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From Minor to Major:
Policy Challenges for Developing Countries in the Global Music Industry*

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Contents

Introduction

1. A characteristic of many developing countries is the combination of poor economic performance with a rich supply of raw materials that are commercially exploited by firms from advanced economies. This is typically the case with natural resources. But it is also true of the less widely discussed case of cultural resources. Many developing countries are rich in cultural assets, local talent and symbolic outputs. However, those countries have not been able to translate this into wider and deeper "productive" capacity, but instead have remained stuck on the lower rungs of the value-added chains of a multi-billion dollar global business.

2. In the particular case of the music industry, talent and experimentation have long been a source of creativity which has influenced international commercial activities (Lovering, 1998). With new communication technologies, both physical and virtual, allowing cultures and cultural expressions to interact more closely, it is likely that this creative and commercial potential will expand. This paper seeks to identify both the opportunities the threats to such a potential expansion in developing countries and by extension badly needed growth and employment opportunities and export earnings.

3. More specifically, the paper asks and seeks answers to a number of key questions of interest to policy makers looking to better exploit their cultural assets:

- ♦ Can current trends in the global music industry support a fair flow of revenues back to poorer nations when their music is exploited globally?

- ♦ How flexible is the music industry value chain, and does it allow new technologies to work in the interest of all creative parties?

- ♦ Which intermediaries are needed to look after the global interests of creators and rights holders in the less developed nations, and what is the current status of the copyright regime in this context?

- ♦ Does vertical integration in the entertainment industry pose a threat to economically poorer players?

4. Answers to these questions must be sought first and foremost at the domestic level, where policy efforts can have the greatest impact, but international factors also matter. Indeed, the music industry has, since its inception, been very strongly shaped by the interdependence of domestic and international economic factors. Copyright regimes and institutions provide one particularly important interface in the development of a viable music industry. A firm conclusion is that the copyright system, despite its failings, is the best way forward to protect the interests of creators in the developing nations. The system must be developed at the local level, or there is a real risk that it will be hijacked by global players whose priorities are not the maximization of returns to the poorer nations. However, minimizing that risk will require concerted support from specialized international organizations, as well as from national, regional and (eventually) global antitrust authorities.

Trends in the global music industry

5. The music industry is a quintessential copyright industry, organized around highly specialized assets, short product cycles and unpredictable markets. Many characteristics of the industry stem from the strong public dimension in ideas-based activities which make the free market a sub-optimal organizational solution regarding supply and delivery (Dayton-Johnson, 2000). Its contemporary shape derives from the separation, in the late 19th century, between the creative idea and its embodiment in a reproducible good, whose manufacture could become the focus of organizational and technological innovation. These features have meant that the creation, capture and protection of economic rents are crucial to understanding evolving structures and strategies in the music industry (Andersen et al. 2000).

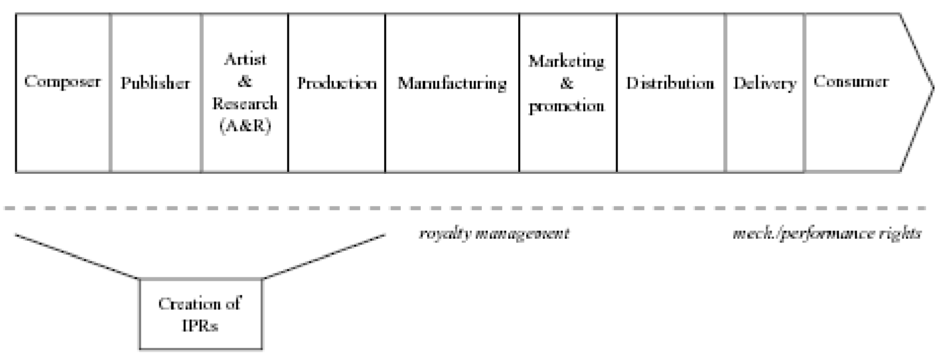
6. The presence of market failures and economic rents has produced a tendency towards a polarized industrial structure with a small number of large firms involved in organizing key segments of the value chain, and a large number of smaller firms concentrated in highly specialized activities. Larger firms have often combined a mixture of intangible and tangible assets, with technological innovations in the latter often providing new sources of large profit opportunities and with considerable first-mover advantages giving firms a surprising longevity. Thus, of the five international firms (AOL-Time Warner, Vivendi Universal, Sony, EMI and BMG – known as “the Majors”) that currently control 80 per cent of music sales, Sony is the only one established after the Second World War, and BMG and EMI can trace their roots back to the 19th century. Moreover, all have a history which includes technological leadership on the production side (Negus, 1999, pp. 37–45). The presence of a range of smaller companies providing highly specialized services to larger market leaders has often built around strong local connections, with agglomeration economies akin to industrial districts being a feature of the music industry (Anderson et al. 2000).

7. The traditional process of income generation in the music industry begins with the creation of an intangible musical composition and ends in a tangible final product embodying that composition and delivered to the consumer. The music industry value chain describes the series of linkages between the creator and the user of the music product (figure 1). Each activity in the chain adds value to the final product, although this may not coincide with the profitability of the activity, which depends additionally on the bargaining strength relating to the transactions with firms upstream and downturn (Mol and Wijnberg, 2000).

8. Traditionally, the writer creates a work of music, and approaches a music publisher (or artist and repertoire (A&R) division of a recording company). A contract is signed assigning to a publisher the right to exploit the work. The publisher was originally part of the production process, investing in and distributing sheet music. A 50/50 revenue split with the composer was regarded as reasonable because of the publisher’s investment requirements for producing sheet music. The publisher would also seek to find artists and record companies willing to record and distribute the composer’s works. Once a combination of work and artists had been decided, the record company would produce the recording, manufacture phonograms, promote the product and distribute the final recording.

Figure 1
The music industry value chain, from composer to consumer

Intellectual property rights are established when composers create and performers record. These generate revenue flows when recordings are sold or performed in public (e.g. when broadcast).



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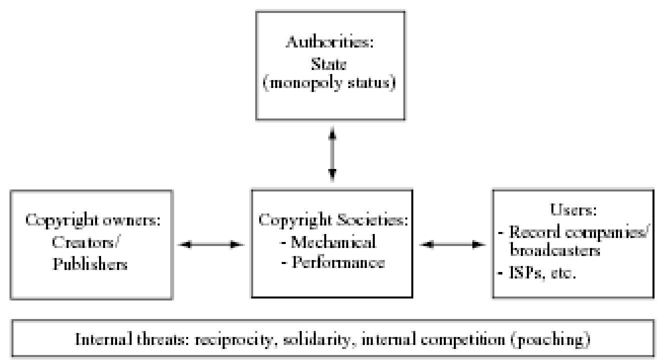
9. Because a key challenge is to reach as wide an audience as possible and through the largest number of formats (a performance, sheet music, sound recording, etc.), marketing of the song becomes a key component of the chain. However, the unity of the value chain depends critically on the copyrightability of the musical idea. Unlike other intellectual property rights, the copyright only protects the expression of the idea in fixed form and is not issued but simply asserted by the creator. Moreover, the creator of a musical idea has an interest from the outset in maximizing market reach. Although the author has original ownership rights, the process of copyrighting puts it into a public arena where it is likely to acquire a more complex jointly owned form involving the author, publisher, the record company and other entities involved in the commercialization of the music product. Various rights are the basis of different forms of revenue. Mechanical rights refer to moneys paid to composers and publishers when musical works are duplicated on physical carriers such as the CD. Performance rights provide income to composers/publishers and in most territories to performers and producers, when recordings are performed in public (see figures 2 and 3).[1]

[1] The United States is the notable exception as regards the latter, although this could change with the introduction of the new US Millennium Digital Copyright Act.

Figure 2
Demands on copyright societies

Copyright societies are experiencing a number of pressures, from competition authorities (national and international), from powerful users and from influential copyright owners. Users can be traditional players such as radio and television broadcasters or newer actors such as Internet Service Providers (ISPs).



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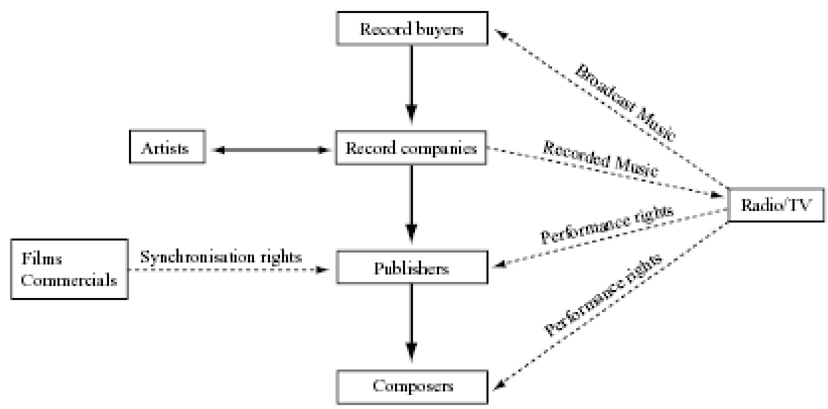
10. From this perspective, copyright provides incentives for creativity, the basis for organizing that the value chain on an industrial basis as well as allowing for experimentation and borrowing from ideas which is essential for a creative music scene. However, the copyright is far from providing a risk-free environment and the investment strategies designed by firms must look to managing a high degree of uncertainty. The choice of artists and their development introduce an immediate source of uncertainty. But the markets for the goods derived from musical talent are not in a simple sense "out there" but must be created and maintained, requiring further investment with an uncertain pay-off. Finally, technological innovations have provided shocks and potential revenues ever since the music industry broke out of space and time constraints associated with performance-based products (Gronow and Saunio, 1997).

The globalisation challenge

11. Current changes in the music industry are – as in all media industries – the result of a mix of economic, political and cultural factors, with the latter including both social and legal aspects. The particular mix has been powerfully influenced by a process of technological convergence stretching across a wider block of audio-visual and communication industries. But while there has been a tendency to focus on technology as the driving force, policy changes are in many respects even more important.

Figure 3
The origins and flows of different types of IPR revenues

The recording industry provides broadcasters with recorded music. Broadcasters pay for the right to broadcast music (a performance right). Record companies pay mechanical rights dues for the right to reproduce musical works. Syncronization rights are valid in cases where music is syncronized with images (e.g. in films or TV commercials).



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12. Moreover, within the corporate globalization trend it is important to identify a particularly dominant role for finance both in shaping the wider international economic context (UNCTAD, 1997) and in the particular shape of corporate strategies used to make and retain profits (Grahl, 2001). This trend has tended to break with more particular corporate strategies linked to the specific domestic conditions of the corporate headquarters, and has imposed a more uniform pattern of industrial structure and behaviour where mergers and acquisitions and access to liquid resources have acquired a growing weight in shaping corporate strategy.

13. Such ongoing developments are significant in the context of the changing ways in which music and culture are distributed. One of the most important trends concerns the structure of intellectual property right (IPR) revenues. IPRs in this context refer to the rights of creators or their representatives to control and demand remuneration for the exploitation of their creations, as well as the extension of protection to cover *performers* and *producers* in countries which have signed the 1961 Rome Convention on "neighbouring rights" (Malm and Wallis 1992). Recent developments under the General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement (NAFTA), and in the European Union (EU), have added further impetus to this process particularly through the gains from tighter control over intellectual property, including extension of the term of copyright protection to a minimum of 70 years after an author's death in the EU and 75

years in the United States. These legal developments have made such rights even more attractive as long-term investments.[2]

14. Not only is there a general growth in the IPR revenue stream but also there is a shift from revenues based on the physical distribution of tangible carriers, such as the sale of CDs and tapes, to income from licensing fees for the use of music in media channels. The main factors here are the growth of music television, the proliferation of private radio stations, and the use of music in advertising and video game products. There is thus an increased dependence by actors in the global media arena on *immaterial rights* as sources of revenue. More recent figures from EMI show publishing activities, namely activities generating revenue via exploiting or trading in intellectual property rights assigned to EMI by composers, accounting for 17 per cent of the EMI groups' turnover, but no less than 47 per cent of net revenue in the year 2000 (*Music & Copyright,* 2002).

Developments in music industry technologies

15. The deregulation referred to above has fostered and been fostered by changes in technology. The technology that supports the music industry has become more and more globally available. Evidence from the 1980s showed that multi-track cassette-based recording technologies spread at a rapid pace to virtually every nation (Wallis and Malm, 1984). At the same time, however, the economics of the music business have become more global as conglomerates have increased in size through various forms of mergers. Even so, most of the real business of music production starts at the local level, where creativity blossoms in a myriad of different forms.

16. As a general observation, the introduction of new technology which is widely available (including in low-income countries), coupled with the growth of a large global industrial oligopoly, decreases the difference in opportunities for smaller players in both rich and poor nations. This is because digitization is in the process of universally permeating the industry, from the production process through manufacturing to both physical and non-physical forms of distribution networks (Wallis et al., 1998; Kretschmer et al., 1999).

17. Networks and associated software allowing the creator, in theory, to meet a worldwide audience are becoming more sophisticated as well as user-friendly. Peer-to-peer file-sharing techniques such as those used in the now-defunct Napster or, more recently, Kazaa allow interested potential consumers to exchange samples of music at will. Anecdotal evidence suggests that a number of musical groups in Africa have created their own "communities of interest" in Finland, based on individuals who have discovered them after someone has made recordings available via P2P networks. The process of creating groups of fans (sub-cultures) in the physical world can, to a certain extent, be replicated in the virtual environment. The same technologies, however, can allow consumers to bypass constraints related to payments of revenues for IPRs, which are the basis for the traditional industry's attempts to block such technologies (or control them by buying in).

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[2] The extension in US law was also coupled with a liberalization of the demands on some music users: certain categories of restaurants and bars were made exempt from the need to pay for the use of music on their premises. This in turn led to a rift between the EU and the United States, and was later found to be unacceptable by the World Trade Organization. The United States is currently paying an annual fine – the exemption has not been repealed (2004).

Changing channels to consumers

18. In parallel to these trends on the production side, there has been a dramatic change in the channels that convey music to consumers. During the 1980s, many Western Governments sought to deregulate the media, resulting in a proliferation of new local radio channels and television channels, including cable and satellite broadcasting. A similar trend could be observed in the 1990s in a number of developing countries, and the Internet has added a new medium of delivery for the developing world.

19. The Internet by its very nature is largely unregulated. This raises a number of largely unresolved issues regarding responsibilities in "cyberspace", including privacy, security and copyright issues. Ready access to sites where music is stored and made available in an established and convenient data format (e.g. as MP3 files) has caused major problems for those controlling large up-front investments in artists. File-sharing applications have been eagerly embraced by consumers but fought in the courtrooms by the major players in the music industry. Many of these legal tussles, however, have already been solved either out of court (e.g. between some major record companies and MP3.com) or via collaborative deals seeking to make the new applications "legal" (e.g. between Bertelsmann, the parent company of BMG Records, and Napster).[3]

20. "Moral panic" in the established industry regarding the activities of rich consumers in the Internet environment has taken a route from legalistic to more pragmatic solutions. Such developments, of course, have considerable relevance for the opportunities for music creators in the developing countries to use new digital channels to reach a potential global audience. Two digital distribution initiatives launched in 2001 by the majors (i.e. the leading music corporations) MusicNet and Pressplay could have resulted in 80 per cent of the world's commercially available recorded music forming a distribution duopoly. Pressplay was to offer music controlled by Vivendi Universal and Sony (in collaboration with Microsoft). MusicNet had access to works owned by the other three multinational conglomerates (EMI, Time Warner and BMG). Both were based on subscription models, whereby consumers pay a fixed monthly sum allowing them to download a fixed number of recorded works of music. If the subscription lapsed, then the customer lost access to all material previously downloaded. However, uncertainties surrounding the commercial viability of both services delayed their actual launch dates.[4] When they were finally started up, the services proved not to be attractive to consumers. Pressplay technology was sold to Roxio (as was the Napster brand name) and the combination was to be relaunched as a legal downloading service in the United States in late 2003.

Mergers, amalgamations and resulting initiatives

21. While the large music corporations have been pushing for greater liberalization and deregulation as a means of expanding markets in search of larger rents they have also had to respond to new competitive pressures that this has unleashed. In particular, the build-up of debt linked to

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[3] Bertelsmann bought Napster in 2002 and then sold it on to Roxio, a manufacturer of software for CD burners. Roxio is now relaunching Napster as a legal downloading service, but with no P2P features. Vivendi Universal enjoys total control over MP3.com. The long-term viability of these activities is still however, in doubt.
[4] It is far from clear that consumers even in the advanced industrial markets are willing to pay up to US$ 10 per month for such services and conditions. However, both Congressmen and organizations representing smaller music producers in the United States have already expressed serious concerns about the risks for collective dominance embodied in the Pressplay and MusicNet initiatives (*Financial Times*, London 4 December 2001, "Record labels launch online music ventures", Music Business International, "Opening Shots", October 2001).

expansion has made companies vulnerable to any drop in sales, or other shocks, and has also given rise to a more intense search for alternative revenue streams further down the value chain.

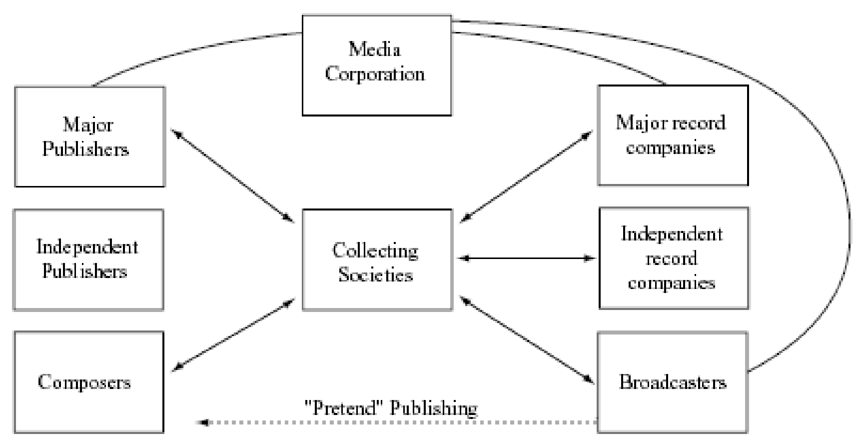
22. In this respect, geographical and technological convergence, which opens up new opportunities to combine music with other media products, has received considerable attention. More importantly, "vertical integration" (figure 5) has been a strongly visible trend in the international music industry over the past few decades. Mergers and acquisitions have been used strategically to increase control over the key stages in the production and distribution process. In the 1980s, the focus was on distributional activities, first as control of the artist repertoire was taken away from independent labels and then as attention turned to managing the market through control over retail outlets, including through the expansion of music-related merchandise (e.g. T-shirts and posters) with a higher retail margin. Another shift occurred in the late 1980s – to publishing activities. This included the amalgamation of organizations that produce recorded music (record or "phonogram" companies) and organisations that own the copyrights to the music that is recorded (music publishers). This process altered not only the configurations of the traditional music business but also the dynamics of the industry's growth and evolution, thus allowing the majors to exert a high level of collective dominance over the market.

Figure 5

Vertical integration involving the dominance of large media corporations introduces instability

With record companies, publishers and even broadcasters being controlled by large media corporations, the power and the independence of collecting societies are heavily curtailed.

Broadcasters can even create "pretend" publishers, the sole purpose of which is to recoup copyright dues via the publication of works composed specifically for radio or television.



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23. A few multinational media corporations now "own" most of the superstars as well as a very large repertoire of music copyrights. Together, Sony (Japan), Vivendi Universal (France), AOL Time Warner (United States), EMI-Virgin (United Kingdom) and BMG (Germany) consistently account for 70–80 per cent of global music sales and publishing revenues.[5] The highly skewed concentration of ownership has a profound impact on global cultural diversity.

24. The spate of music and entertainment industry mergers witnessed over the past few decades reflects the desire to realize economies of scale and scope (selling global hits in a global market). It also reflects the desire to reduce uncertainty in a market which is inherently risky, as well as the desire to better capture and retain rents through increased control over production and distribution (Andersen et al., 2000).[6] The growing "financialization" of corporate strategy has meant that mergers have been followed by considerable rationalization and a narrowing of product range on internationally viable superstars.

25. One inevitable result of this is that larger players prioritize the protection of large up-front investments, seeking market control through the advantages of size. It is easy to understand the power of these incentives for superstar artists. The linking of rights ownership to rights exploitation – a natural aim of a vertically integrated conglomerate – can have negative effects on the economic conditions of the majority of authors. This is particularly so for those reliant on new collecting societies which do not represent large amounts of repertoire (and therefore do not enjoy a position of authority internationally). It is even questionable whether such "bundling" of authors' and performers' copyrights with exploitation rights (production and distribution) is good for competition or even for long-term growth in the industry. Vertical integration/collective dominance can seriously limit creators' access to different channels to a potential audience, which is probably the most important prerequisite for healthy creativity in a cultural market. It follows that smaller players might experience less freedom to act in the market place, if their interests are not supported strongly by antitrust regulation and/or fair independent intermediaries between producer/creator and consumers.[7]

26. New participants, including those from emerging developing countries, must face up to these challenges in the industry, and particularly the dominance of the majors as regards international distribution and promotion. It is therefore essential for artists, entrepreneurs, music institutions and even Governments in developing countries to establish and monitor fair relationships with the international music industry. At the same time, these same trends have allowed a good deal of creative, as opposed to financial, risk-taking to occur in the plethora of smaller firms ("independents"), which represent a multitude of cultures and sub-cultures, where new ideas result from experimentation. This is where many smaller and poorer nations have a potential advantage.

27. Some publishers have moved gradually into traditional areas of record company operations, particularly that of A&R, which is the matching of repertoire with choice of artists. By building their own studios and contracting singer-songwriters to both write and record demonstration recordings (which then may or may not be released and distributed by a record company) they have moved further up the value chain in the direction of the consumer. The fact that this potential source of conflict has not come out into the open can be ascribed to the many mergers that have integrated ownership of both publishing and recording interests.

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[5] Figures for two markets (Australia and the United Kingdom) for sales of physical music products during the first six months of 2001 show the five majors controlling 74 per cent in the market in Australia and over 90 per cent in the United Kingdom (*Source:* Music Business International, October 2001).

[6] The music industry is of particular interest for media-based conglomerates as the capacity to deliver information moves through digital networks because of its pivotal position in the complex of interrelated media products.

[7] Wallis,1990; Malm & Wallis 1992; Choi & Hilton 1995, Burnett 1996, Negus, 1999.

28. On the other hand, size grants the large publisher enormous clout in the copyright world. This process is not so obvious in mature music-exporting countries such as the United Kingdom or the United States. In those countries creators and their lawyers have been able to increase their bargaining power, or retain control by building their own publishing companies (for their own works**).** Such legal/business acumen is often lacking in many poorer nations. In many developing countries, the "publishing" contract is of a type known as "50/50 Receipts", which essentially means that every time moneys are passed from one publisher to another in a chain leading back to the composer 50 per cent plus a fee for administration is deducted. One result of this is that a composer registered in, for example, Kenya, who has a hit in the United States, could end up retaining less than 20 per cent of certain copyright moneys collected in the United States. Add to this the terms of a "life of copyright" contract (the life of the composer plus 75 years in the United States and 70 in Europe), and it becomes clear why publishing has become one of the most lucrative activities of the international music industry.

29. The fact that the majors play a vital role in every aspect of the international trade in music products and artists cannot be ignored. Subsidiaries of the major publishers in Sweden, for example, have established the contacts necessary for offering Swedish compositions to leading American artists.[8] The small studio gets the recording business, the multinational publisher earns a share of the copyrights and the recordings are manufactured and distributed by a combination of majors and independents.

30. Significant differences continue to characterise the industry value chain in developed and developing countries. In particular, larger firms with systemic linkages across the value chain are weak or absent in many developing countries. In a sense, these differences are an extension of the industry's longer history inextricably linked to the dynamic relationship between big and small players. The small group of multinational conglomerates which controls almost 80–90 per cent of the global music business is located in advanced countries, whereas the developing world is home to a plethora of smaller enterprises which function as talent incubators all around the world (Andersen et al., 2000).

New entrants and growing instability in the value chain

31. The observations above suggest that a radical restructuring of the music industry is under way despite the growing dominance of large companies. However, the picture is complex. Many firms acquired high levels of debt during the merger waves of the 1980s and 1990s and the resulting bursting of the market bubble has caused potential problems which are likely to trigger a further round of defensive mergers such as the ongoing attempt to merge the Sony and BMG recording divisions (2004).

32. On the other hand, new opportunities are visible which should enhance smaller players. Singer-songwriters and their studio producers should be able to bypass the established industry and find their own audience anywhere in the world via the Internet (as long as they can make themselves known and heard in all the noise in this distribution channel). Indeed, some market research organizations have predicted the collapse of oligopolistic control over music production and distribution (Jupiter Communications, 1998).

[8] Success in this form of trade has been so remarkable that leading world stars (e.g. Britney Spears) now go to Sweden to record in studios owned by small groups of local songwriters/technicians.

33. What has actually happened to date hardly supports these predictions. Initially, the five leading music corporations were very slow to adopt the Internet as a distribution channel. While they were slowly deciding how to possibly embrace the on-line environment, others were doing it in very different ways. MP3.com and related companies quite simply made music available in a fashion which was clearly incompatible with intellectual property legislation. Napster followed with what turned out to be a “killer application”, a remarkably simple application allowing users to share access to music stored on their own hard discs.

34. The so-called Secure Digital Music Initiative (SDMI) was the music industry’s most highly publicized attempt to provide a secure digital environment for music distribution. SDMI did not materialize probably because of the wide range of personal agendas characterizing the members of the consortium. A challenge to hackers in late 2000 led to the codes being cracked within hours by researchers at Princeton University in the United States.[9]

35. On-line sales have not taken off in a spectacular fashion. The on-line share of the music US sound carrier market in 2000 was 3.2 per cent, up 0.8 per cent from 1999. In reporting these figures from the Record Industry Association of America (RIAA), the London-based *Music & Copyright* newsletter noted that the figures “supported the view that delays by the major international record companies in developing their online strategies have slowed down the expansion of the US online market” (*Music & Copyright*, 2003). The much-publicized entry of Apple computers into this market with iTunes must also be considered in a global context. One billion CDs are still annually sold worldwide. This equates to about 10 billion tracks (or around 3 billion in the United States). Apples’ on-line record of 100 million tracks downloaded for 99 cents per track in the first year has to be evaluated in this volume perspective. The interesting point is Apple’s role in the value chain, replacing the traditional retailer.

36. A second type of reaction can be observed in the case of smaller independent recording companies (the “Indies”), which have been keen to test the new technology. They saw the Internet as an opportunity for music creators to discover the shortest distance to a potential audience anywhere in the world. Often working with lesser-known artists or less popular musical genres, these companies naturally saw such opportunities to bypass the mainstream industry as particularly attractive. Even here, however, success was limited. Consumers showed little willingness to pay for digital downloads of recorded music. Their propensity to pay was decreased even further by the emergence of companies such as MP3.com and file-sharing applications such as Napster which made recorded music available “for free”. [10]

Collecting societies as essential intermediaries

37. Copyright has emerged as a way of organizing collective interests in a potentially fragmented and unstable industry. However, the enforcement of the system of royalty flows between music users and copyright holders is by no means automatic but implies a monitoring and administrative machinery which, in line with the international dimension of the industry, can be complex.

[9] Currently, the majors are seeking to develop new technology which will prevent consumers from copying CDs or even “burning” their own CDs from digital downloaded files. Historical evidence does not suggest that they will find a perfect technological solution to any of the business problems created by new technology. Indeed, more recently these companies have embarked on an aggressive, and so far partly successful, legal assault on illegal users of downloaded music files.

[10] That said, there is some evidence that the increased availability of music in virtual form as MP3 files leads to an increased consumption of physical products such as CDs.

International rules and national demands

38. The liberty to create requires an environment conducive to creativity, one in which the creator is comfortable that those representing or looking after his or her assets are performing efficiently and fairly, and that he/she is not being cheated. Given the nature of the product, and the importance of borrowing and mixing ideas for a creative music scene, music copyrights provide imperfect protection to this industry. Moreover, while such a regime may underpin the industry, the enforcement of income flows between music users and property owners is by no means automatic, but needs to be monitored and administered through an appropriate institutional structure. This essentially is the role of the collecting society (Andersen et al., 2000).

39. The collecting society model is illustrated in figure 2. The societies function as ostensibly independent intermediaries between rights holders (publishers and authors) and users (exploiters of music). Since they often function as de facto monopolies, they have received an increasing level of scrutiny from official bodies such as international regulators and competition authorities. Users have frequently complained that the societies have used their monopoly status to extract rates which are unfairly high. In Europe, the European Commission has encouraged some measure of competition between societies, and has probably regarded the power of certain users as a guarantee against society abuse.

40. The history of collecting societies representing composers in the poorer nations is very fragmented and not always impressive. In many former British colonies, local embryonic societies were started by the UK performing rights society with the primary aim of collecting revenue for UK works, not for establishing a local or an international market for domestic creations in the new independent nation. Moreover, as these infant societies have matured many have been plagued by claims of incompetence or even corruption.

41. The global framework of rules for collecting societies (embodied in the CISAC charter) allows local copyright agencies to retain 10 per cent of incoming moneys to be used for "social and cultural purposes". This gives a society an opportunity to support local music, and generally link the issue of creativity to protection of IPRs.

42. The demands for a powerful, independent copyright collection society are straightforward but exacting. An intermediary that identifies usage of music works, and collects and distributes revenues must have correct, up-to-date and efficient databases covering authors and works, an efficient transaction processing system, comprehensive negotiation and collection routines in its own geographical area of operations and efficient local distribution routines, as well as fair and functioning reciprocal agreements with sister societies in other countries.

43. The main challenge concerns the quality of the data which are fed to the collecting societies. Another challenge concerns the linking of different databases so that each society is not forced to register all data itself, but can look in other databases via suitable search engines. The only functioning examples of this can be found in the Nordic region, where the music performing rights societies of Sweden, Finland, Denmark, Norway and Iceland have linked their sources of data concerning musical works and authors via a virtual database, Norddoc.

The CISAC Common Information System initiative

44. CISAC is the international organization of authors collecting societies, based in Paris. It creates the international rules of play which govern relationships between collecting societies. Virtual databases allowing all societies the same opportunities for efficiency are essential elements of a fair global regime. In the mid-1990s, CISAC launched a major initiative in that direction, namely the Common Information System (CIS), which allows for unique forms of identification (and links to ownership) of works. Linkage to such a system is the best way for a small copyright society to defend its members' interests globally. A functioning CIS regime, for instance, would make it hard for less than honest persons to claim they had written works which had already been registered by creators in a developing country with a unique identification in the CIS system.

45. The above argument illustrates how important it is for the developing countries to establish functioning collecting societies which can perform such registration duties efficiently – and that this task includes even the registration of arrangements of local traditional music. An efficient local system is the best guarantee for (a) ensuring that revenues earned by successful members return to the home country, and (b) not losing local composers to societies abroad. With the major demands on the efficiency of IT systems, there is also a risk that groups of societies will seek more business outside their own area in order to pay for investments in new joint systems. Even within the copyright community, the term "merger" can have significance.

46. Collaboration between mature and younger societies will be essential, as long as it occurs on equal terms – for example, the Swedish composers' collection society, STIM, has given both financial and technical assistance to the fledgling societies in the Baltic States (Estonia, Lithuania and Latvia).[11]

Fair rules of play: International, regional and local challenges

47. Figure 4 suggests that the collecting society enjoys a pivotal position in the music industry, acting as a strong, fair buffer between the interests of rights holders and exploiters, setting tariffs via reasonable negotiations with users on behalf of all authors (thereby being able to offer a universal repertoire), and balancing the reasonable demands of both rights holders and users. Vertical integration via business mergers has a considerable effect on this independence. The major publishers function as an international oligopoly. Their local subsidiaries may well be represented on the boards of local copyright societies – and their representatives thus end up having dual loyalties, both to the local board of the collecting society and to their international masters. This has allowed the major players to derive financial benefits at the expense of smaller players. Major record company divisions have offered all their business (e.g. delivery of mechanical royalty dues in the whole of Europe) to one particular society in return for rebates on price. Their related publishing divisions have then demanded lower society commissions for delivering dues for songs released on such records. Those that have suffered are writers of songs released on smaller labels, where commission rates have often been raised to allow the collection societies to balance their books. There is a very real risk that similar developments could weaken the power of fledgling collection societies in the developing nations.

Figure 4
A traditional view of the role of collecting societies as intermediaries

The collecting societies represent rights owners when negotiating with exploiters of music (record companies, broadcasters). This model assumes that copyright societies enjoy a large degree of independence and power (and that users are independent of rights owners).

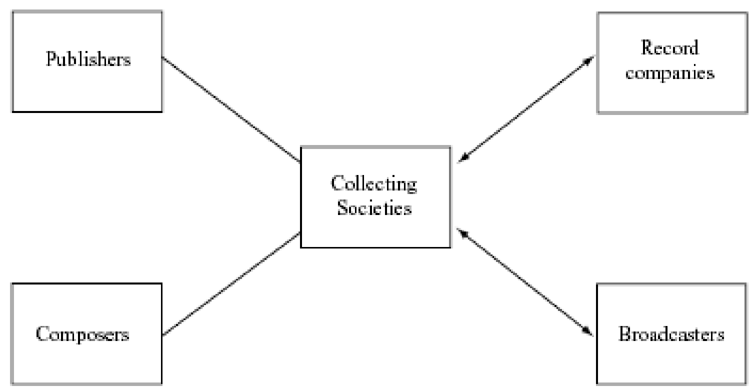

Figure 4.
A traditional view of the role of collecting societies as intermediaries.
The collecting societies represent rights' owners when negotiating with exploiters of music (record companies, broadcasters). This model assumes that copyright societies enjoy a large degree of independence and power (and that users are imdependent from rights owners).

48. Such observations have a number of implications for collective societies in the developing countries. They must clearly be efficient and transparent, and have both moral and legal support from government authorities. They must become part of the international family, but at the same time demand that the same rules apply to them as apply to larger, more established players. These observations lead to the powerful conclusion that CISAC's role as an integrator of the activities of collecting societies, as well as a guardian of the principles of reciprocity and solidarity, must be strengthened, widened and upgraded to reflect the changing face of the global music industry. WIPO, as a guardian of the global rules of play, also has a great responsibility in this context.[12]

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[11] Without this assistance, the Baltic composers who enjoyed success in the Eurovision Song Contest over the past two years, would never have been able to receive a reasonable return of IPR revenues to their countries.

[12] It is interesting to note that knowledge and implementation of this common practice have only recently reached Sweden, despite the success of Swedish composers in the international market. An example is the CISAC rule which states that 50 per cent of sums received for performance rights (e.g. revenues for performances on radio/TV stations or at concerts) in another country must be returned to the author, via his/her collecting society in the country where the composer is registered. This assumes that the composer has a reliable local collecting society, that the works in question have been registered locally and that these data are available internationally. The "other" 50 per cent is usually paid to a local publisher who represents the composer's original publisher in the territory in question. The 50/50 split is an old rule and has its origins in the time when even a local "sub-publisher", e.g. a representative for a German song in the United States, would print sheet music. Many established composers, via "at source" deals, have assured themselves of a larger direct share than 50 per cent. In the United Kingdom music industry, 70/30 "at source" deals are common even for less established composers – in other words, the composer is guaranteed 70 per cent of all moneys collected (less taxes and collection society administration fees). Some successful composers have negotiated 90/10 deals – in other words where publishers can never retain more than a total of 10 per cent of incoming moneys.

Piracy in developing countries

49. The global music industry often reminds the world that piracy is costing artists and composers billions in lost revenues. Worldwide pirated sales for 2000 have been estimated at $4.2billion and piracy in some developing nations certainly is rampant.[13] The spread of cheap copying technology and increasing disc capacity has been the major source of piracy in recent years, and CDs comprised over one third of pirated sales in 2000. However, the impact of improved copyright laws in reducing pirated sales has been demonstrated in countries such as the Republic of Korea and Thailand (Throsby, 2002).

50. On the other hand "piracy", via the unauthorized copying of music, which does not involve a "lost sale" cannot strictly be equated with a loss of revenue. Those who cannot afford to pay $10 or $15 for a CD and prefer a pirated copy for $2 would not necessarily buy as many CDs at the higher price if pirated versions disappeared. The same argument can be presented for consumers who download music from the Internet via services such as Kazaa. Indeed, a number of studies have indicated that the use of Peer-to-Peer services for downloading music from other users' hard discs has actually led to an increase in the propensity to purchase physical music products such as CDs (or even in physical experiences such as attending concerts (Oberholzer F and Koleman S, 2004).

51. Naturally, the control of illegal entrepreneurs with factories producing pirate CDs and recorded cassettes must be a major priority in all countries. The control of piracy is most effective if local institutions have an economic incentive to eradicate it. A functioning local copyright society, for instance, can benefit from effective anti-piracy activities, since they should generate revenue for the society (via IPR revenues from lawful sales).

Best practices and policy recommendations

52. There is no universal set of policy solutions to problems experienced by infant industries in developing countries, including the least developed. The analysis in this paper, however, suggests that ongoing changes in the music industry may provide new opportunities for smaller players and an important emerging area for job creation and trade expansion. These include the capacity to generate high rents, which can make for reinvested profits. The music industry is a high-risk industry with massive cross-subsidization which is necessary in order to be able to take a long-term horizon in the face of considerable uncertainty and volatility. However, these same trends can also give rise to massive first mover advantages which will prevent new entrants from entering the most valuable activities. For small countries a mixed model of private and public participation is a likely road to success. Professional bridges need to be improved between the creative and "non-creative" elements of the sector in order to overcome obstacles to expansion. The economic case for State interventions rests on the well-known market failure argument and the public goods nature of cultural products.

Risk sharing

53. Although accessing finance is an issue of general importance for all business, studies show that cultural enterprises face formidable obstacles, and this is particularly so when those enterprises are small (Cunningham, 2004). In part, the problem reflects the nature of any cultural product, with its

[13] That it is not just a developing country problem is suggested by the fact that estimated pirated sales totalled $280 million in the and $180 million in Italy.

public good aspect exposing it to free-rider risks. As a result, current funding practices are particularly unsatisfactory in the start-up and development phases of cultural enterprises, where risks are in any case particularly high. This problem is amplified in developing countries, where financial markets are thin and deregulation has shifted horizons away from industries with greater risks or longer gestation periods or complex institutional structures (Felix, 2003).

54. Most developing countries lack a comprehensive sectoral policy for the development of their cultural industries. Correcting this is a first step to improving the image of the industry as a potential financing opportunity. Currently most music-related businesses are SMEs, but developing countries will need to develop medium to large-sized firms in order to enter the global markets as competitive players with obvious financial obligations. One possible route will be through craft-based clusters or industrial districts, which appear to be typical of the industry in more advanced countries and can serve as alternatives to large-sized, vertically integrated enterprises (Kozul, 1993).

55. In Europe, there is a vast array of public, private and mixed financial schemes available to cultural enterprises business development available for this purpose, including availability of business loans, soft loans, grants, and grant schemes specifically tailored for development cultural SMEs (EU, 2000). New money instruments (e.g. local exchange trading schemes) of the kind set up in the United Kingdom, for example, are better adapted to local circumstances.[14] Another important policy tool in this regard is the **loan guarantee**. This is a public–private loan-guarantee system with associated financial supports, such as the IFCIC in France and SODEC in Quebec, Canada. Loan guarantee schemes exist in some African countries, for example the GARI (Lomé, Togo), FANG (Tunisia) and others. Although not a surrogate for bank lending, they can provide a type of insurance for the banking sector in support of business development.

56. Finally, development agencies also can play an important role in providing capital for cultural enterprises. So far the multilateral funding bodies and regional development banks have not been prominent in this area, although there are signs of change. Other international agencies, such as UNCTAD and UNIDO, can provide complementary technical support to SME associations as well as government agencies in setting up cultural industries' clusters.

Institutional development

57. An overall conclusion of this paper is that a focus on copyright institutions and revenue flows is essential. Developing countries, where necessary, need to modernize their copyright legislation, and facilitate the establishment of an efficient copyright regime which can guarantee a level playing field between their own creators and those they are competing with internationally. In this endeavour developing countries should receive technical and financial support from the international copyright community to nurture their own copyright protection bodies, bodies which are efficient, fair and transparent. This means that they can satisfy reasonably stringent and independent audits, and also that both music users (who pay money to the societies) and music creators (who receive distributions) are reasonably satisfied that incoming revenues are distributed to those whose music was performed.

58. Any global moves in the music industry that weaken the principles of reciprocity and solidarity that have traditionally held the copyright system together (or even worse, any moves to bypass the latter altogether) can only have negative consequences in this context. Here, international

[14] It is beyond the scope of this paper to discuss these in detail, but see EU (2000).

organizations such as WIPO and CISAC, playing a combination of advisory and watchdog roles, have important responsibilities.

To summarize, policies should encompass the following:

- Where possible, encourage creators to retain their original rights at home (via a domestic original publisher), with contracts for international exploitation being based on “reasonable” terms (terms which are regarded as reasonable in mature music-exporting nations);
- Seek forms of knowledge and technology transfer and operational support from other smaller nations in the developed world which have managed to create local, independent successful copyright management institutions (e.g. Ireland and Sweden);
- Cooperate with international bodies such as WIPO to provide local musicians/composers and music industry entrepreneurs with improved music industry knowledge.

Building and supporting a local industry

59. The creative base starts at the local level. A thriving entrepreneurial climate that encourages smaller independent companies to produce a wide range of music products can provide the foundation for export successes. This in turn can even encourage local subsidiaries of the majors to invest in local repertoire and artists. Such a climate can foster the growth of local entrepreneurship which can find synergy values from collaboration with subsidiaries of the multinational music conglomerates.

60. Some countries have introduced different programmes for direct and/or partial funding of local production. Canada’s Sound Recording Development Programme (SRDP) was created in 1986 to provide support to Canadian-owned companies for the production of Canadian audio and video music and radio programmes, as well as marketing and distribution facilities. Annual funding was originally 5 million Canadian dollars per annum. A Canadian Government Task Force report concludes that despite the fact that this sum has decreased some 27 per cent in constant dollar terms, the programme had a very positive effect on the local sound recording industry. A criticism was that SRDP provides far too little support for marketing and distribution.

61. Successful international trade ventures will most likely involve such combinations of local entrepreneurs and international companies. A prerequisite for success is expertise in the area of “reasonable deals”, including a clear understanding amongst creators of the disadvantage of signing away rights for a small down payment. It is imperative for an emerging developing country industry that good principles and practices be established as regards relationships between players in the local and national industries and their international counterparts. Without knowledge of the standards that apply in, say, established music-exporting nations, a national music industry will be at a considerable disadvantage, irrespective of the value of its creative assets.

Conclusions

62. The trends towards corporate globalization in the music industry have not invalidated the concept of national or even regional music industries. Global distribution channels such as satellites or the Internet admittedly show no technological respect for national, territorial or cultural (linguistic) boundaries. On the other hand, they do not solely have the effect of promoting a diminishing number of global entertainment stars and products.

63. A combination of local factors such as culture, education, economic conditions and access to technology, even when interacting with international trends, can lead to high levels of local activity. The aggregate effect can thus constitute a de facto national resource. This has been the case for decades in the United Kingdom and the United States. More recently, other countries, even small ones such as Ireland, Sweden and Jamaica, have shown that they can develop their own thriving industries.

64. A number of areas for further research can be identified. They relate to the key issues described above: the collective management system, forms of government and private support for building local industries, and the development of music industry skills through education and training. The expansion of IPR revenues to cover more groups of rights holders also deserves closer attention, as does the question of how fast, if at all in some specific cases, developing countries should integrate into this process.

65. The above are highly significant, not only for the developing countries, but also for the international creative industries as a whole. If the world is to benefit from the huge basin of cultural assets in the developing world, creative industries in the developing countries need to be actively supported with a view to developing their supply capacities and assisted with trade expansion and development under equitable trading conditions. This will require a level playing field, with a suitable level of international knowledge even at the local level. Creative industries, such as music, can be a critical vehicle for the promotion and nurturing of cultural diversity. With this in mind, the international community needs to put in place special measures and mechanisms for the purpose of promoting cultural diversity that recognizes the right of societies and social groups to create, disseminate, distribute and have access to cultural goods and services respecting their identity and dignity.

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