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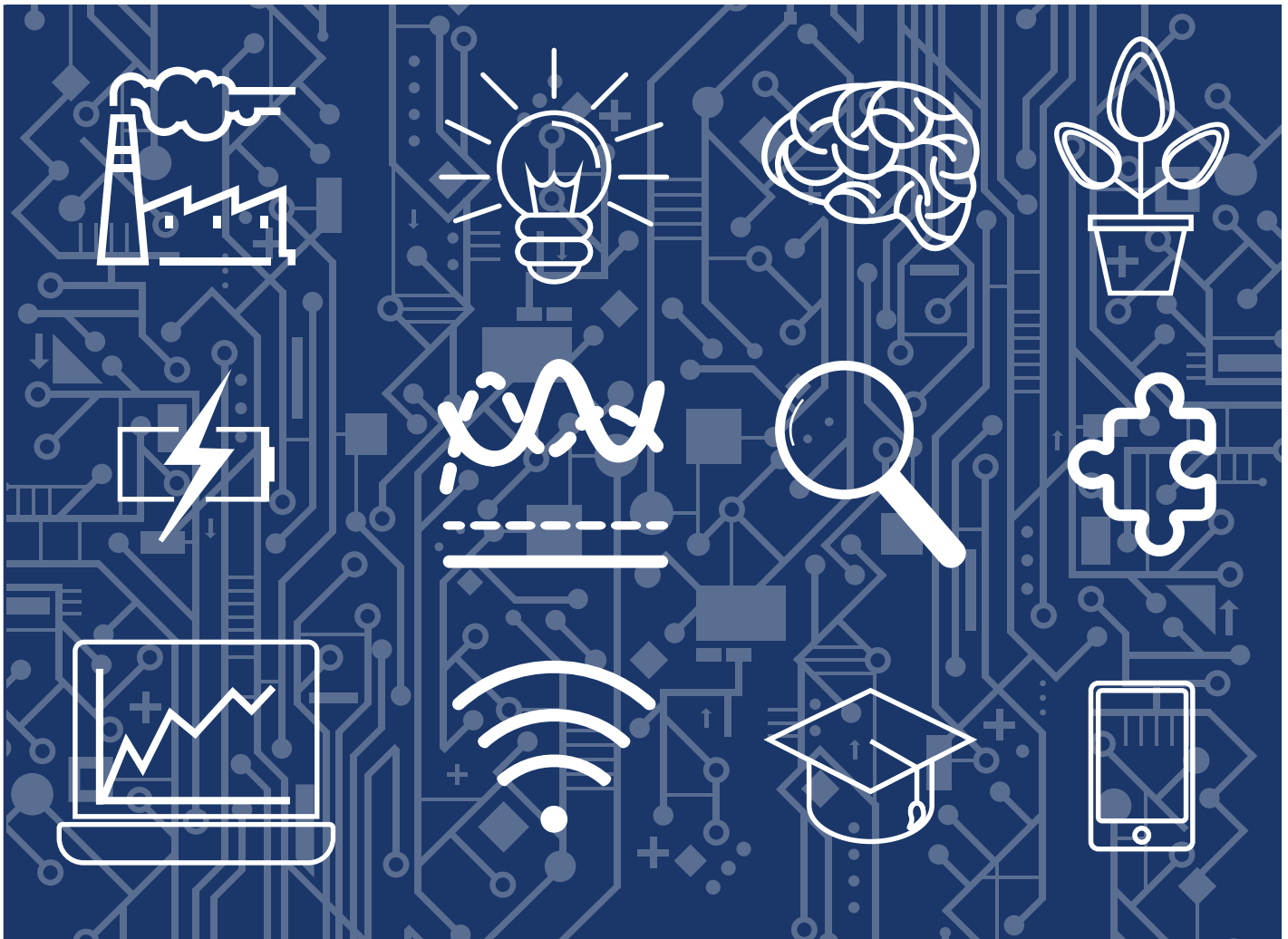
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Creative Industries  
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# Music Creators' Earnings

## Buyout Contracts in the UK Audio-visual Commissioning Sector

September 2021



## Funding, authorship and acknowledgements

In 2020, the UK Intellectual Property Office (IPO) commissioned research led by Dr Hyojung Sun at the University of Ulster and the Creative Industries Policy and Evidence Centre (PEC) with Professor David Hesmondhalgh (University of Leeds) and Dr Richard Osborne (Middlesex University) as Co-Investigators. As the scope of the project grew in size in response to increasing public and industry interest in this issue, further funding essential to the completion of the project was provided to the University of Leeds, with Hesmondhalgh as Principal Investigator, by Research England's Quality-Related Research Strategic Priorities Funding (QR SPF) from January to March 2021 and by the IPO from April to July 2021. These extra funds allowed for employment of a Research Fellow, Dr Kenny Barr (now at the University of Glasgow) at the University of Leeds from January to June 2021. Support for some of the time of two of the researchers came from DigIT, the ESRC Digital Futures at Work Research Centre (Hesmondhalgh) and the AHRC Creative Industries Policy and Evidence Centre (Sun – full time).

This research has generated two reports: the present one, with Barr as lead author, and a longer co-authored report on Music Creators' Earnings in the Digital Era, published in parallel with this report, and also available from the IPO website. Readers of this report are referred to the glossary provided at the beginning of that longer report for explanations of key terms and abbreviations.

The overall aim of the research that generated both reports was to collate and provide objective evidence to facilitate constructive and informed debate about music creators' earnings. In this, the Research Team were able to draw upon input and advice from an Industry Steering Group consisting of representatives of the following organisations: The Association of Independent Music (AIM), British Phonographic Industry Ltd. (BPI), The Featured Artists Coalition (FAC), The Ivors Academy, The Musicians' Union (MU), The Music Publishers' Association (MPA), and PRS for Music.<sup>1</sup>

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<sup>1</sup> Hasan Bakhshi of the AHRC Creative Industries Policy and Evidence Centre (PEC) also attended meetings as an observer.

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## Executive Summary

This report was commissioned by the Intellectual Property Office to examine a key aspect of the market for music commissions in the UK audio-visual (AV) sector: so-called ‘buyout’ contracts between commissioners and composers for screen. As new-entrant Subscription Video on Demand (SVoD) services become increasingly influential commissioners of content in the UK sector, concerns articulated by a number of stakeholders suggest buyout deals are becoming increasingly common. Payment in such agreements is limited to one-off fees at the ‘front-end’ of the deal, with music creators required to waive any claim to potentially valuable ‘back-end’ royalties. Moreover, it has been suggested that these deals are increasingly offered on ‘take it or leave it’ terms. Such developments have profound implications for music creators’ earnings in the streaming age.

The report first identifies the origins of these debates and examines academic and industry discourse around this subject. Following from this, the approach employed in the study is set out. The findings presented here are drawn from three research methods:

- A survey of 69 media composer contracts provided by the Musicians’ Union.
- Focus group discussion with media composers.
- Semi-structured interviews with key stakeholders, including: trade organisation representatives, collective management organisations, music publishers and screen commissioners.

The main findings of the report are:

- Opportunities for AV commissions have greatly increased in the streaming age, but there are a great many more creators active in the marketplace.
- Commissioners suggest that originally commissioned works have become more attractive in order to ensure control of the music component of AV content in an increasingly complex and fragmented licensing landscape.
- A number of contributors noted the importance of being able to trade-off ‘front-end’ and ‘back-end’ dimensions of a commission but intimated that this had become more challenging in a market increasingly characterised by ‘take it or leave it’ terms.
- There was consensus from music creators and trade organisation representatives that ‘front-end’ commission fees have declined while the ‘back-end’ dimensions of screen commissions have also been eroded in the digital age.
- The majority of contracts surveyed did not constitute full buyouts of music creators’ rights as the ‘writer’s share’ remains a significant element that commissioners cannot buy out in the UK.
- While some rights are routinely licensed/assigned/waived in contracts, there was general agreement that protections afforded in respect of unassignable aspects of performing rights should be upheld.

There is considerable scope for further research in this area. A number of potential approaches and lines of inquiry are identified in the report:

- Examination of the extent to which any increase in opportunities for media composers in the streaming age has affected opportunities for new commissions for media composers from underrepresented groups.
- A large-scale survey of agreements between AV commissioners and music creators in order to examine the key features of such deals and how these have evolved over time.
- Research involving different constituencies of writers for screen, including those at the start of their careers, to gain better understandings of creator motivations and contract negotiation processes.
- An examination of the potential for a music commissioning code of practice to be implemented, using relevant comparators from relevant sectors/industries.

## Introduction

This report examines the subject of ‘buyout’ agreements for music commissions in the UK audio-visual (AV) sector. In such deals, music creators’ earnings are wholly dictated by fees and inducements received at the ‘front-end’ of the deal – for example in the form of one-off payments when a piece of work is delivered and/or released. At the ‘back-end’ of these deals, i.e. as the piece of music circulates in various contexts, the music creator will not earn any more income from the long-term exploitation of music they have created. Central to this is the issue of how copyright is assigned, licensed, and in some cases bought out in transactions between primary creators and commissioners. It has been suggested that not only are buyout deals increasingly common in the UK market (Martin 2020, Bickerton 2021), but that the scope for negotiation of the ‘front-end’ and ‘back-end’ dimensions is diminishing as ‘take it or leave it’ propositions increasingly characterise the experiences of music creators operating in this market. Moreover, while ‘back-end’ rewards are being eroded, it has also been reported that ‘front-end’ fees, rather than increasing by way of compensation, are also diminishing in the contemporary market (Ivors Academy 2019). This confluence of factors, said to negatively affect the earnings of music creators, has stimulated considerable pushback from UK trade organisations representing music creators, namely The Ivors Academy (2021) and the Musicians’ Union (2021a).

The contemporary context for this report is an AV production sector that has been the site of steep and sustained growth in recent years. This growth profile is particularly evident in the TV production realm. While expenditure by public service broadcasters (PSBs) on original content has declined in recent years, this decline has been more than offset by the emergence of subscription video on demand (SVoD) services such as Amazon Prime and Netflix as commissioning powerhouses in the UK screen sector (Ofcom 2020). In addition to the rise of these new entrants, incumbent broadcasters and transnational media companies have increasingly moved into the on-demand streaming market: Britbox, Discovery, Disney+, BBC iPlayer, Now TV and a host of other services and platforms now populate an increasingly crowded and competitive VoD landscape. Many of these services operate both as commissioners and aggregators of screen content containing originally commissioned music. Alongside these developments in the TV and film sector, there are many other outlets for screen content that use music commissions and music from production libraries: in games, commercials, and the proliferation of video sharing platforms like TikTok, Twitch and YouTube. At sector and firm level UK producers of screen content have been hugely successful, both commercially and critically, in capitalising on these lucrative new opportunities (Oliver and Ohlbaum 2020, Doyle et al. 2021). However, the extent to which music creators have been able to share in this prolonged period of growth for many sectors of the AV production sector remains unclear.

In this changing industrial environment, characterised by high levels of technological and business-model innovation, it has been asserted that AV commissioners are becoming increasingly acquisitive in respect of music rights (MU 2021a). This has clear parallels with adjacent areas of the screen industries where buyouts of all rights by SVoD commissioners in dealings with television production companies are said to be increasingly prevalent (Doyle et al 2021: 216). Similarly, commissioners of music for screen are said to routinely seek agreements that allow them to fully control works on a global basis for the full term permitted by copyright law. The ramifications of such developments are potentially profound and far-reaching, but nebulous for all stakeholders in dictating how different constituents share in revenues generated from these activities. In order to identify and interrogate the key issues at stake, section 1.1 of this report first examines the existing academic and industry discourse on the subject. In this section, key terms and concepts are introduced and defined. Following from this, section 1.2 sets out the approach and the mixed method research design employed in the study. The findings from each stage of the research process are then set out and discussed in section 2. This informs the concluding section 3, where the significant findings and themes of the report are summarised.

## 1.1 The Buyout Debate: Industry and Academic Discourse

This section examines the existing academic research into contractual practices in the music business and tracks the origins of the debate and controversy surrounding the issue of buyouts in the contemporary AV commissions sector. From this, the core research questions are identified.

### 1.1.1 Contracts between art and commerce

The central issue being examined in this report is contracting practices employed in the contemporary market for music commissions in the UK audio-visual sector. There are, as yet, no scholarly studies that address specifically this particular issue in relation to the AV setting. There is, however, a significant body of literature examining contracts in the wider cultural industries and the music industries specifically (Caves 2000, Macmillan 2000, Greenfield and Osborn 2007, Stahl 2013, Harrison 2017). Richard Caves (2000) characterises the contract as: an agreement that governs the conduct of any economic transaction, defining what each party brings into and takes from the transaction (Caves 2000: 11). Central to such agreements in the cultural industries, and the music industries in particular, is establishing ownership and control of copyright that subsists within the musical works and recordings thereof. The music industries are, to a large extent, copyright industries (Frith 1988, Wikström 2013). The creation and exploitation of the ‘bundle of rights’ that subsist in musical compositions and sound recordings are the foundation of the music publishing and recording industries. There is considerable interdependence across the three main components of the music industries: music publishing, the recording industry and live music. Therefore, contracts that govern the commission and exploitation of music in this industrial ecosystem define what music creators bring to the transaction, and dictate what they stand to gain.

The vast majority of scholarly work on copyright contracts in the music industries has focused on recording contracts and to a lesser degree, music publishing contracts (Greenfield and Osborn 2007, Jones 2012). A comprehensive examination of contemporary contracting in the recording and music publishing industries can be found in Chapter 4 of *Music Creators’ Earnings in the Digital Era*, published in tandem with this report, and also commissioned by the IPO (Hesmondhalgh et al., 2021). In summary, these types of agreements typically involve the assignment or licensing of copyright in return for a ‘front-end’ advance payment to the creator as an inducement to sign the deal and subsequent ‘back-end’ royalty payments. It should be clear that the terms ‘front-end’ and ‘back-end’ are used here to refer to the point at which creators derive income from work, and does not imply any judgement on the relative importance of these income streams. For example, ‘back-end’ performing rights income can represent a significant primary income stream for many screen composers.

The agreements typically stipulate that specified costs including advances and production costs are to be recouped before the creator receives royalties. The ‘option’ deal is also common in these sectors, giving the music company the unilateral option to extend the contract or to ‘drop’ the creator. Crucially, even in cases where the creator is dropped from the deal, the record company or publisher will retain the right to exploit copyright in the works created under the terms of the contract beyond this point, in many instances for the fullest term permissible, commonly expressed as ‘life of copyright’. However, although the creator may have licensed or assigned rights for the full term of copyright, the promise of royalty or profit share means that creators can continue to derive income throughout the term. In this setting the buyout deal is believed to be uncommon.

This has not always been the case. The buyout contract was once the most common type of contract between music creators and third party investors. In the music publishing and recording industries in the early 20th century writers and performers were routinely paid lump sums and salaries rather than receiving royalties derived from exploitation of the works over the longer period (Towse 2016: 142). However, throughout much of the 20th Century,



in addition to the evolution of contractual terms to incorporate royalties, music creators of different types have secured a share in various ‘back-end’ royalties that are not typically licensed or assigned to third parties or offset against unrecouped costs relating to exploitation contracts. Key among these in respect of compositional copyright is the performing right and the ‘writer’s share’ of publishing income as administered by the PRS for Music in the UK (PRS for Music 2021). In instances where the writer has a publisher, they will generally also receive a proportion of the publisher’s share in accordance with the terms of the publishing contract. Performers too have seen considerable improvements in their capacity to earn royalties from their work through performers’ rights and the principle of equitable remuneration when recordings are communicated to the public, on TV for example (MU 2021b). This has been achieved through a complex series of developments in collective bargaining, the establishment of collective rights management organisations and the efforts of music creators, publishers and trade organisations (Peacock and Weir 1975). These amendments to the UK music rights framework, in terms of industry practice and within copyright law, allow creators to derive income from their endeavours beyond any initial ‘front-end’ payment and are, in a large part, designed to limit the scope of contracts, including buyout deals. It is around these valuable performing rights that much of the concern about ‘buyouts’ in AV commissions can be found. Specifically, these concerns relate to the bargaining position of individual composers in negotiations with what are often large, wealthy and influential commissioners of screen content.

As discussed, the specifics of buyout contracts for music commissions in AV content is an area of the music industries that has, hitherto, largely evaded the attention of scholarly investigation. This is in stark contrast to the considerable volume of academic focus devoted to the seismic changes in the UK television production sector achieved by placing limits on commissioners’ capacity to buy out all IP rights in a production (Chalaby 2010). In the UK, this was achieved in the Communications Act 2003 that led to the implementation of a commissioning code of practice designed to limit the buying power of Public Service Broadcasters and foster a competitive, independent production sector. The ‘terms of trade’, as this code came to be known, is overseen by the regulator Ofcom and ensures that independent production companies retain a significant share of secondary rights in commissions, allowing them to build and exploit potentially valuable portfolios of intellectual property rights (IPRs). The ‘gold rush’ effect (Abraham 2016, Doyle and Barr 2019) that followed is recognised in many accounts as a transformational catalyst with profound intended and unintended consequences for the UK television production industry (Doyle and Paterson 2008, Lee 2018, Doyle et al 2021). In the contemporary setting, the emergence of SVoD commissioners as buyers wielding significant bargaining power and operating beyond the ambit of these ‘terms of trade’ has serious implications for the UK production sector.

There are significant commonalities between these developments in the TV content commissioning realm, and in the related field of music commissions in the AV setting. Questions around buyouts of rights, ramifications of the emergence of new commissioning entities and the potential for regulatory intervention all apply in the field of music commissioning for screen. Where the academic literature contains minimal reference to the themes of this report, the trade press and trade organisations have been particularly vocal on the subject. The following section identifies and critiques the main themes of this discourse.

### 1.1.2 The contemporary market

While SVoDs are the main focus of attention, one of the most prominent stories regarding buyouts of music creators’ rights relates to US cable operator Discovery Networks. Discovery was accused of forcing music creators to agree to full buyouts or see their music removed from all Discovery content. Moreover, this policy was reported as being imposed retroactively on existing content as well as new commissions. According to the trade publication Variety, the move was ‘...designed to circumvent the 100-year-old system whereby composers are compensated for use of their music in broadcast media’ (Burlingame 2019). In essence, Discovery sought to require writers to surrender the performing rights dimension of their income.



These royalties, collected in the USA by rights management organisations ASCAP and BMI, provide valuable income for creators when their works are broadcast. In the UK, music creators are entitled to a writer's share amounting to not less than 50% of public performance of their works (PRS for Music 2021). Crucially, members of UK collective management organisation (CMO) PRS for Music cannot be required to assign these rights to third parties such as commissioners.

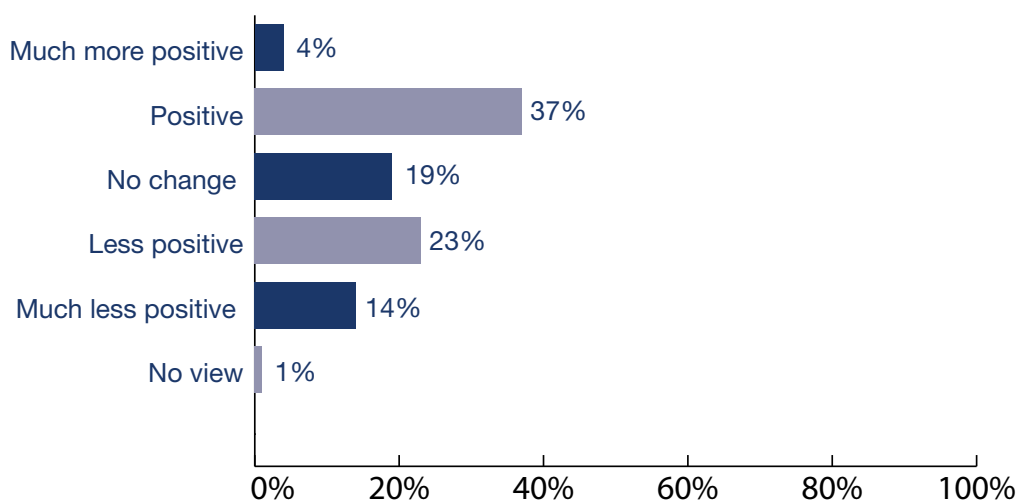
While the UK framework arguably provides more robust protections against full buyout of creators' rights, around the time of the controversy with Discovery in the USA, Ivors Academy conducted a survey examining music for screen commissioning practice. The survey was a response to growing concern that in the UK, media composers were increasingly under pressure to surrender 'back-end' income streams on 'take it or leave it' terms with commissioners. Ivors Academy CEO Graham Davies set out the basis for these concerns:

*“Composers have fought for decades to assert and defend copyright as a moral and economic right. These rights sit with the composer and should not be hollowed out by broadcasters and platforms that see music as a cost, rather than as an integral and important part of the content that drives their businesses” (Davies 2019)*

The survey, answered by 103 music creators, provides valuable insights into perceptions of music creators active in the contemporary market for screen commissions, as well as revealing some of the apparent tensions in attitudes to dealings with commissioners. Echoing numerous accounts of poorly remunerated, precarious careers in the creative sector, (Menger 1999, Hesmondhalgh and Baker 2011, Schlesinger and Waelde 2012), 70% of respondents had worked for free at some point during their career. 64% believed commissioning practices to be coercive. 54% thought these deals were unfair and only 5% thought them to be fair. 51% of respondents thought fees had declined in the preceding two years. However, in contrast to these gloomy appraisals, respondent attitudes were less negative when asked about their current career in relation to earlier years and prospects for future income. Here there was a degree of ambivalence as shown in Figure 1, where there is no significant difference between more positive and less positive attitudes to current careers compared with the past.

### How positive do you feel about your career as a composer compared to the past?

**41% Combined positive 19% No change 38% Combined less positive**

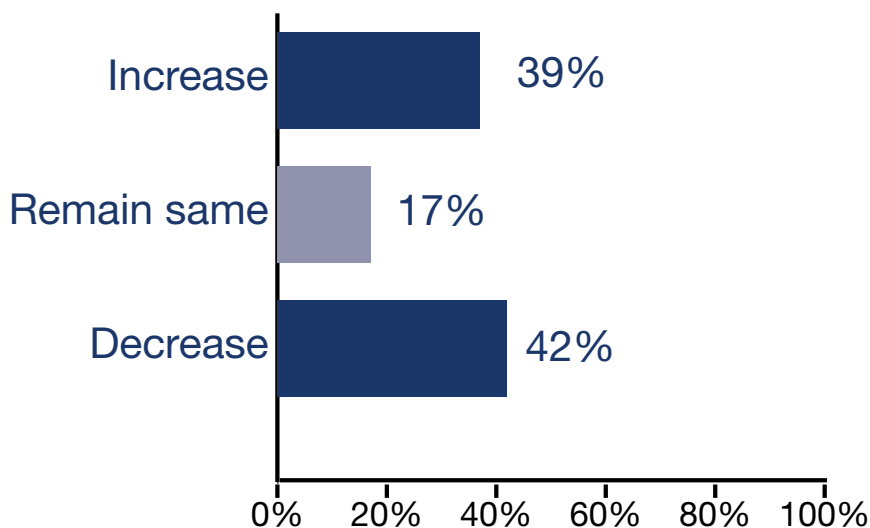


**Figure 1: Attitudes to Future Prospects (Ivors Academy 2019)**

Further, as depicted in Figure 2, there was only a slight divergence in the percentage of creators that thought their income from commissions would increase or decrease in the future.

## Do you believe your income from music commissions, and subsequent royalties will increase, remain the same or decrease in the future?

39% Increase 17% Remain the same 42% Decrease



**Figure 2: Attitudes to Future Income (Ivors Academy 2019)**

In light of the negative perceptions of the commissioning environment these findings are somewhat counterintuitive. That is to say, given the concerns articulated in the media reports it might be assumed responses would be skewed toward less positive attitudes.

However, the qualitative dimension of the survey inviting respondents to provide narrative accounts of trends in income provides further insights into the experiences of media composers. A number of the composers who believed their income would increase were new-entrants who viewed their overall careers as being on an upward trajectory. That is to say, there is a strong sense among these responses that increased volume of works being used, and works being used in higher-profile projects will contribute to increased earnings as opposed to the view that the value of individual fees was necessarily increasing. Indeed, those responses of creators that believed income would decrease pointed to a range of contributory factors including: the increased number of creators competing for commissions, fragmenting digital markets and the emergence of SVoDs.

Much of the focus around buyouts is concentrated on SVoD services, but a pan-European survey conducted by European Composer and Songwriter Alliance (ECSA) reveals 55% of buyout deals were proposed by film and TV producers, as opposed to directly from VoDs or broadcasters (ECSA 2021: 17). Given the UK screen sector's well-documented success in securing international commissions, it is reasonable to suggest this could be a more prominent feature of the UK market. This demonstrates that, although the emergence of SVoDs may be a key factor in the reported increase in the prevalence of buyout deals, such contracts are not limited to direct commissions between SVoDs and music creators.

While the Ivors Academy survey illustrates nuanced creator attitudes to this complex and dynamic aspect of work in the music industries, widely shared attitudes to particular issues were far more apparent. 86% believed commissioning practices should be more transparent and 89% thought a commissioning code of practice agreed between screen commissioners and Ivors Academy would be desirable.

As a component of competition law, codes of practice, or codes of conduct as they are also known, are used in many sectors where buyer power is deemed to be excessive relative to that of suppliers. For example, in the UK there is The Grocery Supply Code of Practice (GSCOP), overseen by the Grocery Code Adjudicator (GCA), and implemented in 2009 as a means of ensuring the buyer power of large grocery retailers is not abused in their dealings with suppliers (Department for Business, Energy and Industrial Strategy 2009). And the aforementioned ‘terms of trade’ for commissions between PSBs and independent production companies overseen by communications regulator Ofcom show that codes of practice are not without precedent in the UK as a mechanism of cultural policy intervention. (Barr and Kretschmer, forthcoming).

In 2021, a number of initiatives and campaigns have emerged calling for action to stem what is presented as moves towards the buyout model. Björn Ulvaeus of ABBA and president of the International Confederation of Societies of Authors and Composers (CISAC) highlighted the significance of ongoing ‘back-end’ royalty payments to him as a writer:

*“You’re so unsecure (sic) and you don’t know if someone is paying you money straight away or something, you don’t know what’s going to happen to it. The competition out there is fierce, and it’s much fiercer than it was during the ‘70s when Benny Andersson and I could afford to write from 9 to 5 because of royalties”*  
**(Ulvaeus 2021)**

The Ivors Academy and the Musicians’ Union jointly launched the ‘Composers Against Buyouts’ campaign and published the ‘Fair Commissioning for Screen Manifesto’ (Ivors Academy 2021). At the heart of this manifesto was a call for commissioners to ‘[a]ppreciate the value that music brings. Commissioners should not expect to acquire rights without genuine negotiation reflecting the true value of music and composition’ (MU 2021b). These initiatives are designed to focus attention on a constituency of music creators that have to a significant extent been overlooked in debates around the effects of digitalisation on music creators. This is particularly pertinent at a time when much of the focus on music creators’ earnings in the digital age has been devoted to the proliferation of music streaming services. This report seeks to contribute in some way to redressing this imbalance.

### 1.1.3 Research Focus

The relative dearth of scholarly work on this theme is at odds with the growing volume of trade media discourse around buyouts, ‘take it or leave it’ deals and diminishing fees for AV commissions. Consequently, this is a particularly timely moment for research in this area. Of course, much of the emergent discourse is generated by organisations in pursuit of lobbying objectives that serve the interests of their membership. However, many of the issues that lie at the heart of the debates identified in this section go far beyond the self-interest of any single constituency of stakeholders. These issues are of profound significance in achieving an equitable and sustainable balance of the interests of stakeholders in what are an immensely complex and dynamic set of adjacent and overlapping cultural industries sectors. To that end, this report seeks to address the following research questions:

- To what extent are commissioning contracts moving from a royalty to a buyout model in the video streaming age?
- Is there evidence of a decline in commissioning fees for the creation of new works in audio-visual content and what is the extent and impact of any such decline?

The next section of the report outlines the approaches employed in order to address these overarching research questions.

## 1.2 Approach: Research Methods

A tripartite research design was devised for the project employing a combination of quantitative and qualitative methods. The three main approaches employed were as follows:

- A survey of 69 media composer contracts provided by the Musicians' Union.
- A focus group discussion comprising 8 media composers of varying specialisms and levels of experience.
- Semi-structured interviews with key stakeholders including: trade organisation representatives, collective management organisations, music publishers and screen commissioners.

In this report the focus is on a particular kind of 'music creator' (as opposed to the focus on music creators in general in the Music Creators' Earnings in the Digital Era report): those commissioned to compose music for use in AV productions. Of course, these creators will invariably hold various other musical roles, such as performer and arranger for example, but the main focus of this report is commissions for composition of music for screen.

### 1.2.1 Contract Database

69 composer commission contracts from the years 2015, 2016, 2017 and 2019 were provided by the Musicians' Union and are drawn from the archive held by the Union. In order to ensure the anonymity of the music creators involved, the contracts were fully redacted by the MU prior to being analysed. The contracts were coded for basic descriptive characteristics of the deal including: year, location of commissioner, fee, number of pages, type of contract as stated on the document. In addition to this, key aspects of the copyright status of the works being commissioned were assessed: assignment or licence deal; exploitation term; status of performing, mechanical and moral rights and a number of other key parameters. This permitted the less readily quantifiable elements of the documents to be analysed in order to assess the extent to which the deals represented buyout contracts. This process required a considerable degree of methodological adaptiveness on the part of the researcher. For example, in a number of instances contracts explicitly stated a buyout of all rights. However, upon surveying and coding these deals it was apparent that significant aspects of creators' copyright had not, in fact been bought out. By way of triangulation of discrete coding parameters, it was possible to identify those contracts that constituted a full buyout of rights and those that did not represent a buyout in the fullest sense.

The approach was initially informed principally by the sources cited in the previous section, but in the iterative and reflexive process of designing the coding matrix a number of parameters were added in order to sharpen the analytic utility of the framework.

### 1.2.2 Music Creator Focus Group

The focus group brought together (by video conferencing due to Covid-19 restrictions) 8 media composers with a wide range of experiences of writing for screen. Five of the group had experience as professional music creators gained over many years and in some cases, decades. Three of the group identified as being new or newer entrants although this ranges from 4 to 8 years and included several commissions, so although identifying as new-entrants, this cohort had gained significant 'real world' experiences of commissioning contracts. The creators had experiences in a range of AV settings including: Advertising, Film, Games and TV. Within these fields there was also some genre diversity, with some creators specialising in writing for Children's TV, Drama and Factual content. Table 1 provides an overview of the discussion group.

Music Creator (MC)	Creator Type	Career Stage
MC 1	Film and TV composer	Previously a recording artist, became a media composer following downturn in recording industry post-1999
MC 2	TV composer specialising in: Entertainment, Children's and Comedy	Approximately 20 years experience as a media composer for PSB and online
MC 3	Composer for Film and TV for Drama and Comedy with a background in TV Commercials	Established composer across a range of sectors and genres
MC 4	TV composer specialising Drama	Considerable experience working on PSB commissions and more recently on SVoD productions and co-productions
MC 5	Film and TV composer for Drama	Previously a classical musician and composer, identifies as new-entrant media composer
MC 6	Film and TV composer	Comes from performing artist background. Commissions for PSB and SVoD. Identifies as new-entrant media composer
MC 7	TV composer for Documentary and Drama	Currently also a performing artist. Identifies as newer entrant. Experience of PSB and SVoD commissions
MC 8	AV composer specialising Commercials for TV and Online	Main experience in international advertising campaigns. Identifies as new-entrant. Also operates as music publisher for own material

**Table 1: Music Creator Focus Group Participants**

The focus group discussion was semi-structured with questions and provocations around the central themes of buyouts, earnings, 'take it or leave it' bargaining, 'front-end' and 'back-end' aspects of commissioning deals. Questions pertaining to earnings were couched in general terms due to issues of confidentiality. This semi-structured approach was utilised to contain the discussion without being excessively prescriptive, thus allowing sufficient latitude for contributors to identify and discuss significant relevant aspects of the commissioning ecosystem. The group was convened by Featured Artists Coalition, Ivors Academy and the Musicians' Union. The discussion was 90 minutes in duration and was facilitated by Naomi Pohl of the Musicians' Union. The focus group discussion was observed by Kenny Barr (lead researcher), David Martin (Featured Artists Coalition) and Julia Rowan (Ivors Academy).

### 1.2.3 Stakeholder Interviews

In addition to the focus group discussion, interviews were conducted with a range of stakeholders outline in Table 2.

Industry stakeholder	Organisation Type
Broadcaster 1	Public Service Broadcaster/music publisher
Broadcaster 2	Satellite Broadcaster/music publisher
CMO 1	Collective management organisation
CMO 2	Collective management organisation
Music Publisher 1	Independent music publisher/agent
Music Publisher 2	Independent music publisher
Trade Organisation 1	Music creator trade organisation
Trade Organisation 2	Music creator trade organisation
Trade Organisation 3	Music creator trade organisation

**Table 2: Industry Stakeholder Interviewees**

These interviews lasted between 30 minutes to 1 hour in length and were conducted by the lead researcher Kenny Barr, again using video conferencing platforms. The interview protocol was closely aligned with the themes of the focus group discussion. Again, the semi-structured format was designed to contain the focus without being excessively prescriptive. Indeed, this was particularly effective in this part of the research as the respondents raised a number of significant issues not anticipated in the preparatory research of secondary sources.

## Findings

The findings are reported here largely in relation to the research method employed and in the order the research was conducted. In doing so the focus tapers from findings of the quantitative survey of contracts into qualitative methods of group discussion and semi-structured interview. While presenting the findings in these discrete parts, these distinct sections are arranged along recurring themes that run through this report.

### 2.1 Findings: Contract Analysis

The coding framework introduced earlier, served as a valuable tool to analyse the large number of media composer contracts provided by the MU. Given the vast number and variety of contracts that are agreed between media composers and commissioners every year, the findings reported here make no claim of representativeness of contracting throughout the sector. It should also be noted that the deals examined are proposals of engagements between music creators and commissioners and it is unknown how many of these commissions came to fruition. That said, this sample of contemporary contracts appears to be unprecedented in any previous research and therefore offers valuable insights into music commissioning practices and norms in the UK AV sector. In short, these documents are crucial in forming a better understanding of the ways in which this constituency of UK-based music creators currently earns money from music commissions.

The 69 contracts surveyed date from 2015 (n= 21), 2016 (n= 8) 2017 (n = 12) and 2019 (n = 28). Of these, 53 were commissions by UK-based companies. 8 were commissions by US-based companies. 2 were from companies based in EU states and 1 each from South Korea and UAE. The remaining 4 are from unspecified territories.

Of the contracts, the majority were commissions by AV companies of varying types, with film and television production commissions being the largest cohorts. A number of the contracts related to multiple activities and when coding it was necessary to judge, on balance, what the principal activity was. There were also commissions for unspecified or broadly framed General AV uses, such as commissions for library music or commissions for music to accompany live and recorded yoga classes for online use.

Sector	Commissions
Advertising	2
Animation	1
Film	15
Games	1
General AV	21
Not stated	2
Online	4
Radio	1
Sheet music	2
Theatre	2
TV	18
<b>Total</b>	<b>69</b>

**Table 3: Commissions by sector**

Commissions of music are in many respects more straightforward contractual transactions than sound recording or music publishing contracts. Commissioning agreements generally pertain to the creation and delivery of music for a specific project such as a TV programme or a film, as opposed to the types of exclusive, multiple option deals common in the recording industry. As such these were comparatively short documents averaging eight pages in length, with some as short as one page and only three contracts exceeding 20 pages. There was also a degree of standardisation of contracts among the sample, including those offered by PSBs which refer to BBC/Musicians' Union terms, and those that follow commissioning guidelines set out by screen production trade organisation PACT (Producers' Alliance for Cinema and Television). The presence of these commissioning codes is a theme that will be discussed later in this report.

That said, some of the contracts were documents of considerable complexity that simultaneously combined aspects of AV commission agreement, music publishing agreement and recording agreement. The immense complexity of music industry contracts, and the copyright regime that underpins these deals, is an enduring criticism of contracts between art and commerce. As an aside, in spite of these complexities, the creator respondents in this study were remarkably conversant with the finer details of their contracts and aspects of the rights framework such as performing rights and mechanical rights. That said, some of the clauses and language used in the deals can be impenetrable to the extent that they defy convenient codification. However, even in these cases it was possible to distil the key elements of the deals.



As with other music industries contracts, it is clear from the deals examined here that each party is engaged in a trade-off between commitments and rewards. That is to say, consistent with Caves (2000), each contributes something to the deal, such as finance, expertise, skills and innumerable other inputs. In return, each party expects to derive a return from these endeavours. Some of these costs are borne at the outset of the engagement, whereas others are spread over the longer term of the agreement. It is the balance and equitability of these trade-offs that lie at the heart of the current debates around commissions for screen in the UK sector.

The discussion now turns to a closer examination of the character and key elements of these deals. The following section of the report first considers the commitments made on the part of the music creator, before turning the focus to what the creator can expect in return for committing to the terms set out in the agreement. Finally, the discussion considers the extent to which buyouts are a feature of the deals examined.

### 2.1.1 Commitments to the deal

The contracts were examined to assess what the creator is required to commit to the agreement in terms of: the types of work being commissioned, the duration of the work and the basis on which the rights within these works are subsequently controlled in terms of exclusivity and exploitation periods.

In some instances, the contracts stipulate clearly and precisely what works are to be delivered. This may identify a specific number and duration of works required to satisfactorily fulfil the terms of the agreement. This varies considerably from short themes and ‘stings’ no more than a few seconds in length, to the entire score for a TV series or feature film which can equate to many hours of music content. In others the expectations are more diffuse, such as so-called ‘first look’ deals that allow the commissioner or publisher first refusal on works created by the composer.

An aspect of the contracts that is less varied relates to the type of copyright works to be delivered under the agreement. 74% of the contracts (51) require creators to deliver both the musical composition and recordings of the compositions as part of the overall fee. In most instances these deals also require an assignment or license of the copyright in musical works (i.e. compositions or songs) and the sound recordings to the commissioner. These distinct copyright works attract different levels of copyright protection and mechanisms for remuneration in the UK and other territories which is often explicitly accounted for in the terms of the contracts examined. As is discussed later in this report, the temporal and territorial scope of AV contracts can be an area of contention between commissioners and music creators.

A smaller number of contracts include a separate recording budget and some, typically the MU/PACT commissioning deals, also include extra funds to pay performers. These ‘package’ deals can also require the music creator to ensure that any performers on these recordings will not receive further payment in respect of performers’ rights. In effect, the commissioned creator is required to ensure performers’ rights in the recording are bought out:

*“The Composer shall warrant that all contributors to the work are fully bought out in respect of all elements of the composition and/or recording of the work” (AV contract 2017)*

This hints at the hierarchies that, according to some analysts, music copyright imposes on different constituencies of music creator (Toynbee 2004: 123) and is a theme that emerged in the subsequent focus groups and stakeholder interviews.

The most expansive commitment was found to be the temporal scope of the deals. The prevalence of ‘life of copyright’ assignments is 88% (61) of contracts. This is noteworthy as ‘life of copyright’ contracts are known to be uncommon in other areas of the contemporary UK music publishing industry. This is also remarkable in view of the fact that the music creator, as opposed to the commissioner, has authored, and as such is the first owner, of copyright in both the musical composition and the sound recording thereof. This is quite different to the ‘work for hire’ system that operates in the USA, where works are owned by the commissioner as opposed to the music creator from the outset. Indeed, the increasing prominence of US-based commissioners in the UK commissioning ecosystem is the source of concern that a culture of ‘work for hire’ is permeating the UK production market.

While the musical composition and the recording are distinct copyright works, they are also vital components of an AV production that will typically contain a wide range of IP rights (both musical and non-musical e.g. script, format rights etc) with numerous authors. This potentially creates an immensely complex rights clearance conundrum for such content, since securing permission from each author on a use-by-use basis would present significant practical obstacles where rights are not available by way of collective licensing. Indeed, it is precisely this issue that is identified by a number of stakeholder interviewees as the underlying motivation and justification for commissioners seeking to buy out rights in commissions. Some stakeholders refute the validity of claims that licensing complexity is either practical or principled justification of buyout deals. However, while the contracts may allow the commissioner to exploit the works for the life of copyright when used in relation to the commission, in some instances the music creator is free to exploit the works in other settings, such as recording and releasing the works commercially. In this respect, many of these deals buy out only some aspects of creators’ rights. This is a key aspect of music commissions where creators can retain a valuable long-term interest in works commissioned by AV companies.

## 2.1.2 Rewards: Fees and Remuneration

The most direct way creators derive income from the contracts examined is through the commission fee. These are typically paid in instalments, first upon signing the agreement and a final payment upon satisfactory delivery of the works specified in the deal. In AV commissions these are payments, as opposed to the recoupable advances that are a feature of music publishing and recording contracts. The Musicians’ Union has published per-minute fee guidelines for music commissions as shown in Table 4.

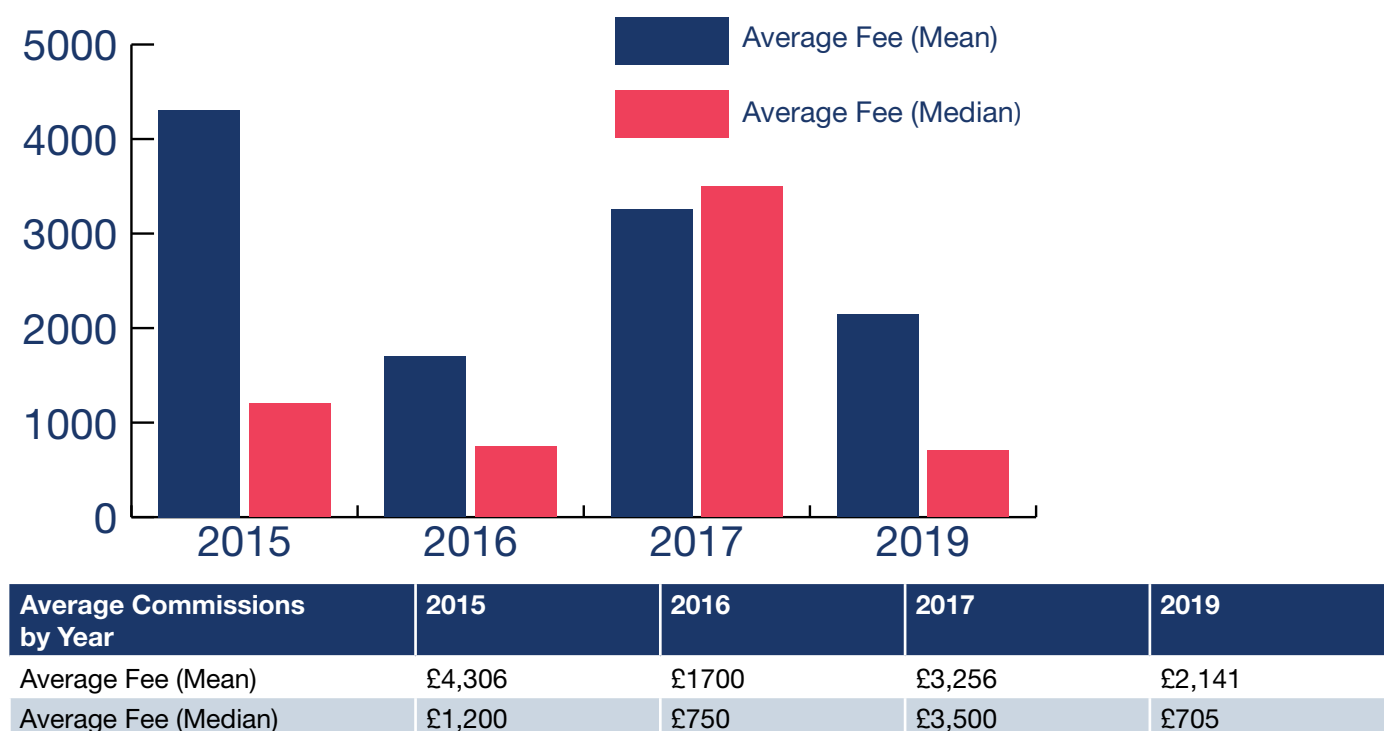
Category	Range of per minute fees	Mean average per minute fee
TV Documentary	£34 – £400	£117
Feature film	£111 – £1,200	£509
TV drama	£100 – £800	£294
Children’s TV	£75 – £417	£163
TV light Ent	£56 – £500	£248
Advertising	£1,000 – £20,000	£8,263
TV Sig tunes and strings	£128 – £7000	£1,624

**Table 4: Musicians’ Union guideline per-minute commission fees (Source: MU 2021)**

These guideline ranges are not subject to any binding agreement between the Union and commissioners:

*“Rates of pay for media commissions will vary according to the nature of the project and the commissioner, the status of the composer, medium, and most importantly the rights package required” (MU 2021c)*

This variance in fees, contractual terms and rights package is a prominent feature of the sample. Figure 3 shows the average fee for commissions in the years under study.

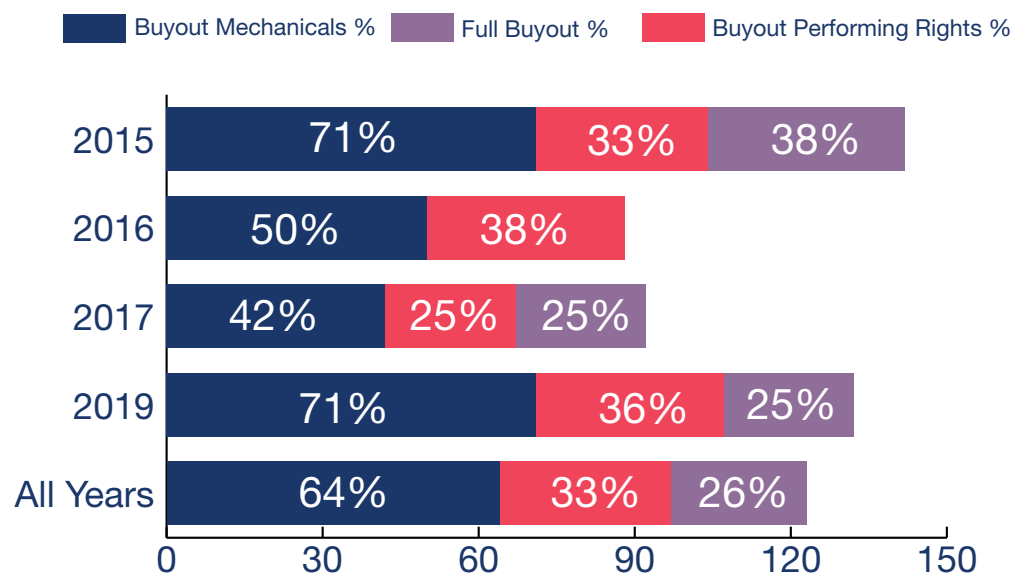


### Figure 3: Average Commission Fees

This mean average displays a downward trend, but the relatively short time frame of 2015-2019 combined with the modest sample size precludes any suggestion that this is representative of a decline in fees across the sector. Moreover, this masks considerable variation in what music creators earn at the ‘front-end’ of the deal. The median average paints a somewhat different picture. Fees as high as £30,000 were exceeded in number by nominal fees of £200 or even zero fees paid to creators. In short, the contracts examined neither confirm or contradict claims that commissioning fees are declining in the streaming age.

A more useful set of parameters used to query creators’ potential to earn from these deals captures the extent to which creators retain an interest in performing rights, mechanical rights and performers’ rights in the works delivered under these deals. As discussed, to varying extents and depending on the type of usage, these rights lie beyond the scope of contractual assignment. A detailed interrogation of these mechanisms can be found in Chapters 2 and 4 of the accompanying report on audio streaming (MCE 2021). In the great majority of contracts, it is explicitly stated or strongly implied that any fee paid represents ‘full and equitable remuneration’ in lieu of any performers’ property rights associated with any commissioned recordings. Mechanical rights in commissions are a potential back-end revenue source for composers. These rights, administered in the UK by MCPS, pertain to mechanical reproduction of music copyright works. Established in the early 20th Century when physical sound carriers such as vinyl records and sheet music were the preeminent formats, these rights also extend to broadcast and online uses where a tangible reproduction of the works does not occur (Gov.UK 2021). The status of mechanical rights was among the most complex and abstruse elements of the contracts examined. In some cases, these rights are explicitly bought out. In other instances, the creator was entitled to a royalty share of these, particularly for beyond the primary commission, in soundtrack albums for example. In such deals, the commissioner in some instances operated as a music publisher, a contentious issue that emerged in the focus group and interviews.

Figure 4 provides an overview of the extent to which each of these key aspects of music creators' rights are partially or fully bought out.<sup>2</sup>



Buyout of Rights	Buyout Mechanicals	Full Buyouts	Buyout Performing Rights
2015	71%	38%	33%
2016	50%	0%	38%
2017	42%	25%	25%
2019	71%	25%	36%
All Years	64%	26%	33%

#### Figure 4: Buyout of Rights

Notwithstanding performers' rights which are routinely bought out in the vast majority of the contracts analysed, it is clear from Figure 4 that mechanical rights are the rights most likely to be bought in an AV commission. That 33% of contracts can be said to represent a buyout of performing rights is perhaps surprisingly high, Table 5 shows that full buyouts are more common in particular sectors.

<sup>2</sup> In 2015 number of buyouts exceeds that of buyout for performing rights due to the presence of an AV commission for an arrangement of a copyright work by another author on a full buyout basis.

Sector	Total Commissions	Full Buyout	% Full Buyout
Advertising	2	2	100%
Animation	1	0	0%
Film	15	7	47%
Games	1	1	100%
General AV	21	2	10%
Not stated	2	0	0%
Online	4	1	25%
Radio	1	0	0%
Sheet music	2	1	50%
Theatre	2	1	50%
TV	18	3	17%
<b>Total</b>	<b>69</b>	<b>18</b>	<b>26%</b>

**Table 5: Buyouts by Sector**

In some instances where both mechanicals and performing rights are bought out, the music creator is entitled to royalties from some other exploitation of the work such as sales, so these do not constitute full buyout contracts.

### 2.1.3 The ‘Full-Buyout’ Contract

To summarise the contract analysis, the sample examined suggests that a full buyout of all rights is not prevalent in AV music commissions for UK music creators. In the majority of cases, music creators retain some interest in ‘back-end’ dimensions of the exploitation of works, principally due to the inalienable ‘writers’ share’ that is discussed in greater detail in the following section of this report. Indeed, the contracts reveal that ‘buyout’ is a somewhat imprecise term that inadequately captures the complex nature of AV commission contracts where certain aspects of creators’ rights are bought out for the full term of copyright, yet other rights are retained. In short, the contracts displayed varying degrees of buyout.

However, it can be reasonably inferred from the wording of a number of contracts that some commissioners would, where possible, prefer to buy out all aspects of the creators’ copyright. A typical expression of this, taken from one of the contracts states:

*“Payment of the sums described in clause 5.1 of the Specific Terms shall be deemed to be a complete assignment of the rights, entitling the Company to fully and freely exploit the products of the services, the music and the recordings to the fullest extent permitted by law without the need for any other payments i.e. on a “buy-out” basis” (AV contract 2017)*

In such contracts, irrespective of the explicit assertion that the contract constitutes a buyout of all rights, there is no attempt to buy out the writer’s share of publishing income from works assigned to performing rights CMOs. In effect, this highlights that interventions by intermediaries and policymakers can be effective in ensuring music creators do not become completely alienated from a share in ‘back-end’ rewards derived from their work. In this regard, the writer’s share of the performing right element is a key differentiator between a partial and full buyout.

However, it is in this area that increasing pressure is said to be exerted on creators to surrender these rights. The contract sample examined provides a valuable overview of contracting practices in the UK AV sector but reveals nothing about the contracting practices of new-entrant SVoD commissioners or those of transnational media companies such as those cited in the literature review of the study. To more closely address these issues, the discussion now turns to the qualitative dimension of the research in order to better understand the themes identified at the outset of this report.

## 2.2 Findings: Music Creator Focus Group and Stakeholder Interviews

The creator focus group discussion and stakeholder interviews permitted a deeper interrogation of the key issues that permeate the debate around buyout contracts in the contemporary AV sector. This is particularly valuable in gaining a richer understanding of the dimensions of commissioning contracts not explicitly stated in the agreements. Of particular interest here are the aspects of a commissioning contract that are not manifest in the contract itself, but are formed as a result of the relationship between contracting parties. This is particularly apposite in respects of the power dynamics that are brought to bear when large corporate buyers engage individual or small groups of music creators. Moreover, as shown in Table 1, the creators in the group had first-hand experience of a broad range of settings, including commissions for SVoDs that are said to be drivers of moves towards full buyout agreements. A number of the industry stakeholder interviewees also had first-hand experience of music commissions from the commissioner perspective and also as representatives of music creators.

### 2.2.1 Contemporary Market for Media Commissions

The focus group and interviews revealed some interesting perceptions of the state of the contemporary labour market for screen creators in the UK. There was consensus among the creators and industry stakeholders that in the digital age there were indeed considerably more ‘routes to market’ for media composers. This was largely attributed to an increasingly disaggregated, multiplatform sector where on-demand AV content has become increasingly ubiquitous and accessible. A more oblique contributory factor proposed by broadcasters was that licensing commercial music has become increasingly challenging for commissioners of screen content. Broadcaster 1, a representative of a UK PSB, noted how steeply the use of commercial music had declined:

*“The use of commercial music on TV is reducing... just looking between 2016 and 2020, there’s anything from a 30% to a 50% reduction and some programmes have gone from using commercial music to using no commercial music whatsoever” (Broadcaster 1)*

Commercial music in this context means existing, commercially available music as opposed to specially commissioned works. Broadcaster 2 noted that while UK broadcasters negotiate a blanket licence with collecting societies at considerable cost, an increasing number of works are being removed from the repertoire by publishers. This can result in the requirement for an individual synchronisation licence to be negotiated as would be the case if the music was being used in a film soundtrack or TV commercial. Therefore, commissioning of original works is viewed as a more attractive than seeking to navigate the licensing vagaries of commercial music. This desire to reduce licensing complexity is used as a justification for commissioners seeking more expansive control of rights, but the notion that buyouts were a necessary response to licensing in increasingly disaggregated global markets was strongly refuted by a number of respondents. This type of response touches on the contingent challenges involved in striking a balance between the interests of all stakeholders involved in commissioning, creating and licensing music for screen.

While there was a sense that the number of commissions has increased, there was also a belief among some contributors that there are a great many more creators competing for these opportunities, thus undermining the potential for creators to derive meaningful income from commissions. Creator 3 saw the proliferation of ‘rights free’ production music libraries operating on a full buyout basis as holding few attractions for the music creators that consider themselves to be ‘professional’ composers:

*“There are all manner of these Epidemic and Pond5 type models now, where dilettantes and amateurs can spend an evening churning out a track and might get £50 for it, or something. That’s fine for them as pocket money or something, but it’s not sustainable for the kind of model that we’re used to as professionals” (MC3)*

Creator 5 developed this point and argued that in addition to this cohort of enthusiastic amateurs, the growing number of highly qualified new-entrant music creators active in the market outstripped the number of new opportunities presented in the digital age:

*“It’s certainly true there’s a lot more TV being made, but also there’s a lot more composers, and the composer schools are churning them out faster than there are jobs for them. So that’s definitely pushing the mid and bottom end prices down” (MC7)*

In short, there was a view that a key contributory factor in diminishing fees was the greater number of music creators in the labour market. This oversupply of creative labour competing for opportunities is a feature of the music industries and the cultural industries more widely. The most direct consequence of this, in a market populated primarily by freelance workers, is downward pressure on earnings (Hesmondhalgh 2019: 353). In the context of the contracts examined earlier in this report, any such pressure on creators’ earning potential will be manifest in the ‘front-end’ and ‘back-end’ payments derived from these deals.

## 2.2.2 Earnings: Front-end/Back-end

There was broad agreement across the creator group that fees had indeed declined in the past decade, corresponding with the findings of the Ivors Academy survey cited earlier. A music publisher shared this perspective:

*“The fees are generally smaller, it depends what it is but there’s more work around. Netflix and Amazon when they started up, certainly their fees were better because I think they wanted to attract the best composers and ‘we’re taking the rights, so we’re paying nice fees’. But that hasn’t translated to all the terrestrial broadcasters at all. Their fees have maybe gone up a tiny bit and they’ve just taken the rights” (Music Publisher 1)*

As an established and successful media composer, Music Creator 1 conceded the fee was perhaps not necessarily the key factor in deciding whether to accept an offer but did perceive a decline in fees:

*“I’m in a fortunate position where I’ve got the stability financially to be able to say ‘take a lower fee’, but it does seem to me that the fees have headed south pretty extensively in the last ten years” (MC1)*

Empirically testing assertions that fees have declined at sector level remains elusive, but the attitudes of the contributors to this report and those seen in wider discourse around the subject demonstrate that there is a strong perception that commission fees have declined in the streaming age and there is evidence of increasing disparity in the royalties a creator can derive from broadly equivalent commissions from different types of commissioner. Music Publisher 2 shared information that provides a valuable illustrative insight into ways in which deals with different types of commissioner can play out in terms of creators’ earnings at the back-end of a deal. The data relates to commissions secured by two composers for high-budget drama productions that achieve considerable commercial and critical acclaim globally, with one commissioned by a UK commercial PSB and the other by a US-based SVoD.

Neither deal was a full buyout, but in the PSB commission the composer and publisher received a share of mechanical rights but no mechanicals were payable on the SVoD production. For the third series of the PSB commission, the composer received in the region of £125,000 in royalties from their publisher. By contrast, the royalties received by the second composer series three of the SVoD production were £30,000.



Each of the publishing deals was a 75/25 split in the composers' favour. The publisher believed this to be typical of the contemporary market.

*“You can use these percentage differences for many dramas, and it shows why people are struggling now” Please remember these two shows are two of the most popular in the world, so figures are much smaller for most of the other docs, dramas, films” (Music Publisher 2)*

These figures provide valuable insights, but in isolation and without knowledge of the fees involved it remains unclear how typical the disparity is between the royalties received by the two composers. Further quantitative research is required in order to assess the relationship between front-end fees and back-end royalties.

However, the qualitative dimensions of the research reveal the tensions and trade-offs involved in balancing the 'front-end' and 'back-end' aspects of a screen commission. Aside from fees paid by commissioners, there was agreement among the creator group that any negotiation for a screen commission should be characterised by a consensual negotiation around the key 'front-end' and 'back-end' aspects of the deal. Specifically, this relates to the fees and royalties discussed in the previous section. While all contributors shared this view, there was divergence on how best to strike a balance between the 'front-end' and the 'back-end'. Music Creator 5, an established writer for drama commissioned by PSBs and SVoDs, indicated that by spending the upfront fee for composition on the recording, this could yield rewards at the 'back-end' through royalties from the commission and soundtrack use of the work:

*“I may spend part of what's maybe theoretically my fee on recording and just make the whole thing as good as possible, because I know that if the soundtrack is good, then maybe the series will do better and then the 'back-end' will pay off. So in a way, I'm using my 'front-end' to spend on a budget now. But of course, now with Netflix and Amazon, the 'back-end' is much smaller” (MC4)*

The cautionary note that 'back-end' income was diminished in works commissioned or licensed by SVoD operators was echoed by other contributors. For one of the newer entrant creators the upfront fee was more important than 'back-end' royalties:

*“I really do care about my upfront fee because the royalties have become so bad and, in a sense, I am a newcomer... with the (redacted) movie I did for (redacted), that was a cinema release and did me well for royalties in the cinema, but Netflix bought it in America and, of course, to this day I still haven't seen my royalties, and that was three years ago. And when little bits of Netflix do appear it's like 0.01p... I am so nervous of the 'back-end' now, I really would rather fight for the 'front-end' because I just can't guarantee what's going to be coming through every quarter” (MC5)*

Again, this creator suggests that while Netflix may not have wholly bought out all rights when licensing this content, the royalties stemming from SVoD use are so infinitesimally small as to be inconsequential in terms of a sustainable income.

Another of the newer-entrant creators held an opposing view and suggested that by being able to accept a lower fee it was possible to achieve more favourable long-term earning potential:

*“In my case because I'm my own publisher, the 'back-end' is always much, much more important for me, and that's actually how I've got a lot of the jobs that I've done the last couple of years, I'm undercutting the 'front-end' a lot” (MC8)*

Again, Music Creator 8 indicates the trade-offs being made between ‘front-end ‘ and ‘back-end’ of a deal but as a self-published creator the ‘back-end’ rewards are of significantly greater value. However, in light of much of the group discussion, there was a strong sense that creators’ expectation of securing a share in the ‘back-end’ of a commission beyond the writer’s share is diminishing. What the overall contributions to the discussion illustrated was that different creators view these dimensions of a contract differently and some are more focused on upfront fees while others are more oriented towards royalties over the longer term, even where this requires sacrifices in terms of fees. Of course, as is the case in many spheres of the music industries, bargaining power in negotiations between individual creators and commercial investors is often heavily skewed in favour of the latter. In view of this, the extent to which there is scope for meaningful negotiations on these deal points is of primary significance to music creators. This is particularly pertinent in the context of suggestions that ‘take it or leave it’ is a characteristic of many deals between music creators and commissioners.

### 2.2.3 ‘Take it or leave it’

As illustrated in the contract analysis, screen commissions contain some features that are common to a great many deals including: the waiving of moral rights; the buyout of performers’ rights and life of copyright assignments. Conversely, some also display considerable variance in aspects of the ‘front-end’ and ‘back-end’ elements of the deal. However, while inferences may be drawn from the contracts about the relative bargaining position of each contracting party, they reveal nothing of the negotiations that precede the deal being offered and signed. The qualitative elements of the study provided far more about this aspect of music commissions. This was particularly the case in respect of the extent to which commissioners seek to buy out rights in a commission.

The focus group discussion highlighted how important it was that there should be latitude to trade-off ‘front-end’ aspects of the deal against the ‘back-end’ and vice versa, although there was some suggestion that this is not the case. As a relatively new-entrant Music Creator 6 described negotiations with commissioning companies.

*“I still am in situations where it’s take it or leave it with the production company. If I say I want 10% of publishing, my agent will say ‘this is it, you can’t have the publishing, it’s a take it or leave it’ kind of thing. So, you really are forced to, at least in my situation” (MC 6)*

This closely echoes Fiona Macmillan’s suggestion that, ‘due to imbalances of resources and oversupply of labour, the rights company can offer terms on a ‘take it or leave it’ basis’ (Macmillan 2000: 99). In the view of one of the trade organisation representatives, this was more of a problem for new-entrant creators:

*“Because of the insecurity in the music business, there are many up and coming composers who will accept these terms in the hope of establishing themselves. As a consequence, the producers and broadcasters are offering it as a take it or leave it situation with very little room for negotiation” (Music Creator Trade Organisation 1)*

There was some concern raised in the discussion by a number of creators that with commissioning companies, including broadcasters, increasingly operating as music publishers, creators were under increased pressure to accept deals covering an expanding portfolio of rights. Indeed, there was a suggestion that while commissioners may be regarded as music publishers in the sense that they are engaged in the acquisition and exploitation of music copyright works, this does not necessarily result in such companies undertaking many of the roles of a specialist music publisher.

*“But it’s coming to a point that the integration of publishers with productions starts to undermine what the purpose of publishing is. It’s no longer representing the composers, it represents the works and the composer as a kind of fungible, replaceable entity” (MC 3)*

In effect, with commissioner/publishers there was an expectation that assignment of publishing rights was a precondition of the deal. That said, as the contract analysis shows, in such instances the composer will typically receive some royalties from these deals over and above the writer’s share. That is to say, the published writer will receive a contractually agreed proportion of the publisher’s share of income. However, the creator will be restricted in their own endeavours to actively seek opportunities to exploit the works that are covered by exclusive license or assignment deals.

*“When we commission a composer, what we do is we’re taking the rights to use the music in conjunction with the programme. So we are automatically buying out the MCPS element and we always have, but there are royalties that flow not from sales but from broadcast and performance licences. There are royalties that come from DVD and DTO (download to own) but of course, that is not the market that it used to be” (Broadcaster 1)*

This broadcaster indicated that publishing rights were a key element of the majority of commissions. This view that commissioners were increasingly avaricious in the rights they expected to be included in a commission and that the rewards on offer were diminishing at the ‘front-end’ and the ‘back-end’ of the deal was consistent across the creator group and among some of the stakeholder interviewees:

*“(Broadcaster redacted), for example, would basically coerce you into signing up with their music publishing arm, but their music publishing arm probably isn’t doing a huge amount proactively on your behalf, as far as I’m aware. Essentially, they think they have a right to share in the income from the work because they commissioned it, but I would say that they’re certainly not paying enough upfront to justify that” (Music Creator Trade Organisation 1)*

The broadcaster/publishers rejected the notion that their role as music publishers could be viewed as a passive, rent-seeking strategy. Instead, it was argued that as global multichannel operations they could add considerable value even to previously dormant works that would feed into creators’ earnings over the longer term:

*“Once you’ve written your music for (Title Redacted) that was made in 1986, it just sits there. Unless the programme is repeated, you’ll never get any extra money, but we’re now looking back in the archives, we’re packaging that music up again and making it into a library so that there is a new audience for it and new commercial opportunities and an income stream that you can get back that you would never have got back before” (Broadcaster 1)*

Broadcaster 2, a satellite operator, suggested a positive symbiosis between the global networks of the commissioner and the music publishing arm of the company:

*“Certainly, from our point of view, we’re commissioning more music than we ever did, so we’re paying out more to composers than we ever did. We’re exploiting that content around the world more, which means those composers get more royalties off the back of the success of those programmes”* **(Broadcaster 2)**

Rather than an increasingly proactive approach to publishing employed by broadcasters, Music Publisher 1, who also operated as an agent for media composers, viewed it as somewhat opportunistic:

*“We used to deal with the BBC, Sky and ITV all the time and that would be our preference... you knew where you stood, you have a straightforward contract, you might have a discussion about rights, you might even have a nibble at keeping some of the rights. But now it’s just all those contracts look the same. I see it as a money grab. They just thought how can we earn more money? ‘Everyone else is doing it, we’ll do it as well and then we can just say we had to do it because everyone else is doing it”* **(Music Publisher 1)**

Incursions by broadcasters onto terrain traditionally occupied by music publishers and creators are unlikely to be viewed favourably by a music publisher/agent, but not with standing any vested interests, it is clear that the increasing tendency for commissioners to operate as music publishers is not viewed positively by all stakeholders.

## 2.2.4 Defending the Writer’s Share

There was a somewhat pessimistic acceptance among the creator group, and some of the stakeholders that commissioners, including SVoDs and PSBs, had become increasingly acquisitive in the deals they presented to creators. But it seemed apparent that full buyouts of all rights remained uncommon in respect of commissions for the works the respondents engaged principally in TV work. However, in addition to the sense that there had been a significant erosion of creators’ earnings from the back-end of a deal, in the view of a number of participants, this was compounded by a decline in commissioning fees.

A number of contributors opined that in light of these concurrent trends, it was increasingly important that the public performance dimension of the musical work should remain beyond the scope of any commissioning deal:

*“Every territory is different, but at least we are protected in this country, if you join the PRS you assign 50% of the performance royalty to them so that’s kind of protected. You can’t be strong-armed into giving that away. That’s been a vital lifeline, I think, for many of us in this country. Other composers in other territories don’t enjoy that protection”* **(Creator 3)**

The views of the music creator focus-group participants closely aligned with the ongoing campaign of Ivors Academy and MU, and organisations including PRS for Music and CISAC. Predictably, the CMO interviewees shared the view expressed by creators that performing rights should remain beyond the scope of commissioning contracts, while warning that a degree of encroachment onto that territory is a feature of the contemporary market:

*“Obviously, in many ways, you can’t buy out the performing right, and that is probably the more concerning encroachment that has been happening in recent years, because technically it’s not possible, even though some people are doing it. So there’s lots of people we’ve heard buy out all the rights, get all the rights. I think especially now that the industry is far more globalised, it’s seen as ‘oh you just need to get everything’”*

**(CMO 1)**

Music Publisher 1 indicated that creators are under increased pressure to buy out these rights, but such moves were viewed as non-negotiable:

*“There have been attempts but we just won’t accept that. That’s the absolute line for us. We won’t deal with anyone who tries to do that, we’ll just say no... I would say at a policy level, the only thing that we should make sure doesn’t come in is that erosion of the writers’ share. That’s something that probably now is the right time and everyone’s in the right place to sort of say no way, and we really mean no way”* **(Music Publisher 1)**

The broadcasters interviewed also echoed the notion that full buyouts should be resisted in order to ensure creators were able to derive income from music irrespective of the contractual terms attached to a commission. A PSB representative expressed the importance of fostering a commissioning environment that allowed all stakeholders to benefit:

*“We don’t have an agreement with the likes of Epidemic Sound. We don’t agree with it... we’re about supporting the creative industry and we don’t feel that that business model particularly does and we have our blanket agreements anyway. So we want to support creators and so we don’t tend to have those agreements with those kind of buyout libraries”* **(Broadcaster 1)**

That status of performers’ rights is not unproblematic in regards to buyout deals. As observed in the contract analysis, performers’ rights are routinely bought out in AV commission contracts. Indeed, music creators commissioned to deliver packages of compositions and recordings are generally required to ensure any performers are bought out. This was repeated by the representative of Music Creator Trade Organisation 1:

*“Then the composer is in the position of basically being the engager of the musician and having to go about a negotiation. So they’re actually negotiating with their colleagues to put them in a situation where they’re probably paid a low fee to accept a buyout”* **(Music Creator Trade Organisation 1)**

However, the issue of composers’ rights was far more prominent in the discussion and interviews and it was here that the views of all of the contributors to the research were in close alignment. While expressing support for backstops against full buyouts, there was no coherent or consistent view among music creators or stakeholders as to how this might be achieved. As discussed in the earlier section of the report, in other sectors of the AV production sector and industries beyond the cultural sector, codes of practice have been employed in pursuit of similar objectives of limiting buyer power.

## Conclusions

The concluding section of the report sets out the main findings of the research before highlighting areas ripe for further inquiry and proposing approaches for achieving this.

### 3.1 Main Findings

In conclusion, the preliminary findings of this research indicate a number of significant findings.

- There was a consensus that due to technological and business model innovation, the opportunities for AV commissions had greatly increased in the streaming age, but also that there were a great many more creators active in the marketplace.
- Commissioners suggested that striking the balance between using commissioned, commercial and library music had become more challenging. This had contributed to making commissioning original works more attractive in order to ensure they control the subsequent use of these works in relation to the AV production, particularly in the increasingly globalised market for on-demand screen content.
- The majority of contracts surveyed did not constitute full buyouts of music creators' rights. Rather, while most could be viewed as partial buyout of rights, even in agreements that explicitly state a buyout of rights, the writer's share is a significant element that commissioners cannot, at present, buy out in the UK.
- Consistent with much of the discourse around this issue, there was a general consensus from music creators and trade organisation representatives that 'front-end' commission fees have declined while the 'back-end' dimensions of screen commissions have also been eroded in the digital age.
- A number of contributors noted the importance of being able to trade-off 'front-end' and 'back-end' dimensions of a commission on a project-by-project basis. For example, by taking a smaller/larger fee in return for a more/less significant share of royalties. This is viewed as harder to achieve in a market increasingly characterised by 'take it or leave it' terms.
- As commissioners increasingly assume the role of music publisher, there was disagreement around the extent to which commissioners are active in seeking opportunities for exploitation of works beyond the primary intended use.
- While some rights are routinely licensed/assigned/waived in contracts, there was general agreement among contributors that it is imperative that protections afforded in respect of unassignable aspects of performing rights should be upheld.

## 3.2 Areas for Further Research

The research conducted for this report provides valuable insights into the contemporary market for music commissions for audio-visual content in the UK. In conducting the research a number of areas with significant potential for further research were identified, including considerable scope to further interrogate the issues addressed here in the context of wider debates around IP in the screen industries, the emergence of SVoDs and the future of PSB broadcasting. The following offer opportunities for further research:

- The important question of whether the apparent increase in opportunities for media composers in the streaming age has improved the situation for media composers from underrepresented groups lies beyond the scope of this report, but this is a vital area for further research in this field.
- A large-scale survey of UK-based music creators involved in AV commissions to examine the conditions attached to such deals. Of particular importance is the relationship between the 'front-end' inducements and 'back-end' rewards that dictate what creators stand to earn from entering into these agreements.
- Focus group/interview research with different constituencies of music creators, including those at the start of their careers, and composers' agents in order to gain better understandings of creator motivations and contract negotiation processes.
- An examination of the potential for music commissioning codes of practice to be implemented, using relevant comparators from other sectors/industries. The intersection of intellectual property law and competition law in this context provides a number of areas of opportunity for further interrogation.



## References

- A Abraham, D (2014) 'After the Gold Rush: Sustaining creative risk in UK television for the next generation', McTaggart Lecture, Edinburgh International Television Festival, August 22, 2014
- Barr, K and Kretschmer, M (forthcoming) 'Cracking the Code: Codes of Practice and Television Production in the SVoD Era', CREATE Working Paper
- Bickerton, J (2020) 'Buyout controversy: PRS for Music pens open letter to broadcasters', Broadcast, 25 February. Available at: <https://www.broadcastnow.co.uk/tech/music-rights-chief-buyouts-must-stop/5147611.article>
- Bickerton, J (2021) 'The Ivors and MU launch Composers Against Buyouts', Broadcast, 31 March. Available at: <https://www.broadcastnow.co.uk/tech/the-ivors-and-mu-launch-composers-against-buyouts/5158561.article>
- Burlingame, J (2019) Discovery Networks Corners Composers in Music Royalties Battle, Variety, 12 December. Available at: <https://variety.com/2019/music/news/discovery-networks-composers-music-royalties-1203434924/>
- Caves, R (2000) Creative Industries: Contracts between Art and Commerce. Cambridge, MA: Harvard
- Chalaby, J (2010) 'The Rise of Britain's super-indies: Policy-making in the age of the global media market', International Communication Gazette, 72 (8), 675-693
- Conlan, T (2020) Broadcast (online) 'Streamers shake up the market', available at: <https://www.broadcastnow.co.uk/indie-survey-2020/streamers-shake-up-the-market/5147980.article>
- Davies, G (2019) cited in: 'The Ivors Academy calls for solidarity against buyouts', Ivorsacademy.com, 19 December. Available at: <https://ivorsacademy.com/news/the-ivors-academy-calls-for-solidarity-against-buyouts/>
- Department for Business, Energy and Industrial Strategy (2009) 'Grocery Supply Code of Practice', available at: <https://www.gov.uk/government/publications/groceries-supply-code-of-practice/groceries-supply-code-of-practice>
- Doyle, G and Barr, K (2019) 'After the Gold Rush: Industrial Re-configuration in the UK Television Production Sector and Content', Media, Culture & Society, 41(7), 939-957
- Doyle, G, Paterson, R and Barr, K (2021) Television Production in Transition: Independence, Scale, Sustainability and the Digital Challenge, London: Palgrave Macmillan
- ECSA (2021) 'ECSA's vision on how Europe can prevent buyout contracts', Available at: <https://composeralliance.org/media/250-ecsas-vision-on-how-europe-can-prevent-buyout-contracts.pdf>
- Frith, S. (1988) 'Copyright and the Music Business', Popular Music. 7.1, pp. 57-75
- Gov.UK (2021) 'Music licences for physical products', Available at: <https://www.gov.uk/music-licences-for-physical-products>
- Greenfield, S and Osborn, G (2007) 'Understanding Commercial Music Contracts: The Place of Contractual Theory', Journal of Contract Law, Vol. 23, pp. 1-2  
Harrison, A (2017) Music: The Business: The Essential Guide to the Law and the Deals, 7th edn, London: Virgin

Hesmondhalgh, D (2019) *The Cultural Industries* (4th Edition), London: Sage  
 Hesmondhalgh, D and Baker, S (2011) *Creative labour: Media Work in Three Cultural Industries*, London: Routledge

Hesmondhalgh, D, Osborne, R, Sun, H and Barr, K (2021) *Music Creators' Earnings, the Digital Era, and On-Demand Streaming Revenues*, London: IPO

Ivors Academy (2019) 'The Ivors Academy calls for solidarity against buyouts', 19 December. Available at: <https://ivorsacademy.com/news/the-ivors-academy-calls-for-solidarity-against-buyouts/>

Ivors Academy (2020) 'The Ivors Academy and the Musicians' Union warn that a new wave of buyout deals damage composers' rights and careers', 8 July. Available at: <https://ivorsacademy.com/news/the-ivors-academy-and-the-musicians-union-warn-that-a-new-wave-of-buyout-deals-damage-composers-rights-and-careers/>

Ivors Academy (2021) 'Fair Commissioning For Screen Manifesto', 30 March. Available at: <https://ivorsacademy.com/news/fair-commissioning-for-screen-manifesto/>

Jones, M (2012) *The Music Industries*, Basingstoke: Palgrave Macmillan

Lee, D (2018). *Independent television production in the UK: From cottage industry to big business*. London: Palgrave Macmillan

Martin, A (2020) cited in: Bickerton, J (2020) 'Buyout controversy: PRS for Music pens open letter to broadcasters', *Broadcast*, 25 February. Available at: <https://www.broadcastnow.co.uk/tech/music-rights-chief-buyouts-must-stop/5147611.article>

Macmillan, F (2000) 'Copyright and Corporate Power', in Towse, R. (Ed.) *Copyright in the Cultural Industries*, Cheltenham: Edward Elgar pp. 99-118

Menger, P (1999) 'Artistic Labour Markets and Careers', *Annual Review of Sociology*, 25, pp. 541-574

Musicians' Union (2021a) 'Take Action Against Buyouts', Available at: <https://musiciansunion.org.uk/campaigns/composers-against-buyouts>

Musicians' Union (2021b) 'Musician Royalties from Recordings', Available at: <https://musiciansunion.org.uk/recording-and-broadcasting/musician-royalties-from-recordings>

Musicians' Union (2021c) 'Media Commissions', 3 February. Available at: <https://musiciansunion.org.uk/working-performing/composing-and-songwriting/commissioned-work/media-commissions>

Ofcom (2020) *Media Nations 2020 UK Report*. Available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0010/200503/media-nations-2020-uk-report.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0010/200503/media-nations-2020-uk-report.pdf)

Oliver and Ohlbaum (2020) 'Pact UK Television Census 2020', 2 October. Available at: <https://www.oando.co.uk/insight/pact-uk-television-census-2020>

PRS for Music (2021) 'Publisher Agreements' Available at: <https://www.prsformusic.com/works/publisher-agreements>

Peacock, A and Weir, R (1975) *The Composer and the Marketplace*, London: Faber

Schlesinger, P and Waelde, C (2012) 'Copyright and Cultural Work: An Exploration, Innovation', *The European Journal of Social Science Research*, 25:1, pp. 11-28

Stahl, M (2013) *Unfree Masters: Recording Artists and the Politics of Work*, London: Duke

Towse, R (2016) 'Copyright and Music Publishing in the UK', in Rizzo, I and Towse, R (eds) (2016) *The Artful Economist*, Switzerland: Springer. Pp. 133-152

Towse, R (1997) The Monopolies and Mergers Commission's Investigation of the UK Music Market, *Journal of Cultural Economics*, 147-151

Toynbee, J (2004) 'Musicians' in Frith, S and Marshall, L (Eds) (2004) *Music and Copyright*, Edinburgh: Edinburgh University Press, pp. 122-138

Ulvaeus, B (2021) cited in: Mamo, H (2021) 'ABBA's Björn Ulvaeus Says Royalties Allowed Him to Write 'From 9 to 5'', *Billboard.com*, 19 May. Available at: <https://www.billboard.com/amp/articles/news/9575294/bjorn-ulvaeus-copyright-billboard-pro-spotlight-intervie>



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