CREATe Working Paper 2015/10 (December 2015)

Copyright and Business Models in UK Music Publishing

Author

Ruth Towse
CIPPM, Bournemouth University and
CREATe Fellow in Cultural Economics,
University of Glasgow
Ruth.Towse@gmail.com

CREATe Working Paper Series DOI: 10.5281/zenodo.34492

This release was supported by the RCUK funded *Centre for Copyright and New Business Models in the Creative Economy (CREATe)*, AHRC Grant Number AH/K000179/1.

http://www.create.ac.uk/blog/2015/12/03/towse-working-paper-assesses-copyright-and-business-models-in-uk-music-publishing/

Copyright and Business Models in UK Music Publishing

Ruth Towse

Professor of Economics of Creative Industries

CIPPM, Bournemouth University and

CREATe Fellow in Cultural Economics (University of Glasgow)

Ruth.towse@gmail.com

Abstract

The paper argues that the paradigmatic shift from the sale of printed music to exploiting and managing musical rights that took place in music publishing during the early years of the 20th century was due to the changing market rather than to changes in copyright law. On the one hand, copyright law was ineffectual in controlling piracy throughout the 19th century and on the other hand, performing rights were ignored by music publishers for over 70 years; these points suggest that copyright was not the main reason behind the success of the industry. Rather than leading entrepreneurially (the current view of dynamism in the creative industries), publishers 'followed the money' and adapted their business models only when new streams of income from new forms of exploitation through sound recording, broadcasting and film became available as a result of exogenous technical progress. Publishers were locked-in to sales revenue as their business model, though when switching to the new business model of rights management took place, the costs seem not to have been greatly significant.

The paper takes an historical approach to the development of music publishing viewed through the lens of present day issues. The research has resonance for the transition from sales to licensing digital works that is taking place in the creative industries today and puts into perspective the relative significance of market forces and copyright law in the process.

Key words: Copyright, business model, music publishing, creative industries.

JEL codes: K,L,M,N.

Acknowledgements:

The research for this article was financed by a grant from the UK's Arts and Humanities Research Board for the project 'Economic Survival in a Long Established Creative Industry: Strategies, Business Models and Copyright in Music Publishing' at Bournemouth University. The author is grateful to the Music Publishers Association, PRS for Music and the British Library for their assistance and to attendees at the Workshop on Music Publishing, Copyright and Music Models at Bournemouth University for their comments. Thanks also to Ronan Deazley for his careful reading of the MS and comments and to Derek Scott for his encouragement. The opinions and interpretations expressed here are the author's own.

1. Introduction

This paper takes an historical approach to analysing the role of copyright law in the economic development of music publishing in the UK. Music publishing, though a relatively small sector of the wider music UK industry,[1] has considerable consequence as a creative industry. A music publisher is the archetypal intermediary, transforming the initial creative work into a marketable service by seeing the musical composition through the stages of production from manuscript to performance, recording and subsequent uses. A century ago, the industry changed its business model from selling a product, sheet music, to managing rights, that is, to dealing with an ephemeral output protected by copyright, something that other creative industries now struggle with. It is argued that this paradigmatic shift, which took place in a relatively short space of time in the industry's 400 year existence, was a fundamental change that occurred first in this industry in a process that is now universal in all the creative industries as digitization alters the business model from sales to licensing. These features and the history of this transition make music publishing an interesting case study in the adaption of a copyright-based industry to new technologies.

The transition in business models from selling a good to licensing services was necessitated by changes in technology but these were not 'endogenous', coming about through technological advances within the industry but were due to the exogenous development of media technologies – mechanical reproduction, radio and film - which forced publishers to adapt when their sales dwindled, a similar story to that of digitization in the record industry in recent times. As these mass media technologies reached the market in the early 20th century, consumer tastes changed relatively rapidly from home production and attending live public performances to listening to recorded and broadcast music from gramophones and radio (Boosey, 1931;Peacock and Weir, 1975; Ehrlich, 1985). The consumer leading the way in adopting the new technologies while the industry attempted to resist them is also the story of the early 21st century record industry (Napier-Bell, 2013). Throughout, copyright law has brought up the rear rather than leading from the front, as is inevitable. Not only can legislators not react as swiftly as industry to such fundamental changes but they generally

[1] The UK music industry's GVA was £3477m.in 2012, to which music publishing contributed £402m (12%) (UK Music, 2012).

prefer to see the way the market shapes up before setting a path that might alter the course of events. Over the last century, though, copyright law has become considerably more complex and markets for copyright works have become more specialised and also more global. Consumers and markets are leading the way and copyright law is struggling to cope (Silver, 2013).

All these strands are brought together in this article and presented as evidence of the relative influence of copyright law and markets on business models in music publishing. There has been little research to date specifically on the economics of music publishing; previous interest has had its focus more on musical composition and composers' relations with their publishers (Peacock and Weir, 1975; Baumol and Baumol, 1994, 2002; Scherer, 2004; Montgomery and Threlfall, 2007; Drysdale, 2013). Those sources, however, indirectly provide useful material on music publishing and with the addition to the author's own research, have been instrumental in developing the argument presented here. Systematic data on the development of the music publishing industry that would enable testing of economic hypotheses about these changes have proved hard to find and the points made in the paper are accordingly backed up with data that are illustrative though not amenable to statistical analysis.

The article proceeds as follows: section 2 is on UK copyright law in music and its influence on music publishing; section 3 provides an account of the growth of the market for published music; section 4 analyses the switch to rights management; section 5 looks at the economic organisation of music publishing today and section 6 concludes.

2. Copyright law relating to music publishing

The main argument of this paper is that copyright did not exert as important influence as is sometimes claimed on the economic development of music publishing. For centuries, the business of music publishing consisted of the acquisition of musical compositions from composers and song writers[2], the subsequent printing, publication and sale of sheet music and the hiring of scores and orchestral parts for theatrical and concert performance. The changes in the early 20th century brought about by new technologies for reproducing and distributing music triggered changes to copyright law, notably the 1911 Copyright Act; that Act greatly assisted music publishers but it was not the cause of the switch to a business model that was

[2] Songs are by far the biggest output of music publishing. Songwriters include both lyricists and composers, each having copyright in their work.

almost entirely based on licensing right. The reason for both the changes in the law and in the market for music was the development of mass media.

Copyright law in the UK dates back to the1710 Statute of Anne, conferring on the author the exclusive right in her work, but it was not applied to musical works until 1777 when the court case of Bach v Longman ruled that it also applied to print music as a form of writing. For many years thereafter, however, poor drafting of the law and difficulties in its enforcement enabled piracy of sheet music to flourish alongside the growth of the legal business. The Copyright Act of 1842 protected the sole right of reproduction for musical works[3] but failed to provide summary penalties for misappropriation of copyright and proceedings for damages had to be pursued through the civil courts; they mostly failed because delays in the process meant the pirates could not by then be found, named and taken to court. The Music Publishers Association (MPA) was formed in 1881 and pursued the pirates, who were well known and highly organised but elusive. The Music (Summary Proceedings) Act 1902 was supposed to remedy these faults in the law but again failed to provide effective remedies and it was not until the 1906 Musical Copyright Act that the publishers, led by the MPA, were able to succeed in eliminating large-scale piracy. Despite these problems in preventing piracy, the market for legally published music had grown, becoming increasingly specialised and highly organised; by the early years of the 20th century, however, sales of sheet music to the public, the main source of music publishers' revenue, were already falling off and it seems clear that neither the 1906 nor the 1911 Copyright, which introduced measures to improve enforcement and extend the scope of protection, failed to rally sales. Although research failed to find data on the output of musical works, data supplied by the British Museum on registrations of song titles illustrate the decline (see Figure 1 in section 3 below).

Several Parliamentary enquiries and Commissions took place over the intervening period in which it was noted that music publishers did not use price reduction to counteract the pirates, whose appeal lay entirely in undercutting the price of 'legal' copies, usually with considerably inferior quality since the only means of mass reproduction was to set up the

[3] The 1842 Act extended the previous copyright term of 28 years (or life if the author were still alive upon expiry) for works published in the UK to 42 years after publication or 7 years beyond the life of the author, whichever was the longest; the 'la Sonnambula case' in 1855 ruled that copyright in a work by a foreign national could be claimed in Britain only if the author was resident in the UK. The 1888 Copyright (Musical Compositions) Act extended the same coverage to foreign as to UK nationals and works following the signing of the 1886 Berne Convention. The Copyright Act 1911 set the copyright term to life of the author plus 50 years. The 1988 Copyright, Designs and Patents Act extended the term to life plus 70 years.

printing process all over again but with inferior materials.[4] As with unlawful copying of CDs in the 2000s, the question was asked why the relatively high prices were not reduced to compete with the pirates. Only one major publisher, Francis Day &Hunter reduced price in the 1900s as a response to falling sales, while Boosey &Co. and Chappell &Co. maintained theirs at around 2/- for song[5] (Boosey, 1931; Peacock and Weir, 1975); Novello, by contrast, had always maintained a model of low prices (Grove, 1887). Thus there was a range of supply to the market and it seems that the fall in sales was not price-related but was due to a shift in demand as consumers' tastes changed.

For centuries, the demand for music was for live performance in the home and in public venues, such as churches and the theatres. Competition from mass produced mechanical devices came in the first instance from player pianos (pianolas), instruments playing pre-programmed music recorded on perforated paper rolls, which were developed in the last quarter of the 19th century; by the first quarter of the 20th century they had been supplanted by gramophones and records. Both 'contrivances' (as the law called them) reproduced music and therefore required the copyright holder's permission, and that lay with the publisher since composers and songwriters assigned all their rights in a work to them, a topic that is explored in detail below. The Copyright Act 1911 (which implemented the 1908 Berlin revision of the Berne Convention) acknowledged that copyright in music applied to reproduction by mechanical means as it did to printing and the Act also extended copyright to the recording itself, separate from the copyright in the content.

In order to protect the infant industry of sound recording and in response to heavy lobbying by that industry, however, the Act restricted the exercise of the composer's exclusive right after the first permission for mechanical reproduction of a work had been granted. The composer could negotiate rates for the use of her work in the first instance but was obliged to deal on the same terms for that work with another manufacturer (record label) and could not refuse to license. The Act introduced a statutory remuneration for the composer of a fixed percentage of the retail price of the contrivance for this 'compulsory' use of a musical composition[6] (Boosey, 1931; Peacock and Weir, 1975; Ehrlich, 1985). William Boosey, the head of Chappell &Co, who took part in the Royal Commission that drafted the Bill, wrote a

[4] Copying by hand also took place, especially in choirs, and was considered a nuisance by the publishers but it was not illegal. Incidentally, it is still unlawful to photocopy sheet music in the UK.
[5] Two shillings in old money, now 20p in nominal value: 2/- in 1910 was worth over £10 in 2014 terms.
[6] The rate was to be reviewed at intervals by the Board of Trade, as it still is. It was set at 5% in 1911 and was 8.5% in 2014.

detailed account of how the draft was mangled in Parliament by members who were completely uninformed about copyright (including Winston Churchill, then President of the Board of Trade), expressing his disgust with the proceedings in no uncertain terms (Boosey, 1931). No doubt, some would be similarly disenchanted with the process of changing copyright law today. Thus the 1911 Act introduced the principle of a compulsory licence with remuneration, something that is increasingly advocated these days in one form or another (Handke, 2015).

In anticipation of the 1911 Act, the Mechanical Copyright Licences Company Ltd was created in 1910, the first copyright collecting society originating in the UK, which acted as agent for the collection and distribution mechanical royalties to composers; in 1924 it merged into the Mechanical Copyright Protection Society (MPCS)[7]. The combination of falling sales royalties and the introduction and collection of mechanical rights led publishers to turn their attention to the possibilities of exploiting the performing right as a source of revenue. The performing right had been introduced in the UK in the Dramatic Copyright Act of 1833, enabling opera librettists and composers to claim a performing right for the public performance of their work in theatres and the Literary Copyright Act of 1842 extended the right for non-dramatic musical works. The right was not exercised, though, as UK publishers did not see it as being in their interest to do so (though it deprived song writers of a source of income from royalties, see Drysdale, 2013). Although SACEM (Société des auteurs, compositeurs et éditeurs de musique), founded in France in 1851, had opened a branch in London by 1870 collecting the *petit droits*, as they were known, for the performance in the UK of music by French composers, British music publishers not only failed to exploit the right but derided them as having little value (Boosey, 1931).

There were basically two reasons for this stance on the part of UK music publishers: requiring performers to pay the performing right was regarded as a disincentive to their chosen business model of revenue-generation and advertising by 'plugging' (discussed below in Section 4); and in addition, the right had been brought into disrepute in a somewhat extraordinary manner by Harry Walls' self-styled private enterprise, the Copyright Protection Society Ltd. Walls had cashed in on the 1842 Copyright Act's statutory charge of 40/- (£2 in today's money, the equivalent of over £200 in 2014 terms) for unauthorised use of copyright

[7] MCPS was taken over by the MPA in 1976, later forming part of the PRS/MCPS alliance; since 2013 it has had its own administration. In recent times, mechanical royalty revenues have fallen off significantly due to the recession in sound recording.

works, which he ruthlessly exploited by buying up expiring copyrights which unwitting performers believed were in the public domain and made a living by taking them to court to obtain the 40/-. The 1882 Copyright (Musical Compositions) Act, the so-called 'Walls Act', intended to stop him by having a notice printed on the title page of every published copy for which that was the case stating that the copyright owner retained the performing right. The Act failed to alter the amount of the penalty, however, so Walls persisted and a further Act in 1888 was necessary that enabled the judge responsible to decide on the penalty. Now, however, there were works on which performing right was retained and others where it was not and this was not only confusing to performers, it later on also inhibited the bargaining power of the Performing Right Society (PRS) when it was set up in 1914.

Part of the problem was that composers and song writers (especially the latter) rarely claimed the performing right, which was virtually impossible to exercise by individuals outside the theatre, and there was anyway ambiguity as to whether the right was included in the composer's contract with the publisher. The 1911 Copyright Act cleared up the confusion on performing rights by ruling that the assignment of the copyright in a work, which was the standard procedure, did not include the composer's performing right unless the contract with the publisher specifically stated it. Once established, PRS followed the SACEM model of blanket licensing, requiring assignment of all works in the composer's repertoire, thereby enabling PRS to issue a licence to perform every work so assigned without further recourse to the composer. Without that, ambiguity would arise about which works were included in the licence, a problem with which PRS struggled in its early years until all the major publishers had joined PRS and assigned to it the performing right to the works they published. The unpopularity of the performing right with performers and with business users, a number of whom had to be taken to court to establish the principle of payment for the public performance of music, meant that in its early years, PRS was cautious about the rates it charged, thus restraining its revenues and accordingly its appeal to publishers (Peacock and Weir, 1975; Ehrlich, 1989). Table 1 below shows the slow initial growth of performing right revenues.

Two changes for the relationship between the composer and the music publisher followed from these developments: composers and song writers now had the opportunity to earn income independently of the publisher since mechanical and performing rights were managed on their behalf and their share paid directly to them, enabling composers to bargain more

effectively with music publishers; and it led to the eventual establishment of royalty contracts as the norm. Both changes assisted the professionalization of composing as revenues for musical compositions grew (Drysdale, 2013).

3. The growth of the market for published music

It has often been said that many of the most frequently performed works were written without the benefit of copyright laws and some attempts have been made to test this empirically, finding little evidence either way (Baumol and Baumol, 1994; Scherer, 2004). Cultural economists and others have questioned the incentive that copyright offers composers and other creators (Towse, 2001: Kretschmer 2005). Copyright protects composers as they seek to exploit their works but in doing so they inevitably have to assign their rights to a publisher, for whom the acquisition of the copyright becomes an investment in a profit-making business (Caves, 2000). With a royalty contract, composers and song-writers share the revenues of the published work and, of course, the risk as well. Royalty contracts, however, did not become the norm in the UK until the late 1920s (Drysdale, 2013; Montgomery and Threlfall, 2007).

For the first centuries of music publishing, copyright was non-existent or weak and the publisher bought all rights in a musical work (lyrics and music), bearing all the costs and risk of exploiting it. Between the demise of the Stationers' monopoly in the 1680s and the Bach v. Longman case in 1777, a period of little proprietary protection for music in England apart from the printing privilege,[8] there was a thriving music publishing industry with well-known houses such as Playford and the Walsh, which were often family businesses, publishing works by Purcell, Arne and Handel as well as collections of popular songs, dances and instruction manuals (see Humphries and Smith, 1970: 31 for lists of music publishers, printers and engravers). Publication of some leading works, such as Handel's oratorios, were financed by subscription (an early version of crowd-funding) while others, usually single ballads, relied on the market, often being sold on streets by people performing the work, but also obtainable directly from the publisher and from music shops. Popular works performed in the theatre were subsequently published as sheet music for sale to the wider public, such as those from Gay's 'Beggars' Opera' and Arne's settings of Shakespeare songs (still much performed today).

[8] See Deazley et al (2010).

Publishing was often part of a wider enterprise that embraced musical instrument making, engraving, printing, publishing and selling music, even composing it.[9] Some publishers continued with these other trades into the 20th century: for example, Boosey & Co produced woodwind instruments and flutes at one time and Boosey & Hawkes continued the Hawkes & Co brass instrument production after they merged in 1930 and the company had a music shop on Regent Street in London's West End until 2003 selling both instruments and sheet music; Novello & Co. had its own printing business; several major publishers still have shops for the sale of printed music, records and so on as well as online sales. Thomas Cramer, founder of Cramer & Co was a composer of piano music as well as a publisher and his company was an important producer of pianos. By the 19th century, music publishers were becoming more specialised, buying in printers' services and concentrating more on promoting music in line with their dominant business model of revenues from sales of sheet music. Markets were well organised with publications being advertised and even given away in magazines and newssheets, with sheet music distributed by travelling salesmen who sold it on commission or on a sale or return basis to music shops and music teachers. Publishers also contracted directly with theatres and music halls, hiring out orchestral parts and vocal scores for the run of performances of a work (Peacock and Weir, 1975; Ehrlich, 1985).

An interesting feature of the music publishing market were the regular so-called 'copyright auctions' which were held in London by Puttick and Simpson from the beginning of the 19th century and into the 20th (the last took place in 1931), in which engraved plates of works, both instrumental works and operas but predominantly popular songs, were sold (Coover, 1983). As publishers routinely owned the copyright, the rights to reproduce and publish the works could be acquired with the plates by another publisher. They could command very high prices, some indication of the asset value of a copyright to the publisher. Using the Bank of England Inflation Calculator, I have translated some of the prices reported by Coover (1983) into 2014 values (shown in brackets): for instance, 'Six Songs' by Sterndale Bennett sold in 1865 for £324 (£36,360) and his hugely popular 'May Queen' for orchestra and chorus composed in 1858 was sold at auction in 1864 for £554-8s (£62,870) and again in 1872 for £1,837 (£185,537) this time with 750 engraved plates, the copyright, libretto and performance rights. The popular song with piano by John Blockley, 'An Arab's Farewell to his Favourite Steed', published in many editions from 1844, sold in 1883 for £640 (£69,505);

[9] An example was Longman and Broderip of Cheapside and Haymarket, London who were musical instrument makers, music sellers, engravers, printers and publishers (see Humphries and Smith , 1970:216).

Charles Coote Junior's 'Prince Imperial Galop' sold in 1875 for £990 (£102,031). Copyrights of 'ordinary' works seem to have been frequently bought and sold, not just the hits.[10] Apart from demonstrating the value of a title as a copyright asset, the significance of the auctions is that they enabled entry into and exit from the industry: only a highly organised 'thick' market could have supported such a trade. Indeed, buying up catalogues from other publishers is still a feature of the present day music publishing industry, which would not be possible without the assignment of rights from composer to publisher.

But these prices at auction accrued to the publisher without benefitting the composer.[11] As a broad generalization, musical composition apart from writing for the theatre, supported very few British composers as a sole professional activity until the early 20th century; Drysdale (2013) contends that Elgar (born 1857) was the first to rely entirely on his compositions and concert fees. Before that, 'serious' composers had to teach, edit, copy music and/or perform, in particular as church organists, or write for the theatre.[12] Music publishing relied mostly on popular songs, choral music and music for the church; many, probably most, popular titles were written by amateurs but also by performers and by people we would now view as classical composers, a few of whom wrote under a pseudonym when writing for popular tastes. On the other hand, Sir Arthur Sullivan, now mostly known for his operettas with Gilbert, was also the composer of the 'Lost Chord' (1877), which was enormously popular in its day, selling over half a million copies, as well as of 'Onward Christian Soldiers'(still popular). Some publishers specialised in one genre of another; for example, Novello &Co published hymns and choral music at relatively low prices to make them accessible to church choirs and choral societies (Grove, 1887). J. Curwen & Sons specialised in producing music in tonic sol-fa notation, which Curwen (a Congregationalist minister) had invented and promoted in schools in order to improve singing in church.[13]

By the 1850s in the UK as incomes and leisure time increased and urban transport developed, music hall was becoming increasingly accessible and grew to be the main place of popular

[10] More details are compiled in a Working Paper on Data Sources in Music Publishing available from the author; the prices analysed were from repeat sales, though there were relatively few of them and so not sufficient for statistical analysis. The British Library has the Puttick and Simpson auction reports on request; they are very hard to decipher, unfortunately.
[11] The exception was the few works auctioned after 1911 on which mechanical and performing right royalties were payable (no doubt discounted in the auction price).
[12] Scherer (2004) provides detailed analysis of the similar state of affairs in other European countries.
[13] See https://en.wikipedia.org/wiki/John_Curwen#Curwen.27s_publications

entertainment until it was displaced by radio and the cinema in the 1920s. Public concerts were promoted by music publishers Boosey & Co, Chappell & Co and Novello & Co in halls they leased for the purpose in London and elsewhere, each performing the music they published (Boosey, 1931; Peacock and Weir, 1975; Ehrlich,1985). These venues provided the settings for plugging their sheet music by hiring singers and other performers to perform them, paying them what was known as a 'royalty'. By the 1880s all but the poorest families owned a piano or harmonium and there was a strong demand for sheet music for home entertainment, performing the songs they had heard in the music hall (Ehrlich, 1985).

Plugging was an essential part of the business model of music publishers and was the chief means of advertising 'novelties', newly written works aimed at the music hall and home entertainment market. It could be an expensive affair: Peacock and Weir report that Lawrence Wright spent £1,000 a week (£56,111 in 2014 terms) in seaside resorts in the summer of 1928 plugging the song 'Among My Souvenirs' (Peacock and Weir, 1975: 43). Sales of over 200,000 were considered to be the hits in the 1890s: 'Soldiers of the Queen' sold 238,000 in 1898 during the Boer War (*op.cit*). Plugging, unlike payola in the US[14], was not against the law, though eventually it was rather looked down upon in the MPA (Boosey, 1931); however, many singers of high repute, such as Clara Butt, were involved in it. This allowed the publisher to print 'Sung by…' and often a picture of the artiste on the title page of the work as an endorsement. Plugging was effectively put to an end by the BBC, which refused at one stage to allow performers to announce the works they were performing in broadcasts, which were mostly live in the 1930s; as the BBC became the major client of the PRS and was the most important promoter of music in the UK that put a stop to it (Boosey, 1931; Peacock and Weir, 1975).

Figure 1, based on data provided by the British Library, shows the growth of the number of song titles from 1880-1960.[15] The chart shows strong growth up to 1908 followed by a decline that lasted until the end of 1st World War. The leap in 1920 signifies a post war return to normal business and also the large number of increasingly popular American songs that

[14] The topic of detailed economic analysis by Ronald Coase (1979).
[15] The data have been collected by the British Library and include both song titles deposited with them and also ones they have added by their own research. They do not represent sales nor the whole output of music publishing, though songs were by far the dominant part of it.

were published in the UK thereby obtaining copyright protection there (since the USA was not a signatory to the Berne Convention)[16].

Figure 1 here

Source: Data from British Library (chart by Hyojung Sun)

4. The switch to rights management

Plugging was the main barrier in the minds of music publishers to exercising the performing right. By the 1920s, however, sales of sheet music had fallen and the PRS was beginning to collect significant revenues from licensing. The more forward looking publishers had joined up early on though the bigger ones were slow on the uptake: Boosey & Co joined in 1927 but Novello & Co held out until 1934, finally enabling PRS to confidently issue its blanket licences. PRS' revenues grew considerably (see Table 1 below). Early on PRS had decided that net revenues (gross revenue minus the average administration fee) would be distributed on a 50:50 basis to composer and publisher members. Table 1 shows the growth of gross PRS revenues with equivalent 2014 values. The revenues from licensing works for broadcasting (solely by the BBC until the 1950s) show how important this source was.

Table 1 PRS Income 1920-2010 (£000) and percentage

	Total gross income	2014 value	Broadcasting	
1920	23	918	0	
1930	173	10,101	54%	
1950	1,495	43,756	43%	
1960	3,296	67,800	44%	
1970	9,127	126,195	28%	
1980	39,342	150,684	42%	
1990	123,297	250,321	34%	
2000	236,830	356,056	35%	
2010	611,200	699,980	28%	(includes online)

Source: PRS Annual Reports and author's calculations

[16] Mutatis mutandis, UK publishers had offices in New York in order to obtain copyright protection for their works in the USA.

The transformation of publishers' business model from reliance entirely on sales revenue to licence fee income from MCPS and PRS,[17] of which music publishers obtain a share[18], was almost entirely driven by market forces. The 1911 Copyright Act had assisted the process by clarifying the legal situation with regard to the performing right but it could be argued that clarification was called for at that point only because by then the performing right was seen as a significant alternative source of revenue to sales. The law per se had nothing to do with the setting up of the collecting societies in the UK, which were a spontaneous market outcome, being founded on private initiative within the industry in response to market trends. The PRS constitution as a self-governing, non-profit cooperative was chosen by its founders based on the SACEM model, adopting the same system of blanket licensing and setting up mutual agreements with similar collecting societies which by1914 had been established in Austria, Germany and Spain (Ehrlich, 1989). Though the collection of performing rights was slower than it might have been, when it took place it did not unduly disrupt music publishing nor impose high switching costs - it simply raised flagging revenues from declining sales.

The growth from the mid-20th century of the market for sound recordings purchased by consumers, broadcast on radio and television, jukeboxes, in clubs, used as background music in restaurants, shops and all other such uses, as well as that for music composed for film and television programmes and advertising, vastly increased revenues from performing and mechanical rights, the last mentioned being due to the 'synchronisation' right for the use of music with a moving image, which developed in the late 1920s. As publishers switched from the buy-out and sales model of the pre-1st World War era to royalty contracts, their function changed to managing a bundle of composers' and song-writers' rights in addition to finding performance and recording opportunities. As the market for music and the use of musical rights became more complex so did contracts, making it necessary for composers and song writers, many of whom in popular music are also bands, to get expert guidance on publishing contracts as well as to any film and recording contracts from managers, agents and specialised lawyers (Harrison, 2011) in marked contrast to the manner of doing business that pervaded the 19th and early 20th centuries (Boosey, 1931; Drysdale, 2013).

[17] Also from 1934 an *ex gratia* payment from PPL, Phonographic Performance Ltd, the collecting society for the record industry.

[18] Initially, the publisher's share was one-third, with one third to the lyricist and one-third to the composer. By the 1990s this had changed to a 50:50 split in conformity with publishing agreements. Thanks to Richard Osborne for this point.

With a royalty contract, the deal is a risk-sharing one with the royalty rate reflecting the anticipated success of the work and the writer's future prospects. Several types of contracts are now in use, ranging from a single song assignment that may act as a trial for a longer term arrangement or just to get one work published to a long term exclusive deal that could last 10 years as well as various in-between arrangements (Harrison, 2011). In a royalty contract there has to be greater commitment on the part of the writer than when copyrights were bought out (Towse, 1999). In principle, at least, bearing a lower percentage of risk suggests that the publisher could take on more composers and songwriters and publish more works. Thus the role of the publisher changed from being a producer of a tangible product to that of a manager of rights, a market maker and in some cases, especially in the classical music sector, a partner in the long term development of a composer's career.

The 1956 Copyright Act introduced related rights for broadcasters and makers of sound recordings as well as setting up the Copyright Tribunal to settle any disputes between the collecting societies, now perceived as dominant monopolies, with the user organisations, such as the BBC; the Tribunal, however, seemed to have little idea of how to evaluate rates (Ehrlich, 1989). As Table 1 showed, revenues from the BBC were particularly important and the rates and the basis on which they were set were disputed; indeed, the BBC's own monopoly (and monopsony use of music - see Peacock and Weir, 1975) was soon to be contested by the introduction of commercial radio and television which further increased income from performing and mechanical rights.

Besides current output by living composers and songwriters, music publishers also have back catalogues to exploit, including works by the deceased, and accordingly benefitted when copyright was extended from 50 to 70 years with Duration of Copyright and Rights in Performances Regulations 1995, producing economic rent appropriable by music publishers as well as heirs, especially if the contract with the composer was for the life of the copyright, which was not uncommon until recent years (Barr and Towse, 2015). Some composers even went out of and then back into copyright, including high–earners, such as Elgar, Holst and Delius; the Delius Trust earned £1.5m. in 2014 terms from that extension (Montgomery and Threlfall, 2007; calculation by this author).

The expanded market also enabled increasing specialisation (as Adam Smith foresaw); composers were able to specialise in music for film and television, song writers in various genres of popular music and so on. Music publishers could also specialise by genre, and by

use. For example, in a major entrepreneurial development, at first called 'library' music and now known as production music, the publisher contracts composers to write music of various types that can be used 'off the shelf' in film, TV programmes and advertisements, arranges for recordings to be made and then keeps them ready for use while making contacts with potential users. With the growth of TV stations and commercial broadcasters around the world, this has become a significant source of revenues for composers and publishers from the performing and synchronisation rights as well as from upfront payments. Collecting societies also benefitted from expanded markets for licences at home and especially abroad (see Table 2 below) as well as from expansion of the catalogue and accordingly are able to collect and distribute more revenue to music publishers.

5. Present day economics of music publishing in the UK

By comparison with the many (often family) businesses in music publishing in earlier times, the twentieth century saw increasing concentration in the industry. The present day music publishing industry in the UK is dominated by three 'majors', Sony/ATV, Universal and Warner/Chappell, each owned by a holding company with wider interests. Imagem, the largest 'independent' publisher, was set up by the Dutch pension fund ABP and media firm CP Masters BV and entered the industry in 2008 by buying up the old established publisher Boosey &Hawkes, which itself had 26 associated companies and the Rodgers and Hammerstein copyrights, and then acquiring publishing rights from Universal Music which the EU had required it to divest; these publishers have catalogues covering every genre, classical, pop, rock, jazz and so on as well as musical theatre and production music.[19] The UK Music Publishers Association stated on its website (www.mpa.org.uk) in 2015 that its 260 members represent 4,000 catalogues. Some of these catalogues are very large, for instance, Warner/Chappell Music has a roster of 650 song writers and a catalogue of over one million copyrights; from its origins as Chappell &Co (founded in London in 1811) the company developed through mergers and acquisitions into the third largest music publisher worldwide as part of the American company Warner Music. Besides these larger-scale enterprises there are also many smaller independent companies, some old some new.

Another indicator of the size of the industry is the number of titles handled by PRS for Music: 100 million in 2013 (PRS, 2014). The top ten all time highest royalty earning song

[19] Information taken from the MPA website www.mpa.org.uk and https://en.wikipedia.org/wiki/Imagem.

titles produced £185m. according to the BBC4 programme 'The World's Richest Songs' (broadcast December, 2013: see http://www.bbc.co.uk/programmes/b01pjrt5). The Number 1 earner was 'Happy Birthday to You' with £30m. at the time (and counting!). A significant source of earnings for these (and other) top titles is cover versions. Cover versions are a cost effective source of royalties for music publishers: they have virtually zero costs as the work has already been recorded and marketed and the subsequent performer uses existing material[20] for which they pay mechanical and performing rights to the original songwriter and publisher. They are accordingly risk-free for the publisher and moreover, some cover versions earn more than the original. YouTube and other social media sites are now significant in publicising titles, adding to royalties. The amounts pro rata are very small but the volume is very high and online royalties are growing fast, though they are still only a small proportion (around 10%) of PRS revenues (Samuel, 2014).

A noteworthy feature of music publishing (that it shares with literary publishing) is the widespread use of sub publishers due to the territorial nature of copyright (Harrison, 2011). Regional and local music publishers are viewed as understanding their markets better than a foreign company could; they work on a percentage of revenues, which varies quite a lot as between companies and countries. They also register works with the collecting society that operates in that territory. The sub-publisher's share and administrative changes (and any other deductions) from the collecting society result in reductions in the revenue that finally accrues to the writer and publisher. This can work both ways, however, with UK publishers acting on behalf of foreign ones. New entrants to UK music publishing include companies whose pitch is that they manage rights internationally using their own data systems in order to avoid the deductions of these multiple charges.

Table 2 shows the sources of music publishing revenues in the UK in 2012. Collection societies are PRS for Music, MCPS and PPL; foreign affiliates are sub-publishers; direct licensing consists of licences for live performance and synchronisation income (both a growing element of the music business). Table 3 shows the percentage breakdown of the sources of those revenues from the various rights and uses in popular and classical music.

[20] Though the original work is usually rearranged enabling the acquisition of a writing credit for the cover version, thus reducing the royalty to the owner of the original.

Table 2 Source of revenues to UK Music Publishing 2012. (£m) and percentage

Collection societies	247	27%
Foreign affiliates	334	37%
Direct licensing	239	26%
Printed music (sales and hires)	76	8%
Other	8	>1%
Total	904	

Source: Music Publishers Association *Annual Report* (2013/4).

Table 3 Percentage of Revenues from Various Rights and Sources by Genre 2012

Popular music	
Mechanical royalties	40
Live performance and broadcasting	36
Synchronization fees	14
Other (ring tones, online, sheet music)	10
Classical music	
Sales of printed music	50
Hire fees	15
Mechanical royalties	12
Live performance and broadcasting	8
Synchronization fees	5

Source: MPA (unpublished)

6. Conclusion

The argument in this paper is twofold: music publishing switched its long term and seemingly locked-in business model relatively costlessly in response to changing market forces; and though copyright played an increasingly important role in the transition to rights management, prosperity of the industry was not led by changes in copyright law. The anti-piracy battles of the 19th century were won too late to have real effect on growth and by the time they were over the market for sales of sheet music was already in decline. It is often said

that copyright law and business models go hand in hand: the argument of this paper is that that was not always so. Changes in copyright law in the last 100 years have taken place because of changes in technologies that affected the demand side of the market not the supply side. Throughout the19th century there were few changes to the production of published music, the main ones being to printing technologies, which basically reduced costs, and to musical instruments, which affected the type of music demanded and supplied (Ehrlich, 1985; Scherer, 2004).

The analysis presented here is historical. The history of copyright in music and of music publishing shows that just having rights is not enough: it requires the appropriate business models to exploit them, which music publishers chose not to do in the case of the performing right for over 70 years. Conversely, the enactment of rights alone cannot stem market forces; music is a consumer good and consumer choice rules this market. The switch in the consumption of music to mechanical and now to electronic technologies shaped and will continue to shape the business models that lead to profitability. The big change in the orientation of music publishing at the turn of the 20th century, amplified enormously at the turn of the 21st, was that composed music was no longer used by only by people to whom it was sold or hired as it became widely available in secondary markets through recordings used in broadcasts, public performance in a multiplicity of venues, on social web sites and so on. Appropriation of revenues due from these uses required collective rather than individual action and, somewhat late in the day, music publishers recognised the value of performing rights and formed institutions for collective rights management to which they all eventually signed up, enabling the cost-effective system of blanket licensing to prevail (Handke and Towse, 2007). Collecting societies now exploit these rights in all the areas in which they apply, including on a global scale through international agreements and increasingly, multi-territorial licensing, which along with the millions of transactions of digital usage of music now present a huge challenge to collecting societies (Towse, 2013). Another threat is a shift to individual licensing that could undermine the bargaining power and the blanket licence system of collective rights management that supports smaller enterprises and creators, the problem PRS faced in its early days (a case of history repeating itself?).

Music publishing is an old industry that has renewed itself and adapted to new technologies and changes in consumption patterns. Its significant switch from sales to rights management may fairly be regarded as a prototype for the changes that the creative industries are dealing with today. That is not to say that history repeats itself but that it is instructive in

understanding survival: businesses that adapt to exogenous conditions survive and may do so without endogenous technical progress. In that process copyright law inevitably lags not leads. The Schumpeterian view that to survive, a business must adapt entrepreneurially is well illustrated in the case of music publishing. It has a message for other creative industries as digital usage spreads and copyright law struggles to be applicable.

The huge outlay on IT investment needed to keep track of digital use suggests that large enterprises will benefit from network and scale economies; large scale enterprises also are better able to pool risk and finance potential loss in superstar markets like those of music publishing. Without intervention in the market by competition law, increasing concentration seems to be the future of the creative industries and copyright appears to assist the process by enabling acquisitions and mergers to take place.

References

Barr, K, and Towse, R. (2015) 'Going for a song: theory and practice of music publishing contracts'. Paper presented at SERCI annual conference, Glasgow.

Baumol, W. and H .Baumol (1994) 'On the economics of musical composition in Mozart's Vienna, *Journal of Cultural Economics*, vol.18 (3); 171-98.

Boosey, W. (1931) *Fifty Years of Music*, London.

Caves, R. (2000) *Creative Industries. Contracts Between Art and Commerce*, Harvard, MA: Harvard University Press.

Coase, R. (1979) 'Payola in radio and television broadcasting', *Journal of Law and Economics,* XXII (2), October, 269-328.

Coover, James (1983) *Music at Auction: Puttick and Simpson (of London)1794-1971*, Detroit: Harmonie.

Deazley, R., Kretschmer, M. and Bently, L.(eds) (2010) *Privilege and Property: Essays on the History of Copyright*, Open Books http://www.openbookpublishers.com/product/26/privilege-and-property--essays-on-the-history-of-copyright

Drysdale, J. (2013) *Elgar's Earnings*' Woodbridge: The Boydell Press.

Ehrlich, C. (1985) *The Music Profession in Britain Since the Eighteenth Century*, Oxford: Clarendon Press.

Ehrlich, C. (1989) *Harmonious Alliance: A History of the Performing Rights Society*, Oxford: Oxford University Press.

Grove, G. (1887/2009) *A Short History of Cheap Music*, Cambridge: Cambridge University Press.

Handke, C. (2015) 'Going means trouble and staying makes it double: the value of licensing recorded music on line', *Journal of Cultural Economics*, online 22 May.

Handke, C. and Towse, R. (2007) 'Economics of copyright collecting societies', *International Review of Intellectual Property and Competition Law*, 8/2007 (38); 937-57.

Harrison, A, (2011) *Music: the Business*, 5th ed., Virgin Books.

Humphries, C. and Smith, W. (1970) *Music Publishing in the British Isles*, 2nd ed. Oxford: Blackwell.

Kretschmer, M. (2005) 'Artists' earnings and copyright: a review of British and German music industry data in the context of digital technologies', *First Monday*, 10, 1-14.

Montgomery, Robert and Threlfall, Robert (2007) *Music and Copyright: the Case of Delius and his Publishers*, Aldershot UK and Burlington VT, USA: Ashgate.

Music Publishers Association (MPA) (2014) *Annual Report*, London: MPA.

Napier-Bell, S. (2014) *Ta-Ra-Ra-Boom-De-Ay*, London: Unbound.

Peacock, A. and Weir, R. (1975) *The Composer in the Market Place*, London: Faber.

PRS (2014) *Annual Report*, London: PRS.

Samuel, M. (2014) ‘Winds of Change. Journey of UK Music from the Old World to the New World’, *Review of Economic Research on Copyright Issues*, 2014, 11(2); 27-59,

Scherer, F. (2004) *Quarter Notes and Banknotes,* Princeton NJ: Princeton University Press.

Silver, J. (2013) *Digital Medieval*, Xtorical Publications Media. Available from Amazon.

Towse, R. (1999) ‘Copyright, incentives and performers' earnings’, *KYKLOS*, 52, 3: 369-390.

Towse, R. (2001) ‘Partly for the money: rewards and incentives to artists’, *KYKLOS,* 54, 2/3; 473 - 490.

Towse, R. (2013) ‘The Economic Effects of Digitization on the Administration of Musical Copyrights’, *Review of Economic Research on Copyright Issues*, 10(2): 55-67.

UK Music (2012) *The Economic Contribution of the Core UK Music Industry,* London: UK Music.

RCUK Centre for Copyright and
New Business Models in the
Creative Economy

College of Social Sciences / School of Law
University of Glasgow
10 The Square
Glasgow G12 8QQ
Web: www.create.ac.uk