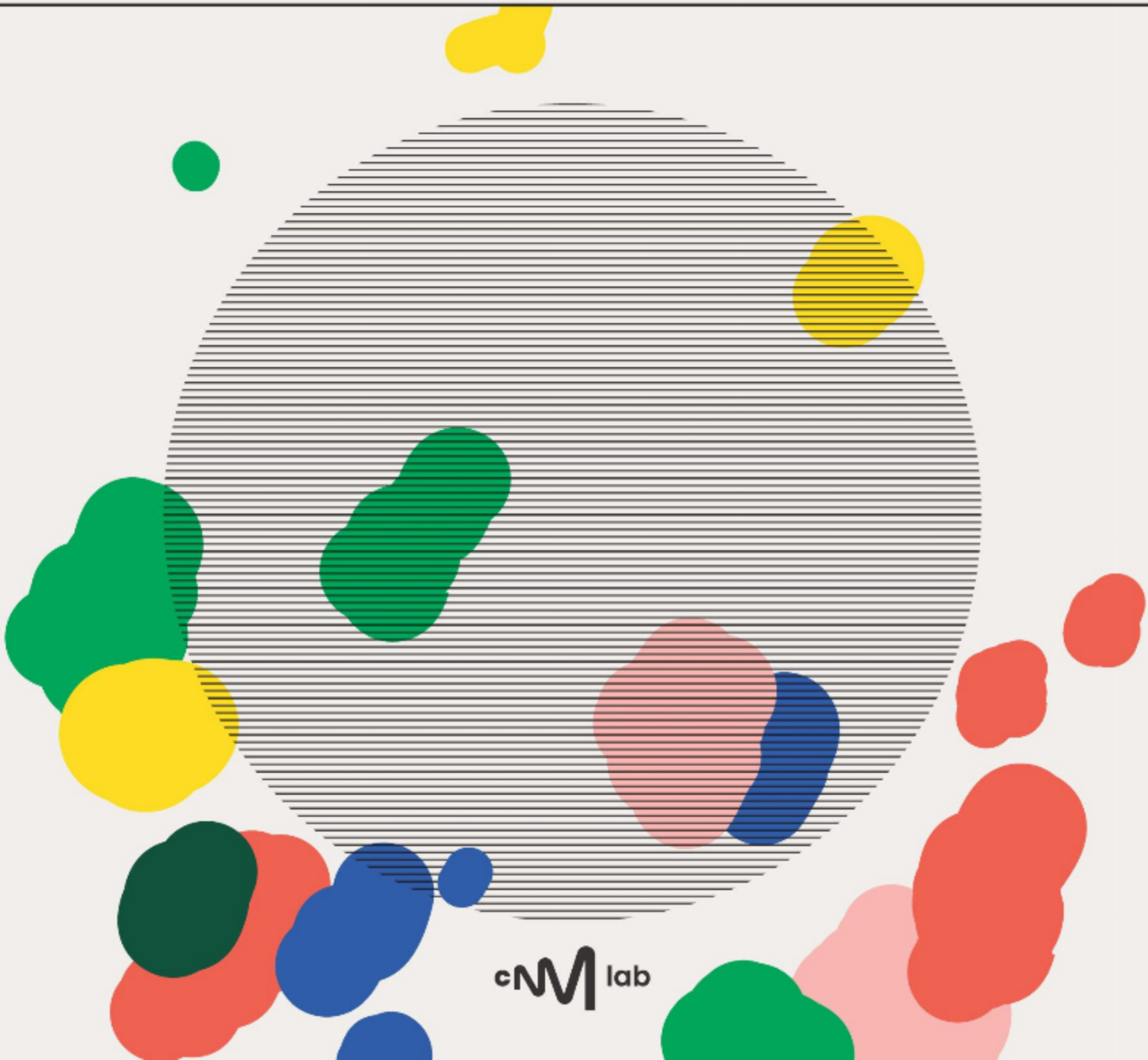
“I Refuse to Be On a Slave Ship”

Female Artists, Master Rights and Contractual Freedom

By Richard Osborne



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1. Summary

This chapter addresses three main subjects. First, it looks at the ownership of sound recording copyright. Legislation has been oriented so that record companies have control but artists are increasingly gaining ownership. In the process, they can gain superior royalty rates and have greater control of their work. Second, the chapter details benefits that artists can achieve by "upstreaming" or "downstreaming" between different types of recording deal, taking advantage of record company support if it is necessary and being more entrepreneurial if it suits their needs. Third, the chapter looks at these issues in relation to gender, outlining difficulties that female artists encounter when they attempt to move between deals or gain ownership of copyright.

2. Introduction

In her 2022 recording "Angel," Little Simz raps, "I refuse to be on a slave ship / Give me all my masters and lower your wages."[1] She is addressing the subject of sound recording copyright, otherwise known as the "master rights." Traditionally, these rights were always controlled by record companies but artists are increasingly able to claim ownership. Doing so can bring benefits. Artists can gain higher shares of revenue and have greater artistic control over their work. Hence Simz's proclamation that she is not a corporate slave.

This chapter looks at the dynamic of master rights ownership through the lens of the British recording industry. It begins by outlining the basis of sound recording copyright laws and assessing how record companies and recording artists have been able to gain control. The chapter then examines rights ownership in relation to different types of recording agreement, looking at the balances that artists need to strike if they wish to gain ownership of copyright. This analysis is followed by a section that details how artists can "upstream" between deals to gain more support from company partners or "downstream" towards independence. This flexibility is important, as artists can make financial gains by moving between deals at opportune times. Moreover, this applies both to making new recordings and in relation to the transfer of their old recordings, the latter of which is only possible if they own the rights.

The chapter then takes a significant turn. Until recently, the story of master rights ownership had been a predominantly masculine affair. The earliest artists to own them were all men. Similarly, the narrative of not owning rights has been led by male performers, including Prince's 1990s "slave" campaign that provides the genesis for Simz's lyric.[2] It is only since the sale of the copyright in Taylor Swift's first six albums in 2019 that female voices have come to the forefront.

This subject is addressed by looking at the ability of female artists to move between deals. The chapter features case studies of artists who have progressed in different ways. Little Simz has "upstreamed" through distribution deals and services deals while maintaining ownership of her master rights. Kate Bush has moved in the opposite direction, making a pioneering turn "downstream" to gain artistic and rights-owning control of her work. The chapter concludes by looking at contractual and career biases that female artists encounter, and contemplates ways to combat this gender asymmetry.

3. Master Rights Ownership and Recording Agreements

Owning the Masters

Sound recording copyright breaks with the norms of intellectual property laws. In respect of most types of artistic work the ownership of rights is granted to creative authors: the writers, artists and composers who make the work. The legislation for sound recordings has been oriented so that record companies have control. It has been awarded on "entrepreneurial" grounds, with ownership granted to the person (whether an individual or body corporate) who takes the financial risk in making the recordings. This has been achieved in different ways across different territories, as it has had to accord with a variety of copyright philosophies.

The UK follows the main international agreement on this subject: the Performances and Phonograms Treaty (WPPT), issued by the World Intellectual Property Organization (WIPO) in 1996. The WPPT designates the "producer" as the owner of the master rights. Legislatively, this term does not refer to studio-based production work, but instead to "the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds.[3]" [3] Record companies have interpreted this as meaning the entity that organizes and pays for the recording sessions. It is on these grounds that they have staked a claim to these rights.[4]

The European Union has also adopted the WPPT and its "producer" criteria for ownership. However, whereas the UK recognizes master rights within the main body of its copyright legislation, this is not the case for countries in continental Europe that have civil law traditions. Legislation in these countries is instead composed of two sets of rights: author's rights, which protect works of "human genius" by awarding ownership to creators,[5] and neighboring rights, which are granted to the performers, broadcasters and recording-makers of creative works. Ownership of sound recording copyright is not granted on creative grounds; it is instead awarded for the organization and financing of recording sessions.

The US has also ratified the WPPT. However, rather than grant ownership of master rights to "producers," US copyright legislation instead recognizes the creativity of the recording process. Recording artists and studio personnel are regarded as co-authors: the former for the "performance [that] is captured"; the latter for "capturing and electronically processing the sounds."[6] US record companies have nevertheless been able to gain control of these rights. They have utilized "work made for hire" rules, the one exception in US law that enables the original ownership of copyright to be granted to "the employer or other person for whom the work was prepared" rather than the creative authors.[7]

Despite these criteria, record companies have not monopolized the ownership of master rights. Recording artists undertake some of the entrepreneurial aspects of record making; consequently, it is possible for them to claim control. In many instances, recording artists pay for their recording sessions. They can therefore satisfy the WPPT's "producer" criteria for ownership because they are taking "responsibility for the first fixation of sounds." In other instances, recording artists hire session musicians and studio personnel. Under the "work made for hire" rules of US legislation they can therefore be regarded as employers and can own copyright on these grounds. The extent to which recording artists are financers and employers varies, however, and this is reflected in their ability to own the master rights. This status is codified in different types of recording agreement, as will be explored in the following section.

4. Recording Agreements

Ownership of master rights is only one aspect of recording agreements. It is balanced against other key features of deals, including advance payments, royalty rates, and promotional and marketing spend. This will be illustrated by outlining five types of deals, drawn from a document issued by the British Phonographic Industry (BPI). It should be noted that, while many territories provide similar agreements, the specificities of the terms relate to UK contracts.[8]

The traditional recording agreement

The first contract type is the traditional recording agreement. For many years this was the only option available to recording artists. Under this agreement, they are remunerated in two ways. There is the upfront payment of two types of advance: personal advances to cover living costs; and recording advances to cover studio expenses. Combined, the value of these advances "may range from a few thousand pounds to hundreds of thousands."[9] In addition, the artists receive royalties. However, these will not be paid through to them until their advances have been recouped. As a result of these arrangements, the contracted artists can be regarded as funding their recordings in whole if they are fully recouped and in part if they are not. Record companies are aware of the legal implications of this financial input and have thus confirmed their copyright interests by contractual means. To safeguard themselves should they not be regarded as the legislative owners of the master rights, they

have requested life-of-copyright assignment of these same rights from their recording artists. There are various grounds on which the companies have argued that this control is fair. First, the artists are not taking full financial risk for their recording sessions, as they do not have to pay back any outstanding debts if they do not recoup.[10] Second, the artists receive considerable marketing and promotional support, which the companies usually fund without recouping from royalties. This investment is also reflected in royalty rates, which are "typically [...] in the range of 15-30% of label receipts."[11]

The license agreement

The second type of contract is the license agreement. When rights are licensed rather than assigned, the licensee gains control of the rights but ownership is not transferred. Moreover, although neither the assignment nor the license of rights need be for life of copyright, a shorter transfer period is more common in the latter case. This type of agreement takes various forms, but the BPI only details the type whereby a large record company licenses recordings "from third party production companies or labels (who have in turn acquired those recordings from artists)."[12]This type of license agreement has been regarded as unfavorable for artists. They will not gain ownership of copyright (it usually resides with the production company or small label instead) and their royalties will be a share of the payment the production company or small label receives. Some performers have nevertheless managed to turn this situation to their advantage by setting up production companies or labels of their own and licensing their recordings to larger record companies. Starting in the 1950s in the US and the 1960s in the UK, these agreements provided the first means by which artists gained ownership of master rights. They remain popular today. Drake, Kanye West, Rihanna, Beyoncé and Adele have all set up companies to gain this type of deal. Latterly a further type of license agreement has emerged whereby artists can license their master rights to record companies even if they do not set up labels or production companies of their own. These artists therefore join with the company-owning artists in being classified as the organizational and financial "producers" – and hence owners – of their recordings. None of these artists bears the financial risk on their own, however, and license deal terms will reflect the labels' involvement. If an artist requires the level of spend on recording advances and marketing support that would come with a traditional deal, their royalties will be tailored accordingly. If they require marketing support but can finance and organize their recording sessions themselves, they can expect higher payment rates.

The profit share deal

The third contract type is the profit share deal. Most aspects of these agreements are subject to 50:50 splits between artists and record companies. The artists bear half of all the costs of making the recordings. On top of studio costs, this can include marketing, tour support, video production "and even legal and accountancy charges."[13] Once these costs are cleared, the artists usually receive half the profits. The copyright situation in these deals varies. Dependent on contract, the rights can be either assigned or licensed to the labels.[14]

Alternatively, the division of entrepreneurial endeavor is reflected in the artists and labels having co-ownership from the outset.15

The distribution deal

Fourth, there is the distribution deal. For most artists, these deals have only been made possible by the digital environment. Digital workstations have made home recording efficient and affordable. Downloading and streaming have made it possible to get recordings to market without the need to manufacture or physically transport them. Consequently, rather than sign one of the deals above, artists can make their own recordings and partner with distributors to get them onto digital platforms. If they only require digital distribution and processing of payments, this can be secured for an upfront fee, leaving the artists with 100% of the digital revenue.16 If the artists want promotional input as well, the distributors are likely to charge a commission rate. This will be "in the range of 15-20%," leaving the artists with most of the revenue.17 Some commission-based distributors are willing to provide advances for marketing spend if artists can evidence previously successful releases.18 Whether the distribution deals are fee-based or commissioned-based, the artists take full financial and organizational responsibility for their recordings and therefore retain ownership of the master rights.

Services deals

Lastly, there are services deals, a type of agreement that has only gained popularity in the digital age. These agreements have similarities to distribution deals but services companies provide a range of optional extras, including marketing, social media, physical distribution, and catalogue management, with the amount of money they are willing to input being calculated in relation to the size of the artists' fanbases.19 Services deals also have similarities to profit share deals and license agreements. The artists license their rights to the services companies, which recoup "defined costs or fees" before they pay out any money to the artists. The companies' commission rates/profit shares range from 25%-50%, dependent on the services required.20 The costs do not usually include tour support or recording advances, however, with the funding for these activities instead being provided upfront by the artists and/or their management teams. The artists' investment in the recordings results in their ownership of the master rights.

Table 1: Deal Types and Master Rights Ownership

Type of deal	Traditional agreement	License agreement	Profit share deal	Distribution deal	Services deal

Conditions for an artist to own the master rights	The artist is denied any chance of owning the rights	If the artist is the licensor (whether under their own name or acting as a company) they have ownership of the rights	Ownership of the rights is determined by contract	The artist satisfies the "producer" criteria of copyright law and therefore has ownership of the rights	The artist satisfies the "producer" criteria of copyright law and therefore has ownership of the rights

As can be seen from the deals listed above, if artists can evidence significant organizational and financial input into their recording sessions, they have a chance of claiming ownership of the master rights. This is becoming increasingly common. Between 2016 and 2022, distribution deals represented the fasting growing sector of the market.[21] Moreover, prior to the twenty-first century, major record companies in the UK gained lifetime assignment of the master rights in most of their new contracts but this had reduced to 66% by 2012, and was only achieved in 26.4% of contracts by 2021.[22] Nevertheless, what can also be seen is that artists are rarely fully independent. Aside from those with distribution agreements, most artists rely on their contractual partners for funding and expertise. Those with traditional recording agreements or advance-funded license deals do so for every aspect of their recording careers. Under other types of deals, masters-owning artists will in most instances be funding their recordings upfront but will gain financial support in relation to distribution, marketing and a variety of other activities.

Upstreaming and Downstreaming

Independence can be complicated further. There is an apparent division between deals where artists partner with record companies (traditional, license and profit share agreements) and those where they partner with other types of company (distribution and services deals). However, the major labels all have distribution and services companies of their own. One reason for these ventures is because they wish to "upstream" artists from these types of agreement to their traditional or license contracts.[23] The movement need not be in this direction, however. Artists can "downstream" as well. To facilitate both types of movement, two time-related factors come into play: contract terms relating to new recordings and contract terms relating to old recordings.

The point at which artists can make new recordings with new contractual partners is determined by the number of releases they are obliged to deliver under their current deals. This varies in relation to different types of agreement. Most distribution deals are on a

"one-off" basis, meaning artists can move to different companies with each release.[24] The situation was originally the same for services company deals but there is evidence these agreements "are getting longer."[25] Some profit share deals are on a one-off basis, whereas others cover an agreed number of releases. Contemporary license deals and traditional deals tend to work on an "options" basis, whereby record companies contract with artists for initial releases but can choose to extend the deals to further releases, with three to four album options being common.[26] Consequently, if artists take over two years to record and release each of their albums, they can be contracted to their companies for a decade or more.

It is in relation to the ability of artists to take their old recordings to new contractual partners that the duration of the copyright transfer matters. Under distribution deals, artists retain control of copyright and can move their old recordings when the distribution deal is terminated. With services agreements, artists license the copyright to the services company for periods varying between four and twelve years and can only transfer their recordings when this period has elapsed.[27] With profit share deals, artists might have co-ownership from the outset or they may gain sole ownership after an agreed time.[28] With license deals, terms of transfer vary but are usually related to the satisfactory fulfilment of all album options plus a set number of years and/or recoupment of advances. With traditional record deals, artists will never gain ownership of the rights.

These time-related factors are important because artists can benefit from being on different contracts at different times. As can be seen from the alternatives listed in the previous section, it is artists who have taken full financial and organizational responsibility for their recording sessions – particularly by funding them upfront – who are most likely to receive the highest shares of revenue. However, this does not mean that artists who are contracted directly to record companies will always be worse off than those with a more independent bent. As well as needing to be entrepreneurial in respect of financing and organizing their recording sessions, independent artists may have to take the reins in respect of marketing and promotion. Record labels invest more money and have greater expertise in this area. Therefore, artists with low royalty rates but effectively marketed recordings might be making more money than those with high shares of revenue but who are not getting heard.

Ultimately, it makes sense for artists to ensure contractual flexibility so they can move between deals at opportune times. In respect of making new recordings, they should ideally be able to acquire marketing support and high advances when most in need. In respect of old recordings, they should ensure the copyright transfer is of limited duration; therefore, when they regain the rights, they can move these recordings to the highest-paying deals. To assess the advantages of different deal types as well as the ability to move between them, this chapter will next look at case studies of Little Simz and Kate Bush. It will then address gender-based aspects of contract agreements.

5. Female Artists and Recording Agreements

Little Simz

Little Simz is a British female rap artist who has upstreamed through different recording agreements. Her first album was released in 2015 and her fifth and most recent album was released in 2022. She has been classified throughout as an independent artist but has gradually welcomed more input into her career, moving from a distribution deal and then to two services deals, the first in collaboration with her own record label, the second in collaboration with somebody else's record label.

Simz's first two albums, *A Curious Tale of Trials + Persons* (2015) and *Stillness in Wonderland* (2017) are issued by her own company Age 101 Music without the support of a services company or record label. This means she is in receipt of most of the master rights' revenue, subject only to a fixed charge or low commission rate paid to her distributor. Her high share of revenue for these albums should nevertheless be contextualized in relation to their popularity. To date, neither has charted anywhere in the world. By November 2023, they had accumulated around 50 million streams on Spotify, which, if subject to a 15% commission rate, would equate to approximately £150,000 in revenue for Simz.[29] This figure could be doubled to account for royalties from other streaming services and recording formats.[30] The resultant £300,000 has been amassed over eight years, however, and this gross figure would be reduced by Simz's expenses for making these albums, including recording costs, session fees, marketing expenditure and company overheads. Reflecting this, the 2018 accounts for Age 101 Ltd show a profit of £16,388.[31] In 2019, profit was only £4,016.[32]

Simz's third and fourth albums, *The Grey Area* (2019) and *Sometimes I Might Be an Introvert* (2022) are also issued by Age 101 but via a worldwide deal with the services company AWAL, which encompasses "global marketing and promotion, digital and physical distribution, campaign coordination, A&R support, synch licensing, and brand partnerships."[33] AWAL runs a "triple-tiered program" of services for artists, with its commission rate rising accordingly.[34] Recording industry sources have provided information about AWAL's deals: the breadth of Simz's agreement would position her in the top tier, meaning it is probably "a 50/50 or profit share agreement" and the rights will have been licensed "anywhere from 4 to 10 years."[35]

AWAL's support has helped Simz to garner significant UK accolades. In 2020 she won an Ivor Novello Award for *The Grey Area*. Two years later, she won the Mercury Prize for *Sometimes I Might Be an Introvert* and a Brit Award for best newcomer. Simz has also gained more streams. Combined, the tracks on these albums had achieved around 400 million plays on Spotify by November 2023. This would provide about £1.3 million in revenue, which could again be doubled to account for other streaming services and formats.

However, under the terms a typical profit share of agreement, Simz's company would bear half the costs of making and releasing the recordings, and would then be in receipt of half of the remaining revenue.

Although the successes of these albums have resulted in improved financial returns for Simz, her position has remained precarious. The logical move following the domestic success of these albums would be to tour the US. However, despite the promise of AWAL to help her "break through to global success," Simz's finances have proven insufficient.[36] A traditional record deal would include a recoupable budget for tour support; services agreements do not provide these funds. Simz has pointed out that "Being an independent artist, I pay for everything encompassing my live performances out of my own pocket and touring the US for a month would leave me in a huge deficit."[37] As a result, she cancelled a tour planned for May 2022.

Simz is also indicative of the complexities of independence. AWAL stands for "artists without a label." On renewing her deal with this company in 2020, her former manager Robert Swerdlow stated, "She is a true independent artist, and has her own creative vision in every aspect of her career. The team at AWAL completely understand this way forward."[38] Paul Hitchman, company president of AWAL, commented similarly that "as an artist with a singular vision for her career, she is a perfect artist for the AWAL model."[39] This model encountered changed the following year, when AWAL was purchased by Sony Music Entertainment, the second largest of the world's three major music labels. Simz's independent releases now contribute to Sony's market share.

The complexities continue with Simz's latest album, *No Thank You* (2022), which includes "Angel," the track quoted at the outset of this chapter. Although this album is distributed by AWAL, it is not issued by Age 101. It instead appears on the record label Forever Living Originals. This company is owned by the studio producer of Simz's last three albums, Dean Clover. If he has a 50/50 profit share agreement with AWAL, this could result in Simz's share of revenue being reduced to 25%. She nevertheless appears to have retained ownership of the masters, as reflected in the lyrics to "Angel."

Simz has been restricted in her funding ability and her latest album has not been released through own her label. It should be noted, however, that once the costs of her first four albums are cleared, she will receive a high share of revenue for as long as these recordings are popular. This includes *The Grey Area* and *Sometimes I Might Be an Introvert* for which she could increase her share from 50% to 85% or more, dependent on how she issues these recordings once the license agreement with AWAL expires. It can also be noted that, although she is probably on a lower rate for *No Thank You*, this could be a one-off deal. Subsequent releases could be issued via Age 101 or she may partner with a larger record company. Simz has stated, "I would never tell someone to be independent or signed, as that's instinctual and something only you can choose."[40]

Kate Bush

Kate Bush has downstreamed to independence. Her first deal was a traditional recording agreement, signed with the major label EMI in July 1976 under what were conventional UK terms at that time: rather than being set by albums options, the duration of contracts was set in years. Bush's agreement ran until July 1980. During this period, there is evidence that EMI was supportive. There were eighteen months of development between the signing of her deal and the release of her first single "Wuthering Heights." Moreover, it was Bush who insisted on this song being the single, getting her choice over the company's preference.41 The partnership was also successful. Aided by EMI's marketing input, Bush had three Top 10 albums and six Top 20 singles in the UK in the first four years of her career. Nevertheless, her contractual terms were not particularly stellar. The initial advance of £3,000 was less than a tenth of the advance the Sex Pistols secured from EMI in 1977.42 From this, it can be assumed her royalty rate was at best average for the time, meaning it could have been a single-digit figure.43 EMI also made decisions that ran counter to Bush's interests, including the use of a sexually exploitive image to promote her first album *The Kick Inside*.44 It was her experience recording the follow-up *Lionheart* that she found most dispiriting, however. EMI gave her limited time to record this album and she suffered sexual discrimination from the studio producer Andrew Powell. Bush explained, "if you're a female, a lot of what you say is not taken very seriously […]. And a lot of the points that I would have liked to have pushed, I would have been told that it wouldn't work."45

In response, Bush "stepped up efforts to have more control over her career."46 After concluding her initial deal with the release of her third album *Never For Ever* in September 1980, she contracted again with EMI. However, rather than do so directly as an artist, she self-financed her recordings and licensed them to EMI via her company Novercia Ltd, thus enabling her to retain ownership of the master rights.47 This maneuver was both encouraged and fed by her growing autonomy. Bush assumed sole studio production duties for her fourth album *The Dreaming* (1982) and built her own studio to record the follow-up *Hounds of Love* (1985).

Bush's license deal lasted thirty years, only coming to end with the collapse of EMI in 2012. During this time, the recording industry transitioned through several formats, starting with vinyl as the main seller and culminating with the rise of streaming. This could prove costly for artists who signed agreements in the 1980s and whose royalty rates remained unchanged due to life-of-copyright assignment of their rights. In the vinyl era, record company royalty rates were calculated in respect of the expenses of manufacture and distribution. This resulted in UK royalties in the 1980s averaging around 14% (Garfield 1986: 19)48.

As a rights-owning artist, Bush was not in this position. Following the demise of EMI, she reissued her previously licensed recordings via her own label Fish People, partnering with the Warner Music Group for distribution.49 It has been estimated this deal granted her "80%-plus" of the master rights revenue.50 When her 1985 single "Running Up That Hill" was featured in the 2022 series of *Stranger Things*, it was for a short while the most popular

recording worldwide on streaming services. Music business journalist Tim Ingham calculated it was then earning Bush "a million dollars in recorded music royalties per month."[51]

Ingham has also posited a drawback relating to distribution deals. After contemplating why the success of "Running Up That Hill" did not lead new listeners to explore "the rest of Kate Bush's oeuvre," he argued this was because the small margins Warner gained from her work did not encourage the label to "throw the full weight of its marketing machine behind her brand."[52] This argument nevertheless rests on Ingham's incorrect claim that Bush "fully" owns the rights for her entire catalogue.[53] Due to the terms of her original deal, the master rights to her first three albums are owned by Warner, which acquired EMI's Parlophone label in 2013. It can be expected that Bush's royalty rates for these albums, which include her second and third biggest hits after "Running Up That Hill," remain considerably lower than those for the rest of her catalogue. Ultimately, given the control she has over her career, the decision to not exploit her "brand" is more likely to have resided with Bush than with Warner Music.

Gender Asymmetry

The case studies of Little Simz and Kate Bush have been chosen deliberately. On the one hand, they are indicative that artists can improve their earning capabilities both by "upstreaming" towards increased label support and "downstreaming" from traditional recording contracts. On the other hand, these two artists have demonstrated an uncommon ability to gain and move between deals. There are gendered aspects to career opportunities, as will be illustrated by the following overview of the British market.

Before commencing, it is worth noting that upstreaming or downstreaming only tends to improve the financial situations of recording artists. It does not provide an escape from the misogyny of the recording industry. As the following information indicates, it is only well-established, self-producing artists such as Kate Bush who can gain some refuge from gender discrimination. A recent UK governmental report has determined that female artists at all other career levels "continue to face unjustifiable limitations in opportunity, a lack of support, gender discrimination and sexual harassment as well as the 'persistent issue of equal pay.'"[54]

These limitations can be first witnessed among female artists who wish to commence their careers as independent artists. Their entrepreneurial abilities might not be recognized. A 2018 study by the Organisation for Economic Co-operation and Development (OECD) showed that women are 60% as likely to be self-employed as men.[55] The International Labour Organization (ILO) has indicated that women entrepreneurs face gender-based barriers, including "discriminatory property, matrimonial and inheritance laws and/or cultural practices, limited mobility, voice and representation, and an unequal share of family and household responsibilities."[56]

Female artists who do manage to self-finance their recordings can then face limitations if they wish to upstream from deals with distribution companies to deals with service companies or record companies. Progress can be biased in respect of musical styles. For example, Simz's 2022 Brit Award for "best newcomer" came six years after the release of her first album and twelve years after the release of her first mixtape. This delayed recognition can be excused due to the rules for the award: an artist requires a Top 40 album or two Top 20 singles to qualify. Simz's progress was nevertheless also hampered due to institutionalized biases. She has mentioned inequality in her genre, commenting that being "a woman played a part" in her being overlooked while second-rate male rappers were prioritized around her.[57] This bias was noted in a 2016 headline in Vice magazine, which read "Little Simz Is Pioneering UK Rap, So Why Won't the Industry Support Her?"[58] It can be witnessed in other genres as well. Several mainstays of distribution deals and services agreements, including indie, electronic dance music and grime, have been overwhelmingly male in terms of company personnel and the artists who they sign.[59]

Female artists also face biases in respect of musical roles. Early success in the independent environment can prove pivotal, as artists tend to work at the borderline of financial viability. In this respect, Simz's creative partner and recent label owner Dean Clover has had financial advantages over her in being a studio producer rather than a rapper. The producers of "beats" tend to make more money than the providers of vocals.[60] This includes relatively low-profile producers such as Clover, whose financing of his label has been aided through his work with star performers such as Adele. Studio personnel tend to be male. In recent years, women have only occupied about five percent of production and engineering jobs in the UK.[61] Meanwhile, as the UK government has reported, female artists are "invariably more likely to be accepted as singers in contrast to most other types of musicianship, further restricting their music careers and ambitions."[62]

Gender differences are also in evidence when artists start their careers with traditional recording agreements and then attempt to "downstream" to entrepreneurial independence. Here, the pioneering nature of Kate Bush's recording agreements should be noted. When she gained her license deal in 1980, she was following a small minority of UK artists who had secured ownership of their master rights, beginning with Dave Clark in 1963, and including the Rolling Stones in 1970, Pink Floyd in 1972, Peter Gabriel in 1975 and Paul McCartney in 1979. Bush appears to have been the first British woman to achieve this feat. One reason for the absence of precursors lies with the economics of the British music industry, which from 1968 until the digital era was oriented towards albums rather than singles.[63] This market was skewed towards male acts and rock music. A weekly UK albums chart was inaugurated in 1956, but when Bush achieved a number one album with *Never For Ever* in 1981, she was the first woman to attain this summit. Another reason is the level of autonomy accorded to female performers. Bush was unusual in being involved in the studio production for her albums (from *Never For Ever* onwards). Although the "producer" criteria in copyright laws is defined separately to the role of studio production, there is a link between the two practices. If a studio producer owns their studio and/or pays for their recordings, they can be well positioned to claim ownership of the master rights via a license deal. A third possible reason for the lack of female rights owners is because the benefits of

having control were not widely recognized or discussed at this time. In this respect, Bush may have gained insight from working Dave Gilmour and Peter Gabriel, both of whom had license deals.

Today, it appears more likely that female artists can successfully downstream. The ability to do so is nevertheless dependent on having successfully completed a traditional recording agreement and this is not easy. In the first instance, a record company needs to have offered an artist a deal. As ever, only a small minority realize this ambition. The chances also decrease if you are female rather than male. In a recent analysis of gender bias in the British music industry, Vick Bain showed that women have equal ambition to be musicians – just under half of all students studying music at postgraduate level are female – yet they constitute less than a fifth of all artists signed to UK record companies.[64] Moreover, 12.6% of the labels surveyed had no female artists at all.[65]

Artists must then see out the full number of options in their deals without being dropped or kept in limbo. The former can be damaging regarding securing good terms in subsequent agreements; the latter can extinguish artists' careers. Both have gendered aspects. A study of "critics' choice" winners at the Brit Awards has indicated that UK labels each tend to prioritize a single female artist at any given time and can be neglectful of other female performers on their rosters.[66] Testimony on being kept in limbo also points to the harsher treatment of female artists.[67] In an analysis of this phenomenon, Michael Cragg has written that "Pop is littered with artists, from Chlöe Howl to Sinéad Harnett, who have signed with major labels and then been sidelined."[68] This includes the artist Raye, who signed a traditional recording agreement in 2014 with options for four albums but by 2021 had still not been allowed to release her first album because she was "awaiting confirmation" from her label she was "good enough" to do so.[69]

These outcomes reflect how record companies interact with different genres. Keith Negus has distinguished between an "organic" approach for rock music, which involves a "long term" view of an act's potential and giving them a degree of freedom in respect of marketing and repertoire choices, and a "synthetic" methodology for pop music, where the company is closely involved in both image and music but their focus might only be "short term."[70] As Bain indicates, rock music is still "dominated" by male performers and therefore many female artists face the synthetic approach.[71] Raye is a "rare" escapee.[72] She extricated herself from her traditional deal in December 2021 and subsequently released a self-financed album through a services company. It reached number two in the UK charts.

The difficulties of signing a record deal and being prioritized are at their height if an artist does not already have a track record. They are different if an artist is upstreaming from a services deal and has achieved recognition and success. Little Simz, for example, would be well positioned to demand preferential terms in relation to marketing, royalty rates and ownership of the masters. Most of today's star performers have nevertheless begun their careers with traditional recording agreements and have thus had to assign the rights in these deals for the life of copyright. Only a handful have been able to reclaim them. In America, this includes Bruce Springsteen, Prince and Jay-Z but not Taylor Swift. In Britain,

David Bowie, Queen and Radiohead have reached this exalted position but Kate Bush has not reclaimed her earliest recordings. It is another phenomenon that appears to have a male bias.

All businesses are encouraged to address disparities such as these. At a global level, the OECD collates company information in respect of gender inequalities.[73] The British music industry has gone further in terms of data and actions. Since 2016, its overarching trade body UK Music has conducted a biennial diversity report, which requires music companies to detail gendered aspects of career progression and pay. The latest, from 2022, also instructs them on policy. Companies should "Work towards a five-year equality, diversity and inclusion (EDI) strategy and vision," "Identify barriers to entry or inclusion" and "Incorporate EDI into every part of an organisation's structures and systems."[74]

Thus far, UK Music has not addressed recording artists in its reports. This is because they are not regarded as employees. Although their contractual positions and status as copyright owners are varied, the recording industry has in this instance chosen to view all of them as independent contractors. Therefore, it has not provided UK Music with information about career progress or remuneration. It has also failed to incorporate recording artists in its EDI work.

6. Conclusion

This chapter has dealt with three main subjects. First, it has indicated that when artists gain ownership of sound recording copyright, this tends to be based on their entrepreneurial ability to fund and organize their recording sessions. They are rarely fully independent of recording industry support and financing, however, and contracts are tailored to reflect this. Second, it has detailed benefits that artists can gain from upstreaming or downstreaming between different deals, taking advantage of record company or services company support if felt necessary and being more entrepreneurial if it suits their needs. Third, it has outlined gendered differences in respect of the ability to move between deals and gain requisite levels of industry input. This last topic has been addressed because female artists have been discriminated against when it comes to copyright ownership and progressing their careers.

How can gender parity be achieved? Some issues, such as the lack of female studio producers, are the result of artistic preconceptions and can be best resolved by encouraging the advancement and appreciation of skills. In some genres, including dance music, this is starting to take place.[75] We are also beginning to hear more about other issues, such as the institutional biases that affect the signing and developmental policies of record companies and services companies. Female artists are increasingly vocal about contractual inequities;[76] studies are being undertaken. There is nevertheless a need for these companies to do more. In the UK, they have been instructed to incorporate EDI into all their structures and systems, yet they have failed to address the contracts that form the cornerstone of their work. There is a possibility that this could be mandated. In January 2024, the UK

government's Women and Equalities Committee recommended that record labels "commit to regular publication of statistics on the diversity of their creative rosters."[77] This is essential work. Until the structural inequalities in recording agreements are reported and actioned, any visions for equality will be willfully blind.