

The production of music: explorations in law, creativity and technology

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The larger project

Performers' rights:
music-making in the digital era

This paper

PERFORMERS' RIGHTS

copyrights v performers' rights

PRS v PPL

INTERVIEWS

Orchestra Elastique + + +

influences

findings

Performers' rights are for performers
'unlikely to create an original
musical work'.

Arnold (2010, 10)

Provided the contribution of the individual band member to the overall work is both significant (in the sense that it is more than merely trivial) and original (in the sense that it is the product of skill and labour in its creation) and the resulting work is recorded (whether in writing or otherwise), that band member is entitled to copyright in the work as one of its joint authors and to any composing royalties that follow.

Blackburne J in Fisher v Brooker [2006]

Credit while you can!

Fisher v Brooker [2006/2008/2009]

PROCOL HARUM

a whiter shade of pale

HIT-PARADE

Life lines of



MATHEW GARY RAY DAVE BOBBY

CHART-TOPPING PROCOL HARUM

<p>Real name: Mathew Charles Fisher Birthdate: March 7, 1946 Birthplace: Croydon Personal points: 5ft. 8in.; heavy; hazel eyes; brown hair</p>	<p>Gary Brooker May 29, 1945 Hackney 5ft. 11in.; 11st. 7lbs.; patchwork eyes; black hair</p>	<p>Ray Royer October 8, 1945 The Pinewoods 5ft. 6in.; 8st. 9lbs.; green eyes—subject to change in atmosphere; mousey hair</p>	<p>Dave Knights June 28, 1945 Islington 6ft.; 10st. 6ozs.; blue eyes; brown hair</p>	<p>Bobby Harrison June 28, 1943 East Ham 5ft. 10in.; 11st. 7lb.; brown eyes; patchwork hair</p>
Brothers'/sisters' names: Judith	Angela, Gale, Rudolph	Lorraine, Yvonne, Mary	Ken, Fred	Yvonne, Susan, Joan, Richard
Present home: Croydon	Eastwood	Leyton	London, N.W.5	Brentwood, Essex
Instruments played:				
Where educated:				





Beckingham v Hodgens [2002/2002/2003]



copyrights

v

performers' rights

Copyrights v performers' rights

- lack of simplicity
- performers are second
- no right to ER in films
- not protected from imitation
- moral rights in the UK are weak
- duration

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art venues, cinemas, bars and pubs, shops
radio and TV broadcasters
cable and streaming service providers



PRS



composers, songwriters, publishers



- performance rights (s.19)
- communication to the public rights (s.20)



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- communication to the public rights (s.20)



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PPL



Performers and record companies



- making available right (s.182CA)
- right to equitable remuneration for exploitation of a sound recording (s.182D)

Right to equitable remuneration for exploitation of a sound recording (s.182D)

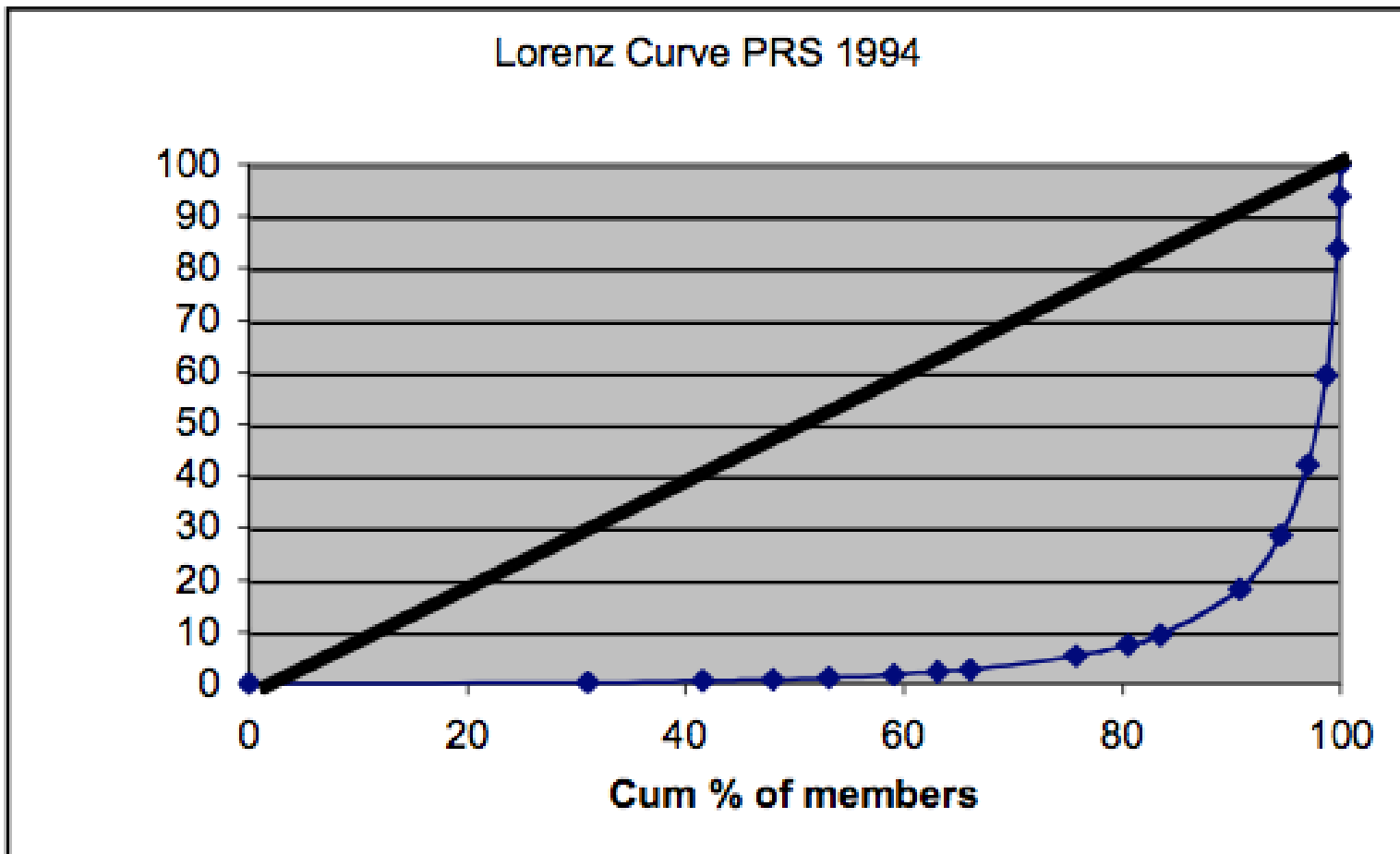
- (1) Where a commercially published sound recording of the whole or any substantial part of a qualifying performance—
- (a) is played in public, or
 - ^{F190}(b) is communicated to the public otherwise than by its being made available to the public in the way mentioned in section 182CA(1),]
- the performer is entitled to equitable remuneration from the owner of the copyright in the sound recording.



v



- collected £ 665.7m
 - 104,000 members
 - gross income per capita £ 6400
- collected £ 152.2m
 - 90,500 members
 - gross income per capita £ 1682



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Orchestra Elastique
+
other respondents

Orchestra Elastique

- dilution of composer / performer dichotomy
- no standards or pre-composed material
- no rehearsals

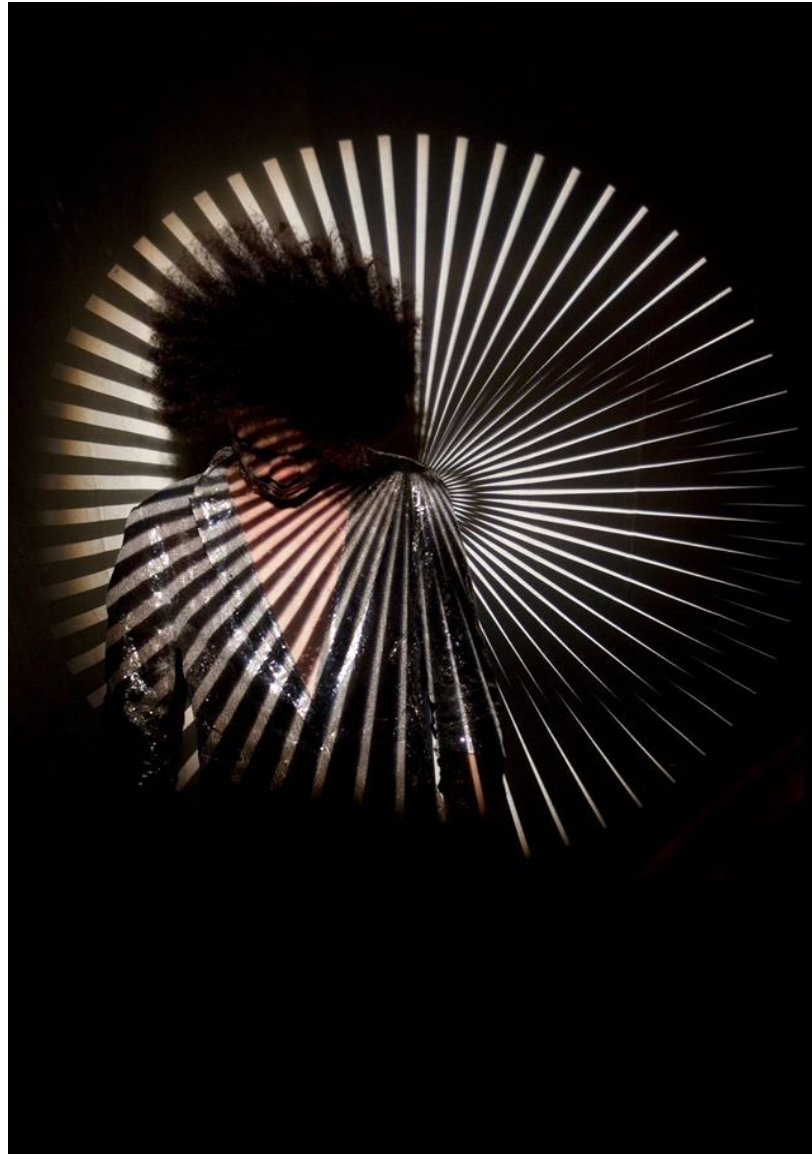
Orchestra Elastique



Orchestra Elastique



Orchestra Elastique



Orchestra Elastique



Orchestra Elastique



Orchestra Elastique



Preliminary findings

- technological prowess
- ability to navigate the market
- competent users of social media
- strong opinions on circulation of their work
- low degree of legal understanding

Influences

- Tom Phillips and John Street (2013)
- Jessica Silbey (2011)
- Richard Peterson and Narasintham Anand (2004)

Tom Phillips and John Street (2013)

Concern with legal matters:

- increases with experience and time in the profession;
- is not necessarily linked to whether their living depends on the exploitation of their rights;
- is influenced by experience of the industry, genre, political values and aesthetics.

Jessica Silbey (2011)

- IP is central at company level
- creative impulses are associated with contracts and joint venture, not with IP
- moral rights take precedence over economic rights (=piracy)
- IPRs are considered after finalisation of a work, not before

Richard Peterson and Narasinhham Anand 2004

production of culture perspective: six-facet model

- industry structure
- law and regulation
- organisational structure
- occupational careers
- technology
- market

Industry structure

- not the focus of this paper
- winner-takes-all market

Law and regulation

- rights come into action when people start showing enough interest to warrant a monetary exchange (=no support for the creation process)
- musicians are more likely to associate copyrights with their moral rights than with their economic rights

Organisational structure

- aesthetic ethos plays role in formulating the organisational structure
- extra-musical skills and professions assist in keeping bands running

Occupational careers

- musical careers are vocational and financial gain is not essential but an aspiration

Technology and Market

- democratic web 2.0 tools have made competition fiercer than ever
- established fan-base has become the pre-requisite for being signed by a record company
- sources for music discovery are varied and far from being exclusively digital

Conclusions

- considerable distance between first attempts to enter the market and legal knowledge
- some of the disinterest in legal matters is deliberate
- signing with a label is still an ambition for musicians
- musicians are not encouraged by the system to inform themselves about their rights

Thank you.

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