



How Working Musicians (Finally) Became a Matter of Mainstream Political Interest

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HOW WORKING MUSICIANS (FINALLY) BECAME A MATTER OF MAINSTREAM POLITICAL INTEREST

The pay and working conditions of musicians have, until recently, very rarely been an issue of explicit public concern. Political interest has been even more scarce. Such apathy may well have been one of the peculiar legacies of nineteenth-century romantic thought: a prevalent view, often internalised by cultural workers themselves, that poor remuneration and working conditions are almost inevitable, except for a lucky few (Ross 2000). Such post-romantic views lasted into and beyond the age of modernism and, in music, well into the rock era (Klein 2020). They may be eroding as the insecure working conditions of musicians have come to seem exemplary of a more widespread labour precariousness of labour in twenty-first century contexts of neo-liberalism and austerity.

Our chapter recounts how in the UK growing awareness of—and solidarity with—the working conditions of musicians has recently fed an unprecedented degree of political scrutiny of the music industries. We explain the process by which a UK parliamentary inquiry into *The Economics of Music Streaming* was

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launched in 2020 by the Committee overseeing the national government’s Department of Digital, Culture, Media and Sport (DCMS) (hereafter, “the DCMS Inquiry”) leading to a substantial report (“the DCMS Report”) that was surprisingly critical of the music industries. The earnings and well-being of musicians in the age of streaming were central concerns and this political scrutiny became the object of significant media coverage and public debate, internationally as well as in the UK. In addition, a substantial body of research on these and related topics was commissioned by UK government agencies, both before the launch of the DCMS Inquiry and as part of the UK government’s mandatory response to it. Box 35.1 provides a brief timeline of these events.

Box 35.1 Timeline of Key Political Developments Concerning Remuneration of Musicians in the UK

- May 2015: Launch of the Fair Internet for Performers Campaign
- June 2019: The European Union’s revised Copyright Directive comes into force
- October 2019: UK Intellectual Property Office (IPO) commissions research on *Music Creators’ Earnings in the Digital Era*
- March 2020: COVID-19 pandemic lockdowns across much of world eliminates most earnings from live musical performance
- April 2020: “Fix Streaming campaign” launched by pro-creator groups; “Broken Record” Campaign launched by musician Tom Gray
- October 2020: Launch of DCMS parliamentary Inquiry into *The Economics of Music Streaming*
- June–July 2021: Sony Music announces that unrecovered advances performers signed to them before 2000 will be “disregarded” (i.e. that these advances will no longer be deducted from royalties); Warner and Universal adopt similar measures the following year
- July 2021: Final DCMS Committee report on *Economics of Music Streaming* published
- September 2021: Government response to DCMS Committee Report
- October 2021: Publication of report on *Music Creators’ Earnings in the Digital Era* (Hesmondhalgh et al. 2021) and formation of working groups on transparency, metadata and “performer equitable remuneration”
- November 2021: Kevin Brennan MP’s Private Members’ Bill published (this fell in December 2021)
- July 2022: Competition regulator CMA’s interim market study of music streaming published, including a decision not to conduct a fuller investigation (CMA 2022a).

(continued)

Box 35.1 (continued)

- November 2022: CMA publishes final report on music streaming (CMA 2022b)
- November 2022: Follow-up DCMS Committee hearing on music streaming
- January 2023: Publication of DCMS Committee’s follow-up report (DCMS 2023)
- February 2023: Publication of UK government research on “the impact of music recommendation on the UK music industry” (CDEI 2023) and of a report on contract adjustment and rights reversion (Osborne and Sun 2023)
- May 2023: Publication of industry agreement on metadata; formation of industry working group on artist remuneration
- December 2023: Further DCMS Committee session on “creator remuneration” in music
- February 2024: Publication of UK government research on the potential economic impact of performer equitable remuneration on performers and the music market in the UK; government rules out application of “broadcast model” to on-demand streaming (UK IPO 2024)

As two academics who produced some of the government-commissioned research informing this political scrutiny, we think the politics of these developments are worth analysing, for at least three reasons. First of all, the events we recount illuminate the political forces aligned on different sides of struggles over cultural labour justice. In short, as we shall see, corporate owners of copyright and related rights and digital platforms often play a fundamental role on one side, with less well-resourced “creator” organisations and activist groups on the other. The media and social media have also played important parts. Second, the research commissioned as part of the developments summarised here has produced interesting findings, which we believe will be of interest and value to those researching the music industries and other cultural industries internationally; we outline the main research in what follows. Third, these events represent a fascinating case study of the increasing prominence of questions of cultural labour (and musical labour) justice in public debate.

As we write, in early 2024, there has been little change in UK law and copyright practice as a result of the developments we outline. However, the Music Streaming Inquiry brought under public scrutiny a number of crucial issues regarding the condition of musicians to a degree that is as far as we know unprecedented in any other country. Ensuring that it took place at all was itself a remarkable achievement by a group of organisations representing the interests of musicians.

The account and analysis mainly cover political and industry developments surrounding musicians and copyright in the UK, from roughly 2010 to the end of 2023. This includes our own reflections as researchers commissioned by government to investigate music creators' earnings, recommendation algorithms and other areas of potential reform such as contract adjustment, "rights reversion" and the possible adoption of a rather obscure copyright measure known as "performer equitable remuneration" (ER). All these terms are explained below.

In terms of academic research and debate, the chapter contributes not only to studies of the music industries in the digital era, but also to the much narrower body of work on public policy in relation to the music industries (Bennett et al. 1993). That research tradition is small partly because public policy has shown very little interest in the music industries, compared with other cultural industries such as television, film and museums. Such research has tended to address three domains: the crucial industry battleground of copyright; contestations over national or local subsidy for musical activity that is deemed to be unsustainable without public support, from orchestras to small venues to support of domestic versus international repertoire; and occasional scrutiny of industry trends over whether they "distort" market competition. Only very rarely has the ability or otherwise of musicians to achieve sustainable livelihoods from music (Arditi 2020; Taylor 2023) featured explicitly and in a sustained way in any of these areas. It is intriguing that this is now beginning to change. But how meaningful is public policy engagement with these matters? The recent developments in the UK we analyse here may serve as a test case.

UK public policy attention to musicians' earnings had its origins in controversies surrounding the new technology of streaming, but as we shall see, during the events recounted in this chapter, the battleground shifted to copyright and contract. It might be tempting to interpret this shift as a demonstration of platform power, a successful lobbying effort by the information technology (IT) industries that own and operate the streaming platforms to divert public attention away from themselves. This would be a mistake. We want to argue instead that the shift was in fact a largely appropriate and welcome move, and a significant short-term achievement by organisations representing the interests of creators. However, we also argue that in the longer term it looks likely to be only a provisional and limited success, because of entrenched features of the cultural industries, and the distinctive complexity and opacity of music and copyright.¹

¹We are grateful to Graham Davies (Ivors Academy), David Martin (Featured Artists Coalition), Naomi Pohl (UK Musicians Union) and John Smith (International Federation of Musicians) for background and context, and our report co-authors Kenny Barr and Richard Osborne for their comments on a draft. We would also like to thank Nick Yule (AEPO-ARTIS), Daniel Johansson (Inland Norway University) and Martina Andersson (SAMI) for their input. Thanks too to all members of the Steering Group of the *Music Creators' Earnings in the Digital Era* research project discussed in this chapter.

FROM RECORDING INDUSTRY CRISIS TO POLITICAL CONTROVERSY

Readers of this handbook are likely to be familiar with the crisis that afflicted the recording industry in the wake of digitalisation in the early twenty-first century (Marshall 2012; Sun 2018). By 2015, the increasing success of music streaming platforms (MSPs) such as Spotify (launched in 2006) had begun to stabilise how music was consumed, bringing about a significant recovery in revenues from rights-holders. The recording industry increasingly came to be centred on MSPs from that time onwards. Apple and Google bought up streaming services in 2014 and launched their own MSPs in 2015; Amazon followed in 2016. Since the early days of music streaming, there had been complaints that it was bad for musicians (Hesmondhalgh 2020), as well as for music itself (Hesmondhalgh 2021). Media coverage of criticisms of streaming services by prominent artists such as Thom Yorke and Taylor Swift helped to spread the debate (Aguilar 2018) and criticisms grew with the entry of Big Tech—though much of the critique was directed at the leading service, Spotify. Critics claimed that the new system centred on streaming paid musicians less well than under the old system centred on the sale of CDs, cassettes and vinyl records—and many fans agreed. Comparisons were made between the amount that musicians would make from the price of a CD and the amount of money that would be paid to a musician on the basis of a single stream (the “per-stream rate”). But these comparisons are frequently misleading, because MSPs do not pay musicians directly, they pay rights-holders or digital distributors who then distribute royalties to the musicians contracted to them. In both the new and the old system, the most crucial factor in determining musician payment is the contractual deals between musicians and rights-holders—including royalty rates and other terms, such as when and under what circumstances rights might “revert” to creators. Nevertheless, per-stream rates became a major element of public concern about streaming. And perhaps the most fundamental issue is how many musicians can make a sustainable living from music, including recorded music, and how this compares with the old, pre-digital system (Hesmondhalgh 2020).

Another prominent issue in public debate concerned the method that MSPs use to divide revenues up between the owners of the music that is “licensed” to them. The main system used from the inception of streaming to the present (early 2024) is often called “pro-rata”. Revenue is distributed to rights-owners on the basis of each recording or composition’s share of total streams within any period. The owners of the rights to a track that attains one millionth of the streams in a certain period on an MSP such as Spotify will get one millionth of the revenue that the MSP will pay out for that period. Some creators and their representatives hoped that replacing this system with a “user-centric” one would benefit musicians. Under this system, the segment of individual users’ payments to MSPs that are paid to rights-holders are distributed on the basis of the share achieved by recordings or compositions of any user’s streams

within a period. So if someone pays ten euros or dollars in a month, and one hundredth of their streams are of Aretha Franklin's version of "I Say A Little Prayer", then one hundredth of the seven or so euros or dollars paid out by Spotify after they take their roughly 33% cut would go to the rights holders for that track and song. For some time, there was vigorous contestation over the feasibility and effectiveness of "pro-rata" versus "user-centric" payment systems but evidence seems inconclusive (Pedersen 2018) and the debate has receded somewhat in recent years. As with discussion of low "per-stream rates", it may be that this issue served to distract publics from the more fundamental issues concerning contracts between musicians and rights-owning companies. As we shall see, it has hardly featured in the policy debates of recent times.

Organisations representing music creators had been seeking to build on public concerns about the new system centred on streaming for some time. Recent discussions about music creators' earnings can be traced back to debates concerning the Digital Single Market that began in 2015 and in particular the process of revising the 2001 EU Copyright Directive for the platform era. A campaign, Fair Internet for Performers, was launched by various organisations representing performers to demand better remuneration, via the introduction of a new measure regulating on-demand use of recordings on MSPs (Aguilar 2018). Organisations representing performers in Europe, including the International Federation of Musicians, proposed an amendment to legislation that would apply "performer equitable remuneration" (performer ER) to streaming.

This provision requires explanation to anyone who is not something of an expert in music and copyright. In this context, performer ER refers to the principle that performers should be paid, usually via a collective licensing system and at a standardised rate, rather than the revenue being collected by a rights-owner (e.g. a record label), which then pays royalties at a rate set by a negotiated contract. In those national copyright systems where it exists, performer ER has mainly been applied to public performance and broadcasting. The case of radio can serve as an example. Rights-owners are in many countries compelled by law to license recordings to be broadcast. Radio organisations pay a fee for the recordings they play, revenues are collected by a collecting society (in the UK, it is an organisation called Phonographic Performance Limited, PPL) and then after a commission is taken, they are split (by convention rather than law) 50-50 between rights owners (usually labels) and performers. In the UK, the 50% for performers is then further divided: two thirds for "featured" performers, and a third for session musicians.²

²In the USA, radio stations do not pay for the use of sound recordings—a result of their once-formidable lobbying power. Nor are there really related or neighbouring rights of the kind that elsewhere are called "performing rights", partly because US copyright law awards rights in sound recordings to "creators" rather than to "producers" (usually rights-owning labels and publishers). Such "producers" instead assert ownership of rights in sound recordings via contracts that see such recordings as "works made for hire". However, a version of performer ER does apply to the subscription "digital radio" (e.g. Pandora) that has been unusually prominent in the USA. Many thanks to Richard Osborne for helpful clarification regarding these issues; any remaining errors are our responsibility.

By contrast, revenues from the streaming of recordings (rather than their underlying compositions) have been collected by record labels, rather than collecting societies, and are divided on the basis of contract rather than a centrally determined rate. Featured performers typically receive a percentage of label streaming revenue, but non-featured performers (session musicians) are not entitled to contractual royalties and therefore receive no ongoing remuneration from streaming. Royalty rates for featured performers were pretty much never 50-50, and were often in single figures once deductions were taken into account. So featured performers stood to gain if performer ER could be applied to streaming, at least if the standardised rate were to be set higher than prevailing royalty rates. Non-featured performers stood to gain even more significantly, because they currently receive no remuneration from streaming. Importantly, performer ER would usually mean that the right to gain revenue in this way would not be waivable as part of contracts between performers and rights-holding companies. This would be an advantage for performers because they usually have limited bargaining power in contract negotiations with such rights-owners.

One reason why pro-creator lobbyists argued in Europe and in the Inquiry that performer ER should be applied to streaming is that royalties from radio are dwindling and streams are more like radio than they are like sales, in that the recording that a user experiences is not purchased and owned by them. In the build-up to the passing of the European Union's revised Copyright Directive in 2019, there were campaigns for new legal provisions for music creators in the streaming age, and some of these provisions appeared in the revision, including measures addressing transparency of contractual terms, contractual adjustments and rights reversion (measures to allow performers and songwriters to regain under certain circumstances rights they had previously assigned to rights-holders). But in spite of efforts by campaigners, the Directive did not extend performer ER to streaming; instead there was merely a rather vague reference to "appropriate and proportionate remuneration" for performers. This has meant that as each of the 27 EU member states have passed the 2019 Copyright Directive into law, there have been various degrees of implementation of performer ER. As we shall see, these developments were to have a significant but under-acknowledged influence on events in the UK, which left the European Union in 2020 and so is not subject to the Copyright Directive.

When the COVID-19 pandemic hit the world in early 2020, removing earnings from live performance and making teaching work far more challenging, a UK campaign called #Fix Streaming was launched by an alliance of the Musicians Union and the Ivors Academy (representing UK songwriters). Shortly afterwards, a musician called Tom Gray, of the rock band Gomez, started a Twitter hashtag #BrokenRecord, arguing that "streaming always

cannibalised culture and gave all of the income to a very small amount of the market” and that the loss of live income made the issue even more urgent (quoted in Dredge 2020). There were particularly strong concerns from songwriters, who felt they were under-rewarded compared with performers. A reason given by some was that the majors owned both recording and publishing interests and because they gained a greater share of recording rights than publishing rights (i.e. they paid songwriters a far higher royalty rate than they did performers), this led the majors to negotiate lower payments from streaming services for publishing than they did for recording (see Osborne 2023 for discussion of such claims).

The campaigns occasioned widespread media and social media interest. Rights-owners and their representatives claimed in response that any reforms (such as the extension of performer ER to streaming) that distributed a greater share of streaming revenue to musicians would harm their ability to invest in artist development (“A&R”) and marketing. Meanwhile, the Featured Artists Coalition (representing featured performers) and the Music Managers Forum (representing artist managers) were campaigning on issues such as minimum session rates, unrecouped artist balances and data transparency. These organisations had joined with the Musicians Union and Ivors Academy to form a Coalition of Music Makers umbrella group in 2019.

In most democracies, parliamentary deliberation takes place in committees rather than in the main houses. In the UK’s “lower” but more powerful chamber, the House of Commons, “Select Committees” of Members of Parliament (MPs) scrutinise issues, with each Select Committee overseeing a government department. Labour Party MPs on the Select Committee overseeing the Department of Digital, Culture, Media and Sport (hereafter “the DCMS Committee”) in 2019–2020 were very sympathetic to the above campaigns concerning musicians in the age of streaming, and two Members of Parliament (MPs) on the Committee (Kevin Brennan and Julie Elliott) were themselves members of the Musicians Union. In October 2020, in spite of considerable lobbying by the major record corporations and their trade organisation the British Phonographic Industry (BPI), along with the major publishers and their trade body the Music Publishers Association, the DCMS Committee launched its inquiry into *The Economics of Music Streaming*. Its remit was the “economic impact music streaming is having on artists, record labels and the sustainability of the wider music industry” (DCMS Committee 2021). On the face of it, it is surprising that Conservative MPs, who formed a majority on the Committee and held the chair, assented to the Inquiry, given that they would traditionally tend to favour businesses over workers. This may have been because of perceptions that an unacceptable degree of monopoly had developed between the MSPs and the record companies that supplied their most popular repertoire. What is even more surprising, given the rightward-leaning composition of the Committee (reflecting the UK government of the time), was that, as we now explain, it took a distinctly pro-creator stance in the Inquiry and its final report.

THE DCMS INQUIRY

The DCMS Inquiry of 2020–2021 was without doubt the most detailed public investigation of the operations of the UK recorded music industry since two investigations of market competition in the 1990s (MMC 1994, 1996) and almost certainly the most detailed public investigation of the recorded music industries in a single country anywhere in the world in recent years. Parliamentary committees have the power to summon witnesses, and major figures from all sides of the music industries answered MPs’ questions during the public sessions, which took place mainly via video conferencing, because of the COVID-19 pandemic. Even the streaming platforms, who generally avoid any kind of public scrutiny, were compelled to send representatives to appear. In addition, 214 organisations and citizens submitted their views in writing. The perspectives and evidence form a potentially rich source of perspectives and data for music industry researchers.³

As the drama of the DCMS Inquiry unfolded, watched avidly by many music industry insiders online from their lockdown residences, there was another development. Striking while the iron was hot, pro-creator lobbyists worked with Labour MP Kevin Brennan to push for legal reform, and by chance he was selected in the lottery determining which MPs will have their “private members’ bills” considered. The Brennan Bill sought to introduce a number of reforms: transparency obligations for music rights-holders; contract adjustment; rights reversion (see above); and most notably a change in copyright law so that streaming would be subject to the performer ER provision explained above. Although the Brennan Bill failed, discussions leading to it raised awareness among creator activists of potential reforms and was to have a significant influence on the Inquiry—and the influence of lobbying around the EU Copyright Directive seems clear.

The DCMS Inquiry Report, published in July 2021 (preceded by an earlier interim report), echoed criticisms of the music industries that had been made by many musicians and fans, and some academics. The report described companies leveraging “structural advantages to achieve seemingly unassailable positions in their relative markets”. It referred to the historically high profit margins and asset ownership of the majors and the small proportion of revenue earned by performers, songwriters and composers, long-term trends highlighted by the loss of live music. Most significantly, the DCMS Report recommended “a broad yet comprehensive range of legislative reforms and regulatory interventions” to address these issues.

As already indicated, a key development in the course of the Inquiry was that critical attention shifted away from the controversies over streaming that had helped initiate it, and towards the major transnational music companies, or “majors”, of which there are currently three (in order of size and dominance,

³Remit, reports and evidence, including oral testimony, offered to the Inquiry can be found here: <https://committees.parliament.uk/work/646/economics-of-music-streaming/>.

Universal, Sony and Warner). This is apparent in the fact that, in spite of the report's bold proclamation that "streaming needs a complete reset", recommendations relevant to MSPs in fact took two rather mild forms: a recommendation to introduce a code of conduct concerning payments to curators for inclusion on streaming platform playlists; and another that the government should commission research into the impact of streaming platforms' algorithms on music consumption.

By contrast, the most striking recommendations concerned law and practice related to copyright and contract, in particular the application of performer ER to streaming and the introduction of new rights for creators concerning "a right to recapture works and a right to contract adjustment where an artist's royalties are disproportionately low compared to the success of their music". The right to recapture, sometimes known as "reversion rights" or "termination rights" already exist in other countries, notably in the USA (under the 1976 Copyright Act). Such rights can enable creators "to terminate the transfer of their rights after a specified period or alternatively on recoupment of the advances paid to them by rights holders. After the rights have reverted, the creator could be able to negotiate a new deal and could possibly improve their terms" (Osborne and Sun 2023). A contract adjustment right, on the other hand, could enable creators to contest royalty rates or lump sum payments they view as inadequate. They could gain compensation and/or increases to royalty rates. Laws in the Netherlands and Germany have some versions of these rights (Osborne and Sun 2023). Also striking was that the Report called on the UK government to launch a separate investigation into distortion of competition in the recorded music market via an independent regulator, the Competition and Markets Authority (CMA)—we return to this investigation below.

In long-term context, such conclusions and recommendations were arresting. Two years previously, no-one would have predicted that a group of MPs from across the political spectrum would issue such a critical report on the music industries. Nor would anyone have foreseen that the Committee's critical attention would be mainly directed towards the majors that had dominated the music industries since long before the era of streaming, and the systems of music rights and contract that underpin their practices and profits. All this meant that, in political terms, the Inquiry and the Report resulting from it represented a real setback for the major recording and publishing companies and the lobbyists associated with them. It was also notable that the European developments recounted earlier were echoed in many of the recommendations of the Inquiry, even though the UK had formally left the EU in early 2020.

THE AFTERMATH OF THE INQUIRY: AND RESEARCH ARISING FROM THE CONTROVERSIES

What concrete changes did the DCMS report bring? As of early 2024, the short answer so far is: very little. The UK government is compelled to respond to reports by House of Commons Select Committees, though not to act on them, and in October 2021 it published its response (UK Parliament 2021). The key responses concerned the “legislative reforms and regulatory interventions” proposed by the DCMS Committee, outlined above. We address the most significant developments here, including a summary of some of the findings of a separate report on music creators’ earnings that the UK government released as part of their response, as well as the research on algorithms mentioned above.

Performer Equitable Remuneration (ER)

As already indicated, the demand for performer ER on the part of pro-creator groups and lobbies preceded the DCMS Inquiry. It was a significant part of lobbying behind the EU Copyright Directive, which was updated to its relevant provision in the Digital Single Market Directive and included a provision on fair remuneration to authors and performers enshrined in Article 18. It provides an obligation for Member States to introduce “mechanisms”, although it does not specify which types of mechanisms.

Critics of the extension of performer ER to streaming, especially record companies and their trade associations, pointed out potential unintended consequences and uncertainties, such as whether ER should be applied to all streams, or only to those that were “pushed” in the form of recommendations (see also former Spotify economist Will Page’s discussion—Page 2023). One complication was that no national copyright system had yet applied performer ER fully to streams, at least in the way it operates in radio (see above)—and some would argue that restrictions in the World Intellectual Property Organisation’s Performances and Phonographs Treaty (1996) limit what can be done. Modified “top up” versions of performer ER exist in Spain and Hungary. Unlike radio, rights-owning organisations (most notably record companies) license recordings directly to MSPs, but in these modified versions, “a small percentage of total streaming monies flows through the collective licensing system and is paid directly to performers [...] including session musicians” (Cooke 2022).⁴ Advocates of applying performer ER to streaming argued that performers should receive ER for every stream, even if they might receive different rates for “push” and “pull” streaming activity. They pointed

⁴In introducing its own national legislation to conform to the 2019 EU Copyright Directive in 2022, Belgium added performer ER for streams but it is not yet clear how this will operate (Cooke 2022).

to how, in Spain, royalties from performer ER offered an alternative source of income that might help compensate for reduced royalties from radio.

In February 2024, the UK government published its report investigating the potential impact of ER, outlining three different scenarios: “broadcast” where ER is applied to all streams; “partial broadcast” where ER is applied only to “lean back” streams, akin to radio; and a “Spanish model” where streaming platforms pay ER (UK IPO 2024). The report suggested that applying performer ER to streaming may not be a straightforward solution to the financial problems facing musicians. Around the same time, the UK government published its plan for its creator remuneration working group and made it clear that the government does not intend to implement the “broadcast” model advocated by many groups representing music creators (DCMS and UK IPO 2024). As the ER report admits, economic modelling is limited in nuance, and it is also important to remember similar economic concerns were raised before the application of performer ER to the traditional radio, which is now widely accepted. These developments arguably represent a setback for musicians, and it now seems unlikely that performer ER on streaming will make it on to the statute, even under the Labour government elected in July 2024.

Rights Reversion and Adjusting Contracts

What of the Inquiry’s recommendation that the government introduce “a right to recapture works and a right to contract adjustment where an artist’s royalties are disproportionately low compared to the success of their music”? Pro-creator groups had argued that contracts between creators and rights-owners (most notably record labels and publishing companies) had historically tended to be signed for a long duration, often for the lifetime of copyright, and featuring very low royalty rates, which had not sufficiently been adjusted for streaming. And even though there is evidence that contractual arrangements in the music industries have improved in recent decades (Hesmondhalgh et al. 2021; Osborne and Sun 2023; CMA 2022b), unfair practices no doubt persist. In a context where increasing proportions of the revenue from streaming is coming from “catalogue”, often defined as recordings released more than a year previously (Ingham 2022), pro-creator groups argued that artists and songwriters on older contracts were not being fairly remunerated.

A substantial report on rights reversion and contract adjustment was commissioned, and published in February 2023 (Osborne and Sun 2023). It addressed existing provisions in other regimes and the difficulties in assessing evidence about their effectiveness. A major issue is that any new law would need to be retroactively applicable in order to address the injustices of “legacy” contracts (Osborne and Sun 2023). It remains to be seen whether there is the political will in the UK to enact such changes.

Some Key Reports: Music Creators' Earnings and Music Industry Competition

A significant part of the UK government's response to the DCMS Inquiry was formed by the publication of a series of three major reports, which we now discuss. The first, on *Music Creators' Earnings in the Digital Era* (Hesmondhalgh et al. 2021), published in October 2021, had actually been commissioned two years earlier by the UK's Intellectual Property Office, before anyone even dreamed that there would be a major government inquiry relevant to this topic. The commissioning of this independent report was itself a response to the concerns raised in earlier public controversies about streaming—including rights holders' battles to extricate greater revenue from the IT sector's streaming companies. The second and third reports came out of the Competition and Market Authority's investigation into competition in the industry (CMA 2022a, 2022b). All three offer a treasure trove of methods and findings for music industry researchers internationally.

We were two of the authors of the music creators' earnings report.⁵ Although we and our co-authors self-identify as critical researchers, and we have all in the past expressed scepticism about aspects of the music industries and digital music technologies, our aim in conducting the research was to provide objective research to inform public debate. The project's Steering Group, chaired by Pauline Beck of the Intellectual Property Office (IPO), was in general helpful, but discussions of the issues and of our work were sometimes heated, and it felt that every word of our plans and drafts were pored over, in a way that sometimes went considerably beyond "advice". We were exposed to a number of very different lobbying groups: notably those representing performers, those representing songwriters, and those representing rights-holding organisations (both independents and majors). The latter organisations were particularly tenacious in their determination to have their positions represented in the report. Moreover, with their considerable resources and access to data, they were able to produce abundant data supporting their arguments in submissions and lobbying, very little of which was offered to us. The MSPs were conspicuous by their absence from our research, and pretty much refused to speak to us. None agreed to serve on the Steering Group convened by the IPO.

Our book-length report (Hesmondhalgh et al. 2021) began with a substantial literature review and a comprehensive explanation of how music creators' earnings work, including how on-demand streaming revenues are collected and distributed. It then analysed the perspectives and views of different stakeholders, based on interviews and focus groups. Chapter 4 of the report

⁵The other authors were Richard Osborne (Middlesex University) and Kenny Barr (University of Glasgow). Initial funding was provided by the UK Intellectual Property Office, with Hyojung Sun as Principal Investigator, and Hesmondhalgh and Osborne as co-investigators; in 2020, this was supplemented by substantial further funding awarded by the University of Leeds to Hesmondhalgh from Research England funds, allowing the vital appointment of Barr as a research collaborator, the commissioning of a survey, and the purchase of streaming data.

provided unprecedented quantitative evidence regarding key questions about music creators' earnings in the age of streaming. One of the main challenges was the difficulty of obtaining longitudinal historical data comparable with contemporary data, but the careful forensic work of our co-author Richard Osborne showed that, in inflation-adjusted terms, the earnings that performers and studio producers made from recording rights had remained relatively stable in real terms since 2008, and that the earnings that composers and lyricists gained from music publishing rights had increased by 11% in that period (again, taking into account inflation), though arguably from a very low historical base.⁶ Osborne calculated that average per-stream rates had fallen between 2012 and 2019, but revenues had risen substantially during this time, suggesting that the per-stream rates that were a feature of many complaints about streaming provided only a limited perspective on remuneration issues. The report also traced the costs faced by record companies, showing that costs of manufacture and physical distribution had declined; however, the report did not find evidence that the A&R and marketing costs borne by record companies had risen during the digital era, potentially challenging some of the claims made to justify the relatively high proportion of streaming revenues gained by the recording sector versus the publishing sector. However, the survey we commissioned for our report put the focus on streaming in public debate into some perspective. It showed that revenues from recorded music constitute only a small proportion of music creators' earnings; live music and teaching are by far the main ways in which musicians make a living from music.

More generally, we sought to make the point that the main issues determining musicians' income from streaming concern how much revenue is collected by MSPs and how it is shared between MSPs, rights-owning companies and contracting musicians. Average "per-stream" shares expressed in penny fractions gain attention but are pretty much meaningless compared with how much musicians earn in total. Streaming companies that have many users are likely to produce higher total payments but lower per-stream rates than those with fewer listeners.

A vital factor in understanding debates about musicians' earnings from streaming is that it is a system whereby consumers pay either nothing for the music they stream via advertising-supported platforms or very little if subscribing (fees hardly rose in the fifteen years or so since the launch of streaming services up to 2023, a steep decline in real terms). As with cheap clothing, if consumers do not pay much, then it is difficult to see how musicians might earn substantial amounts.

⁶In our view, access to longitudinal data on sales and royalties, going back to the 1980s and 1990s, is the key to addressing the debate about whether digitalisation has *historically* helped or hindered music creators, but comparability will remain a challenge even if access is granted by labels, publishers, artists and collecting societies, because of the huge differences in business models between the 1990s and 2020s.

How is streaming income divided? Although there have been variations over time (see Hesmondhalgh et al. 2021; Osborne 2023), MSPs retain around 33% of the revenue they collect, give or take a couple of percentage points; hardly anyone we interviewed for our report felt this proportion was deeply unfair and/or that it should be substantially reduced in favour of rights-holding organisations and contracted musicians. To our knowledge, no-one has suggested a significant way in which the respective shares of MSPs and rights-owning organisations might be reshaped through law or regulation. Performer ER is unlikely to change those shares much. It might favour some performers, especially session musicians, and may help replace lost broadcast royalties if radio were to continue its relative decline, but it will not change those proportions significantly.

We argued in our report that it is vital to realise that the old system never provided substantial income for most musician-creators. There is no doubt that the rise of MSPs and digital distributors has permitted vast numbers of musicians to enter the greatly expanded recorded music eco-system. But this seems principally to have led to a massive lengthening of the long tail, a finding confirmed by our report's use of purchased streaming data, which showed the number of artists achieving at least one UK stream in our sample month (October) had doubled between 2014 and 2020, from around 200,000 to 400,000. Collecting society data provided to us also showed a large increase in the number of songwriters earning money from their compositions in the UK, from over 36,000 in 2009 to over 62,000 in 2019 (Hesmondhalgh et al. 2021: 211). Popularity however remains highly concentrated in the "head" of the distribution curve: our data showed that the top 1% of tracks gained 75–80% and the top 1% of artists gained 78–80% of all streams in all Octobers between 2014 and 2020.

The two Competition and Markets Authority reports referred to (CMA 2022a, 2022b) provided yet more information of potential value to researchers and students. This included information suggesting significant improvements in the contractual terms gained by musicians from the majors over the years from 2012 to 2021 (CMA 2022b: 45), including higher gross royalty rates, shorter contact terms (with the average number of "commitments" e.g. albums) falling from 3.8 to 3.0 between 2012 and 2021, shorter average periods of retention of recording rights (from 50.4 years to 30.0 years) and a steep decline (from 66 to 26.4%) in the number of contracts where labels took ownership of copyright in perpetuity. The CMA's calculations of average royalties of 26.3% for major recording deals and 84% for major publishing deals confirmed the suggestion in our music creators' report that, in terms of songwriters' earnings versus those of performers, the higher royalty rates for songwriters might balance out the lower share of streaming revenues taken by song rights. These are undoubtedly much higher rates than those achieved historically by artists contracted to the majors. However, many creators would argue that the increase was long overdue, that the rates should be still higher, that studio producers would usually need to be paid out of the performer royalties (a cut

of 3–5% of total income) and that recoupment of advances would have highly variable impacts on musicians’ actual income—impacts that were valuably modelled in the CMA’s analysis (pp. 46–9).

The reports also contained valuable information on many other issues (see Dredge 2022), including the market shares of different MSPs (Spotify is extremely dominant in the UK market), on the different types of playlists used by different MSPs, the highly varied ways in which playlists and recommendation operate across different platforms, and the remarkable degree to which “catalogue” (recordings more than a year old) dominate music streams (86% in the UK in 2021)—though much of this older music was only released in the previous 15 years or so. However, the main purpose of the study was to determine whether to conduct a much fuller “market investigation” rather than market study, and on the basis of its first interim report, it decided against such a move, partly on the grounds that the increasing profits of the majors did not, in its view, represent sustained and excessive profits. While record labels, publishers and their trade associations welcomed this conclusion, pro-creator groups and other interests expressed disappointment, feeling that the CMA report concentrated more on outcomes for consumers (which many people would agree are relatively favourable) rather than power imbalances within the music industries themselves.

Report on Algorithmic Recommendation

In response to concerns about the opacity of music recommendation and playlists, the UK government commissioned its Centre for Data Ethics and Innovation (CDEI), which sits within its Department for Digital, Culture, Media and Sport, to investigate related issues. The CDEI’s research included a 25,000-word review of relevant research, led by Hesmondhalgh with the support of three colleagues (Hesmondhalgh et al. 2023). This is, we believe, the most systematic attempt so far to bring together the extensive literature from computer science and human–computer interaction studies with critical social science and humanities research on recommender systems. The engineers behind recommender systems often collaborate closely with academic computer scientists, or publish academic papers themselves (for a study, see Seaver 2022). The literature review pointed to the predominance in computer science literature engaging with problems in recommender systems of problematically limited concepts of fairness and bias. It also identified the forms of “bias” most discussed in the literature: “*popularity bias*”, a supposed tendency for MRS to favour items that are already popular, thus reinforcing or amplifying the success of the most successful artists and companies, which might also potentially limit the access of audiences to a wider diversity of music; and *biases based on demographic characteristics*, whereby music produced by artists belonging to certain categories (such as men) are favoured at the expense of music produced by others (such as women). Other “biases”, for example those concerning distortions regarding data and systems in relation to ethnicity, social class, sexuality,

age and able-bodiedness/disability of artists and users seem not to have been the focus of sustained analysis. Moreover, the review found that computer science research on bias and diversity has tended to depend on simulations based on relatively limited datasets, or in some cases the use by researchers employed by MSPs of the company’s own proprietary data, which is not available to other researchers. Publicly available research on these topics, based on user studies and/or large-scale online experiments (where real users interact with MRS), was found to be rare.

The CDEI’s own report (CDEI 2023) also provided another potentially valuable resource for critical music industry research, in the form of a survey of 4120 adults living in the UK, one of the most extensive sets of publicly available data on music consumption, and as far as we are aware, a unique dataset on recommendation and discovery. The results are sobering for those who believe that MSPs are only game in town when it comes to critique of the music industries (see the results in Box 35.2). At least according to consumers’ own understandings, MSP recommendations fall considerably behind other means of becoming aware of music; and radio was by far the most frequent way in which people engaged with music (according to the survey, 64% of people over the previous three months, compared with only 40% for both paid and free streaming services).

The CDEI also reported the results of a much smaller survey of creators (n = 102) on music recommendation. The report intelligently surveyed various relevant issues, but its recommendations were relatively limited, arguing that changes to the ways that MSPs “communicate about these technologies could help ease feelings of discontent, and better foster trust between parties in the music ecosystem”, in particular clearer indications “about when a playlist is curated by algorithms, editors, or a combination of both” and the possibility of offering consumers a “why am I seeing this recommendation?” function, and better communication with creators and their representatives about how to access data about how their music is consumed. The CDEI report also

Box 35.2 How UK Users Get Music Recommendations

Radio	39
Friends/family	31
Social media	25
MSP recommendations	22
TV/film	18
Official charts	10
Direct from artists	7

Responses to the question “Typically, speaking, how do you generally get new music recommendations?” (Percentages) Source: CDEI 2023

advocated a standardised approach to transparency across MSPs and further research on music recommender systems. Perhaps because of the mildness of these conclusions, the report landed almost without trace and no relevant government actions have followed, as of July 2024.

CONCLUSIONS

What did these UK developments amount to, and what can we conclude from them concerning struggles for better conditions for musicians internationally? As we have already indicated, there has been a great deal of research, discussion and working groups, but not much real change, beyond some modest progress on metadata (an industry agreement was announced in May 2023) which in any case was relatively uncontroversial. The much more contested issue of performer ER is still uncertain. The UK government commissioned research on performer ER via its Intellectual Property Office (IPO). The report was published in early 2024 (UK IPO 2024). In addition, the majors have adopted some voluntary measures such as writing off advances so that legacy artists could start receiving royalties from streaming (see Box 35.1 timeline). Some music creators interpret this as a way to deter legal measures concerning contract adjustment or rights reversion.

In some quarters, debates continue over alternative methods of distributing streaming revenues to rights-holders such as the “user-centric” payment system mentioned above. That this issue hardly featured in the Inquiry or its aftermath suggests alternative methods might struggle to find policy traction. User-centric payments have been introduced in a partial way by MSPs such as Soundcloud and Deezer. Studies based on their experiments suggest that less successful artists could benefit from a shift to user-centric (Pedersen 2018). In response, major labels, perhaps seeing a threat to the superstar economics that underlie their businesses, have been working with some MSPs to test and/or advocate a set of more “artist-centric” approaches, which seek to reward, for example, artists whose work initiates listening sessions. In Spotify’s new model, introduced from 2024, tracks receiving fewer than 1,000 streams in any year will receive no royalties in that year. The goal appears to be to discourage “gaming”, such as the uploading of multiple short tracks containing rain, to which users might be directed by recommender systems as they use MSPs for relaxation; stemming a potential tide of generative AI-produced tracks is probably another. Such measures may reduce fraud but they may also favour already popular artists and the majors to which they are often signed, marginalising emerging artists.

Music streaming contained the seemingly unstoppable wave of free downloading, by forging a compromise between two sets of interests: major and large independent labels who wanted to extend their control as much as possible, and users, who were exposed to free music, and wanted cheap access (Sun 2018). Although the music streaming model allowed musicians of all kinds to distribute their music more easily, a third set of interests, those of musicians,

were largely ignored at first. Digital optimists' hopes that digitalisation would make it easier for musicians to make music available have only partially been achieved. As our report on music creators' earnings (Hesmondhalgh et al. 2021) demonstrated, success is still concentrated among relatively few musicians. We have shown that recent developments in the UK have involved belated but serious political attention to the fate of music creators. Well-organised groups representing the interests of creators achieved significant results in terms of raising public and policy awareness of musicians' remuneration and working conditions. They were helped by some public animosity towards MSPs. Some public perceptions were based on misunderstandings (e.g. the focus on "per-stream rates") but pro-creator lobbyists were able to redirect attention to important issues, in some cases having to overcome the highly developed lobbying capacities of the majors. However, in doing so, they faced a couple of formidable challenges that will continue to exist. One is that copyright law and practice are complex and difficult for lay people to comprehend. Performer ER is not a topic that sets pulses racing—hating Spotify is far more engaging. Another challenge is that musicians are not generally a priority for governments or political parties. Events in the UK, and to some extent the EU and elsewhere, suggest musicians might have nudged a little higher up some political priority lists, but there is still a long way to go.

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