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Copyright and Creation Authors Respond to Critics

Blog Administrator

*The policy brief Copyright and Creation published recently by the LSE Media Policy Brief received coverage from diverse sources. In light of this coverage, the authors **Bart Cammaerts, Bingchun Meng and Robin Mansell** clarify five points.*

We released our *Copyright & Creation* Report on 30 September 2013 and it has been reported widely. We respond here to some of the main claims by commentators and criticisms of what we said by clarifying five points.

1. It has been claimed that we are 'pro-piracy' and that the report legitimises copyright infringement.

We are not 'pro-piracy'; we do not condone illegal acts. We do suggest that in a changing digital culture, online sharing is coming to be seen as a social norm that is unlikely to be reversed. Many forms of online sharing of music and other digital content do not involve commercial gain for the sharer. Policy that targets citizens is not likely to stamp infringing sharing practices out, although of course it will have effects, some as desired by industry, but also unintended effects. We acknowledge that in the UK until such time as the DEA is implemented there is no empirical evidence of the impact of the DEA's measures. Our argument is that the industry assumptions underpinning its estimates about the impact are questionable given the relevant evidence on sharing practices and on lessons from other jurisdictions where legislation has sought to curtail infringement by targeting individual citizens.

2. It is claimed that we downplay the impact of online infringement on the creative industry

Clearly online infringement does have an impact on the creative industry. The industry itself acknowledges that it has had to embrace the digital culture, investing in new business models. Criminalizing all citizens who share infringing content under existing copyright law is, however, unlikely to have the scale of suppression effect claimed by the industry. Our argument is that the impact of infringing online sharing by citizens is exaggerated by the industry and that the contribution of these practices to subsequent sales is consistently downplayed.

3. It is suggested that we make use of 'unscientific data'.

Comprehensive data in the public domain encompassing the whole of the music industry is unavailable in a form that provides sufficient detail or a basis for easy comparison of segments that generate revenue. The industry argues, for example, that recorded music is not the same industry as the live performance industry. It is not the same industry segment. But if changes in the overall music industry landscape are to be analysed, then revenues generated in multiple segments need to be examined for their patterns. The industry focuses on the prospects of firms within market segments. Our interest is in the overall picture. For this reason we presented data available from various sources that are in the public domain.

As far as we can discern, the data in our report (Figure 1) are nominal (i.e. not deflated) data. This is the way our sources including PWC report it. This should have been indicated more clearly in our report. Because our intent is to examine patterns across segments, general measures of inflation are less relevant as these would have similar impact across all segments.

We have modified Figure 1 to eliminate the indicative 'total' as we reported it since the publishing revenue in the music industry is upstream from consumer sales (price times quantity) of physical and digital

recorded music. It may therefore be misleading to report a total because, although the PWC figures for recorded music are based upon customer sales (where the price may include costs of the copyright on lyrics and music accruable to publishers), adding these publishing revenues may amount to double counting from an overall revenue perspective.

We report the pattern of publishing revenues across various business activities in order to assess the overall pattern of revenue growth, stability or decline. It is difficult to provide a picture of the patterns across all relevant music related activities to show declining, stagnating and growing segments. We have attempted to provide an overview because of the industry's often-exclusive focus on physical recorded music sales. Unless the industry makes data transparently available in the public domain we must rely on what is available, potentially flawed as it may be demonstrated to be.

We do not deny that music sales of physical copies have been in decline. Our point is that other (including new) sources of revenue are breathing new life into the industry. IFPI reports that overall global recorded music revenues increased by 0.2% in 2012, the first year of growth since 1999. This includes digital, performance rights, synchronisation revenues, and physical revenues, which did not increase. A transparent and comparative analysis is essential if government and independent researchers are to assess the proportionality of measures envisaged in the DEA.

It also is not methodologically sound to project future revenue gains as a result of the implementation of the DEA by assuming what would have happened in a world in which there is no infringing file sharing. The industry makes unrealistic assumptions about the substitution of 'paid for' content and 'free' infringing content, thereby inflating the estimated revenue gains from future enforcement of the DEA.

4. It is argued that we neglect the well-being of artists

It is large companies, not struggling musicians, that often own the rights to creations. We do not argue that musicians and other artists should give up their right to remuneration for their works.

We suggest that: 1) individuals engage in creative activities for a wide variety of reasons; 2) the digital environment makes it easier to create as a response to incentives other than monetary reward; and 3) the participatory digital culture is enabling individuals to seek alternative ways of receiving compensation than by transferring their copyright to large companies.

Some artists are benefiting from the participatory digital culture; others are not. Some less well-known artists and 'underground' musicians are indeed struggling. To remedy this, novel approaches are needed to support a diverse and sustainable creative industry.

5. It is argued that we misreport the effectiveness of HADOPI

The issue of the proportionality of the measures envisaged by the DEA is a continuing focus of policy debate. It is not possible to know with certainty what will happen if the DEA is implemented. We look to experience elsewhere, and HADOPI experience specifically, to discern what happened. What we find is evidence of contradictory impacts and a move by the French government to change its approach based on two years of experience with HADOPI. This is evidence which we call upon the government to take into consideration if, as we argue it should, its position on the implementation of the DEA is reconsidered.

The [revised report](#) with the change referred to in this post can be found on our [Policy Brief list](#).

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