Can the Creative Industry Adapt to Change?

blogs.lse.ac.uk/mediapolicyproject/2013/09/30/can-the-creative-industry-adapt-to-change/

The recent *Supporting the creative economy* report of the House of Commons Culture, Media and Sport Committee, laments the UK Government's systemic failure to enforce copyright infringement law. It also 'condemns' Google for failing to block copyright infringing websites, and asks for a maximum 10 year imprisonment penalty for online copyright infringers.

This is tough language. The Committee takes the view that online piracy is an '*existential threat'* to the industry. It seems neither the Committee nor some segments of the creative industry have learned that 'whosoever desires constant success must change his [her] conduct with the times' (Machiavelli). In modern times, the weight of evidence from studies of innovation and technological change across all sectors of the economy is that companies that fail to adapt to change in their environment face decline and, sometimes, death. Companies failing to respond to huge changes in our internet supported sharing environment should take heed.

On first reading the Committee's report is a virulent call for government succor and protection from this wave of change. Industry players make a strong 'plea for no change' in existing copyright law and quick implementation the Digital Economy Act 2010, intended to tackle copyright infringing online file sharers –now to be implemented in 2015, if at all. The traditional business models of the large creative industry companies have been destabilized by the growth of the online sharing culture, but the reality of these changes is different from the Committee's short-sighted view.

Our review of recent industry evidence shows that, far from being in terminal decline in the wake of online piracy, some segments of the creative industry are thriving – they are adjusting and generating revenues from diverse sources, boosting their overall performance in some sectors. Ofcom finds that although there are variations by type of content, people who access online content illegally spent £26 every three months on average over several years compared to a £16 spend by those who report that they do not infringe copyright.[i] The industry rarely mentions its gains from these higher spending pirates.

A close reading of the Committee's report suggests that the industry does not speak with a single voice – the report echoes special pleading by only some segments of the creative industry. The report acknowledges that 'there is within the music industry acknowledgement, if not acceptance, that piracy is a feature of a successful industry'; it is learning to live with 'copy and share'. It is increasingly concerned about the more recent wave of technological innovation and business models – cloud storage and cyber lockers.

Of course 'it is not beyond the wit of the engineers' to block illegal websites at Google or the Internet Service Providers as the Committee notes, but it is also not beyond the wit of engineers to innovate and provide new ways of circumventing that which is blocked. No-one is calling for the end of innovation, and the issue of enforcement is not just a technical matter. As the Committee says, it is important to balance consumer and creative industry interests and the industry interests especially are not stable.

Citizens have interests in privacy, freedom of expression, and their ability to produce creative works online. The large firms in the music, film and television sectors are not the only players with interests in the creative industry – who would have thought that YouTube's site which harbors much infringing content would become host to new TV stations or that Netflix would start commissioning television series? Or that BT, which took the Government to court in 2011 over the DEA, would be worrying about piracy now that it owns rights to Premier League games. Many companies are repositioning themselves on copyright issues as they seek to exploit new technological and market opportunities.

The Committee understands that Hargreaves' *Digital Opportunity* report was 'effectively overtaken by technology with the development of cloud services and cyber lockers' – but it can't seem to grasp the idea that the answers to the creative industry's troubles lie mainly within the industry. A robust response by UK creative industry plc to the likes of Google – whose motives are mistrusted by some – would call for more innovation and learning about how to adjust to change, not government protection. The notion that the tide of cultural change can be held back by achieving marginal changes in citizen attitudes through education about a confusing array of legal and illegal online services puts the responsibility squarely on the shoulders of citizens to protect themselves. Even in the US, the voluntary system of 'graduated response' letters sent by Internet Service Providers' to customers comes without punitive measures.

What does the industry want? It wants to go after 'organized crime involving online piracy on a commercial scale'. Voices echoed in the recent report want Google and others to do a better job of taking down infringing content and webpages encouraging illegal acts online. Its frustration with Government inertia or ambivalence on implementing the DEA leads them to call on Internet Service Providers to voluntarily help them go after the worst individual offenders – there is no hint of what threshold would be used, and the report does not note that it was this failed strategy that led to the now technologically obsolete DEA in the first place.

Neither the creative industry nor governments can put a stop to cultural change that is global and, in many cases, welcomed by other segments of industry. Companies and their advocates need to learn and change. There is a need to foster recognition and economic reward for UK creators and for copyright legislation to underpin economic growth. But legislation needs to be consistent with 21st century values and practices. It needs to be introduced responsibly on the basis of independent, not partisan, evidence, if it is to achieve a balance among the interests of all stakeholders – citizens/consumers, content producers, online hosts, and distributors. The issues concern the fundamental rights of UK citizens and UK industry – they are about what kind of society we will have as a hybrid free and 'paid for' online environment becomes ubiquitous. One thing is certain: 'there is nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success, than to take the lead in the introduction of a new order of things' (Machiavelli). Surely the UK can lead, not entrench itself in a bygone era.

This article gives the views of the author, and does not represent the position of the LSE Media Policy Project blog, nor of the London School of Economics. The review of evidence mentioned by the author is in the latest LSE Media Policy Project Policy Brief entitled Copyright and Creation.

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[i] http://www.bbc.co.uk/news/technology-24055245 and http://stakeholders.ofcom.org.uk/market-data-research/other/telecoms-research/high-volume-infringers/?utm_source=updates&utm_medium=email&utm_campaign=oci-high-volume