6. MIKE JONES, ‘ONE PENNY FROM BRAZIL: MUSIC PUBLISHING, REVIVED BUT UNTRANSFORMED’

In 2000, in a review of an extensive research programme into media economics and media culture, its leader, Simon Frith, made the simultaneously prescient and yet overdue recognition that, in his phrase, ‘the music industry is not a manufacturing industry, it is a rights industry’ (Frith 2000: 388). The recognition was overdue because, as he argues, the then dominant music industry research paradigm (which he identifies as the ‘Production of Culture’ approach) had become preoccupied ‘with the object manufactured being [...] the record’ (ibid.: 390). To paraphrase Frith, his argument was that, to understand music industry, we should not be distracted by the making of records but should instead follow the money. The principal beneficiaries of music sales are music rights owners.

In this discussion, I want to explore a recent phenomenon: the return to music-industrial prominence of music publishers. Publishers have long been main players in music industry (Harrison 2017; Passman 2015) but, in the 1960s, the rise of performers who were also songwriters (the Beatles and Bob Dylan as the most obvious examples) tended to draw attention away from the phenomenon of ‘Tin Pan Alley’ (Keightley 2010) and towards the recording industry with its value chain of A&R, marketing, promotion, sales and distribution. As I will argue, music publishers tended to become passive passengers in a music economy driven by major record companies.

As major record companies faltered in the early 2000s, and as the music economy began to change under the pressure of the take-up of digital communication, so music publishers found new ways to be active participants in that turbulent economy. Even so, the habits of passivity can still be identified. Further, these habits can be argued to be a key effect of the forms of contract that became standard to music publishing throughout the 20th Century. In more recent times, the Featured Artists Coalition (FAC) has argued that music publishers should ‘use or lose’ the copyrights they come to own. I hope to show the necessity for, and justice in, that demand through unpacking new approaches to accounting to signed songwriters, ones that see them re-designated as ‘clients’ of the music publishers with whom they have contracts, rather than the, always poorly-realised, status of ‘partners’ that such contracts enshrine.

*Uses not units*

The recording industry business model was that end users bought ‘units’: albums or singles released in physical carriers. As the practice of illegal file-sharing showed, many music users wanted recordings more than they wanted the compact discs that held them. From the perspective of rights owners, the first decade of the 21st Century was very much a battle to create new, law-abiding (and paying) habits among Internet-users. As memory of the recording industry’s absolute dominance of ‘the music industry’ begins to recede, there is now a new sensibility and a new confidence exhibited especially by music industry trade bodies such as the International Federation of the Phonographic Industries (IFPI) and the Music Publishers Association (MPA); one conveyed in this observation of Leslie Meier:

Figures compiled by the International Federation of the Phonographic Industries (IFPI) [...] suggest that in 2012, the value of global recorded music revenues grew for the first time since 1999, reaching US$16.5 billion […]. Moreover, if music publishing revenues are added to the equation, the worldwide music copyright industry exceeded US$25 billion in 2014. (2017: 3)

What is notable here, though, is not so much the beginning of recovery of revenues from sales - and now uses – of recordings, but that Meier should include the additional revenue from music publishing to establish that recovery. Even though music publishing income was always substantial, it is a sign of changing times when books about popular music begin to consider that revenue accrues from sources beyond the sales of recordings. As the inclusion of the figures show, ‘digitization’ is at last coming to seem a boon to owners of music copyrights *in general* – whether as recordings or songs - rather than solely a ‘bogeyman’ to (major) record companies.

In a combination of ways, all ‘players’ in music industry – whether record companies, music publishers, live agencies and promoters or musicians themselves – are beginning to adjust to a new economic environment in which there are now multiple revenue sources. Among these, while individual payments from music streaming might be microscopic, the accumulating totals of payments can be impressive, especially when synergies can be generated by cross-promotion of recordings across all fields. Take Drake as an example; *Forbes* magazine cites him as the ‘most streamed artist on the planet’ (1.3 billion streams) whose 2017 earnings they estimate at US$94 million (McIntyre 2017). We have no way of knowing what sources of revenue contributed what proportions of this total, but the income from streams on this scale will have been very great indeed.

When the focus of music-industrial activity switches away from selling records and towards encouraging user-generated ‘plays’ then rights-ownership takes on a new resonance; as an article the UK trade paper *Music Week* put it:

Amid all the changes in the music industry, one sector that is experiencing a resurgence is music publishing. The management of rights attached to compositions used on multiple platforms is as old as music publishing itself, and the quasi-symbiotic relationship between authors and composers and their publisher is as important, if not more, today than it ever was. (Legrand 2016: 14)

This new ‘visibility’ is reflected in an assertive and self-confident tone evident in interview after interview in *Music Week*. Take for example these comments, made by David Renzer, chairman of Spirit, a US ‘rights management company’: ‘We’re building Spirit B-Unique into a powerhouse boutique music publishing company that is already enjoying tremendous worldwide success’ (Gumble 2017: 2).

What is striking about this observation is that B-Unique was formerly a UK independent record company. As Mark Lewis, co-president of the newly amalgamated company, puts it, ‘we’re basically a record company that’s morphed into a publishing company’ (ibid.). Their formation of a joint company, together with the industrial relocation of that company (from recording to music publishing) shows how prescient Frith’s remarks were: seventeen years after he made them, a record company becomes a music publisher because it is there that ‘tremendous worldwide success’ is to be found.

If a ‘boutique’ music publisher is flourishing then this is a reasonable indicator that the vastly larger ‘major’ publishers are similarly thriving. The Managing Director of one of those majors, Warner-Chappell, confirms this when commenting that ‘publishing is a very creative space right now’ (Sutherland 2017: 10). Even so, as someone who continues to be published by another of those majors, Universal Music Publishing Group (UMPG), I would argue that UMPG’s supply of publishing figures to me, as one of its signed writers, identifies an experience far removed from this generalized euphoria.

*Universal Music Publishing Group’s ‘Royalty Window’*

In April 2015, UMPG switched to on-line royalty accounting. Under the title ‘Royalty Window’, the system replaced their former paper-based system. In and of itself there is nothing remarkable in a switch to ‘paperless’ accounting; it is common practice across all forms of money-transfer. In many ways, digital delivery of royalty collection information outstrips paper-based royalty accounting, both in the variety of forms of representation of the sources and amount of the royalties collected and in terms of the fine granularity of the detail digital representation affords. So it was that, in 2016, I learned, in an accounting of the second (six-monthly) period of 2016 that recently I had earned one penny in Brazil.

On encountering this fact I was simultaneously impressed and dismayed, with the questions, ‘how did they find that?’ and ‘only a penny!?’ representing the twin poles of the emotional continuum. These immediate impressions eventually gave way to a more critical reading of the entire enterprise of the Royalty Window but they did not give way immediately. There is something both dazzling and persuasive about the switch to digital: ‘dazzling’ because the graphical interfaces are both attractive and (superficially at least) quite useful, ‘persuasive’ because micro-payments take enormous amounts of paper to account (Figure 6.1).

**<TS: insert Figure 6.1>**

Figure 6.1: Royalties by period.

I was one of many songwriters whose copyrights were transferred, in 2006, from the music publishing division of Bertelsmann’s Music Group (BMG) to UMPG following the latter’s acquisition of the former. For me, a typical BMG royalty statement ran to eleven pages, but, if I downloaded the UPMG statement it would run to 107 pages, and this for someone whose songs are nowhere near as popular as they had been when those royalty statements were far shorter.

In the example below (taken from a BMG paper royalty statement) For example, the a song with the title ‘Toulouse’ is shown, in 1999, yielding yielded £19.74 from unit sales in two ‘territories’ (Germany, Austria and Switzerland, which combined represent the ‘G.A.S’ territory, and Hong Kong). This is accomplished in a limited section of a page that accounts two other songs in full and two in part (broken across the top and bottom of the page, respectively) (Figure 6.2).

**<TS: insert Figure 6.2>**

Figure 6.2: BMG paper royalty statement.

In stark contrast, the same song, which yielded yielding £3.09 in royalties in 2017, takes seven *pages* to account, so small are the payments generated (where the following illustration is only part of a single page) (Figure 6.3).

**<TS: insert Figure 6.3>**

Figure 6.3: UMG online royalty statement.

If we set aside, momentarily, how little the yield is from streams, the Royalty Window begins to lose its novelty when we realize that there is a sub-text to the graphical representation of royalties accrued.

*The penalties of assignment*

Garfield (1986) and Southall (2008) are two authors who discuss, in colloquial terms, how punitive music industry contracts were (and, by implication, can be). Yet this ‘knowledge’ tends not to deter aspiring musicians and songwriters from seeking ‘deals’. One such musician, and former student, once wrote to me in an email about his on-going efforts to become successful and concluded by observing that he was ‘still searching for that elusive recording and publishing deal’. The problem in this construction is that ‘a deal’ is conceived as a quantity, as an object, which is ‘elusive’ and requires a hard ‘search’ to secure. But a deal is not an artefact, not a quantity, and it is not something ‘lost’ or well-hidden; a ‘deal’ is a quality, it is more accurately and more productively understood as an agreement between two parties. These two parties, to cite a legal fiction, are empowered equally to agree how to trade one valuable item for another as the basis for a working agreement. The ‘trade’ is that, in return for his or her copyright, the musician-composer will receive ‘royalty’ payments for however long the agreement to assign or licence such rights is in force.

In my own experience, three problems arose from signing a ‘deal’: first, my copyrights could not be retrieved; second, my royalty payments were fixed as a proportion of income generated by them but with no guarantee that the publishers would work to generate royalties; and third, there was no provision that I would earn from any sale of my copyrights to a third party. To consider the last of these first, the observation was made previously that my copyrights were assigned from BMG Music Publishing to UMPG in 2006. This was not the first time that this particular group of copyrights had been assigned. This first happened when I ‘signed’ a publishing ‘deal’ with Block and Gilbert Music in 1984, where this assignment was from me to the contracting company. Those copyrights were then assigned again when this company was dissolved.

BMG was formed in 1987 and its newly established London office quickly persuaded the majority partner in Block and Gilbert Music (Derek Block, still a leading music agent and artist manager in 2019) to assign his copyrights to them. Because of the nature of the publishing contract I had signed, firstly, I could not resist or prevent this sale and, secondly, I could not participate in the windfall income earned by Block and Gilbert (BG) from the sale. This same set of conditions applied when BMG sold my copyrights (along with those of thousands of other songwriters) to UMPG. What money they earned from this sale passed to the company; nothing came to the writers whose copyrights they had had assigned to them (in my own case, and likely those of others, quite indirectly) as a result of purchases of existing catalogues undertaken from 1987 onwards. No amount of pastel-shaded, three-dimensional bar charts can compensate for the reality that, once assigned, copyrights only earn to the extent that they do, individually, from sales or uses. What I mean is that songwriters ‘buried’ in mass catalogues do not earn from the sales of those catalogues, only their owners do (for example, what if BMG had invested, on behalf of its writers, a large percentage of UMPG’s payment and paid its writers a regular dividend proportionate to their earnings?).

*Further penalties of signing a deal*

If we return to the illustration that shows the earning of one penny in Brazil (Figure 6.1), what needs to be noticed is the ‘strapline’ on the top border, which reads ‘Client Song Listing’. The page within the ‘Royalty Window’ graphic that identified that I had earned a penny in Brazil is headed ‘Client Song Listing’ and this is a cause for (great) concern: the point here is that, in agreeing the final, negotiated offer, I was not, nor did I become, a ‘client’ of BG, I was ‘simply’ a party to an agreement of assignment of copyrights. When I return to that contract, it makes for confusing reading. It reads confusingly, not simply because the language of the law is discursively so removed from everyday speech but because, beyond their payment of royalties to me, it is not clear what they are giving me (if anything) in return for my copyrights. Further, how the relationship is expressed in the original document is highly misleading; both of these dimensions of the contract warrant examination because both have a bearing on how, today, earnings from the copyrights are represented to me, digitally. The first source of confusion is in how the agreement is represented:

Dear Sirs,

We hereby engage you and you agree to enter into an agreement with us on the terms and conditions set forth below in this letter agreement (*sic*) and on the terms and conditions of the General Conditions attached hereto and made a part hereof wherein we are referred to as ‘the Licensee’ and you are referred to as ‘the Owner’.

The essential point that needs here to be grasped is that, while I (and my song-writing partners) may accurately be described as ‘the Owner’ of the copyrights, BG were certainly not ‘Licensee(s)’. Had they been ‘licensees’ we would have retained our copyrights and allowed BG to take a commission on any paying uses they generated during a limited period of time. I discussed this point with a lawyer who specializes in music industry agreements; his opinion was that the drafting was ‘extremely sloppy’ but not ‘intentionally misleading’. The root of the ‘sloppiness’ reveals itself later in the document when, quite suddenly, references appear to ‘CBS Songs Limited’:

Dear Sirs,

In consideration of, and as an inducement to, CBS Songs (sic) Limited (‘CBS’) entering into an agreement dated today with (‘the Owner’) the undersigned acknowledges that [...]

What seems to have happened is that, in their haste to sign us as songwriters, Jeff Gilbert (Block’s partner whom Block had recruited from CBS Records) had adapted an existing CBS *licensing* agreement as a full song-publishing one. Whether or not this is sufficient grounds to render the original agreement null and void is moot; for the purposes of this argument it ‘muddies the water’ because, in no true sense, were the original copyrights *licensed* to BG, they were assigned, and not just assigned, but assigned ‘irrevocably’ and ‘in perpetuity’:

(*clause*) 7. In consideration of the agreement for payment of royalties hereinafter contained you as beneficial owner hereby irrevocably assign and transfer [subject to the condition of general condition 12 hereof] to us for the Territory the whole of your copyright and interest, present, future or contingent whatsoever and wheresoever, now and hereafter known, in all the work[s] TO HOLD the same unto us absolutely throughout the World for the Rights term and all possible renewals and extensions thereof wherever and to the extent the law of any country so allows and thereafter as far as possible in perpetuity.

(all capitalization and punctuation as per the original)

This is the reason that UMPG continue to account royalties to me in 2019. They own the songs that became assigned to them for the life of the copyrights, and the reason why BG could assign the rights to them was because of this clause in the contract I signed. To have signed away my copyrights forever is an enormous sacrifice, and mistake, on my part. It is both mistake and sacrifice because the contract does not truly indicate what, aside from royalties, I might have expected in return for agreeing to their terms.

The collective trade body for the UK music publishing industry is the MPA. On their website they assert the following about the working relationship between publisher and writer:

The relationship between a music publisher and a songwriter/composer is supported by a publishing contract setting out the rights and obligations of each to the other. Under these contracts songwriters and composers assign the copyright in their music to the music publisher in return for a commitment to promote, exploit and protect that music.[[1]](#footnote-1) (Music Publishers Association 2019)

In the contract that has led to my using the UMPG Royalty Window, BG appear to be under no obligation other than to pay royalties. Further, the agreement contains no indication of any effort the company might make in promoting the copyrights I assigned to them and neither am I afforded any means of monitoring the company’s commitment at what cannot help but seem the beginning of a (business) relationship between us. While it is clear from the contract that it does not constitute a legally-recognizable ‘joint venture’, it is reasonable to draw the inference from their offering ‘a deal’ that the music publisher would want to work with me as a songwriter and would want to ‘work’ (in the sense of make money from) the copyrights they have been assigned. Whatever the strengths and weaknesses of the making of such an inference, and however much the contract was not the basis of a joint-venture, what the assignment *did not* make me was a client of BG. It is for this reason that I am now not a client of UMPG and, for what are likely to be an identical set of reasons, neither are any of UMPG’s many other writers, living or dead.

It is vital to contest this re-designation from equal party to an agreement to ‘client’ because what the acceptance of client status carries with it is a further dilution of the nearly non-existent obligations music publishers make to songwriters. If I accept my imputed ‘clienthood’ then UMPG becomes a variety of ‘collection agency’, which retains my custom by tracking down even the tiniest royalty payment from the most distant ‘market’ (as in the case of one penny from Brazil) and commissions me for its efforts. As it is, the Performing Right Society already plays this function for me and, in any case, UMPG have to do nothing to ‘retain my loyalty’ because they own my copyrights ‘in perpetuity’. Bagehot and Kanaar make the point that,

All publishers [...] offer a positive obligation that they will at least use reasonable endeavours to exploit compositions but such an obligation is very nebulous and the cynically minded might think that the words were included in a contract merely to give it the appearance of being more fair and reasonable and thus with a better prospect of enforceability by the courts in the event of a dispute. (1998: 141)

By re-positioning a ‘signed writer’ (an assignor of copyrights) from someone with whom they work to someone *for* whom they work to collect royalties, UMPG could be argued to be accomplishing something far more profound than simply ‘future-proofing’ themselves against litigation as a potential eventuality. If I accept that I am a client of UMPG then, in turn, my client-status is a *de facto* acceptance that UMPG is not to be seen as an agency working to generate income from copyrights, but only as one that collects income generated by some other party. ‘Client’ shifts the ‘nebulous’ obligation into an even more imperceptible form. Yet perhaps there is a sense and a logic to this that serves a larger purpose for them, as well as for all large-scale music publishers. To understand this we need to refer back to the ‘Royalty Analysis’ block diagram.

*The dead letter office*

Inevitably, any graphical representation of income distributed a chart such as Figure 6.2 draws attention to its peaks rather than its troughs. In a block-diagram, just like physical tower blocks, the eye engages with the tallest structures and implicitly dismisses the ‘ground’ on which they stand as necessary, supporting landscape; except that the ‘flat land’ here is, in fact, evidence of gross inactivity on the part of UMPG.

If we consider the six categories of royalty collection activity represented in the ‘Royalty Window’ – ‘mechanical, ‘performance’, ‘digital’, synchronisation’, ‘sheet music’, ‘other’ - the greatest proportion of my royalties is consistently ‘mechanicals’. Although mechanical royalties can be generated by streaming (and the diagram gives no indication of their derivation), it seems likely that these continue to be generated from sales of compact discs (a brief trawl at the time of writing through Amazon turned up ‘customer reviews’ of recent purchases of a range of different albums containing songs I have co-written). Essentially, UMPG plays no part in the promotion of these CDs, their sales happen entirely by chance and there is therefore no indication why there was a comparative surge in sales in the first half of 2016. This in turn throws into question the comprehensiveness of the data on offer: the Royalty Window can tell me that my earnings were above average in one period but cannot tell me why.

After mechanical royalties, performance royalties are the second most lucrative source of income for me. Again, as performing rights can derive from streaming, it is not clear from what source or sources these royalties accrue, although the (depressing) truth is likely to be that, for a whole six months, hardly any radio station anywhere played one of my songs (still the most lucrative source of performing royalties). Here again though, UMPG play no part in securing radio plays for the copyrights it owns, as in the case of sales these are chance affairs and they are happy to collect their share of the royalties so generated. In turn, that ‘share’ is not inconsiderable. To return to the original music publishing contract:

(*clause*) 5.01 We shall pay to you the following royalties in respect of the works:

b. (Sixty Five percent) of gross income in respect of the mechanical reproduction of the works save that in respect of income arising from the mechanical reproduction in the United Kingdom the figure shall (*sic*) 75% (Seventy Five percent).

UMPG ‘earns’ 0.35 of my one penny from Brazil, for very little effort. And this lack of effort is reproduced across the board. Royalty payments show no evidence that the company has secured any ‘covers’ of songs I have written or any ‘synchs’ of songs of mine that have been recorded, yet it is covers and ‘syncs’ (to use the more generally accepted, colloquial abbreviation) that are so much part of the new found, and increasing and intensifying, industrial centrality of music publishers.

*The horns of a dilemma*

The synchronization of music with moving image has long been a lucrative area for music publishers, from the first ‘talking picture’ onwards. What has intensified and foregrounded sync is a combination of factors, driven by digitization. David Yoffie (1997) was the first to engage with the then barely-emergent phenomenon and Henry Jenkins (2006) (among others) developed this exploration. Essentially, as memory capacity, processor speeds and Internet bandwidth grew and became independent from landline connections, it became increasingly easy to stream sound and moving image to smaller and smaller devices. One of the areas to exploit this phenomenon was digital gaming (Donnelly 2014, Collins 2008a, 2008b, 2013).

Alongside the rise of gaming, there has also been a proliferation in television channels. This has intensified the demand for incidental and featured music and has increased exponentially the space for advertising and especially branding (Jackson et al. 2013), with the latter’s increasing reliance on a distinctive music soundtrack generalizable across virtual and real spaces (Meier 2017: 9). When all of this is coupled with the commonality of user-generated audio-visual (AV) content (Wyrwoll 2014), the significance of YouTube as a ‘freemium’ streaming service (Vernallis 2013), the economic support offered to ‘bloggers’ by the carrying of ‘sidebar’ ads (increasingly AV ‘pop ups’), and the rise of online television and film providers (some of whom, Netflix as an example, now make their own content (Jenner 2014)), then there should be little wonder that, just so long as they are collectable, this is a bumper time for harvesting sync royalties. Even so, this is not a ‘bumper’ time for me as a songwriter; my royalty payments proceed inexorably downwards as the data (the ‘numbers’, courtesy of the Royalty Window) show more graphically than ever before.

The blunt truth is that no one is ‘working’ my copyrights, yet, when challenged on the general point of under-utilization of their particular massive catalogue, Guy Moot, Managing Director of Sony/ATV denied this vehemently:

Question: Your independent competitors would say that you have too many copyrights to give them all the attention they deserve. What is your response?

[...] we have a huge resource. We’ve got 15 people working on synchronisation [...] we’re fully staffed up to deal with the amount of copyrights we’ve got [...]. We’re very focused on the catalogues we have and we staff accordingly. (Sutherland 2016: 11-12)

There is no way of knowing how many copyrights each of these ‘15 employees’ are responsible for and what the division of labour is between those who work new copyrights and those who work back catalogue, but there is an air of defensiveness in Moot’s comment and this complements a hollowness in the further comment of Warner-Chappell Managing Director Mike Smith, ‘There’s a real drive to make sure you’re looking after your writers 150%’ (Sutherland 2017: 10). What seems apparent is that the writers who are looked after ‘150%’ are those who have (almost literally) ‘track records’ of hits, whether in the form of sales of their own works, or as covers, or as syncs placed in games, television programmes, film soundtracks or in AV branding exercises.

Syncs are alluring because not only can a ‘one-off’ sync be lucrative, some syncs can go on earning sometimes for decades; consider ‘Mad World’, written by Roland Orzabal (of Tears for Fears) and sung by Gary Jules. Jules’ version was used on the soundtrack of the film *Donnie Darko* in 2001. Subsequently, this version alone has appeared in five further films and in fifteen television programmes, in an unknown number of television ads (notably in the UK for Lloyd’s Bank in 2016) and it also topped the iTunes chart in 2006 as a result of featuring in (as well as lending its name to) the first iteration of the video game *Mad World*. If we added in the number of times the Tears for Fears original has featured in such contexts, as well as further cover versions (including, among many others those by Tiesto and by Akon featuring Eminem), then this one song by Orzabal (written as a 19 year old in 1982) is a ‘pension’ in its own right (and Tears for Fears had at least two bigger hits than this). In all of this we cannot know who was active in securing the uses of the song and/or recording, but we can be sure that the rights owner would drive the deal in each case.

The dilemma facing a songwriter such as myself is that, on the one hand, a hit song (or preferably songs) can be, exactly, a pension and in increasingly uncertain economic times a pension is an attractive ‘prize’. The flip-side of such venality is that the treatment of the song (or a specific recording) can fail to respect the original, to the extent that it can be positively offensive to the integrity of that original. Take for example the use, in October 2017, of Stephen Sondheim’s ‘Send in the Clowns’ by the carmaker, Audi. Sondheim’s original elucidates the heartbreak of the female lead, Desiree, in his musical *A Little Night Music*. In the Audi version, the plaintive even heart-rending piece becomes an aggressive assertion of ‘vorsprung durch technik’, one in which the steely power of the automobile reflects not just the driver’s superior driving skills, as against those of other drivers represented as ‘clowns’ (hence the soundtrack, the ‘sync’), but, by implication, his or her superior taste, sensibility and, more importantly still, income and status. Sondheim earns from this sync (as he does from over 900 cover versions of the song) but earning is surely not everything in the face of a use of a copyright that does such violence to the original. A violence, it must be remarked, that goes entirely unregistered by one of the advert’s ‘music supervisors’, Ayla Owen (of The Most Radicalist Black Sheep Music), who commented to *Music Week* that ‘The current Audi music vibe is all about classic songs reinterpreted with a progressive twist, and Clowns is a brilliant example of this approach’ (Homewood 2017: 12).

*The same old song*

The key set of numbers missing from the UMPG’s Royalty Window is the total of the units of energy used by the staff of UMPG in seeking covers and syncs of the songs I wrote and they own. These units of energy could be expressed both as calories (used up in searching for opportunities) and joules (generated in pushing against the competition to secure those opportunities). A persuasive counter-argument might be that, just because such ‘numbers’ do not appear in my statement does not mean that such energy has not been expended. All those songs may have been listened to and rejected or else they may all have been listened to and even now are ‘on hold’ waiting for exactly the best and most apposite opportunity to deploy them. A counter-counter-argument would be that I have no evidence that this work has taken place (in the sense there are never any meetings with, or correspondence with, my ‘partners’). If, perhaps, I truly was a ‘client’ of theirs, this would be a very bad example indeed of customer relations.

What surprises me about this evident lack of effort and demonstrable lack of discussion is that so much energy would seem to have been expended to find a penny in Brazil. More puzzling still, the securing of covers and syncs is very much in the interest of UMPG. If we return to the originating contractual assignment we find the following:

(*clause*) 5. 01 We shall pay to you the following royalties

(e) 65% (Sixty Five percent) of gross income in respect of any synchronisation licences granted by us or our licensees.

(f) […] we shall pay you fifty percent (50%) of such sums where such income is attributable to Cover Recordings.

What this means is that UMPG earn 35 per cent of any sync they secure, and an extremely generous 50 per cent of the royalty produced by a cover version. Somehow, though, these appear to be insufficient incentives in and of themselves to work the catalogue; instead, as income from streaming and from AV usages of music go on increasing, there is an air of complacency about this inactivity wherein merely owning rights is enough. It is this complacency that goes to the heart of the matter.

While it is indeed the case, in Meier’s quoting of IFPI figures and Sutherland quoting Renzer’s anticipation of (implicitly sustainable) ‘worldwide success’, that music publishing is in an expansive phase, this expansiveness conceals (from a songwriter’s perspective) a great deal of frustrating and familiar passivity on the part of individual music publishers.

It now seems a long time since illegal file-sharing began to disrupt the certainties of the business model of the recording industry. Why the disruption was so severe was that the three principal music industries – recording, live performance and music publishing - all had vested interests in the creation of recording stars; stars who, in turn, were then largely expected to write their own material. Because of this expectation, there had become far less for music publishers to do than they had been used to in the days of the Tin Pan Alley ‘song-pluggers’. So it was they became for many decades passive owners of copyrights and passive collectors of royalty payments generated by the efforts of the promotions and sales departments of the major record companies. Now that the days of ‘song-plugging’ appear to have returned, a combination of ingrained passivity and deep mine-shafts full of copyrights means that, for the most part, those copyrights remain as dead as the last air on which the strains of their sounds were carried.

*Conclusion*

To find a penny in Brazil seems to take effort, but perhaps it does not, perhaps the money simply flowed to London from Rio or Sao Paulo by digital means, triggered by the International Standard Recording Code (ISRC) embedded in the streamed or synced track. Certainly, it is someone’s job to fit the payment to the beneficiary, but as the publishers Kobalt are demonstrating, royalty distribution is likely to become a process of instant triggering and receipt. Frith was right to argue that ‘the music industry is [...] a rights industry’. Despite this, as well as being overdue and prescient, there is still something misleading about his observation. ‘Industry’ is an active term, it is concerted effort towards the production of an outcome, and the problem with music publishing as an example of ‘the music industry’ at work is that the effort of the songwriter is made exchangeable in return for the promise of royalty payments but once copyrights have been assigned, the effort of the songwriter has for too long ended there. Clearly, in digital times, there are now far more ways for songwriters to be proactive in terms of garnering ‘plays’ for their work, but while signed to a music publisher, is the songwriter working for themselves or for the publisher?

I signed my first music publishing contract a long time ago. Perhaps the key, and fatal, clause in that contract was this one:

(*clause*) 7 […] Without prejudice to the generality of the foregoing, the interest present, future or contingent hereby assigned includes the following sole and exclusive rights

This is a stark and definitive slamming of the door on co-operation. From that fateful day onwards the songs I wrote were condemned to be ignored; condemned to generate money without effort for any publisher to whom they were (and will in the future be) assigned. That signing was, in effect, the end of *my* music industry and yet, all these years later, I am willing and able to promote the songs I wrote. The stark reality is, though, that the disincentive is a profound one, because those songs are not, in fact, ‘mine’; they are, as the clause indicates, (now) the ‘sole and exclusive’ property of UMPG.

Music publishing does not need to be this way; even the ‘majors’ appear to have relinquished ‘in perpetuity’ clauses and there are examples of new companies (such as Sentric) who offer an ‘easy in, easy out’ assignment of copyright (a period of notice of one month to remove copyrights from them). All of this is too late for me, although a subsequent music publishing contract I signed with EMI contained a ten-year ‘reversion’ clause which shows that, even years ago, it was possible to evade a demand for ‘in perpetuity’ assignment if not exclusivity:

(*clause*) 7. SPECIAL and ADDITIONAL CLAUSES

Term of the agreement: September 1st 1993, 1993 – August 31st, 2003.

Even so, while this knowledge is comforting, it is so only to a limited extent. Whether in the UMPG case, or the case of the EMI contract, there is still no obligation on the part of the music publisher to do anything with the copyrights assigned to them, beyond the collection and transfer of royalties subject to their high levels of commission. The creation of a Royalty Window comes a long time after the event, and ‘the event’ has largely been a catastrophic one for me. What needed to be spelled out, not just in my publishing contracts but in all publishing contracts, is a commitment from the publisher that they will ‘use or lose’ the titles they are assigned. This has been one of the six key demands of FAC since its formation in 2009: ‘Copyright owners to be obliged to follow a ‘use it or lose it’ approach to the copyrights they control’ (FAC 2019).

What is interesting about FAC is that two other of its six core demands also coincide with this unpacking of my responses to having earned a penny in Brazil: ‘An agreement by the music industry that artists should receive fair compensation whenever their business partners receive an economic return from the exploitation of the artists’ work’; ‘All transfers of copyright should be by license rather than by assignment’ (FAC 2019). It is ironic that my first, hastily, and poorly-drafted, music publishing contract should have referred to the assignees as ‘licensees’ when they were not because, if BG had been licensees, those first 50 songs would now not be in the perpetual possession of UMPG. On the other hand, if ‘fair compensation’ was an industry standard then I may have earned more from being ‘signed’ to them for so many years.

In summary, the music industry has always been a ‘rights industry’, it is just that this was less apparent when the recording industry dazzled us with the stars it made. The years of painful transition from a recording-dominated music industry seem at last to have revealed the defining truth that the ‘numbers’ that count are those that flow from rights ownership. In turn, these can only be made to tell their full story when one looks beyond the view available from the Royalty Window.

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1. It is interesting and notable that even in 2019, the MPA do not identify alternatives (such as the songwriter/composer limiting by licence the use of their rights) to this ‘all or nothing’ practice of assignment. [↑](#footnote-ref-1)