



University
of Glasgow

Kretschmer, M. (2005) Artists' earnings and copyright: a review of British and German music industry data in the context of digital technologies. *First Monday*, 10 (1). ISSN 1396-0466

Copyright © 2005 The Author

<http://eprints.gla.ac.uk/71497>

Deposited on: 8 January 2012

Enlighten – Research publications by members of the University of Glasgow
<http://eprints.gla.ac.uk>

Artists' earnings and copyright: A review of British and German music industry data in the context of digital technologies

by Martin Kretschmer

Abstract

Digital technologies are often said (1) to enable a qualitatively new engagement with already existing cultural materials (for example through sampling and adaptation); and, (2) to offer a new disintermediated distribution channel to the creator. A review of secondary data on music artists' earnings and eight in-depth interviews conducted in 2003–04 in Britain and Germany indicate that both ambitions have remained largely unfulfilled. The article discusses to what extent the structure of copyright law is to blame, and sets out a research agenda.

Contents

[Introduction](#)

[Methodology](#)

[Results: Markets in creative industries](#)

[Results: Views of the digital environment](#)

[Conclusions and future research](#)

Introduction

The relationship of the artist to the market, mediated by transferable copyrights, has evolved in several phases. Up to the eighteenth century, copyright was typically practiced as the one-off sale of an original manuscript to a market intermediary (stationer/publisher or performing entrepreneur/patron). Subsequent exploitation of a work, often very short-lived, was left to the discretion of the new owner. No royalties were payable.

Early statutory copyright terms were short. Under the English Statute of Anne of 1710, protection was granted for 14 years from publication (renewable once), and limited to reprints of books or other writings. With England as the trend setter, the subject matter of copyright soon embraced engravings (1735), music (1777), fabric designs (1787), and sculptures (1798).

During the nineteenth century, the copyright term began to be measured from the life span of the authors and their immediate heirs. *Post mortem auctoris* terms were introduced, for example, with the author laws of the French revolution (1791; 1793), the Prussian Act for the protection of property in works of science and the arts (1837); and, Talfourd's copyright act in the U.K. (1842).

In negotiations with authors, publishers gratefully accepted these extended terms of protection and explored prolonged exploitations in the market, such as repeat performances. Royalty contracts became common in music and print publishing.

The shape of Western copyright was settled with the Berne Convention of 1886, and integrated into the global free trade area with the WTO TRIPS Agreement of 1994. The regime combines a nod to the creator — exemplified by a term of protection derived from the author's life — with the economic structure of transferable property rights, creating a market for cultural productions. Thus the application of copyright in the contractual relations of music and media arts (despite any author-driven rhetoric) always has been a function of the bargaining power of market intermediaries.

The twentieth century was characterised by a shift towards multi-channel exploitation of works, for example through recordings, films, broadcasts, and advertising. What used to be secondary exploitation turned into the dominant intermediating activity. New technologies of exploitation often led to a concomitant change in the range of infringing activities under

copyright law. Adaptation, translation, recording, and broadcasting all became exclusive to the rights owner.

At the end of the twentieth century, music production and consumption dramatically embraced digital technologies. In 1982, the "music instrument digital interface" (MIDI) was introduced, revolutionising music production. Within a decade, professional recordings could be assembled in widely affordable home studios. In 1983, the CD came to the market as the first digital mass consumer product. In 1994, Netscape's Navigator browser was released, initiating rapid worldwide Internet adoption. The MP3 compression standard (1994) and peer-to-peer technologies such as Napster (1999) turned the Internet into a music distribution medium.

These technological developments may appear to have two main copyright effects:

- Digitisation enables a more extensive engagement with already existing artefacts (for example through sampling and adaptation), and may break down the traditional copyright barrier between creator and user.
- Digitisation offers a new disintermediated distribution channel which may affect the bargaining power between creator and existing market intermediaries (and thus the structure of copyright contracting).

This study aims to assess whether these potentialities have been realised — and if not, why not.

Methodology

Definitions:

'Music and media arts' for the purposes of this study was defined as any artefact that can be delivered digitally as strings of 1s and 0s where sound is an essential and dominant feature of the receptive experience. This definition allows for the inclusion of words or pictures (*i.e.*, multimedia music works), but music videos, video installations, computer games, or radio plays are not the primary focus of the study.

The term 'artist' is used to cover a contemporary creative role that may include three legally distinct activities: composition, production, and performance of sounds.

These definitions are adopted for working purposes only. The first definition narrows the category of artefacts sufficiently to ensure historic comparability of music industry data. The second definition widens the traditional conception of music creation by pooling the legal categories "author of musical work," "producer of sound recording," and "performer" to capture contemporary artistic practices.

Data Collection:

Three methods of data collection were used.

A: Desk research, reviewing existing quantitative data on artists' earnings in music and media arts.

B: Visits to industry events, such as trade fairs, policy symposia, and professional development seminars, to investigate current issues and explore views of leading members of copyright organisations (Collecting Societies; Music Publishers; Record Labels; Managers). Six such events were attended in 2003.

C: In-depth interviews with a selection of artists.

The selection of artists aimed to capture experiences that reflected the impact of digital technologies. Interviewees included artists working in different genres (such as rock, pop, electronic, and classical); and, creating a variety of products (such as live performances, records and music specifically designed for broadcasting media).

Eight artists were interviewed between November 2003 and May 2004 in Germany and the U.K. Four interviews were conducted in person, four on the telephone, each lasting about one to one-and-a-half hours. Notes were taken and written up within 24 hours.

The artists were (self-definitions):

- Rock artist, also running label and publishing company
- Session musician with songwriting credits
- Dance and "library music" artist
- Electronica artist and DJ (many samples, three U.K. Top 10 singles)
- Electronic music artist (contemporary "classical")
- Techno-jazz artist, also running production, label, and publishing company
- DJ and producer (crossover techno/contemporary)
- Film and media composer, also active in copyright society.

All interviewees are mid-level entrepreneurial artists, *i.e.* they succeed in making a full time

living from music.

Interview protocol:

1. Artist earnings
What are artists' income streams, including percentage from copyright (royalty) and non-copyright (live, media, teaching) sources?
2. Digital distribution technologies
Is Internet distribution benefiting independent and niche repertoire? What are the obstacles to self-publishing, self-distribution?
3. Transformative use
What are artists' experiences in using material claimed by third parties (e.g. sampling, bootleg tracks)?
4. Non-copyright consumption practices
What are artists' perceptions of P2P services, pirate radio, unlicensed clubs?

Methodological limitations:

It was expected that methods (A) and (B) would generate artist profiles and an interview protocol as the basis for in-depth interviews (C). The review of artists' earnings data (A), again was important in providing a context in which to generalise from eight individual experiences (C).

Initial discussions with copyright societies, labels, and publishers indicated that it was difficult to validate the selected artist profiles as representative for the whole population of music creators. It was claimed: "each artist is different," and "no two income streams are the same." Within the time and resource constraints of a pilot study, the interview data therefore may be seen as a source of theory development. A larger, survey-based study, as proposed at the end of this article, remains desirable [1].

Results: Markets in creative industries

The arts show an oversupply of creative ambitions (Hirsch, 1972; Peterson and Berger, 1975) combined with curious 'winner-take-all' demand patterns (Frank and Cook, 1995; Kretschmer, *et al.*, 1999). This has two main effects on copyright contracting.

1. Since many more products want to enter the market than can be consumed, there is an important role for the commercial intermediary, acting as selector or gatekeeper. In the music industry, publishers, record companies, broadcasters, or clubs can play this role for different markets. The bargaining power of artists early in their career is therefore weak.
2. Despite ever more sophisticated marketing efforts, commercial intermediaries have been unable to reliably predict demand patterns. Nobody knows the next hit. Only about one in ten releases will repay its initial investment (Goldberg, 2000; Kretschmer, *et al.*, 2001). Market intermediaries tend to favour known artists with a track record. The bargaining power of consistently successful artists is therefore very high.

Only two reliable large scale studies of artists' earnings were identified: (a) an analysis of royalty distributions of the British collecting society PRS published by the Monopolies & Merger Commission (MMC, now Competition Commission) in 1996 (*Performing Rights*. London: HMSO Cm 3147) and (b) a German analysis of artists' insurance data for the federal ministry of employment in 2000 (*Bericht der Bundesregierung über die soziale Lage der Künstlerinnen und Künstler in Deutschland*). See [Appendix](#) for a summary of data.

In 1994 (MMC, 1996), 1,438 U.K. composers and lyricists (of a total of 15,500 writers) received more than £2,500 from performing royalties (for broadcasts and public performances). 10 composers received more than £100,000. (In addition to performing royalties, composers can expect to earn a similar amount from mechanical royalties for the sale of sound recordings).

1994 PRS income distribution (15,500 writer members) Source: MMC, 1996
10 composers more than £100,000
204 more than £20,000
459 more than £10,000
848 more than £5,000
8,237 under £100

1998–2000 PRS income distribution (30,000 writer members) Source: annual reports
200 more than £100,000
700 more than £25,000
1,500 more than £10,000
2,300 more than £5,000
16,000 under £100

The average annual earnings for a German composer in 1998 (total in *Künstlersozialkasse*: 3,717) were in the region of DM 22,000 (~€11,000). About 90 percent of musicians (total in *Künstlersozialkasse*: 26,545 [2]) earned below DM 30,000 (~€15,000). 2,650 musicians earned above DM 30,000, with 125 musicians earning above DM 102,000 (~€51,000).

Only about 1,200 German composers can live from their creative output.

The MMC Performing Rights study only captures copyright income while the German data includes income from non-copyright sources, such as teaching or media work. However, the results of both studies broadly match with survey-based studies. For example, the U.K. Society of Authors survey (Poole, 2000) to which 1,711 members responded revealed average earnings of £16,600 per annum. Seventy-five percent earned under £20,000, 61 percent under £10,000, and 46 percent under £5,000. In the Pew study "Artists, musicians and the Internet" (2004), 78 percent of 2,755 responding musicians had a second job, while 41 percent earned less than twenty percent of their income from music-related activities. According to a GEMA (German collecting society) insider, only about 1,200 German composers can live from their creative output [3].

Only a small minority of artists reaches ordinary living standards from copyright income.

A questionnaire survey of Austrian composers' earnings by a group of sociologists from the Vienna Hochschule für Musik und Darstellende Kunst (now Musikuniversität), delivered the following income profiles (*Komponistenreport*, 1993):

630 questionnaires, 283 returns, average age 37 years:

Income from compositions as percentage of total income	
below 10%	36.8%
10–20%	31.2%
21–49%	14.1%
50% and more	17.8%

Most composers received also income from	
other musical activity (performance and teaching)	82.0%
non-music professional activity	25.6%
family members	18.2%
social security benefits	3.9%

capital	1.1%
other sources	3.5%

It is well-known that in the U.K., the social benefit system plays an important part in the early stages and gap periods of artistic career. Our interviews confirmed this.

Earnings from non-copyright, and even non-artistic activities, are an important source of income for most creators.

Two arguments can be made why the 90:10 distribution of copyright earnings still represents effective support for the creative basis of society. Both arguments are doubtful.

(a) The market picks the winner. Copyright supports the best segments of culture.

Products accounting for the top 10 percent segment include blatantly industrial products (such as singles tied in to populist TV shows), but also cultural classics (such as the Beatles). It is evident that much that is culturally worthwhile is not reaching, and will never reach, this Top 10 segment. Diversity of cultural production, and support for niche communities is not a major effect of copyright.



Earnings from non-copyright, and even non-artistic activities, are an important source of income for most creators.



(b) Artists are risk takers. Without the prospects of potential top 10 percent earnings, nobody would become an artist.

This argument warrants closer empirical attention. It is unlikely that production in the lower earning segments would cease without the incentive of possible top earnings, in particular if non-copyright support was available, such as grants or benefits. However, the prospect of financial success appears to be a significant motivation.

The rationale of artists' contracts

Most artists' earnings formally involve the sale or licensing of copyright (often structured as advances plus royalty entitlements). However, it is difficult to determine precisely the role of rights in the generation and distribution of artists' income. Contractual transactions may emulate the effects of copyright, as they do for sport stars (who do not legally own their performances).

To give an example: A film composer may receive £5,000 for the delivery of a sound track to a television series. This may be divided into an author's fee and a production fee. Additionally the composer may receive performing royalties via a writer collecting society (PRS) for each broadcast on TV, royalties from a performers' collecting society if the composer conducts (performs) his/her own score (PAMRA), and mechanical royalties via MCPS if a soundtrack is released.

Without the existence of copyright, the composer may still be commissioned for delivery of a soundtrack, just as a footballer is paid to play football. Similarly, the composer may contractually receive royalties, just as the footballer may receive a bonus for winning a title, or making an agreed number of appearances.

In a market transaction, the contracting parties should normally agree only a royalty deal (rather than a one-off flat fee) if there are benefits from risk-sharing or benefits from the artist's continued association with his/her works, in enhancing the work's reputation by supporting promotional efforts and giving performances (cf. Towse, 2001).



There is increasing pressure by more powerful actors, such as advertising agencies and broadcasters, to capture valuable copyright royalties by setting up their own publishing companies. These new music publishers do not promote the music they sign but act simply as a legal vehicle for receiving royalties.



However, the institutional structure of copyright societies has historically led to advantageously structured royalty terms. Composers receive a greater share of income than the market would allocate to them. For example, in Germany the collectively negotiated pay-per-play performance fee received by performing rights society GEMA is split 2/3 : 1/3 in favour of the composer (mechanicals 60:40). Under PRS statutes, the upper limit for the publishers' share is 50 percent. As one would expect from economic premises, there is increasing pressure by more powerful actors, such as advertising agencies and broadcasters, to capture valuable copyright royalties by setting up their own publishing companies. These new music publishers do not promote the music they sign but act simply as a legal vehicle for receiving royalties. Mol and Wijnberg (forthcoming) term this trend "value chain envy."

Royalty terms for performers are less advantageous, and much closer to actual bargaining powers. Traditional recording contracts were for extended exclusive periods. Over the last decade, record companies tied artists with a combination of advances and options which could be unilaterally exercised by the label. Since advances paid are recoupable from production, video, and promotion expenses (often exceeding US\$500,000), most artists up to sales of 200,000 copies appear never to receive any royalties for their performances. As one interviewee said: "the majors don't want you to stop working."

Several interviewees made more money selling only a few thousand records via local vinyl retailers or concerts, than from earlier recording contracts.

Results: Views of the digital environment

All the artists' careers we engaged within our interviews were affected by the revolution in media production associated with digital equipment. Since the late 1980s, professional studios have been affordable with countless possibilities for sampling, manipulating, and mixing sounds. In 1991, one artist said he had spent £7,000 for his first home studio. Some of our interviewees entered the market at that time, exploring new genres such as house, acid, jungle, or trance. The distinctions between composer, performer, and producer became increasingly blurred.

(a) sampling

For all our interviewees, creative engagement with contemporary cultural materials, arguably a core potential of digital technologies, was prevalent. However, this had been hindered through highly bureaucratic and costly processes of sample clearance. For example, if an artist wants to include a sample from another record, major rights holders often insist on a controlling interest of 50 to 100 percent of the rights in the new track. EMI demands that these rights are preserved even in future remixes where the original sample may no longer be recognisable [4]. Remixes of whole songs typically require assignment of 100 percent of the rights in the new (adapted) track.

If an artist wants to include a sample from another record, major rights holders often insist on a controlling interest of 50 to 100 percent of the rights in the new track.

One interviewee thought it was best not to clear a sample if only 1,000–2,000 records would be sold, and risk "cease and desist" letters. Another argued for a system of compulsory licensing, with fees of US\$250 per sample deposited with a trust fund (avoiding costly searches). Others supported releasing samples from the scope of copyright altogether: "Some songs use 200 samples just for the drum loops. The club music of the 1990s is based on infringements."

(b) distribution

When the prospect of ubiquitous digital connectivity appeared on the horizon with the release of Netscape in 1994, there was an expectation that artists would soon be able to reach a global Internet market without the help of intermediaries. Music and media arts which can be delivered entirely as strings of 0s and 1s should have anticipated this trend, enabling niche consumption to flourish, and perhaps subverting winner-take-all markets.

We find little evidence that this has happened. Bargaining power has remained firmly tilted towards intermediaries. Reasons include:

- the difficulty for individual aspiring artists of getting noticed among the "noise" of creative ambition; and,
- the reluctance of many artists to engage with alternative forms of copyright exploitation.

A new generation of copyright laws predominantly concerned with preventing unauthorised

distribution in digital networks through proprietary digital rights management (DRM) technologies has not helped (WIPO Internet Treaties, 1996; DMCA, 1998; EC Information Society Directive, 2001).

Recently, U.S.-based agencies for collective digital distribution aimed at independent labels and individual artists, such as the Independent Online Distribution Alliance (<http://www.iodalliance.com>), Digital Rights Agency (<http://www.digitalrightsagency.com>) or CD Baby (<http://www.cdbaby.com>), have attempted to change this. The performance of new royalty contracts on offer, such as CD Baby's 91:9 split in favour of the artist, should be researched closely [5].

Some interviewees thought self-publishing was not cost-effective, taking up too much promotional effort in placing tracks. Most were willing to participate in online services (if they had not already signed away their online rights to publishers and labels). Rather than plunging radically into e-commerce, many artists seem to have become shrewder in exploiting strategically the royalty possibilities of the existing copyright system: for example producing works that are high on the collecting society valuation scale (Germany's GEMA *Wertungsverfahren*), or making a succession of small deals for individual tracks.

Non-copyright responses

There are strong indications that a significant creative element of society no longer accepts the current structure of copyright, with long exclusive rights bundled in the hands of major rights holders.

- On the user side, we are familiar with the arguments from ever increasing "piracy" rates on peer-to-peer file sharing networks (such as Napster pre-2000, or Kazaa). For example, participants in the 2000 MORI Study "Intellectual Property: Public Attitudes" particularly resented restrictions on non-commercial use.
- On the creator side, we find garage communities that mix or hide their sources, producing so-called bootleg records. Artist identities include Freelance Hellraiser, Frenchbloke, or Soulwax. Remixes from familiar copyright protected material may include combining Madonna with Telex, Kraftwerk with Whitney Houston or Depeche Mode with Eminem. Recent controversy marked the Internet release of the Grey Album by DJ Dangermouse, mixing the Beatles' White Album with Jay-Z' Black Album (www.greytuesday.org).
- Even intermediaries, such as metropolitan sub-culture radio stations or dance clubs, now often operate outside the accepted frame of copyright laws.

One interviewee accepted that pirate radio was "good promotion," and that Ibiza clubs played his records for free. "If I am desperate for them to play my music, why should they pay me for it?" As "secondary benefits" of such unauthorised exposure, some artists named "further remix work," or "DJ invitations."

Artistic motivations are complex, with some creators favouring wide distribution over the exclusive control promised by copyright law. This is in line with a questionnaire study of academic authors conducted by Gadd, *et al.* (2003), and the growth of licences under the Creative Commons initiative (<http://creativecommons.org>). Others were happy with the exclusive structure of modern copyright, as they had learned to benefit from the system. The Pew "Artists, musicians and the Internet" study reports a paradox (2004): 35 percent of 2,755 respondents in the musicians Internet survey

"agree with the statement that file-sharing services are *not bad* for artists because they help promote and distribute an artist's work; 23 percent agree with the statement that file-sharing services *are bad* for artists because they allow people to copy an artist's work without permission or payment. And 35 percent of those surveyed agree with *both* statements." [6]

Conclusions and future research

Is there evidence of a breakdown of the barrier between creator and user?

The answer is an unambiguous "Yes" — but much creative reworking takes place despite copyright barriers. Rights owners' terms remain very onerous, hindering engagement with contemporary cultural materials.

Has digital distribution benefited creators financially?

The evidence here is contradictory. The often-made claim that copyright supports the creative basis of a society is empirically doubtful. There is a suspicion that copyright underpins vastly unequal rewards.

Creator and investor interests are not the same. Copyright suits investors (music publishers, labels) who are incentivised to market and distribute the works they exclusively control. Copyright also suits creators with a track record of hits who can extract favourable terms from investors.

Copyright does little for new and niche creators who often sign away their bargaining chips cheaply. In the absence of alternative compensation schemes, digitisation so far appears to have brought few financial benefits from disintermediated distribution.

Royalties from performing rights administered by collecting societies (which cannot be individually renegotiated to reflect economic bargaining power) appear to form an important and increasing part of artists' earnings. They appear to encourage artists at the margins of full-time work.

A more systematic profile of creators' income streams across different sectors and different legal frameworks (jurisdictions) would be highly desirable. Copyright contractual income (involving a transaction of rights); copyright non-contractual income (via collectively negotiated or statutory royalties administered by copyright societies), non-copyright contractual income (such as live performances or teaching) and income from non-artistic sources can be conceptually separated and captured by survey data and collecting society distributions.

The questionnaire below is proposed as an empirical instrument that might fill this gap for the music sector, using U.K. terminology.

Research agenda: analysis of music artists' earnings

Total income:

1. Income from music:

1.1 Copyright: Non-contractual income

PRS:

MCPS:

PAMRA/PPL:

1.2 Copyright: Contractual income [Z]

Studio work:

Record sales (apart from MCPS):

Own label:

Own publishing company:

1.3 Non-copyright: Contractual income

Live performances:

Grants/commissions:

Sponsorship/merchandising

Teaching:

Other (please specify):

2. Income from non-music sources:

Family support:

Capital:

'day time job':

Other (please specify):

Our study reveals that orthodox assumptions about the function of copyright in creators' lives are largely invalid. Copyright neither appears to support the creative basis of society, nor does it make cultural materials available in a legal form that legitimises creative digital re-use. Future copyright policy must be based on a much clearer empirical picture of the role of copyright in creative production. 

About the author

Martin Kretschmer is Professor of Information Jurisprudence and Joint Director of the Centre for Intellectual Property Policy & Management at Bournemouth University (www.cippm.org.uk).

E-mail: mkretsch [at] bournemouth [dot] ac [dot] uk

Acknowledgements

This research has been supported by Arts Council grant "Digital Copyright and Microdistribution in Music and Media Arts" (2003). Many thanks to Friedemann Kawohl, CIPPM Research Fellow, who contributed to the literature review and conducted four interviews in Germany. An earlier version of this paper was delivered at the AHRB Copyright Network Conference, Birkbeck College, University of London, 29–30 June 2004.

Notes

1. On 5 December 2004 an important study was published by the Pew Internet & American Life Project (www.pewinternet.org): "Artists, Musicians and the Internet," assessing "how artists and musicians use the Internet, what they think about copyright issues, and how they feel about online file-sharing" (p. ii). Among three instruments, the study includes a Web survey of 2,755 musicians. The data support the general findings of this article, however at this late stage we cannot provide a detailed comparison. Some cross references are included in the text. It should be noted that the Pew study focuses on artists' attitudes and does not provide systematic data on the relative weight and function of copyright and non-copyright earnings, as demanded at the end of this article. However, the Pew analysis divides the musician sample into four useful profile groups (p. 26): (1) Success Stories (musicians who spend 30 or more hours per week in music-related activities, drawing 80 percent or more of their income); (2) Starving Musicians (also spending 30 or more hours per week but earning less than 20 percent of their total income from music); (3) Part-timers (spending less than 30 hours per week but earning some income from music); and, (4) Non-working musicians (currently inactive, including aspiring and formerly active musicians not earning money from music). The number of Pew respondents falling into these respective groups were: Success stories: 296; Starving Musicians: 1,021; Part-timers: 578; Non-working musicians: 851.
2. Figures for the distribution of earnings were only available for an aggregate of all musicians. See [Appendices](#).
3. Dümling 2003, p. 313; citing Wahren, 1995.
4. Music Publishers Association (www.mpaonline.org.uk) contract seminar, 13 November 2003.
5. There are no data available on earnings from digital download services supplied by these agencies. However, according to CD Baby, already US\$10 million have been distributed to 75,000 artists and labels between October 1998 and October 2004 from CD sales through its online store (<http://cdbaby.org>; 22 October 2004).
6. At p. 34 of the Pew study. The Pew analysis continues (p. 35): "Not surprisingly, Starving Musicians are more likely to say free downloading has helped and Success Stories are less likely to say it has helped their careers. Still just 13 percent of Success Stories say that free downloading has only hurt their career and 16 percent say it has both helped and hurt."
7. Copyright contractual income is defined here as negotiated payment that involves a transaction of rights.
8. Excluding earnings equalisation allowances, unlogged performance allocations, and revenue from performance of films.
9. These propositions were first advanced in my article "Digital copyright: The end of an era" (2003), *European Intellectual Property Review*, volume 25, number 8, pp. 333–341. Star creators should be treated as investors.

References

- L. Bently, 2002. *Between a rock and a hard place: The problems facing freelance creators in the UK media market-place*. London: Institute of Employment Rights.
- R.E. Caves, 2000. *Creative industries: Contracts between arts and commerce*. Cambridge, Mass.: Harvard University Press.
- A. Dümling, 2003. *Musik hat ihren Wert: 100 Jahre musikalische Verwertungsgesellschaft in Deutschland*. Regensburg: ConBrio.
- W.W. Fisher, 2004. *Promises to keep: Technology, law and the future of entertainment*. Stanford, Calif.: Stanford University Press.
- R.H. Frank and P.J. Cook, 1995. *The winner-take-all society*. New York: Free Press.
- E. Gadd, S. Proberts, and C. Oppenheim, 2003. "RoMEO Project (Rights MEtadata for Open archiving)," at www.lboro.ac.uk/departments/dis/disresearch/romeo/index.html.
- D. Goldberg, 2000. "The ballad of the mid-level artist," at www.tonos.com.
- P. Hirsch, 1972. "Processing fads and fashions: An organisation set analysis of cultural

industry systems," *American Journal of Sociology*, volume 77, number 4, pp. 639–670.

Komponistenreport, 1993. hg. v. Alfred Smudits, Irmgard Bontinck, Desmond Mark, Elena Osterleitner. Wien: WUV Universitätsverlag.

M. Kretschmer, G.M. Klimis, and R. Wallis, 2001. "Music in electronic markets: An empirical study," *New Media and Society*, volume 3, number 4, pp. 417–441.

M. Kretschmer, G.M. Klimis, and C.J. Choi, 1999. "Increasing returns and social contagion in cultural industries," *British Journal of Management*, volume 10, pp. S61–S72.

Künstlersozialkasse, 2000. Bericht der Bundesregierung über die soziale Lage der Künstlerinnen und Künstler in Deutschland, Bundesministerium für Arbeit und Sozialordnung, 31. März 2000.

J. Mol and N. Wijnberg, forthcoming. "Value chain envy: Explaining new entry and vertical integration in popular music," *Journal of Management Studies*.

MORI, 2000. Intellectual property: Public attitudes, Report to the IP Task Force at the Department of Culture, Media and Sport.

Performing Rights, 1996. U.K. Monopolies and Mergers Commission, HMSO Cm 3147.

R.A. Peterson and D.G. Berger, 1975. "Cycles in symbol production: The case of popular music," *American Sociological Review*, volume 40, pp. 158–173.

Pew Internet & American Life Project, 2004. "Artists, musicians and the Internet," (researcher: Mary Madden); at www.pewinternet.org, accessed 5 December 2004.

K. Poole, 2000. "Love, not money," *The Author* 58 (summer 2000).

R. Towse, 2001. *Creativity, incentive and reward: An economic analysis of copyright and culture in the information age*. Cheltenham: Edward Elgar

Appendices

Appendix 1: Monopoly and Mergers Commission (U.K. 1996): Performing rights

PRS income distribution in 1994

Bands of net domestic distributed revenue (£) [8]	Number of writers	%	Cumulated % from top	£m	Percentage	Cumulated % from top
Up to 24	4,812	31.0	100.0	0.04	0.19	100.0
25–49	1,624	10.5	69.0	0.06	0.29	99.8
50–74	1,001	6.5	58.5	0.06	0.30	99.5
75–;99	800	5.2	52.0	0.07	0.34	99.2
100–149	920	5.9	46.9	0.11	0.56	98.9
150–199	632	4.1	40.9	0.11	0.54	98.3
200–249	460	3.0	36.8	0.10	0.50	97.8
250–499	1,481	9.6	33.9	0.53	2.6	97.3
500–749	750	4.8	24.3	0.46	2.2	94.7
750–999	452	2.9	19.5	0.39	1.9	92.4
1,000–2,499	1,130	7.3	16.6	1.79	8.8	90.5
2,500–4,999	590	3.8	9.3	2.11	10.4	81.7
5,000–9,999	389	2.5	5.5	2.75	13.5	71.4

10,000–19,999	255	1.6	3.0	3.50	17.2	57.9
20,000–49,999	164	1.1	1.3	4.98	24.5	40.7
50,000–99,999	30	0.19	0.26	2.04	10.0	16.2
100,000 and over	10	0.06	0.06	1.26	6.2	6.2
Total	15,500	100.00	100.00	20.35	100.00	100.00

Appendix 2: Künstlersozialkasse (Germany 2000)

Künstlersozialkasse is a compulsory insurance for freelancers, working in one of the four sectors "Word" (mostly journalists), "Visual Arts/Design" (including the advertising industry), "Music," and "Performing Arts" (e.g. actors, directors).

Sector: Music (1998)

Area of activity	Number of artists	Total income (in DM1,000)	Average income
Composer	3,717	81,144	21,830
Lyricist	234	6,297	26,910
Arranger	430	7,476	17,386
Conductor	265	7,380	27,849
Choirmaster	382	7,742	20,267
Instrumentalist Solo (E)	1,550	23,151	14,936
Orchestra Player (E)	507	7,251	14,302
Singer (opera, musical)	456	8,042	17,636
Singer (concert)	390	5,957	15,274
Singer (choir)	48	676	14,083
Singer (popular)	1,564	28,634	18,308
Tanzmusik	2,552	40,662	15,933
Kurorchester	442	7,299	16,514
Jazz and rock	2,634	36,255	13,764
Technical staff	474	9,148	19,299
Teacher	10,709	175,006	16,342

DJ	631	11,179	17,716
Others	893	14,000	16,222
Total	27,851	477,299	17,138

Musicians with an income in 1999	
Income level	Number of musicians
< DM 7,561	1,451
DM 7,561–8,821	3,123
DM 8,821–17,641	12,969
DM 17,641–30,000	6,228
DM 30,000–40,000	1,604
DM 40,000–76,501	909
DM 76,501–102,001	136
> DM 102,001	125
Total	26,545

Appendix 3: Propositions for copyright law reform

Proposition 1:

There is no unified category of rights owners, covering creators (authors) and investors (producers) [9]. Creators have four main interests:

- to see their work widely reproduced and distributed;
- to receive credit for it;
- to earn a financial reward relative to the commercial value of the work; and,
- to be able to engage creatively with other works (in adaptation, comment, sampling etc).

Regarding the appropriate structure of author rights, this leads to three conclusions:

- The creator has little to gain from exclusivity (it prevents widest distribution; it prevents access to other works; it does not ensure financial reward)
- The creator has little to gain from transferability (under prevalent contractual practices, the creator can be bought out in a one-off commercial transaction)
- The creator has a lot to gain from the so-called *droit moral* (a kind of creative trademark, ensuring integrity of origin).

There are considerable economic inefficiencies caused by the costs of administrating rights.

Digital technology offers new possibilities of tracing use and rewarding the creator.

Transforming collecting societies into regulatory bodies answering to society at large (not only rights owners) may be the best way forward. For one detailed proposal, see Fisher (2004).

Proposition 2:

Investors want exclusive and transferable property rights, to extract maximum returns from their investments. Exclusive rights, however, come at a cost to society.

- Useful works become more expensive than they would have been (this is a direct consumer loss).

- Works become available for creative engagements only on the terms of the rights holder (this is a loss of cultural diversity, innovation, and critique).
- Automatic returns from a back catalogue of works subsidise existing large rights holders, creating an entry barrier to the creative industries (this is an anti-competitive effect).

Regarding the appropriate structure of copyright, this leads to one conclusion:

- Investors should be granted exclusive terms of protection only as a response to market failure: *i.e.* where without the incentive of exclusivity, a work in the "useful arts" would not be produced at all.

In the past, the exploitation cycle of cultural products already justified only a short exclusive term. The faster digital dissemination and exploitation environment demands an even shorter exclusive term. Modern copyright laws — in the tradition of Berne and TRIPS — have got this radically wrong.

Editorial history

Paper received 12 November 2004; accepted 29 November 2004; revised 17 December 2004.

HTML markup: Christopher Day and Edward J. Valauskas; Editor: Edward J. Valauskas.



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 Unported License](https://creativecommons.org/licenses/by-nc-nd/3.0/).

Artists' earnings and copyright: A review of British and German music industry data in the context of digital technologies by Martin Kretschmer

First Monday, Volume 10, Number 1 - 3 January 2005

<http://www.firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/rt/printerFriendly/1200/1120>