Classical Music, Copyright, and Collecting Societies: Past, Present and Future

Introduction: Copyright and the (Classical Music) Work-Concept[1]

Copyright and classical music have a symbiotic relationship.[2] Although copyright once simply denoted the legal right to copy specific documents, it achieves its fullest potential when it defines fixed, bounded, and original abstract entities manifested in one or more physical modalities. The description readily applies to (implicitly classical) musical works, which Lydia Goehr calls 'ontological mutants': a piece's identity lies neither in its score, for music is an aural medium, nor in any single performance or recording, for the same score gives rise to different interpretations; it is instead abstracted from the sum of *all* potential realisations.[3] These conceptions, then, rely on abstraction but also containment and association with a single individual: musically, the composer. Goehr coined the term 'work-concept' to encapsulate her idea, defining musical works as 'complete and discrete, original and fixed, personally owned units.'[4]

This theoretical framework is important because it corresponds perfectly with how modern copyright professionals routinely use the term 'work' to denote discrete units under copyright protection, be they musical, artistic, or literary. As Anne Barron has observed:

> Copyright law—not unlike musicology—operates with a conception of the musical artefact as a bounded expressive form originating in the compositional efforts of some individual: a fixed, reified work of authorship.[5]

Friedemann Sallis has identified a 'weak' work concept informing music composition before the French Revolution: composer-performers were seen as enacting a craft, and music was about events rather than ideas; process rather than product. This was overtaken by 'the era of the strong work concept' from the late 1700s to the present day, in which 'music conceived as "works" consigned to paper… emerged as a new concept that had a major impact in Western culture.'[6] Significantly, the newer concept acquired a regulative role, not only in terms of aesthetic ideology but also by influencing copyright legislation:

> In the early eighteenth century, publishing houses acquired copyright… insofar as sheets of music were produced. For most of the eighteenth century copyright remained so defined. In 1793, however, copyright laws were passed in France to transfer ownership away from publishers to composers… [reflecting] the basic

[1] I would like to thank Gary Carpenter, Sarah Rodgers, Edward Gregson, Harriet Wybor, and Julia Haferkorn for their thoughtful comments that informed this chapter.

[2] 'Classical music' is used through the chapter to denote art music (i.e. music made primarily for purposes other than entertainment or profit) typified by a division of labour between composer and performer achieved through the use of notation. The classical music referred to is implicitly Western; the first part of this definition could also apply to non-Western classical music, but not necessarily all of the second part. While the term is admittedly contested and polysemous, it (and its cognates in other languages) is commonly used in public with such meanings. For further discussion, see my article 'Vive la différence', *M* [PRS Members' Music Magazine], 12 (2004), 16–18.

[3] See Lydia Goehr, *The Imaginary Museum of Musical Works: An Essay in the Philosophy of Music* (2nd edn; Oxford: Oxford University Press, 2007), 2–3. Goehr draws on and develops arguments previously expounded by Roman Ingarden (the problematic ontology of musical works) and Carl Dahlhaus (the paradigmatic centrality of Beethoven).

[4] Goehr, *The Imaginary Museum of Musical Works*, 206.

[5] Anne Barron, 'Harmony or Dissonance? Copyright Concepts and Musical Practice', *Social and Legal Studies*, 15/1 (March, 2006), 25.

[6] Friedemann Sallis, *Music Sketches* (Cambridge: Cambridge University Press, 2015), 2–3.

> idea that composers are the first owners of their works, for it is they who put the works in permanent form [by notating them].[7]

Goehr and others have traced the rise of this strong work-concept, which spread from France across Europe in the late eighteenth and early nineteenth centuries—a period in which the enduring productions of copyright legislation and Viennese musical life also flourished. The pivotal figurehead, of course, was Ludwig van Beethoven, who effectively elevated the musical score from being 'a more or less detailed map to being a full and complete representation of a work.'[8] Similarly, a composition was no longer mere craftsmanship but an autonomous work of transcendent art.[9] An emerging Romantic aesthetic accordingly emphasised, and valorised, originality.

This cultural *zeitgeist* engendered changes in copyright legislation that enhanced abstraction. New laws were enacted to extend protection to performances of musical works (the "performing right") in Prussia (1837) and the United Kingdom (Thomas Talfourd's Act of 1842).[10] The ideology of Romanticism *continues* to inform the regulative function of the work-concept: both modernist classical music and the rock concept of "authenticity" inherit elements of it, as qualities such as rebellion, shock, alienation, the transcendent power of the original, and the aspiration to art attest. The incorporation of popular musics into the ambit of the work-concept is particularly interesting—and, as we shall see, relevant to classical music. In nineteenth-century France, such styles were originally excluded from legislation, being considered insufficiently 'original' or worthy of artistic or commercial status.[11] Because certain popular forms, such as Victorian ballads and Tin Pan Alley standards, divide labour between writer(s) and performers—a mode still evident in modern pop icons reliant on "hit factories" or shows such as *The X Factor*—they more obviously fit the work-concept template than, say, the group dynamic of later blues-based rock music, where the functions and boundaries of composers, performers, and indeed of the work itself, are more blurred.[12]

For popular music productions in oral traditions to acquire copyright protection, the tangible trace (in copyright law, the "fixed form") becomes the original recording. This requires some abstract thinking on the part of lawyers and administrators to conceptualise the "work" underlying and separate from the sounds (a case of strengthening a weak work-concept). In the UK, copying the underlying works in musical recordings ("mechanical copyright") was first controlled by the 1911 Copyright Act, which led to the establishment of what became the Mechanical-Copyright Protection Society (MCPS, allied with the Performing Right Society (PRS) since 1998). Protection of copyright in sound recordings themselves was established by a court case that led to the founding of the "neighbouring rights" (i.e. non-authorial copyright) society Phonographic Performance Limited (PPL) in 1934.

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[7] Goehr, *The Imaginary Museum of Musical Works*, 218.
[8] Goehr, *The Imaginary Museum of Musical Works*, 227.
[9] Drawing on Dahlhaus, Sallis discusses how 'Beethoven… claimed for music the strong concept of art… [for] an instrumental composition could now exist as an "art work of ideas" transcending its various interpretations.' Sallis, *Music Sketches*, 20. Nicholas Cook also links Beethoven's (Dahlhaus-identified) conception of music—an ideal, imaginary realm—to the composer's profound deafness. See Nicholas Cook, *Music: A Very Short Introduction* (Oxford: Oxford University Press, 1998), 26.
[10] See Friedemann Kawohl, 'Commentary on the Prussian Copyright Act (1837)' and Ronan Deazley, 'Commentary on Copyright Amendment Act 1842', in *Primary Sources on Copyright (1450–1900)*, ed. Lionel Bently and Martin Kretschmer (2008), www.copyrighthistory.org (accessed 5 June 2017). France had already protected performances through the Revolutionary laws of 1791/93, as noted by Goehr.
[11] Goehr, *The Imaginary Museum of Musical Works*, 219.
[12] See also Jason Toynbee, 'Musicians', in *Music and Copyright*, ed. Simon Frith and Lee Marshall (2nd edn; Edinburgh: Edinburgh University Press, 2004), 126–28.

As Ron Moy has argued, the evolution chronicled here has much to do with a general desire to identify popular music-based products with individuals, and the consequent necessity to construct singular authorial subjects.[13] More recent popular music forms, such as electronic dance music with its reliance on sampling and remixing, have posed stronger ontological challenges to the work-concept. Such issues will be revisited later in the chapter, which focuses primarily on the copyrights of classical composers.[14] It scrutinises how and why the PRS instituted a Classical Music Subsidy and removed it at the end of the twentieth century. The episode illuminates the roles of collecting societies, how the performing right is mediated in practice, and how socio-political shifts reframe copyright societies in general and classical music in particular. Finally, we zoom out to examine contemporary copyright challenges and debates, again nuanced by a classical music perspective.

Like academia, the worlds of copyright and collecting societies are replete with acronyms and specialist terminology. While the former will be defined in the text, Figure 1 offers a glossary of some key terms from musicology and collecting society policy and practice which recur throughout this chapter.

Collective Licensing: The Performing Right Society (PRS)

To administer copyrights, composers and their publishers rely on collecting societies to license music "users" on their behalf, from live and recorded performance premises and cinemas, to record labels, broadcasters, and, more recently, online entities.[15] Also known as authors' societies, or Performing Right Organisations (PROs) when performing rights are involved, collecting societies are typically national monopolies, linked by reciprocal agreements with affiliated societies across the world. The PRS ("PRS for Music" since 2009) was formed in 1914 with a committee of composers, authors, and publishers.[16] Composers were largely drawn from the popular and light music sphere, but classical publishers were well represented, including William Boosey and Charles Volkert (of German publisher Schott, among other publishers). Tracing the society's history three-quarters of a century later, Cyril Ehrlich argued that

> [The PRS], as it approached a seventy-fifth birthday, continued to serve the general public no less than its members. The former were provided with access to the world's music, easily and cheaply, while giving due reward to its producers… Among the members there was general satisfaction with the Society: an efficient alliance of interests, maintaining a reasonable balance between writers and publishers, [and between] serious and popular music.[17]

This Panglossian conclusion may not have been entirely inappropriate at the time of the book's publication, yet a mere decade later members, management, the Board, and even promoters, would be at loggerheads—a situation that threatened to pull the PRS apart and,

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[13] See Ron Moy, *Authorship Roles in Popular Music: Issues and Debates* (New York: Routledge, 2015).
[14] Incidentally, classical (and all) performers have enjoyed explicit protection of their recorded performances as intellectual property since the World Intellectual Property Organization (WIPO) instituted the 1996 Performances and Phonograms Treaty.
[15] Classical publishers usually require copyright to be assigned for its full term, although it can also be reassigned or fixed-term licensing agreements can be negotiated.
[16] PRS, like other PROs, acquires control of the performing right through legal assignment, and shares royalties between music/text authors and publishers. This legal and distributive principle is also applied to the mechanical right by societies in mainland Europe.
[17] Cyril Ehrlich, *Harmonious Alliance: A History of the Performing Right Society* (Oxford: Oxford University Press, 1989), 157.

according to some, to decimate the composing profession in the UK. Let us now explore the primary catalyst for this explosive reaction.

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To the Arts Council, it had been an 'enlightened example of musical patronage.'[18] To British Academy of Songwriters, Composers and Authors (BASCA) chief executive Chris Green its removal was 'the most terrible tragedy.'[19] To Terri Anderson (PRS's then Communications Director), its abolition was part of the 'slaughtering of a number of sacred cows' by a 'determined and unsentimental' chief executive, John Hutchinson.[20] To composer George Benjamin, its disappearance was 'the worst thing that has happened to classical music in my lifetime.'[21] One of many changes PRS made to its distribution policy at the end of the twentieth century, the withdrawal of its subsidy for live classical concert royalties was a high drama of cultural politics, bitter wrangling, unresolved resentments, and long-term relationship disruption. The voluminous textual trace left by the episode allows us to recount the facts of the matter and to examine some of the contexts and ideologies underlying participants' actions, responses, and debates.

What was the Classical Music Subsidy (CMS)? The origins of the mechanism that had acquired this label by the 1990s are hard to pinpoint, but its contexts are clear. The first is the enormity of the task facing all PROs in identifying all public performances of copyright music by any means within their given territory of jurisdiction; that is, licensing them *and* acquiring data to inform distributions of this 'general' revenue (see glossary in Figure 1). Recorded public performances—to the smallest shop or bar with a radio, TV, or stereo playing in the background—are arguably hardest to identify. The impossibility of negotiating separate licenses for every work that might be used leads to "blanket" licensing solutions: in return for access to the repertoire of the licensing society and its international affiliates (that is, virtually all copyrighted music), users are charged according to tariffs for different types of use, creating revenue "pools". Likewise, the impracticality of having a direct royalty distribution from every licence fee paid to every work performed (sometimes called a "straight line") means that distributions of general revenue have always depended to an extent on ideological decisions. And while broadcasters are easier to manage in licensing and reporting terms, the issue of how to allocate, or subdivide, into multiple usage subcategories those large blanket licence lump sums paid annually by public broadcasters such as the BBC is inevitably a matter of collecting society policy.

This practical reality leads to a second, more specific context, which Ehrlich outlines:

> Methods of redistributing income within the Society had been discussed at least since the 1920s, when there was talk about compensating "serious work" as against "commercial music". It was also a policy long established by CISAC [Confédération Internationale de Sociétés d'Auteurs et Compositeurs, the umbrella organisation representing collecting societies worldwide] that societies

[18] Arts Council, 'Specific Comments on the PRS' Decision to Phase Out its Old-established Classical Music Subsidy', in *House of Commons: The Performing Right Society and the Abolition Of The Classical Music Subsidy* (5th report of the Culture, Media and Sport Committee, 1999), http://www.publications.parliament.uk/pa/cm199899/cmselect/cmcumeds/468/46803.htm (accessed 17 November 2016).
[19] House of Commons, Question 67 of 'Examination of Witnesses'.
[20] Terri Anderson, *Giving Music its Due* (London: MCPS-PRS Alliance, 2004), 132, 138.
[21] George Benjamin, quoted in Stephen Moss, 'Used Notes Only', *The Guardian* (11 January 2001), https://www.theguardian.com/culture/2001/jan/11/artsfeatures (accessed 9 June 2017).

> should give preferential treatment to serious works when distributing royalties, usually by means of paying more per minute for longer works.[22]

As the end of Ehrlich's last sentence implies—although this has not always been appreciated—"serious work" is not inherently identified with classical music in this context. Nor is the "serious" intent necessarily located in the music itself. A PRS bulletin from the early 1970s that refined "general" distributions explicitly invokes an underlying principle to distribute according to the type of usage rather than the nature of the music used.[23] This implies less an appraisal of musical worth and more a value judgement about modes of engaging with music: rapt, undivided attention in the concert hall was deemed more serious than performances at dances, for example, and was rewarded with higher royalty payments, whether their composers were Benjamin Britten or The Beatles. Other factors influencing live royalties also tended to objective phenomena: number of performed lines adduced from notified instrumentation, duration, and concert hall capacity. Such an approach is echoed by international PROs today (see Figure 2 for comparisons), where the music's *scale and ambition* ('symphonic', 'complex', with more 'voices', longer duration) as much as its style is invoked to justify enhanced royalty payments. Indeed, the stylistic marker 'classical' is rarely used explicitly.

Framed in largely utilitarian terms, a 1978 article in the *PRS Yearbook* defines the Classical (serious) Music Subsidy and its rationale:

> Performing Right Societies across the world generally accept that, as the production of works of serious music involves a far greater investment of time and labour on the part of their creators than most of the more popular forms of music, and that as performances of such works are relatively few and far between, it is appropriate that the societies should adopt *preferential forms of treatment* for these works in their distribution of royalties, both in order adequately to remunerate the actual performances and also to encourage the continued creation of such works.[24]

Reference follows to a decision to create a specific revenue pool for serious music concerts with 'a reasonably substantial amount of revenue from other sources to be added by way of subsidy.'[25] In other words, licence revenues from all serious/classical music concerts in a given year were paid into the same pot, topped up with general revenue so that the distributable amount was more than 100% of gross collections, then divided up into "points" with fixed values for distribution purposes, weighted exponentially towards longer works and larger forces. Classical publishers and composers benefitted not only through the subsidy, then, but also because of the pooling (which made royalties predictable) and weighting towards the more labour-intensive compositions. Instrumentation was not taken into account in allocating royalty points for radio and television broadcasts, but longer pieces were rewarded with a higher rate per minute ("bonus for length"), in accordance with the CISAC principle outlined by Ehrlich above.[26]

How this dispensation disintegrated is a function of general cultural change and specific events in the 1990s. The previous decade saw publishing and recording companies incorporated into global conglomerates, invariably dominated by pop and other commercial musics and empowering these "majors" within the PRS. As Andrew Potter, then Chairman of

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[22] Ehrlich, *Harmonious Alliance*, 155–56.
[23] See 'General Fees Distributions', *Performing Right*, 6 (November, 1971), 40–1.
[24] PRS, 'How PRS Helps Serious Music', *PRS Yearbook* (1978), 66–7; emphasis added.
[25] *PRS Yearbook* (1978), 66.
[26] Concert performances attracted a similar bonus until 1988.

the Society, remarked: 'PRS stopped being a gentleman's club and became a business.'[27] Signs of change are found in the 1988/89 *PRS Yearbook*, which described the abolition of royalty weighting according to instrumentation, and declared that a wider range of performances would benefit from subsidy via a new 'semi-classical' category.[28] A review of the broadcasting bonus for length multiplier was also announced, while additional notes made the pointed observation that 1987 had 'produced payments that were disproportionate in relation to those [payments] applicable to larger [presumably popular] ones'.[29] Significantly, the more neutral term "serious music" had become the stylistically marked (othered?) "classical music". Attempts in the late 1980s to raise tariffs for live concerts of all genres were only partially successful, leading to a new live music policy in 1992 where both classical and popular concerts held at a list of several hundred 'significant venues' were guaranteed royalty distributions, subsidised from general (live) revenue.[30] This marked a shift towards parity of treatment, distributionally speaking, for pop and classical concerts; previously, only popular music events earning over a certain licence fee had been distributed, while *all* classical concerts had been eligible for distribution.[31]

The primary catalyst for a further raft of distribution policy changes was a referral—by the Office of Fair Trading (OFT) to the Monopolies and Mergers commission (MMC)—to investigate the PRS. An OFT press notice referred to

> complaints made by composers of less popular forms of music that they were receiving inadequate royalty payments [and] lacked sufficient representation; [and that] the revenue distribution policies recently adopted by the Society [i.e. the 1992 live music policy] unduly favoured composers and publishers of more popular forms of music.[32]

Perhaps surprisingly, then, this was no flexing of the muscles of the majors seeking more power, but a revolt from "below". (The complainants are understood to have included classical composers, as the press notice, indeed, implies.) The PRS's voting structure has arguably tended to perpetuate financial inequality among its members by linking voting rights, and therefore influence on policy, to earnings.[33] Conducted in 1995, the MMC investigation reported in February 1996. Its authors called for a review of the live music distribution policy and alluded to the possibility of statistically 'sampling' all areas of public performance (see Figure 1). They further commented:

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[27] Andrew Potter, quoted in Anderson, *Giving Music its Due*, 100.
[28] *PRS Yearbook* (1988/89), 65. The new category explicitly included 'avant-garde jazz' performed to audiences 'there primarily to hear the music' in the context of 'undisturbed listening', echoing the society's 1971 terminology describing 'serious' music. Two years later, 'semi-classical' became 'light classical'. See *PRS Yearbook* (1990/91), 74.
[29] The bonus for length for TV broadcasts was abolished in 1988; that for radio was retained until 1998. See *PRS News*, 27 (October, 1988), 12–13; and *PRS News*, 49 (May, 1997), 10.
[30] This policy also abolished the "light classical" category and is detailed in a supplement to *PRS News*, 33 (Autumn, 1991), 2–5.
[31] The 1992 policy was, however, amended the following year to allow classical members to be paid for performances at 'non-significant' venues on a claims-only basis. In parallel, the subsidy for popular concerts was removed, perhaps shoring up resentment from that sector towards the continuing subsidy for classical music. See *PRS News*, 38 (Autumn, 1993), 2.
[32] OFT, *Press Notice* 54/94 (30 November 1994).
[33] See https://www.prsformusic.com/about-us/governance/prs-membership-categories (accessed 6 June 2017).

> The classical music subsidy… has been in place for many years and appears from the evidence provided to us to have the broad approval of both writer and publisher members.[34]

The PRS's subsequent Distribution and Data Review became increasingly imbued with the ethos of cost-benefit analysis, concluding that 'we need to ensure that the resources we devote to collecting and processing performance data are in proportion to the revenue at stake.'[35]

On the subsidy itself, a PRS questionnaire divided opinion: 48% of members were found to be in favour of it, 48% against, and 4% had no view, to which the Board responded that it planned 'no action at present, and has noted this response.'[36] The reassuring tone soon became more measured ('the classical music-subsidy is now being re-evaluated'),[37] and in early 1999 a Subsidies Taskforce was set up to 'ensure… any support of subsidy payments will adhere to the MMC instructions… [in order to] distinguish clearly between distribution rules and cultural support and donation.'[38] By now, however, the die was cast. In fact, a December 1998 press release had announced the phasing-out of the CMS and the implementation of the new live music policy.[39] In practice, this meant: that the last major classical distribution under the old (1992) policy, with its 'significant' venues and fixed royalty values incorporating a full subsidy,[40] took place in July 1999; that classical concerts from the start of 1999 were "sampled", with only concerts generating a licence fee of £75 or more being guaranteed distribution, and sample rates decreasing according to box office value;[41] and that the subsidy was to disappear completely by 2001.

In amelioration, the PRS initiated a gradual escalation of the tariff ("LC") charged to classical concert promoters, rising from 3.3% initially to 7.3% by 2007, in order to maintain revenue in the live classical sector by increasing collections rather than supplementing them from other revenue areas.[42] (This is comparable with the current practice of the Spanish society Sociedad General de Autores y Editores (SGAE)—see Figure 2). Additionally, a new £1 million fund to support contemporary music was announced, which effectively enhanced an existing committee that dealt with Donations & Awards, but which was soon branded the PRS Foundation.[43] While this money was available on application to composers and songwriters of any genre with a demonstrable need for support, the timing of PRS

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[34] MMC (now the Competition and Markets Authority), *Performing Rights: A Report on the Supply in the UK of the Services of Administering Performing Rights and Film Synchronisation Rights* (February, 1996), http://webarchive.nationalarchives.gov.uk/20111202195250/http:/competition-commission.org.uk/rep_pub/reports/1996/378performing.htm, Section 2.82 (accessed 17 November 2016).
[35] *PRS News*, 52 (Summer, 1998).
[36] See *PRS News*, 47 (Autumn, 1996), 7.
[37] *PRS News*, 52 (Summer, 1998), 18.
[38] *PRS News*, 53 (January, 1999), 3.
[39] This dates the decision to remove the subsidy to that December's Board. Only two of its members voted against the decision.
[40] Which at this time boosted live classical revenue to the tune of 170% of receipts.
[41] The threshold for guaranteed payment was reduced to £50 in 2000. Since 2004, all such concerts have, in principle, been distributable.
[42] However, following a referral by the Association of British Concert Promoters to the Copyright Tribunal, the tariff was settled at 4.8% in December 2003.
[43] The Foundation's funding model was also different, and less politically contentious. While Donations & Awards had been funded with a percentage of distributable revenue, the Foundation was, and remains, funded by non-licence revenue (essentially bank interest on funds awaiting distribution). See also http://www.prsformusicfoundation.com.

communications suggest this was intended to be understood as one way of replacing the CMS.[44]

Reaction, Counter-reaction, and Debate

The first salvo in response to the withdrawal of the CMS came from a group subsequently known as the Classical Music Alliance (CMA).[45] A letter of protest was signed by Donald Mitchell (chairman of the Britten Estate and former PRS Director) and leading composers Harrison Birtwistle, Peter Maxwell Davies, and Mark-Anthony Turnage.[46] John Tavener and Paul McCartney, among others, were subsequently identified as supporters.[47] The letter rehearsed several arguments that would characterise subsequent debate: that compared with mainland European societies, classical concert tariffs were low; that the subsidy therefore brought royalties up to an appropriate (that is, comparable) level; that PRS members were insufficiently consulted; that the timing was poor (perhaps a reference to the press release issued just before Christmas); and that the effect of removing the subsidy on the UK classical music industry, especially 'young British composers of the future', was great relative to its cost and the lack of tangible effect on other members' earnings.

Two further arguments were added in a letter sent a week later by representatives of leading contemporary classical publishers.[48] The first was a utilitarian argument about the labour and cost of preparing performance materials (that is, scores and parts) for contemporary classical performances, and the consequent need for long-term investment that might never be recouped.[49] The second was that removing the CMS was 'the last straw' following a series of changes adversely affecting classical music, in particular the removal of the instrumentation multiplier at the turn of the 1990s, and the removal of the radio bonus for length in 1998.[50] Unrepentant, Hutchinson responded by defending: the new system's greater fairness and transparency as a consequence of the straight line between collection and distribution of concert revenue;[51] the avoidance of problematic value judgements and differentiation between genres; the fact, based on the aforementioned questionnaire, that supporters of the scheme did not form a majority of the membership; and that the largest beneficiaries of the subsidy were not young British composers, but the estates of deceased composers and members of overseas PROs affiliated to the PRS.[52]

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[44] For example: the Foundation's announcement in July coincided with the final fully-subsidised distribution of classical concert revenue. See *PRS News*, 55 (August, 1999), 1–2. Sarah Rodgers (former Chairman of BASCA's Concert Executive) confirms that 'creation of the PRS Foundation, at the suggestion of John Hutchinson, was definitely a gesture of compensation towards the disenfranchised classical members.' Rodgers, correspondence with the author, 5 July 2017.

[45] See Andrew Stewart, 'PRS under Fire from Classical Music Pressure Group', *Classical Music* (6 March 1999), 5.

[46] See Donald Mitchell, 'Classical Concerts Income "Halved"', *The Times* (23 February 1999), 19. Other signatories included conductor Simon Rattle and composer/broadcaster Michael Berkeley.

[47] See Stewart, 'PRS Under Fire from Classical Music Pressure Group'.

[48] Trevor Glover [Boosey & Hawkes], 'From Mr Trevor Glover and Others', *The Times* (1 March 1999), 21. Other signatories were Chris Butler (Novello), Sally Groves (Schott), Martin Kingsbury (Faber Music), Ben Newing (Universal Edition), and James Rushton (Chester Music).

[49] This was an (intentionally?) ironic echo of the PRS's own former view, as expressed in its 'How PRS Helps Serious Music' features, published annually between 1978 and 1988.

[50] See notes 26 and 29.

[51] That is, the total concert royalty equalling the licence fee minus an administration charge (20% as of December 2016). This is further divided, proportionately according to duration, between the copyright works in the programme. For more on "straight-lining", see Moss, 'Used Notes Only'.

[52] John Hutchinson, 'End of "Subsidy" for Classical Music', *The Times* (1 March 1999), 21.

The Guardian newspaper also hosted the debate, with composer Colin Matthews echoing the 'last straw' argument,[53] and drawing a repost from Andrew King of pop publisher Mute Song:

> Once again the grandees of the world of classical music emerge from their rural retreats… The beneficiaries of this scheme [the CMS] have kept very quiet about it until, as a result of a widely supported effort to bring the PRS out of its fustian gloom by updating its business practices… this subsidy… is to be removed… These people have always insisted that only their value judgements, which are consistently self-serving, have any merit.[54]

King's combative tone typifies a certain view of the classical music industry, problematises the sector's presumed claim to the "transcendence" of its music, and points to broader questions concerning the genre's relevance and purpose at the turn of the century (and, indeed, since).[55] There was an irony in King attacking a genre that effectively gave rise to the musical work/copyright concept on which all pop publishers' business models rely. Nevertheless, the heightening of rhetoric continued when Hutchinson provocatively quoted a comment (attributed to Mitchell) from the MMC report—that 'the moral basis for PRS "depended on its being perceived as fairly representing the interests of every sector of the membership and serving impartially the creators and their publishers across the musical spectrum".'[56] Aggravated, Mitchell duly rose to the challenge:

> Turning his fire on me will not save Mr Hutchinson when he has to face the cultural and political fall-out from the assault he is leading PRS to mount against the very sector which founded PRS in 1914. The Society's creators must be turning in their graves.[57]

The very public debate soon migrated to the pages of industry journal *Classical Music*, whose editorial observed how 'the PRS has a long history of upsetting its classical members', adding the context of the Significant Venues scheme and the lack of financial rewards accruing to classical composition.[58]

The CMA sought government mediation, and a Select Committee hearing chaired by Labour MP Gerald Kaufman was held in mid 1999. Several new ideas and observations were developed by the witnesses and their interlocutors: that classical composers and publishers might form their own collecting society to break PRS's monopoly, a prospect the Chief Executive of Boosey & Hawkes considered unviable however;[59] that new classical music is disseminated overwhelmingly through infrequent live performance, whereas more popular

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[53] Colin Matthews, 'Cough up, PRS', *The Guardian* (13 March 1999), https://www.theguardian.com/theguardian/1999/mar/13/guardianletters (accessed 8 June 2017).
[54] Andrew King, 'Pay Scales', *The Guardian* (15 March 1999), https://www.theguardian.com/theguardian/1999/mar/15/guardianletters (accessed 8 June 2017).
[55] See, for example, Norman Lebrecht, *When The Music Stops* (London: Simon & Schuster, 1996). Conversely, this air of fatalism inspired defensive apologias such as Julian Johnson's *Who Needs Classical Music? Cultural Choice and Musical Value* (Oxford: Oxford University Press, 2002).
[56] John Hutchinson, 'Discord in Musical Fraternity', *The Guardian* (23 March 1999), https://www.theguardian.com/theguardian/1999/mar/23/guardianletters (accessed 8 June 2017).
[57] Donald Mitchell, 'Oscars Won't Make up for a Cut in Composers' Royalties', *The Guardian* (27 March 1999), https://www.theguardian.com/theguardian/1999/mar/27/guardianletters (accessed 8 June 2017).
[58] Keith Clarke, '[Editorial]', *Classical Music* (3 April 1999), 3.
[59] House of Commons, 'The Performing Right Society and the Abolition of the Classical Music Subsidy', Question 4 of 'Examination of Witnesses'.

genres place greater emphasis on recordings and broadcasts;[60] that the CMS contained anomalies, for example that popular works performed in classical concerts would receive it, but not vice versa because the subsidy was awarded to licensable events, rather than to individual works. As Kaufman elaborated:

> In any kind of logic whatsoever, the internal PRS Subsidy is anomalous and unjustified… On the other hand, any kind of subsidy from the Arts Council or anywhere else is not going to provide an impulsion for performance in a way that the PRS subsidy has done.[61]

The rhetoric of taking money from genres (other than classical music) was stressed by those opposing the subsidy,[62] upheld by the Committee,[63] and even acknowledged by some of its defenders (such as BASCA), although the reality of this characterisation was, had been, and continued to be disputed in other quarters.[64] Nevertheless, the PRS's decision, and its right to make it, was condoned by politicians perhaps imbued with the Government's contemporaneous "Cool Britannia" agenda,[65] wherein cultural advocacy and ambassadorship was associated with popular music, typified by Britpop, rather than with "art" music.

As the impact of the new policy began to be felt, attention was redirected to another of its controversies: the statistical sampling of live classical performances. Sally Cavender (Faber Music) tactically echoed the market-oriented rhetoric of the policy's proponents:

> [Statistical] sampling is fine for pop, but not for classical music. The system just doesn't meet the needs of our market segment. We don't want handouts—we want payment because our pieces are being played.[66]

A *Guardian* editorial in January 2001 even called on Culture Secretary Chris Smith to intervene—rather late in the day, given the Select Committee had concluded in 1999, observing that 'PRS's approach, which links box-office success to the likelihood of a composer being rewarded, will encourage a play-safe approach and discourage risk-taking.'[67] Faber's Richard Paine had already criticised the policy's unabashed commercialism, claiming it would 'inevitably favour the established and successful composers at the expense of the up-and-coming.[68]' Ironically, PRS had often made similar arguments to criticise the failure of the CMS to support living or young composers. It repeatedly quoted statistics on the percentage of subsidy paid to estates of deceased composers and affiliate societies, although

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[60] House of Commons, Question 81 of 'Examination of Witnesses'. In the same report, see also: 'Memorandum submitted by the Publishers of *Classical Music*', Section 2; and 'Memorandum submitted by The Classical Music Alliance', Section 3.1.1.

[61] House of Commons, Question 58.

[62] This had been pre-empted in another part of Andrew King's letter cited above: 'The classical music subsidy operated by the Performing Right Society has taken money earned from performances of works by other composers of all genres and types and given it to the rights owners of so-called 'classical' works.'

[63] House of Commons, 'Conclusions', Sections 42–3.

[64] For example, the PRS's former CEO Michael Freegard, as reported by Anderson: 'UK writers and publishers saw deductions of all kinds (such as affiliate societies' social and cultural deductions) as "members' money being taken": Freegard's standpoint was and is that the revenue collected by PRS "was not anyone's money until it was distributed".' Anderson, *Giving Music its Due*, 106. See also Matthews's letter to *The Guardian* (13 March 1999), which refers to 'unallocatable [general] income which would not, and will not, find its way to [other niche genres].'

[65] Indeed, the transcript alludes to this term, along with its iconic representatives, Oasis.

[66] Sally Cavender, quoted in Moss, 'Used Notes Only'

[67] 'Air on a Shoestring', *The Guardian* (11 January 2001). https://www.theguardian.com/theguardian/2001/jan/11/guardianleaders (last accessed 1 July 2017). This editorial is likely to have been penned by then editor Alan Rusbridger himself, whose interest in classical music is well documented.

[68] Richard Paine, 'Young Composers', *The Times* (20 September 1999), 19.

some of those estates were quick to retort that such money was redistributed through schemes to support young musicians or new music.[69]

Analysis, International Comparisons, and Consequences

What are we to make of the above episode? What does it tell us about classical music, copyright, and British cultural politics? Composer and long-term PRS board member Edward Gregson now believes that the CMS 'emerged as a "problem" [because of] the increasing presence and variation of pop board members', who were concerned exclusively with financial "bottom lines".[70] Sarah Rodgers feels that while the MMC report did not threaten the classical subsidy directly, it 'opened a chink' in the longstanding settlement described by Ehrlich.[71] She believes that this allowed pop publishers, who had moved away from "gentlemanly" congeniality and towards a market-driven foregrounding of individual corporate interests, to argue away the subsidy by promulgating the "level playing field" argument.[72] The Arts Council's belief at the time that the 'view of PRS' General Council… [is] that the cultural consensus underlying the [CMS] has broken down' offers a broader context,[73] as do parallels the same organisation drew with the fact that its own funding for music had, until the mid 1980s, been directed exclusively towards classical music. To recall the start of this chapter: if popular songs were to be conceived as 'works', they could now be considered 'art'; but by the same token, now effectively stripped of its transcendent artistic status, British classical music was exposed, unprecedentedly, to the harsh realities of the commercial music industry.[74] In fact, the Arts Council advocated reorienting subsidy across many minority genres, couching the argument in instrumentalist terms to argue that 'investment in uncommercial repertoire—R&D expenditure—is essential for the long-term health of the music industry.'[75] The PRS did not adopt their suggestion.

A lynchpin of arguments in favour of the subsidy was greater parity with overseas affiliates, particularly in mainland Europe where most societies did (and still do) apply royalty

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[69] See, for example, the enduring grant-giving programme of the Britten-Pears Foundation: (http://www.brittenpears.org/grants, accessed 7 June 2017). Illustrating the swiftness and sharpness of change in the 1990s, PRS itself had formerly acknowledged that while the subsidised classical concert royalty section most benefitted the estates of frequently performed early and mid twentieth-century composers, their publishers were 'thereby helped to invest in the new generation of composers who have yet to establish themselves'. *PRS Yearbook* (1986/87), 102. The point is made in every *Yearbook* from 1978 to 1989.

[70] Edward Gregson, interview with the author, 8 September 2016. Gregson points out that in 1995, a third of the board were "classical" members, divided equally between composers and publishers. As of September 2016, only three publishers and one composer—Gregson himself—were identifiably classical.

[71] Sarah Rodgers, interview with the author, 3 August 2016.

[72] Indeed, Hutchinson told the Select Committee that 'it became clear… that hidden subsidies were totally inconsistent with the principles set out by the MMC… For a subsidy to be transparent, members needed not only to know how much they were contributing but to whom and why; within a confidential distribution system, that is just not possible.' House of Commons, Question 87. However, less objective motivations have also been suggested. An industry anecdote tells of a prominent pop/media composer agitating pop music publishers to demand the Board abandon the CMS after a performance of a large-scale work of his had been classified 'non-classical'. In pondering this suggestion, the importance of personal relationships in the music industry, and the presence of strongly distinctive personalities, should certainly be borne in mind.

[73] House of Commons. 'Specific Comments on the PRS' Decision to Phase Out its Old-established Classical Music Subsidy'.

[74] That said, even under the previous consensual settlement, "serious" composers had been vulnerable to the market. As Alan Peacock and Ronald Weir observed in the 1970s, 'there must be few professions who have to face up to the fact that their professional evaluations of their creations are so much at variance with the judgement of the consumer expressed in what the latter is willing to pay.' Alan Peacock and Ronald Weir, *The Composer in the Market Place* (London: Faber, 1975), 31.

[75] House of Commons, 'Specific Comments'.

weightings that benefit classical music (Figure 2), even if they are not always framed as such. Moreover, mainland European societies generally achieve higher concert licensing tariffs.[76] Why did something that is politically possible in other countries become untenable in the UK? The enormous success and strength of the Anglo-American popular music industry looms large, both culturally and organisationally; Rodgers, for example, observes the greater regard other European countries pay to classical music traditions, be they long and unbroken or identified with national independence movements.[77] Similarly, PRS's voting structure is not replicated in other European collecting societies, where major publishers tend to have less influence. Since the 1980s, British political culture has tended to view classical music with suspicion: for some on the Left, its perceived elitism and lack of popular support can be problematic; on the Right, its hunger for public funding and subsidy compare unfavourably with the commercial success of popular music, coupled with the fact that, since the 1990s, some "classical" music has also crossed over (and been explicitly marketed) to become "commercial".

As for the episode's consequences: this chapter has so far documented a deep rift between the UK's classical composing and publishing community and its leading music copyright organisation. Some classical publishers and composers, however, defended the logic and, perhaps, the inevitability of removing the subsidy, not least PRS Chairman Andrew Potter (who also worked for Oxford University Press) and David Bedford (Potter's successor at the PRS). Others accepted the Board's decision but continue to believe, as Gregson argues, that 'support of classical music through distribution enhancement is justifiable.'[78] He continues:

> I tried to argue that… supporting classical writers and publishers in some kind of enhanced manner… would benefit the music industry as a whole, as so many classically trained composers were, and still are, a vital part of the pop and media world. Sadly, that argument fell on deaf ears![79]

Discontent arising from the loss of the CMS was manifested both trivially—one anecdote tells of a classical publisher popping PRS-branded balloons at a sponsored classical event—and as a lasting blow to trust and confidence. A more positive outcome, recommended in civil servant Richard Hooper's review of PRS for Music in 2013, has been the appointment of a Classical Account Representative (Naomi Belshaw, 2014–16; Harriet Wybor since 2016). The role 'acknowledged the need to build bridges' with the community, as composer Gary Carpenter observes.[80]

For Rodgers, it is as much a matter of the "soft" skills of understanding the language and milieu of classical music as it is "hard" policy,[81] although she also talks of a transformation from royalties forming a reliable 'central plank' of composers' incomes to composers having

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[76] For a selection of rates, which reach as high as 12.5% of gross receipts (Belgium's SABAM), see PRS, 'Overseas Live Classical Concerts Tariff', *M*, 11 (Spring, 2004), 27.

[77] Rodgers references the German term *Ernste Musik* (serious music), which is opposed to *Unterhaltungsmusik* (entertainment music). This opposition, as understood, has been associated with German-language collecting societies, notably the Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (GEMA), but is also a wider cultural-societal concept in German-speaking (and Nordic) countries. (Interview with the author.)

[78] Gregson, interview with the author.

[79] Gregson, correspondence with the author, 28 June 2017.

[80] Gary Carpenter, interview with the author, 8 June 2016.

[81] As an example, a PRS scheme launched in 2004 to allow writer-performers to report for distribution performances in non-concert venues was entitled "Gigs and Clubs", despite all music genres, including classical, being eligible.

to earn from parallel musical activities.[82] However, the flow of new entrants to the British composing community has certainly not dried up in line with some of the direr predictions of the CMA. If anything, the community is larger, and more diverse, than it was at the turn of the century. Rodgers, Wybor, and Gregson all acknowledge that conditions in the UK today make it very difficult, but not impossible, to pursue a career exclusively as a classical composer.[83] At the same time, classical music is now less narrowly defined it than it once was, with a broader range of opportunities, particularly for collaboration. Wybor points to new priorities for PRS for Music in improving reporting and responding quickly and effectively to 'new forms of the market [with] simple and effective licensing solutions.'[84] One example is a new tariff for cinema simulcasts, introduced in 2013 to meet the growing popularity and value of live cinema relays of opera house productions.[85]

Copyright Challenges and Classical Music

Professional and academic discourses on copyright law and practice have diverged in recent decades in response to such technological and cultural changes as (unlicensed) digital sampling and the (illegitimate) online dissemination of music.[86] To borrow John Oswald's observation, cited by Simon Frith, 'the legal challenge of digital technology is… that it blurs the boundary between production and consumption.'[87] This also weakens the strong work-concept on which copyright relies. Frith notwithstanding, academic literature tends to be situated in an American rather than European context, which highlights a further divide: between economically-based property theories of copyright prevalent in the US (and to an extent other English-speaking countries) and the inalienable *droit d'auteur*, a concept closer to that of human rights that emphasises moral rights and is fundamental to European civil law jurisdictions. Ideological backdrops similarly range from Ronald Bettig's explicitly Marxist perspective,[88] to out-and-out neoliberal capitalism, sometimes masquerading as quasi-socialist "sharing", to which we will return. Classical music is rarely explicitly considered in either industry or academic discourses.[89]

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[82] Rodgers, interview with the author.

[83] The main challenges are a lack of money in the sector, the number of aspiring professional composers competing for limited resources (financially and in terms of identifying suitable performers). The latter suggests that potential professionals have not been put off by the former, although Rodgers notes that this is true only because of a context of lower (financial) expectations. Again, this is not entirely new: Alan Peacock and Ronald Weir refer to the supply of new classical music 'being "wildly" in excess of demand', given the 'limited nature of the market.' Alan Peacock and Ronald Weir, *The Composer in the Market Place* (London: Faber, 1975), 162.

[84] Harriet Wybor, interview with the author, 20 July 2016.

[85] While PRS, like most PROs, does not control opera and other such dramatico-musical "grand right" performances directly, it does license secondary usages.

[86] Professional and academic discourses tend to focus on recordings rather than scores, not because sheet music copyright is not infringed on the internet (which simply provides a new and more convenient locus for the long history of sheet music piracy), but because, by its nature, such infringement is on a relatively smaller scale and attracts less publicity.

[87] Simon Frith, 'Music and Morality', in *Music and Copyright* (1993), 19.

[88] See Ronald Bettig's *Copyrighting Culture: The Political Economy of Intellectual Property* (Westview: Avalon, 1996), especially Chapter 8: 'Intellectual Property and the Politics of Resistance', 235–45. See also: Siva Vaidyanathan, *Copyrights and Copywrongs: The Rise of Intellectual Property and How it Threatens Creativity* (New York: NYU Press, 2001); Lee Marshall, *Bootlegging: Romanticism and Copyright in the Music Industry* (Thousand Oaks: SAGE Publishing, 2005); and Joanna Demers, *Steal this Music: How Intellectual Property Law Affects Musical Creativity* (Atlanta: University of Georgia Press, 2006).

[89] A notable exception is: Amanda Scales, '*Sola, Perduta, Abbandonata*: Are the Copyright Act and Performing Rights Organizations Killing Classical Music?', *Vanderbilt Journal of Entertainment Law and Practice*, 7/2 (Spring, 2005), 281–99. While Scales acknowledges some of the obvious differences between classical and popular musics, the US-focussed article contains a number of problematic generalisations and inaccuracies, of which the most serious is the claim that 'For their trouble, the PROs keep fifty percent of the money they

In terms of changing copyright practice, Lawrence Lessig's theories have been highly influential, being realised through licensing options that allow for different degrees of creators' control, as outlined by the California-based organisation Creative Commons.[90] Lessig's central premise is that digital technology and, relatedly, postmodern aesthetics have enabled society to recapture a kind of prelapsarian state of engaging with cultural products, rather than passively consuming them, as in the industrial age: RW (read-write) rather than RO (read-only) culture. Although Lessig's differentiation of commercial and "sharing" economies and his ambitions to deregulate amateur creativity and simplify copyright are laudable,[91] he appears to conceptualise musical creativity exclusively in terms of digitally manipulating existing commercial recordings. Lessig, and indeed others, have generally overemphasised the importance of (artistic) sampling, which, although prominent in certain genres, is not ubiquitous in mainstream rock and pop, let alone classical music. (Neither is it anything new conceptually, as the history of musical borrowings in classical repertoire attests.)[92] His perception does, however, further illustrate how far the public image of musical creativity has moved from the classical model of the individual composer notating scores in isolation.

Lessig has also recommended shorter copyright terms,[93] and a reversion to the pre-1976 US (non-Berne Convention) principle of calculating copyright duration from the date of registration rather than from the death of the author (the *post mortem auctoris* or "pma" principle).[94] This is a typical revelation of the conceptual split between property theory (copyright as a commodifiable, intellectual "product") and *droit d'auteur* (copyright as an individual quasi-human right, inheritable by descendants). Crucially, it discounts the possibility that in some genres, such as classical music, successful reception and dissemination might be achieved over decades rather than years. Moreover, given Lessig's hope to simplify copyright, it is hard to see this being achieved by replacing the simple "pma" principle with one that requires knowledge of dates of publication and potential renewals at work level. Indeed, the US copyright situation before 1976 was considered highly problematic in the industry.[95]

Lessig's manifesto, particularly concerning decriminalisation, implies great change, although his influential Creative Commons schemes have demonstrated their ability to coexist with, rather than overturn, extant copyright protection. Change more radical still was proposed in 2017 by the UK Pirate Party:

> Copyright should give artists and innovators the chance to make money from their work; however, that needs to be balanced with the rights of society as a

collect.' (285) Average administration rates are nowhere near that high (see note 51 of the present chapter which documents PRS for Music's *highest* rate).

[90] See Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy* (London: Bloomsbury, 2008). For licensing schemes, see https://www.creativecommons.org (last accessed 4 July 2016).

[91] See Lessig, *Remix*, 254–72.

[92] Surprisingly, Scales (see note 89) foregrounds this weak work-concept tradition in classical music, which has largely been overshadowed by the Beethovenian strong work-concept. See Scales, '*Sola, Perduta, Abbandonata*', 294. Quotations and other musical borrowings, including a kind of acoustic "sampling", are indeed features of certain late twentieth- and early twenty-first-century approaches of a postmodern hue, from Luciano Berio to Michael Finnissy.

[93] See Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (New York: Penguin, 2004), 292–93; also available at http://www.free-culture.cc/freeculture.pdf

[94] An enduringly democratic, inclusive benefit of the Berne Union is that any creative individual can generate a copyright simply by fixing their creativity, thereby acquiring legal economic potential and protection of moral rights for life and beyond (50–70 years or more in Berne jurisdictions).

[95] See Peacock and Weir, *The Composer in the Market Place*, 163.

> whole. We will work for copyright reform and reduce copyright terms to 10 years [from creation/publication] to balance everyone's needs.[96]

The party previously advocated a copyright term of five years from creation, renewable once. While European Pirate Parties generally present themselves as part of the radical left, the Deputy Leader of the Swedish Pirate Party (the original Pirate Party) revealed a nakedly neoliberal face when taken to task by *Classical Music* in 2009:

> *Classical Music*—Do you think that classical composers would be able to earn a living under this system [a five-years-from-creation copyright term]?
>
> *Christian Engström*—They will have to adapt their business model, that is what it is like being an entrepreneur, running a company which is in effect what most cultural work is. If you can't make a profit from it, unfortunately you have to do something else. It is called a market economy and that is the way it is.[97]

Representatives of BASCA quickly pointed out that this would 'destroy the economic model of any collecting society' and therefore also the chance to benefit even from this limited term.[98] In the later UK manifesto, however, reference appears to be made to subsidising culture.[99] It is striking that countries which enjoy high levels of cultural and welfare spending, such as those in the Nordic region,[100] also have the highest popular support for Pirate Parties—perhaps implying that the Pirates' supporters believe a *social-democratic* model could provide an alternative to comprehensive copyright protection. Yet states like Norway and Denmark offer basic incomes *as well as* publicly-funded commissions for their composers, with copyright income *on top* (which itself may be weighed towards serious music—see the policies of TONO and KODA outlined in Figure 2). For regimes where art music thrived without copyright protection we have to look, not to modern social-democratic states, but to older, feudal structures such as those of pre-modern Europe, where composition was predicated upon extensive ecclesiastical or aristocratic patronage.

Conclusions

Despite their obvious flaws and apparent lack of consideration for classical music, the critiques and proposals we have examined do highlight that a reductive approach to distributing copyright royalties risks exacerbating the flow of a large percentage of available revenue to a small number of recipients. Notwithstanding the specific nature and needs of a genre such as classical music, collecting societies must consider how this balance is managed if they are to retain the confidence and support of their stakeholders. Anderson, indeed, recalls the 'founding concept of the PRS as a collective… [where] almost everyone got

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[96] Pirate Party, 'Our 2017 General Election Manifesto', https://www.pirateparty.org.uk/sites/default/files/library/OpenManifesto.pdf (accessed 9 June 2017), [9].
[97] Christian Engström. 'Q&A', *Classical Music* (6 June 2009), 17.
[98] Sarah Rodgers, David Bedford and Patrick Rackow, 'Tackling the Pirates', *Classical Music* (4 July 2009), 69.
[99] 'Artists should be the focus of culture sector funding.' Pirate Party, 'Our 2017 General Election Manifesto', [9].
[100] Nordic countries are often viewed as creative paradises by stressed, cash-strapped British composers: Iceland, Norway and Denmark provide lifetime income guarantees for composers and other artistic creators. Sweden stopped offering lifetime guarantees in 2010 in favour of awarding long-term (ten-year) grants to a wider range of recipients. Daniel Carlberg (Föreningen svenska tonsättare [Society of Swedish Composers]), correspondence with the author, 14 September 2016.

something.'[101] Distributions of "black box" income, framed by PRS in terms of "unlogged performance" or "special" allocations but abolished in 1999, once offered emerging writers modest but tangible financial support.[102] The social and cultural funding offered, and promotional work undertaken, by mainland European collecting societies has consequences beyond immediate benefits for the recipient. As pointed out by Michael Freegard, not least of these benefits is seen in the achievement of higher licensing tariffs than those gained by PRS for Music, partly due to the greater public and political awareness such work enables.[103] Collective licensing will always be necessary for public reception and the majority of live performances, and will maintain bargaining power when negotiating blanket broadcast licenses. However, technologies that promise shorter, immutable value chains from music users to copyright owners, such as Blockchain, threaten to undermine the collecting societies' role, particularly in online arenas.[104]

These tensions throw the focus back on to value of collective copyright licensing as a collective. As writers collaborate across genres, and publishers understand that they face the *same* types of challenges that writers face, the benefits of the collective become more obvious, particularly for new entrants to the profession. Indeed, arguably the greater benefit is the equality principle, whereby all writers and publishers, irrespective of their experience or status, receive the same per-work royalty rate for the same usage category and type. This principle does *not* play out when publishers license music directly, for example mechanical rights for most feature film and advertising usages, known as synchronisation or "sync" rights. The idea of new music, including (and perhaps especially) classical music, as a kind of R&D laboratory for innovative ideas that go on to benefit the mainstream has been espoused in many quarters, from the Arts Council to the Pirate Party.[105]

While this argument leans rather heavily on economic instrumentalism, it does at least support the concept of incentivising, and rewarding, work beyond the immediately popular or profitable, whether through direct public funding or internal collecting society distribution policies. The latter need not take the form of explicit subsidy from one section to another, as revenue pooling itself has a democratising effect. (This is still carried out to a considerable extent within PRS for Music, as with other PROs.) Some kind of emerging writer allocation, in the form of a minimum royalty payment guaranteed for the first years of membership, would help ameliorate distribution inequality and provide rudimentary support for new

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[101] Anderson, *Giving Music its Due*, 137.

[102] My own experiences as a composer member (since 1998) and former employee of MCPS-PRS (2001–07) support this observation. As an aside, when I first joined the society, it seemed to me an almost magical thing to be rewarded financially for the ongoing performance life of music I had *already written*.

[103] Anderson, *Giving Music its Due*, 105–6. The rebranding of PRS as PRS for Music in 2009 is surely an attempt to increase its own public and political recognition.

[104] For an explanation of Blockchain technology and the extent (and limits) of its potential to facilitate royalty distributions, see Jeremy Silver, 'Blockchain or the Chaingang? Challenges, Opportunities and Hype: The Music Industry and Blockchain Technologies' (Centre for Copyright and New Business Models in the Creative Economy (CREATe): 2016), https://zenodo.org/record/51326/files/CREATe-Working-Paper-2016-05.pdf. (accessed 14 June 2017). At the time of writing, societies seem to view the technology as a useful tool rather than as an existential threat.

[105] Many examples from classical music could be cited; perhaps the most obvious is Karlheinz Stockhausen's experiments with electronic music informing more mainstream, popular music, including The Beatles (for example, the band's 'Revolution #9' collage). An anecdotal illustration of Stockhausen's (sometimes unwitting) influence on electronic dance music is found in Dick Witts, 'Stockhausen Meets the Technocrats', *The Wire*, 141 (November, 1995), 33–5.

writers. The PRS actually operated such a guarantee, for the first two years of membership, as part of its unlogged performance allocation between 1992 and 1999.[106]

Copyright legislation has developed in tandem with, and in response to, specific times and places. For musical copyrights, the work-concept as developed in the early nineteenth century in the context of European classical music remains paradigmatic; it has proved remarkably adaptable to different forms and contexts. Although the work of Goehr and others means that the work-concept is understood in musicology, the idea's debt to classical music is insufficiently recognised in the music industry. After all, it informed part of the Berne Convention, a genuinely democratic and internationalist late nineteenth-century initiative whose precepts resonate today, even as they are challenged.[107] If copyright generally, and Berne's principles in particular, are to continue to thrive, a wider understanding of how they benefit individual creators (especially morally)—and hence those who appreciate their work—is important. As for collecting societies and other cultural institutions, the message of this chapter points to the need for acknowledgement and understanding of generic difference, in terms of language and support. This may go beyond the well-trodden pop/classical binary.

Consider, lastly, non-Western "classical" music, long positioned by Western writers and scholars within the realm of ethnomusicology or, even more problematically, "world" music. How should copyright societies across the world treat such music? In what ways should (and do) they distinguish between "their" and "other" classical musics?[108] What role, if any, should they have in encouraging, or incentivising, the development of such traditions?[109] These questions are pointers both to further research and towards a potential enriching of global cultural practice.

[106] The suggestion also has contemporary resonance with proposals mooted across the political spectrum to consider universal basic income.
[107] Moreover, its initial 1886 signatories were not limited to European nations, but included Tunisia, Liberia, and Haiti.
[108] An indicative example is the treatment of Indian classical musics by the PRS. Previously deemed non-classical for programme classification purposes, such programmes are now classified as classical, thereby accruing the higher concert tariff "LC".
[109] Michael Church, indeed, identifies most of the world's classical music traditions *other* than Western as endangered. See Michael Church (ed.), *The Other Classical Musics: Fifteen Great Traditions* (Woodbridge: Boydell Press, 2015): 17.