



Bennett, J. (2014) *The death of the songwriter: attribution of creative ownership in popular music production*. The 9th Art of Record Production Conference: Record Production in the Internet Age. University of Oslo, Norway. 4 December 2014.

ResearchSPAcE

<http://researchspace.bathspa.ac.uk/>

This version is made available in accordance with publisher policies.
Please cite only the published version using the reference above.

Your access and use of this document is based on your acceptance of the ResearchSPAcE Metadata and Data Policies, as well as applicable law:-

<https://researchspace.bathspa.ac.uk/policies.html>

Unless you accept the terms of these Policies in full, you do not have permission to download this document.

This cover sheet may not be removed from the document.

Please scroll down to view the document.

The Death of the Songwriter:
attribution of creative ownership
in popular music production

Joe Bennett
Bath Spa University
joebennett.net
@joebennettbath

Whose creativity?



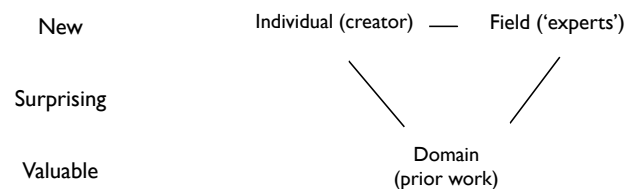
Example 1 (1999)

Example 2 (1967)

Example 3 (1998)

Example 4 (1938)

Anti-romantic creativity



The creative mind : myths and mechanisms (Boden, 2004)

The Systems Model of Creativity (Csikszentmihalyi, 1988)

Research questions

How do collaborators allocate creative duties?

How do they attribute copyright ownership?

What musical activities generate IP? Why?

How do we value or reward different creative contributions?

Influence, genre and plagiarism – 'linear collaboration'?

Creative attribution

Is an economic right

Is a moral right

Is the mechanism by which songwriters get paid

Song vs Track

A musical work:

"a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music."

SONG

A literary work:

"any work, other than a dramatic or musical work, which is written, spoken or sung"

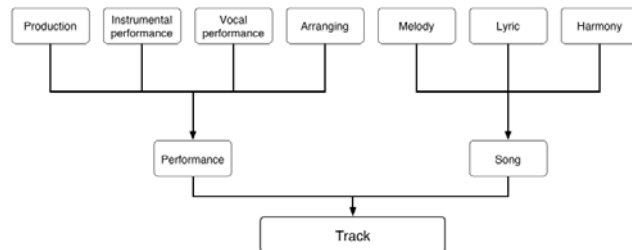
A sound recording:

"a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced."

TRACK

(UK Copyright, Designs and Patents Act 1988)

Creative contributions



(Bennett 2014)

Performance/Song/Track paradigm from Moore (2012)

Taxonomies of songwriting process

Primary research:

interviews and co-writes with pro songwriting teams 2009-2013

Additional sources (songwriter interviews)

Process-based

Time-based

Production-based

Process taxonomy

Process name	Description
Lyric-setting	Lyric is provided to composer, who writes melody in response, sometimes with edits.
Music-setting	Melody is provided to lyricist, who writes lyric in response.
Title-first iterative	Title pre-agreed; music and lyrics developed iteratively and interdependently.
Melody-first iterative	A melodic fragment, usually in harmonic context, is provided and music & lyric are developed interdependently.
Harmony-first iterative	A chord sequence is established and melody and lyric are developed interdependently.
Band iterative	A live band plays stimulus fragments generated by its members and evaluates them for inclusion.
Toplining	A backing track is created; a collaborator then provides melody and/or lyrics. Often includes post-production editing.

Time-based taxonomy

Collaboration timescale	Description
Simultaneous present	Collaborators collaborate face to face in real time.
Iterative present	Collaborators work face to face but on different tasks, demarcated by skillset.
Simultaneous absent	Collaborators work simultaneously online, for example on a shared lyric document, or over video link.
Iterative absent	Collaborators pass the song back and forth, adding to and adapting the Other's contribution. Common in online collaborations.
Linear absent	Collaborators pass the song back and forth, adding to <u>but not adapting</u> the Other's contribution. Common in music/lyric demarcated teams.

Production taxonomy

Creative model	Description
Subtracted production	The song is fixed in a tangible medium (performed audio demo or notation), ready for recording at a later date.
Integrated production	Songwriting and recording occur simultaneously or overlap.
Semi-integrated production	Some audio remnants of the songwriting process survive in the final recording but others are later replaced.

The issues

Collaborators may generate song and track simultaneously

Listeners do not differentiate

Separating creative contributions is difficult in real-time, and impossible retrospectively

Different creative activities enjoy different levels of copyright protection

Is 'influence' merely linear historical collaboration?

Whose creativity?

Concerto for Violin in F Major, Op. 8, No. 3,
RV293, Autumn, I. Allegro

Capella Istropolitana

(You Make Me Feel Like) A Natural Woman
Aretha Franklin

No Matter What
Boyzone

It Don't Mean a Thing (If It Ain't Got That
Swing)
Stephane Grappelli and Django Reinhardt
(**Quintette du Hot Club de France**)

Image

Whose creativity?

Concerto for Violin in F Major, Op. 8, No. 3,
RV293, Autumn, I. Allegro

Antonio Vivaldi

(You Make Me Feel Like) A Natural Woman
Gerry Goffin, Carole King, Jerry Wexler

No Matter What
Andrew Lloyd Webber and Jim Steinman

It Don't Mean a Thing
(If It Ain't Got That Swing)
Duke Ellington and Irving Mills

Image

Assumptions?

Concerto for Violin in F Major, Op. 8, No. 3,
RV293, Autumn, I. Allegro

Antonio Vivaldi (composer)

(You Make Me Feel Like) A Natural Woman
Aretha Franklin (vocalist)

No Matter What
Boyzone (boy band/vocalists)

It Don't Mean a Thing (If It Ain't Got That Swing)
Stephane Grappelli and Django Reinhardt
(soloists)

Image

A recording that moves people is never just about the
artist and the songwriters. It's about people like:

[record company bosses] Jerry [Wexler] and Ahmet
[Ertegun], who matched the songwriters with a great
title and a gifted artist;

Arif Mardin, whose magnificent orchestral arrangement
deserves the place it will forever occupy in popular music history;

...Tom Dowd, whose engineering skills capture the moment for posterity;

...the rhythm section, the orchestral players, and the singers.

...the promotion and marketing people that helped this song to reach
more people than it might have without them.

But in the end it was Aretha's performance that sent our song not only to
the top of the charts but all the way to heaven.

(Carole King, 2012)

Image

Case studies

Mona Lisa (1949)

Irreplaceable (2007)

Mona Lisa (1949)

Image

Jay Livingston & Ray Evans

Commissioned by Paramount Pictures for the film 'OSS' (later 'After Midnight/ Captain Carey USA')

Original 'Mona Lisa' lyric changed to 'After Midnight' and back again.

(full story at joebennett.net/tag/mona-lisa)

Brief and veto as collaboration?

We had to write an Italian song. It was a picture called OSS, which was the CIA during World War II. Alan Ladd was in a little Italian town, and they wanted some way of warning him that the Nazis were coming with a patrol. He was there with a little radio and the partisans, and they [the film company] said, 'Why doesn't somebody play a song on an accordion, a street guy.' He was blind but he could really see, and he'd start playing this song and that would warn Alan Ladd.

I started to write something kind of scary, but we thought 'no, that's going to warn the Germans.' So we wrote 'Mona Lisa.'

...[the film studio] said that [the Mona Lisa melody] sounded Italian and they liked it.

(Jay Livingstone interview, cited in Carter 1990).

Initial idea is derivative

Ray had the title 'Primadonna'. There was a big song called Ballerina out. You shouldn't do it, but you do imitate...

I was driving in the car, and I went 'Primadonna, Primadonna, de da de da'. I wrote the whole melody [in the car that day].

Of course, we didn't like 'Primadonna' as a song. He [Evans] came up with the title 'Mona Lisa' the next day

(Livingston, in Carter 1990)

Mona Lisa
Jay Livingston and Ray Evans (1950)

Mon a Lis a, Mon a Lis a, men have named you You're so like the la dy with the mys tic
smile Is it on ly 'cause you're lone ly they have blamed you? For that Mon a Lis a strange ness in your
smile? Do you smile to tempt a lo ver, Mona Lis a? Or is this your way to hide a bro ken
heart? Ma ny dreams have been brought to your door step They just lie there and they
die there Are you warm, are you real, Mon a Lis a? Or just a cold and lone ly love ly work of art?

Commercial intervention

They [Paramount] loved title songs because it sold their picture. They changed the title of the picture OSS to After Midnight. They said, 'We need a title song. Throw the lyric to Mona Lisa away and write After Midnight, because that's a pretty melody and it sounds Italian.' So we wrote, 'I'm so lonely / and it's only / after midnight / Did we leave the / candlelight, the / wine too soon.' Same melody.

(Livingston, in Carter 1990)

Rewrite - After Midnight (1949)

Introduction

Soft guitars were playing as we whispered our goodnight
And the gondolier caressed his song
Love is on the way I know it's just about in sight
May it soon come along

Theme (sung to the 'Mona Lisa' melody)

I'm so lonely, though it's only after midnight
I'm so tattered by the soft Italian moon
I'm so restless, are you restless after midnight?
Did we leave the candlelight, the wine too soon?
Do you lie awake as I'm awake this midnight?
Does the tick-tock of the clock seem much too slow?
In the hush of each long lonely hour
How I miss you, long to kiss you
But I know love will grow, love will flower
And then we'll share this after midnight afterglow

Image

Who really created
Mona Lisa?

Image

Sidney Keith Russell and Carl Sigman (Ballerina 1947) -
four-syllable word became 'Primadonna'

Paramount Pictures (an Italian melody - with veto)

Livingston and Evans (topline, lyric and harmony)

Nat King Cole (rhythmic interpretation, performance)

Leonardo Da Vinci ('enigmatic' inspiration)?
(or sitter Lisa Gherardini?)

Irreplaceable (2007)

Written in the studio by 'Stargate' (Tor Erik Hermansen & Mikkel Storleer Eriksen) and...

Ne-Yo aka Shaffer Smith (topline + lyric)...

+ 'Espionage': Espen Lind and Amund Bjørklund (guitar chords)

Beyoncé (vocalist) later credited as co-writer

"We put a lot of instrumental melodies in our music that singers and lyricists can use and adapt. Our goal is to inspire singers to come up with melodies, and then we edit these melodies and lyrics." (Hermansen, in Tingen 2010)

Ne-Yo & Beyoncé

"I give other people credit where credit is due, like Beyoncé really did vocally arrange [Irreplaceable]."

(Ne-Yo, in Moody 2007)

Image

Image

Publishing royalties

Creators

Composer **KNOWLES, BEYONCE GISSELLE**

Composer/Author **ERIKSEN, MIKKEL STORLEER**

Composer/Author **HERMANSEN, TOR ERIK**

Composer **LIND, ESPEN**

Composer **BJOERKLUND, AMUND IVARSSON**

Composer/Author **SMITH, SHAFFER**

[percentages redacted]

Publishers

EMI MUSIC PUBLISHING LTD

SONY/ATV MUSIC PUBLISHING (UK)

LIMITED

IMAGEM MUSIC

Attribution in Irreplaceable

Production artefacts (guitar loop) credited

Producers credited

Topliner credited

Vocalist credited

A new and better model? Or a performer wielding economic power?

Questions

Are Cole or Paramount co-writers of Mona Lisa?

Should Beyoncé's economic power beget a song credit?

What do we mean by 'creating music'? Both words are contextually defined.

How do we protect arrangement-based or 'non-melodic' creative works? (e.g. Techno)?

Performer as creator?

Performers may or may not be credited as writers (e.g. Larry Mullen Jr / Ringo Starr)

UK case law for instrumentalists:

Hadley vs Kemp (sax solo is not part of the song)

Beckingham vs Hodgins (violinist is a songwriter)
(Bently 2009)

Beyoncé added to Irreplaceable credits 2007

Issues

Some songs are written in the studio

Contemporary songwriting often starts with the production

Vocalists add value (do they add creativity?)

Different admin mechanisms for different creative activities:

"I was paid £9 for the session. I've spent it since then."
(Vic Flick, guitarist on the James Bond theme)

Is all art collaborative?

"We have come to take for granted ... the vital and enduring concept of originality. It carries with it an idea of the new, of something created in a godlike fashion out of nothing.

"[But] the antithetical notion of artistic creation... is that no one escapes history. Techniques and conventions developed by predecessors [...] are available as ready-made tools and have a profound effect. Above all, art is a conversation conducted down through the generations."

(English novelist Ian McEwan, 2012)

Image

References

Bennett, J., 2014. *Constraint, Creativity, Copyright and Collaboration in Popular Songwriting Teams*. Guildford, UK: Surrey.

Bennett, J., 2013. *Mona Lisa by Jay Livingston and Ray Evans – analysis of a co-write*. Joe Bennett website. Available at: <http://joebennett.net/2013/08/08/mona-lisa-by-jay-livingston-and-ray-evans-analysis-of-a-co-write/> [Accessed August 26, 2013].

Bently, Lionel. "Authorship of Popular Music in UK Copyright Law." *Information, Communication & Society* 12, no. 2 (March 2009): 179–204. doi:10.1080/13691180802459948.

Boden, M., 2004. *The creative mind: myths and mechanisms* 2nd ed., London; New York: Routledge.

Carter, W., 1990. *Writing together: the songwriter's guide to collaboration*, London: Omnibus.

Csikszentmihalyi, M., 1988. *Society, culture, and person: a systems view of creativity*. In R. Sternberg, ed. *The Nature of creativity: contemporary psychological perspectives*. Cambridge; New York: Cambridge University Press, pp. 325–339.

HMSO, 1988. *Copyright, Designs and Patents Act (UK) 1988*. Available at: <http://www.legislation.gov.uk/ukpga/1988/48/contents> [Accessed July 19, 2010].

King, C., 2012. *A natural woman: a memoir* 1st ed., New York: Grand Central Pub.

McEwan, I., 2012. *The originality of the species*. *The Guardian*. Available at: <http://www.guardian.co.uk/books/2012/mar/23/originality-of-species-ian-mcewan>

Moore, A.F., 2012. *Song means: analysing and interpreting recorded popular song*, Farnham, Surrey; Burlington, VT: Ashgate.

Tingen, P., 2010. *The Stargate Writing & Production Team*. *Sound on Sound magazine*. Available at: <http://www.soundonsound.com/sos/may10/articles/stargate.htm> [Accessed April 28, 2013].