulté en des conflits avec le syndicat, tandis que celui-ci luttait pour la préservation d'une philosophie collectiviste tout en étant soumis à des pressions à la fois internes et externes.

Since the publication of Frith's groundbreaking article, "Copyright and the Music Business" (1987), accounts of the music industries¹ have increasingly explained their operation in terms of the acquisition and exploitation of intellectual property rights (See, for example Frith 1993; Frith and Marshall 2004; and Wikström 2009) However, in unraveling the complex series of relationships between music corporations, their collection agencies and the law, the role of those who performed the music, and the work of their representatives, is largely neglected. Using material drawn from the archives of the British Musicians' Union (MU), this article aims to redress this imbalance by looking at the evolution of copyright in sound recordings in the UK from the perspective of musical labour.

The research stems from a wider research project on the history of the MU,² and my colleague, Martin Cloonan, details the background of both this and the opportunities presented by our approach (viewing musicians as workers) in his article elsewhere in this issue (2014: 10-29). More pertinent here is how this research and approach sheds new light on matters relating to copyright from the perspective of musical labour. Central to this is the Union's archive,³ which contains documents previously unavailable to researchers on copyright matters and that adds considerable detail to our understanding of how the copyright regime in the UK has developed through the 20th century. In addition, the nature of the Union's interactions with copyright reflect the interests of the players and workers⁴ in the music profession, rather than authors, creators and composers who have been the focal point of most previous studies of copyright and the music industries (See, for example, the various accounts in Frith and Marshall 2004).

This article aims to shift this focus and does so in four parts. The first offers some context for the importance of copyright in the music industries. The second explains the origins of copyright in recorded sound in the UK before looking at five major instances where the MU has been involved in significant changes to the copyright regime. The third part looks specifically at the impact of these changes on the internal machinations of the Union, and how they caused conflict between different types of working musicians. Finally, this paper teases out the wider implications of these copyright debates for those involved in organizing musical labour in the current industrial and political context.

Using this approach, the article will claim that:

- (i) Far from being a recent phenomenon, the never-ending acquisition, extension and promulgation of rights surrounding recorded music has been the key to the exploitation of musical labour throughout the entire history of the recording industry, *and*
- (ii) That the conflict within the recording industry, described by Negus as a series of "tensions between artists, consumers and entertainment corporations" (1992: vi) is better understood by also considering instances of cooperation between supposedly conflicted parties and the internal tensions within each.

In doing so, it will show how the MU has frequently found itself on the same side of copyright campaigns as the record companies, cooperating with their trade bodies in attempts to extend and maximize the benefits for both parties. For the Union, benefits centred on protecting employment; for the record companies, their motivation was a more straightforward pursuit

of profit. While this mixture of shared interests and common enemies (frequently broadcasters⁵) has preserved generally good industrial relations across the British recording industry for most of its history, it has, on occasion, destabilized the Union, leaving it to deal with internecine quarrelling over the proceeds of its negotiations.

Part 1: Music as a Copyright Industry

Before looking in detail at these claims, it is useful to note the substantial change in how the mechanics of the recording industry have been explained by those with an academic interest in it. Early accounts by the likes of Hirsch (1969, 1972) and Peterson and Berger (1975) were heavily influenced by what Jones describes as the “gloomy weight of Adorno’s work” (2012: 2), wherein the “culture industry” and the processes within it were described with reference to “assembly lines” (1979 [1944]: 163) that operated a “synthetic, planned method of turning out its products” (163).

Frith challenged this conceptualization of recording as a manufacturing industry when he claimed, in 1987, that for record companies “the age of manufacture is now over. Companies (and company profits) are no longer organized around making things, but depend on the creation of rights” (1987: 57). Negus subsequently argues that the recording industry bore “only a superficial resemblance to a production line” (1992: 46) and, influenced by work on the cultural industries by Miège (1989) and Hesmondhalgh (2002), more recent accounts have gone as far as to suggest that “the contemporary music industry is best understood as a ‘copyright industry’” (Wikström: 2009: 12).

The definition of what constitutes “the music industry” or “music industries” (see Williamson and Cloonan 2007, 2013 and Jones 2012)⁶ and the extent to which copyright is the best way of understanding them remain unresolved and beyond the scope of this article, but the point is that copyright is now integral to the business strategies of all of the major (and most of the minor) firms operating in the contemporary music industries.⁷

Part 2: Key Moments in the Development of UK Copyright in Sound Recordings

The story here, however, is not about the global music industries or copyright regimes. Instead, it will focus on the initial recognition of copyright in sound recordings in the UK’s Copyright Act (1911) and discuss five of the most

important changes to it and the role of the MU in bringing them about. These are: the recognition of rights in public performance; the agreement between Phonographic Performance Ltd. (PPL)⁸ and the Musicians' Union to manage and control these new rights in 1946; the gradual lobbying for, and recognition of, performers' rights; the Monopolies and Mergers Commission report into *Collective Licensing* (1988); and the recent⁹ extension of the copyright term length from fifty to seventy years.

(a) *The Recognition of Copyright in Sound Recordings 1911*

To recognize the significance of the rights granted by the 1911 Copyright Act, it is important to understand the position of both the record companies and the musicians in the period immediately before it. The recording industry in Britain was then undergoing its first existential crisis due to a downturn in the economy. Between 1907 and 1909, the biggest British record company, Columbia, went from being “a prosperous and secure business with substantial record catalogues in the twin formats of cylinder and disc” (Martland 1996: 102) to having to close all its retail branches and dismiss the majority of its employees just two years later.

This undoubtedly influenced Columbia's thinking on the issue of public performance of their records. Rather than seeing these performances as an opportunity to generate new income, they viewed them as a means of promoting the sales of the disc. The submission of the Gramophone Company to the Copyright Committee in 1909 noted that “public performances (of records) in our view are a great advertisement to the music, and the author would be very sorry for us to discontinue them” (qtd. in Board of Trade 1952: 50). When Lord Gorrell asked specifically whether “the purchaser of a disc should not merely acquire the right to use it in his own private surroundings like the singing of a song, but to use it in public?” the response of the Gramophone Company was simply “yes” (50). Therefore, the record companies' position in 1909 was that purchasing a recording allowed the consumer to play it in public, and that this would benefit sales of the recording.

These deliberations, however, had little impact on musicians. Most working musicians were in symphony orchestras, or more likely, playing in theatre and cinema orchestras. Few, if any, of the Amalgamated Musicians Union's¹⁰ members had ever been involved in a recording session as most of those who performed on records at the time—opera stars, concert stars and music hall performers—were either in other unions,¹¹ or were not unionized. Therefore, working musicians had little interest in the implications of investing copyright in sound recordings because, at that stage, it had no impact on their work.

(b) Carwardine and Phonographic Performance Ltd.

The first significant change to the practice (if not the wording) of UK copyright law with regards to sound recordings came after a Bristol restaurant owner, Stephen Carwardine, played a recording of Auber's *Overture: The Black Domino* in his establishment during February 1933. Wanting to test the legislation on public performance rights, The Gramophone Company, who had released the record, brought an action against Carwardine¹² for infringement of their performing right in the record. The judge ruled that the rights assigned to the record companies in the Copyright Act (1911) went beyond merely protecting against mechanical reproduction of the work, but also gave them "the sole right to use that record for a performance in public" (McFarlane 1980: 132). Though this was not reflected in statute until 1956, EMI and Decca¹³ immediately formed Phonographic Performance Ltd. (PPL) in order to exploit what Frith and Marshall called "a new kind of musical copyright" (2004: 8) and the company immediately began negotiating licences with music users.

The context is as important as the implications of the ruling. For both record companies and musicians involved in recording, three factors are crucial here: technological advances, developments in the music industries and the state of the economy more generally. Firstly, technological advances in the 1920s saw the increasing use of both records and radio and the former were used by entrepreneurs like Carwardine to help generate profits for other businesses, such as restaurants, cafes, theatres and fairgrounds (Laing 2004: 76). Secondly, the record companies looked with considerable envy at the initial success of the music publishers in establishing a collection agency, the Performing Right Society (PRS). This was formed in 1914 to collect a performing right on their behalf and had seen its revenue grow from £40,00 in its first year to £346,000 in 1935 (Ehrlich 1989: 160). Finally, the economic downturn of the late 1920s had a severe impact on both the record companies and working musicians. In the two years prior to merging in 1931, the turnover of Columbia and The Gramophone Company (they merged to form Electrical and Musical Industries, EMI) had dropped by 90% (Gronow and Saunio 1998: 57). Prospects for working musicians were similarly dire. A post-war employment boom, particularly in cinemas, had seen membership of the Musicians' Union reach 20,000 in 1925,¹⁴ but the advent of the "talkies" (sound film, the first of which, *The Jazz Singer*, came out in 1927) had shrunk employment in the cinemas, meaning that by 1934, the Union had fewer than 7,000 members (Jempson 1993: 7).

While McFarlane notes that in these adverse economic conditions, the record companies had been “casting around anxiously for an additional form of income to bolster their sagging profits” (1980: 132), the initial formulation of PPL suggests that this was something more complex than just an opportunist rights grab on behalf of the record companies.

PPL faced a number of initial problems. It was a small operation and was insufficiently resourced to effectively police all the uses of recorded music in the UK. In addition, those who contributed to the records—the composers and musicians who played on them—were unhappy that the funds raised went to the record companies and not to them. This meant that PPL had to quickly reach agreements to placate both groups.

The PPL turned initially to the MU (as the largest organized group of musicians in the UK) and other unions representing performers,¹⁵ offering a share of its new-found income,¹⁶ and proposed that it would set aside, on an *ex gratia*¹⁷ basis, 20% of its net revenue for all the musicians who had appeared on recordings. After initial discussions, PPL decided that it would distribute the money directly to the musicians in question without the involvement of the MU, but a dialogue between the two organizations had begun, with PPL acknowledging the MU’s argument that the public performance of records could impact live music.

(c) PPL and the Musicians’ Union

While the Union had tacitly approved the existence of PPL on the basis that it might provide some additional income for a small number of its members, it was not until after World War II that an agreement was formally reached between the two parties. This was to remain in place for the next 43 years. In 1946, the Union found itself in a stronger negotiating position than in 1935, with membership increasing as musicians returned from war and the demand for live music growing. However, it is also important to understand the Union’s broader stance on recorded music as detailed in its Report of the 1945 Delegate Conference proceedings. Here it set out to:

- (iii) Limit the extent to which gramophone records may be used for public entertainment;
- (iv) Obtain payments to the Union from the users of any records reproduced publicly either directly or from radio broadcasting and
- (v) Acquire some measure of control over the issuing of licences, and the conditions upon which licences are issued by PPL, for the use of recordings for public entertainment. (1947: 33)

Clearly, the MU still saw recording as a threat to live performance, and where public performance of records was to be permitted, the Union wanted both control over the use of records and payment for that use.¹⁸ Broadcasting had become an increasingly important source of revenue for PPL, so this meant that, as well as negotiating with the MU in 1946, PPL also began negotiations with the BBC.¹⁹ Consequently, fear on the part of the record companies of a recording strike and a challenge to PPL's collection arrangements meant that they were willing participants in post-war discussions with the MU, and, by extension, the BBC.

The power of the MU was evident in the outcome of the two sets of negotiations. In 1946, PPL agreed to pay the Union 10% of its net distributable revenues for the first two years and 12.5% thereafter to compensate non-featured musicians on recordings, with a further 20% allocated for the featured performers.²⁰ The Union was also able to exert sufficient influence over PPL's eventual agreement with the BBC in 1947 to indirectly control the broadcast use of records. This agreement established the principle of "needletime," a restriction on the number of hours of recorded music that could be played each week. The assumption was that remaining time would be filled with live musical performance. Needletime was initially set at 28 hours per week across the BBC radio networks, and though the allocation varied, this restriction remained in place until 1988.

The combined effect of these two agreements meant that the Union had achieved all three of the aims set out at the 1945 Delegate Conference, earning in the process a considerable degree of control over, and income from, the uses of recorded music in the UK.²¹ The extent of the MU's influence over PPL extended beyond broadcasting to public performances of records, with venues around the country subject to a series of restrictions forcing them to guarantee musicians employment in return for being granted PPL licences which, in return, allowed them the right to play a limited number of records.²²

(d) Lobbying for Performers' Rights

The third area in which the MU has played a major part in the development of copyright in sound recordings in the UK has been in the formal recognition of the performer in UK law. While some limited rights for performers were granted in the Dramatic and Musical Performers' Protection Act (1925), which made it an offence to make a recording "without the consent in writing of the performer or to sell, or perform in public any record made without such consent" (qtd. in Board of Trade 1952: 61), these were regarded as outdated and unworkable by 1952, when the Report of the Copyright Committee

acknowledged that, in practice, the refusal of consent by one player “was never likely to happen” (61).

With new copyright legislation being planned, the MU lobbied Members of Parliament between 1952 and 1956 on two main issues. The first was to advance the case for a performers’ right that enshrined in law the right of performers to be paid for public performances of records on which they played, and the second was to protect the 1946 agreement with PPL, the loss of which, General Secretary Hardie Ratcliffe told the Union’s executive committee, “would be a most disastrous occurrence” (minutes of Executive Committee meeting, July 3 and 4, 1955).

While the Copyright Act (1956) did not go this far, it was still a less than satisfactory outcome for both the Union and PPL. It rejected additional rights for performers, and established a Performing Right Tribunal to rule on disputes between users of recorded music and PPL. Understandably, both the MU and PPL were worried that this would reduce their shared control over the uses of recorded music, but it did not challenge the agreement between them, and actually strengthened PPL’s position in law with regards to the collection of revenues from both public performance and broadcasting.

Nevertheless, it took until 1996 before performers’ rights were fully recognized in UK law with the implementation of the EC Rental and Lending Rights Directive in the Copyright and Related Rights Regulations (1996).²³ The Performing Right Tribunal (later the Copyright Tribunal) ruled on a number of issues that affected PPL and the Union²⁴, including, most notably, the case of the Association of Independent Radio Contractors (AIRC) in 1980,²⁵ but did not, in any of its findings, overtly challenge the nature of the agreement between them.

(e) Monopolies and Mergers Commission

Ultimately, it was another government body, the Monopolies and Mergers Commission (MMC) that terminated the MU/PPL agreement of 1946, when the findings of its investigation into *Collective Licensing* (1988) were implemented by the Conservative government the following year.²⁶ Much to the Union’s chagrin, and though the report specifically “did not criticize” (MMC 1988:38) the MU’s previous use of the funds, it proposed that “all performers should receive equitable remuneration, directly paid by PPL, specific to each recording’s use in broadcasting or public performance” (39). In other words, the MU could no longer retain the funds for collective use, nor would it handle the distribution of funds to individual members.

Unsurprisingly, the impact on the MU was colossal. The continued expansion of the recording industry meant that by 1987, the annual payment from PPL to the Union was £1.3 million (MU Executive Committee Report to Conference 1989); losing this income would have a significant impact on the Union and its members.

Indeed, a further outcome of the MMC ruling was a lengthy dispute between the MU and PPL over what to do with the monies generated in the period post-1989. The MU argued to the Department of Trade and Industry (DTI) that, contrary to the findings of the report, the Union was best placed to allocate these funds. This may have been an argument that they were to regret winning, given the ramifications, which are detailed in the next section.

(f) Copyright Term Extension on Sound Recordings

The final instance where copyright in sound recordings was changed with the support of both the MU and PPL is perhaps the most significant: the extension of the copyright term from fifty to seventy years, which was passed into UK law on November 1, 2013—the result of an extended campaign by music industries' organizations, both collectively under the umbrella of UK Music²⁷ and individually. Tellingly, the momentum for this may have stemmed, again, from economic necessity on the part of the record companies.²⁸ In a press release marking the extension, the Union's General Secretary, John Smith, highlighted the Union's leading role in the campaign and claimed that the extension "represents a major step forwards that will be welcomed by all recording musicians."²⁹

Rather than debating the merits or motivations behind such an extension, the extension of copyright is included here to illustrate that, since 1934, the Union and PPL were largely in agreement when it came to each of the five sizeable changes in the operation of UK copyright law detailed above. However, the internal dynamics of the MU during the same period were often volatile, resulting primarily from the various demands of different types of musicians and the Union's attempts to represent all its members, regardless of their employment status, musical proficiency or the style of music they played. This volatility was most visible at the start and end of the Union's agreement with PPL, as shown in the next section's examination of the issues that arose within the Union on receipt of, and the discontinuation of, the funds from PPL.

Part 3: Internal Conflict

When the Union received its first payment in respect of the 1946 agreement with PPL, in 1951 (a sum of around £15 000 was paid towards outstanding sums in 1951), there was much internal debate among members about how best to use it. This was further complicated by a string of conditions (discussed below) attached to the payments by PPL. At the outset, the Union's Executive Committee decided that rather than distributing these monies directly to the musicians who actually played on the recordings, it would retain the funds and use them "for the benefit of all musicians" (Martin 1996: 16). The Union's thinking here was clearly that the minority of members who were recording had a negative impact on the majority whose income derived primarily from live performance.

Two main considerations shaped the Union's final allocation of the funds. The first was a fear of being perceived as a "yellow" union "in which it could be alleged that it was dependent in any way, either directly or indirectly, on employers' organizations to maintain it in existence" (*The Musician*, January 1961: 6). The second was the detail of the restrictions imposed by PPL. The most important of these was that the funds could not be used for "the purposes of furthering any trade dispute or for any purpose that may be contrary to or adversely affect the interests of PPL or its member companies" (Executive Committee Report to Conference 1947: 23). PPL also limited the amount of the income that could be used for general union administration costs to 5%, although this was later increased to 10%.

This meant that the Union's eventual use of the PPL money was subject to both internal (what members wanted and how it would be perceived) and external (what PPL would allow and the fear of legislation) pressure. In response to this, the Union established a Special Account for what became known as the "Phonographic Funds." For some years, this was unused, collecting interest until the tax implications were clarified and agreement reached on a plan for its use. When this finally happened, initial beneficiaries included the Union's Benevolent Fund,³⁰ a series of May Day Dances around the country, the Royal Philharmonic Orchestra, The Scottish Opera Society and the Bournemouth Military Band. However, in 1959, the Union's Executive Committee made a tactical decision that "a large proportion of the Phonographic Funds should be utilized in the direct promotion of employment for members," (Executive Committee Report to Conference 1959: 16). Influenced by the American Federation of Musicians' (AFM) experience,³¹ the emphasis was on live performance and employment.

In 1964, the Union advertised for an official to run what was then known as the "Keep Music Live" campaign, a post that was held until the

1990s by Brian Blain. During this period, the Union's Music Promotion Committee (MPC), which oversaw the campaign, made numerous small grants to fund events, ensembles and organizations around the country, but also gave substantial amounts in both grants and loans to the London Symphony Orchestra, the Royal Philharmonic Orchestra and Ronnie Scott's Jazz Club, all of which, at various points, were under threat of closure. All of this entrenched the MPC as an important part of the Union's business for over three decades. While it clearly benefited the Union in public relations' terms, the work of the MPC was also a cause of some subsequent problems, which centred on the Union's relationship with both the recording industry and its members. The relationship with the recording industry had been formalized as a result of the PPL agreement, and central to the successful implementation of this agreement were the *ex-gratia* nature of the payments and the American experience. Gaining a voluntary agreement to pay the musicians collectively was a triumph for the MU: the loss of these funds would have played badly with members and would have had a negative financial impact on the Union. The longer the agreement held, and the larger the annual payments and reserves became, the more important these monies became for the Union. Similarly, for the record companies, the agreement with the Union was a way of reducing the threat of a recording ban, which, as the recording industry grew in size, could have been disastrous.

The stability of the agreement was continually threatened by legislation, technology, social change and general economic conditions; however, by voluntarily hitching their fortunes to each other, the MU and PPL maintained cordial industrial relations in the UK recording industry. By the late 1960s, when faced with new challenges to their agreement (for example, commercial television and the advent of, first, pirate radio and then independent radio³²), both parties simply had too much to lose from a breakdown in the agreement.

The other issue was what the PPL funds meant to the internal organization of the Union. In directing funds towards organizations where large numbers of its members worked (for example, the London Symphony Orchestra or Royal Philharmonic Orchestra), the Union at various points saved jobs and achieved what Blain claims was "a good public relations job for the Union, making the members more sympathetic to what the Union was about" (interview with Martin Cloonan, December 18, 2012). While there were inevitable disputes as to who were the most worthy recipients, there was little evidence of any substantial dissent among Union members and officials about the collective ethos behind the use of the PPL money, either at conferences or in the MU's publications.

Remarkably, and in spite of the MU and PPL agreement being described in the House of Lords by Lord Burden in 1953 as “a travesty of trade unionism,” “a legalized racket” and “syndicalism of the most vicious kind” (qtd. in McFarlane 1980: 115), it was not until the election of Margaret Thatcher in 1979 that the status quo was seriously threatened by a combination of a changing political climate and the growing power of the independent radio companies.

Thatcher’s Conservative government introduced a range of legislation with the aim of curbing trade union powers, primarily with respect to the right to strike and “closed shop” arrangements.³³ While the MU had only conducted localized strikes (most notably, a nine-week strike at the BBC in 1980) and denied the existence of a “closed shop,”³⁴ it felt the effects of the government’s reforms and what McIlroy called the government’s “rejection of marketization into state owned enterprise and the rooting out of restrictive practices” (1995: 76).

The deals struck in the 1970s between PPL, the MU and the AIRC were those that came under closest scrutiny as the independent radio stations struggled to become profitable in their early years, laying the blame for their lack of profitability partly on the high tariffs on advertising revenue and “needletime” restrictions imposed upon them.³⁵ Having failed in their attempt to challenge these at the Performing Right Tribunal in 1980, the AIRC began an appeal and continued to lobby a receptive government ever more ferociously (see Stoller 2010) before finally achieving a reduced tariff and the abolition of “needletime” through a combination of the implementation of the MMC report, the Broadcasting Act of 1990 and a subsequent Copyright Tribunal ruling in 1992.

The outcome of the changes on the Union, as the General Secretary, Dennis Scard, noted, was that “the Union’s controls over ‘needletime,’ employment quotas and the policy of not allowing records to accompany live performance all disappeared overnight” (speech to MU Delegate Conference 1991). Unsurprisingly, given the sudden and dramatic loss of control over, and revenue from, the recording industry, the Union underwent a period of conflict both with external bodies (PPL and the Department of Trade and Industry) and, more damagingly, internally. After finally resolving its dispute with PPL in 1994, the Union was left with large sums of money, covering the PPL revenue from 1989-1994, which it was left to distribute among those individual members who had played on the tracks that generated the revenue. This served to fuel internal dissent in two ways: first, in disputed individual claims on the funds and second, in wider discussions of the how the PPL monies had been handled historically by the Union.

Although nearly £12 million was distributed in the 1994-1996 period

(Martin 1996: 17)³⁶ the Union had to allocate funds relating to recordings for which no or few records of the recording sessions were kept. Somewhat inevitably, multiple claims were made by musicians who claimed to have performed the same parts on some of the most popular records of the 1960s and 1970s, and distributions were made on the basis of a combination of a limited quantity of accurate data, unsubstantiated claims by musicians and, seemingly, guesswork. This inevitably caused some discord within parts of the membership. An unintended consequence of the Union's distribution of these funds to individuals rather than using them collectively was that not only did it end the Union's control over public performance and broadcasts of recorded music, but it also changed its relationship with its own membership.

This internal discord was exemplified by a number of legal challenges brought by members against the Union (both in the courts and to the Trade Union Certification Officer) and, ultimately, in a challenge to the Union's leadership. The most visible example of the former was the case of the session trumpet player Freddie Staff, who pursued a case against the Union, demanding access to the Union's financial records. While this was eventually resolved when Staff was given access to the records in 2002, and while no claim was subsequently pursued, the case generated a considerable amount of bad press for the Union (see Lebrecht 2001; Sweeting 2001), some of which implied mismanagement on the part of the Union's leadership over the Union's use of the pre-1989 PPL funds. The Union's leadership fiercely rejected the notion that there had been anything underhanded in its management of these payments, and there is no evidence to suggest that there was. However, at least a sizeable minority of its members remained suspicious of the Union leadership's financial decisions. As a direct result, incumbent General Secretary Dennis Scard was defeated in 2000 after his opponent, Derek Kay, claimed in his election material that "the Union, otherwise bankrupt, is being sustained by appropriating money given to compensate for the loss of work" (2000).³⁷

Part 4: Findings—Changes in Musical Labour

Today, the Union receives no funds from PPL, and session musicians are paid their share of monies due from their performances on records directly by PPL in a manner not dissimilar to that envisaged back in 1935. However, the story of the Union's involvement in this revenue stream and the acceptance of the idea of remunerating performers for the public or broadcast use of recordings is worth placing in the wider context of changes in both the nature of musical employment and wider political issues.

While this article has viewed the end of the MU's arrangement with PPL as being primarily a consequence of state intervention in what the government saw as the Union's implementation of restrictive practices and a more general weakening of trade union power, the response to the end of such practices highlighted changes in both the employment status and worldview of the musical workforce in the intervening years. In 1946, very few musicians were involved in recording, and the majority of musical work was in live performances either in orchestras or dance bands. Although the record companies were seen as a potential threat to employment (in live music), they were not viewed by the Union as an employer in the same way as, for example, The Theatre Managers' Association, Mecca Ballrooms or other major employers of musicians at the time.

By 1989, the growth of the recording industry was one of a number of factors that meant an already fragmented musical workforce had become increasingly dependent on freelance work from a range of different employers. With a relatively small proportion of members in salaried employment (mainly in orchestras), Mark Melton, an employee of the MU at the time, claimed that "politically, the natural instincts of the self-employed are entrepreneurial" (interview with author, December 19, 2012). While this is a contestable claim, subsequent events suggest that, at least in the MU, some members happily embraced the neoliberal ideology underpinning the Thatcher government that McIlroy characterized as "a return to human nature, individualism and entrepreneurialism" (1995: 76).

The move away from the collectivist philosophy that informed the Union's original policy on the monies received from PPL was particularly evident in the number of individual members willing to attack the Union's leadership (and by extension, underlying beliefs) during the course of the 1990s. The Union laid the blame for these developments at the door of not only the government but also what Scard called "ambulance-chasing" lawyers (speech to MU Delegate Conference, 1997) who, emboldened by new anti-Trade Union legislation, encouraged disenfranchised members to create difficulties within their own union for potential personal enrichment.

Having succeeded, in partnership with the recording industry, in creating and sustaining an important revenue stream from the use of musical performance on recordings, the Union then found itself in an unenviable position in the early nineties: not only had a revenue source dried up, but many of the values that had been enshrined by its leadership were also being called into question by a number of its members.

Conclusions

This account of the history of copyright in sound recordings in the UK has taken a different starting point from previous studies of the field. Rather than concentrating on, for example, the implications of copyright for composers, publishers, record companies or stars, it focused on the role of working musicians and their representative body, The Musicians' Union. In doing so, it has highlighted three issues of importance beyond the UK and its specific examples, but which are all related to organized musical labour.

The first issue of note is the historic power of the MU during large parts of the 20th century. The combination of this power, together with the BBC's initial monopoly in broadcasting³⁸, meant that the Union was able to secure hugely advantageous deals with the record companies and broadcasters: it was a direct beneficiary of, and stakeholder in, some of the copyright legislation (and related practices) in the UK for most of the 20th century.

The second issue of note is the relationship between the Union and the record companies, which was not the typical, adversarial relationship between a trade union and one of the key employers in its industrial sector during the 20th century, but rather one based on shared interests and lobbying. John Morton spoke of the Union's relationship with the recording industry as "generally very, very good" (interview with Dave Laing, April 5, 2011) and there is evidence of cooperation between the recording industry and Union on a range of issues including opposing the formation of the Performing Right Tribunal in the 1950s, supporting a blank tape levy in the 1980s and the extension of the copyright term in sound recordings in recent years. The MU remains involved with PPL despite the end of the financial link: it currently has two members on PPL's Performer Board³⁹ and both organizations are members of UK Music.

These relations can also be viewed within wider changes in the Trade Union movement. Under the leadership of John Monks, the Trades' Union Congress moved towards a more conciliatory approach under the banner of "new unionism," a situation McIlroy described as one where "industrial relations and trade unions were no longer adversarial" (2009: 50). It could be argued that the MU's experience of partnership and cooperation with the record companies pre-dated this approach by almost half a century.

Finally, it is worth noting the changing nature of the Union itself. Faced with changes across the music industries, including a fragmented and largely freelance workforce with many different employers, the collectivism that served the Union so well from the 1940s, with its "for the benefit of all musicians" ethos, has been gradually eroded. Bacon and Storey see this as

part of a general shift in UK unions, which came to rely “less on the collective context for Union activity and more on services that can be provided to individual members” (1996: 56).⁴⁰

By focusing on providing services such as low-cost instrument and public liability insurance and campaigning on issues of broad agreement across the wider music industries, the MU has maintained its membership levels when other craft unions in the UK have been forced to merge with larger unions.⁴¹ That the MU remains influential in debates surrounding copyright is, therefore, as much to do with contemporary pragmatism as it is with historic collectivism. 🌱

Notes

1. For the purposes of this article, I will refer to the “music industries” (plural) of which recording, publishing and live music are the major components, as per Williamson and Cloonan (2007).

2. See <http://www.muhistory.com>. The author is a researcher on the project that has been funded by the Arts and Humanities Research Council (AHRC) and Economic and Social Research Council (ESRC).

3. Located at the University of Stirling. See: <http://libguides.stir.ac.uk/archives>.

4. The rights for which the Union has campaigned have generally been in the interests of session musicians and orchestral players.

5. At various points, radio and, to a lesser extent, television, were seen as a threat to both sales of recorded music (by record companies) and work in live music (by the Union).

6. For the purposes of this article, I will refer to the “recording industry” as one of the component parts of the wider “music industries” as per Williamson and Cloonan (2007).

7. See, for example, the Annual Reports of Live Nation (2013) and Vivendi (2013).

8. The major record companies in the UK formed PPL in 1934 to collect royalties (on the recordings) for public performance.

9. This was approved by the EU in September 2011 and became law in the UK on November 1, 2013.

10. The AMU was the forerunner of the Musicians’ Union, founded in 1893.

11. Most were deemed variety artists and members of the Variety Artists’ Federation.

12. *Gramophone Co. v. Carwardine* (1934, Ch. 450).

13. EMI and Decca dominated the British recording market in the 1930s (see Gronow and Saunio 1998: 58).

14 The AMU had merged with the National Orchestral Union of Professional

Musicians to form the Musicians' Union in 1921.

15. The actors' union, Equity and the Variety Artists' Federation (VAF).

16. A separate deal was reached with the music publishers via their collection society, MCPS (Mechanical Copyright Protection Society).

17. This is a legal term meaning "by favour"—in this case, that the record companies made the payments voluntarily and were under no legal obligation to do so.

18. An important international precedent had been set here on the conclusion of the 1942-44 recording strike by the American Federation of Musicians. This was resolved by the record companies agreeing to make payments into the AFM's Transcription and Recording Fund for unemployed musicians (see Pinta 2010: 29).

19. The British Broadcasting Company was formed in 1922, and became the British Broadcasting Corporation in 1926, having been granted a Royal Charter. This gave it a monopoly over radio and TV broadcasting in the UK until Independent Television (ITV) launched in 1955.

20. This was not distributed by the MU but by the record companies to whom the featured artists were signed.

21. The first payment from PPL to the MU was in 1951, and was placed in a Special Fund before the Union decided how to use it.

22. The "misuse of records" was a frequent agenda item in the Union's executive's minutes during the 1950s.

23. Though they had been recognized in the Rome Convention of 1961 to which the UK was a signatory, it was at the behest of the individual governments to initiate legislation to recognize the right of performers to income from public performances of works on which they had played. In the UK, this legislation came about as a result of the European Union (EU)'s attempts to harmonize copyright laws across member states.

24. For the full remit of the Copyright Tribunal see <http://www.ipo.gov.uk/tribunal.htm>.

25. The AIRC was the trade body of independent local radio, which began in the UK in 1973. Its members were unhappy at the high percentage of advertising revenue that PPL (at the MU's prompting) charged and the limited amount of "needletime" offered (see Stoller 2010: 181-196).

26. The government sought voluntary undertakings from PPL and MU to implement the findings without it having to resort to legislation.

27. A UK music industries' lobbying organisation whose members include representatives of record companies (British Phonographic Industry (BPI), Association of Independent Music (AIM), PPL), publishers (Music Publishers' Association (MPA), Performing Right Society (PRS) and musicians (MU), as well as concert promoters and music education bodies.

28. According to International Federation of Phonographic Industries statistics, retail sales of recorded music dropped every year from 1999-2011 (IFPI 2012).

29. See <http://www.musiciansunion.org.uk/news/2011/09/14/victory-for-term-extension-campaign/> (accessed November 12, 2013).

30. The Union's Benevolent Fund offered support to the families of musicians and their families in times of financial hardship caused by illness and inability to work.

31. After the 1947 US musicians' strike, the AFM set up a Music Performance Trust with an independent trustee (Pinta 2010: 29) with the emphasis on creating employment in live performance for unemployed musicians.

32. Commercial television in the UK launched in 1955, pirate radio was broadcast from ships off the coast of the UK during the mid-sixties to flout broadcasting regulations, and Independent Local Radio (ILR), which was funded by advertising, launched in 1973.

33. The "closed shop" was an arrangement wherein all workers in a certain location or trade had to be Union members.

34. John Morton, the General Secretary, denied the MU operated a "closed shop" but said "it depends what you mean by closed shop. In reality, everyone in this country seriously involved in making money from music—or seriously involved in music and requiring to earn money from it—will be a member of the MU" (interview, September 1985 available from British Library).

35. The ILR stations had to pay 3% of their net advertising revenues in the first year (rising to 7%) to PPL, while the MU extracted a commitment from them to spend a further 3% of advertising revenue on live music. The stations were limited to 9 hours of "needletime" per day (Stoller 2010: 186).

36. In 1996, two new collection agencies, PAMRA (Performing Arts Media Rights Association) and AURA (Association of United Recording Artists) were set up to distribute the funds from PPL. The MU was represented at board level on PAMRA.

37. After his election, the Executive Committee suspended Kay for bringing the Union into disrepute for these and other comments during his campaign.

38. As a public service broadcaster, the BBC had no meaningful competition in television until 1973 and radio until 1955 on the launch of Independent Television (ITV) and Independent Local Radio (ILR) respectively

39. John Smith and Pete Thoms represent the Union.

40. See Cloonan (this issue) for discussion of the shift in the role of the British Musicians' Union toward providing member services more so than negotiating with employers.

41. Membership of the MU in 2012 was 31,482, around the same as it was in 1968.

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