Misogyny in music: actors, business and law

MISOGYNY IN MUSIC: ACTORS, BUSINESS AND LAW

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1. INTRODUCTION

In the summer of 2022, the UK Parliamentary Women and Equalities Committee (WEC) started an inquiry into "Misogyny in Music" ("WEC Inquiry") responding to the increasing awareness of intersectional gendered hardships experienced by women and gender diverse artists in the music sector. Continuing on through 2023 this inquiry investigated culture, and behaviours, which have previously been rendered invisible behind the perceived glamour of the industry. With the release of their report on 30 January 2024, the WEC agreed with researchers, non-profit organisations, and activists that misogyny in music is "endemic" (WEC Report, 2024, pp.3, 17). The WEC have called for a significant culture change and made thirty-four recommendations for action, addressed at the industries and the Government.

In fifty-six written submissions and eight oral evidence sessions, all made public, supplemented by several confidential group sessions, and a confidential call for evidence regarding non-disclosure agreements (NDAs) with witnesses protected by parliamentary privilege, the WEC Inquiry heard academic, industry and individual first-hand reports of how "endemic" (Annetts, 2023) misogyny is in music. The authors of this chapter submitted written evidence to the WEC Inquiry in July 2022, participated in an oral session held in parliament in February 2023, followed by further written information in April 2023 on behalf of a campaigning organisation called The F-List for Music CIC, representing female and gender diverse musicians in the UK.

It is expedient to start by clarifying the difference between misogyny and sexism. Sexism is the belief that women are less competent than men. This is a form of prejudice. The United Nations Development Program's Gender Social Norms Index (GSNI), demonstrates that in 2023 over ninety per cent of the world's population still hold gender biases that restrict women into subordinate roles in their careers, professional opportunities, and personal lives. This prejudice has a range of forms along a continuum from benevolent sexism, a condescending form of prejudice (Glick *et al*, 2000), to misogyny, discrimination, and harassment in the workplace, or outright hostility and its most dangerous manifestation,

violence. Misogyny is the enforcement mechanism of patriarchy which results in the debasing and controlling of women and is a backlash against any action which may threaten man's dominance and privilege (Banet-Weiser, 2018; Manne, 2018).

There has been an increasing focus of academic interest in this particular belief and behaviour system over the past decade because of the growing awareness of it as a fundamental cause of violence against women and girls. Rottweiler and Gill (2021, p.6) identified several dimensions pertaining to the construct of misogyny including: the distrust of women, the devaluation of women and the belief that women are manipulative and exploitative by nature. These beliefs then result in hypermasculinity, sexual entitlement, a tendency to seek revenge, violent beliefs, and, ultimately, physical aggression. Although they failed to recognise misogyny as a specific hate crime in their "Hate Crime Laws" report of 2021, the Law Commission in the UK (p.128) reported that numerous police forces consider behaviours such as unwanted sexual advances, online abuse, sexual harassment, threatening/aggressive/intimidating behaviour, stalking and sexual assault towards women as constituting misogyny. Multiple recent music industry reports outline the prevalence of sexual assault including rape and other gender-based violence (Jones and Manoussaki, 2022; and Williams and Bain, 2022).

These circumstances affect both business and law, governing the position and power stakeholders hold in the music industry. In this chapter we offer a multi-disciplinary overview of the ways in which the patriarchy of the music industries is maintained, and when needed, enforced through misogyny. After this introduction, the chapter focuses its investigation on three areas: first, mapping the relations, stakeholders, and actors (organisations and individuals) in the music industries. Second, the chapter investigates the accepted precarious employment practices and asymmetric power dynamics in music and the behaviours this supports, including bullying and harassment, and explaining why matters in music are more alarming than in other parts of society. And thirdly, the chapter explores the role of intellectual property ("IP") laws (especially copyright) in maintaining the accumulated power in the music eco-system and with it, the perpetuating of the intersectional gender hardships lived by women and gender diverse people. It is argued that IP laws could act as a social justice corrective, by redistributing the power across the sector. In conclusion, we outline an agenda of what needs to happen next.

2. MAPPING THE MUSIC INDUSTRY

The WEC Inquiry identified seven key stakeholder groups in music it wished to consult with in public oral sessions, interviewing the following: music academic researchers, music membership and lobbying organisations, live music and festival organisations, major music organisations, government representatives, in the cultural industries, two high-profile women in music, the musician Rebecca Ferguson and radio DJ Annie Macmanus and also women in music campaigning representatives. This Inquiry has been notable in that it has included less powerful voices, such as individual women and grassroot campaigners who have experienced discrimination and harassment, and who are usually not given such a public platform to discuss misogyny in music. Conversely WEC also interviewed those from a number of the most economically successful and prestigious music companies in the UK, who were adamant in their testimony that misogyny was a thing of the past, no longer an issue (Mann, 2023). Thus as we review the main actors, stakeholders, and relations in the music industry, we ask who does this *status quo* benefit and who is keeping these structures intact?

The music industry is, at first glance, a huge success for UK plc (the informal term given to the whole of the UK economy) (UK Music, 2014). Numerous reports published by the sector's lobbying body, UK Music, celebrate its economic success. According to the latest figures from 2021 the music industry's contribution to the UK economy was £4 billion and exports rising to £2.5 billion, down from pre-covid figures but still a sizeable contribution to His Majesty's Revenue and Customs. In addition, the industry's cultural importance, prestige and soft power cannot be overstated either.

Notably the recorded and publishing industry is an oligopoly (Guichardaz *et al*, 2019, p.2) with seventy per cent of the UK's music economy generated through only three companies: international and stock-floated organisations Universal Music Group, Sony Music Group and Warner Music Group, also commonly known as 'the Majors' (Competition and Markets Authority (CMA), 2022, p.19). As of April 2022, there were only thirteen music related organisations (not including educational organisations) who employed more than two hundred and fifty people and therefore must mandatorily report their pay-gap in the UK (out of over fourteen thousand in the rest of the economy). These include the two collective management organisations ("CMOs"), PRS for Music and the Phonographic Performance Limited (PPL), alongside the dominant newcomers, the digital intermediaries such as Spotify, as well as the more traditional live music promoters AEG and Live Nation.

In addition to the Majors, CMOs and streaming service providers, there are several thousands of other companies existing in the music ecosystem employing tens of thousands of people, however most of them are small. The Creative Industries Federation (Cauldwell-French *et al*, 2018, p.8) calculated ninety-five per cent of creative businesses are 'micro,' that is they employ fewer than ten people. Alongside this there are also extraordinarily high levels of self-employment, where short-term non-standard employment and freelance contracts predominate. All musicians signed to record labels are self-employed and have investment contracts in the form of financial loans, not employment contracts (Arditi, 2020). Ultimately it is then up to them as their own business to create and generate income, usually via a mixture of studio recorded music, now mostly consumed digitally, complemented by periods of 'going on tour' with live performances. This is why the music industry is the original "gig economy," a term initially used by jazz musicians in the early 20th century, who were contracted one performance at a time (Bau Graves, 2021; Bain, 2024) so that most musicians live from one gig (paid job) to another with all the precarity, as we will further explore, that entails.

The Office of National Statistics ("ONS") analysis of a decade of data (2012 to 2021) derived from the Annual Population and Labour Force Survey reports reveals eighty-three per cent of those who report being a musician as their primary occupation, are self-employed. The Department of Culture, Media, and Sport (DCMS, 2018) reported seventy-two per cent of those working across music, visual and performing arts were self-employed. This is significantly higher than the thirteen per cent of those employed as of March 2022 (ONS) across all other sectors in the UK.

However, of all the roles it is those who create the musical works and perform them, the songwriters, composers, and performers, that are considered the most important and of the highest status and prestige. After all, we argue, it is their creativity that forms the bedrock of the industry. Musicians are considered one of the most elite occupations in the UK alongside architects, doctors, and judges (Carey *et al*, 2021, p.12) and competition to train and become successful in these roles is demonstrated by the tens of thousands of young people who enrol in music performance degrees each year in the UK. The Higher Education Statistics Authority reports just over one hundred thousand students studied music performance degrees in the UK over the five-year period to 2018 (HESA, 2018 cited in Bain, 2019, p.20).

When we explore who is benefiting most from the music industry a picture of inequality and discrimination emerges. Analysis has shown eighty-six per cent of songwriters and composers with publishing deals; and just over eighty per cent of signed artists on record

labels in the UK are men (Bain, 2019). This male dominance directly results in seventy-four and a half per cent of the artists booked to headline fifty large UK festivals in 2022 being men only acts (Mansfield *et al*, 2022) and significant inequality in the popular UK music charts and on radio airplay (Coogan-Byrne *et al*, 2023). This is despite the education pipeline into the sector being nearly gender equal with forty-six per cent of the aforementioned performance students being women.

Turning to those in executive roles. Here we see a quickly changing picture of apparent equality success; where a decade ago Creative and Cultural Skills (2013) had reported that only thirty-two per cent of the music industry workforce were women, in 2022 UK Music reported in its last published Workforce Diversity Survey (p.5) that overall, fifty-three per cent of its respondents were women (with a further one point seven per cent preferring to self-describe their gender representation). However, they acknowledge this high number of women in the music industry workforce is primarily because of those working in their twenties who now predominate in entry level, low-paid work. Women constitute over two thirds of these low-paid roles and only a third of its highest earners; this pyramid is known as vertical segregation. There is concurrently a gradual drop of women for those aged thirty-five and over, with women only making up just over a quarter of the workforce by the age of sixty-five. Government pay gap reporting has revealed each year since 2017 in all the dozen or so large companies operating in music that their top quartiles are dominated by men, as well as the majority of board and C-suite positions throughout the industry.

Thus for both the roles they secure, and the career success they achieve, what men and women do in the music industry remains highly gendered. Men dominate in the most valued, high-status roles which are the best rewarded jobs in the industry in both creative, music, roles and in the workforce. Moreover, despite the economic success of the Majors, the music industry is built on freelancers, who do not have adequate representation or power and there are significant numbers of people working in the industry, who lack representation in any meaningful conversation, or policy making processes.

3. HEGEMONIC PATRIARCHAL POWER STRUCTURES OF MUSIC

Thus we find a stark situation for those working in the music industry, particularly those from marginalised communities. Some of the structural barriers women and gender diverse musicians face are the lack of legal protection and financial vulnerability of the self-employed, and the normalisation of sexual harassment along with the lack of reporting

mechanisms and retaliative behaviours if they do complain, which all signal a toxic and misogynistic culture. Not only does this affect those who work in music, but also fans and audiences who attend music performances and festivals.

Across all sectors in the UK only six per cent of women run their own business (Rose, 2019, p.7). As we have seen with the high levels of self-employment in music, and increasing numbers of women entering the industry, women have had to adapt to these structures. Self-employment for women can offer some benefits, namely in the form of flexibility and is one strategy undertaken to deal with the demands of parenting, a responsibility still predominantly falling to women to manage (Seva and Oun, 2015). Nevertheless, there are barriers for self-employed women in music, such as juggling their caring responsibilities (McDowall, 2019), a lack of entrepreneurial training in comparison to men, and a lack of investment by banks and other financial institutions (Rose, 2019). There are also fewer employment legal protections afforded to the self-employed, leaving many women particularly vulnerable. This situation has been highlighted in the WEC report.

Furthermore, whilst musicians have high status positions in terms of the level of their social position, in reality the vast majority struggle financially. In partnership with the IPO, Hesmondhalgh *et al* (2021) reported that in 2019 nearly two thirds of musicians earned less than £20,000. Women averaged two thirds of that, with a median income of just over £13,000; precarious working in music is gendered (Bain, 2024). There were further intersectional penalties noted for non-white musicians and for Black women that means twenty-five per cent less (Black Lives in Music (BLIM), 2021). The recently published "Musicians Census" has outlined other intersectional pay-gap penalties for those with disabilities, ethnicity, and the LGBTQ+ communities (Help Musicians, 2023). Only those with existing financial capital can survive a music career and this perpetuates gendered and racist socio-economic disadvantages.

Despite the intense competition to become a performer, or indeed to simply 'work in the business,' working patterns and conditions for most of those in the industry are exemplified by high levels of self-employment, enforced under-employment with the need to work multiple jobs sometimes out of the sector, and low renumeration, concealed by a fractionally small minority who do achieve financial success. Because of the ideology and apparent glamour of being a musician it means those in the industry remain vulnerable to the reality of these extremely poor working conditions with serious consequences for their well-being. These conditions particularly collude to exclude those from less economically privileged social classes and the intersections of women and those who are gender diverse.

There is another barrier which is perhaps the most dangerous of all, both personally and professionally. In the workplace, sexual harassment, and other acts of violence act as a control mechanism to inhibit and remove women through the creation of a hostile environment (Acker, 2006, p.123, Equality and Human Rights Commission, 2018, p.3). Even those who have not experienced it but have been witnesses, sometimes called bystanders, can experience negative consequences. McDonald (2012) reviewed thirty years of literature on sexual harassment and found victims consistently suffered significant psychological, health and job-related consequences, some even developed post-traumatic stress disorder. Pina and Gannon (2012) reviewed the literature over a similar period finding that an organisation's culture is the strongest predictor of sexual harassment with tolerant climates experiencing more sexual harassment.

It has been found that in creative organisations women consider these toxic attributes a part of their work culture and a normalised aspect of business they have to learn how to negotiate. Researchers working in the creative industries found that there are four root causes contributing to its prevalence: (1) industry cultures; (2) gendered power relations (unequal power dynamics); (3) informal social networks and (4) high competition for jobs which all contributed to tolerance for sexual harassment (Hennekam and Bennett, 2017, p.1).

The Independent Society of Musicians ("ISM") has now published three reports into harassment and discrimination in music in the UK. The first report titled "Dignity in Work" published in 2018 revealed that sixty per cent of the nearly six hundred respondents had experienced discrimination, including sexual harassment or inappropriate behaviour. The second report published a year later, "Dignity in Study," co-authored with Equity and the Musicians Union, found thirty-seven per cent of respondents had experienced gender-based discrimination whilst studying. And the final report published in 2022, "Dignity in Work 2," found the prevalence of sexual harassment and discrimination had increased since the first report, with sixty-six per cent of the six hundred and sixty respondents having experienced these behaviours. Shockingly six per cent reported having been raped and assaulted.

Safety for women and girls at live music concerts and festivals presents another serious issue and was a key question for the WEC Inquiry. In pubs, clubs and festivals, large amounts of alcohol can be consumed, alongside the use of recreational drugs, which can leave women in a particularly vulnerable position to predatory men. Festivals are unique environments in that they usually involve multiple nights camping with oftentimes many tens of thousands of party revellers. Festivals of certain genres and sub-cultures may promote themselves as being progressive and libertarian, adding to an atmosphere of freer behavioural

codes and egalitarianism but conversely women are still very much at risk (Platt and Finkel, 2020). Festivals may seem fantastical, other-worldly and beyond the usual day to day humdrum but in fact they mimic mainstream society's rules and prescriptions, magnifying gender-sexual power dynamics and all its concomitant risks (Motl, 2018).

A recent paper by Bows *et al* (2022) reported similar statistics arguing that while many felt totally safe at festivals (with good networks around them), a third of women had been harassed and eight per cent had been sexually assaulted. Alarmingly only one per cent had reported their experiences to festival staff and even fewer to the police. This displays a lack of trust in authorities, who are in principle entrusted with the maintenance of order, and where needed, the protection of women.

Of course, for women performers these spaces are their place of work. Women on stage may be seen as 'easy targets' and receive higher levels of verbal abuse, heckling, disruption, unwanted touching, and physical assault than their male counterparts, all heightened by alcohol intoxication (Crabtree, 2020). The anonymity in these spaces and lack of intervention by venue security leads to a toleration of such behaviours and increased risk to women musicians. The lower levels of women on event and festival line-ups are almost certainly influenced by the working conditions we have described above. Post-performance abuse can also extend beyond the actual performance into the digital arena.

There is also an intersectional compounding of harassment with Black women being particularly susceptible to racism as well as gender-based abuse, *i.e.*, misogynoir. Black Lives in Music published research in 2021 into the experiences of nearly two thousand musicians and music professionals, revealing a high level of systemic racism throughout the industry. Women are particularly affected by the intersection of misogynoir: reporting more instances of abuse, eighty per cent of respondents had experienced discrimination, and other impacts such as lesser pay and career progression resulting in lower levels of mental well-being as a consequence. The ISM found that the more protected characteristics someone possessed, such as race or disability, the greater the likelihood was they had experienced discrimination and harassment (2022, p.3). This is backed up by recent research from Attitude is Everything and Black Lives in Music in their "Unseen Unheard" report (2023) demonstrating the multiple discriminations Black disabled people experience.

Of particular concern is the invisibility of trans-women in this research, which hides and can reinforce transmisogyny, which is misogyny targeting trans women and transfeminine people. This manifests in behaviours such as objectification (trans women are often objectified and sexualised), exclusion (from women only spaces to reinforce that trans

women are not women) and misgendering but also greater rates of discrimination and violence purely for one's gender identity (Menendez, cited in Bain and Potočnik, 2023). Trans women constitute one of the most vulnerable groups in the world today (Manne, 2019) and little is known about their experiences in the UK music industry.

Another critical question from the WEC Inquiry was to ask what support exists for women in the music industry and how can they report problems. Reporting of problems, such as abuse, remains fraught with challenges. In the ISM Dignity at Work 2 responses (p.19), less than a quarter had officially reported the harassing behaviour. Of those who did not, eighty-one per cent of them cited fear of losing work, not being taken seriously or fear of the perpetrator as reasons they did not do so. Fifty-five per cent stated they didn't report because "it's 'just the culture here'". As ninety-five per cent of creative companies are micro-businesses this leads to issues reporting harassment in such small teams. This is compounded by the high levels of self-employment across the sector where their precarious working conditions mean many remain unsure of who to complain to, or indeed whether it is practical to do so, when they were only contracted for a one-night or other short-term engagement.

Just as troubling is the growing phenomenon of employers inhibiting complaints procedures in order to protect their reputation, or indeed to protect 'valuable' male perpetrators within these organisations, a process known as 'institutional betrayal' (Smith *et al*, 2016). Currently victims bear the burden of holding harassers and employers to account, with all the subsequent potential risks. This can include the possibility of experiencing retaliative actions including being pushed out of their jobs and sometimes their chosen industry, derailing their careers, often silencing them through the widespread use of Non-Disclosure Agreements (NDAs). Researchers in the US have explored this phenomenon noting in the US legal system at that time twenty-five per cent of all employment claims included complaints about employer retaliation (Ahmed, 2021).

The WEC committee found that NDAs are being used in the music industry as a weapon to silence women from discussing their experiences of discrimination, harassment, and abuse and prevent them from pursuing cases in the Employment Tribunal. They received numerous reports of women being forced and threatened with financial and reputational ruin into signing agreements, some without independent legal advice. One woman's testimony described how she had to "agree to a settlement where I would leave with a glowing reference, or I would be sacked for gross misconduct with immediate effect and no money." (p.52).

Therefore, with so many cases hidden it is likely the true extent of misogynistic behaviour is not acknowledged, even within the music organisations where it is most prevalent. This leaves perpetrators free to continue abusing and more women vulnerable to being attacked. In music this has long been accepted as being 'just the way it is.' The hegemonic patriarchal power structures of the industry ensure that these behaviours are prevalent with no sign of them being appropriately dealt with. The question is not whether women are discriminated against – depressingly the question always is: *how bad is it*?

4. INTELLECTUAL PROPERTY LAWS IN MUSIC: FEMINIST AND SOCIAL JUSTICE CORRECTIVES

In 2023 it remained the case that most people in the world hold gender-based biases, which carry negative consequences and harms for women (GSNI, 2023). These social norms have been written and enforced by men throughout history, as they represent "the undervaluation of women's capabilities and rights in society" and "constrain women's choices and opportunities by regulating behaviour and setting the boundaries of what women are expected to do and be. [] Biased gender social norms are a major impediment to achieving gender equality and empowering all women and girls (SDG [UN Sustainable Development Goals] 5)" (GSNI, 2023, p.3). These social norms in music, or the *culture of the music industry* was at the centre of the WEC Inquiry and is recorded in more detailed in the previous sections of this chapter. What is often overlooked, even in the 2024 WEC report, is the role of intellectual property ("IP") laws, especially copyright or related rights in the sector. Scholars in the United States have long demonstrated that IP standards are not gender- or race-neutral and that effects of IP rules on different communities will vary significantly, leaving certain marginalised creators without protection or reward for their works (Jamar and Mtima, 2024; Potočnik, 2024a). IP Social Justice (IP-SJ) scholars have moved away from looking at IP laws through a pure economic or market lens and have approached questions of IP policy through questions of social or distributive justice, and social utility. They argue that IP laws should pursue both economic and social utilities in the system, where currently marginalised creators, are given access, are included and feel empowered by the IP systems (Jamar and Mtima, 2024). IP-SJ theories work in parallel with feminist IP theories, in their investigations of power and dispelling the myth of *objective standards* in IP laws, such as authors, owners, or performers (Potočnik, 2024a).

The evidence that women are not doing as well as men in the music industries is staggering, and yet, not all facets of the system are researched, or under scrutiny. IP laws continue to be viewed as a mere "technical subject" which does not contribute to the gender discrimination, found in the sector. IP's role to generate power and with it, create, enable or perpetuate the gender discrimination in the music industries is not investigated by most researchers, or policy makers in the field. It is argued however that this is not a coincidence, or a happen-stance, rather a systemic design and barrier to be kept in mind. As we have stated earlier in this chapter, misogyny is the enforcement hand of the patriarchal systems, whenever women, and arguably gender-diverse people, *step outside the norm* (Manne, 2018). We argue that IP laws, and in particular copyright and related rights, are part of the system that enables the patriarchal structures and institutions, by giving them the power and control to enforce the gender-based norms (further Potočnik, 2024b). These institutions in music (both the recorded industries and CMOs, see Section 2) draw most of their value from copyright and related rights, and are therefore often referred to as "the copyright industries" (Osborne, 2022, p.1) (see Section 4.1). The UK should follow the international directives found in the World Intellectual Property Organization ("WIPO") Intellectual Property Gender Action Plan ("WIPO IP GAP") (2022) and build its future IP norms on intersectional gender evidence, where authors, creators or performers are not devoid of their personal characteristics (see Section 4.2). Evidence found in the WEC Inquiry, together with the findings in the 2024 WEC Report, must be shared with DCMS and the Intellectual Property Office, in their future governmental IP inquiries.

4.1. The Myth of Gender-Neutrality in IP Laws

IP laws, specifically copyright and related rights tell us which music and creators will be protected under the law. IP systems will reward original music creation, but also investments made in the production of such original works. International and domestic rules are written in gender-neutral terms (*i.e.*, referring to authors, owners, or performers in single categories). The rules do not expressly exclude women or gender diverse creators, from their scope. To date, IP policy makers and most of the literature operate under the assumption that IP laws are gender-neutral, and their application or effects are not investigated further. IP laws, and copyright are seen as a mere technical subject, and political topics, such as gender equality, are *best kept out.* All music, which is created by an author, and is original, will be protected under the Copyright Act (CDPA, s.1(1)(a)), and the scope of protection, including its

duration, will not depend on any personal characteristics of the author. In addition, all sound recordings of music so made, will be protected by a separate copyright, vested to the entity who has made the investment by making such recording (CDPA, s.1(1)(b)). The assumption is that all creators, who are "talented" will have the same access to the IP systems, and that all creative endeavours are deemed equal under the law (DCMS Definition of Creative Industries, 2023).

Some scholars have challenged this assumption and are moving away from the uniform concept of an author, creator, or owner. According to IP-SJ or feminist theories, when marginalised creators lack access to IP system or are excluded and rendered invisible by such IP systems, these IP systems are not fully functional (Mtima, 2019; Potočnik, 2024a). IP systems' economic profitability for only select groups of stakeholders, for example only white men, should not suffice, when assessing whether an IP system is fully functional.

As evidenced in Sections 2 and 3 of this chapter, women, and gender diverse creatives are not doing as well in the music eco-system, when compared to men. Feminist inquiry therefore suggests that the role of IP laws should be investigated, to understand whether IP rules have played a role in creating, enabling, or maintaining the unequal treatment of men and women in the system (Bartow, 2021). Rules are not gender-neutral, just because they are written in terms, such as the author, owner, or performer (CDPA, s.1). Instead, "[fa]cially neutral IP law is not neutral, but imbued with the assumptions of those who wrote it and interpret it, including assumptions about sexual orientation and gender identity. Identifying this problem is a first step toward addressing the problem." (Swanson, 2015, p.185).

As argued elsewhere (Potočnik, 2024a; Potočnik, 2024b; Potočnik, 2024c; Potočnik, 2024d), the current copyright system, favours men's creative endeavours, where it focuses on the commercial protection and exploitation of works, and any protection of the author, is by an extension only. The overwhelming focus is therefore on the outputs, and their commercial exploitation by way of economic rights (CDPA, s.16). This can be linked to the origins of the "musical works" in musical history, and the notion of a single genius or music creator, to the cost and detriment on communal creative processes in music (Stone, 2017; Gaunt, 2006). One of the main problems of the current copyright system is its focus and organisation on protecting the works, or the outputs in the form of "musical works" (CDPA, s.1) or "qualifying performances" (CDPA, s.181), and not the individual creators behind these works or performances (Potočnik, 2024a; Potočnik, 2024b).

Relying on an interdisciplinary combination of feminist theories in law and music, it is argued that copyright laws should no longer divorce the creator from their creations, where

the focus of protection is the output (*i.e.*, "music work"), even when no longer in the hands of the musician (composer or performer). As we know, UK copyright laws allow for a transfer of economic rights to third parties, leaving the music creator without any power to control the ongoing exploitation of economic rights (CDPA, ss.11, 16, and 90). The same situation also occurs in employment relationship and musicians who create music whilst employed, under the terms of that employment, are not the owners of copyright in so-created music. Employed musicians are the authors, and their employers are the owners of copyright in so-created music (CDPA, s.11). Copyright laws should be rewritten to better protect the economic and moral interests of the authors, and performers, resulting in optimal economic and social utilities of copyright laws (Potočnik, 2024a; Potočnik, 2024d). By redirecting the focus of IP laws from outputs to their human creators, *i.e.*, authors or performers, the powers given by IP laws would vest into music creators, not owners or investors in musical outputs.

Furthermore, the current copyright systems focus on the protection of individual creators and authors and fail to adequately protect the creativity and imagination of performers, often to the cost of women in the music eco-system (Potočnik, 2024b; Potočnik, 2024d). In addition, the creative efforts of women are not always recognised under the system, and rules of joint authorship do not always protect against the authority gap that women author's experience in music co-creation with male co-writers (Potočnik, 2024c).

The copyright systems must be reviewed through the relational feminist, and other feminist lenses, most notably, radical feminism and intersectionality, to correct the commercial blinders put on the protection of music, which are currently put in place (Potočnik, 2024a (relying on West, 2019 for relational feminism)). Only music that fits the mould, *i.e.*, *commercial sound* (Potočnik, 2024c), will be protected under the current copyright system. When women do get their opportunity or access to the industry, only those that fit the male gaze, *i.e.*, *because they look right*, will get access to the commercial platforms to share their performances (Potočnik, 2024d). As reported in the WEC inquiry, women's appearance still defines their creative and professional opportunities,

> "We are still seeing situations in which women are sacked because they are pregnant if they are freelance. That is a reality. **If they do not look right**—if they have a bump that is showing—and they are in some kind of musical, they will lose that job, let alone thinking about menopause policies. … **There is something about the image that women are asked to aspire to in music. You have to look right**. If you look a bit older, you might not look quite right. There is a lot of stereotyping that goes on in the music sector." (Annetts (n 31) Q134 (emphasis added))

The lessons and research from feminist musicologists should be embraced by IP scholars, to further investigate the role of IP to control and exercise patriarchal power, in more detail. The concept of protectable works in copyright emerged in musicology, and the social context should be appreciated,

> "[g]iven the developments more or less around 1800 in musical practice – in theoretical, practical and institutional terms (i.e., with as thick a view as one could possibly have of a practice) – the work-concept emerged as the dominant concept by which all activities would be arranged. Henceforth, there would be composers of works, commissions of works, scores of works, performances of works, experiences of works, reviews of works, copyright laws introduced to protect the works, and halls built to house the concerts of works." (Goehr, 2017, pp. xvii-lii).

Music creation, as art, is a social activity (Gaunt, 2006; Nochlin, 2021) and patriarchal practices found and reported on by feminist musicologists (Goehr, 2017; Gaunt, 2006; Stone, 2017) are replicated in copyright systems (Potočnik, 2024a; Potočnik, 2024d). To achieve gender equality in the music eco-system, scholars, researchers, and policy makers must make a choice for gender equality, and join forces in an interdisciplinary, and intersectional project, or the project will be left to fail.

4.2. The Imperative to Collect Intersectional-Gender Evidence in IP Government Inquiries

IP law and policy discussions must be a part of the corrective in the music eco-system, if change is to be systemic, and meaningful. As argued by IP-SJ scholars, "[t]o achieve its social utility purpose of human nourishing and flourishing, the intellectual property law must therefore adhere to inherent precepts of socially equitable access, inclusion, and empowerment" (Mtima, 2019, p.419; Potočnik, 2024a). Therefore, governmental inquiries should follow the example set by the WEC Inquiry and collect the empirical data from women and gender diverse artists, recording their lived experience in the sector, when writing new rules and regulations, governing the music industries. An approach, as found in the 2021 DCMS Inquiry on the "Economics of Music Streaming" or the "Future of Music Festivals" (Potočnik, 2021), which operates under the myth of *talented creators devoid of any personal circumstances*, ignores the evidence of systemic intersectional gender discrimination. Without a course correction, , the DCMS is unlikely to bring about a meaningful social-justice corrective to the systems, which are ignoring several groups of marginalised creatives.

The meaningful evidence collected by the WEC Inquiry is already proving this point. Specifically in IP laws however, the World Intellectual Property Organization (WIPO) has made significant recommendations that could assist national governments in their future IP policymaking. The 2022 WIPO IP GAP is built on important research findings across multiple jurisdictions, which evidence that women innovators and creators do not benefit from IP systems as well as men in comparable situations. For the society to benefit from the ingenuity and imagination of everyone in their midst, WIPO recommends national governments to write inclusive IP laws, which are built on evidence from all inventors and creators, including groups, which are currently under-represented in the system. WIPO's vision is one of a "world where innovation and creativity by women anywhere is supported by IP, for the good of everyone" with a mission to lead the development of "an IP ecosystem that promotes and encourages women's engagement in IP and innovation" (WIPO IP GAP, 2022, p.2). Evidence collection is therefore key in the efforts of moving towards a more inclusive IP system, and WIPO aims to work with national governments and other stakeholders "in integrating a gender perspective into IP legislation, policies, programs and projects" and to drive further "research to identify the scope and nature of the gender gap in IP and ways to close the gap" (WIPO IP GAP, 2022, p.4).

It will be impossible to remedy and correct the current misogyny and gender-based discrimination in the music eco-system without addressing IP laws, the contracts for IP use and the relationships of power and control they regulate. IP is the centre of power in the music eco-system. The evidence collected by the WEC Inquiry should not be ignored by the IP policy makers, or the DCMS, as has been the case thus far (Potočnik, 2021). WIPO IP GAP should be followed in the UK, as this is the only choice, leading to a more socially just IP system. UNDP advises that,

> "Challenging biased gender social norms is a choice we can make today. To drive change towards greater gender equality, we need to focus on expanding human development through investment, insurance, and innovation. Education, recognition, and representation can directly address biased gender social norms." (GSNI, 2023, p.3).

5. AN AGENDA FOR THE FUTURE

Through our exploration of the structures, employment processes, and the exclusivity of copyright systems of the music industry, we have revealed various aspects of lived intersectional gender discrimination. Thus, we argue this situation should no longer be left to self-regulation within the music industries and there is a need for better support, legislation, and regulation to control misogynistic behaviours. The WEC Inquiry report into Misogyny in Music, published 30 January 2024, outlined thirty-four recommendations (pp.59-65) for the Government, the music industry including representative bodies, and music education establishments, to adopt. The recommendations acknowledge the additional barriers that women, particularly those with intersectional dimensions such ethnicity face, and recommend that this additional impact is taken into consideration with an amendment to the Equality Act 2010. The report acknowledges that sexual harassment and abuse and its covering up by way of NDAs legitimises the behaviours and has infused the culture of the music industry. WEC recommend that NDAs are prohibited in cases of sexual abuse, sexual harassment, sexual misconduct, bullying or harassment along with a moratorium for those currently bound to an existing NDA (in effect over turning existing agreements). Such a change to legislation was recommended by the authors of this chapter in their submission (2022) and would be an extraordinarily bold step towards the transparency that is needed to positively change the culture of the music industry. WEC also highlight greater protection from discrimination and harassment for self-employed workers in the music industry is needed with an acknowledgement of the vulnerability of these particular groups. This would be a step-change in equalities legislation and additionally potentially protect many more hundreds of thousands of workers, not just those working in music.

Other recommendations are aimed at the industry and include mandatory diversity and inclusion training along with prevention of sexual harassment training for all staff particularly those in music venues and recording studios (both identified as hot spots of vulnerability), and the licensing of such premises contingent on such training. WEC also call for all organisations to "commit to regular publication of statistics on the diversity of their creative rosters. All organisations with more than 100 employees should be required to publish data on the diversity of their workforce and gender and ethnicity pay gaps." (p.60). Such information would make it very clear where there has been, or has not been, gender diversity inclusion and investment and was a key request of the authors in their submission (2022).

We therefore call on the music industry to acknowledge and commit to these recommendations for greater awareness and cultural change through data collection and training. As the WEC report acknowledges we have a situation where women and gender diverse musicians and those in the workforce are routinely discriminated against with the consequences borne by those individuals often to the detriment of their careers and mental health. Since the publication of the report there has been a muted response from the industry with little substantive commitment of action. And yet this is exactly what is needed. A cultural change requires the music actors and organisations to understand their own businesses, their workforces including self-employed contractors as well as their music rosters; in the words of the United Nations who state that "challenging biased social gender social norms is a choice we can make today" (GSNI, 2023, p.3). Not acting on the research highlighted in this chapter, as well as the WEC Inquiry report, is also a choice.

Finally, there are conversations that are yet to emerge. In WIPO, we have seen discussions on gender and other intersectional barriers to full human development and creativity. IP laws, especially copyright and patents, are seen as tools of human development. The WEC committee only mentions IP laws once, in connection with the NDAs, but their role in giving, preserving, or distributing power in the music industry, is not considered. Feminist work investigates and evaluates the existing systems, structures, and power – and IP laws are vehicles of power, because they give their owners monopoly rights, in the form of exclusive rights. The F-List for Music and the authors of this chapter will continue their work in reviewing IP laws, in particular copyright, as tools of power distribution, going forward.

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