

# Copyright and creation: repositioning the argument

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## Abstract

*Purpose* – This paper highlights the challenges and key arguments for digital copyright protection legislation for creative industries.

*Design/methodology/approach* – This briefing is prepared by independent academics who place the arguments in context based upon literature and market data.

*Findings* – Many of the arguments used against copyright protection laws draw upon flawed analysis. Artistic creators should be treated fairly and their work should be afforded the same protection as other property.

*Practical implications* – Digital legislation warrants review, but not for the frequently cited reasons of ‘stifling innovation’ or ‘restriction’ of others using the work. Rather, artists need better protection for their work and fairer treatment with regards their property rights.

*Originality/value* – The paper provides context and practical insights into the data used to influence policy decision makers, providing a stronger case for legislative review.

**Article Classification:** Briefing. Viewpoint.

**Keywords:** Copyright, Creative industries, Data analysis.

A report from LSE Media project (Cammaerts *et al.*, 2013) makes a case against the current proposed form of legislation in the UK for protecting intellectual property rights in the digital domain, the UK Digital Economy Act (DEA, 2010). We agree that an in-depth economic and legal evaluation of regulations is legitimate and valuable. However, the motivation for this evaluation is the opposite of the LSE report; work needs to evaluate whether the current legislation can efficiently protect creators and copyright holders property rights.

An in-depth evaluation of the DEA act would be valuable, both in economic and legal terms. However, the LSE report has several drawbacks in methodology raising questions as to the validity of parts of the argument made. Cammaerts *et al.* (2013) overlook existing evidence on the impact of IPR policy implementation. This short report better positions Cammaerts *et al.* (2013) work in the literature, helping policy makers in taking informed decisions.

### **Data Analyses and the Argument**

Significant business, legal, academic and political debates have arisen over copyright protection laws as a response to internet piracy. There is general agreement that current laws are insufficient, but the challenge lies in the form legislation should take and strategies managers should employ.

Attempts to quantify the issue use different methodologies to analyze the relationship between illegal file-sharing and purchasing activity, including:

- *Aggregated data* taking information at city, region or country level compares variables such as the number of people with internet access or piracy rates with industry revenues. The leading analyses finds file sharing damages sales.
- *Consumer survey data* is the most extensively used approach to data capture (Strategic Direction Briefing, 2013) and has, in most of the cases, found file sharing reduces purchasing. However, two studies using this approach found no evidence of sales loss resulting from piracy.
- *Consumer transaction data* comes from attempts to capture actual downloading or individual's clicks made on websites. Reports using this data have shown piracy as beneficial to sales, however, analysis of such data is difficult and the reports are potentially misleading (Parry *et al.*, 2013).

Analysis is complex, theoretical and empirical arguments can hide assumptions and sometimes erroneous methods have been used leading to misleading conclusions.

### **Context and the music market**

It is argued that digital copyright legislation risks "stifling innovation" as individuals cannot remix or edit content to create something new (Cammaerts *et al.*, 2013, pp. 5). A reasonable argument? Changing the context, let us imagine that a home has 3 rooms and one of the rooms is empty. The house is private property which usually means the owner does whatever they consider best; nobody can dispose of their assets without permission. Is this stifling innovation because the spare room could be used by someone to run a business? Why should digital content be different to other property? The argument draws upon the concept of open innovation, but in open innovation resources are given voluntarily.

The growth of digital music is often cited as evidence against the need for legislation. Digital music data shows significant global revenue growth, from 2% in 2004 to 34% in 2012. Putting the figures in context of the recorded music market expressed in Millions of GBP, the graph shows digital revenue is growing in a declining total market (see Figure 1). Digital gains an increasingly larger piece of a shrinking pie.

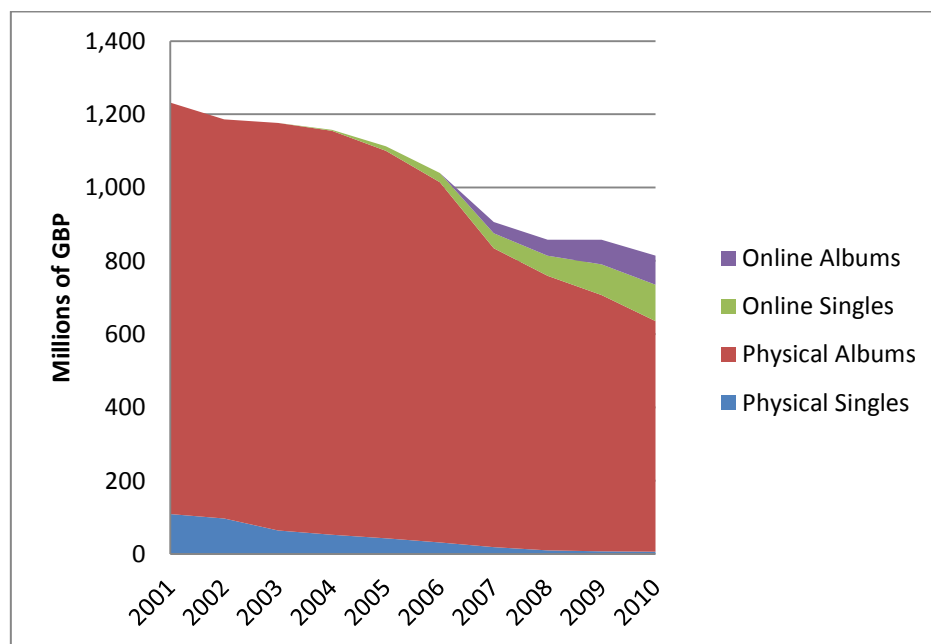


Figure 1. Total Market for Recorded Music in the UK 2001-2010 (IFPI Recording Industry in Numbers).

The decline in music revenue is a complex issue that involves considerations of changes in consumer attitude, market environment, the business models employed by organizations and piracy. For convenience of analysis, these issues are usually treated

separately, but they are deeply interrelated. Empirical research shows that 22.5% of global consumers are not interested in downloading or purchasing music digitally (Bustinza *et al.*, 2013). The same study reports that 28.2% of the population engages in illegally downloading files, violating the rights of the property holders. This represents a complex challenge requiring consideration of IPR protection and the way consumers are engaged. The music industry has had to change its role from supply chain management and content exploitation to management of diverse supply channels and a greater role in content protection.

The growth of digital revenues suggests the industry has made significant strides forwards, innovating new business models. The overall decline in the total market revenue would suggest that there is still much to be done.

### **Creative industry sectors**

Creative industries affected by digital legislation include motion pictures, video games and books but whilst facing similar challenges, they are not the same. The industries differ in delivery format, digital file size and consumer use of content. Video games content protection employs sophisticated means of piracy prevention using consumers' online activity as an opportunity to test the validity of files and actively blocking those identified as having illegal content. The music industry's attempts to implement Digital Rights Management to prevent piracy found those who most suffered inconvenience were legal purchasers. Music does not face the same language barrier at the point of consumption as a book or a film and has a much smaller file size than a film. Volumes produced and consumed are also different. Consider how many songs you heard last week compared to the number of computer games you played, films you saw and books you read.

### **Conclusions**

Whilst, perhaps remarkably, it has been a matter of debate as to whether musicians require remuneration in order to continue to create new work. Further, the right to dispose of property usually remains with the individual or organization, yet arguments propose that rights over created property should be different for artists.

Danaher *et al.* (2013) empirically shows that new legislation in France decreased piracy and increased purchases by up to a quarter on iTunes. This legislation was not popular with a vocal group who felt it infringed their freedoms. The legislation was duly tempered, but remains in place as it is demonstrated as being effective. No study data is available for the UK and the impact of legislation could usefully be modeled. There is a need to protect property rights yet allow creative use of content by communities and current legislation would seem inadequate in this regard.

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