

## The Changing Location of Intellectual Property Rights in Music: A Study of Music Publishers, Collecting Societies and Media Conglomerates<sup>1</sup>

---

MARTIN KRETSCHMER, GEORGE MICHAEL KLIMIS & ROGER WALLIS

**ABSTRACT** *This article reports the results of a major study, conducted between 1996 and 1999, examining the impact of de-regulation and digital technologies on the global music industry. We analyse four negotiations in the process of bringing music to the world market: commodification, globalisation, delivery, and royalty management. We show that the location of intellectual property rights in this process depends on the mutual bargaining power of the parties involved, within a statutory frame vesting music copyright initially in the author. We describe the forces which have led to the appropriation of rights accounting for 80% of global publishing and recording revenues by only five companies: EMI (UK), Bertelsmann (Germany), Warner (US), Sony (Japan) and Universal (Canada). We predict that this regime will not last and consider the likely future location of intellectual property rights in music.*

**Keywords:** globalisation, information society, intellectual property, music copyright, royalty, vertical integration.

### Introduction

Music is covered by complex intellectual property provisions. A right arises if an original musical idea is given a fixed expression; for example, if a song is written down or recorded in some other form. This right is located in the creator of that musical idea. By an act of legislation, the musical idea turns into a copyrighted work, owned by the creator, who will have the power to prevent others from using it. Under the TRIPs agreement (Trade-Related Aspects of Intellectual Property Rights, signed by more than 100 states in 1994 as part of the Uruguay round of the GATT), this principle of exclusive usage shall last until 50 years after the author's death. The European Union even enforces an extended term of 70 years *post mortem auctoris*.<sup>2</sup>

Although the copyright is first vested in the author, it rarely remains there for long. A composer might want to bring his/her work to the market. Thus, he/she might turn to a publisher who might buy the work outright or, more typically, take on the work against a share of future income generated. The terms of these contracts vary greatly, but royalties are commonly split somewhere between 70:30 and 50:50 in favour of the composer over a term of 10–15 years. The publisher will promote the work by printing sheet music (until around 1900 the core publishing function), seeking performances and securing a recording contract.<sup>3</sup> If a work is recorded, a second set of rights is created: these so-called neighbouring rights are located in the performance of that particular work and are owned by the producer (e.g. broadcaster, record company) and the performing

artist. Under the Rome Convention of 1961, these rights last for 50 years from the date of first broadcast or sale.

If the publisher and/or producer are independent firms of only local reach, the international rights might well be assigned to a multinational company with worldwide distribution. Following the current logic of the market, the rights to the works and records accounting for 80% of global music sales end up in the hands of only five companies: EMI (UK), Bertelsmann (Germany), Warner (US), Sony (Japan) and Universal (owned by Canadian drinks group Seagram, which took over Polygram (Netherlands), the world's largest music firm). One is tempted to conclude that the concept of the *author* underlying Western copyright legislation is perhaps no more than the 'functional principle' of a global music market exceeding \$US40 billion—although the multinational media groups claim that 20–30% of music revenues will eventually flow back to the artists.<sup>4</sup>

We describe and analyse the forces that determine the current location of intellectual property rights in music, and ask whether this regime can last. Drawing on more than 100 interviews conducted between 1996 and 1999 in the US, Japan, Germany and the UK (the four largest music markets), we first report how the industry itself explains and justifies the dominance of multinational firms. Secondly, we describe the complex intellectual property revenue flows underpinning the global music business, and the role of so-called copyright collecting societies. Thirdly, we identify recent challenges to the system posed by technological change, de-regulation and vertical integration. Fourthly, we indicate the attitudes and likely responses by the main actors to these challenges. Finally, we claim that the current location of intellectual property rights in music depends on a peculiar organisational division of publishing, production, distribution and revenue collection functions which cannot, and perhaps should not, be upheld in the future. Thus, we predict a radical restructuring of the global music industry.

### Textbox 1

#### Methodology

Semi-structured interviews (for full questionnaire, see Appendix I)

Core sample (44):

Five largest multinational music firms in Japan, Germany, UK

Copyright societies Japan, Germany, UK

International organisations & trade bodies: European Commission, World

Intellectual Property Organization (WIPO), International Federation

of the Phonographic Industry (IFPI), British Phonographic Industry

(BPI), Recording Industry Association of Japan (RIAJ), Music Publishers Association (MPA)

Context interviews (60) in Australia, Canada, Germany, Greece, Ireland, Japan, Korea, Sweden, UK, US with composers, artist management companies, independent labels and publishers, new media firms, telecommunications firms, financial institutions

Interviews conducted between 1996 and 1999 as part of a project 'Globalisation, Technology and Creativity: Current Trends in the Music Industry' (grant no. L126251003) within the UK Economic & Social Research Council (ESRC) Media Economics & Media Culture Programme. Unless otherwise indicated, all direct quotations in this article are taken from these interviews.

### The Creation of Value in the Music Industry

Over the last half-century, music has developed from a cultural fringe phenomenon into a commodity central to the developed national economies. Music is now an indispensable glue for many media offerings and pervades every level of society. Sports events, video games, shopping arcades, telephone calls have become inseparable from a constant stream of musical experiences. The industrialisation of popular music took hold during the 1960s, when the corporate model of divisional splits finally reached the music business.<sup>5</sup> A major music firm is organised into the following divisions:

- *A&R* (or Artist & Repertoire, the equivalent to the industrial Research & Development division): it is the function of A&R to discover and develop new material and artists. Around 13% of turnover is spent on Research & Development (more than in any other sector of the economy).
- *Production*: recording and post-production costs of a 'master-tape' can rise past the £100,000 mark for a popular album. The costs of a parallel music video release mostly exceed the costs of music production.
- *Manufacturing*: the pressing of CDs has become very cheap, with unit costs below £0.50.
- *Marketing and Promotion*: the working of outlets (advertising, broadcasting, retailing, cross-promotions) is now the major expenditure in 'breaking a new act', easily reaching £250,000 per album release in a national market like the UK.
- *Distribution*: the logistics of meeting sudden physical demand are complex. With high uncertainty and extremely short life cycles, even for many successful products, there is little room for error. This is a capital intensive global operation.

In addition, there are two further functions:

- *Publishing*: publishers hold and administer the copyright to the work which is being recorded. Some publishers actively source, promote, commission, even produce new material; others are just passive accounting operations set up by media groups.
- *Retailing*: retailers can command a 25% (or more) margin of the total sales price of a music carrier.

The following graphic is a useful representation of how the costs buried in these different corporate activities are reflected in the retail price of a CD.

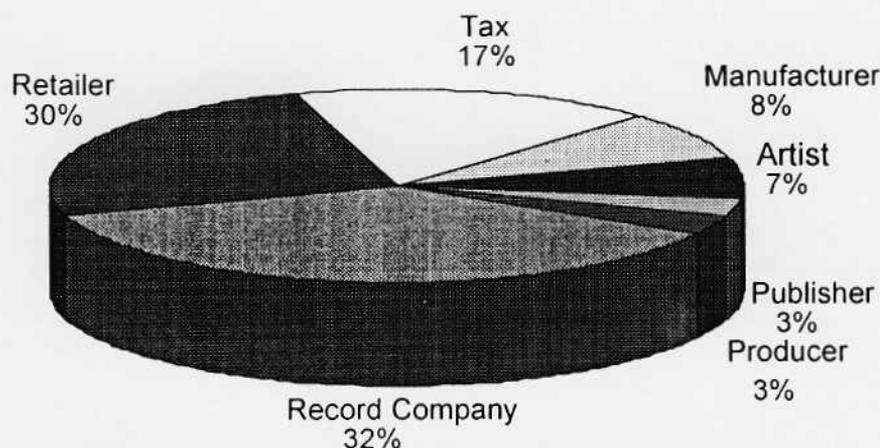


Figure 1. Cost cake for sample full-price CD, UK.

Alternatively, in a chain model popularised by Michael Porter, each of the functional splits in the music business may be represented as adding value.<sup>6</sup>



**Figure 2.** Value chain for music firms.

Multinational companies are integrated across the value chain, with the exception of retailing and the proviso that the multinationals' publishing arms quite commonly contract material to outside firms. Polygram Publishing (now part of Universal) was thought to control 50% of the works recorded by Polygram Records—the highest percentage among the multinationals.<sup>7</sup> By contrast, an independent label may not have its own publishing division, or manufacturing and distribution network. Other organisational entities are best described as publisher-producers or as management-production companies.

Despite the conventions of corporate organisation, there are peculiar characteristics of cultural goods setting the music industry apart:

Music is unlike soap or socks. We deal in emotions. The goods we sell are not very price-sensitive. If people want Morrissey or 'Candle in the Wind' they buy it whatever the costs (President, multinational).

Another gospel of the industry states that 'nobody knows the next hit', and that 'the hit/flop ratio of 1:10 has remained constant over the years', as many of our interviewees volunteered:

If for every successful release there are eight–nine failures, we break roughly even (CFO, multinational).

Such claims have received some independent support from the application of network analysis to the dynamics of fashion (e.g. the endemic effects of word-of-mouth) and from the analysis of publicly available data on the income distribution of the copyright collecting societies (according to which 10% of composers earn 90% of revenues).<sup>8</sup>

If music is sold in such volatile markets, how can a few multinational firms dominate the global business? Over the last 20 years, the same five to six largest companies have consistently accounted for a total market share of 70–80%, although each individual firm experiences considerable year-to-year swings in turnover. Many within the industry glorify the market instincts of brilliant A&R people who feel the pulse of time.

[W]hen the A&R department gets it right and discover the next Blur or Oasis, their success can bankroll the entire record company for years to come.<sup>9</sup>

Others emphasise a well-oiled marketing operation, 'a machinery of promotion and long-term rights' (Vice-president marketing, multinational) 'pressing products into the market' (CFO, multinational).

Independent companies trade their international copyrights against our global market and distribution competence (Chairman, multinational).

Record companies provide artists with an 'entourage', a structure that understands the artist, the market, international contractual arrangements. How does an artist

**Table 1.** Value of world sales of recorded music and shares of major players 1996

	Polygram <sup>a</sup> % share	Sony % share	Warner % share	EMI % share	BMG BMG	Market value \$ billions
US	13	14	22	10	12	12.1
Japan	13	18	7	14	8	7.6
Germany	23	12	13	22	15	3.3
UK	22	13	11	22	9	2.6
France	32	25	13	19	11	2.4
Canada	20	13	24	10	8	1.1
Netherlands	23	14	8	15	13	0.7
Australia	13	27	18	18	6	0.7
Italy	19	16	17	15	24	0.6
Korea	10	5	4	5	5	0.5
Sweden	20	19	13	26	22	0.3
Taiwan	17	5	14	6	5	0.3
World	17	16	15	11	14	35.5

Notes: <sup>a</sup> Universal's market share would total 23% (Polygram's and MCA's shares combined).

Source: MBI, Music and Copyright, BPI.

find a manager, once he has grown beyond the club circuit? How does he find a voice in the wider public? ... The artist can't market himself directly because he does not understand direct marketing. Why doesn't Elton John go to Coca-Cola? Because we integrate economic and artistic thinking, we know how to position an artist, and we understand the creative process (Senior counsel, multinational).

This still begs the question why so many long-term rights so consistently should have ended up in the hands of only a few firms. Independent labels are close to the market, they understand creative processes, they can buy in legal expertise. They excel in the competencies the multinationals claim. Why then have independent right holders found it so difficult to achieve organic growth? The trivial answer is that independents who tried to venture beyond their core territory have been bought—as in a landmark deal of 1992 under which EMI bought Virgin Records for close to \$US1bn, at the time termed 'the end of the independents as a force in the music business'.<sup>10</sup>

At first sight, the situation appears quite similar for the global film business, dominated by six major Hollywood studios which produce and distribute their own films, but also distribute independent movies: Walt Disney, Paramount (owned by Viacom), Twentieth Century Fox (owned by Rupert Murdoch's News Corp.), Warner Bros. (Time Warner) and Universal (Seagram). Economic explanations for the evolution of such oligopolistic industry structures often point to sizeable up-front capital investments; for example, in steel or car manufacturing.<sup>11</sup> In the case of the music business, the creation of an international distribution network is expensive and open to significant economies of scale, yet the capital needs for music production itself are much lower than for movies and, as we shall see, shrinking.

Another argument might stress the peculiar nature of risk taking in cultural markets:

One of our main functions—the artists know that well—is as financiers. Many indies can't do that. And telecoms or whoever would have to deliver that first. This is one of our big advantages ... There is not much venture capital in this area, and no bank will take the risk in a market with a flop rate of 98 per cent (Director business development, multinational).

From this perspective, the dominance of the multinationals will continue as long as they retain the financial clout to take over medium-sized independents, and remain the sole provider of risk finance to the music business.

In summary, we found executives defending almost every value creation function as the core business of the multinational music firm, from A&R to promotion, distribution and the parallel provisions of finance. Despite constant merger and acquisition activities, however, the consolidation processes of the music industry have not significantly increased the aggregate market share of multinational firms. The take-overs of substantial medium-sized enterprises, such as Virgin, Motown or A&M, have typically led to only short-term gains. In the developed economies, a state of maximum horizontal consolidation may have been reached during the last decade. Scope for multinational expansion appears to remain only in underdeveloped markets (such as India, Korea or Brazil) and in the vertical integration of music businesses into media conglomerates.

**Table 2.** Consolidation processes since 1985

Buyer	Target	Date	Price (\$US millions unless stated)
Chrysalis	Lasgo Exports Ltd (75% the rest 25% in 88 & 89)	1985	n/a
Virgin	Charisma Records	1985	£0.1 million
Bertelsmann	RCA	1986	300
Warner	Chappell Publishing	1987	n/a
Polygram	Go! Discs (49%)	1987	£0.75 mn
Sony Corporation	CBS	1988	2000
EMI	Chrysalis (50%)	1989	96.6
Polygram	Island	1989	322
Polygram	Big Life Records	1989	£1.05
Polygram	A&M	1989	500
Time Life	Warner	1990	14,000
	Communications Inc (includes WMG)		(for the whole Warner)
EMI	IRS Records	1990	£2.25
EMI	Filintrax	1990	93.5
MCA	Geffen	1990	550
Matsushita	MCA	1990	6600
Polygram	Really Useful Holdings Ltd (30%)	1990	£70 mn and deferred payments paid on performance
Virgin	EG Records	1991	£3 mn
EMI	Chrysalis (remaining 50%)	1991	£35 mn
Carlton	Pickwick	1992	£71 mn
Communications			
Zomba Records	Embaro Ltd holding company for Conifer Records (76%)	1992	n/a
Sony	Creation Records (49%)	1992	n/a
EMI	Virgin	1992	957
Polygram	Big Life Records (outstanding 51%)	1993	n/a
Polygram	Motown	1993	301
Bertelsmann	Ricordi Publishing	1994	n/a
Seagram	MCA (80%)	1995	5700
MCA	Interscope (50%)	1996	200
Seagram	Polygram	1998	10,400

Source: KPMG, Industry sources, MBI.

### Intellectual Property Revenue Flows in the Music Business

Music copyright was first formally established in England following a court case in 1777. Johann Christian Bach (the youngest son of J.S. Bach, and London's leading composer of the day) had applied for an injunction against the unauthorised publication of one of his pieces. It was judged that music indeed fell under the copyright act of 1709, which protected 'books and other writings' for 14 years from publication, renewable once. Treating music as literary work, however, missed its essence: music is not to be read but to be played, a more elusive legal concept. This dimension of music remained untapped until the pioneering introduction of a right to public performance into French revolutionary law in 1791. In Paris, a bureau for collecting performance royalties for writers and composers of dramatic work was established by Pierre-Augustin Beaumarchais in the same year. However, there was no generally practicable way to turn the legal right to public performance into economic benefit until a further court case in 1847. Ernest Bourget, a composer of popular chansons, refused to pay his bill at the fashionable Paris café *Ambassadeur*, where one of his pieces was being played. 'You consume my music, I consume your beverages', he argued. Although the *Tribunal de Commerce de la Seine* found in favour of the composer, Bourget realised that, as an individual, he would never be able to monitor general usage of his music. With the help of a publisher, a collective body was set up which, in 1851, became the *Société des Auteurs, Compositeurs et Editeurs de Musique* (SACEM), the first modern collecting society.<sup>12</sup>

In many countries, publishers gradually became aware 'that eventually a composer's performing rights might be more valuable than his publishing rights'.<sup>13</sup> Modern copyright institutions now seek to enforce a comprehensive 'pay-for-play' principle; that is, to monitor each and every usage of music in a given territory, and collect and distribute fees accordingly. The Berne International Copyright Convention (1886) recognised for the first time this ambition across national boundaries. Rather than fully harmonising national legislations, Berne required that each member country give the same protection to works created by nationals of (or published in) member countries as is afforded to works created by nationals of the country where protection is sought—the so-called principle of national treatment, subject to a minimum term of protection of 50 years *post mortem auctoris*.

During the early decades of the 20th century, performing right societies were founded in most major music markets (Germany, 1903; Britain, 1914; US, 1914; Japan, 1939). They established links via reciprocal agreements under which each society collected royalties for the 'world repertoire' in its national territory, which were then passed back to the society of the respective country of origin, which again distributed the money to the original right holders. This Big Brother regime of global music usage is neither cheap nor unbureaucratic, but it generally works. If today a piece by a minor English song-writer is used in a Japanese advertising campaign, the original composer and publisher should receive, within a year, a sizeable remuneration for a usage they could never have anticipated when the song was first published. Senior collecting society executives have described the system as 'a miracle'.

Other crucial extensions of music copyright followed technological change. When music began to be recorded by gramophone, this too was judged to be an infringing reproduction of the copyrighted work. A French court first recognised such a 'mechanical' reproduction right in 1905. Mechanical royalties today are set at between 6 and 9.3% of the 'published price to dealer' of a record. When recordings began to be broadcast, composers and publishers again encountered resistance in collecting royalties. US broadcasters claimed that once they had bought a record, any further use was at

their liberty—a puzzling confusion between work and copy. The argument escalated, and in 1939 the broadcasting industry decided to set up its own collecting society, BMI (Broadcast Music Inc.), to administer copyrighted material on more favourable terms. This was the birth of the radio licence formula of 2.75% of a station's annual revenue, which covered unlimited broadcasting of repertoire controlled by BMI. In 1941, the original US copyright society, ASCAP, finally settled on the same terms, which have since been applied in most Western countries.

Compulsory licences set an important precedent in that they replaced in certain cases the older right to exclusive usage with a right to compensation. The music industry has since struggled to reclaim exclusive rights in as many domains as possible, most successfully with the WIPO (World Intellectual Property Organization) internet treaties of 1996, which framed any transmission of music via the internet within the exclusive right of 'a communication to the public'.<sup>14</sup> Many in the music industry would like to extend this approach to all music usage.

I give you figures for a typical private radio station: 93 per cent of programming is music from the charts, but only 2 per cent of total revenue goes to the music industry, equivalent to 3 per cent of net profit. A station's cost order is: 1. personnel, 2. telecom bill! The compulsory licence rates were set at a time when radio was the most important medium of promotion (Senior counsel, multinational).

Only one thing can be a real danger to the established music industry: a breakdown of 'the system'. Schoolboys buy one CD and tape it for the whole class. This is the way back to an agrarian society, to barter, what the Greens want. WIPO is so important because it allows the industry to say 'No' in the on-line environment. The compulsory licence system for broadcasting should be revised too. Politicians appear to come around to our view. It is not that we want to forbid broadcasting, but having the right to say 'No' would result in higher margins (President, multinational).

In this maximalist vision, the right holder (most likely not the author, certainly not the author after his/her death) would have the unilateral right to say 'No' for more than 120 years after publication—if we take Stravinsky's *Sacre du Printemps* (composed in 1913) as a guide, or the Beatles catalogue.<sup>15</sup>

For mechanical reproduction rights (that is, rights involved in the pressing of records) and synchronisation rights (that is, rights to combine a work with a moving picture), a parallel scheme of collective licensing was developed (Germany, AMMRE, 1909; Scandinavia, NCB, 1915; UK, MCPS, 1924; US, Harry Fox Agency, 1927). The rationale for mechanical collecting societies is similar to that for performing right societies. An individual right owner cannot effectively monitor all reproductions or other uses of his/her work. Conversely, users of music (record labels, broadcasters, night clubs, restaurants, supermarkets ...) find it more convenient to have one agreement covering all repertoire, rather than several with different actors representing different catalogues of works. Copyright societies remedy a market failure which arises from the high transaction costs involved in individual contracting.<sup>16</sup>

With sophisticated modern monitoring technologies, the transaction cost argument for the collective administration of rights has come under scrutiny, in particular for 'mechanicals', which are now quite easy to identify and collect. The multinational companies, accounting for 80% of global record sales and publishing revenues, pay mechanical royalties mainly to themselves, in many cases from the recording to the publishing arm of the same holding company. Multinationals have a clear economic incentive to by-pass the current copyright society structure. Polygram has reported

potential annual savings of \$US2.5 million in Europe alone.<sup>17</sup> In south-east Asia, where there is no established society structure, the multinationals have signed a Memorandum of Understanding under which they collect mechanical royalties themselves. In Europe too the collecting societies have been threatened with a withdrawal of repertoire in order to obtain better terms. An agreement reached in 1997 at the Cannes trade fair, Midem, offers multinational firms a reduction on commission previously set at 8% of received royalties to 6%. By contrast, smaller right holders might now be charged a handling fee of 12% or more.

Whether policy makers should allow this to happen is a different question. On another occasion we have supported the view that 'those who join a collective system, enjoying the accrued benefits of that system, cannot then undermine it by demanding different arrangements for handling parts of the activity where the transaction cost is low'.<sup>18</sup> A fixation on transaction costs may skew the music market towards bland, global products and erect entry barriers for new firms.

Current copyright society accounts show that, in most Western countries, revenues are roughly equally divided between income from 'mechanical' carriers and performance royalties. Table 3 offers details of royalty rates, institutional processes and total royalty revenues in a selection of countries.

Royalty rights for collective licensing through copyright societies are set in a complicated institutional process of bargaining, lobbying and statutory intervention. Terms and structures vary from country to country, in particular between the Anglo-American common law system and the civil law traditions of continental Europe. Under common law, protection resides as a transferable property right in the work, while civil law exempts some rights from the creator-user contract; that is, they cannot be transferred from author to market intermediaries for exploitation.<sup>19</sup>

The UK Mechanical Copyright Society, MCPS, was started by music publishers in 1924, and they have a majority on the board. In 1997, a 'Music Alliance' joint venture was formed with the older Performing Right Society, PRS, (founded in 1914), giving publishers a *de facto* overall control over both performance and mechanical rights collection (and distribution) in the UK. Germany's GEMA and Japan's JASRAC collect both mechanical and performance royalties, and are regarded as author-dominated (with composers, lyricists and publishers each accounting for one third of executive votes).

As *de facto* monopolies, author-dominated societies took upon themselves some element of cultural and social responsibility, often encouraged by the State (in Germany, France, Japan and Sweden). Germany's GEMA defines itself as a *Schutzorganisation für den schöpferischen Menschen*, literally 'an organisation for the protection of creative men', funding education, pensions and commissioning serious contemporary music. Similarly, Sweden's performing right society, STIM, uses cultural funds to promote local composers, run a Swedish MIC (Music Information Centre) and give stipends. An international agreement among collecting societies, under the umbrella of the *Confédération Internationale des Sociétés d'Auteurs et Compositeurs* (CISAC) situated in Paris, allows for the deduction of 'social and cultural funds', amounting to a maximum of 10% of incomes generated in the home territory (i.e. excluding revenues transferred from other collecting societies for performances in other territories). Local societies can also apply their own brand of 'cultural policy' by introducing some subsidies into the way income is distributed; for example, by paying more for some forms of music when performed. The distribution formula tends to favour serious music over popular songs (even if performances of the latter generate most income for the societies). As might be expected, the multinationals are fiercely opposed to any cultural deductions, which they view as expropriation.

**Table 3.** Global royalty collection in 1995

Country	Net Royalty	Method of determination of Mechanical Royalties	Phono-Mechanical Royalties (\$US mn)	Performance-based Income <sup>a</sup> (\$US mn)	Other Income <sup>b</sup>	Grand Total
Canada	6.16% of ppd <sup>c</sup>	Collective bargaining	34.43	50.64	15.14	<b>100.21</b>
France	9.306% of ppd	BIEM-IFPI	163.42	329.51	239.1	<b>732.03</b>
Germany	9.306% of ppd	BIEM-IFPI	282.60	341.62	374.82	<b>999.04</b>
Italy	9.306% of ppd	BIEM-IFPI	57.22	261.23	73.12	<b>391.57</b>
Japan	7.5% of ppd <sup>d</sup>	Government regulations	378.53	231.73	170.21	<b>780.47</b>
Netherlands	9.306% of ppd	BIEM-IFPI	180.17	115.08	57.19	<b>352.44</b>
Spain	9.306% of ppd	BIEM-IFPI	50.35	64.44	40.18	<b>154.97</b>
UK	8.5% of ppd	Government regulations	170.2	178.02	97.71	<b>445.93</b>
USA	8% of ppd <sup>e</sup>	Set by statute	471.07	594.96	263.26	<b>1329.29</b>
Rest of Europe <sup>f</sup>	9.306% of ppd <sup>e</sup>	BIEM-IFPI	106.98	193.75	152.06	<b>452.79</b>
Rest of world	Various	Various	80.69	309.92	79.07	<b>469.95</b>
		<b>TOTAL</b>	1975.93	2670.9	1561.8	<b>6208.9</b>

Notes: <sup>a</sup> Includes income from radio, TV/cable and satellite, live and recorded performances.

<sup>b</sup> Includes income from synchronisation/transcription, private copy, reprint of printed music, sale of printed music, rental/public lending, interest investment income and other miscellaneous income.

<sup>c</sup> Estimate based on the following assumptions: 10 tracks per CD; CD retail price \$US14; retailers margin 25%. The official rate is 6.47 cents per work, 1.295 cents per minute.

<sup>d</sup> Estimate based on retailer margin of 25%. Official rate is 5.6% of the rsp (retail sales price).

<sup>e</sup> Estimate based on the following assumptions: 10 tracks per CD; CD retail price \$US11; retailers margin 25%. The official rate is 6.60 cents per work, 1.25 cents per minute.

<sup>f</sup> The countries included are Austria, Belgium, Denmark, Finland, Greece, Hungary, Iceland, Ireland, Norway, Poland, Portugal, Sweden. Some of the countries have not reported performing income while Ireland's reproduction-based income is included in the UK figures.

<sup>g</sup> Ireland's rate is 7.5% of ppd.

Source: NMPA, IMRO, G.M. Klimis, Industry sources.

Key: IFPI = International Federation of the Phonogram Industries (represents the interests of the recording industry); BIEM = Bureau International des Sociétés Gerant les Droits d'Enregistrement et de Reproduction Mécanique (represents the interests of collecting societies); ppd = Published Price to Dealers.

Despite their compelling rationales, collecting societies are extremely fragile constructions. They unite conflicting interests under one institutional roof in at least two respects. First, there is no harmony of interests between authors and publishers (contrary to the assumptions behind the standard economic analysis of copyright).<sup>20</sup>

Under Common Law, everything is 'transferable', 'assignable', a total freedom of contract. For example, authors can sign away all their mechanical rights to their publishers. Civil Law legislation ensures that the publisher or producer does not get everything. If all claims are represented by the producer or publisher, the question is: Do they really have an incentive to pass on the share of the author? (Executive, international organisation).

Secondly, collecting societies have to represent their members' interests against users, such as record companies or broadcasters, which might be part of the same multinational holding company as publishers on the society's board.

It is hard for the board of a collecting society which is planning a negotiating strategy against, say, the record industry as regards mechanical copyright rates, to have a smooth and open discussion if some of its members are from publishers which are owned by the same conglomerates which control the recording industry. EMI Music Publishing, for example, is on the board of both STIM (in Sweden), and PRS/MCPS (in the UK) (Board member, collecting society).

Collecting societies administer intellectual property rights in areas where right holders cannot individually exercise their rights. These rights are often called 'secondary rights', although they may be equally valuable to the 'primary rights' which are individually contracted between authors and intermediaries to the market. If an artist is first contracted to a record company, the distribution of primary rights is a reflection of their mutual bargaining power.

What has always generated the main profits are newcomers on contracts favourable to the industry. Our industry is about finding new acts (President, multinational).

New artists are traditionally signed for seven album deals. This, in effect, secures exclusivity for a label since the normal life cycle of an act is 2-4 albums (Vice-president marketing, multinational).

It is careless to allow management/production companies to retain the rights to the master tapes (President, multinational label).

Often, sliding scales are used, paying a royalty rate on the price of each CD sold well below 10% for the first 50,000 or 100,000 units, which then may move up to 15%. If contracts of already successful artists come up for renewal, the bargaining power shifts dramatically. According to his 1991 Sony contract, Michael Jackson receives 22% of the selling price of each CD. His sister, Janet Jackson, trumped him in 1996 when she negotiated a deal with Virgin (EMI) for 24% of royalties on sales, a \$US35 million signing on fee, and a \$US5 million advance for each album while regaining the rights to the master-tapes after 10 years. The largest advance of \$US10 million per album for six albums was reputedly paid to Prince under the terms of his 1992 contract with Warner.<sup>21</sup> Still, TAFKAP (The Artist Formerly Known As Prince) soon wanted to get out of his contract, claiming violations to his artistic integrity—a case settled out of court.

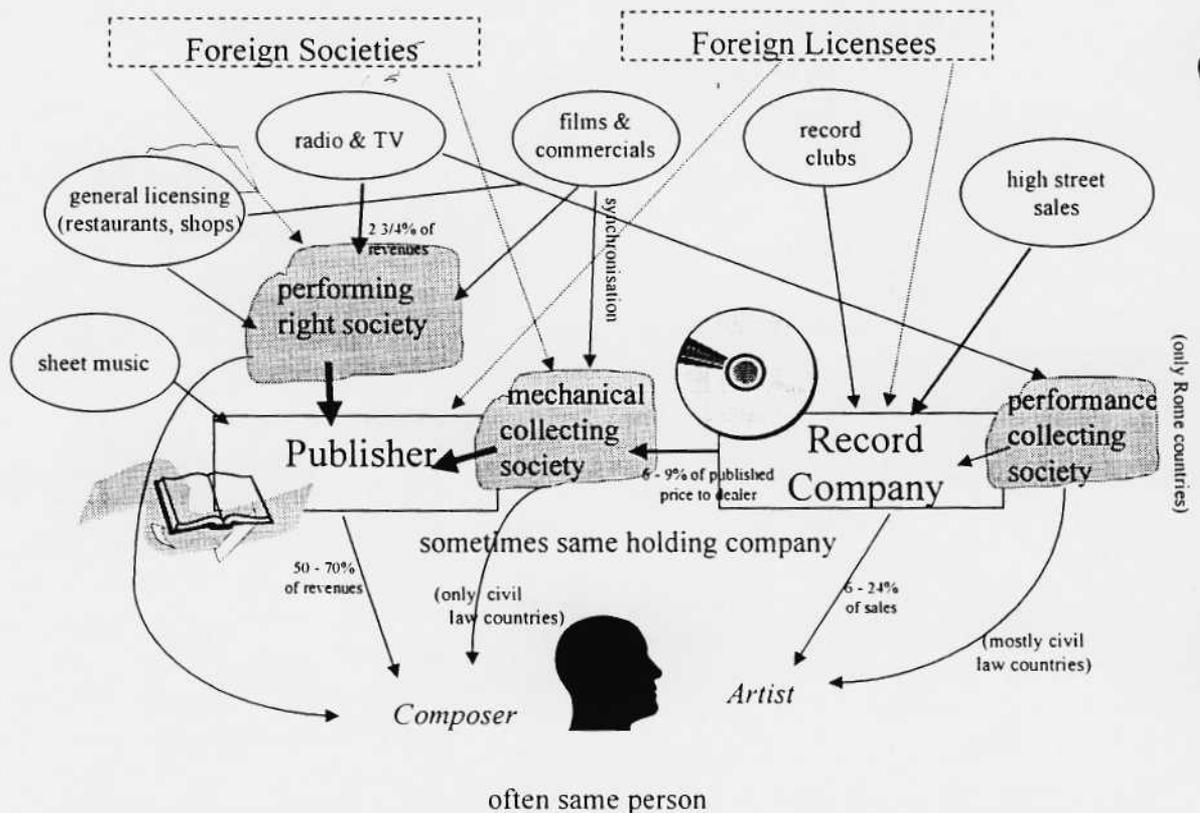
Unsurprisingly, many now famous artists who are locked into long-term exclusive contracts try to renegotiate terms, and sometimes take their record company to court for unfair restraint of trade. George Michael vs Sony was such a headline case—lost by the artist in 1994 in the UK High Court.<sup>22</sup> It is now common sense within the industry, that the bidding war for the best known artists during the early 1990s has failed to produce economic return.

I don't think this will repeat itself. We have become more sensible (Director business development, multinational).

Many of the best-known and lucrative artists are 'singer-songwriters'; that is, they hold rights covering both the music and the performance (e.g. The Beatles, David Bowie, Janet Jackson, Michael Jackson, Madonna, George Michael, Prince). The rights to the music are full copyrights, and have been discussed at length. The rights to the performance arise with the production of a master-tape. These so-called neighbouring rights are less strong. Under the Rome Convention of 1961, they are protected for 50 years from first release, and are often not exclusive rights (that is, they are entitlements to compensation rather than control). Among the right holders are the lead artists, backing musicians, the record producer, and the producing company. Performing artists and record producers may have individual contracts over royalties from sales of units

('primary rights'). We have seen above that they may range from 6 to 24% for the artist, while a producer may achieve a percentage between 1 and 5% of retail sales.

As with full copyrights, there are areas of ('secondary') exploitation of neighbouring rights where individual contracting is difficult (radio and TV stations, shops, hotels, airlines etc.). In Europe, the record producers and performing artists have responded in the time-honoured way by setting up collecting societies to which they assign these specific rights. In the UK, production and artists' rights are administered separately by PPL (owned by the record industry) and PAMRA (performing artists). In Germany, royalties are collected jointly by GVL, the worldwide biggest neighbouring rights society founded in 1959, with revenues of DM 185 million in 1995. In the US, which is a non-signatory of the Rome Convention, performing artists are compensated via guilds—the American Federation of Television and Radio Artists (AFTRA) and the American Federation of Musicians (AFM).



**Figure 3.** Music intellectual property revenue flows in the entertainment field.

We have provided an exposition of the complex regime of intellectual property rights underpinning revenue flows in the global music business. At the end of this section, we focus briefly on features of this system supporting exploitation processes as yet untried in much of the traditional economy.

1. Intellectual property rights (IPRs) in music are located up-stream. They arise through the 'functional principle' of the author at the beginning of the chain of value creation.
2. The main revenue streams from IPRs flow from exploitations far down-stream. In particular, they flow from uses which may not have been foreseen, and returns may be appropriated on a pay-per-use basis.
3. Returns from intangible rights, such as the right to public performance, are comparatively immune from economic cycles and technological change. As long as music is

used and media channels keep communicating, royalties will be due—regardless of fluctuating high street sales and the technological platform of delivery.

4. Music which has entered a cultural back catalogue of classical works (e.g. Stravinsky, Elvis Presley, The Beatles) offers extremely secure returns, perhaps over more than 100 years. Not many artists have this potential, but those who have are incomparable investments.
5. Collective administration of intellectual property rights is a powerful concept, but it poses tough regulatory questions regarding the internal governance of these bodies, and regarding their ability to exert monopolistic control over certain markets.

### **Digitisation, De-regulation, Convergence**

Since the introduction of the Apple II personal computer in 1977, digital technology has been pervading more and more areas of life. This section follows the impact of technological and regulatory developments over the next two decades, culminating in a radical challenge to the current regime of intellectual property revenue flows in the music business.

Low-cost, high-speed computing could not have arrived at a more fortuitous moment for the music industry. Sales of vinyl records were stagnating at the end of the 1970s. The launch of the CD in 1983, the first mass market digital carrier, revitalised the business, leading to a decade of strong growth as consumers replaced their record collections and accepted a premium price for a glossier, surface-noise-reduced soundscape. At the same time, digital technology led to a revolution in music production with the introduction of the MIDI (musical instrument digital interface) standard in 1982, opening countless possibilities for sampling, manipulating and mixing sounds. In a serendipitous parallel, Western governments began to de-regulate media and communication channels. New cable and satellite operators entered the market, commercial radio stations proliferated, and music television was invented (MTV started broadcasting in 1981). A global youth culture began to spread, carried by names such as Benetton, Coca-Cola, Disney, Michael Jackson and Madonna.

Researchers in mass communications and the sociology of culture soon identified such trends towards 'globalisation'—well before the inflationary impact of that term. They traced minutely the formal and informal integration within and between different sectors of the media industries (e.g. publishing, producing, broadcasting), and an increasing gap between local and global operations, leading to the demise of the medium-sized company. The 1980s saw the rise of Murdoch's News Corporation, Turner's creation of CNN, Disney's push into merchandise and themed marketing, Bertelsmann's entry into the US market, Warner's merger with Time Inc, Viacom's expansion into cable and music television. It is during this decade that multisector corporate media groups were formed with truly global ambitions, a message finally brought home by the arrival of Sony (1987) and Matsushita (1990, aborted 1995) in Hollywood.<sup>23</sup>

De-regulation and the new digital technologies changed the mission of the music business. The sudden multiplication of media channels combined with cheaper, more flexible means of producing, manipulating and integrating musical material into new contexts (such as music TV, video games and advertising) led to a shift in revenues from physical distribution to immaterial performance rights. A wider, simultaneous presence in global markets imposed further constraints to find instant 'synergies' across the activities of a media group. The image of the artist increasingly suppressed any musical aspirations.<sup>24</sup>

The purpose of a major music company now is not to sell records, but to develop artists. Developing artists means investing money to create a brand (Director new media, multinational).

Attitude is more important than music (A&R executive, multinational).

Pop is anything that sells (Chairman, multinational).

Our interviewees were ambivalent about these developments. They complained about 'burn outs', 'an ever-shorter life cycle of acts', 'a back catalogue that is not replenished'.

There is greater pressure to suck money out of album one (Vice-president, marketing).

Some products have an extremely short life cycle. A single, then quickly the album thrown in, and after two or three weeks, they have disappeared off the stage. This can't be the back catalogue of tomorrow (Director business development, multinational).

While the music industry partly drives this phenomenon, it may also be driven. A new threat is 'convergence'—an acceleration of the factors of digitisation and de-regulation. According to the visionaries of convergence, any content may soon reach any domestic appliance via any technological platform.<sup>25</sup> Thanks to the rapid adoption of internet technologies, the capital intensive logistics of global distribution can now be replicated by parties new to the music business.

Hi-fi quality is already available over ordinary phone lines, using compression techniques. Market research shows that music is high on the list of goods subscribers would buy on-line (CFO, multinational).

The topic, new media, is imposed on us from the outside: consultancy reports, questions from journalists, everybody is engaged with these issues. We don't set the debate ourselves. We react. We respond to technology, to the telecoms which are suddenly deregulated and look for new business areas, and the IT industry which, perhaps pushed by Microsoft, starts to look at consumer electronics. This is where the pressure comes from. They invent and develop clever new technical devices, and suddenly find they need content. The technical applications themselves are quite useless without content (Director business development, multinational).

Growing access to decentralised digital production facilities and the rise of the internet as a global communication medium have also opened new possibilities for the independent players within the music industry. The trade of international copyrights against global distribution and market knowledge, which is at the heart of the current industry structure, suddenly looks less attractive.

There is now a vibrant underground scene of digital jukeboxes, such as IUMA and MP3.com in the US, which charge unsigned acts about \$250 to post up their recordings. Consumers can hear the music online for free, or pay to download it ... Digital jukeboxes are the online version of independent labels but with such smaller cost bases that they may prove more resilient.<sup>26</sup>

How will the established music industry react to these technological and organisational possibilities? In the next section, we extract salient responses from our interview set.

## **Defensive Postures**

One common attitude among our interviewees was to play down the threat of on-line delivery, emphasising instead the opportunity to appropriate the margins enjoyed at present by high street retailers.

10 years from now, the music industry will look essentially the same. The resources of a major music company are difficult to develop. Many have tried it. It is a history of failures. Look at Dreamworks (bought former Warner people, no significant hit since its start) or Marlboro Records. New distribution technology is just that—a new form of distribution. It will not make a significant difference to the competencies of our industry, which cannot be bought for money (President, multinational).

I don't see any change to the value chain. In the old environment, A&R to distribution was integrated. In the new environment, retailing will simply be added. We will keep A&R. Production will change because it is no longer physical production; it will be digitization, manipulation, compression—those elements make music transferable via networks. We will keep a close eye on that; we will not leave post-production to third parties. Perhaps now, in the pioneer phase, we might contract out to small software firms to develop specific tasks. But in the end, all the digitization will be in house. Manufacturing might disappear, it becomes database management. I think we will use the telco networks simply as pipes. Today, we have hauliers for transportation. These hauliers will be the telcos. I don't anticipate that the value chain will fundamentally change (Director business development, multinational).

Music-on-demand will be simply one more way to use music. The digital environment will not shake the intellectual property regime. Three to four years ago, the idea of the information society was hyped. Even DG XV of the European Commission in Brussels [Internal Market and Financial Service Directorate, home to the Copyright Unit] thought that every artist, from Michael Jackson to the local group, will simply put their offerings on a server, stating the conditions of usage. The copyright societies would become superfluous. Today, everybody accepts that it is much more difficult and costly to devise an alternative to the present system. Whatever happens in multimedia, we will be at the table (Vice-president, collecting society).

Market predictions have always been wrong. In 1979, I attended a direct marketing conference at the Algarve. There was a presentation on the CD—light, resilient. Boston Consulting argued that in 10 years time, 50 per cent of record sales would be armchair shopping. Today, the figures are between 7 per cent to 9 per cent. And direct marketing people know their consumers very well! (Senior counsel, multinational).

Despite these assertions of confidence, the multinational music business has undertaken a number of steps to control the move towards new media channels. We encountered at least five (which could have been taken straight from a business strategy textbook).

### *(1) Don't Force the Issue*

It is always dangerous to open up a new market if it threatens you in the old.

In three to five years, demand might be there and we will be a fully active player. However, we will follow demand, not be proactive since our existing business

produces very good margins, and we need to cultivate good relationships with retailers (CFO, multinational).

The major music firms should not encourage on-line distribution, since the margins are likely to be much smaller than for physical carriers. If networked distribution becomes inevitable (as it eventually will), the majors should do it themselves. But customers also wish to own music, to have a visible, touchable library. This will not change (Chairman, multinational).

### *(2) Tighten Up Control of Rights*

New template contracts are being issued by the multinational HQs, including on-line distribution and internet domain names.

If you control content, the form of distribution does not matter to you (President, multinational).

All new contracts are designed to cover any possible right the law allows in the multimedia environment ... There will be no watertight global IPR regime. For the Western markets, our strategy is to work within controlled environments, such as internet service providers, to avoid large scale piracy (CFO, multinational).

It is highly unlikely that servers in copyright free zones will become a major problem. The same 'no national boundaries' argument had been proposed when satellite broadcasting first took off. But Mercedes will not buy advertising in an illegitimate environment (Vice-president, collecting society).

### *(3) Co-opt Potential New Entrants*

The most threatening competitors are network operators in the following order: telcos, Microsoft, cable, Motorola (satellite network), utilities (the electricity operators reach every household). Retailers are no threat, nor is MTV. It is easy to build a broadcasting station. Majors can do it (see [German music channel] Viva), but to create an infrastructure is beyond our clout (CFO, multinational).

Acting collectively, the industry has tried to seek control of the new means of distribution by exploring strategic alliances in setting up a controlled infrastructure. Pilot schemes have been pursued with IBM in San Diego, BT in the UK, Deutsche Telekom in Germany, and under the umbrella of RIAJ in Japan. An extreme variation of this strategy would see record companies being transformed into distributors, licensing material from independent artists or production companies. As database management, this role may be occupied by network operators. Yet all our multinational interviewees were scathing about the prospects of third parties moving into the music business.

The removal company wants to buy the furniture store. This is ridiculous. But the time has come to talk to each other, and gain a better mutual understanding between content producers, the telcos and consumer electronics. The contractual framework we agreed with Deutsche Telekom is far superior to the one operated by BT and the UK record industry during previous trials. The UK deal involved the transfer of some rights. In Germany, Deutsche Telekom merely operates an infrastructure and billing system. That's it. The infrastructure is open to all, but not very significant. Where the server is placed does not matter much. Key are the rights (Senior counsel, multinational).

*(4) Develop Own Procedural Competencies in the New Technology*

Apart from pilot schemes in on-line delivery, the in-house creation and management of digital databases and websites has been advanced by all multinationals.

New technologies, web-sites, narrowcasting may add to our market-knowledge. We start to own the consumer. We employ a new media task force mainly to this effect, not to explore distribution (Chairman multinational).

To create and maintain a database of all content in digital parcels is both technologically and personally expensive. We are not yet prepared to throw big money at it, but trials are being conducted. Under no circumstances would we allow such a database to be managed by a future network operator (CFO, multinational).

*(5) Create Brand as the Music Navigator of the On-line Environment*

The whole new media talk is an enormous hype. Sure, an increase in channels will make marketing more difficult. On the other hand, this will only increase the need for a gatekeeper. This will continue to be the function of the record company. The internet must be seen mainly as a promotions medium and a mail order machine (President's office, multinational).

We already systematically build up our brand in the on-line environment. Labels will continue to be important to identify genres of music to customer groups, but the crucial brand will be [the record company], creating a trusted sales environment (CFO, multinational).

Branding, however, presents an obstacle for multinational companies. The consumer is interested in the artist, not the firm behind.

It would be a disaster to market Bruce Springsteen, say, as Sony (Vice-president marketing, multinational).

In music, typically, the artist is the brand. The five defensive postures sketched here can be found among all multinationals and in all sample countries. There are some interfirm variations in the ways multimedia strategy is being formulated and implemented (Sony and Warner being the most centralised), and in the progress of the core markets (despite the second highest PC penetration in the world, Japanese internet usage and electronic commerce is somewhat lagging). The pattern of competitive responses, however, appears robust.

### **The Future Location of Intellectual Property Rights**

The location of intellectual property rights in music is dependent on the mutual bargaining power of the parties involved within a statutory frame vesting the copyright initially in the author. From this perspective, the current dominance of multinational record companies is the outcome of contingent circumstances which are about to change. We identified the technological revolution of digitisation and the de-regulation of media and communication channels as the main factors affecting the power balance. Four negotiations are at the heart of the music business:

1. *Commodification.* The author wants to bring music to the market. Because he/she often lacks the necessary resources, he/she will assign the copyright to an intermediary who commodifies the musical work into a product. This first intermediary is traditionally the publisher. It might also be a management or production company. The trade-off

is essentially copyright against some specific commodification competence (e.g. music production, market knowledge).

2. *Globalisation.* The first intermediary often lacks the resources for multipurposing and international exploitation of the rights acquired. Independent companies then trade their international intellectual property rights against a global, multipurpose competence (chiefly marketing and distribution). This is the deal cementing the role of the multinational record company.
3. *Delivery.* The third intermediary finally delivers the product to the consumer. This might be a high-street retailer or a media channel. Normally, this transaction does not involve any transfer of intellectual property rights.
4. *Royalty Management.* After the product has been brought to the market, no individual player (author, first intermediary, second intermediary, third intermediary) has the resources to monitor secondary usage (performances on the media and in public places). Author and/or intermediaries therefore assign these specific rights to collective bodies, the copyright societies.

Intellectual property rights are located up-stream with the fixation of an original musical idea by the author. For each down-stream intermediating function, questions need to be asked. Why is there pressure to assign intellectual property rights further down the chain? Why do first or second intermediaries not buy the copyrights outright, rather than splitting royalties? Why does the retailer or media channel normally not hold any rights to the music products it sells?

We have shown in some detail that the allocation of intellectual property rights is essentially a result of bargaining power in the process of bringing music to the market. We have also argued that the functional splits in the music business are the result of historical accidents (e.g. printing sheet music) rather than a reflection of the negotiation process in bringing music to the market. A change in technology and regulation should lead to a different allocation of intellectual property rights around the value adding functions of commodification, globalisation, delivery and royalty management. Following our analysis, these functions do not match the prevalent organisational entities in the global music business.

An example from the Japanese market may illustrate the dynamics of IPR allocation. In Japan, the media are essential to 'breaking an act'.

Many sales are tied to TV and radio. Japanese stations exert a far greater independence. It is like Britain 20 years ago. 'Pluggers' which today dominate the British radio scene don't find easy access to the Japanese media. The record companies cannot control promotion in the same way as in Europe where a 'big push' virtually guarantees sales. This partly explains the unsuspected success foreign acts can experience in Japan. They may be virtually unknown in their own country, not heavily promoted by their Japanese label and sell 3 million copies (Marketing director, multinational).

Record companies are the weakest player. The media are all powerful ... One problem with the new media is: How do you find out about a new act? We have to introduce new artists. In Japan, everything goes through TV. Nine out of ten hits are hooked up to television (Director international pop, multinational).

This leads to a situation in which intellectual property rights are assigned further down the value chain to the third intermediary.

What is never talked about is that in return for exposure on television, record companies have to sign over some rights to the broadcaster. Many TV stations, even

radio, have started to set up their own publishing company solely for this purpose. These publishers are not involved in any publishing activity. They are a vehicle for receiving money. If we want to tie-in a new act to a drama series on [broadcaster's name], for example, they will ask us to sign over some of our publishing rights. If we don't own the publishing rights, they ask for a share of the royalties from record sales. In other countries, of course, this might be outlawed as anti-competitive practices, but this is how the Japanese system operates (Director international pop, multinational).

Another example from Japan indicates that similar pressures operate up-stream, at the beginning of value creation.

In recent years, the contracting structure in the music industry has changed. Record companies now rarely sign and develop new artists directly. They contract with management/production companies, who use changing artists as commodities and even dictate sudden changes in style (Marketing director, multinational).

In 30 per cent of contracts, the management/production company now owns the master-tape. In terms of sales, the situation is much more dramatic since only the best-selling artists can negotiate these terms (Legal consultant, multinational).

It is imperative that we reverse this trend. This is why it is so important to develop our own artists (President, multinational label).

In the Japanese market, IPRs are stretched between the first intermediary (management/production company) and the third intermediary (media channel), appropriating returns down-stream. These developments may anticipate some of the dynamics of digitisation and de-regulation in Western markets. In our concluding discussion we shall briefly summarise possible future roles for the main organisational entities in the global music business.

### *(1) Artists*

Most artists are still unlikely to command the resources required to bring music to the market. If they already enjoy the benefits of a local fan base, access to cheap production and distribution points may enable some artists to retain their intellectual property rights while growing the market. Digital technology facilitates this option. More entrepreneurial spirits may try to set up their own commodification intermediary, such as a publishing company, a label or a strong management team. Alternatively, they may be forced to contract to an established third party. This would involve the transfer of substantial IPRs. Since supply in cultural markets far exceeds demand, the commodification intermediary retains a strong position.

Artists who become famous are often locked into long-term contracts with intermediaries. When such contracts come up for renewal, 'superstars' are in an extremely strong position to recover and retain their IPRs. Such artists are commodified products in themselves, increasingly they have access to alternative means of finance, and they may use new distribution technologies to control globalisation and delivery processes.<sup>27</sup> This scenario is the great fear of the multinational companies.

### *(2) Publishers*

Publishers have developed into two entirely different types of organisations. The first continues the traditional intermediating role of sheet publishers. They seek to provide a

commodification platform for attractive new material and have developed a specific promotional competence. The second type of organisation is an accounting subsidiary of a larger media group, occupying either the second or third intermediating function. A record company may sign a new act, and 'encourage' the transfer of publishing rights to its subsidiary; a broadcaster or producer may commission a piece of music and 'encourage' the transfer of publishing rights to its subsidiary.

This second type of publisher does not appear to add any independent value to the product. The location of IPRs in such subsidiaries depends on the bargaining power of the parent company. Competition authorities are well advised to study this grey and rapidly growing area of transfer practices. Another dubious practice is to channel foreign publishing earnings through so-called 'sub-publishers'. In some countries these subsidiaries can take a 50% slice of all revenues before the remainder is passed back to the original publisher, which then takes its negotiated percentage of between 30 and 50%. This double cut can hardly be justified by a passive accounting operation.

Using technological advances, publishers may further venture either into other commodification functions (such as music production) or into full-scale royalty management.

In a world of digital water marking and comprehensive automated monitoring of electronic channels, I can even see publishers bringing royalty collecting in-house for mechanicals, broadcasting and internet, leaving only general licensing to third parties (President, collecting society).

### *(3) Record Labels*

In a multi-channel environment, physical carriers will be only one form of music licensing, and perhaps not the central one. As indicated previously, multinational record companies may be re-positioned as branded media gateways, as digital distributors or providers of risk finance. In all these areas, they are open to increased competitive pressure from independents within the music industry (publishers, labels, artist management), from network operators (telcos, IT firms) and from financial institutions (venture capitalists, investment banks specialising in securitisation).

### *(4) Retailers*

The generous high street margin of 25% of cover price may be under threat from direct-mailing operations or digital delivery. New entrants (CD Now, Music Boulevard, Amazon.com) and major retailers (Barnes & Noble, HMV, Tower) are already moving into internet retailing, as have record companies (BMG, Sony and Warner). Traditional retailing intermediaries have the advantage of offering a complete selection of music (unlike the web sites of multinational record companies promoting only own brand goods). Specialist niche retailers may succeed in widening their client base with a global service. However, pure retailing intermediaries are unlikely to appropriate IPRs.

### *(5) Media Groups*

If media groups control the main communication channels through which new acts are promoted, they may command commodification, globalisation and delivery functions—and thus substantial transfers of intellectual property rights. Universal, Time Warner, Sony and Bertelsmann all appear to treat their music divisions increasingly as part of

global corporate strategies. Music contents may be cross-promoted and customised across many different media channels.

(6) *Collecting Societies*

The collecting societies are in a precarious situation, as the transaction cost argument from the cost of individual contracting has lost its persuasion. In many lucrative areas, multinational right holders are now in a technological position to monitor music usage and collect royalties themselves, rather than assigning rights to a collecting society. From this position of strength, the multinationals now try to force the copyright societies into offering special, discounted terms. In countries influenced by the civil law tradition of continental Europe this has been met with great hostility. There is a growing argument that the collective administration of music copyrights should be restyled as a 'universal service' provided for all right holders under statutory guarantees. Major right holders may be required to contribute to the financing of this system, even if they do not want to use it.

In such countries as the US, with its competition between three collection bodies (ASCAP, BMI, SESAC), copyright societies have all but abandoned areas where royalties are expensive to collect. These societies try to secure their survival by adding A&R functions (i.e. signing new talent early in their careers) and offering individual deals to high turnover superstars. The current uncertainty in the field of collective licensing may have detrimental effects on the aggregate returns to global music copyrights.

In this article, we have examined the current, and likely future location of intellectual property rights in the global music business. Music is one of the most deeply rooted human activities. It is accessible, easily personalised and permeates as a commodified good every level of society. Yet it is complex to produce, difficult to trace and forever swayed by the waves of fashion. The global music industry is significant in its own right, but we also suggest that a greater understanding of the music industry may illuminate the subtle processes of appropriating returns to intellectual property rights. Contrary to much public debate, the issue of piracy is perhaps only a lobby-driven distraction. To be sure, without statutory protection of an intellectual property right vested in the author, the music market would shape up in very different ways. But the granting and enforcement of that right does not determine how it is filtered down in a heterogeneous process of value creation, and how the appropriation of returns is governed. Whether the current regime ought to persist, we have hardly begun to ask.

## APPENDIX

### Questionnaire

1. Which are the parties in the music industry that *can/can't* appropriate value in a multimedia environment? Why?
2. Which are the parties in the music industry that *will* appropriate value in a multimedia environment? Why?
3. Which are the parties outside of the music industry that *can/can't* appropriate value in a multimedia environment? Why?
4. Which are the parties outside of the music industry that *will* appropriate value in a multimedia environment? Why?

5. Which part of the *old* value chain will all of the above try to appropriate? (Show model old value chain)



6. What part of the *new* value chain will all of the above try to appropriate? (Show model new value chain)



7. What will be the relationship of *those* parties (both in the *physical* and in the *multimedia* environment) with:
1. Artists
  2. Publishers
  3. Labels
  4. Retailers
  5. Other media (music TV, radio, etc)
  6. New digital distributors of music
  7. Telcos
  8. IT firms
  9. Collecting societies
8. What will *your* relationship be (both in the *physical* and in the *multimedia* environment) with:
1. Artists
  2. Publishers
  3. Labels
  4. Retailers
  5. Other media (music TV, radio, etc)
  6. New digital distributors of music
  7. Telcos
  8. IT firms
  9. Collecting societies
9. What will *your* relationship be with the parties that can and will claim a stake in the multimedia environment?

### Notes and References

1. We acknowledge financial assistance from the Economic and Social Research Council in the UK, grant nos. L126251003 ('Globalisation, technology and creativity') and L325253009 ('Intellectual property and knowledge transfer'). Many thanks to Anne Barron, Peter Drahos and Simon Frith for helpful comments.
2. On the implications of linking intellectual property to trade issues, see Peter Drahos, 'Global property rights in information: the story of TRIPS at the GATT', *Prometheus*, 13, 1, 1995, pp. 6-19; Peter Drahos (ed.), Special Issue: Trade and Intellectual Property, *Prometheus*, 16, 3, 1998.

3. In many markets, new acts first sign with a record company before contracting to a publisher.
4. The figure of 20–30% was given by the CFO of one multinational company. We have been unable to verify this claim. Universal's offer for Polygram was reduced to \$10.4 billion in June 1998. The deal was completed in December 1998. On the author as functional principle, compare Michel Foucault's notorious diagnosis: '... the author is not an indefinite source of significations which fill a work; the author does not precede the works; he is a certain functional principle by which, in our culture, one limits, excludes, and chooses; in short by which one impedes the free circulation, the free manipulation, the free composition, decomposition, and recomposition of fiction'. Michel Foucault, 'What is an author?', in Paul Rabinow (ed.), *The Foucault Reader*, Pantheon, New York, 1984, p. 101.
5. Simon Frith, 'The industrialisation of popular music', in J. Lull (ed.), *Popular Music and Communication* (2nd ed.), Sage, Beverly Hills, 1993, pp. 49–74.
6. Michael Porter, *Competitive Strategy: Techniques for Analyzing Industries and Competitors*, Free Press, New York, 1980.
7. Financial Times Newsletter, *Music & Copyright*, 17 July 1996.
8. The role of network effects for the fashion dynamics of cultural markets is examined in Martin Kretschmer, George M. Klimis and Chong Ju Choi, 'Increasing returns and social contagion in cultural industries', *British Journal of Management*, 1999 (BAM special issue, forthcoming). The income distribution of the British Copyright Society PRS is analysed in Monopolies and Mergers Commission, *Performing Rights*, HMSO, London, Cm 3147, pp. 65–6.
9. Nigel Williamson, *Times Saturday Magazine*, 6 February 1999, p. 37.
10. Marcus Breen, 'The end of the world as we know it: popular music's cultural mobility', *Cultural Studies*, 9, 1995, pp. 486–504.
11. Harold L. Vogel, *Entertainment Industry Economics*, Cambridge University Press, Cambridge, 1994, pp. 31ff. Since 1995, Dreamworks (led by Spielberg, Katzenberg and Geffen) has had some success in establishing a new major studio.
12. Martin Kretschmer, 'Intellectual property in music: A historical analysis of rhetoric and institutional practices', *Studies in Cultures, Organizations and Societies* 1999 (special issue: *Arts Management and Cultural Industry*, forthcoming). Ferdinand Melichar, *Die Wahrnehmung von Urheberrechten durch Verwertungsgesellschaften*, Munich, 1983.
13. William Boosey (heir to the publishing dynasty), *Fifty Years of Music*, London, 1931, p. 175.
14. Mihály Ficsor, 'Copyright for the digital era: The WIPO 'internet' treaties', *Columbia—VLA Journal of Law and the Arts*, 21, 3–4, 1998, pp. 197–223. The US congress implemented these terms with the Digital Millennium Copyright Act, passed on 8 October 1998. The European Parliament adopted a directive to the same effect on 10 February 1999.
15. The topical debate between copyright maximalists and minimalists is well covered in P. Bernt Hugenholtz (ed.), *The Future of Copyright in a Digital Environment*, Kluwer, The Hague, 1996. See also Pamela Samuelson, 'A prohibition law glides over internet', *International UNESCO Symposium on the Effects of New Technology on Cultural Information, Transmission and Dissemination, the Protection of Authors' Rights and Other Holders of Rights, Cultural Developments and Trends in Social Life*, Madrid, 11–14 March 1996 (available at <http://negocios.com/tendencias/artic11.htm>).
16. John Kay, 'The economics of intellectual property rights', *International Review of Law and Economics*, 13, 1993, pp. 337–48 (p. 340); Ruth Towse, 'Copyright as an economic incentive', in Hector L. MacQueen (ed.), Special Issue: Innovation, Incentive and Reward: Intellectual Property Law and Policy, *David Hume Papers on Public Policy*, 5, 1, 1997, pp. 31–45 (p. 39).
17. Financial Times Newsletter, *Music & Copyright*, 17 July 1996.
18. Gunnar Petri, 'Copyright: The right to ownership', in Roger Wallis (ed.), *The Big Picture: The Global Entertainment and Telecommunications Forecast*, American Chamber of Commerce, London, 1997, pp. 106–7; quoted in Roger Wallis, Charles Baden-Fuller, Martin Kretschmer and George M. Klimis, 'Contested collective administration of intellectual property rights in music: the challenge to the principles of reciprocity and solidarity', *European Journal of Communication*, 14, 1, 1999, pp. 5–35. For a conflicting analysis, accusing the collecting societies of charging excessive rates and handling fees, see John Temple Lang, *Media, Multimedia and European Community Antitrust Law*, Competition Directorate of the European Commission (DGIV) working paper, 1997, pp. 51ff.

19. This 'inalienability' is prominent in civil law conceptions of a creator's *droit moral*, the right to claim authorship of a work, and to protect its integrity. Raymond Sarraute, 'Current theory on the moral right of authors and artists under French law', *American Journal of Comparative Law*, 16, 1968, pp. 465-86; Robyn Durie, 'Moral rights and the English business community', *Entertainment Law Review*, 2, 1991, pp. 40-9.
20. W. Landes and R. Posner, 'An economic analysis of copyright law', *Journal of Legal Studies*, 18, 1989, pp. 325-66. For a critique, see R. Towse, *op. cit.*, p. 34, who casts the relationship of author to publisher as a principal-agent problem.
21. Contract terms are never officially revealed by the industry. The above figures are regarded as reliable, and are often repeated in the trade press (*Rolling Stone*, *Hollywood Reporter*, *Billboard*, *Music Week*).
22. George Michael's original deal with CBS (as part of the group Wham!) was signed in 1983 and was to last until 2005. After the battle won in the UK High Court, Michael's record company (now Sony) agreed to release the artist from his contract only against a 3% royalty on Michael's next two albums (with Dreamworks and Virgin), while retaining the rights to his valuable back catalogue and a Greatest Hit compilation (*MBI*, August 1995).
23. Instructive material on this decade can be found in Paul M. Hirsch (ed.), *Globalization of Mass Media Ownership*, *Communication Research*, 19, 6, 1992; Krister Malm and Roger Wallis, *Media Policy and Music Activity*, Routledge, London, 1992; Roger Wallis, *Internationalisation, Localisation and Integration: The Changing Structure of the Music Industry*, University of Gothenburg, Department of Mass Communication, working paper, 1990.
24. J. Qualen, *The Music Industry: The End of Vinyl*, Comedia, London, 1985; K. Roe and R. Wallis, 'One planet—one music: The development of music television in Europe', *Nordicom Review*, 1989, pp. 35-41; Paul Rutten, 'Local popular music on the national and international markets', *Cultural Studies*, 5, 1991, pp. 294-305. According to one multinational record company, one-eighth of revenues are now royalty earnings.
25. *Intellectual Property and the National Information Infrastructure. The Report of the Working Group on Intellectual Property* (chaired by Bruce Lehman), US Patent and Trademark Office, 1995; *The Emerging Digital Economy*, US Department of Commerce, April 1998 (available at [www.ecommerce.gov](http://www.ecommerce.gov)). Publications of the European Commission include *Europe and the Global Information Society*, Bangemann Report, May 1994 (<http://www.ispo.ccc.be/infosoc/backg/bangeman.html>); and *Convergence of the Telecommunications, Media and Information Technology Sectors, and the Implications for Regulation: Towards an Information Society Approach*, COM(97) 623.
26. Alice Rawsthorn, 'Big five shudder at digital jukeboxes', *Financial Times*, 13 January 1999.
27. In 1997, David Bowie issued bonds secured against future royalties from his back catalogue of rights, raising \$55m. Rod Steward and heavy metal band Iron Maiden have followed suit ('Superstars give you their bond', *Financial Times*, 7 February 1998; 'Iron Maiden to tune in with bond package', *Evening Standard*, 26 January 1999). Twenty years ago, Frank Zappa proved the income potential of mail order operations controlled by the artist. The internet is increasingly used for this purpose.