

Online Distribution Could Mean Income for UK Creatives, if Copyright Issues are Resolved



*On the 9th of May a public event at the LSE entitled **The Theft of Creative Content: Copyright in Crisis** will bring together industry experts to discuss the future of music copyright in the digital distribution society we find ourselves in. **Andrew Murray**, Professor in Law at the LSE, explains that legal music streaming sites, a distribution model with a lot to offer musicians, are being financially suffocated by royalty obligations.*

The UK creative sector is faced with serious challenges. In April, PRS for Music published their **2012 financial results**. These show that of the £641.8 million collected by PRS for Music £51.7 million came from online distribution. Although this represents a fraction of the overall amount (8%) the trends are more interesting. In 2011 online distribution contributed only £39.1 million of an overall royalty collection of £630.8 million (6.1%) and while broadcast and public performance royalties showed small increases of 3% each and recorded media remained constant, it was the 32.2% increase in online royalties which was almost exclusively responsible for the small overall increase in royalties collected of 1.7% or £11 million. Perhaps most tellingly it was noted that “Royalties from online services now provide a larger income stream for music creators than radio, live or the pub sector.”

This demonstrates the opportunities offered to musicians by the online distribution model, and it is not restricted to the UK. In the United States SoundExchange, which like PRS for Music collects performing rights royalties for streamed music as well as broadcast music on satellite radio and cable TV (but in their case not broadcast radio) **reported** that it collected a record revenue of \$117.5 million in the first quarter of 2013 from digital music services, an increase of nearly 10% on Q1 2012.

This though only scratches the surface of what may be collectible in the online distribution market by agencies such as PRS for Music. For while legal streaming services like Spotify seem on the surface to be offering the future model for music distribution (and royalty collection) – a personalised music streaming service akin to being your own station controller – the financial data for such services makes uncomfortable reading. Their 2011 revenues showed remarkable growth, up 151% to \$244 Million, but the costs of servicing their royalty payments increased equally as quickly leading to a \$59 million dollar loss.

More alarmingly, their accounts showed that for every dollar they generated 98 cents went directly to collecting societies as royalty payments. This means Spotify were left with 2 cents in the dollar to operate their business, leading many **commentators** to declare that their business model is unsustainable. As legal streaming services such as Spotify and **Pandora** struggle to service their royalty debts many competitor services have chosen to ignore the problem of the royalty poverty trap by simply not signing up and offering illegal downloads in breach of copyright law. The 2013 **BPI Digital Music Nation** report records that “piracy in the UK remains at a high level with 7m individuals visiting sites that offer content illegally each month.” The same report records that in January to June 2012, “monitoring service MusicMetric’s first Digital Music Index report estimated that over 43m downloads were made via BitTorrent alone. Of these 78% were albums and 22% single tracks, equating to 345m tracks downloaded illegally via BitTorrent. Over the same period 91.7m tracks and 14.7m albums were downloaded from iTunes, Amazon and other licensed services, which equate to 239m tracks (using a ratio of one album to 10 tracks).

In other words, legally purchased tracks still represented less than half the number of tracks downloaded in total from legal sites and BitTorrent – and this does not include all the tracks

sourced illegally from locker sites, other P2P protocols, stream rippers, illegal paysites, blogs and forums.” Although this is a discussion of downloading rather than streaming the problems for Spotify and Pandora are clear. They are paying out around 98% of their revenues in royalty payments, while competing with sites which offer the same content for free, and which allow the consumer to retain a copy rather than just stream one.

The obvious solution would be to close down the illegal services. This is something the music and movie industries have been pursuing for several years. I am sure many of the readers of this blog will recall the Napster litigation which concluded in 2001 with the close down of the old illegal Napster service (not to be confused with the current legal streaming service). While this succeeded in closing Napster it also led to the mushrooming of a number of imitator services using better technologies such as eDonkey, Kazaa, Grokster and Morpheus. Further litigation led to the closure of these services but by then the technology had moved on to BitTorrent systems and trackers like The Pirate Bay. The message was clear lawyers and lawsuits are not the answer – illegal online content distribution is a many headed Hydra, for each head that is cut off two more replace it, and like the Hydra for those in the copyright industries “This monster [is] so poisonous that she kills [profit] with her breath” (with apologies to Hyginus). Despite the obvious peril of continuing to engage the Hydra copyright lawyers bravely went into battle in the beast’s lair taking on The Pirate Bay in Sweden. At each turn they were successful with both the District Court (Tingsrätt) of Stockholm and later the Svea Court of Appeal finding The Pirate Bay operators guilty of promoting copyright infringement. The Pirate Bay though still operates as do many similar BitTorrent trackers and recent attempts by copyright holders to use [s.97A of the Copyright Designs and Patents Act](#) to **block access** to such tracker sites seem to have **little effect** on traffic to these sites despite **strong suggestions** to the contrary from content suppliers.

Perhaps recognising the copyright law as it stood was unlikely to change behaviour, extensive lobbying in many states including the United States, France and the UK have led to various disconnection models. The first such model to be implemented, the French HADOPI, or Creation and Internet, Law has proven to be of **limited effect** and is now under **review** with a view to either give the regulator more teeth or to abandon the policy altogether as had been **promised** by Francois Hollande in his manifesto. The UK of course has been through an equally painful policy discussion in relation to the [Digital Economy Act](#) but we have yet to experience the issuing of warning notices as repeated implementation delays **suggest** it could be late 2014 or even 2015 before the notification period begins. The more cynical among us may suggest the current government would not be unhappy to see the implementation of the notification procedure delayed beyond May 2015.

No matter what the content industries seem to do the Hydra keeps on coming. What changes could we make to protect UK creative industries? Suggestions that have been made include proposals that the government should prevent companies from advertising on sites that distribute music illegally and that it should do more to educate the public about the law surrounding illegal downloading and its impact on UK employees. Maybe the solution is simpler if Spotify is paying out 98% of its revenue to service royalties this suggests the royalty fee is too high. Maybe the collecting societies should accept that 30% of something is better than 98% of nothing.

On the 9th of May, hosted by LSE and PRS for music, [Eg White](#) (musician and songwriter); [Amelia Andersdotter](#) (MEP, Pirate Party); [Robert Ashcroft](#) (Chief Executive, PRS for music); [Ludovic Hunter-Tilney](#) (Rock and pop critic, Financial Times) and [Dr. Luke McDonagh](#) (LSE) will discuss these and other issues which have placed copyright in crisis.

*This post **originally appeared** on the [British Politics and Policy Blog](#) on 7 May, 2013*

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