COPYRIGHTS, COMPETITION AND DEVELOPMENT:

The Case of the Music Industry

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The economic importance of copyright industries in developed market economies has been well documented. Although less important in developing countries, this is likely to change with the growing weight of the service sector in these economies and its importance for their closer integration into the global market economy. This paper analyses the relationship between the copyright and income generation in the audio-visual sector, in particular music, and argues that the appropriate copyright administration is essential in creating the conditions for a viable music industry in developing countries. However, an effective copyright regime is not, by itself, sufficient to guarantee a flourishing music industry, and other institutional arrangements will be needed in countries looking to better exploit their musical resources.

Music is spiritual. The music business is not.

Van Morrison

Introduction

The economic importance of copyright industries in developed market economies has been amply documented, and these are becoming all the more important with the rise of the knowledge-based economy.[1] According to recent estimates, the core copyright industries[2] in the United States contribute $260 billion dollars to the economy and already generate over $60 billion in foreign exchange earning (Daley, 1999; RIAA, 1999). Although such industries are less significant in developing countries, this is likely to change with the growing weight of the knowledge-based service sector in these countries and its importance for their closer integration into the global market economy.

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1 On the copyright industries specifically see Jehoram (1989) and Silberston (1998). On the nature and growing importance of the knowledge economy see: OECD (1996); Carayanis and Alexander (1999); and Thurow (1999).

2 The core includes printing and publishing industries, computer industry, radio, recording, music, televisions, and advertising. In this paper, audio-visual and cultural industries will be used, interchangeably, to refer to this group of industries.

The music industry is one of the fastest growing export sectors of the global service economy (UNCTAD, 1999). Because it is based on creative expression and related intangible assets, intellectual property plays a critical role in determining its performance. The export potential of music is already recognized in some developing countries, such as Brazil and India, in addition to its complementary links countries) and its role in the promotion of national culture. However, in most developing countries the music industry remains under-researched with insufficient information or reliable data on its economic performance, and in many countries policy makers are still reluctant to accord it the status given to more traditional industries.

Redressing this situation has not been helped by the treatment of copyrights in the economic literature, subsumed under the more general discussion of technological change (Archibugi, 1992; Bainbridge, 1996). Although recent efforts to move beyond the conventional neo-classical approach to technological change have incorporated learning, the tacit dimension of knowledge and a more interactive relation between the producers and users of technological knowledge – all features of relevance to cultural industries – the focus has remained on the role of intellectual property in industrial research and development, where patents play a key role.[3]

The primary object of this paper is to show that because the production and distribution of audio-visual products is more closely tied to the creation of rents than is the case with traditional manufacturing products, specific institutional mechanisms, and in particular the copyright, play an integral role in organizing these industries. Where the required institutions associated with the copyright are weak or missing, as in most developing economies, the chances of becoming competitive in this sector are greatly diminished. The paper examines this organizing role of the copyright with specific reference to the music industry, paying particular attention to the interplay of legal, technological and economic factors. This further helps to understand the distinct institutional foundations of a competitive music industry. We conclude that creating a successful music industry is as much related to institutional capabilities as to the presence of music potential or talent.

The next chapter examines the links between ideas, rents and industrial organization. In particular, it shows that in industries where ideas are used as a key resource the need to bring together highly specialized assets and to create very large markets for the product lead to composite quasi rents, whose vulnerability means distinct institutional structures, including the copyright, are needed to organize an effective industry. Chapter II describes these structures in the global music industry. Chapter III looks at the links between copyrights and income generation in the music industry. In light of weak copyright regimes in many developing countries, the final chapter examines how copyright regimes have evolved as well as some of their institutional features, in particular the important role of collecting societies.

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[3] For an excellent discussion of the new approach to technological change and its differences with the standard neo-classical model see David (1992).

I. TALENT, RENTS AND COMPETITION

The 1990s have witnessed the arrival of a more liberal global trading environment and a shift towards a new technological paradigm based on widespread diffusion of information and digital technologies. These developments coincide with ongoing structural changes in the developed market economies, particularly the steady rise of the service economy. Together these trends point to a much more important role for ideas and other intangible resources in underpinning competitive processes in today's globalizing world. Assessment of that role is complicated by long-standing conceptual and measurement problems surrounding the size and contribution of service activities in a market economy,[4] as well as by significant differences among these activities. But it is made all the more difficult by the peculiar economic nature of ideas.

The fact that an idea can be consumed jointly and that its production often involves significant fixed costs means that it has some of the qualities of a public good.[5] However, unlike a public good, it is possible for the creator of an idea to exclude others from using it, opening the possibility for wider commercial exploitation. Property rights for ideas must, as Romer (1992: 71) noted, mean a market price higher than its marginal cost (which tends to zero) giving rise to rents. At the same time, because the value of non-rival goods depends on the size of their market, there is an incessant drive to expand the market for ideas so as to realize greater rents. However, the larger the market for a particular idea, the greater the threat from copying; and the more so, the lower the marginal cost of reproducing and distributing the idea.

This dilemma is particularly apparent with cultural ideas expressed in a tangible product, such as a sound recording, a book or a film. Such ideas tend to have a shorter product cycle than other ideas, and explosive market growth is often the key to successful rent creation. Specific investments made in establishing a particular artist and promoting their ideas underpin such growth. At the same time, because these ideas can often be easily and cheaply reproduced by others, the originator of the idea can be highly vulnerable to copying, which can prevent a return on investment sufficient to cover fixed costs and to compensate for the high degree of market uncertainty (Landes and Posner, 1989). Organizing an industry around effective responses to this dilemma is complicated by the externality problems arising from the intangible nature of ideas.[6] Given that the value of an idea (whether as an input into production or as a final product) is difficult to gauge without first looking at or hearing it but that disclosure can mean giving everything away, there are likely to be significant problems of information uncertainty and coordination. Thus, finding ways to establish and defend a reputation for creativity (without giving away specific ideas) is likely to be an important concern of cultural producers. At the same time, creating cultural ideas means

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[4] For discussions of these problems see Baumol et al. (1989), and Rowthorn (1992, 1999).

[5] This characteristic is usually referred to as the "expansible" or "non-rival" aspect of a public good. A true public good is also non-excludable.

[6] Romer (1992) unduly downplays this aspect of ideas in his discussion.

constant borrowing from and experimenting with existing ideas, allowing that this has to be part of the creative environment in which cultural ideas can flourish.

In the presence of joint consumption and (imperfect) excludability, scale economies and non-competitive pricing, along with considerable risks and uncertainty, are likely to be characteristic features of cultural industries. As a consequence, distinct institutional structures, including those relating to the copyright, play a pivotal role in shaping the performance of these industries. In part, such structures arise out of the need to reduce transaction costs, which can be particularly high when intangible resources are used extensively.[7] But it is the central importance of rents – never occupying a comfortable place in conventional economic analysis – which is the key to understanding the structure and dynamics of audio-visual industries.

The earliest discussions of rent concentrated on payments arising from the unique qualities of land. Ricardo demonstrated that because the supply of land was invariant to its price, differential rents would be earned on lands of varying quality, depending on the overall demand for agricultural products and the quality of the land employed to satisfy that demand (Ricardo, 1981). However, a rent could be earned even on land of equal quality due to specific attributes that augment its value over the next most valued use. In the case of land, location could give rise to such scarcity rents. But classical economists also recognized that a scarcity rent could arise with other resources:

> To excel in any profession, in which but few arrive at mediocrity, is the most decisive mark of what is called genius or superior talents. The public admiration which attends upon such distinguished abilities makes always a part of their rewards; a greater or smaller proportion as it is higher or lower in degree (Smith, 1937: 122–123).

Where the supply of such talent is fixed and the service highly specialized, all earnings would take the form of a scarcity rent whose size would be contingent on the extent of the market reached by the superior talent.

Subsequently, economists rejected the idea that land was a special factor of production, and the term quasi-rent was coined to suggest that, while the supply of most resources was invariant to price in the near term, they were usually augmentable over some longer period (Marshall, 1952). Consequently, while most resources can earn rents, these are likely to be temporary, competed away as new supplies enter the market. However, following Smith, Marshall recognized that the properties of indestructibility and non-augmentability might be more enduring with respect to the supply of talent:

> When an artisan or a professional man has exceptional natural abilities, which are not made by human effort, and are not the result of sacrifices undergone for a future gain, they enable him to obtain a surplus income over what ordinary persons could expect from similar exertions following on similar investments of capital and labour in their education and start in life; a surplus which is of the nature of a rent (Marshall, 1952: 517).

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[7] In the case of the music industry, pioneering work from a transaction cost perspective has been undertaken by Ruth Towse.

While Marshall had in mind the exceptional abilities of skilled labour and management in traditional manufacturing activities, in those industries, such as the audio-visual industries, where creative effort is not simply a complement to labour and capital but actually defines the nature of the product itself, rent creation is likely to take on a much more central role in shaping economic performance. This is very much the case where the talent produces a cultural idea.[8]

Where a cultural idea is provided as a service through a live performance, the problems of joint consumption and (imperfect) excludability are reasonably easy to manage. The market remains limited and because reputation is itself established through direct creative expression, the cultural idea can be reasonably well protected from imitators and the rent earned is fairly secure. But even under these conditions, and particularly where the creative effort is divided between the creator of the idea and its performer, rent creation is less a matter of "natural" talent and more one of organizing multi-dimensional resources with a significant "social" component:

> ... a singer represents a bundle of services – voice, voice type, stage presence, physical appearance, musicianship, ability to work with others – and a "talented" singer is the one with the right combination at the right time. The demand for singers is anyway derived from the demand for particular works and also depends on current taste or fashion for particular types of performance (Towse, 1992).

Consequently, rent creation in cultural services is likely to be a collective process where the "right combination" depends on the presence of various complementary skills to bring the best out of a performer. In their absence, the rent can be significantly diminished. At the same time discontinuities on the demand side due to changing tastes and fashion are likely to add to the uncertainty surrounding the size of the potential rent.

The economic status of the cultural idea changes once it can be separated from the individual creator and embodied in a tangible product, whose manufacture can become the focus of organizational and technological innovations.[9] Due to such innovations, the consumption of cultural ideas has been able to expand across both time and space. Under these conditions, nurturing and protecting artistic talent is much more closely tied to the organization and management of a growing market for the product. The advantage to the talented individual from this increased level of exposure is the potentially higher rents it can generate. But it carries a cost in terms of a loss of control, both because the reputation of the artist – and the rent he/she can earn – becomes much more dependent on activities linked to market creation and because the

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[8] As Romer (1992: 72) recognizes, as cultural ideas enter the manufacturing stage it is important to distinguish between talent and the ideas produced by talent. Although ideas are non-rival and (imperfectly excludable) talent is a private good, in the sense of being both rival and perfectly excludable. As long as the idea is embodied in a performance by its creator, the degree of excludability is high.

[9] A good deal of the recent discussion of audio-visual industries has concentrated on the economics of performance, and, in particular, on the difference in cost dynamics between the performing arts and more traditional manufacturing activities. However, many audio-visual products have already acquired the characteristics of mass-produced goods, whether as written word, moving image, or song. For a survey of this debate see Towse (1997).

cultural idea acquires the properties of a non-rival product, which opens up the possibility for widespread copying and imitation.[10]

The copyright is one of the essential institutional mechanisms which has helped facilitate the creation and dissemination of cultural works through modern business enterprises, by providing a framework to manage the problems arising from the joint consumption and imperfect excludability of such works. As such, it is much more than a mechanism for protecting the rent derived from an intellectual resource; it is part of the institutional framework that helps define a marketable product as well as reliable income flows (through royalties and related income). To fully understand that role it is necessary to recognize that the mass production of many cultural goods continues to rely on a number of very highly specialized assets and faces unpredictable and even erratic demand conditions. This implies distinct features in their organization at the industry level.

Marshall recognized that in certain industries where demand conditions lead to quasi rents and where the production process relies heavily on combining separately owned specialized assets any rent created jointly – or what he called a composite quasi-rent – would be well in excess of what each could receive elsewhere (Marshall, 1952: 520). Although the traditional forces of competition are unlikely to eliminate them very quickly, if at all, composite quasi-rents are vulnerable and this tends to give rise to a variety of specialized institutional arrangements to guarantee the most effective use of the specialized assets, and through this the highest possible rent to the industry. Vulnerability reflects the high degree of risk which accompanies any production process combining specific assets (Williamson, 1985), the danger of the whole industry becoming hostage to the demands of one group of specialized suppliers, as well as the damage arising from conflicts between the different suppliers.

Marshall's analysis was confined to traditional manufacturing activities, but his concerns are of even greater relevance in idea-based industries whose products are defined by specific talents. In these industries, vulnerability arises not only from supply-side problems surrounding asset specificity but also from the unpredictable role of fashion in shaping market tastes, and because illicit copying and imitation can reduce the potential size of the market. As firms in these industries depend on creating large markets and on sizeable investments in specific capital goods and knowledge-based assets, such high levels of vulnerability are likely to give rise to a variety of non-market institutional arrangements to guarantee their economic viability and success.

The copyright system, in addition to creating a market, can, by promoting a common interest in the effective commercial exploitation of cultural ideas, help reduce conflicts between different asset owners and share some of the risks arising from a volatile market. However, copyrights are not the only way to promote and protect composite quasi-rents. Another mechanism discussed by Marshall was the geographical clustering of these industries – industrial districts – which would allow relations of trust to develop among specialized suppliers, guarantee more regular employment of specialized assets, and ensure that knowledge

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[10] As Landes and Posner (1989: 329–333) discuss in some detail, there are various practical obstacles to copying, even in the absence of copyrights, as well as various non-legal norms against it.

spillovers be maximized to the benefit of the industry as a whole (Marshall, 1919). A number of studies have found such districts in industries where ideas are an integral component of the production process.[11]

The presence of scale economies and non-competitive pricing, as well as the need for copyrighting and clustering, has implications for the optimal degree of competition in idea-based industries. Although the copyright protects a scarcity rent, it is only one amongst various mechanisms designed to support rent creation in industries which rely on talent and ideas as their basic resources. The design of government policies, including appropriate forms of regulation, for industries where knowledge is a key resource will have to be sensitive to the role of rents as a driving force of economic success, the high degrees of risk facing agents in the industry, and the specific institutions which the combination of rents and uncertainty generate.

II. THE GLOBAL MUSIC INDUSTRY

Music is a quintessential copyright industry based on creative talent and highly specialized assets. Although the modern music industry has its roots in the early twentieth century, when technological breakthroughs in recording meant that reproduction rather than live performance became the basis of the industry, its present shape owes much to the rising incomes and personal experimentation of the post-war golden age, and in particular the growing financial independence of young people. In the late 1950s the industry was still relatively small and dominated by the United States market, where sales had reached $500 million. By 1998 over 4 billion records (any sound recording in various formats, including tapes, records, CDs, DATs, etc.) were sold worldwide, generating a total revenue of nearly $39 billion. A further $5 billion was generated from pirated recordings. Moreover, music has become increasingly tied to other entertainment products, such as TV, films and videos, thus generating further revenue streams.[12]

The global music market is dominated by Europe and North America, each accounting for around one third of total music sales. Asia – dominated by the Japanese market – accounts for a little under a quarter of the global sales of recorded music. The fastest growing markets, however, are located in the developing world. The Latin American market grew by 8 per cent per annum over the past decade, and is expected to exceed 10 per cent growth over the next five years. Although still a small market (with total sales of only $233 million in 1997), strong growth is also projected for the African market.

Historically, the industry has been subject to considerable volatility. On the demand side, the unpredictable (and on some accounts uninformed) nature of the consumer means that non-price factors such as fashionability, herd behaviour, and experimentation have had a profound influence on the music market. Adapting to and channelling these influences has become a major focus of the leading firms in the music

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[11] See Kozul (1995) for a discussion of the furniture industry, where design is a key factor. See Storper and Sorenson (1987) on the film industry, as well as the discussion in Krugman (1994).

[12] Over 60 per cent of music performance revenues are derived from these sources (Vogel, 1998: 41).

industry and an increasingly dominant influence on investment strategies. On the supply side, technological developments have not only allowed better and cheaper ways of delivering music to the consumer but have also generated new products to enter the market. Such developments have, periodically, allowed independent firms to enter an industry which, otherwise, tends towards high levels of concentration through large vertically integrated firms (Fink, 1989).

Since the mid-1960s, and accelerating in the 1980s, the industry has tended to become steadily more concentrated (Alexander, 1994) under the dominance of a small number of very large international firms. Currently it is estimated that approximately 75 per cent of the global market is controlled by five media giants (BMG, EMI Music, Polygram, WEA Group, and Sony Music) (RIAA, 1998). Most of these corporations are highly diversified media conglomerates, in which music revenues account for between 10 per cent (Sony) and 33 per cent (BMG) of global revenues. Only EMI, the smallest of the "majors", remains primarily focused on music.

Through various oligopolistic practices these firms are able to earn the large rents needed to maintain their leadership role in the industry, and to generate the considerable financial resources which allow them to carry the risks and costs involved in identifying and developing artistic talent and marketing a risky final product with very large sunk costs. According to Towse (1999: 279), an album released by a major record company costs anywhere from £250,000 to £1.75 million, of which £125,000–£1.4 million is recoupable from artists royalties if sales are high enough; however, on average only 10 per cent of recordings actually cover costs (Vogel, 1998: 147).

But despite the financial dominance of the majors, the industry still contains a galaxy of smaller independent firms characterized by an enormous heterogeneity and offering a diverse range of services and products. Independent record companies have been able to survive often by specializing in market niches (classical, R&B, country'&'western, jazz) although increasingly these companies have only been able to continue by establishing "alliances" with the majors. There also exists a highly complex system of subcontracting on the production side among firms of different sizes. Most recording studios are independent and many producers subcontract their services to the majors. The presence of independent companies, particularly at the interface with artists, is probably a reflection of the limits of large firms with respect to creativity and experimentation, which remain essential ingredients of a flourishing music sector.

This continued role for large numbers of highly specialized firms explains the geographical clustering of the music business in a small number of key centres, for example Lagos, London, Los Angeles, Miami, Nashville, Paris and Rio de Janeiro. The reasons for this reflect the professional advantages that songwriters and musicians themselves can derive from being part of a closely knit community of talent. But, at the industry level it also reflects the need for a readily available supply of specific assets and the advantages from having close communication where relations of trust have to be established, e.g. between artist and producer (Fink, 1989: 58). Even for the largest companies, the presence of music centres such as London, Los Angeles and New York allow for close links to and familiarity with financial markets enabling a degree of

intimacy to develop between creditor and borrower, which is necessary when large but inherently risky investment projects are involved.

Despite the financial leverage of the majors, technological shocks continue to shape the industry. Owing to the impact of new digital technologies – especially Internet technologies that enable direct downloading of music – distribution costs will be reduced substantially, thus allowing new entrants. These trends are likely to fundamentally alter the economics of the entire industry. Industry analysts predict that 7.5 per cent of the overall music market will be distributed online by the year 2002, up to one third within the decade (*Jupiter Communications*, 17 June 1998, and *Financial Times*, 12 December 1998), and up to 10 per cent by 2005. Industry analysts predict that in five years global Internet music sales will reach $4 billion, i.e. 8 per cent of the market (*Financial Times*, 26 May 1999).

These latest technological developments in the industry threaten to change the balance of power within the music market, thereby allowing consumers worldwide direct access to their favourite artists at discounted prices. Consumers will be able to entirely bypass traditional retailers, with significant implications for the cost structure and configuration of the present industry. The five major music companies are extremely concerned about the latest developments in entertainment technologies and are already preparing themselves for Internet's full impact (Andersen and Howells, 1999).

Developing countries and the music industry

Arguably, many developing countries are better positioned to compete in audio-visual industries than in many traditional industries. This is because the basic raw material, such as talent to create new music, is readily available and entry costs, at least in the case of music, are not as prohibitive as in many industries. In addition, and despite the global image of the music industry, there remains a very strong regional dimension to musical tastes. In 1998, 65 per cent of global music sales originated from a "local" source, ranging from 40 per cent in Europe to over 85 per cent in the United States. This regionalization of musical tastes points to potential markets for fledgling industries in developing countries. Moreover, as relative newcomers, developing countries may have the most to gain from new technologies such as the Internet. However, developing countries have, for the most part, been unable to successfully commercialize their own music, and hence reap equitable benefit from this important indigenous resource.

A great deal of so-called "world music", based on folk music heritage, originates with musicians from the developing world.[13] This type of music has wide "cross-over potential" and appeal and, although its overall market share is very small (under 2 per cent of global market share – IFPI, 1998), the share is growing. The cross-over potential derives from its mixture with diverse musical genres, such as soul, rap,

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[13] In a recent article in the *New York Times* ("I Hate World Music", 3 October 1999), David Byrne – formally the lead singer with Talking Heads and now a record producer – whose label carries a number of artists from developing countries, has offered a caustic critique of the term "world music".

R&B, jazz, rock and pop, which can have vast appeal to global audiences.[14] That it is not generally well known in developed market economies is largely owing to poor marketing and commercialization. Notwithstanding, developing countries, such as Brazil (the world's sixth largest exporter of recorded music), already have some competitive advantages in the creation of music and generation of new musical sounds based on the fusion of traditional music with "western" musical traditions.

As shown in table 1, trade in this sector is growing strongly. Over the past decade, trade flows in recorded music products between developed and developing countries have shown a significant increase, growing more quickly than global trade. However, there have been clear asymmetries. Not only does trade continue to be dominated by Northern producers, but although imports from the developing countries in the developed market economies have risen fivefold, exports of recorded music by the developed to the developing countries have grown by almost sixfold. These trends have only intensified since 1997. Thus, while developing countries are becoming more important both as producers of and markets for music products, there is clearly an urgent need to strengthen the export potential of this sector and overcome large and rising trade deficits.

Table 1
Music and trade, 1988–1997

A. Developed market economy (DMEC) exports of recorded music
(Sitc Rev. 2 Heading 89832. In thousands of US dollars)

Partner	*1988*	*1997*
DMEC: World	3,943,505	13,342,635
DMEC: DMEC	3,360,896	11,135,601
DMEC: Developing world	326,418	1,859,258

B. Developed market economy imports of recorded music
(Sitc Rev.2 Heading 89832. In thousands of US dollars)

Partner	*1988*	*1997*
DMEC: World	4,300,382	12,454,049
DMEC: DMEC	4,151,389	11,676,323
DMEC: Developing world	133,593	684,663

Source: UN Comtrade Database, various years.

[14] The first third-world artists to successfully cross over were, in the late 1960s and early 1970s, the Mexican jazz-rock guitarist Carlos Santana and the Jamaican reggae musician Bob Marley.

The pattern of trade is not altogether surprising. Developing countries do not have the large firms and financial structures necessary to invest significant capital into a sophisticated marketing and distribution machinery with a global reach. This is unlikely to change very quickly. However, the local music industry in most developing countries has suffered from weak institutional and political support, low levels of entrepreneurial capability, low value-added, over-dependence on foreign manufacturing and distribution, and massive copyright infringement. Hence the earnings are far below the potential, were the industry more effectively organized.

As is apparent from the discussion in the previous chapter, the organization of the industry is complex. However, an appropriate point from which to set about reversing the situation in developing countries is with an examination of the way income is generated and managed in the music industry, and the important role that copyright legislation and institutions play in this.

III. COPYRIGHTS AND MUSIC REVENUES

Rents in the music industry are generated through the creation of musical ideas with the help of highly specialized assets and market expansion. Much like other intellectual property rights, by establishing rules of access to musical ideas the copyright is essential to this process of rent creation. However, unlike other intellectual property rights, the copyright does not protect the artistic idea itself, only the expression of the idea in fixed form – i.e. rock'n'roll music (a certain beat, instrumental sound, etc.) cannot be protected, but its particular expression by, say, the Rolling Stones can. Moreover, unlike patents, the copyright is not issued but simply asserted by the author or publisher. In part, these weaker aspects of property rights reflect the greater extent to which a legitimate level of borrowing is an essential part of a creative artistic culture.[15] But unlike industrial innovations, where an initial rent can be earned by the inventor through ensuring secrecy and charging a very high price for the product which embodies the innovation even at the expense of market size, the songwriter has an interest from the outset in establishing as large a market as possible.

The process of income generation in the music industry begins with the intangible musical composition. Within music two principal types of "ideas" are produced: musical compositions and sound recordings:[16]

- A *musical composition* consists of music, including any accompanying words, and is normally registered in Class PA (performing art). The author of a musical composition is generally the composer,

[15] However, unlike literary compositions, accidental copying may infringe upon a song writer's copyright if the song has been widely performed (Landes and Posner, 1989: 34–67).

[16] Although copyright offices around the world do not use as explicit a classification in copyright registration as in the United States, it appears that most mature economies implicitly rely on a similar deconstruction with respect to copyright legislation of neighbouring music rights, as well as the way in which they manage and process the neighbouring copyrights in musical works (see chapter IV on the role of royalty-collecting societies). The US classification scheme can be found at website: http://lcweb.loc.gov/copyright/reg.html (November 1999).

and the lyricist, if any. A musical composition may be in the form of a notated copy (for example, sheet music) or in the form of a phono-record (for example, cassette tape, LP or CD).

- A *sound recording results* from the fixation of a series of musical, spoken or other sounds, and is always registered in Class SR (sound recording). The author of a sound recording is the performer, whose performance is fixed, or the record producer, who processes the sounds and fixes them in the final recording, or both (USCO, 1998).

Once codified into a notated sheet or a phono-record, a musical composition becomes "copyrightable", provided it meets certain conditions of eligibility, such as "originality" and sufficient "creative effort".[17] A musical composition in the form of a phono-record does not necessarily mean that there is a claim to a copyright in the sound recording, nor is a copyright in a sound recording the same as, or a substitute for, a copyright in the underlying musical composition. These musical ideas and the associated division of labour among its authors or creators are presented in table 2.

The copyright belongs initially to the author or creator of the first fixation who controls any subsequent reproduction, distribution or public performance of the work. However, once a music composition has been recorded and issued to the public, any one may (by virtue of the compulsory licensing provisions of copyright law in most economies) make a recording of the composition and release it for sale, provided that the prescribed royalty is paid to the original author, the author is credited, and there is no unauthorized adaptation of the original composition.

The initial focus of music copyright was sheet music and live performance. However, owing to the development of techniques in music creation, recording and delivery, some neighbouring copyrights have been issued. That is, as (i) new sound recording and music playing technologies (e.g. magnetic tapes, long-play (LPs) vinyl records, compact desks (CDs), high fidelity and stereos, video, digital audio technology), and (ii) new broadcasting and public performance techniques (e.g. radio, television, cable, satellite, Internet) have evolved, the musical copyright, which was originally designed to protect printed copies of musical compositions (i.e. music sheets), has likewise expanded to include mechanical rights (i.e. the right to reproduce musical works in sound recordings) and synchronization rights (i.e. the right to record music that is timed to the display of visual images in films or videotape soundtracks), in addition to a much broader concept of performance rights (to include the right to receive payment for almost any broadcast and public performance of a composition). These neighbouring copyrights provide the basis for collecting various types of royalties and licence fees (table 3).

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[17] What is copyrightable is not straight-forward: "In specifying the criteria of copyrightability, the designers of any copyright system must select a position somewhere on the spectrum marked by what is 'original' and what is a recognizable combination of the existing. Such judgement has become even harder with information technology making it possible to merge and change existing compositions, so what is new becomes debatable (the same problems apply to copyrights in software). Another ambiguity is that copyright law does not require any proven artistic merit or novelty (as patent law) and accepts authorship on the basis of creative effort; thus arrangements, compilations, listings, databases, etc., are protected by copyrights separately from the original material embodied in them" (Cheung, 1986: 6).

Table 2
Deconstructing musical ideas for copyrights

Music idea	*Classification of right*	*Division of "music creators" (or authors for copyright purpose)* [a]	*Physical objects in which the music work can be fixed* [b]
Musical composition	Performing art (PA)	• The composer • The lyricist	• Notated copy (music sheet) • Phono-record (tape, cassette tape, disk – LP or CD, etc.)
Sound recording	Sound recording (SR)	• The performer (or recording artist) • The record producer (or publisher) • Or both	• Phono-record (tape, cassette tape, disk – LP or CD, etc.)

Source: Andersen and Miles (1999).

a Composer, lyricist, performer (or recording artist) and record producer (or publisher) are not necessarily different people.

b The physical objects are not musical compositions or sound recordings, but just various ways in which various kinds of music works can be fixed.

Although, the author/owner of a copyright has the exclusive control over a bundle of rights (such as the right to perform, reproduce and distribute the copyright work), these rights (either separately or together) may be transferred or licensed to another party. In the case of a musical composition, it is common for the author of the original composition to transfer ownership to a publisher, while the owner of a sound recording usually transfers ownership to a record company, which then owns the recording rights. As was suggested earlier, and in comparison with most industrial innovations, a key step in the creation of a music industry is the release of the copyright by the original creator all the way down the music supply chain and across the various broadcast media. With the copyright secured, a producer can commit himself to the complex and expensive process of organizing artists, producers, sound engineers, sessions musicians, etc., and record companies can begin marketing an often risky product, with a guarantee that their high fixed cost investment is protected against free-riding. The artist is guaranteed future income flows based on the popularity of

Table 3
Music licences in the United States

Type of music use	*Type of licence required*
1. Commercial broadcast of nondramatic music	Performance licence
2. Non-broadcast performance of nondramatic music	Performance licence
3. Phono-record sold for private use	Compulsory or "negotiated" mechanical licence
4. Music video production used for broadcastor cable TV	Synchronization licence and performance licence
5. Movie, music video other video software sold or rented to individuals for home use	Synchronization licence that includes licence to mechanically reproduce copies for sale
6. Motions picture for theatrical exhibition	Synchronization licence that includes a right to exhibit (performance right)
7. Broadcast commercial	Special use permit
8. Merchandizing tie-ins, computer software applications, etc.	Special use permit
9. Environmental music (e.g. Muzak)	Transcription licence that includes the right of performance
10. Dramatico-musical production (performed live)	Grand right or dramatic right
11. Public broadcasting station	Negotiated licence
12. Jukebox	Negotiated licence
13. Cable TV	Compulsory licence for some, negotiated for others

Source: Baskerville (1995, table 6.1).

his/her composition.[18] Consequently, the copyright in music represents a complex case of joint ownership, between the author (and the composer), the publisher, the record company and other entities involved in the commercialization of the music product.

While this arrangement opens the possibility to maximize rents, problems can arise from the fact that these benefits are not necessarily shared evenly. It is interesting to see how the transaction, and hence location,

[18] The artist is also guaranteed income for past works, which can be important if the reputation of an artist suddenly changes for the better and earlier recordings increase in demand.

of copyrights and royalties (which is the main revenue for the music industry) is determined by the bargaining power and collaboration of individuals and firms, including lobbying and statutory intervention, as opposed to market forces. Towse (1999) and Kretschmer et al. (1999) have illustrated how different incentives and interests as well as asymmetry in information and risk evolves into skewed power structures between composers, musicians, artists, publishers and record companies, when they negotiate modes of royalty sharing or payment.

Whereas a combination of bargaining power and collaboration (networks and relationships) between agents and firms, together with scale economies, helps to reduce the uncertainty surrounding income in the music industry, it certainly does not reduce the variation in income determined by accumulated rent from sales and performances (MMC, 1996: 57). Valuation of the various music rights is made all the more difficult by the realization that across much of the music industry talent (in music supply) and taste (in music demand) is socially determined (e.g. based upon social political attitude or fashion). Hence, rents and incomes related to musical ideas can and do change abruptly over time. In part because of this, cross-subsidies are operated between copyright holders or controllers, and the bodies responsible for collecting and distributing royalties have a redistributive role. This is motivated by attempts to support specific categories (such as, for example, classical and other minority music with "cultural importance", or music used for educational purposes), as well as by attempts to redress perceived imbalances in income.[19]

It is not merely the allocation of royalties which is based on bargaining and collaboration among various individuals and firms in the music supply chain; the "size" of the royalties paid by music users is also based on a complex system of tariffs and licensing agreements, which reflect similar pressures. However, there is no common standard within or across countries, even in the most mature economies where negotiations with music users tend to be carried out by the collecting agencies (see chapter IV below). For example, the Performance Right Society (PRS) in the United Kingdom (now allied with the Mechanical Copyright Protection Society – MCPS) negotiates licences on an individual basis with broadcasters, but for other users a tariff structure is applied. Some tariffs are set by the PRS, some are agreed through trade associations, and, finally, some are subject to agreements established by the Copyright Tribunal of the United Kingdom; finally, the PRS has "special arrangements" for some music users (MMC, 1996: 71–74).

IV. ORCHESTRATING COPYRIGHTS IN THE MUSIC INDUSTRY

The broad aim of Intellectual Property Rights (IPRs) is to provide incentives which both encourage creativity and disseminate the products of that creativity. These rights span a diverse range of subjects,

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[19] The UK Performance Right Society also cross-subsidizes between copyright holders for mainly technical reasons with respect to the operation of the service they provide. This is due to lack of adequate direct and indirect administration cost allocation procedures, as well as because of less than 100 per cent logging of performances, which disfavours small and not so well-known musical works (MMC, 1996: 104–107).

disciplines and legal regimes, and involve different types of legal statute such as property, contract and competition law; they also touch on a wide spectrum of economic and social issues relating, for example, to trade, monopoly and competition, and cultural identity. Musical copyrights are no exception to this complexity. But in addition, the use of copyrights to organize creativity in the music industry must accommodate the industry's incessant drive for rapid market expansion and allow for borrowing and mixing ideas, which is essential for a creative music scene.

Perhaps not surprisingly, music copyrights provide imperfect protection to the industry. There has long been a substantial leak in the copyright system, with illegal copying on cassette tapes and now CDs (as CD writers become more common),[20] and this has become big business, and in some regions of the world part of organized crime. Today one out in three recordings sold in the world is based on piracy (BPI, 1998). Despite this, whether and how much income is generated from this particular resource still depends on the efficacy of the "copyright regime" and the related royalty-collecting administration machinery.

A. The evolution and efficiency of copyright legislation

Copyright legislation in music, and its enforcement, has not been strategically planned but has been shaped by a persistent search to strike the right balance between copyright owners and users – a balance which has been subject to a variety of technological and economic, as well as legal, pressures. The first copyright court case relating to music was held in the United Kingdom in 1777, involving Johann Christian Bach and concerning publishers' rights. It was 70 years later, in 1847, that performing rights were established, when two composers Paul Henrion and Victor Parziot, supported by their publisher Ernest Bourget, brought a lawsuit against a café in Paris whose orchestra was performing their songs. Whereas court cases in the early days were based upon establishing a basic framework to protect "authors" with respect to publishing and performing rights, the more recent court cases have centred on whether exploitation of the rights of music composers by multinational firms (especially the record companies) undermine the moral and long-run economic intention of the IPR system to protect creativity.[21] The best known court case in this respect is probably the "artist George Michael *versus* Scene", which was lost by the artist in 1994 in the High Court of the United Kingdom. However, as the number of music producers and users (both public and private) has multiplied, the search for a legal balance and the fairness of copyrights has grown in complexity. Not surprisingly, music copyright law is full of annexes around references to software and related broadcasting media. Most recently this has centred on digital music composition and recordings, where the music industry

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[20] The piracy problem arises from the combination of high fixed production costs of production of music expression, compared with the very low marginal costs of making copies.

[21] See, for example, Kretschmer et al. (1999). For the philosophy of IPR systems, see below.

faces the same types of copyright problems as the protection of computer programmes. In most countries, these have been dealt with as a literary work, to which annexes have been added (Bainbridge, 1996: 175).[22]

Because ideas can cross borders more easily than physical goods, copyrights were embodied in international legal treaties from a fairly early date. The first such treaty dates back to the Berne International Copyright Convention in 1886, which recognized the scope for enforcement of publishing rights across countries, and enforced a so-called "principle of national treatment", which extended protection to a minimum number of years after the creator's death. Rather than harmonizing national legislations, it was required that each member country give the same protection to the works of creators in member countries published within the country as they do to creators of their own country. This principle of national treatment today applies to the member countries of the Rome Convention (1961) with respect to performing, mechanical and synchronization rights in relation to sound recordings (in the absence of other reciprocal agreements).[23] Agreements on Trade-Related Intellectual Property Rights (TRIPs) came into force in 1995 as a part of the Uruguay Round Agreement. By the time all signatories are in full compliance, each is expected to have a system of IPR and effective enforcement consistent with internationally agreed norms and standards.[24]

The evolution of copyright legislation has been closely linked to technological changes in the audio-visual sector and to the rise of corporate capitalism during the early decades of the twentieth century (Noble, 1979; Sullivan, 1989). Although the music industry did not take off until after 1945, it was, from an early date, subject to the influence of large, vertically integrated, firms and to conflicts among the different parties involved in producing and distributing the final music product. In part to combat growing corporate influence, musicians created during the first decades of the twentieth century a number of institutions of their own, including collecting agencies, which could defend their interests.

The rise of radio in the United States during the inter-war period provided an initial point of conflict over copyrights in the modern music industry, when the owners of stations insisted that their purchase of a record carried no further financial obligations to composers. This situation was not finally resolved (in favour of the composers) until the early 1940s (Vogel, 1998: 133). Improvements in recording technology and the public airing of singles through the jukebox provided another set of contentious issues after the war. The introduction of cassette tapes in the 1970s provided another cause of conflict between owners and users of music goods; as music-related copyrights have become increasingly science-based in both sound recording

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[22] Galperin (1999) discusses the problem of how many cultural industries in general are based on annexes, exceptions and side-agreements with respect to trade related aspects (see also footnote 25).

[23] However, the United States (i.e. world's biggest exporter of cultural products – films, TV and recorded music) has not signed the Rome Convention.

[24] The TRIPs Agreement was signed by more than 100 States in 1994 as a part of the Uruguay Round on the General Agreement on Tariffs and Trade (GATT). The main provisions of the TRIPs Agreement include: (i) basic principles: a minimum standard for intellectual property (IP) protection is established; national treatment and most-favoured-nation treatment are provided; (ii) protection standards for industrial property rights (patents), copyrights, etc.; (iii) IP enforcement; (iv) dispute settlement related to IPRs; and (v) transitional measures: the TRIPs Agreement is expected to be implemented between 1996 and 2006, depending on a country's level of development.

and channels of music delivery using digital technologies (including software and Internet), the application of copyrights to protect these technological advances has become relevant to music products.[25] The income leaks through copying, already substantial, are threatening to become floods on the information superhighway; therefore, new ways to make the Internet organized and secure in order to recognize and monitor intellectual and other property are currently being investigated (Kokka, 1998). Thus, not only does the new information paradigm indicate the greater need for copyright protection, but the copyright system also needs to undergo changes to satisfy more effectively the new technological opportunities being provided within the new information economy (Andersen and Howells, 1998).

B. The diversity of copyright regimes

National IPR Offices are responsible for developing and carrying out policy on all aspects of intellectual property, including copyrights. This essentially means defining the broad "rules of the game" through establishing the fairness and equity of copyright legislation, including setting and adjusting royalty rates, as well as determining the public interest in the availability of creative works. The Directorates of these Offices are also normally responsible for formulating and implementing new legislation, which includes any changes necessary to meet obligations under international directives and international treaties. Furthermore, the Offices and Directorates play an active part in international negotiations. Table 4 provides examples of where the IPR system in relation to copyright is administered by national governments in major industrialized economies as well as in some developing countries.

These regimes must balance the conflicting demands of the creative forces of the music industry, the desirability of increased information and spillover, which facilitates development and sharing of ideas and expressions, and the moral integrity of cultural producers. Although all these ingredients must be managed in an effective copyright regimes, it would appear that the different locations of copyright administration in the case of music legislation, is, in part, based upon different approaches to intellectual property.

Administering music copyrights under the Library of Congress in the United States and under the Ministry of Information in Saudi Arabia suggests an overall rationale on balancing the conflicts surrounding information spillovers. It also strongly implies that the economic organization of the copyright is left in private hands. Much the same rationale lies behind locating copyright administration under the Ministry or Secretariat

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[25] In June 1974 the Director-General of the World Intellectual Property Organization (WIPO) convened an advisory group of experts that looked into the question of the protection of computer programmes; it found that in only a few countries might computer software be adequately protected without changes to existing laws (WIPO, 1987: 21). Even in developed countries – such as the United Kingdom, where protection afforded to computer programmes is considered relatively good – was this done by treating computer programmes as literary works under the Copyright Act of 1956. Indeed, even under the subsequent Copyright, Designs and Patents Act of 1988, in the United Kingdom , as in most countries, computer programmes are still treated as literary works (Bainbridge, 1996: 175). All other types of related protections are via annexes to copyright law.

Table 4

Government departments and units under which copyrights are administered

	United States	*United Kingdom*	*Germany*	*France*
Government department	Library of Congress	Department of Trade and Industry	Federal Ministry of Justice	Ministry of Culture and Francophone Affairs
Unit	Copyright Office	The Patent Office, Copyright Directorate	Copyright Section	Office of Literacy and Artistic Property
	Japan	*Brazil*	*Mexico*	*India*
Government department	Ministry of Education, Science, Sports and Culture	Ministry of Culture	Secretariat of Public Education	Ministry of Human Resource Development
Unit	Japanese Copyright Office (JCO)	Copyright Coordination	National Institute of Copyright	Department of Education
	Jamaica	*Trinidad and Tobago*	*Cuba*	*Saudi Arabia*
Government department	Ministry of Commerce and Technology	Ministry of Legal Affairs	Ministry of Culture	Ministry of Information
Unit	Copyright Unit	Intellectual Property Office	National Copyright Centre (CENDA)	Directorate of Publications
	South Africa	*Malawi*	*Denmark*	*Sweden*
Government department	Department of Trade and Industry	Ministry of Youth, Sports and Culture	Ministry of Culture	Ministry of Justice
Unit	Office of the Registrar of Patents, Trade Marks, Designs and Copyright	Copyright Society of Malawi (COSOMA)	Copyright Division	Division of Intellectual Property and Transportation

Source: Information is traced from WIPO (1999).

of Public Education or the Ministry of Human Resource Development, as is the case in India, Japan and Mexico. However, this also suggests the need for a public role in organizing creativity, with emphasis on strengthening human capital. In Jamaica, South Africa and the United Kingdom locating copyright administration under Departments of Trade and Industry suggests a more strategic approach to copyrights in creating a dynamic environment. In particular, the need to encourage investment in copyright industries focuses on incentive problems where fixed costs are high and reproduction costs are low, and the possibility of direct public support.

By contrast, in Germany, Sweden, and Trinidad and Tobago music copyrights are administered by the Department of Justice or Ministry of Legal Affairs, which suggests a rationale based on legal rights to own creativity but a weaker concern with its economic rationale. Finally, in most other countries presented in table 4, music copyrights are administered by the Department of Culture or associated bodies, which reflects a strong historical and moral rationale for the protection of intellectual creativity, arguable above narrow economic interests. Such a *moral rationale* of copyrights is especially based on "human rights", where the law should provide remedies against those who appropriate the ideas of others. But another moral rationale to copyrights is based on "business ethics", where property rights function as a safeguard for consumers on matters of product reliability and quality, as well as against deception in the market place.[26]

It is interesting to see how countries from the same regions with some degree of cultural convergence (e.g. the Caribbean, Scandinavia, or Central Europe) have no common philosophy on IPRs. However, some more general patterns can be discerned. In most English-speaking countries the IPR system falls under *common law*, and as such is more about protecting the skill, labour and investment of those responsible for the creation of works, in order to safeguard them from reproduction and other unauthorized uses; whereas the "droit d'auteur" under the *civil law* system, which exists in most non-English-speaking countries, results from considerations of natural justice and regards the work as an expression of the artist's personality, as a result of which he/she has a fundamental human right to control the economic exploitation of his/her work and to protect its integrity (MMC, 1996: 60). Another difference is that under *common law* everything is "transferable", "assignable", with total freedom of contract. For example, authors can sign away all their mechanical rights to their publishers. *Civil law* legislation ensures that the publisher or producer does not get everything (Kretschmer et al., 1999).

It is important to acknowledge the different institutional systems among countries when understanding why different copyright regimes differ in their ways of enforcing IPRs, and why they differ in trade-related aspects of copyright industries. However, although the countries may differ in ways of organizing music copyrights at the national level, the way in which they are monitored within industrial structures reflects greater similarities in ways of capturing and monitoring rent from music rights.

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[26] For classification of the rationales or the philosophy of IPR systems see Andersen and Howells (1998).

C. Royalty management by the collecting societies

As illustrated above, copyrights provide both the legal and commercial foundations for the music industry. However, while this regime may underpin the industry, the enforcement of the system of royalty flows between music users and copyright holders is by no means automatic, but needs to be monitored and administered through a complex machinery. As it would be far beyond the majority of "copyright holders" to negotiate and collect their own royalties, royalty-collecting societies have evolved to perform this service.

The first collecting societies emerged in Europe in the middle of the nineteenth century and proliferated in the early decades of the twentieth century. They are essentially non-profit making monopolies[27] controlled by their members, and whose functions are: (i) to license for specific uses work in which they hold copyrights;[28] (ii) to monitor the use of copyrightable material and collect revenue; and (iii) to distribute the revenue as royalties to members of the society.

Collecting societies have evolved, in large part, to reduce the transaction costs arising from the continuous and complicated task of monitoring and policing copyrights, including abroad.[29] This means building institutional capabilities with respect to knowledge about copyright legislation, as well as about the system of all music-right holders, music delivery and music users. It also means building technological capacities to track the flow of copyrightable materials and monitoring royalty payments. Finally, it means establishing credible legal threats in the event of copyright infringement. But collective agencies can often play a larger role in the industry, lobbying policy makers on music-related issues, providing information on the business to their members, promoting musical talent, through scholarships, etc.

However, the structure (i.e. division of labour in managing music rights) of collective societies differ significantly across countries, in terms of:

- their size, i.e. number of members and affiliates (e.g. publishers), total revenue, number of employees;
- their internal organization (including whether they are public or private bodies), eligibility criteria, the structure of the board and members' influence, their methods of monitoring copyright use and their basis for revenue distribution;
- their external organization, including methods of licensing, structure of tariff agreements, and international collaboration.

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[27] The UK Monopolies and Mergers Commission has found that this monopoly exists in favour of its members and is not against the public interest (MMC, 1996: 9).

[28] The licensing is based upon a pay-for-use principle, which requires that each of every use of each of every copyright owners' work is identified and paid for. The whole complex structure of types of licensing agreements with types of music users is presented in Taylor and Towse (1998), as well as addressed briefly above in chapter III.

[29] A leading UK government official recently stressed, in a interview with one of the authors of this paper, the costly process of royalty management, and highlighted that one of the two major goals of royalty-collecting societies in the United Kingdom is cost saving – the other being licensing as much as possibility. He emphasized how new technology (especially tracking systems) and ICT can enhance their capabilities in both respects. MCPS and PRS are the cheapest royalty processors in the world: MCPS only uses 5 per cent of revenue in processing and 95 per cent for distribution, whereas PRS uses only 10 per cent of revenue in processing and 90 per cent in distribution.

In the United Kingdom we find one of the most formalized and disaggregated management of royalties with several collective societies managing exclusively different music rights (performing, mechanical and synchronization rights) for different right holders.[30] Firstly, there is PRS, which represents those who own, control or administer the rights in the United Kingdom of public performance (live or recorded), and broadcasting and cable diffusion of copyright musical compositions (i.e. they administer performing and synchronization rights for composers, lyricists and songwriters, sometimes through music publishers). The most important users of licences issued by public performance agencies are radio and TV stations, but they also include public performance venues (and film companies in the case of synchronization rights).

Secondly, there is MCPS, which as an agent represents those (music-publishing companies or sometimes music composers) who own, control or administer the mechanical rights in the United Kingdom to reproduce copyright musical works/master copies. This basically concerns licensing record companies (and sometimes film companies, as well as radio and TV stations) to manufacture musical works. Recently PRS allied with MCPS, mainly to broaden their scope of using information and communication technology, and to share and extend interactive databases (PRS, 1998).

Thirdly, Phonographic Performance Limited (PPL) is an agency that represents those who own, control or administer the performing and broadcasting rights in the United Kingdom of public use of sound recordings of the record companies. This is mainly a service for record companies, although it also sometimes includes featured artists or singers, as well as non-featured session players. That is, companies (and associate) that make sound recordings have legal protection against unauthorized public performance, broadcasting or cable diffusion of their sound recordings.

Finally, there is a smaller society, Video Performance Limited (VPL), which is an agency that represents those (mostly record companies) who own, control or administer the rights in the United Kingdom of public use of copyrights in music videos. That is, companies that make music video recordings have legal protection against unauthorized public performance, broadcasting or cable diffusion of their music video recordings.

This is not the only model. In other countries, only *one* society exclusively manages all these rights, such as JASRAC in Japan and SACEM in France. In the United States, where several societies manage the same rights non-exclusively (such as, for example, ASCAP and BMI), both managing performing rights together, with the existence of one society, SESAC, managing several rights. Collecting societies usually have reciprocal arrangements with other analogous organizations all over the world, in order to capture foreign payments from sources outside the countries of origin of music.[31] In particular, international collaboration in the external organization of royalty-collection societies is increasing, not only through agreements between societies but also in direct formal collaboration, collectively monitoring or merging databases. For example, ASCAP of the United States, Buma/Stemra of the Netherlands and the PRS-MCPS music alliance of the

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[30] See Andersen and Miles (1999) for a detailed analysis of the role, function, organization and operation of the collective societies in the United Kingdom.

[31] International cooperation dates from the 1920s, with the creation of the International Confederation of Societies of Authors and Composers.

United Kingdom have created an International Music Joint Venture (IMJV) service centre to provide advantages in the digital age (PRS, 1999). This is only one example of several international initiatives, which, in addition to improve their services of the societies, also aim to have an impact on standardization issues in relation to such services.

In most developing countries, collecting societies (and particularly those dealing with mechanical and synchronization rights) are lacking or very weak. In many cases they are public or semi-public bodies. In former colonies, collecting societies are often represented by agencies from the former colonial power – such as the PRS of the United Kingdom, which is still operating in Jamaica in collaboration with its own local collecting agency (Kozul-Wright and Stanbury, 1998). Jamaica has no mechanical rights-collecting society. Although collecting in developing countries (such as Jamaica) is due to lagging skills and technologies, there remains a lack of appreciation among local people (both users of music as well as producers) of the wider organizing role of the copyright.

V. CONCLUSION

Cultural industries, such as music, offer considerable growth and export potential to developing countries. Not only is the basic resource, musical talent, abundantly available, but regional musical tastes offer significant opportunities to establish markets for producers in the South. However, talent alone is not sufficient to build a competitive music industry, and in most developing countries it has suffered from weak institutional and political support, low levels of entrepreneurial capability, low value-added, over-dependence on foreign manufacturing and distribution, and massive copyright infringement. Hence, earnings are far below the potential were the industry more effectively organized. But in industries where ideas and specialized assets give rise to rents, effective organization requires a variety of specialized institutions. This is particularly true of music, where the volatility of demand adds to the sizeable risks involved. Indeed, creating a successful music industry is as much related to institutional capabilities as to music potential or talent.

In this paper we have focused on the role of the copyright and related “neighbouring” rights in providing a meaningful and important “economic” justification behind most knowledge-intensive products and services in the audio-visual sector. Without the copyright, the economic reward from original creative work is threatened and income flows greatly reduced. But the copyright does much more than this: it also helps to define a market, provides a common focus for complementary specific assets, which are needed to create a music product, and offers a form of risk sharing.

Even among advanced industrial countries and regions, there are significant differences in their rationales for IPR protection, which might give some explanation of why they differ in their attitude to trade related aspects of cultural products, as well as their success in orchestrating intellectual property rights in the music business with respect to capturing rent. Recognizing this diversity and adapting copyright legislation to local conditions should be a focus of policy makers in developing countries looking to strengthen their cultural

industries. However, the copyright involves much more than legal norms. Monitoring and administering copyrights highlights the important role of collecting societies as part of a functioning copyright regime. Such bodies are often central agents standing halfway between the legal and financial systems, and cover both the national institutional and sectoral aspects of the music industry.

Without the copyright regime, and for all its flaws, a modern music industry is simply not possible, and unless developing countries develop this system, they will be unable to fully realize the benefits from the creativity and talents of people in the audio-visual sector. However, given the importance of specialized assets, the level of market uncertainty for the product and the dominant role played by TNCs in the music industry, many other policy issues are involved in establishing and consolidating fledgling cultural industries. In addition, the tendency to cluster geographically music activities raises additional options for policy makers in developing countries seeking to develop this sector. These issues are the focus of further research.

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