



CREATE Working Paper 2015/03 (May 2015)

# Collective Management Organisations, Creativity and Cultural Diversity

---

## Authors

John Street  
University of East Anglia  
J.Street@uea.ac.uk

Dave Laing  
University of East Anglia

Simone Schroff  
University of East Anglia

---

*Versions of this paper have been given at the IASPM Conference, Gijon Spain, 24-28 June 2013, the CRASSH Conference, University of Cambridge, 28-29 March 2014, the IASPM UK-Ireland Conference, Cork, 12-14 September 2014; the Workshop on 'Creativity and Institutions', University of Cambridge, 9 December 2014; and 'The Economics of Creativity and Competition' CREATE/CCP Conference, UEA, 4-5 February 2015.*

CREATE Working Paper Series DOI: 10.5281/zenodo.17860.

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.

## **Collective Management Organisations, Creativity and Cultural Diversity<sup>1</sup>**

John Street, Dave Laing and Simone Schroff, CREATe/University of East Anglia

### **Introduction**

‘Somewhere right now, in this country, a young person is scribbling on a scrap of paper or tapping on a keyboard, composing a song that will resonate far beyond the page. The industry may change, but that simple act of creativity remains, and will always remain, immortal and timeless’ (Feargal Sharkey, Chief Executive, UK Music, 2010)

The quotation above from Feargal Sharkey, former lead singer of the Undertones, appears in the Foreword to UK Music’s *Liberating Creativity* policy statement. The document captures a familiar dilemma. On the one hand, Sharkey-the-romantic holds dear to the belief that there is something magical or mystical about the act of creativity, a moment in which an individual, or small group of individuals, are inspired to create. On the other hand, there is Sharkey-the-lobbyist arguing for the need for government intervention and investment for the purpose of ‘liberating creativity’. Sharkey is by no means alone in wanting to combine these two thoughts. But can they be? What contribution does public policy intervention make to creativity? Does it liberate it, or stifle it?

---

<sup>1</sup> Versions of this paper have been given at the IASPM Conference, Gijon Spain, 24-28 June 2013, the CRASSH Conference, University of Cambridge, 28-29 March 2014, the IASPM UK-Ireland Conference, Cork, 12-14 September 2014; the Workshop on ‘Creativity and Institutions’, University of Cambridge, 9 December 2014; and ‘The Economics of Creativity and Competition’ CREATe/CCP Conference, UEA, 4-5 February 2015. We are very grateful for the comments and the suggestions we received at all these events, and for the support of the CREATe programme. A particular debt of thanks is owed to Ruth Towse. We alone are responsible for the views, the errors etc.

This is a familiar question, to which there are many answers. We discuss some of these below, but our main concern is with the contribution to creativity of a particular institution – the Collective Management Organisation (CMO)<sup>2</sup>, and the public policy designed to regulate its performance. We also concentrate on a single sector of the creative industries: the music industry. In doing this, we examine the European Union’s attempt to reform the CMO in the name of creativity (among other goals), and we compare the performance of CMOs in different national settings. Our argument is that, by these two routes, we can contribute to an understanding of the part played by public policy and institutional intermediaries in fostering creativity.

This narrowing of the focus is necessary for any reasonable answer to the question as to what a particular policy regime and its component intermediaries contribute to creative culture. Key to the operation of such a regime is the management of copyright, and our analysis is concerned with how intermediaries themselves understand and justify their contribution – for example, it is notable how the word ‘creativity’ is often parsed as ‘cultural diversity’, a rather different, if equally important, goal.

In what follows we begin by justifying our emphasis upon the CMO, a justification that is couched both in terms of the neglect to which CMOs have been subject and the importance that they are assuming in a digital economy (Towse, 2013). This importance is recognized by the EU in its recent Directive on CMO reform (2014/26/EU), and by the recommendations of inquiries – like that by Ian Hargreaves (2011) – for greater transparency, among other things, in CMO practice. We also consider other attempts to reveal the role played by institutions and institutional structures in facilitating creativity, and

---

<sup>2</sup> Collective Management Organisations are also referred to as Collecting Societies, Authors Societies and Performing Rights Organisations.

the problems entailed in measuring the key terms and identifying the key causal mechanisms.

## **Background**

The general context for this paper is that of the digitization of the creative economy, and the new problems, opportunities and players that this is heralding (see Hardy [2012] for an excellent survey). For the CMOs, these extend from the emergence of streaming services and the issue of cross-border rights management, to the increasing tendency of entertainment conglomerates to handle rights 'in-house'. The more specific context – a response to the larger one – is the EU Directive 'on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market' (issued on 26 February 2014). This Directive, designed to align the collective management of rights with the new digital order, is likely to have significant consequences for the CMOs, and possibly for music culture in Europe.

This paper is part of a more general project that aims to explore what might be deemed 'the conditions of creativity'. It is about cultural policy and the institutions (both public and private, governmental and corporate) that contribute to creativity. This is not to deny the role of individual artists in the story, but rather to understand the institutional context in which they work, and to explain variations within and across countries in the forms and character of the art that emerges. Our concern is, thus, not just with the conditions of creativity, but with the politics of creativity, and in relation to this: the politics of copyright and rights management.

The designation and regulation of copyright represent two dimensions of the politics of creativity. There is a growing literature on the impact – typically, the constraining or

enabling impact – of copyright on creative practices. This literature speaks to the way in which copyright, or its interpretation and implementation, privileges certain types of creative authorship over others, and to the enabling or facilitating effects of copyright (Burkhart, 2010; Fredriksson, 2014; Frith and Marshall, 2004; Gaines, 1991; McLeod and DiCola, 2011). Whatever the emphasis, the point is the same: copyright shapes creativity (more accurately, ‘originality’, since the law is silent on creativity).<sup>3</sup> Or in the rhetoric of UK Music: ‘Copyright is the currency of creativity’ (UK Music, *Liberating Creativity*, 2010: 13).

This literature does not, for the most part, grapple with the question of what is meant by ‘creativity’, and how it might be evaluated. Rather, the authors are concerned to identify the ways in which artists come to benefit from, or clash with, the requirements of the copyright regime. For example, McLeod and DiCola (2011: 6) write of their interest in ‘how the law encourages some form of creativity and discourages others.’ The question of what, independently of the interpretation of courts, makes an act ‘creative’ or what defines ‘creativity’ is not their concern.

In one of the few sustained attempts to define and explain creativity in music, Keith Negus and Mike Pickering (2004) also discuss copyright’s role in detail. They note that copyright was introduced to ‘incentivise’ creativity, by discouraging copying and rewarding innovation. It was designed to provide a source of benefits to the creator and to the wider society that would benefit from the artist’s creativity. But, as Negus and Pickering also note, to observe the *intentions* of copyright is to not to describe its *effects*. Does copyright, they ask, actually benefit those it was intended to benefit, whether the artist or the wider society? Have changes in the technologies of creativity (the capacity to fix and reproduce a

---

<sup>3</sup> With thanks to Ruth Towse for this point.

work of art) and in the corporate interests allied with it (the culture/creative industries) radically altered copyright's role and its relationship to creativity?

In assessing changes to copyright and its effects on creativity, Negus and Pickering (2004: 63) set themselves against what they see as the 'unhelpful dichotomous terms' – artists versus corporations; rich countries versus poor ones - in which the debate is often framed. Rather, they suggest that close attention needs to be given to the specifics of copyright and the ways in which it constitutes the possibilities (and the restrictions on those possibilities) faced by an artist (and how they view 'art'), as well as the relationships that exist between artists and the many intermediaries who constitute what becomes the 'copyright regime'.

But while Negus and Pickering provide a framework for understanding the creative process that includes the institutions and actors that constitute it, they do not say explicitly how we might judge between different regimes and the contribution they make to creativity. How might we know which of two rival schemes best enhance creativity? There is a literature that has attempted this task. It derives from the application of industrial organization theory to the market in music.

### **Explaining innovation in music**

Understanding the conditions under which creativity occurs takes many forms. Consider the case of The Beatles. Greg Clydesdale (2006: 138) has argued that the group's success was a product of competition: 'In the case of The Beatles, competition-based incentives, such as outperforming the competition, enhanced innovation.' In contrast, Simon Frith (1988) has contended that The Beatles' creativity was enabled by the space for public experimentation created by the BBC.

Such accounts, in which the focus is on the mechanics of production, stand in contrast to what Stanley Lieberson (2000) calls 'reflection theory'. This is the idea that creativity and innovation are generated by the wider social and political context in which the artists reside. Such an account can, in the case of The Beatles, be found in Mark Lewisohn's (2013) monumental – the first volume is over 900 pages long - biographical history of the band, in which the context looms large. It is also apparent in many accounts of the rise of punk in the 1970s (see Hebdige, 1979; Laing, 1985; Savage, 1991). For Lieberson (2000: 273), the limits of reflection theory are revealed in the tendency to ignore 'the role of internal mechanisms and therefore the fact that changes occur even where external conditions remain constant.' And it has been these 'internal mechanisms' that have been the focus of a long tradition of music scholarship.

From the 1970s, music scholars have asked this question: under what conditions do we get innovation in popular music? To answer such a question, it was necessary a) to establish a measure of 'innovation'; and b) to isolate the mechanism responsible for it.

The first systematic answer was provided by the sociologists Richard Peterson and David Berger (1975). By examining the turnover in singles appearing in the US top 10, and mapping this onto the structure of the music market, they concluded that market competition was the driver of musical change and innovation. Their initial foray led to a spate of responses from other researchers, and the follow-up studies by Peterson and his colleagues. These are documented in Table 1 (see Appendix), in which we trace both the measure of musical innovation used and the factors associated with it. As can be seen, for much of the history of this literature the basic framework remained unaltered. Market structure was mapped onto innovation. The variations tended to take two forms. Rival researchers challenged the measure of innovation. Should the focus be on albums, rather

than singles? And then the question was whether ‘innovation’ should be understood in terms of stylistic devices, rather than in terms of the change in artists appearing in the charts. The other way in which the Peterson and Berger approach was challenged was in terms of how industry structure might be measured. Instead of focusing on the competition between independent companies, attention turned to the internal structure of the music industry and the degree of latitude allowed to corporate executives.

With each successive study, questions were raised about the methodology being used (eg Christianen, 1995), but only gradually were other measures introduced – such as the ethnicity or gender of artists (eg Dowd, 2004; Lena, 2006). And it was not until relatively recently (eg Fox, 2005) that other market actors – retailers and broadcasters – were introduced, or that acknowledgement was made of the role of the internet (Waldfogel, 2012). And even as these revisions were made, the focus remained heavily dependent on charts as measures of success and the US as the case study. Non-US studies were the exception (eg Christianen, 1995); and comparative studies almost non-existent.

The conclusion of almost all these studies has been that innovation and diversity depend on competition. The more intense and open the competition the greater the innovation and diversity to be found in the resulting music. This conclusion does not seem to have changed with digitization, although the sophistication of the research has (eg Ferreira and Waldfogel, 2013). (And a similar assumption, as we shall see, inhabits the EU Directive.)

However, there are at least three limits to this research tradition. These goes beyond the focus on a particular genre or form of music. They relate to the relatively (again, it varies) simplified model of the market being applied. Typically, the market is understood to involve firms, artists and audiences/fans. While there is much to be learnt from the terms



under which the firms compete, the 'industry' is narrowly conceived as comprising recording companies only, and makes little or no acknowledgement of the other 'industries' involved (Cloonan and Williamson, 2007). One way of refining our understanding is to examine the role of intermediaries in the market. This is acknowledged by one of the founders of the tradition we have been discussing, Richard Peterson (1990), who in his article 'Why 1955?' locates the origins of rock'n'roll in the concatenation of legal, economic and institutional processes of the time.

Another refinement is to introduce a comparative element. This is to counter a second limitation. Most of the research listed in Table 1, as we have noted, employs a single, national case study. A comparative analysis of the performance of different national industries would allow us to hypothesise about the factors affecting the performance of those industries, and to identify the contribution made by particular intermediaries.

The final limitation stems from the terms applied to the analysis. Typically, the music market is assessed in terms of 'innovation', rather than 'creativity', and the two terms may not be synonymous. Indeed, there is third term which emerges – implicitly or explicitly – in the later studies, and this is the notion of 'cultural diversity'. Although it shares a family resemblance to both creativity and innovation, cultural diversity may have other, quite different connotations and policy implications (see, Street, 2011, for an overview).

In the research reported below, we offer a comparative analysis of the role played by Collective Management Organisations in a number of territories, and in doing so try to identify the contribution made (or intended) for cultural diversity or creativity. CMOs, we suggest, are key intermediaries, particularly in a digital era. The EU Directive is indicative of exactly this thought. In what follows, we present initial findings from a comparative study of CMOs in Europe and the US, together with case studies of key developments in the

regulation and operation of those CMOs. We report on the initiative taken by the EU to consolidate and harmonize the regulation of CMOs, on the initiatives taken by individual CMOs, and on the comparison to be made between CMOs. We also consider the language and rhetoric used to evaluate the contribution made to musical creativity, and explore the differences that may be implied by the languages of 'creativity' and 'cultural diversity'.

### **The role and reform of Collective Management Organisations**

In the literature on innovation and the music industry very little attention is given to the role of the CMOs beyond the (not insignificant) distribution of earnings to artists. Indeed, they are neglected too in the general literature on the music industry, or even those that focus on the specific effects of digitalization (see, for example, Hardy, 2013; Jones, 2012; and Wikstrom, 2009; exceptions include Haunss, 2013; Laing, 2004; Wallis, 2004; Wallis et al, 1999).

While the CMO may be overlooked in music studies, it has attracted the attention of legal and economics scholars (eg Kretschmer, 2005; Kreschmer et al, 2005; Towse, 2000a, 2000b, 2002, 2006a and 2006b; Handke and Towse, 2007; Hilty and Nerisson, 2013). It has also caught the notice of policy makers; in particular those who regulate competition. The CMO – as a natural/national monopoly – has posed problems as to how it should be managed so as to benefit rights holders and those who use their works (Towse, 2012). The CMO has also featured in the deliberations of national governments and transnational authorities which wish to advance the cause of the creative industries. There is a long history of European Commission, European Court of Justice and European Union scrutiny of CMOs and a slightly shorter one in the UK, evidenced most recently in the Hargreaves (2011) report and the subsequent work of the Intellectual Property Office.

The main focus of the legal and economic literature and the policy initiatives has been on rights and economic efficiency. Less attention is devoted to other dimensions – most notably, the cultural value of what emerges from the copyright regime. This is our particular concern here.

Many – if not all – CMOs are committed to promoting social and cultural value. They are charged with contributing to the quality of the music culture of their territory. This is what Kretschmer (2005: 8) has called their ‘solidarity rationale’ – by which he means supporting domestic creators, the cross-subsidizing of small rights holders by larger ones, and ‘discrimination between genres’. It can also take the form of a commitment to ‘cultural diversity’. This ambition is shared by the EU. A version of the solidarity rationale features in the new EU Directive on the collective management of copyright. In the preamble to the Directive, the EU notes that previous Directives on copyright and related rights were designed to ‘contribute to the development and maintenance of creativity’ (Para 1), and goes on to argue that CMOs ‘play, and should continue to play, an important role as promoters of the diversity of cultural expression’ (para 3).

So, to summarise, we have a general concern with the conditions under which creativity might be enabled to flourish, a literature that has, for the most part, neglected the particular contribution of the CMO to these conditions, and a policy agenda that imagines and expects such a contribution to be made. The rest of this paper is given over to the question of how such a connection might be made. How might we analyse and evaluate the extent to which an intermediary – in this case, the CMO – contributes to creativity?

## **Evaluating the contribution of CMOs: from creativity to cultural diversity**

In analyzing the role of the CMO in fostering creativity, the first issue that arises is how 'creativity' features in the agenda and intentions of these organisations. The language chosen tends to be determined by the interests of those using it. Where the concern is market performance the tendency is to use the language of 'innovation' and 'market choice'; where the focus is cultural policy, the key criteria are 'excellence' (Jowell, 2004) or 'cultural diversity' (UNESCO, 2005). The EU Directive itself, as we quote it above, moves from 'creativity' in paragraph one, to 'cultural diversity' in paragraph 3. These terms have, in fact, radically different implications for policy, but before we examine these, it is important to note briefly their origins.

Within key international bodies, notably the EU, the Council of Europe and UNESCO, the emphasis is increasingly upon 'cultural diversity' as a core value to which cultural policy is directed. The concern with cultural diversity might be viewed as a response to processes such as globalization, 'glocalisation' and 'McDonaldisation', each seen as containing a threat to national or ethnic identities and cultures. In its recent Consultation Document on European copyright policy, the EU makes explicit the connection between its various economic and cultural agendas. It says that for the EU copyright regulatory framework to be 'fit for purpose in the digital environment', it must 'support creation and innovation, tap the full potential of the Single Market, foster growth and investment in our economy and promote cultural diversity' (2013, p2).

While the language of 'creativity' and 'innovation' remains, it is increasingly evident that, in respect of the cultural values to be promoted in cultural policy, the core term is 'cultural diversity'. The first of the main principles held by the Council of Europe in cultural matters is: respect of identity and promotion of cultural diversity and intercultural

dialogue. This is linked by the Council to such principles as those of human rights and (cultural) democracy (<http://www.coe.int/en/web/about-us/values>).

One of the key statements on cultural diversity is UNESCO's (2005). This refers to 'cultural activities, goods and services as vehicles of identity, values and meaning' and makes cultural diversity a necessary condition of other principles, most notably freedom of expression and communication. This is understood to require 'the ability of individuals to choose cultural expressions'. The principle of state sovereignty allows for states to protect the diversity of cultures within the nation. And the principle of equality is held to require 'equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples.'

Without going into detail here, it is evident that a commitment to cultural diversity is different from a commitment to cultural excellence. As Brian Barry (2001) has argued, there is no necessary connection between the two. Indeed, Barry suggests that they are incompatible, and that the one cannot be delivered by the other. Cultural diversity will not guarantee excellence, and vice versa. The issue is, then, which agenda is to be preferred. This is a matter of political argument and judgement (see Parekh, 2000). It might be contended, therefore, that the EU and those who place cultural diversity as a primary goal of cultural policy are, in the interpretation of creativity, engaged in an exercise of political judgement. This judgement may not only entail a rejection of 'excellence', but also of 'innovation'. 'Innovation' may neither entail excellence or diversity; it may merely signify a new market choice. The politics of this are too complex and fraught for this short paper. We simply note that the selection of criteria by which to evaluate the ends of cultural policy carry considerable political baggage.

Settling upon ‘cultural diversity’ as the goal of cultural policy resolves only one of the problems with which any policy regime has to deal. There remains the issue of what ‘cultural diversity’ is to mean in practice and how it is to be measured or identified. We can here only indicate the various attempts that have been made to do so.

UNESCO, for example, has published work that tries to develop methodologies and concepts originating in the measurement of biodiversity by ecologists. It uses the concepts of variety, balance and disparity to analyse levels or quantities of diversity. One of the case studies to which this method is applied is that of the French record industry.

In the same spirit, we turn our attention to the policy initiatives and institutional strategies that are intended to promote cultural diversity. While ‘intention’ and ‘impact’ are not, of course, the same, they do at least help to establish the territory on which the relationship between intermediary institutions and culture might be explored. Here, we will focus focus on the specific actions taken by the European Union and by two CMOs, SACEM of France and PRS for Music of the UK. We will then consider briefly a more general comparison of CMOs.

### **Case studies (1): the EU Directive**

This discussion of the policy initiatives of the EU focuses solely on the recent Directive since it, in turn, is concerned solely with the reform and regulation of CMOs. It is a major initiative designed to enable the management of rights to operate more effectively in the digital economy in which national borders no longer assume the role they did in the analogue era. It requires the creation of a system in which rightholders may authorize any CMO to act on their behalf. CMOs are required to meet standards of governance and transparency that assuage misgivings about their monopoly status. They are, for example,

required to provide information on deductions made for 'social, cultural and educational services' (Article 13(4)).

Beyond ensuring that CMOs observe particular governance criteria and meet standards that serve the economic interests of their members and users, the Directive also addresses the role of CMOs in promoting cultural diversity. It specifies this role in two ways: a) 'enabling the smallest and less popular repertoires to access the market'; and b) 'providing social, cultural and educational services for the benefit of their rightholders and the public.' (ibid.)

In themselves, these aims appear to recognize a broader agenda than simply economic efficiency. However, Christoph Graber (2012) has argued that the Directive is not even-handed in its treatment of the goals it sets itself. According to Graber, the cultural agenda is marginalized, and indeed compromised, by the economic efficiency agenda. He contends that the Directive is

- a) framed to favour rightholders over users;
- b) designed to promote competition between CMOs that will lead to a focus on the 'most lucrative' of music rights; and
- c) likely to lead to the under-representation of 'less popular music and music in languages that are less widely-used.' (Graber, 2012: 8).

If Graber is right, the Directive will have a significant effect upon music culture in Europe.

This effect may be compounded by other developments in collective management. The status quo ante involved the granting of 'blanket' licenses on a national basis to broadcasters and other licensees for the whole of the global music repertoire, providing an opportunity for licensees to use items from even the most obscure music genres or national repertoires. In contrast, there is now a system of piecemeal cross-border licensing that

enables licensees to get access to limited parts of the global repertoire by making agreements with new CMOs set up for this purpose. Thus, CELAS - a joint venture between EMI Music Publishing, PRS and GEMA (the German music CMO) - can license all the Anglophone pop songs published exclusively by EMI for online and mobile purposes. The temptation for licensees such as broadcasters and streaming companies is to license only this repertoire (and similarly lucrative ones) and to ignore the repertoire of other national languages.

Adolf Dietz (2014), another critic of the Directive, offers further grounds for suspicion. He argues that the Commission is insufficiently concerned for the cultural (as opposed to the commercial) role of the CMOs. He argues (2014: 11) that the European Parliament has shown much more interest in the cultural impact of copyright than has the Commission. The latter is more interested, he suggests, in matters of competition and anti-trust, and these do not necessarily serve the EU's commitment to creativity and cultural diversity. Dietz (2014: 14) contends that anti-trust rules operate negatively; they 'push the [collecting] societies to compete, which is not appropriate to the sector'. He worries (2014: 15-16) that one consequence of this will be the diminution and down-playing of the social and cultural contributions made by CMOs.

Although Dietz (2014: 23) acknowledges that the Commission's line on the CMOs' social and cultural role has been softened during the passage of the Directive, he remains convinced that the European Parliament better expresses or represents the cultural interests of the European community. The Commission, he insists, is still 'aimed primarily towards the internal market and the European economy as a whole' (Dietz, 2014: 17). Such priorities, Dietz suggests, serve the interests of the larger CMOs and the repertoires for which they are responsible (see also Towse, 2012). While the Directive is formally seeking to



counter this trend by making provision for the compulsory licensing of the ‘less popular’ music under certain circumstances, whether or not this will preserve the existing degree of cultural diversity in European music will not be known until several years hence.

The tensions and questions raised by the Directive’s critics stem in large part from the assumptions about what is meant by ‘creativity’ (revealed in the terms used to capture it), and about the means to realise it. The latter rests largely on an under-developed argument that competition is key to creativity; and that competition between CMOs depends on the ‘high standard of governance, financial management, transparency and reporting’ (para 9) that organize their practices. It also assumes that the key stakeholder in this competition is the rightsholder, who needs to be able to be ‘freely able to choose a CMO’ (para 9) and ‘to exercise control over the activities of CMOs’ (para 55). ‘CMOs should act’, the Directive asserts (para 22), ‘in the best collective interests of the rightsholders they represent’ (para 22). Joseph Schumpeter’s (1976/1942) notion of ‘creative destruction’ is often cited in the discussion of competition and innovation, but interestingly it is a notion of competitive democratic elitism that might be seen to underpin the EU’s policy.

### **Case Studies (2): the CMOs and their cultural contribution**

While the EU is seeking to introduce an element of harmonization and standardization into the operation of the CMOs in an attempt to serve both its single market and cultural diversity agendas, the CMOs themselves have developed different ways of contributing to the music culture in their respective territories. Our focus here is on the ‘solidarity’ element of their role, and particularly the desire to improve the *quality* of culture, rather than simply rewarding creative effort.

GESAC, the European association of CMOs, states that most CMOs pursue an intensive cultural agenda and support many activities and events neglected by the market, i.e. demanding or risky repertoires (contemporary music, improvisation, poetry, etc.) and works created by young professionals. By way of illustration, we consider the example of two such CMOs: SACEM, the French CMO, and PRS for Music, its UK equivalent.

### **SACEM**

The cultural diversity work of SACEM needs to be seen in the context of French state cultural policy. Successive French governments have been at the forefront of support for what came to be called the 'cultural exception' in international trade relations, following the GATT treaty of the late 1940s. Most recently, the exception argument has prevailed in the negotiations for a Transatlantic Trade and Investment Partnership between the EU and USA, when in June 2013 EU trade ministers agreed to exclude 'AV services' from the talks (European Parliamentary Research Service, 2014). These could be reinstated, but only if all member states agreed. In addition to these actions on the international level, there have been a range of domestic measures to support French cultural expression, including an airplay quota, limiting the radio exposure for non-Francophone music and laws to ensure that a proportion of the private copying levy or tax is spent on developing and promoting Francophone music artists, venues and recordings.

SACEM's programme can be seen as part of this overall national strategy. It describes its own approach as 'three pronged' (SACEM website:

<http://www.sacem.fr/cms/site/en/home/creators-publishers/cultural/cultural->

initiatives\_1). Firstly, it aims to support for 'original creative work' across all music genres,

then to give grants to assist live performances at concerts and festivals in France, and finally

to provide assistance for training programmes to develop the professional skills of young artists. To this extent, SACEM appears to be actively committed to an agenda that promotes 'creativity' and cultural diversity, broadly understood.

### ***PRS for Music***

In contrast to France, the UK has no over-arching cultural strategy or programme to enhance cultural diversity. The nearest thing to this is a paper from the Arts Council for England (nd), 'What is the Case for Diversity?', which takes a 'social engineering' or 'social exclusion' approach, stating that 'since the 1970s, the Arts Council and those it funds have pursued various ways of increasing equality in the arts, mainly by implementing measures under the umbrella term 'cultural diversity''. In such a world, it is left to individual organizations to explain their broader cultural agenda. Hence, PRS for Music set up a Foundation:

Supporting new music has always been important to our members. In 1999, we launched an independent charitable foundation that has become the UK's leading funder of new music across all genres. The *PRS for Music* Foundation aims to stimulate and support the creation and performance of new music in the UK and motivate public debate about creative music-making through ground-breaking projects such as the New Music Award. (PRS website:

<http://www.prsformusic.com/aboutus/ourorganisation/community/Pages/default.aspx>)

Here PRS for Music couch their agenda in terms of 'new music'. Although many of the specific interventions made by PRS are similar to those of SACEM, the 'diversity' being addressed is that of music genres or styles, without the emphasis on national cultural

identity that underpins the SACEM approach.<sup>4</sup> PRS for Music's emphasis on 'new' music opens up a different set of issues, if only because the adjective can be used to designate music that is recent or innovative.

This ambiguity might account for the controversy that accompanied a further PRS initiative, its Momentum Music Fund. This is a jointly financed project with Arts Council England (ACE) (<http://www.prsformusicfoundation.com/Funding/Momentum-Music-Fund>). Set up in 2013, its aim has been to help financially 'artists and bands who are at a crucial point in their development, with the potential to significantly further their career within the next two years.'

This intervention was criticized by the head of the BPI, the representative body of the major record labels, for suggesting that there was a competitive market failure within the industry. The Huffington Post (Carey, 2013) quotes him as saying:

The new Arts Council fund represents a drop in the ocean - around a third of one per cent - compared to annual investment by UK labels. New funding for investment in UK talent is always a good thing, but the Arts Council should be supporting the music industry's excellent record of breaking talent, not attacking it with ill-judged soundbites.

But this may be a misinterpretation of the initiative, at least insofar as it wanted to support creative innovation, rather than mere 'newness' or novelty.

What PRS for Music, though, was not – unlike SACEM – seeking to promote was 'cultural diversity', or at least not as its primary goal. This was revealed in a dispute with an

---

<sup>4</sup> See, by way of contrast, the Irish Music Rights Organisation (IMRO) which states that it is 'prominently involved in the sponsorship and promotion of music in Ireland' (IMRO website: <http://www.imro.ie/about-imro/>)

organization representing PRS members who create music in the Welsh language, the Welsh Music Publishers and Composers Alliance (WMPCA). It claimed that Welsh rightholders were being inadequately rewarded for radio and television usage of their works. PRS for Music's response was that it has standard payments for music, 'irrespective of genre, language or other distinctions.'<sup>5</sup> PRS's position suggested a strong notion of equality that trumped claims based on 'cultural diversity'.

These two examples of CMO practice in respect of the 'cultural' or 'solidarity' agenda are offered as illustrations of the different ways (in terms of practice and values) in which CMOs may act to affect the character of music culture in their countries. In the last section, we introduce a stronger comparative dimension to the question of how CMOs operate and how they differ.

### **Comparing CMOs**

The differences between the positions adopted by SACEM and PRS, and the debates round the intentions and effects of the EU policy intervention, all contribute to our understanding of how institutions and intermediaries may affect (or intend to affect) music culture. In the course of the discussion, we have hinted both at what this effect may be and about what lies behind the differences of approach. This latter includes the political interests and priorities of the key actors (the Commission vs the Parliament), the language used to identify the goals of cultural policy (diversity vs innovation), the national political agendas

---

<sup>5</sup> WMPCA then established its own CMO, Eos, to negotiate directly with the BBC, the main broadcaster of Welsh language music and other programming. The resulting impasse led to a hearing before the Copyright Tribunal.

(France vs UK), and political values (equality vs diversity). It might be contended, however, that these insights are necessarily speculative, and may reflect contingency more than causality. What is needed is a more systematic overview of the role played by CMOs (and the context established for them by the EU).

As an indication of what might be revealed by a more systematic analysis, we report here on the initial findings that emerge when we compared, on a variety of axes, the performance of a number of CMOs in Europe and one in the US. In doing so, we follow in the example set by a number of other scholars (for example, Burke, 1996; Kretschmer, 2002; Rochalandet, 2003; Guibault & Van Gompel, 2012). What we offer is a larger and more recent set of comparisons. Using the CMOs' websites and other published information, we have charted some of the more significant similarities and differences between them.<sup>6</sup>

Figure 1 traces the income (standardized to euro equivalents) received by CMOs in France (SACEM), the UK (PRS for Music), Germany (GEMA), Sweden (STIM), Spain (SGAE) and the US (ASCAP).<sup>7</sup> What is evident is that all but one (STIM) of our CMOs enjoy roughly equivalent income levels. They vary greatly in sources of their income (ie how much derives from broadcasting as against streaming, and so on). They also differ in terms of administrative costs. They vary too, as we have already indicated, in the proportion of their income devoted to 'cultural' and 'solidarity' spending. We have data for three CMOs only. It is notable that for the others in our comparison, these data are very hard to obtain. Figure 2 maps the contribution made by three CMOs to cultural and social projects. PRS for Music

---

<sup>6</sup> We only give a sample of our data here. A later paper will provide further detail.

<sup>7</sup> It is important to note that STIM and ASCAP deal in performing rights only; GEMA, SACEM and PRS deal in licensing, performing and mechanical rights; SGAE and SACE manage music and audiovisual rights. Our thanks to Frances Lowe of PRS for Music for drawing our attention to these differences.

appears to contribute considerably less than the others. There are two important reasons for this. The first has to do with the obligations imposed on SACEM and GEMA to make such contributions that do not apply to PRS; the second is that PRS provides cultural support only – it does not have a social fund.

Figure 1

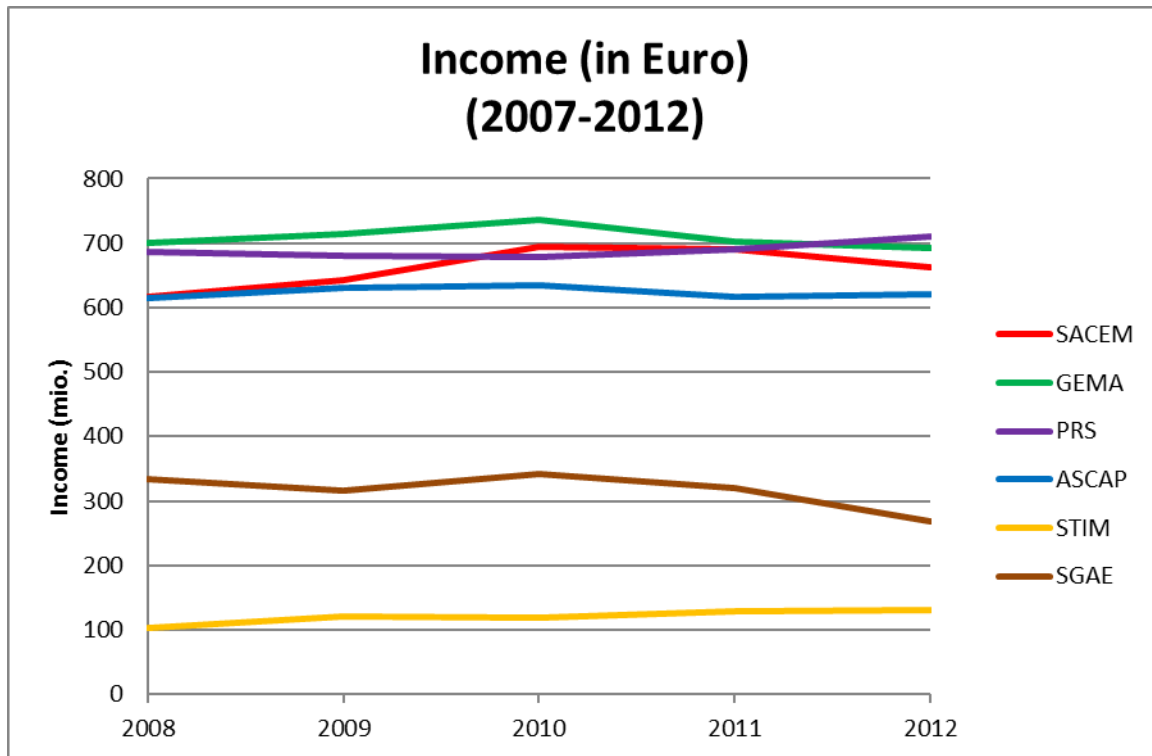
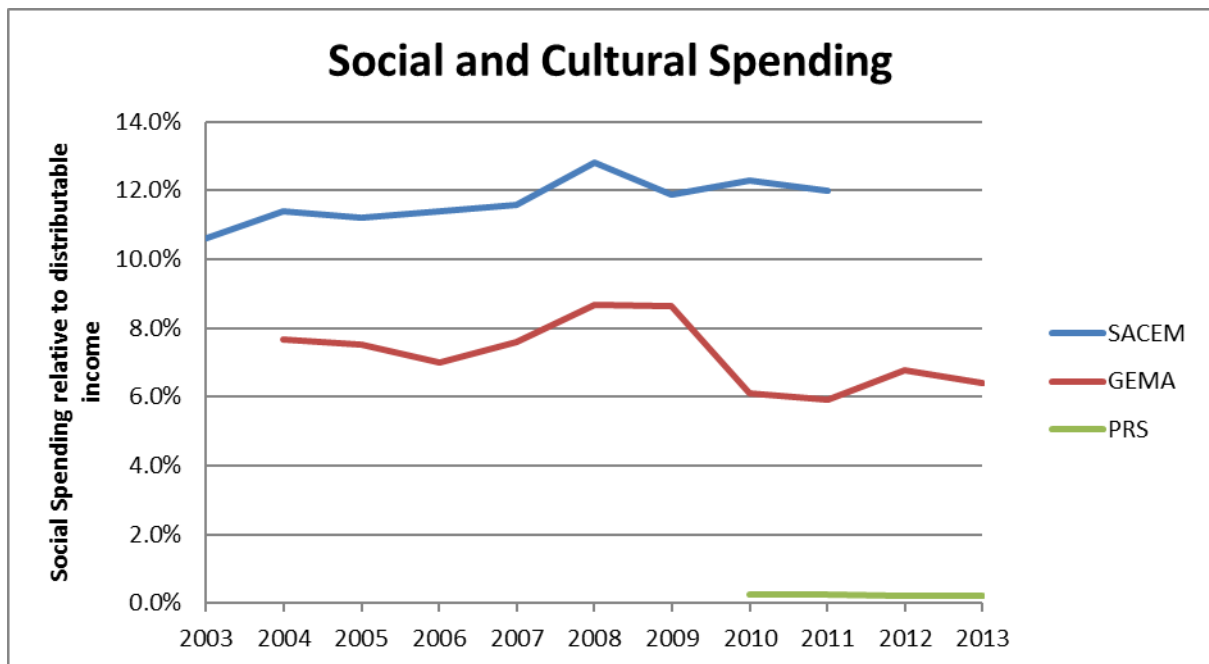


Figure 2



We do not presume to offer further explanations for these similarities and differences here. What we would say, though, is that such comparisons have the capacity to reveal variations that might otherwise go unnoticed. These both allow us to reflect on the possible sources of the variations, and to explore the different contributions made by CMOs to their respective music cultures.

Our contention is that such comparisons are a crucial tool in any attempt to explore the role played by specific intermediaries in the creative life of a country (or region). Such comparisons are not easy to conduct, and are subject to debate and dispute. However, it is important to try and refine the approach because of the possible insights that it may generate.



## Conclusion

This paper began by asking how and when the institution of the Collective Management Organization might contribute to musical creativity. This question was set against the background of other attempts to map organizational form onto musical innovation. We argued that, while these other attempts contributed valuably to our understanding of the drivers of change in music, they were limited. These limitations included a lack of interest in the role of the CMO, the tendency to focus on a single territory, and a limited account of what represents musical innovation (or at least how it might be measured).

We cannot pretend to have a solution to such limitations, or to have provided a definitive answer to the question we posed. Far from it. Rather, we have suggested how the question might be approached, and what might be gleaned from the mixture of policy analysis, case study and comparison that we have outlined above.

We would suggest, however, that further investigation might pay dividends. It is important – insofar as the cultural agenda/solidarity rationale still applies - to look more closely at how the language of ‘creativity’ and ‘cultural diversity’ are used by key actors like the EU and EC, and by intermediaries such as the CMO. It is necessary, too, that we acknowledge the political dimensions of this language, and the institutions that adopt it (the tensions between the Parliament and Commission, for instance). Further refinement emerges in the detailed attention to policies and practices of the CMOs. This is not just a matter of what they contribute to the cultural or solidarity agenda, but also whose interests they represent, and how these interests are organized into the constitutional forms of the different CMOs. And finally, we suggest that comparison of these differences yields further insights into the contribution that CMOs make to music culture. Each element helps to give a perspective on a relatively neglected, but important, player in the digital landscape.

## References

Alexander, P. (1996) 'Entropy and Popular Culture: Product Diversity in the Popular Music Recording Industry', *American Sociological Review*, 61(1), pp. 171-4

Arts Council England (nd) 'What is the Creative Case for Diversity?' Available at: [http://www.artscouncil.org.uk/media/uploads/pdf/What is the Creative Case for Diversity.pdf](http://www.artscouncil.org.uk/media/uploads/pdf/What_is_the_Creative_Case_for_Diversity.pdf)

Barry, B. (2001) *Culture and Equality*, Cambridge: Polity

Burkart, P. (2010) *Music and Cyberliberties*, Middletown: Wesleyan University Press

Burke, A. (1996) 'How Effective are International Copyright Conventions in the Music Industry?', *Journal of Cultural Economics*, 20(1), pp. 51-66

Carey, P. (2013) 'The Arts Council vs BPI Debate Gathers Momentum.' Available at: [http://www.huffingtonpost.co.uk/paul-carey/the-arts-council-vs-bpi-debate\\_b\\_3353879.html](http://www.huffingtonpost.co.uk/paul-carey/the-arts-council-vs-bpi-debate_b_3353879.html)

Christianen, M. (1995) 'Cycles in Symbol Production? A New Model to Explain Concentration, Diversity, and Innovation in the Music Industry', *Popular Music*, 14, pp. 55-93

Cloonan, M. and Williamson, J. (2007) 'Rethinking the music industry', *Popular Music*, 26(2), pp. 305-322

Clydesdale, G. (2006) 'Creativity and Competition: The Beatles', *Creativity Research Journal*, 18(2), pp. 129-39

Dietz, A. (2014) 'The European Commission's Proposal for a Directive on Collecting Societies and Cultural Diversity – a Missed Opportunity', *International Journal of Music Business Research*, 3(1), pp. 7-25

Dowd, T. (2004) 'Concentration and Diversity Revisited: Production Logics and the US Mainstream Recording Market, 1940-1990', *Social Forces*, 82(4), pp. 1411-1455

Dowd, T. and Blyler, M. (2002) 'Charting race: the success of Black performers in the mainstream music market, 1940-1990', *Poetics*, 30, pp. 87-110

European Commission (2014) Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (2014/26/EU)

European Commission (2013) Public Consultation on the Review of EU Copyright Rules, available at: [http://ec.europa.eu/internal\\_market/consultations/2013/copyright-rules/index\\_en.htm](http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/index_en.htm)

European Parliamentary Research Service (2014) 'TTIP and the cultural exception'. Available at: <http://epthinktank.eu/2014/08/29/ttip-and-the-cultural-exception/>

Ferreira, F. and Waldfogel, J. (2013) 'Pop Internationalism: Has Half A Century of World Music Trade Displaced Local Culture?', *The Economic Journal*, 123, pp. 634-664

Fox, M. (2005) 'Market Power in Music Retailing: The Case of Wal-Mart', *Popular Music and Society*, 28(4), 501-519

Fredriksson, M. (2014) 'Copyright Culture and Pirate Politics', *Cultural Studies*, 28(5-6), pp. 1022-1047

Frith, S. (1988) 'The Pleasures of the Hearth – The Making of BBC Light Entertainment', in S. Frith, *Music for Pleasure*, Cambridge: Polity, pp. 24-44

Frith, S. and Marshall, L. (eds) (2004) *Music and Copyright*, 2<sup>nd</sup> Edition, Edinburgh: Edinburgh University Press

Gaines, J. (1991) *Contested Culture: The Image, The Voice, And The Law*, Chapel Hill: University of North Carolina

Graber (2012) 'Collective Rights Management, Competition Policy and Cultural Diversity: EU Lawmaking at a Crossroads', *The WIPO Journal*, 4(1), pp. 35-43

Guibault, L. and Van Gompel, S. (2012) 'Collective Management in the European Union', Amsterdam Law School Research Paper, No. 2012-08, available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1984015](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1984015)

Haunss, S. (2013) 'The changing role of collecting societies in the internet', *Internet Policy Review*, 2(3), pp. 1-8

Hardy, P. (2012) *Download: How the internet transformed the record business*, London: Omnibus

Hebdige, D.(1979) *Subculture: the Meaning of Style*, London: Methuen

Hilty, R. and Nerisson, S. (2013) 'Collective copyright management', in R. Towse and C. Handke (eds), *Handbook on the Digital Creative Economy*, Cheltenham: Edward Elgar, pp. 222-234

Jones, M. (2012) *The Music Industries: From Conception to Consumption*, Houndmills: Palgrave Macmillan

Kretschmer, M. (2002) 'Copyright Societies Do Not Administer Individual Rights: The Incoherence of Institutional Traditions in Germany and the UK', in R. Towse (ed.) *Copyright in the Cultural Industries*, Cheltenham: Edward Elgar, pp.140-64

- Kretschmer, M., Klimis, G. and Wallis, R. (1999) 'The Changing Location of Intellectual Property Rights in Music: A Study of Music Publishers, Collecting Societies and Media Conglomerates', *Prometheus*, 17(2), pp. 163-186
- Laing, D. (2004) 'Copyright, Politics and the International Music Industry', in S. Frith and L. Marshall (eds) *Music and Copyright*, 2<sup>nd</sup> Edition, Edinburgh: Edinburgh University Press, pp. 70-88
- Laing, D. (2015/1985) *One Chord Wonders. Power and Meaning in Punk Rock*, Oakland: PM Press.
- Lena, J. (2006) 'Social Context and Musical Content of Rap Music, 1979-1995', *Social Forces*, 85(1), pp. 479-495
- Lewisohn, M. (2013), *The Beatles: Tune In*, London: Little, Brown
- Lopes, P. (1992) 'Innovation and Diversity in the Popular Music Industry, 1969-1990', *American Sociological Review*, 57(1), pp. 56-71
- McLeod, K. and DiCola, P. (2011) *Creative License: The Law and Culture of Digital Sampling*, Durham: Duke University Press
- Negus, K. and Pickering, M. (2004) *Creativity, Communication and Cultural Value*, London: Sage
- Parekh, B. (2000) *Rethinking Multiculturalism*, Cambridge, MA: Harvard University Press
- Peterson, R. (1990) 'Why 1955? Explaining the advent of rock music', *Popular Music*, 9(1), pp. 97-116
- Peterson, R. and Berger, D. (1975) 'Cycles in Symbol Production: The Case of Popular Music', *American Sociological Review*, 40, pp. 158-173
- Peterson, R. and Berger, D. (1996) 'Measuring Industry Concentration, Diversity, and Innovation in Popular Music', *American Sociological Review*, 61(1), pp. 175-178
- Rochlandet, F. (2003) 'Are Copyright Collecting Societies Efficient? An Evaluation of Collective Administration of Copyright in Europe', in W. J. Gordon and R. Watt (eds.) *The Economics of Copyright – Developments in Research and Analysis*, Cheltenham: Edward Elgar, pp. 176-98
- Ross, P. (2005) 'Cycles in Symbol Production Research: Foundations, Applications, and Future Directions', *Popular Music and Society*, 28(4), pp. 473-487
- Savage, J. (1991) *England's Dreaming. Sex Pistols and Punk Rock*, London, Faber.

Schumpeter, J. (1976/1942) *Capitalism, Socialism and Democracy*, London: George Allen & Unwin

Stein-Sacks, S. (2012) 'On Quotas as they are found in Broadcasting Music', Canadian Radio-television and Telecommunication Commission. Available at: <http://www.crtc.gc.ca/eng/publications/reports/rp12039c.htm>

Street, J. (2011) 'The popular, the diverse and the excellent: political values and UK cultural policy', *International Journal of Cultural Policy*, 17(4), pp. 380-393

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

Towse, R. (2012) 'Economics of copyright collecting societies and digital rights: is there a case for a centralised digital copyright exchange?', *Review of Economic Research on Copyright Issues*, 9(2), pp. 31-58

Towse, R. (2006a) 'Copyright and artists: a view from cultural economics', *Journal of Economic Surveys*, 20(4), pp. 567-585.

Towse, R. (2006b), 'Copyright and Creativity: cultural economics for the 21<sup>st</sup> century', *Review of Economic Research on Copyright Issues*, 3(2), pp. 83 -91

Towse, R. (2000a) 'Copyright, Risk and Artists', *International Journal of Cultural Policy*, 6(1), pp. 91-107

Towse, R. (2000b) *Creativity, Incentive and Reward*, Cheltenham, Edward Elgar

Towse, R. (ed) (2002) *Copyright in the Cultural Industries*, Cheltenham: Edward Elgar

Towse, R. and Handke, C. (eds) (2013) *Handbook on the Digital Creative Economy*, Cheltenham: Edward Elgar

Toynbee, J. (2000) *Making Popular Music: Musicians, Creativity and Institutions*, London: Arnold

UK Music (2010) *Liberating Creativity*, London: UK Music

UNESCO (2005) *The 2005 Convention*, available at: <https://en.unesco.org/creativity/>

Waldfoegel, J. (2012) 'Copyright Protection, Technological Change, and the Quality of New Products: Evidence from Recorded Music since Napster', *Journal of Law and Economics*, 55(4), pp. 715-740

Wallis, R. (2004) 'Copyright and the Composer', in S. Frith and L. Marshall (eds) *Music and Copyright*, 2<sup>nd</sup> Edition, Edinburgh: Edinburgh University Press, pp. 103-122

Wallis, R., Baden-Fuller, C., Kretschmer, M. and Klimis, G. (1999) 'Contested Collective Administration of Intellectual Property Rights in Music: The Challenge of the Principles of Reciprocity and Solidarity', *European Journal of Communication*, 14(1), pp. 5-35

Wikstrom, P. (2009) *The Music Industry*, Cambridge: Polity

APPENDIX [in separate file]



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](http://www.create.ac.uk)

