

Nothing New under the Sun

Essays on the Economic History of
Intellectual Property Rights in Music

Staffan Albinsson



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‘What has been will be again,
what has been done will be done again;
there is nothing new under the sun.’

Ecclesiastes 1:9

ABSTRACT

‘Nothing New under the Sun? Essays on the Economic History of Intellectual Property Rights in Music’

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Doctoral dissertation in Economic History at the Department of Economy and Society, School of Business, Economics and Law, University of Gothenburg, Box 720, SE 405 30 Göteborg, Sweden. (written in English)

This thesis consists of an introductory chapter, five separate articles and an article in Swedish which functions as summary. The introductory chapter provides a general background to the economic history of intellectual property rights in music.

Article 1 examines the early history of music copyrighting. It covers the evolution of copyright law regarding the publishing of printed music. Beethoven, Schumann and Debussy are used to exemplify the economic importance of new laws.

Article 2 depicts the evolution of performing rights in four European countries. It maintains that economic growth in the Industrial Revolution created new arenas for music from which composers demanded their fair share of revenues. Furthermore, the article discusses why it took several decades before Germany, Britain and Sweden implemented the French system of collective licensing of performing rights.

Article 3 focuses on how technological innovations regarding the distribution of music have influenced intellectual property laws. It discusses the argumentative positions of various stakeholders when the printing press, the gramophone, the radio and the cassette tape were introduced.

Article 4 describes the financial evolution of the Swedish Performing Rights Society/STIM between 1980 and 2009. It shows how the loss of income from record sales has been compensated for by increased income from broadcasts. Furthermore, the article shows the winner-take-all character of royalty income distribution.

Article 5 includes a unique data set presenting the financial situation for Swedish composers of art music between 1990 and 2009. Its main theme is the monetary incentive for new output.

KEYWORDS: Intellectual property rights in music, music copyrights, performing rights, cultural economics, winner-take-all,

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Preface

To venture into the world of academia again after more than three decades in another professional arena was a desire which grew slowly and gradually over many years. However, one day I made the decision without any sign of anguish. It was like getting out of bed on a sunny Sunday morning. I left the best job I had ever had for a life of which I knew very little: a PhD candidacy. I did this at a mature age when I was really supposed to be checking my pension funds on a daily basis. The truth of the matter lies mainly in the fact that I am easily bored. I knew that I had to find some new kind of life well before my time as a retired, former and ex-employee began. Not a new career, of course. But a new activity in which I could feel inspired and creative on to my own terms and did not have to follow anyone else's agenda. I chose learning.

Could I, instead, have chosen a new life of constant gardening? Or perhaps freemasonry? Maybe take my Triumph Tiger on a trip around the globe? Why not incessant wine *dégustation* in Provence? No. I took on learning as a challenge and an ultimate goal. I have not regretted it for a minute and I look forward to further research activities if and when the PhD title is granted.

I have identified three sources of inspiration for this new endeavour. The first is the offer of a job as an amanuensis that I received in the 1970s from Lund University. Most PhD candidates were sponsored that way in those days. I turned it down politely but decidedly. I wanted to test my capacity in professional music management. I did this for more than thirty years. But off and on I wondered how life would have evolved if I had accepted that job offer.

The second inspiration came from my brother Per Albinsson and my sister Stina Fransson Sellgren who received their doctorates before me, Per at a young age in the 1980s and Stina only a few years ago. I doubt if I would have dared to venture into the academic world again if they had not been my role models. All three of us owe our lust for learning to our inspirational parents Ingrid and Gillis Albinsson. Furthermore, my beloved adult children Klara, Jakob and Karin helped me through periods of despair with this task by simply sharing their lives with me and, even showing interest in my topic. Jakob was of crucial practical assistance in administering part of the data.

My third inspiration came from what I had experienced in my profession in music management. I was not satisfied with the way music copyrights were discussed at the turn of the millennium after the digital revolution. As I have worked closely with composers of various sorts I found the discourse rather shallow. Maybe this thesis provides some background information for a better understanding of the issues at stake.

During the work with the thesis I have been very much delighted about the interest that my research topic has received. First I must direct my gratitude to all the members of the Föreningen Svenska Tonsättare (FST)/The Swedish

Union of Composers who decided to volunteer as confidants in the study. I have assured them that they will remain anonymous. Without their support Article 5 of this thesis would not have been possible. The former FST chairman, Sten Melin, and his successor, Martin Q Larsson, have provided valuable assistance.

Furthermore, I need to express my sincere gratitude to the Ragnar Söderberg Foundation which sponsored this thesis financially through a major grant. The Helge Ax:son Johnson Foundation provided an initial inspirational stipend which tempted me to further develop my plan. Paul och Marie Berghaus's Endowment Fund contributed to the costs connected with my work in the Parisian archives (Article 2). The Richard C Malmsten Memorial Foundation granted me a month's stay at the Hôtel Chevillon of the Grez-sur-Loing Foundation. Most of the introductory chapter was written there and then.

My supervisors, professors Christer Lundh and Susanna Fellman, have been constantly knowledgeable, friendly, inspiring and encouraging. My PhD candidate colleagues in the Department of Economy and Society at the School of Business, Economics and Law of the University of Gothenburg formed a useful sounding board in a friendly and supportive atmosphere. Among them Joacim Waara, luckily for me, was assigned as my mentor. Staffan Granér, the deputy head of department, was my candidate thesis supervisor and he provided valuable comments about several of the papers in this thesis. Deirdre McCloskey, the visiting professor of our department, provided me with some supportive and profound comments to the first draft of Article 4, the first to be written and published, and convinced me that I was not derailed. Stefan Öberg taught me some necessary administrative tricks when I was somewhat lost with the organising of the Article 5 dataset. Jonas Helgertz (Lund University) commented on the econometrics of that article. Kristoffer Schollin of the law department of our school improved my reading of legal matters, mainly in the introductory chapter. However, regarding both the econometrics and the legal issues I am responsible for any analytical errors.

Of vital and sometimes a little painful importance were the highly skilled but anonymous peer-reviews that I got from the journals that I approached.

Last but not least, I must thank the people at the STIM (the Swedish performing rights society), CEO Kenth Muldin and former senior advisors Margita Ljusberg and Kai Thurfors, for their assistance and keen interest in my work. A word of thanks must also be directed to the Vara Concert Hall CEO, Kerstin Fondberg, for granting me the necessary leave of absence and for generally being a good friend.

Hässlås, April 2013
Staffan Albinsson

Introductory chapter

1. Introduction

1.1. General background

The biblical title of this thesis, *Nothing New under the Sun*, was chosen to indicate that debates concerning Intellectual Property Rights (IPRs), including those pertaining to music, have reoccurred many times throughout history. What we currently experience regarding the debate on digital and online copyright has novel aspects, related to the new technology. However, the debate as such is not new. Such debates, as will be narrated in this thesis, seem to have been a companion of mankind for at least as long as our history has been recorded. When it comes to the outcomes of the debates — for instance, new legal acts caused by new distributive means — it may be more accurate to slightly revise what is indicated by the title to, ‘*Little*’ *New under the Sun*. Obviously, laws have changed. Pro and con arguments have been influenced by new subject matters, such as technological innovations and their consequences. Nevertheless, many fundamental principles guiding IPR laws have, largely, remained unaltered.

IPRs in music is a theme which can be, and has been researched from a variety of angles: e.g. philosophy, psychology, musicology, jurisprudence, legal history, business administration, business history and economics. It is difficult to shed sufficient light on the matter by using one single method. This thesis emanates from the economic history discipline. In the narrative, important aspects of other disciplines are also integrated, in order to clarify, and as a means of analysis. I hope that I have made some meaningful contributions to the understanding of what is indicated by the subtitle of this thesis, namely ‘the economic history of intellectual property rights in music’. It has not been my object to contribute to other disciplines. Furthermore, the intention is that there will be a clear progression, historically and empirically, from Article 1 to Article 5.

The overarching idea guiding the thesis is that IPR laws were introduced and developed to promote the following goals: (1) secure an income for the composer, and later the musician, and (2) enabling them to fulfil listener

demands by releasing high-quality music on the market. The latter goal is collective and societal but, nevertheless, enjoyed by individual consumers if fulfilled. This idea is discussed mainly in Article 1, but also in Articles 2 and 3. Articles 4 and 5 discuss whether the idea has current relevance. If it does not, at least the parts of IPR laws related to monetary issues, could be made redundant.

The main contribution of the research presented here lies in the analyses of Swedish data from the last three decades, pertaining to composers' incomes in general, and their IPR revenues in particular. Articles 4 and 5 belong to this area of research. Articles 1 to 3 present readings of the older history of music IPRs, with a focus on economic issues. Some elements of ongoing primary research on the judiciary events which took place in Paris in 1847–1849, and which made it worthwhile to establish the world's first collective performing rights licence fee collecting society, are included in Article 2. The published papers appear in different journals and, hence, some minor parts in one also appear in other articles in the interest of better understanding the aspects discussed within the confinement of a single article.

Performing rights licensing agencies are private enterprises owned by the right holders – not public authorities. Thus, they have been reluctant to give researchers access to their files. Owing to the difficulties in acquiring first-hand income data from collective performing right licensing bodies, such as the STIM (Sweden), PRS (UK), GEMA (Germany) and Sacem (France), most of what has been discussed, also in scientific journals, is either rather theoretical or philosophical (right v. wrong on moral grounds), or simply promoting a line of arguments. This thesis includes a data-set which was collected and administered with signed mandates from individual right holders as legal grounds for access. Thus, new numerical light is now shed on the IPR issue.

The file-sharing debate was hardly based on solid facts at the turn of the millennium. Data were presented by the record industry itself, as a stake-holder statement difficult to scrutinise from the outside. Pirates, instead, argued, fundamentally, for their moral right to copy what was in their possession, i.e. a CD, a DVD or a digital mp3 file. One, still prevailing consumer argument is the reference to the Freedom of Speech. What is then actually advocated, however, is a Freedom to Copy and a Freedom to Distribute, at liberty, something which has been expressed under the Freedom of Speech principle. A child of this argument is the link to Freedom of Information. However, in the music case it is hardly correct to refer to a recording as 'information'. The binary code of a digital music file may be regarded as information which is decipherable for a computer. However, what comes out of the loudspeakers is

not generally ‘information’.¹ The sound waves create an artistic experience.

Moreover, some claim that Freedom of Information should be interpreted as a Freedom *to* Information; i.e. in our case, a right to have access to all pieces of music. To be effective, such a claim requires a coercive liability for composers to publish everything and anything that has come from their hands; i.e. an Obligation to Inform. However, the aim of IPR law is to provide exactly the opposite; namely, a legal framework, which incentivises composers to create under specific terms, which accrue to the works that they choose, deliberately, to make public.

Another anti-IPR statement is the claim that most of the revenues from IPRs are collected by intermediaries in the record business, not by the actual composers or singers/songwriters, and that these intermediaries are not entitled to the scale of their remuneration. There might, however, be acceptable reasons for remuneration per se. Each value-adding contributor should be granted a compensation big enough to both act as an incentive and to cover the actual costs. If the number of value-adding steps is large, the share which each of them receives may not be very big. Of course, there should be a large share of the pie left for the one who is providing the initial and actual gems. Which is the composer’s fair share? This thesis presents data on the revenue amounts. If they are fair or not is left mainly to the reader to ponder.

Is it a major IPR flaw that some hit-providers receive much more than most other composers who, in fact, are left with a pittance? Or is it an unavoidable feature of the art of music or, maybe, the music business? It seems, as discussed in Article 4, that the financially less fortunate composers generally consider IPRs to be beneficial. What they bring may not be much. However, all additions to the personal budget, big or small, are welcomed as tokens of appreciation.

1.2. The research frontier

This thesis is oriented in two separate but combined and intrasupportive directions: 1. the history of music IPRs with a focus on the economic aspects; and 2. statistical findings on music IPR revenues in Sweden from 1990. Thus, a rendering of research frontiers should be twofold.

Much has been written since the millennium shift, regarding the future of music, the music industry and music IPRs. Of course, the development of the Internet has been the main inspiration for this genre, but I will not venture into this realm in this thesis. The reason is self-evident: what may occur in

¹ Thomas Edison discussed the ‘information’ and the ‘reading’ issue when he introduced the phonograph; see Article 3

the future is not yet possible to study from an economic history perspective. However, some aspects of the debate have caught my attention. Several authors have written thorough renderings of how the record industry has been affected by the Internet. Steve Knopper, author and contributing editor for *Rolling Stone*, (2009) and Fred Goodman, former senior *Rolling Stone* editor, (2010) have contributed to this field. Patrik Wikström, of Northeastern University in Boston, MA, (2009) provides a wide international overview on how digitally driven changes have affected the music industry in the new millennium. However, his perspective is short, and what is presented is the music industry position in 2008–2009. Legal, fee-based downloading and streaming services have grown, primarily, thereafter.

What will evolve in the coming decade is not obvious nor unambiguous. Chris Anderson, editor-in-chief of *Wired*, (2006) is dedicated to the idea that the future does not lie in hits but, rather, in the ‘long tail’ of what used to be considered commercial failures. Those ‘misses’ now have a better chance in a new global digital network with easy access to them. So far, however, the continuous adaptation of IPR law to every new shift in distribution technology has probably only meant increasing divergence between winners and losers. Anderson’s view seems to be that the increased interest in losers’ music will come, owing to the new technological possibilities, and regardless of possible future IPR changes.

Law scholar Siva Vaidhyanathan (2001) and musicologist Joanna Demers (2006) both discuss how IPR law, allegedly affects musical creativity in a negative way. Lawrence Lessig, Professor of Law at Harvard Law School and a founding board member of Creative Commons (2001, 2006) understands IPR laws, fundamentally, as being governed by multinational corporations and, thus, as being counterproductive to the idea of a more general and widespread creativity based on the notion of ‘freedom of ideas’. However, many will argue that ‘ideas’ have never been protected by IPR laws anywhere.² Lessig does not propose a general dismantling of IPR laws for the sake of more creative freedom. His concern is targeted towards questions such as: ‘What cyberspace do we want?’ ‘What freedoms will it or will it not guarantee?’ and ‘Who shall control the necessary codes of conduct?’

Another line of inquiry is concerned with the issue of ‘participatory creation’. One person’s creative work feeds on the creative work by others not only in principle, as before, but now also by using parts of others’ actual products in new works. This is increasingly relevant in the current digital world. It is claimed that, if there are too many fences around the use of earlier works

2 See p. 14 below and Article 1, p. 272. Of course, what matters is how one defines ‘an idea’ and ‘a formulation of the idea’, respectively, and where one draws the line between the one and the other.

in the making of the new it is detrimental to the public good. Demers (2006) belongs to this category together with, for instance, law scholar James Boyle (1997), James Surowiecki, the business and finance columnist at *The New Yorker*, (2004) along with management scholar Don Tapscott and Anthony D. Williams, vice president of research with the think tank New Paradigm (2006). They question the norm of the one-person creative genius established in the nineteenth century, and, instead, propose collaborative work as more rewarding for culture, science, GDP and the originators' bank accounts. The growth of the Creative Commons, Linux, Wikipedia, Facebook, YouTube and other such phenomena is based on collaborative work, without anyone claiming individual authorship. Nothing, obviously, in IPR laws prevents these new digital arenas from growing. The law, however, forbids the use of creative inputs without the consent of the IPR owner. Thus, the decision on participation lies with the contributor and not with the user. IPRs can only be waived by their owners.

Eva Hemmungs Wirtén, Professor of Library and Information science at Uppsala University, (2009), in a Kantian tradition (Kant 1790. paragraph 43), questions the economic incentive concept as it has been propagated by pro-IPR lobbyists. She considers an increased 'symbolic' capital the true goal of creators, and one which is more important than the pecuniary. Hemmungs Wirtén claims that it is the inner creative force, the joy of personal development and the will to share that are the true driving forces behind works of literature, visual art and music. Here, too, there is no obstacle in current IPR law for a creator to share without economic compensation. But what if the creator is actually interested in a financial reward? The fact that music may also be created without IPRs is hardly a reason for them to be abolished.

With regard to the early history of publishing privilege in music — the original and actual 'copyright' — it is difficult to imagine much new knowledge adding to the existing. What is known is well covered on the *Primary Sources on Copyright (1450–1900)* website to which the world's leading researchers have contributed. A small number of documents, in languages other than English, German and French, has been added during the last few years. However, they only contribute the same kind of national, legislative processes which occurred in the countries already covered, and with the same kind of arguments.

The evolution of IPRs for composers has been part and parcel of the development of IPRs for authors. Composers 'write' music. Many facts are covered by Joseph Loewenstein, Washington University of St. Louis, (2002), Bernard Edelman, French philosopher and lawyer (2004) and Gunnar Petri, law scholar and former president of the STIM and The Royal Swedish Academy of Music, (2008). In the articles below, some other similar sources are also listed.

There is a lack of historical information regarding another main IPR category for music: performing rights. The events which preceded the introduction of such rights in IPR law took place in Paris in 1847–1849. What happened exists as unconfirmed anecdotes in the writings of, for instance, Jean-Loup Tournier, lawyer and former president of the Sacem, (2006. 28), Gunnar Petri (2000. 104) and law scholar Aaron Schwabach (2007. 151). It is striking that today's immense media industry is founded on a legend. However, the original, handwritten court verdicts are to be found in the *Archives de Paris*. Furthermore, reports of the trials were published in two contemporary Parisian journals: *Gazette des tribunaux* and *Le Droit: Journal des tribunaux, de la jurisprudence et de la législation*. It seems that the Tournier-Petri-Schwabach legend can be supplemented, perhaps even replaced, by these findings. In Article 2, this information is presented with analyses based on institutional economic theory.

To claim that there is a research frontier regarding the incomes of historic composers would be an exaggeration. What appears in journals and books is not much and not systematic. However, Julia Moore's dissertation (Moore 1987) on the financial career of Beethoven is a source referred to by, for instance, F.M. Scherer (2004) and Åke Holmquist (2012). There seems to be no elaborate and focused rendering of any other composer, with the exceptions of Claude Debussy (Herlin 2011) and Benjamin Britten (Kildea 2002).

Very early in the history of cultural economics, Ruth Towse proved to be one of the most knowledgeable scholars. Her contribution as textbook author is substantial, both regarding cultural economics in general (2003) and regarding IPR issues (Towse 2002a, 2004, 2008). Among scholars that contribute presently to an increasingly data-based research on IPR issues, Stanley J. Liebowitz (2005, 2008, 2010) should be mentioned. Liebowitz's work is largely econometric, but he integrates the numerical findings in a larger societal context. Much of Liebowitz's concern is based on Internet issues. He was the keynote speaker at the 17th International Conference of The Association for Cultural Economics International (ACEI), Kyoto, 2012 (Liebowitz 2012).

It is also appropriate to claim that the Swedish researchers Ulrik Volgsten (2012) and Rasmus Fleischer (2012) are among the leading scholars in the international scientific arena, when it comes to music IPR matters. Unfortunately, for both them and their potential international audience, they publish their findings in Swedish (for a review in English of Fleischer's book, see Albinsson 2013).

1.3. Terminology

The term ‘copyright’ in the English language stems from early medieval discussions and legal acts. Its target was a tangible item which was a means of distribution of content. Initially, it was the producer of the tangible item, and not the content provider, whose interests were protected by law.

The *word* copyright has undergone a kind of etymological transition to become the present broader *legal concept* of copyright. Now, laws in many countries focus on the content provider’s legal protection of their intangible ‘work’, not merely on the tangible item which carries this work to the listener. Copyright not only covers the initial right to make (almost) identical copies of a tangible item, but also the right to produce ‘copies’ in various other media forms from that of the intangible work. However, in both cases the copyright is targeted on an intangible or tangible *object*, and not on its originator.

For a meaningful economic analysis of the effects of IPR law, the intangible works must have been commodified. In the music case, the tangible item most often is a ‘private good’, which is rivalrous and excludable; e.g. a score or a CD. The commodity may, however, be much more complex, and include the live or mechanical production of sound waves, from scores or recordings, in concerts or broadcasts. In a concert produced at an indoor venue various products are necessary for the event, i.e. the commodified rendering of the musical ‘work’. The entrance ticket and the seat it provides are rivalrous and excludable; i.e. private goods. The sound waves and the musical experience are shared with the rest of the audience, and non-rivalrous in relation to other ticket holders, but others are excluded; i.e. they are club goods. Sometimes, the experience is also shared with radio listeners or TV viewers, and it becomes more or less non-rivalrous, and non-excludable; i.e. public goods.

Thus, the introduction to Article 2 states that the performing right covers ‘situations that, in some aspects, are non-rivalrous or non-excludable’ and that, hence, this right is regarded as something separate from the copyright (= the right to copy). This claim has been contested and accepted by reviewers, conference discussants and readers, both before and after the article was published. Thus, it is, at least, obvious that the use of both the word, and the concept of copyright may cause communicational difficulties, owing to its dual application to both the intangible artistic work and the distributed item, in the form of private, club or public goods.

In many other languages, the term differs from the English ‘copyright’ in that it focuses instead on the creator of the work, which is conveyed through the use of a distributional means:

French:	<i>Droit d'auteur</i>
Russian:	<i>Авторское право (avtorskoe pravo)</i>
Dutch:	<i>Auteursrecht</i>
Italian:	<i>diritto d'autore</i>
German:	<i>Urheberrecht</i>
Swedish:	<i>Upphovsrätt</i>

Perhaps these differences influence the minds of those discussing in English, compared to those who have other languages as their mother tongue. While most languages use words which are based on the *subject*, the English language use a word derived from the *object*. Motives, arguments and legislative results may vary, according to the semantics used, as these have different roots and maybe different normative foci.³

The result of this confusion is that the same matter is inspected from slightly different angles, in texts from different nations, and in different languages. On the one hand, Continental European IPR law, when the subject is in focus, has incorporated, for instance, the French *Civil Code* concept of *droit à la paternité* (the right to be identified as the creator), *droit à l'intégrité* (the right to object to the derogatory treatment of a work) and *droit de retrait* or *repentir* (withdrawal right). Anglo-American IPR laws lack many Continental European 'moral rights'. Maybe the reason for this is that it is not obvious how an object, the copy, could be filled with moral considerations and, even, sentiments.

3 Eva Hemmungs Wirtén (2006) touches on this issue as well.

2. Historical background

2.1. The antiquity

The nature of ‘knowledge’ and what use mankind may make of it has been debated since the times of Socrates, Xenophon, Aristotle and Plato. They recognised different kinds of knowledge, mainly *epistêmê*, *technê* and *phronêsi*. Aristotle lacked a clear division between them but, largely, he saw a span from theoretical *epistêmê* over *technê*, as the knowledge of crafts, to the practical wisdom of *phronêsi*. (Parry 2007)

Both Aristotle and Roman philosophers, for instance Papinianus and Ulpianus, maintained that theoretical knowledge, *epistêmê* or *scientia*, should not be sold, only given as a gift. Matthew 10:8 states that Christ told the Apostles that ‘freely you have received, freely give’ (*gratis accepistis, gratis date*). Thus they ‘should not preach in hope of recompense from their auditors, for they received their power from their Lord and master without payment (*absque pretio*) and worldly wealth is superfluous’ (Post et al. 1955).

Confucius refuted that the greatness of a Chinese scholar was to be found in innovation and novelty, and rather, what was hailed was his ability to ‘interpret the wisdom of the ancients, and ultimately God, more fully and faithfully than his fellows’. In Islam, too, all knowledge is believed to come from God. (Hesse 2002).

Although the role of the knowledgeable was to convey their divine gift freely, a kind of proto-copyright debate sometimes occurred. When, in the fourth century BC, Plato’s pupil Hermodorus of Syracuse, wrote down the master’s lectures and published them in the form of handwritten copies — the available technology of the time — a moral and legal debate took off (see De la Durantaye 2006. 22–30, for information on the Greek and Roman IPR debate). Hermodorus did not have Plato’s permission either to write down or to publish. Although Plato was probably not deprived of a substantial sum of money by Hermodorus’s action, the latter became regarded as a dishonoured individual by his contemporaries. Cicero (106–43 BC) complained to his publisher Atticus that one of his speeches was published without his consent, and he demanded an explanation.

Virgil’s (70–19 BC) epic *The Aeneid* is an early example of the fact that originators’ and consumers’ interests are not always identical. Virgil

bequeathed the unfinished manuscript to two friends, with the explicit proviso that it should *not* be published. Virgil's friends maintained this request until Emperor Augustus intervened, and saw to it that the text was published. Augustus saw himself as a representative of *res publica*; i.e. the people. According to the emperor, there was a public interest in Virgil's work and thus, it should be published.

In his biography of the Greek philosophers, Laertius (3rd century AD) characterized Zena of Citium (333–264 BC) as a literary thief and gave him the epithet *andropodistes* — slave-robber — or, in Latin, *plagium*. The personal gain from *plagiarising* what other people had created with the help of their own intellect was regarded as a serious offence.

Our copyright disputes can be tough, but never as violent as (the legend of) the dispute between the Irish monk Columba who, circa AD 560, hand-copied the psalter created by his deceased teacher Finian. Movilla Abbey, founded by Finian, disputed Columba's right to keep the copy. In 561, the feud ended in the bloody battle of Cul Dreimhne. In front of a church synod, Columba chose voluntarily to be exiled as a missionary in Scotland (Hunter 1986).

2.2. Scholasticism

Medieval philosophers also recognised that 'knowledge is the gift of God, and so it cannot be sold (*scientia donum dei est, unde vendi non potest*)' (Post et al 1955). Selling something that belonged to God constituted the sin of simony. Nevertheless, it was accepted that the teacher should be offered a premium for his labour. If the master was not employed and salaried he could charge fees at least from wealthy students for the labour involved in teaching. He, however, had no stake in the product of that labour.

Thomas Aquinas did not regard the pursuit of material welfare as an end in itself, but as a means to achieve the *summum bonum* of salvation. Although Aquinas adhered to the ancient notion that money is sterile and barren he also 'compares it to seed which, if put into the soil, will sprout and produce a crop' (De Roover 1955). Thus, his economy had dynamic traits.

The Schoolmen, like the authors of antiquity, considered political economy as an appendix to ethics and law. In dealing with issues of justice, they integrated discussions on economic matters. One primary interest was the question of the just price and, later, the just wage. This issue is of particular interest here, as the size of current IPR licensing fees are often negotiated bilaterally, rather than given by multiple sellers and buyers in a free market.

Henry of Ghent, also known as Doctor Solemnis, (c.1217–1293) argued that the thitherto prevailing view that a correct price is that for which a good

can be sold should be replaced by the new norm, under which the correct price is that at which the good *ought* to be sold. It was considered to be relevant to take the seller's social value into account. Every social class was entitled to receive the added value that allowed it to maintain its role in society (Langholm 1998: 78). Saint Antoninus of Florence (1389–1459), for instance, stated that:

... if a merchant looking for a reasonable profit, in order to create for himself and his family a good life on their rightful societal level, or it allows him to help the poor more generously and he even does business for the common good ... and as a consequence seeks a profit not as the ultimate goal, but only as a reward of his labour, he cannot in this case be condemned. (Saint Antoninus)

Moreover, Saint Antoninus accepted that a just price could vary within a framework limited by: 1. law; 2. customs and habits; and 3. the value judgment, which is the result of the seller-buyer negotiation (Wilson 1975). If the seller's costs, for some reason, were abnormally high, Aquinas accepted that the buyer had to pay a higher price. That a buyer was willing to pay more was, however, not enough per se. If the seller in that case accepted the higher price he was selling something which did not belong to him (Sandelin et al. 2001).

2.3. The 18th-century Paradigm Shift of Economic Thought in Europe

The early history of copyright legislation is covered below in Article 1:5. Among items discussed, are: the Master Johannes Privilege in Venice, from 1469; Martin Luther's fierce defence against copyright *pirates*; the British Statute of Anne from 1709/10, which ensured the author a stake in the copyright; Johann Gottlieb Fichte's (1793) threefold division of the artistic item into the idea, the form and the physical object; and the French Literary and Artistic Property Act of 1793, instigated by Lacanal.

Obviously, both Fichte and Lacanal were inspired by Enlightenment philosophy, of which they became part. In 1651, Thomas Hobbes had declared that

In [the state of nature] there is no place for Industry, because the fruit thereof is uncertain: and consequently no Culture of the Earth; no Navigation ...; no Arts, no Letters; no Society; and which is worst of all, continuall feare, and danger of violent death. And the life of man, solitary, poor, nasty, brutish, and short. (Hobbes 1651)

These predicaments were, of course, also dealt with by earlier philosophy and religion. The Ten Commandments, for instance, can be regarded as a set of rules of conduct which, if they are followed by all, will take everybody out of the state of nature. Other religions have similar codes of conduct. The moral perspective is one of *collective* rather than *individual rationality*.

Like Hobbes before him, John Locke identified the concept of Law of Nature, although they were not fully in accord in their interpretation of it. Locke, for instance, did not accept that the state of nature had to be one of constant war. According to Locke, The Law of Nature requires that no one harms another in their life, health, liberty, or possessions. This leads Locke to state that:

For the Law of Nature would, as all other laws that concern men in this World, be in vain, if there were no body that in the state of nature had the Power to Execute the Law and thereby preserve the innocent and restrain offenders. (Locke 1689. ch. 2, sec. 7)

Rousseau in his *Discours sur l'origine et les fondements de l'inégalité parmi les hommes* (Rousseau 1755) develops these ideas further. While Hobbes regarded competition and Locke cooperation as primary responses to scarcity, Rousseau put his faith in innovation. As the savage in the state of nature has an aversion to harming others, most will try to get what they need by working harder, and with more creativity (Wolff 1996).

Crucial to Hobbes, Locke and Rousseau, was the idea of social contracts. It was elaborated in Rousseau's *Du contrat social au principes du droit politique* (Rousseau 1762). The overall idea was that every person must either accept a social contract of mutual obligations to themselves, other individuals and society, or live in the state of nature. The contract should be voluntary. Mostly, the idea was either tacit or hypothetical. David Hume contested the idea, at least partially, as most men are not fully free to choose domicile (Wolff 1996. 39–48).

Fundamental to the IPR rationale are John Locke's words on the creation of individual property:

Though the earth, and all inferior creatures be common to all men, yet every man has a property in his own person: this no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men: for this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others. (Locke 1689. ch. 5, sec. 27).

Locke regarded the labour theory of property as a natural law. Although the prerequisites and the limits of the theory have been heatedly debated by, for instance Marxists and American individual anarchists, the basic idea has been widely accepted.

Adam Smith's groundbreaking *Wealth of Nations* has one single reference to IPRs:

A temporary monopoly of this kind [granted to merchants who «establish a new trade with some remote and barbarous nation»] may be vindicated upon the same principles as upon which a like monopoly of a new machine is granted to its inventor, and that of a new book to its author' (Smith 1776. 418).

The fact that this quote is solitary might perhaps be turned around and interpreted as evidence, pointing to the author's copyright as a well-established principle among Enlightenment Age economists. After all, they depended on the copyright for their own financial support as writers.

In the latter part of the eighteenth century, the cultural life in Europe underwent a dramatic transformation. The rise of a middle-class, reading public led to an explosion of the publishing business. The items which constituted the main bulk of what was published had little to do with the transference of divine knowledge. What was now in demand was 'modern' secular literature: novels, theatrical works and self-help manuals. The suppliers of these were oriented more toward the commercial market potential than toward eternal glory. Daniel Defoe in England, Denis Diderot in France and Gotthold Lessing in Saxony tried to live from the profits of their pens rather than from elite patronage. Hence, they started to make claims for better pecuniary compensation for their works. (Hesse 2002)

The same tendencies were seen among composers. Music was distributed mostly in printed form, for domestic live entertainment, and the music publishing business was more or less equal in size to the book publishing business in the nineteenth century.

The further history of music copyright is narrated in Article 1, from Section 5.

2.4. Performing rights, mechanical rights, blank media levies

The historical background of performing rights is depicted in Article 2. The narrative includes the important Bourget v. Morel case in Parisian courts, 1847–1849. The café proprietor Morel had refused the composer of popular songs, Ernest Bourget, what he had ordered: an *eau sucré*. The Morel policy was that evening guests should order something more; something which included the use of a corkscrew. Bourget went home angry, and wrote Morel a letter in which he forbade the café singers to perform songs from Bourget's popular musicals. Morel did not abide with the Bourget decision. Bourget eventually won the legal feud and the world's first collective licensing agency was established in Paris, in 1851: *La Société des Auteurs, Compositeurs et Éditeurs de Musique* (SACEM). In Article 2, the transaction cost analysis, behind the decision to start the SACEM, is discussed. The article, furthermore,

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discusses why it took more than half a century before similar organisations were established in other countries.

Similarly, the historical background of mechanical rights, pertaining to recorded music, rights accruing to broadcasting and the blank media levies, is discussed in Article 3.

3. IPRs as an institution

Much economic history research is based on institutional economics theory. Thorstein Veblen (1898) was the one who complained most viciously about why and how classical economics, in his view, were an insufficient means of economic analysis. Veblen claimed that human nature was not likely to be captured easily in simple theories in classical economics. Man on the verge of doing something:

... is not simply a bundle of desires that are to be saturated ... but rather a coherent structure of propensities and habits which seeks realisation and expression in an unfolding activity.....The activity is itself the substantial fact of the process. (Veblen 1898)

He criticised classical economic theories for being relevant only for static states, and the difficulties they had when trying to incorporate, ‘the organic man, with his complex of habits of thought, the expression of each is affected by habits of life formed under the guidance of all the rest’.

John Commons developed Veblen’s intuitive ideas. He discussed the concept of ‘transactions’ and ‘transaction costs’, which will be developed further below. Commons’s view of institutions as ‘collective actions in control, liberation and expansion of individual action’ seems very relevant to the concept of IPRs. Obviously, the collective performing right licensing bodies, created by producers of literature, music, visual art and film, are ‘collective actions, which control and liberate individual actions of both creators and consumers, and expand the market’ (Commons 1931. 4).

Article 2 describes the events behind and the *raison d’être* for the French collective performing rights licensing society SACEM, and its partners in other countries.

William Landes and Richard Posner define ‘intellectual property’ as:

... ideas, inventions, discoveries, symbols, images, expressive works (verbal, visual, musical, theatrical), or in short any potentially valuable human product (broadly ‘information’) that has an existence separable from unique physical embodiment, whether or not the product has actually been ‘propertized’, that is, brought under a legal regime of property rights. (Landes & Posner 2003. 1)

However, in the case of ‘ideas’, Landes and Posner’s inclusion of them in the intellectual property concept is somewhat problematic. The demarcation line between the idea per se and the formulation of that idea may not always be easily drawn. Is an idea which is not manifest in some way really an idea? Is it the idea of combining raw materials A and B to produce medicine C which

is covered by IPR law? Or is it the manifest idea in the form of a recipe? The scholar of IPR law may claim the first, while the law practitioner probably relies more heavily on the latter. Even if there is an IPR protection of ideas, the problem of establishing their ownership may be extremely difficult without manifestations in time and space. Landes (2003. 132) clarifies that works protected by the copyright part of IPR must be fixed in a tangible form.

IPR laws generally, require a sufficient level of originality for (the manifestation of) an idea to be granted IPR protection. However, that is, according to Landes, not the case for works protected by copyright. The issue is not whether the work is original but whether it originates with an originator.

Based on the Fichte division of what can be described as intellectual property (Article 1. 67-68) the ideas on which a piece of music are based are not copyrightable. Such an idea can be that of a new song in 4/4 time, in a major key, with an *andante* tempo and with an ||:AABAABC:|| format. It is only the unique ‘formulation’ of the idea that is covered by IPR law; i.e. in the music case, the melody.

The same opinion is voiced by Sir Louis Mallet in his ‘separate report’ to the Royal Copyright Commission of 1878: ‘It is not even claimed that an author should have a right of property in ideas, or in facts or in opinions’ (Royal Copyright Commission 1878. xlviii).

The World Intellectual Property Organization (WIPO) Intellectual Property Handbook uses another definition which excludes mere ideas:

Intellectual property, very broadly, means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields. Countries have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations. The second is to promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development. (WIPO 2012, paragraph 1.1)

The first major article on the economics of IPRs was published by Arnold Plant (1934). One of his main points was that intellectual property rights *create* scarcity, whereas property rights in physical goods *manage* scarcity. In his groundbreaking article, he gives credit to Sir Louis Mallet who discussed this scarcity and exclusivity issue in his 1878 report:

A limitation of supply by artificial causes, creates scarcity in order to create property. To limit that which is in its nature unlimited, and thereby to confer an exchangeable value on that which, without such interference, would be the gratuitous possession of mankind, is to create an artificial monopoly which has no warrant in the nature of things, which serves to produce scarcity where there ought to be abundance, and confine to the few gifts which were intended for all.

It is within this latter class that copyright in published works must be included. Copies of such works may be multiplied indefinitely, subject to the cost of paper and of printing which alone, but for copyright, would limit the supply, and any demand, however great, would be attended not only by no conceivable injury to society, but on the contrary, in the case of useful works, by the greatest possible advantage. (Royal Copyright Commission 1878. xlviii)

Mallet obviously made points similar to those we encounter at present, in the copyright piracy debate.

Dani Rodrik of Harvard University does not separate IPRs from overall property rights. What he writes on this subject is directly relevant for IPRs. He defines desirable institutions as those that:

... provide security of property rights, enforce contracts, stimulate entrepreneurship, foster integration in the world economy, maintain macro-economic stability, manage risk-taking by financial intermediaries, supply social insurance and safety nets, and enhance voice and accountability. (Rodrik 2008)

This relates to IPRs in complex ways. For instance:

1. IPRs must be secure.
2. Business contracts within creative industries must be enforced.
3. IPRs as such must stimulate entrepreneurship (by providing strong incentives).
4. IPRs will not be formally accepted as collateral, but past performance will nevertheless contribute positively to possibilities for future risk-taking by financial agents.
5. IPRs have some social insurance and safety net implications; e.g. much longer durability in comparison with patents.

Rodrik argues that property rights do not have to be the same everywhere to be efficient. There is no single, universal best-practice institution: ‘It stands to reason that an entrepreneur would not have the incentive to accumulate and innovate unless s/he has adequate control over the return to the assets that are thereby produced or improved’ (Rodrik 2000). Control is more important than ‘ownership’. Control and ownership can come in many variations. Currently, the record industry tries to impose more rigorous control from Internet service providers on their subscribers, in order for copyright owners to safeguard their assets without extra transaction costs.

3.1. The knowledge component of copyright

In Sections 2.1 and 2.2, the view of knowledge and the terms of its transmittance to the public in early history were discussed. Overall, a division between theoretical knowledge, *epistêmê*, and knowledge in crafts, *technê*, was already recognised by the Greek philosophers.

Joel Mokyr (2004) claims that the economic growth of later centuries was made possible by an immense widening of public domain knowledge, from

which specific knowledge emerged, mainly in the form of micro-inventions. Mokyr focuses on the concept of ‘useful knowledge’ which he divides into (Mokyr 2004. 4):

- *propositional* knowledge
- *prescriptive* knowledge

Another common way of labelling is simply Science (*epistêmê*) for propositional knowledge, and Engineering (*technê*) for prescriptive knowledge. Prescriptive knowledge is, in general, only possessed by some, while propositional knowledge should be possible for everybody to find and internalise. From this, it is derived that goods that are the results of prescriptive knowledge are based on some individual’s labour in acquiring not only the science available for all, but also to develop skills and techniques that are their own.

Continuous accumulation of prescriptive knowledge through personal work experience is an efficient means of building informal human capital. James McNeill Whistler, a radical American/British 19th-century visual artist, who searched for a more ‘musical’ visual artistry and called some of his paintings ‘symphonies’ or ‘nocturnes’, once was challenged in court as to why he could charge the considerably large sum of 200 guineas for a painting, for the labour of only two days. Whistler answered: ‘No, I ask for the knowledge of a lifetime’ (Galenson and Jensen 2009. 222).

Galenson and Jensen found that there is a wide difference of age at production of the ‘most famous painting’ for talent-driven conceptual artistic innovators, who are normally only thirty years old or younger at the time, as opposed to ‘experimental innovators, who adopt the knowledge-accumulation work model. These artists are generally in their fifties or older when they produce what becomes their most important work’ (Galenson and Jensen 2009. 244). This age component has some bearing on the age variable in the study of Swedish composers’ incomes, in Article 5.

Science is a good that should be in the public domain. By definition it cannot be anything else. It seems that Mokyr’s general idea, regarding prescriptive knowledge or Engineering, is that the creation of it suffers if there is a lack of institutions making it possible to obtain a more substantial reward from it. IPR law can provide such an institution. On the other hand, the part of prescriptive knowledge that is possible to disclose is made part of the total propositional knowledge base (Mokyr 2004. 33).

The continuous qualitative evolution of music is apparent. What is created today is radically different compared to what was created only a few decades ago. If, hitherto, music was created inspired by earlier composers, avoiding plagiarism, there is now a new composing technique; namely ‘sampling’, whereby bits of the digital file of a composer’s work are used by a secondary composer. Concern is raised regarding current IPR laws that prohibit the

creation of this kind of artistic output. It should, however, be stressed that what IPR laws prohibit is the use of such inputs without the consent of their creator, or the custodian of their property. IPR laws safeguard the original creator's right to an income when their work is used as raw material in a product which, supposedly, will bring an income for a secondary composer's work. Thus, it is not, mainly, an artistic constraint but an economic one, and that constraint may be waived by the provider of the input material.

The public domain is, in IPR theory, the same as 'common goods' of physical property right theory. Some writers on copyright use the alternative term 'intellectual commons'. There is also the opposite: the so-called 'anti-commons'. This occurs when copyrights are so split up between dispersed owners of rights, pertaining to each step of value-adding activity, that the transaction cost of tracing all copyright owners and obtaining all necessary user rights is higher than the anticipated user value. The 'tragedy of the commons' should, according to most economists, be solved by privatisation, through the distribution of property rights. These must, however, be upheld through some kind of 'fencing out' of free-riders. The same kind of fencing procedures are used in creative industries, under copyright regimes. According to Ruth Towse, such activities, if they are too complex to unravel, will diminish wealth for both copyright owners and users/consumers (Towse 2004. 59).

3.2. Economic incentives for creation

The idea of a monetary reward providing a positive inclination to take on a desired task stems from an axiomatic assumption in economics: that of the selfish economic agent. Of course, in the case of the incentive, there is also the provider of it, who is equally selfish. When a good is put on the market the foreseen price is multiplied with the expected number of sold items, to form the incentive for production.

After the introduction of the public good concept by Paul Samuelson (1954), the literature on economic incentives focused on the provision of non-rivalrous and non-excludable goods in a market economy. Markets driven by self-interested parties may be unable to provide them. William Vickrey and James Mirrlees were awarded the 1996 Nobel Memorial Prize in Economic Sciences, 'for their fundamental contributions to the economic theory of incentives under asymmetric information' (Riksbanken 1996). The more recent contributions of behavioural economics on the issue of monetary incentives find counteractive problems in certain situations. As pecuniary incentives are often provided when a task is unpleasant, based on 'disamenity compensation theory', regarding disagreeable jobs, discussed already by Adam Smith and

Karl Marx, the inclination to take on a job which lacks disamenities might be reduced, if economic compensation is provided.⁴

The crucial dilemma that confronts the composer, in financial terms, is that their product has a lot of development costs for its very first copy, combined with a more or less zero marginal cost of production for the second copy. The neoclassical idea of price = marginal production cost cannot be applied here, as there will be no return on investments and sunk costs. These costs have to be covered from sales as well. The aim of IPR legislation is to overcome this predicament which, in the language of economics, is labelled a ‘market failure’. The copyright provides the composer with a prospective ex-post reward, which attempts to incentivise their ex-ante production effort. What is good for the copyright holder is good also for society, as the music good would not be produced if there was no chance for protection from competitors applying a marginal production cost-pricing.

Digital technology and the Internet have reduced copying costs to a point where they are almost infinitesimal. Internet piracy is threatening the fundamentals of the monetary incentive theory implementation embedded in copyrights.

The initial copyright transferred a potential non-rival and non-excludable public good into a rivalrous and excludable private good. A market was created which incentivises producers for the benefit of consumers. If these items are not bought but stolen no such benefit is at hand, as the production will soon cease. If the item, which is then not produced, is considered, nevertheless, to have been at least potentially beneficial, the initial market failure reoccurs. Thus, it may be claimed, that illegal peer-to-peer copying on the Internet is a threat not only to producers but also to consumers.

The common piracy argument that compensation will instead be provided from the sale of concert tickets demands a new professional role of many composers; that of performer. The current division of labour between the composer and the musician, based on a late medieval process described in Article 1, is then perhaps not possible to uphold. Every composer or songwriter, in this case, needs to become a musician/composer or singer/songwriter.

In the music piracy case, it should, however, be noted that the threat can also be turned into an inspiration. In a Forbes (2012) interview, Daniel Ek, the main inventor of the Internet platform Spotify, identifies the short-lived illegal download site Napster as ‘the Internet experience that changed me the most’. Napster ‘was fast, free and limitless’. Ek ‘became one of the 18–30 year olds now considered a lost generation: Those who don’t believe you need to pay for music’. Nevertheless, Daniel Ek was inspired to work on the creation

4 Emir Kamenica (2012) provides more information on counteractive economic incentives, based on the reading of current literature.

of a new platform, which could integrate the ‘fast, free and limitless’ in ‘a revolutionary model that allows legal access to almost every song you’ve ever heard of, on demand, for free’. Ek refers to his maternal grandparents, who both worked in the music industry, as a complimentary source of inspiration. Through successive fine-tuning of its features, Spotify has now been able to attract paying customers as well. A sixth of the Spotify shares are now owned by four major multinational former record companies (now better labelled ‘recording companies’: Universal Music Group; EMI Music; Warner Music Group; and Sony BMG).

Music IPRs provide a kind of privileged monopoly for copyright holders, albeit with a time limitation. As monopolies create deadweight losses, the situation can be suboptimal. Of course, the most radical solution would be to replace IPR laws related to music with the following:

1. the good is instead provided by the state free of charge: in the music case, composers will be given public salaries. The virtues of this case are diminished by the fact that the copyright alternative will, instead, spread the costs of creation only to the actual consumers and users of the good, and leave non-consumers financially unattached. Furthermore, IPR fee collection has become transnational. If fees are not collected from foreign consumers they benefit financially at the expense of national tax-payers.
2. competitions and awards: public and private ex-ante grants are targeted towards desired outcomes, whereas ex-post awards (‘blue-sky prizes’) are given to creators, based on actual outcomes of their efforts (Scotchmer 2006. ch. 2.3 and 2.5). Paul David (1993) distinguishes between:
 - Patronage: ‘publicly financed prizes, research grants based on the submission of competitive proposals, and other subsidies to private individuals and organizations engaged in intellectual discovery and invention, in exchange for full public disclosure of their creative achievements’; and
 - Procurement: ‘government’s contracting for intellectual work, the products of which it will control and devote to public purposes. Whether the information produced will be made available for public use is a secondary issue, although an important matter for public policy’.

If a third alternative, that of private donations, is implemented, we are back to a pre-modern-IPR law situation, with composers dependent on private patrons (i.e. a pre-Beethoven situation described in Article 1), or on more anonymous donation rallies. Commissions for new music are also sponsored in our time⁵. However, in that case, what is covered is the commissioning fee. It does not necessarily waive the composer’s copyright. Donations are often asked for, although not required, by providers of software in the open-source community for computing applications. Buskers are financed in the same way.

5 The Ramlösa mineral water company, for instance, paid for the commissioning of composer Johannes Jansson for a piano concert as part of the celebration of the 75th anniversary of the Helsingborg Symphony Orchestra.

A more modest solution to the deadweight dilemma would be to further limit the scope, content or duration of IPRs.

The economic incentive concept is elaborated in Article 5.

3.3. The Bundle of Rights

The first international agreement pertaining to music IPRs was signed in Berne, in 1886. This treaty, the first *Berne Convention for the Protection of Literary and Artistic Works*, was ratified by seven European countries, as well as Tunisia, Liberia and Haiti. The convention has been revised eight times. The last revision was agreed upon in Paris, in 1971. The current version includes some amendments accepted in 1979 (Berne Convention 1979). The Berne Convention currently has 166 member states (Berne list 2013). The last to join was Vanuatu, on 27 December, 2012.

The Berne Convention was strengthened by the Agreement on Trade-Related Aspects of Intellectual Property Rights or ‘The TRIPS agreement’ of 1994 (TRIPS 1994). Ratification of TRIPS is a compulsory requirement of World Trade Organization (WTO) membership. Hence, TRIPS is now the most important vehicle for the globalisation of IPR laws. States such as Russia and China, which were reluctant to join the Berne Convention, have found the prospect of WTO membership a powerful enticement. Furthermore, unlike the Berne Convention, TRIPS has a powerful enforcement mechanism. WTO members can be disciplined through a dispute settlement mechanism. Regarding the issues related to music IPRs, the TRIPS agreement relies heavily on the Berne Convention, to which it refers in its first article (Article 9) of its section on copyright (Section 1).

The World Intellectual Property Organization (WIPO) has been the supervisor of the Berne Convention since its beginning. In 1996, the new WIPO Copyright Treaty (WCT 1996) was signed together with the WIPO Performances and Phonograms Treaty (WPPT 1996). The WCT is an extension of the Berne Convention in that it prohibits the circumvention of technological protection of works, and gives authors full control over the rental and distribution of their works. The WPPT clarifies issues which were treated by the Rome Convention of 1961. A total of 185 nations have ratified the two WIPO treaties, including China, with a population of 1.3 billion, and the Vatican with approximately 550 citizens.

All treaties deal with fundamental principles for which each country may decide on national legal interpretations. Thus, IPR laws still vary in their content across countries. Passed in October 1998, by a unanimous vote in the United States Senate, the Digital Millennium Copyright Act (DMCA) extended

the reach of prior copyright, while limiting the liability of the providers of online services for copyright infringement by their users.

The European Union remains active regarding issues of intra-union harmonisation, and more efficient legislation for cross-border management of Internet-based distribution of music (section 4.3). The ‘Directive 2004/48/EC of the European Parliament and of the Council of 29 April, 2004, on the enforcement of intellectual property rights’ (also known as IPRED) has met with a lot of controversy. The Directive requires all Member States to apply effective, deterrent and proportionate measures against those engaged in counterfeiting and piracy. The enforcement of IPRs is its focus. National provisions on intellectual property, international obligations of the Member States and national provisions, relating to criminal procedure and criminal enforcement, are left unaffected.

IPR laws and international treaties are a scientific field of their own. For a better understanding of the articles below, an overview of the IPR content, relevant for most countries and treaties, is provided here.

3.3.1. *Droits économiques* (economic rights)

The IPRs pertaining to music provide the holder of them with the exclusive right to remuneration from (e.g. The Intellectual Property Office/IPO; Frith and Marshall 2004. 7–10; Bentley and Sherman 2009. ch. 6; Towse 2000):

- copying the work in any way; for example, photocopying, reproducing a printed page by handwriting, typing or scanning into a computer, and taping live or recorded music are all forms of copying.
- issuing copies of the work to the public.
- renting or lending copies of the work to the public.
- performing the work in public. Obvious examples are performing music and playing sound recordings in public. Letting a broadcast be seen or heard in public also involves performance of music and other copyright material contained in the broadcast.
- broadcasting the work or other communication to the public by electronic transmission. This includes putting copyright material on the Internet or using it in an on-demand service where members of the public choose the time that the work is sent to them.
- making an adaptation of the work, such as transcribing a musical work.

As soon as the original work has been fixed — for example, in writing or through a recording — it receives copyright protection without the creator having to do anything to establish this. Although it is a requirement of various international conventions that copyright in this way shall be automatic, some kind of registering is, nevertheless, normally needed for the economic right to be claimed successfully (IPO).

The economic rights are non-imperative and can, in principle, be waived, sold or transferred by the right holder. However, to waive one’s performing

rights and have one's music played without fees is difficult. The collective licensing agencies sell blanket licences to their full catalogues. If one's pieces of music are not in such a catalogue there is no compensation from the agency. In most countries, the agencies are single, monopoly agents and licensees pay lump-sum fees per concert or, even, per annum. Such fees are not reduced if unregistered music is played instead of registered music. A composer can claim that the performing rights for their music shall be waived, and leave it unregistered. Mostly this means that many licensees pay their lump-sum fees to a collective licensing agency which, in turn, does not have to pay anything to the composer. Moreover, to claim one's performing rights in a direct manner, not including a collective licensing agency, is costly, both time-wise and financially. At least, this has been the case hitherto. There are now some experiments on the Internet which try to bypass the collective licensing agencies, and connect broadcaster and composer directly.

3.3.2. *Droits moraux* (moral rights)

The WIPO treaties include at least some of the issues which have been included in the IPR laws of many European civil law countries for many years, under the heading 'moral rights'.

1. the paternity right (*droit à la paternité*):
the right to be identified as the author of a work; there is also a right not to have a work falsely attributed to oneself.
2. the right of integrity (*droit à l'intégrité*):
the right to object to derogatory treatment of the work.⁶

In many continental European countries composers have:

3. the right of disclosure (*droit de divulgation*):
the right to determine when and whether a work shall be published;
and
4. the withdrawal right (*droit de repentir*):
the right applies also for works already published.

Germany and Austria follow the 'monist theory' of authors' rights. This considers authors' economic and moral rights to be thoroughly interwoven so that they cannot in principle be separated. Lionel Bently (2009.55) explains:

6 After the expiration of the actual IPR coverage and the work, thus, is transferred to the public domain there is in some countries another perpetual protection based in IPR law: in Sweden "klassikerskyddet/the classics protection". The use of works in the public domain is thereby limited so that derogatory treatments which constitute "violations of the interest in spiritual cultivation" are forbidden. In the case of music only the Royal Swedish Music Academy may litigate in reference to the classics protection act.

Although moral rights may be designed to protect a creator's spiritual interests, a monetist would take the view that moral rights can legitimately be used to claim financial benefits, and exploitation of works through economic (a.k.a. 'patrimonial') rights fuels the author's reputation which the moral rights protect.

The United States has implemented moral rights regarding only the visual arts, through the Visual Artist's Rights Act/VARA of 1990. According to Melissa Boyle et al., 'the average artist's income falls by around \$4,000 per year, as a result of moral rights legislation' (Boyle et al. 2010). However, to measure the pecuniary effects of moral rights may be regarded as a misconception of the underlying ideas. Moral rights are not *droits économiques*; they are not targeted on the incomes of the rights holder. Rather, they are connected to the 'symbolic capital' concept discussed by Hemmungs Wirtén (2009), and to the 'recognition incentive factor' discussed in Article 5.

American musicologist Joan Demer (2006, 12) treats the 'moral right' concept not as a headline for actual legal acts or parts thereof, but refers to it as an argumentative line, which has been followed by IPR owners in the United States to motivate their copyrights. It is, according to these IPR holders, ethically good that originators should be compensated financially. Of course, this is a plausible stance. However, the difference in the interpretation of what 'moral rights' are adds to the semantic confusion between the European and the American debate.

According to Hemmungs Wirtén (2006), the debate in European civil law countries such as France, Germany and Sweden is much more 'instrumental' than the American. Hemmungs Wirtén claims that the dividing line between the two traditions is, 'partly a result of a fundamental difference in scientific theory perspectives and partly a result of legislative differences'.

3.4. The stakeholders

Demers (2006) does not regard royalty claimants as owners of IPRs. In her opinion, only the tycoons in the media business own the copyright. This means that, in her view, royalties paid to composers and musicians are alimonies or gratuities. The actual case is that only a part of the *droit économique* is waived by the originator and transferred to a value-adding partner who, for the benefit of a contracted use of the originator's work, has to pay a *droit d'auteur* fee, or royalty. The value-adding chain can be depicted as in Figure 1.

In this thesis, the focus is on composers, but the interests of other parties are also invested in the intellectual properties of a piece of music. There are, primarily, three lines of music distribution: 1. music prints; 2. live music; and 3. recorded music. All three require a composer. The last two involve one or more musician.

NOTHING NEW UNDER THE SUN

- Music prints:* this was the first kind of music needing IPRs. Frequently, including today, the music has been printed and published before it is played.
- Live music:* in order to be presented to a live concert audience there is a need for a concert promoter/producer and a concert venue.
- Recorded music:* here the value adding production line has more steps. A recording studio is necessary. The stored music can be presented directly through a broadcasting net (radio, TV, Internet). Consumer equipment is needed to make soundwaves from the broadcasted information to be enjoyed by the listener. Alternatively, the recorded file is copied on CDs which are, in turn, broadcast or sold through dealers, to be enjoyed by the buyers.

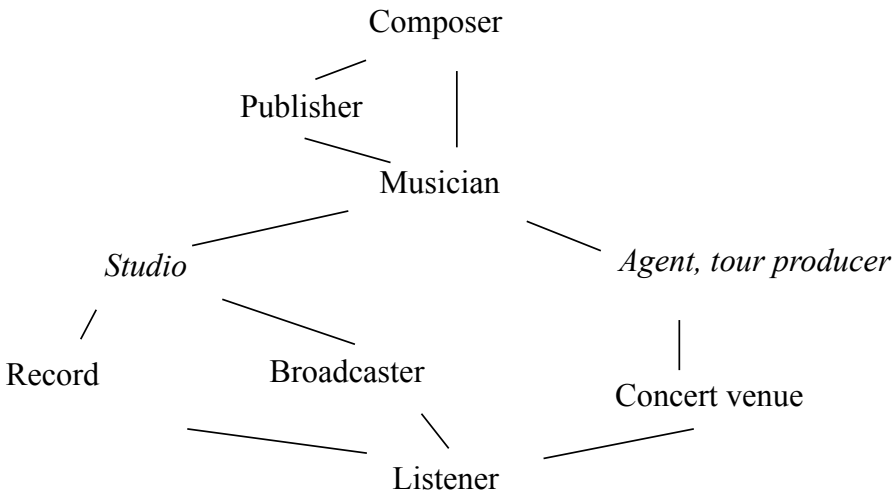


Figure 1. The value-adding chain of music production

3.5. Copyright Licensing Agencies as Natural Monopolies

The system of single copyright licensing agencies in each country is, by these same agencies, often described as based on the concept of ‘natural monopoly’. The alleged rationale is that the monopoly agency is more economically efficient than any competitive system, mainly because the transaction costs for both producers and users/consumers are reduced to a minimum by the single operator.

The transaction costs referred to are:

- **information gathering:** who is the actual IPR owner of a song? Such information is collected and administered by the licensing agencies.
- **contracting:** once the IPR owner is identified, a question regarding the use permit

should be put and answered; the licensee is given *carte blanche* for use of all songs by agency contracted composers at any time after mutual agreement with the user.

- **payment transfers:** the agreement on use of the agency's catalogue stipulates payment in some sort being regulated between the user and the agency; the extreme alternative being that a user or consumer should have to pay to each composer directly.

When the licensing agencies were founded (SACEM, in France, in 1851; the Swedish STIM, in 1923) listing, contracting and payment transfers were, of course, much more time-consuming than today, and information distribution was more difficult. In essence, the digital technological revolution should make it possible to reduce transaction costs, both regarding information-gathering and payments from other ways of organising relations. Collective licensing possibly still reduces contracting costs. The benefits to IPR owners, the music industry and the consumer may still be substantial enough to motivate the monopolistic or oligopolistic system.⁷

A point in time will probably occur where the self-interest of the established organisations will make them even more involved in regulation policy decision-making than hitherto. At this point, the transaction cost reductions that motivated the system are no longer relevant. The system prevails by its own force.

It is obvious that the formerly joint interests of copyright licensing agencies and record companies are not necessarily mutual any longer. The STIM has not engaged itself in the regulatory lobbying procedures that the media industry has been involved in over the last decade. The composers want their music distributed as efficiently as possible, with a reasonable revenue secured, regardless of distribution technology.

Libertarian economists habitually question the whole notion of natural monopolies. Even economists who recognise, in principle, possible benefits of (true) natural monopolies argue that technological shifts may make such a monopoly less natural in the future.

In July, 2004, the Polish Office of Competition and Consumer Protection (UOKiK) decided that The Polish Society of Authors (ZAiKS) had infringed national competition laws by abusing its dominant position on the market of collective management of copyrights. The initiative was taken by a music group, BRATHANKI, which complained that ZAiKS demanded that members assign all forms of copyright exclusively to them. ZAiKS had, without prior consultation, licensed the mechanical reproduction rights of BRATHANKI's music to a record company. The Polish Supreme Court later dismissed ZAiKS's appeal. There, however, seems to have been no economic analysis in any of the two verdicts; for instance, a discussion based on transaction cost motivation of natural monopolies (Zablocka 2008).

⁷ European countries are generally served by monopolistic licensing agencies whereas, for instance, there are, at least two oligopolistic licensing agencies in the US, and even more in Brazil

4. Some criticism of current IPRs

4.1. The piracy movement

The Internet piracy movement has been especially strong and successful in Sweden. The Swedish Pirate Party has held a seat in the European Parliament since the 2009 election. The party promotes the general idea of a 'participant culture', where everyone should be allowed to use anything now under copyright law, for any purpose. The policy presented by several national Pirate Parties is the original Swedish formulation in English translation:

The official aim of the copyright system has always been to find a balance between the interests of publishers and consumers, in order to promote culture being created and spread. Today that balance has been completely lost, to a point where the copyright laws severely restrict the very thing they are supposed to promote. The Pirate Party wants to restore the balance in the copyright legislation. All non-commercial copying and use should be completely free. File sharing and p2p networking should be encouraged rather than criminalized. (US Pirate Party 2013)

James Boyle also discusses this balance issue:

Precisely because it is not a rejection of intellectual property rights, but rather a claim that they only work well through a process of consciously balancing openness and control, public domain and private right, it still leaves open the question of where that point of balance is and how to strike it. (Boyle 2008, 206)

In the 2006 Swedish general election, the Pirate Party managed to provoke candidates from more established political parties to express the idea that free downloading of copyrighted items from the Internet should be made legal. After a short initial post-election period of government flirtation with the piracy movement, the official policies of the liberal-conservative Alliance government, still in power in 2013, is back in line with established international agreements.

4.2. Duration of post-mortem autoris

Some authors find problems with other parts of the current IPR legislation. Professors Åke E. Andersson and David Emanuel Andersson argue that

it is difficult to offer any credible economic reason for the extreme durability of copyrights ... Although such well-protected property rights are defensible for purely private goods on utilitarian grounds, no such defence can apply to ideas and their artistic expressions. Creative ideas have a collective welfare potential that the public cannot exploit with the current duration of copyrights. (Andersson and Andersson 2006. 139)

This duration is currently, in Sweden and most countries, the originator's lifetime, plus seventy years for their estate. There is an obvious social loss in such a long duration. This is the same kind of criticism of the *post-mortem auctoris* concept as that presented already in 1841, by Thomas Babington Macaulay, poet, historian and Whig politician, in a House of Commons speech:

It is good that authors should be remunerated; and the least exceptionable way of remunerating them is by a monopoly. Yet monopoly is an evil. For the sake of the good we must submit to the evil; but the evil ought not to last a day longer than is necessary for the purpose of securing the good. (Macaulay 1841)

The opposite view was taken by the famous British artist Sir Cliff Richard who, as a front figure in the UK music industry campaign some years ago, demanded that recording artists should be granted the same royalty duration as composers (Richard 2006). The proposal was supported by a few British European Parliament members. The issue was brought to the European Union, which eventually decided in favour of Sir Cliff. In September 2011, the EU Council voted to extend the copyright on sound recordings from fifty to seventy years. However, it is not a *post mortem* but the seventy years' count from the release of the recording. The US extended the same copyright protection from fifty to ninety-five years in 1998.

4.3. The EU challenges national collective licensing society monopolies

Natural monopolies have the virtue of creating the lowest price for the customer through scale effects. Hence, free-market competition will eventually produce this sole provider of the service.

The EU has put pressure on the collective licensing societies to open up for competition in all national markets. With reference to the natural monopoly virtues, STIM and its partners argue that this is pointless. According to them, a distortion of the natural monopoly is not in the interest of either the music industry or the single customers. This was what the British Monopolies and Mergers Commission/MMC found in the 1990s. 'However, it did level criticism at the relatively high administrative costs' (Towse 2000). According

to Towse the anti-trust body in Germany came to the opposite conclusion regarding the German collecting society GEMA.

The EU does not, however, sit idle. In its view: ‘the Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society needs to be updated or further harmonised at EU level’ (European Union 2012). The EU Commission regrets the limited success of its Recommendation 2005/737/EC, on the collective cross-border management of copyright and related rights for legitimate online music services: ‘Being a Recommendation, it was non-binding and its voluntary implementation has been unsatisfactory’. The ‘Proposal for a Directive of the European Parliament and of the Council on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market (2012/0180 (COD)’ includes some coercive, transborder licensing measures that must be accepted by member states and their collecting societies (European Union 2012). The object is to facilitate the expansion of online music services, which are multi-territorial in scope and practice.

4.4. Qualitative implications of copyright

Obviously, a change of the range and/or direction of music copyrights will not only influence IPR revenues, or only have quantitative implications. The change will, as a consequence of new patterns of revenue allotments, also change the music itself and thus have qualitative effects as well. Current successful stakeholders will argue ‘to the worse’. Others might benefit from a change at least in relative terms. If the ‘commercial music’ of our time, created in the current IPR regime, is not equally commercially viable in the future, there will be less of it. Maybe people will eventually lose interest in music, or now neglected talent will have better opportunities. Only time will tell.

Chris Anderson (2006) is convinced that change is inevitable and good. Robert Frank and Philip Cook claim that the success-breeds-success feature in markets for popular culture ‘is especially troubling in light of evidence that, beginning in infancy and continuing throughout life, the things we see and read profoundly alter the kinds of people we become’ (Frank and Cook 1995, 19). In ‘Bowling Alone’, Harvard professor Robert D. Putnam argues that the increased lack of social capital in the US is a result, at least partly, of the technological evolution, in combination with copyright protection, which has boosted the media industry and reduced the ordinary American to a couch-anchored, self-centred, passive citizen, indifferent to what is going on in the real world beyond the TV screen (Putnam 2000).

The effect of one set of IPR law on the quality of the output compared to another set is, of course, of extreme relevance for the IPR debate, but is generally overlooked in scholarly literature. When asked questions about this at conferences and workshops, some authors find the idea that there is a connection between how an IPR law is designed and the quality of the musical output too self-evident. Others shun the issue as they find it too complex. Nevertheless, the more research that is presented concerning the financial effects of IPRs, the more unsatisfactory the lack of qualitative approaches becomes.

5. The articles

The rest of this thesis is a compilation of five articles. There is a progression from Article 1 to 5 in that numeric data occur more and more frequently. There is also a regression, in that general background facts are concentrated in the first articles. Thus, the articles should preferably be read from 1 to 5. However, this does not indicate that such a reading will necessarily provide a large-scale monographic understanding.

The published papers appear in different journals. The unpublished paper is in a ‘review and resubmit’ process

• **Article 1: *Early Music Copyrights: Did they matter for Beethoven and Schumann?***

The article was published in *The International Review of the Aesthetics and Sociology of Music* (IRASM), volume 42(2), in December 2012. It provides information on the beginning of an ‘originator consciousness’ — the composer as a profession separate from that of the musician — and the early stages of copyright legislation. The paradigm shift of music creation in the Vienna of the 1790s, and the budding commercialisation of the music scene is described. Ludwig van Beethoven is used as an example of how copyright revenues formed a part of total income; in his case a substantial part. Robert Schumann is used as an example of how the Pan-Germanic Copyright Treatise, of the 1830s, influenced copyright revenues. Furthermore, the article discusses some economic aspects of publishing after Schumann, of which data on the incomes of Debussy are highlighted. Beethoven, Schumann nor Debussy relied on IPR revenues alone. While Beethoven relied on rich, aristocratic patrons, Debussy, a century later, acted as a free agent on a more commercialised music scene.

Ludwig van Beethoven and Claude Debussy are chosen as examples as a consequence of the previous research, which has been done on their copyright incomes (and for Debussy his performing right revenues). It seems that no other composer biographies include systematic statistics regarding IPR incomes. The income information on Robert Schumann was provided by himself, through his meticulously kept household books. Business history books covering publishing houses mostly lack systematic composer-per-composer information. However, they give the impression that they are based on well-kept archives. Some of today’s publishers have histories ranging back several centuries. Thus, it is likely that more composer-specific information should be possible to deduct from their files.

• **Article 2: *The Advent of Performing Rights in Europe***

This article was published in *Music & Politics* vol VII(1). It provides information on the evolution of *grand droits* — still prevailing for performing rights in music theatre productions — and *petits droits*. Both took place in France. The Bourget v. Morel case (see Section 2.3 above), which led to the world's first performing right licensing society, the SACEM, is elaborated. This is based on primary research in Parisian archives. Thus the findings have not been published before.

Furthermore, this article relates how the French system was adopted subsequently in Germany, the UK and Sweden, however, with a half-century or longer delay.

An important conclusion drawn in the article is that the inclusion of the performing rights part of IPR laws was not caused by any singular technological innovation, regarding the distribution of music. Rather, it was caused by the wish among composers to have a fair share of the income from the growing live music business, which was made possible by the general economic growth following the Industrial Revolution.

• **Article 3: *The Resilience of Music Copyrights: Technological Innovation, Copyright Disputes and Legal Amendments Concerning the Distribution of Music*. Draft for an article in *Culture Unbound*, vol 5, June 2013.**

This article provides information on how and why technological shifts affected patents and copyrights. For and against arguments for IPR law amendments are presented. The legal consequences of the printing technology in the 15th century is discussed, as well as the subsequent consequences of later innovations, such as the gramophone, the radio and the tape recorder. The article provides information on how the actual copyright was supplemented by mechanical rights, broadcasting rights and the blank media levy. A preliminary discussion on the Internet as a blank media is also included in the article. Similarities in the positions that various stakeholders seem to have taken in the processes are indicated and discussed.

• **Article 4: *Swings and roundabouts: Swedish music copyrights 1980–2009*.**

This article was published online by *The Journal of Cultural Economics*, in August 2012. It provides information on the revenues from collective music IPR licensing in Sweden 1980–2009, and on the income distribution from IPR revenues distributed by the STIM. It concludes that the total income of the STIM has grown substantially despite Internet file-sharing. While royalty revenues from records have decreased radically, revenues from broadcasts and live performances have risen.

After the publication of the article and, even more, after the final year of the data in the article, the Swedish music landscape has changed a great deal. Already in 2010, the IPR revenues from music downloaded or streamed from the Internet grew significantly. The statistics for 2011 show a 70% increase of this kind of royalty income from the year before. As royalty incomes from record sales decreased by 12%, Internet-related income is now bigger than record-based income. In fact, it is already 20% higher (Portnoff and Nielsén 2013).

Much of this radical trend is most likely related to the success of Spotify and other similar platforms. According to a recent article in the Swedish magazine *Filter*, Spotify has most likely managed to absorb a lot of illegal file-sharing (Strömberg 2012). Fifteen million users in fifteen different countries, at the time the article was written, have contributed to this success. According to Spotify, the 2011 turnover was approximately 175 million euro; 70 % of the revenues were transferred to the IPR holders.

· **Article 5: *Sound Earnings? The Income Structure of Swedish Composers 1990–2009.***

This paper will be published in *The Review of Research on Copyright Issues/ RERCI* in June 2013. Denis Herlin (2011) has experienced the same problems with the extraction of data from the collective licensing societies — in his case the French SACEM — as everybody else who has tried. The performing right societies are not public but private enterprises. They guard their financial information effectively from the eyes of the public. The information provided by the STIM, for Article 4, and which was not found in annual reports, was based on data that had been processed previously for other purposes. For the STIM data in this article, individually signed mandates had to be collected.

The unique panel-data set was processed econometrically. The data provide information on the income distribution among Swedish composers, how the prospect of income affects output (the monetary incentive case), and the influence on income of gender, education, age and domicile. The income distribution is highly skewed in favour of a very small number of receivers, who collect a very big share of total IPR revenues; hence a ‘winner-takes-all’ case. There is some small trace of an economic incentive effect. Female composers are shown to have a much smaller income than their male colleagues. The decrease in income at a late age is less for composers than for people in other professions. Contrary to the general idea circulating in the music business, the location of a composer has little influence on the income.

Other incentive factors than economic factors are discussed as well. The propensity to compose music is also influenced by recognition incentive factors (status) and pleasure incentive factors; i.e. the inner rewards of feeling creative. The findings regarding these aspects are, however, more preliminary and inconclusive than the findings regarding the monetary incentive.

This study only deals with the 300 art music composers who are members of the Swedish Union of Composers (FST). Thus, the findings relate only to this category and not to non-FST members. Although it is likely that a study involving also all other STIM members would show the same pattern, with a 'long tail' of receivers of token revenues combined with an extremely small group of 'winners', this is, however, not manifested in this study. Of course, a wider study of all receivers of STIM revenues, or at least a sufficiently big sample thereof, would be valuable.

6. David Bowie's predictions of music being always everywhere

In a David Bowie interview by Jon Pareles in the *New York Times* on the 9 June, 2002, the artist famously predicted that:

The absolute transformation of everything that we ever thought about music will take place within 10 years, and nothing is going to be able to stop it. I see absolutely no point in pretending that it's not going to happen. I'm fully confident that copyright, for instance, will no longer exist in 10 years, and authorship and intellectual property is in for such a bashing ... Music itself is going to become like running water or electricity. So it's like, just take advantage of these last few years because none of this is ever going to happen again. You'd better be prepared for doing a lot of touring because that's really the only unique situation that's going to be left. It's terribly exciting. But on the other hand it doesn't matter if you think it's exciting or not; it's what's going to happen. (Pareles 2007)

There are three fundamental statements in this short declaration. Now, in 2013, the following should have happened, according to Bowie:

1. There are no IPR laws
Obviously, IPR laws still exist but they have been knocked. This time, as during all previous technological shifts, they show an amazing resilience.
2. Artists are touring much more as a means of income
Total incomes from live performances have risen (Montoro-Pons and Cuadrado-Garcia 2011). Ticket prices have rocketed (Krueger 2005). It can be argued whether the loss of income for artists from consumer digital file-sharing is the only or, even, the main reason for this development. Consumer preferences and generally increased incomes among music lovers are likely to play a part. With a higher demand for live music events, both as artistic experiences and social fora, more venues are established, and the trend feeds on itself.
3. Music is like running water or electricity
This is the main prediction of David Kusek and Gerd Leonhard as well: 'Clearly, the future of music belongs to truly mobile products and services: anything, anytime, anywhere' (Kusek and Leonhard 2005: 14). Furthermore, Kusek and Leonhard foresaw that: 'streaming music rather than downloading it will quickly become a viable option, once networks provide a truly acceptable sound quality and simplified pricing'. The price of the new services would be 'so compelling that everyone considers it [media streaming] a part of their basic expenses, like the phone bill, cable television, or car registrations'. What Bowie, Kusek and Leonhard envisioned is rapidly becoming our present reality.

When it came to the introduction of performing rights and their implementation, France was the pioneering country, see Article 2. The running water analogy above was perhaps inspired by another French, turned global, occurrence. In 1994, Jean-Marie Messier, nick-named 'J2Ms' after his initials, took up the

chairmanship of the water utility company *Compagnie Générale des Eaux*. In 2000, he supervised its merger with Canal+, Seagram, and Universal Studios, to form Vivendi Universal. A year later, USA Network was bought. Messier, by now dubbed ‘J6Ms’, for ‘*Jean-Marie Messier Moi-même Maître du Monde*’, by many sceptical reporters, aimed at creating a global entertainment conglomerate of the former *Générale des Eaux*. His idea was to install fibre optic cables in the water pipes to convey content; i.e. music, movies, video games, the Internet, etc. Messier himself was dethroned in 2006, owing to several ‘mistakes’, which are still debated in court. However, the idea of embedding media cables in water pipes has been copied by other companies. The Vivendi group itself broke a new record of profitability in 2011, earning a net profit of 2.9 billion euros from a turnover of 28.8 billion. Some commentators, however, predict the imminent downfall of Vivendi. (Pietralunga 2012).

The crux of the Bowie predictions is that the first and third statements are, largely, antagonistic. The success of the running water or electricity idea is based on upheld IPRs. The value-adding agent system depicted in Figure 1 above has had a new, somewhat different, look during the last decade. The main current contribution are the music-streaming services. There is a variety of similar services; e.g. Spotify, Rdio, Pandora, HOG, Slacker and Rhapsody. Spotify is now owned by the major, global record companies but, nevertheless, its system includes possibilities for direct uploading to the Spotify library from independent companies, and even individuals.

Even if it were possible to create free media distribution to consumers through advertisement or tax funding, the distribution of such incomes to the providers of content must follow some kind of agreed-upon system. Within the framework of current IPR laws, content providers — i.e. composers, musicians, recording companies and Internet platforms — have a wide range of options for how each value-adder will be compensated in the new streaming business. Unlike the blank media levy, the IPR revenues from streaming can be distributed to content contributors, based exactly on consumer tastes. What is streamed is compensated for.

7. Coda

The articles below all have their separate narrative foci, research questions, theories and methods. However, they fall under the general, probably undisputed and, thus, axiomatic, issue guiding my efforts: that the pecuniary parts of music IPRs are of no use if composers and musicians do not benefit financially from them. Financial concerns were paramount for the Venetian Senate in 1469, when it gave Johannes of Speyer a five-year privilege to print. Today, if the monetary parts of IPR law have ceased to have positive financial effects for the actual originators, we could do away with them. My findings do not support such a radical measure. This statement, however, does not exclude the possibility that a revision of current IPR law may be wise and advisable, in view of some reoccurring criticisms.

There are two unique contributions to this thesis:

1. a more accurate history of the events in Paris which eventually provided a legal basis of the first performing rights agency, SACEM, from the previous anecdotal renderings. This narrative is based on primary sources in the Parisian archives.
2. an analysis of a unique data-set including incoming information from between 1990 – 2009 for a large proportion of Swedish composers of art music.

It seems that most composers realise and accept that only some collect the big money from the IPR system, and that its contributions, for most, should be seen as bonuses for jobs well done. However, composers' money comes in various ways. Royalty revenues is only one. Contrary to what has been pleaded widely over the last decade, this income stream is not likely to vanish from the institutional income-providing palette for many decades to come.

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Early Music Copyrights: Did They Matter for Beethoven and Schumann?¹

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1. Introduction

This paper explores how music copyrights have influenced the professional circumstances which enabled Ludwig van Beethoven and Robert Schumann to compose the music which is now part of our shared international cultural heritage. Some features of the developments since the time of Schumann are also presented.

My general idea is that copyright legislation would not have been introduced and developed if it did not promote the following goals: (1) secure an income for the composer, and later the musician, enabling him/her (2) to fulfil listener demands by releasing high-quality music on the market. The two goals have both an individual and a collective societal purpose. In the language of economics, the

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Abstract – Résumé

The general legal and business conditions pertaining to the music publishing business improved considerably in the 50 years between the 1790s, when Beethoven began his career, and the 1840s, when Schumann experienced his professional peak. The paradigm shift in politics, economics and music which occurred at the end of the eighteenth century made it possible for Schumann to make a living predominantly from what he earned from publishers' fees. Publishers united to participate in the creation of stronger copyright laws. They could depend on legal protection against reprints and it was thus possible for them to offer higher fees.

Keywords: economic history of music copyrights • intellectual property rights • music business • business history

realisation of the goals will provide commercially viable music based on consumers' willingness to pay and music which can be described as a 'merit good'.

Copyright legislation has changed in parallel with developments in technology. This article describes how changes in the organisation of German music publishing during the early nineteenth century benefited Robert Schumann but not Ludwig van Beethoven a few decades earlier.

Beethoven and Schumann were chosen as examples of the evolution of early copyright law for two interrelated reasons: they comply with the second of the two requirements laid out above, of meaningful copyright legislation, in that they both fulfilled listener demands by releasing high-quality music on the market. Their music is of such undisputed quality that not only have their artistic efforts and merits been researched but the details of their financial circumstances are also available.

Baumol and Baumol, in their study of Mozart's financial circumstances, cited Otto Jahn's statement in his 1891 Mozart biography that the composer did not earn much from the publication of his works: »... the music trade of the day was small and insignificant; indeed, the first impulse was given to it by the publication of an edition of all Mozart's works soon after his death...« (Baumol & Baumol, 1994). Beethoven did begin to collaborate intensively with a number of publishers within a decade of Mozart's death in 1791. Beethoven therefore fits well as a first example of the economic potential of early copyright legislation.

This article focuses on copyright as an element of the composer's income. Other kinds of income are discussed and presented only in order to put the copyright revenues in the proper financial context. F.M. Scherer (2004) has covered a lot of what is known regarding such sources of income. His chapter on copyright matters is largely limited to a presentation of data collected from Robert Schumann's household books. The same primary data is used here but presented in a way which differs from that of Scherer. It has not been possible to reconstruct the econometric results presented by Scherer; his regressions models were not presented in his book. The results here therefore differ somewhat in detail as compared to those presented by Scherer.

2. The Beginning of an 'Originator Consciousness'

The Originator Concept is a 'Child of the Renaissance' (Pohlmann, 1962: 19). Early medieval music was created by anonymous composers and in music history textbooks Guillaume de Machaut (ca. 1300-1377) is often acclaimed as the first known, or at least mentioned, composer. Composers at this point began adding their names to scores. The century before the Gutenberg invention was used to print music saw a large number of manuscripts and hand-copied scores with the composer identified on the first page or the cover as the 'author'. Heinrich Isaac (1450-1517) added his name to the title on the front page of his pieces ('Henrico Ysac

Auctore'). Similarly, Josquin Desprez, Guillaume Dufay and Johannes Ockeghem ensured that they were identified as the composers of their oeuvres.

The profession of composer was separated from the profession of performing musician and recognised as such by court employers during the fifteenth century. One of the first to have a salaried position as composer was Heinrich Isaac, who called himself 'Kunglichen Mayestat Componisten' (Royal Majestic Composer) when he acknowledged the contract written and signed by the Emperor Maximilian on 3 April, 1497:

We have recorded our faithful Heinrich Ysaackh as our Composer and Servant and to him all years, the decision as announced verbally by ourselves, grant 200 rheinish gulden and after his retirement his Housewifes 50 gulden to draw from our Treasury. (Pohlmann, 1962: 22)

After Isaac's retirement, the emperor's accounts also mention payments made »... to our Composer Ysaakh all years his lifelong 150 gulden.« (Pohlmann, 1962: 22)

A further sign of the recognition of composers was promotion to the aristocracy. This normally rendered further financial compensation. Of the more well-known composers, Orlando di Lasso, the brothers Hans Leo, and Jakob Hassler had nobility conferred upon them.

This type of employment with royal and aristocrat courts was the prime source of income for composers until the first decade after the French Revolution. Joseph Haydn had a long tenure of over thirty years at the Esterházy court but thereafter, from the 1790s, he became one of the first freelance composers. He was probably inspired by Georg Philipp Telemann, Georg Friedrich Handel and Christoph Willibald Gluck, who had succeeded in becoming independent, freelance and multi-tasked musicians-conductors-producers-composers.

3. Fundamental Economics of Composing

Music is obviously not a homogeneous good. A string quartet by Benjamin Britten is quite different from a Shostakovich quartet although the two composers were contemporaries and even friends. Songs by single singer-song-writers cannot be substituted for each other. Publishers, media, venues, promoters and dealers, sometimes even musicians, generally contribute little to the creative process which makes one piece of music differ from another. Fundamental heterogeneity is created by the composer and it is sometimes aided by a producer. He/she and the others involved in the music business try to convey utility values to the listener/consumer to create a feeling of desire which can be expressed through a demand for music.

The general idea of supply as a response to demand is hardly directly applicable to music. It is rather the single entrepreneurs, the composers (with the help

of the industry), who create the demand and the market for their goods. Possibly the pop music business, more or less by definition, is more focused on demand from existing consumer tastes whereas art music tries to expand tastes and so create a demand for new musical expressions.

The first major article on the economics of Intellectual Property Rights (IPRs) was published by Arnold Plant in 1934. One of his main points was that IPRs create scarcity, whereas property rights as applied to physical goods manage scarcity. Plant credits Sir Louis Mallet, who discussed the issue of scarcity and exclusivity in an 1878 report. Mallet obviously made points similar to those in the current copyright piracy debate:

A limitation of supply by artificial causes creates scarcity in order to create property. It is within this latter class that copyright in published works must be included. Copies of such works may be multiplied indefinitely, subject to the cost of paper and of printing which alone, but for copyright, would limit the supply, and any demand, however great, would be attended not only by no conceivable injury to society, but on the contrary, in the case of useful works, by the greatest possible advantage. (Plant, 1934: 193)

Copyright provides necessary monetary incentives for creative work which benefits the producer, the consumer and society. Copyright legislation thus has qualitative implications. Quality in this case describes differences in character – it does not necessarily define good or bad, which is a separate, much more complex, matter, and one which is most likely futile in our post-modern age.

4. Musical Public and Non-Public Domains

Music copyrights apply to the fruits of the artist's imaginative work. Most of the raw materials used in the composing and performing of music belonged or belong to the public domain, for instance:

- Rhythms
- Keys
- Scales
- Notation
- Instruments
- Musical forms or formats (e.g. the sonata form)
- The well-tempered intonation

Between the Middle Ages and the French Revolution with its subsequent Napoleonic Civil Code, melodies were also regarded as belonging to the public domain but during this long time span which included the Renaissance and the Baroque periods, plagiarism became increasingly questioned. Based on both the originator concept, as previously discussed, and music copyright legislation gradually introduced from around 1500, the partial or full incorporation of pieces of other composers was condemned. The upshot was that any person who was found not to be the actual composer and thus was guilty of plagiarism suffered a loss of prestige.

As the profession of composing became recognised and was beginning to pay off, plagiarism was considered the same as cheating on one's paying audience, employer or publisher. This moral disgrace fell, for example, on Wilhelm Friedemann Bach, who in 1749 was found guilty of presenting as his own a piece composed by his father Johann Sebastian (Pohlmann, 1962: 49). Again, Emperor Karl V of Spain, an avid music lover, heard a piece in 1556 by the then famous composer Francisco Guerrero. The Emperor recalled hearing the piece before as a composition by another master. Therefore Guerrero became stigmatised (Pohlmann, 1962: 53).

According to the first music property rights thinker and composer, Johann Mattheson of Hamburg, the melody also distinguishes one piece from another. Mattheson discussed a natural-rights-derived code of honour for composers in his *Grundlage einer Ehren-Pforte* of 1740. This concept was based on the fundamental idea of *suum cuique* (to each according to his merits) as described by Plato, Cicero, and the philosophers of the Enlightenment. Mattheson was the first to identify composers as having actual property rights to their music (Pohlmann, 1962: 51).

Most musical formats and the well-tempered intonation are the fruits of someone's mind. If invented today, IPRs would perhaps be applicable and claimable. Very little of today's music, whether popular or arty, would be possible without well-tempered intonation. Neither modulations, as in Mozart's Jupiter symphony, nor simple key lifts, as in the stylised Eurovision Song Contest formula, sound agreeable with the pre-Baroque Pythagorean 'just' tuning or the meantone temperament. There is no licence in the use of the well-tempered intonation.

5. Early Copyright Legislation

The very first publicly declared copyright originated with the rulers of Venice in 1469, a short time after Master Johannes von Speyer established a printing shop there. Master Johannes was actually granted much more than simply a right to copy; he was given a five-year monopoly on the right to print. In modern terms, this was a typical example of infant industry protection. It was motivated by arguments – which we can recognise from similar debates in our own time – that:

... such an innovation, unique and particular to our age and entirely unknown to those ancients, must be supported and nourished with all our goodwill and resources and ... the same Master Johannes, who suffers under the great expense of his household and the wages of his craftsmen, must be provided with the means so that he may continue in better spirits and consider his art of printing something to be expanded rather than something to be abandoned, in the same manner as usual in other arts, even much smaller ones. (Johannes of Speyer's Printing Monopoly, 1469)

There is no reference to moral issues in this document, only to pecuniary matters. It is thus clear that from the outset the legislative concern was focused on,

pro primo, safeguarding the producer's income in order for him, *pro secundo*, to be able to provide the public and consumers with the product they desired. There is no point in copyright regulation if it does not promote both aims.

Master Johannes's monopoly was succeeded by a multitude of privileges given to both authors (understood to include composers, visual artists, etc.) and publishers, each being provided a monopoly, and thus 'copyright', for a single piece of art. The Senate of Venice, again acting as pioneers, gave the publicist Pietro da Ravenna, and his publisher of choice, the exclusive right to print and sell his book *Phœnix* (Matthews, 1890). One of the first privileges, certainly the first in the German Empire and the first episcopal one, concerned the printing of religious texts. In 1479, the Prince-Bishop of Würzburg, Rudolf of Scherenberg, granted privileges to three printers. His intention was to standardise the books used in all churches in his empire (Privilege of the Prince-Bishop of Würzburg, 1479).

Martin Luther fiercely defended his originator's rights in the prefaces of both the Wittenberg Song Book of 1529 and the *Geystliche Lieder* of 1545, as well as in other manuscripts. In his famous 'Warning to the printers' of 1545, Luther complains about greedy people reprinting his translated Bible carelessly:

Avarice now strikes and plays this knavish trick on our printers whereby others are instantly reprinting our translation and are thus depriving us of our work and expenses to their profit, which is a downright public robbery and will surely be punished by God and which is unworthy of any honest Christian.... But this I must lament about avarice, that these greedy and rapacious pirate printers are handling our work carelessly. For, seeking only their own profit, they don't care much about the accuracy of what they are reprinting, ... (Luther's 'Warning to the Printers', 1545)

This might represent the first printed use of the word 'pirate' to refer to one who copies another person's work without permission.

The English King Henry VIII was even more aware of the power of the press, and he felt a strong need to control that power. He issued what is now known as the 'Henrician Proclamation of 1538'. The focus is readily apparent within the opening sentence: »The King's most royal majesty, being informed by sundry contentions and sinister opinions have, by wrong teachings and naughty printed books ...« (Henrician Proclamation, 1538).

A system of printing licences was established under King Henry which combined the economic ownership that the privilege provided to the printer with prior ideological control enjoyed by the ruler. Perhaps he inspired Henry II of France to make a similar censorship proclamation in 1547 (French Censorship Act, 1547). Two years after the issuance of the French edict, Saxony issued a similar proclamation.

During the reign of the English Queen Mary Tudor, the Royal Charter of the Company of Stationers from 1557 regulated printing within England. The Com-

pany of Stationers was granted control over all printing which occurred in the country. This is normally referred to as the 'stationers' copyright', and it provided Queen Mary's government with indirect control over printing privileges as well as weak censorship enforced by supporting proclamations throughout the Tudor period.

The first recorded copyright declaration regarding artistic products other than books was issued in France in 1676 during the reign of King Louis XIV – 'le Roi Soleil' (Decree on Sculptures, 1676). The decree was signed by the *Contrôleur Général des Finances* (Minister of Finance), Jean-Baptiste Colbert, the famous French mercantilist.

The use of licensing copyrights, which essentially constituted a form of censorship, was contested by Daniel Defoe in an important article first published in 1704, 'An Essay on the Regulation of the Press'. Defoe not only favoured a liberal press policy without licences, but he also discussed pirating in terms similar to those used by Luther 150 years earlier:

'T'would be unaccountably severe, to make a Man answerable for the Miscarriages of a thing which he shall not reap the benefit of if well perform'd; there is no Law so much wanting in the Nation, relating to Trade and Civil Property, as this, nor is there a greater Abuse in any Civil Employment, than the printing of other Mens Copies, every jot as unjust as lying with their Wives, and breaking-up their Houses.' (Defoe's *Essay on the Press*, 1704: 28)

Like Luther, Defoe used the pirate analogy, for instance in saying, »...pirating Books in smaller Print, and meaner Paper, in order to sell them lower than the first Impression«.

The types of ideas which Defoe advocated were broadly accepted in The Statute of Anne, 1709/10. Many consider this act to be the world's first copyright legislation but, as can be understood from a reading of the related sources above, this claim is somewhat dubious. The right to copy described in the Statute of Anne is not much different from that described in several prior acts issued in other parts of Europe and, indeed, also in Britain. An important difference in this statute, however, was that copyright ownership was assigned to the author rather than to the publisher or printer. The author-printer copyright was granted after the item had been listed on the Stationers' Register for a period of 14 years. After this period it was up to the author to decide whether the book should be copyrighted for another 14 years.

The concept of a time limitation for copyright derives from the Venetian Decree of 1469 described above, which gave Master von Speyer a five-year monopoly on printing in the city. The two-fold aim noted in the von Speyer Decree is also apparent in the Statute of Anne: (1) the concern for the income of the author and the printer, and (2) the good that the author conveys to the betterment of society. This latter concern was evidenced in the duty to provide the libraries of

nine major universities in England and Scotland with a copy of all printed items sold. Ronan Deazley has commented that the legislators:

...secured the continued production of useful books through the striking of a culturally significant societal bargain, a trade-off involving, not the bookseller and censorial state, but the author, the bookseller and the reading public. It was the free market of ideas, not the marketplace of the bookseller, which provided the central focus for the Statute of Anne. (Deazley, 2008: 7)

France experienced a similar development with the *Code de la Librairie* and other subsequent acts. The code was initially applicable only in Paris when it was first enacted in 1723, but was subsequently extended to apply to the entirety of the nation in 1744.

In both the Germanic countries—despite the fact that they lacked copyright legislation—and in France, commentators developed the notion of the author's ownership and the concept of intellectual property. Diderot summarised the discussions:

...what is the relation between commerce and literature; whether it is possible to degrade one without injuring the other, and impoverish the bookseller without ruining the author; what privileges are in regard to books, and whether they should be included under the general and odious denomination of other monopolies (*exclusives*); if there is some legitimate basis for limiting their duration or denying applications for their renewal; what is the nature of a bookseller's stock-in-trade; what rights of ownership to a work does the bookseller acquire from the writer (*litterateur*); whether those rights are temporary or eternal. (Diderot, 2002: 48)

Immanuel Kant was not only isolated geographically in Königsberg, he was also isolated intellectually when it came to some of his views on originators' rights as presented in *Von der Unrechtmäßigkeit des Büchernachdrucks* (On the Unlawfulness of Reprinting Books; Kant, 1785). To a greater degree than most other writers who touched on the subject, Kant recognised only the tangible object as property and advocated the publisher's right to what he had bought. According to Kant, once the publisher had bought a manuscript, the author surrendered the right to that property. This aspect of Kantian ideas remained at a dead end for more than two centuries until the internet file-sharing community of the late 1990s began to cling to the same type of reasoning in their quest for moral and intellectual support.

Johann Gottlieb Fichte, another German philosopher, wrote an article in which he developed earlier ideas on *Geistlichkeit* (spirituality). These ideas had been presented by Kant and many others prior to Fichte's publication, and were later discussed by Hegel, as well. Fichte made a clear division (Fichte, 1793) between:

1. The ideas presented in a book →

when read, ideas become the property of not only the author but also the reader and thus they then belong to the public domain;

2. The form in which the ideas are presented →
this form is a reflection of the author's personality which cannot be sold or copied and the form should thus be given copyright;
3. The book as a physical object →
the book can be bought and read, but it can also be sold or even burnt and the author would not have the right to object or oppose this. The buyer, however, has bought only that item and not the right to copy it.

This threefold division influenced contemporary and future legislative debates and coloured the manner in which such laws were written and conceived. The Fichte division was possibly influenced by the political and legislative zeitgeist.

The first copyright decree issued by the French National Convention after the revolution was a small article with only seven short paragraphs (French Literary and Artistic Property Act, 1793). The act was to have a fundamental influence on all copyright legislation efforts subsequently undertaken. It introduced:

1. the same rights for composers (and painters and draughtsmen) as for authors, as article 1 granted that, »their entire life enjoy the exclusive right to sell, authorize for sale and distribute their works in the territory of the Republic, and to transfer that property in full or in part;«
2. a *mortis autoris* clause which stated that the property rights defined in article 1 were transferrable to the authors' heirs, which constituted article 2 and stated that, »for a period of ten years following the death of the author,« and article 7, which stated that, »the heirs.... shall have exclusive property in those works for a period of ten years;«
3. article 3 provided the property owners (authors, composers, heirs) the right to assistance from 'officers of the peace' to confiscate »all copies of publications which have been printed or engraved without the formal written permission of their authors;« and,
4. »Counterfeiters are required to pay the true owner of the work a sum equal to the cost of 3,000 copies of the original edition« (article 4). Vendors of counterfeit editions were also required to pay authors the cost of 500 copies (article 5).

The creator of the decree, the President of the *Comité d'instruction publique*, Joseph Lakanal, urged the National Convention to accept it by arguing that:

Genius fashions in silence a work which pushes back the boundaries of human knowledge: instantly, literary pirates seize it, and the author must pass into immortality only through the horrors of poverty. Ah! What of his children...? Citizens, the lineage of the great Corneille sputtered out in indigence! (French Literary and Artistic Property Act, 1793: 4).

This copyright act, although valid, was not included in the *Code Napoleon*, later renamed the *Code Civil*, of 1804, although the thorough and well-defined

clauses on contracting included in the *Code Civil* would be of great importance for the implementation of copyrights.

As the boundaries of the Republic expanded during the Napoleonic wars, the French copyright act and the *Code Civil* were implemented in the occupied countries. Napoleon seized Vienna in 1805 for a period of four years, during which the new legislation influenced how composers such as Beethoven perceived their profession and how they should be remunerated.

F.M. Scherer has claimed to have found a slight decrease in the number of composers per unit of population in the decades immediately following the introduction of music copyrights in the UK (following a lawsuit initiated by Johann Christian Bach in 1752) compared with the period just prior. On the other hand, the idea that copyright protection would be an incentive which would lead additional talented individuals to pursue careers as composers has been corroborated in Scherer's analysis of late 18th-century and early 19th-century France, which introduced similar copyright protection a few decades after Britain (Scherer, 2004: 195).

5. Printing Technologies

The use of movable type in music printing was developed primarily by the Venetian printer Ottaviano dei Petrucci around 1500. His technology was the most advanced available during the sixteenth century. The use of engraved copper or pewter plates gradually came to dominate, as it was able to create better copies of pieces of increasing complexity. Johann Gottlob Immanuel Breitkopf upgraded the movable-type technology by using some 230 small sets, each a fraction of an item of notation and each able to be utilised in any one of several combinations. The lithographic printing method was used by its inventor, Alois Senefelder, to produce music prints in the early nineteenth century. The choice of printing method was based on qualitative ambitions and cost-benefit analyses which were based on:

<u>costs</u>	<u>revenues</u>
sunk costs in first specimen	market size
marginal cost for copies	consumer price
	price to retailer

Typesetting was somewhat cheaper but, for large quantities at least, Breitkopf & Härtel preferred the use of engraving due to the better quality of the final product (Hase, 1968: 398). The cost of printing was also still compared to the cost of hand-copying. The latter was typically done by freelance copyists, most of whom were low-ranking musicians. The time needed to hand-copy a piece of music was substantially less than the time needed to prepare a printed edition. If the potential demand for a piece of music was small, the cost-benefit analysis would favour hand-copying. Publishers' suggestions to composers often explic-

itly and to the chagrin of the latter, were for the composition of new, simple sonatas, duets or songs. The demand for pieces for performance at home by amateurs was huge, whereas the market for symphonies was much smaller. Even Beethoven himself accepted this as fact as, for his first symphony, he suggested the same fee as for a single solo sonata from a publisher in Leipzig.

Beethoven's *Missa Solemnis* consists of 31 individual parts, of which the string parts and the chorus parts each must have a sufficient number of precise copies to provide for the multitude of musicians and singers who will be performing. The composer let copyists prepare the material for the first performance. Beethoven's bill for the copying of this piece and Symphony no. 9, which was premiered in the same 1824 concert, was 800 Gulden W.W. (Moore, 1987: 217). Copies, probably of the score only, were hand-prepared for ten special subscription patrons at a cost of 60 Gulden each and sold at a price of 50 Gulden. One reason for their lower cost was the musical ignorance of the patrons. The accuracy needed in the performance was lost on the patrons and their copies often contained many errors. The printing permit was eventually obtained by Schott in Mainz.

The copyists were not reliable business partners. They often pirated the music by making unauthorised copies for sale. Haydn and Mozart had copyists work in their own flats so that they would be able to oversee their activities. Beethoven on occasion omitted the last page from the manuscripts he provided to copyists.

6. The Paradigm Shift of Music Creation in the Vienna of the 1790s

One of the most-heavily stylised facts in musicology is that Beethoven was the first freelance composer. He appeared in music history at the right time and in the right place. Most composers before him had been employed by nobility or by the clergy. Some, such as Handel and Telemann, had for at least part of their professional lives been freelance musicians-teachers-composers. In his very last years, Mozart could generally be conceived of as a freelance musician-composer, but this was a brief and not very successful period in his life. Haydn, who had been employed by Count Esterházy for more than three decades, began his successful freelance composing career at a late age in the 1790s. Beethoven came to Vienna at a time when several other composers were trying to establish themselves in a budding public music scene, with not only the nobility but a wider, more bourgeois audience as a target group. Two parallel movements contributed to this shift:

- New financial possibilities
- The idea of music as an art with aims which went beyond mere crowd-pleasing

Most economic historians agree that the industrial revolution and the changes which led to modern economic growth began in the British Isles, and were well under way during the second half of the eighteenth century. The old, landed

nobility invested in new industrial enterprises. To a large extent, the new entrepreneurs came from families with non-noble backgrounds. Financial resources were thus redistributed, first in favour of industrialists and bankers; from the 1820s, workers also began to see some benefit from this redistribution of wealth.

People and money moved into urban conglomerates. Social order and the social activities pursued in cities differed from those pursued among the landed gentry. The urban *nouveaux riches* wanted to gain access to similar types of amusements enjoyed by the aristocracy and they were willing to pay for them. Music must, in this light, be regarded as a good which will be demanded only once more basic human needs have been satisfied. The demand for such 'luxury' goods, in contrast to goods of necessity, will increase at a disproportionate rate as income rises. A comparatively small number of wealthy people were therefore able to make an out-sized difference in the course of music history, and hence it was in London that the first commercialisation of concert life occurred. Londoners had a particular taste for foreign musicians who, in many cases, could earn much more from their frequent performances in England than they could by performing in their own countries. In the 1760s, Leopold Mozart wrote home about a 'good catch of guineas' and, from his tours to London, Haydn is said to have brought home a small fortune of 15,000 Gulden (McVeigh, 2008).

The popular Italian Opera at the King's Theatre was forced to close for three seasons during the 1750s, resulting in a substantial number of public and semi-public concerts being promoted in other venues. A writer in *The London Magazine* was offended, complaining that music was not »the labour, principal attention, or great business of a people. Yet, how far, how scandalously it has of late prevailed, as such, in our country, let the shameful number of concerts now subscribed for in this kingdom, declare« (McVeigh, 2008: 49). The revival of the Italian Opera in 1754, luckily for the anonymous author, put an end to most of the public concerts. The number of subscription concerts began to gradually grow anew and, by the end of the century, concert attendance was well established on the social calendar. Composer-musicians such as Johann Christian Bach, Carl Friedrich Abel and Johann Peter Salomon were instrumental in bringing about this development.

Simon McVeigh (2008: 50 ff) has identified three different forms of promotional concerts performed in London during the latter half of the eighteenth century:

- Public concerts produced and financed by commercial entrepreneurs;
- Semi-public concerts sponsored by 'musical societies' and consisting of amateur musicians, occasionally augmented by professionals. The societies aspired to be socially inclusive—but only of gentlemen; and,
- 'Salons' for invited guests which placed the focus on the performers rather than on the music. The aim was to amuse guests and impress them with both the wealth and the good taste of the hostess.

The concert scene remained exclusive throughout much of this period, with a small audience pool of only a couple of thousand individuals in a city approach-

ing one million inhabitants. The target group was primarily members of the landed gentry with West End flats, although the new bourgeoisie were gradually sought after as concert audiences by professional artists who, naturally, saw a new market emerging for their services. The shift from a pastime exclusive to the nobility to a fully commercialised concert scene was neither swift nor without difficulties. There was a decline in the number of concerts in London during the first two decades of the nineteenth century until the new system had established itself. This system remained highly commercialised, as Mendelssohn noted in 1829: »Here they pursue music like a business, calculating, paying, bargaining, and truly a great deal is lacking ... but they still remain gentlemen, otherwise they would be expelled from polite society« (McVeigh, 2008: 52).

The concert scene in the major cities of continental Europe attracted smaller numbers and lagged behind that in London when it came to the implementation of commercialised promotions. This may very well mirror the fact that modern economic growth had developed earlier and more quickly in Britain. More or less the same type of shift, from exclusive performances for the nobility to a more public commercialised concert scene, nevertheless also occurred in, for example, Paris, Berlin and Vienna (Werner et al, 2008).

According to DeNora (1991: 43), an impoverished aristocracy has been suggested by many scholars as the primary reason for the disbanding of many of the *Hauskapellen* (court orchestras) in the late eighteenth century. This forced musicians to seek out job opportunities elsewhere. What they probably observed was that the reduced wealth of the nobility was not only nominal but also relative to other groups in society. Mercantilism had been the economic doctrine for the period before the end of the eighteenth century. In many ways, its focus on building a strong economy for the ultimate end of (military) national power is shown in the state/court intervention in music production through the establishment of the *Hauskapelle*. Following the publication of Adam Smith's *Wealth of Nations* in 1776, reformed mercantilism was succeeded by market-oriented, laissez-faire economics, indicating a shift to more commercialised concert production for broader and, to some extent, anonymous audiences. Contemporary economic theory thus advocated free competition among concert promoters. Musicians and their music have always been drawn to where money can be found, and now they turned to a more 'general' public.

The artistic or 'content' aspect of the paradigm shift can easily be described; explaining it, however, is more complicated. Any explanation must be based on the notion that the timing was right and ready. Enlightenment philosophy was widespread and accepted in broad parts of society. The French Revolution had also inspired artists to take on a new identity, one which ascribed to them more professional integrity than they had hitherto enjoyed. The utilitarian role of the composer and musician as servant with the sole aim of attending to his master's

immediate pleasure changed with the new egalitarian ideas of the Enlightenment. Goethe's *Werther*, published in 1774, contributed to the snowballing of Romanticism, of which the concept 'l'art pour l'art' was to become part and parcel. These ideas were eventually formulated and presented by Hegel (which is not to say that he was their sole originator):

No content, no form is more immediately identical with the innerness, with the true nature, of the substantially unconscious being of the Artist; whatever the subject matter is indifferent for him ... there is these days no matter which in itself stands above this relativeness. (Ullrich, 2005: 235)

In regards to music in particular:

Music holds within itself the most possibilities among all the Arts to liberate itself not only from every real text but also from the expression of any definite content, if only to satisfy an in itself closed progression of build-ups, changes, contrasts and mediations, which falls within the pure musical realm of tones. In this case the music is, however, empty and meaningless as it parts from the main object of every Art: spiritual content and expression; and it is thus actually not to be regarded as Art. Only if the Spirit is revealed in some clear-cut way in the sensual element of tones and its plentiful figurations does the music elevate itself to true Art. (Hegel, 1838: Chapter III, section I.I. b. paragraph 1)

The royal librarian Gottfried van Swieten (1733-1803) was to have an instrumental effect on the direction of music as an art form. He first worked as an Austrian diplomat to major European courts in, for instance, Paris and Berlin. According to Olleson, it was, in fact, van Swieten's knowledge of music that made him ideal as the Austrian representative at the Berlin court headed by the composer-musician-emperor Frederick the Great (DeNora, 1995: 52; DeNora cites Olleson's dissertation from 1967). Olleson claimed that contemporary Berliners considered their cultural and musical life to be far superior to that enjoyed by the Viennese. During his tenure in Berlin, from 1770 to 1777, van Swieten's musical preferences changed and, by the time he returned to Vienna, »he was an ardent spokesman for the serious in music and the ideology of greatness« (DeNora, 1995: p. 23). Berlin was, after all, the capital of the Romantic ideological movement, with its emphasis on 'the genius'. Having returned to Vienna in the 1780s, van Swieten first influenced Mozart and Haydn to search for serious music in the old, traditional style of J.S. Bach. The influence of van Swieten on Beethoven following the latter's move to Vienna in 1792 was rather the opposite. In this instance, van Swieten instead encouraged the modernness in Beethoven's genius.

On his return to Vienna, van Swieten was appointed royal chief librarian. He had a great love of music. He had composed several operas and symphonies but did not enjoy success in this field. It was as a sponsor and concert promoter that he was to influence the future of music.

It would be fair to say that those composers favoured and sponsored by van Swieten and his entourage were not the most prosperous in Vienna during this process. When van Swieten persuaded Mozart to compose in the old-fashioned, learned style of J.S. Bach in, for instance, the c-minor 'Great Mass', Mozart's reputation began to decline. In 1789, a writer in a music periodical declared that Mozart's music did »not in general please quite so much« as the music of the celebrated Kozeluch (who has heard of him today?) (DeNora, 1995: 314). Within a decade after Mozart's death, thanks to the shift in musical tastes, he was talked about as 'the immortal Mozart'. People of influence such as van Swieten brought about the advent, in the 1790s, of a new musical aesthetic based on ideas of seriousness, complexity and the artistic personality. The ageing Haydn and the young Beethoven were hailed as the main proponents of the new musical ideology.

The contemporary observer Johann Ferdinand von Schönfeld described van Swieten's influence thus: »When he [van Swieten] attends a concert our demi-connoisseurs refuse to take their eyes off him, trying to read in his posture, not always intelligible to all, what should be their own opinion of the music« (DeNora, 1995: 25).

Practically all of the major works authored by Haydn, Mozart and Beethoven in the 1780s and 1790s were performed with the aid of van Swieten and his *Gesellschaft der Associierten Cavaliere* (The Society of the Associated Knights, or GAC). The aim of the GAC was to elevate the taste for qualitative music among the society's mostly aristocratic members. In this way, they became real *Kennern* (connoisseurs) rather than less-learned patrons (*Liebhabern*) and van Swieten »thereby helped to preserve (at least for a time) the cultural boundaries between old aristocracy and others« (DeNora, 1991: 312).

7. Ludwig van Beethoven

Although Ludwig van Beethoven (1770–1827) was a well-known composer during his life-time, his fame did not pay off substantially in monetary terms. His continuous struggle to make ends meet was, however, shared by most residents of Vienna. The Austro-Hungarian Empire and its capital were hard-hit by the Napoleonic Wars. This, in combination with the Enlightenment ideas disseminated as part of the earlier American and French revolutions, shaped Beethoven's life and work. His aim was to become an independent artist in his own right. The war contributions affected everyone. Currencies were altered, but nobody gained. After the peace settlement of the Congress of Vienna in 1814-15, a more stable world promoted optimism regarding economic growth. In the last decade of his life, Beethoven managed to secure a financial situation equal to that of a *Hofrat* (Royal Adviser). He eventually died in his seven-room flat in *Schwarzspanierhaus*—the largest and best-kept of his homes. More than 20,000 admirers followed Beethoven's cortège to his grave.

Beethoven was greatly influenced by the liberal ideas which swept through Europe and North America in the eighteenth century. His ambition was to make a living not as the employee of kings or the aristocracy, but as an independent entrepreneur selling his talent and his products on a free market. This attitude was novel in the history of music. Beethoven did succeed as an unattached musician and composer, but at a cost. He did not, however, renounce all financial aid from aristocratic patrons. Ladenburger has observed that, »although Beethoven valued his artistic freedom highly it in no way meant that he did not strive for well-paid employment. Thus the road to freelance composer was neither straight nor fully voluntary.« (Ladenburger, 2003: 1).

Musicians in Vienna in the 1790s—i.e., during the first years of Beethoven's Viennese career—found a world in transition from aristocratic sponsorship to a slightly more market-oriented set-up. Tia DeNora has claimed that musicians at that point had to begin to look for income from a variety of sources, such as, »teaching,... performing in privately sponsored concerts and salons, and small-scale, often subscription, publishing, supplemented with occasional concerts« (DeNora, 1995: 52).

Beethoven made much of his money in five ways:

- playing the piano and conducting in public and private concerts;
- composing on commission;
- composing music that was sold to publishers;
- donations from kings and the aristocracy; and,
- private pupils—Beethoven taught on occasion, albeit reluctantly.

During the last decade of his life, Beethoven learned to invest in the stock market established in Vienna following the Congress. His very early purchase of shares in the new Austrian central bank made him a pioneer among composers and musicians.

7.1 *The Performing Artist*

During the early growth period of the bourgeoisie in Vienna and elsewhere, modern music institutions had not yet been established and the number of available venues was limited. All musicians who wanted to establish themselves as independent artistic entrepreneurs had to do most of the promoting and production work themselves. They typically rented the hall and the orchestra themselves and, if necessary, they advertised, similar to what most freelance ensembles do today. Revenues from ticket sales not only had to cover the actual costs, but also had to provide enough of a surplus to allow the artist to live off of the performance for some time. Beethoven had the good fortune to be granted major venues for free on a couple of occasions. He produced such *Akademien* in:

Venue	Year	First public performances
Burgtheater	1800	Septett op. 20, 1 st piano concerto and 1 st symphony
Theater an der Wien	1803	3 rd piano concerto, oratorium <i>Christus am Ölberge</i> , 2 nd symphony
Theater an der Wien	1805	3 rd symphony
Theater an der Wien	1808	5 th and 6 th symphonies, 4 th piano concerto, choral fantasy op. 80, parts of Mass in C major op. 86

Beethoven recognised that his hearing was already defective in 1802. It worsened continuously. By 1815 he was completely deaf, and his performing career came to an end.

7.2 Support from Nobility: Stipends, Pensions and Dedication Fees

Stipends and pensions from nobility to composers with no performance obligations were common during the eighteenth century. Handel, for instance, was provided with an annual pension of £400 with no special duties required by the royal family during much of his London career. From 1787, Mozart received a similar royal stipend without commitments of 800 Gulden a year. After settling in Vienna in 1792, Beethoven was granted 600 Gulden per annum by Prince Lichnowsky. This came to an end, however, following a dispute in 1806 over a performance which the prince had demanded (DeNora, 1995: 55-56).

In July 1807, a new state, the Kingdom of Westphalia, was created through the Treaties of Tilsit. Napoleon announced his brother Jérôme as its first king. Three opera companies were established: one each in French, German and Italian. In 1808 Beethoven wrote to his friend, Count Oppersdorff, saying: »I have, furthermore, been called by the King of Westphalia to be his Kapellmeister, and it may well be that I will answer to this call«. The annual fee offered was 2,700 Gulden.

Beethoven appears to have made plans for his eventual migration to the Kassel court. This threat to the standard of Viennese musical life was confronted by Prince Lobkowitz, who managed to persuade Beethoven to stay by offering him a lifelong annuity of 4,000 Gulden which he, the Archduke Rudolph and Prince Kinsky would provide. When Emperor Franz I issued the Bankrottpatent in February 1811, as a response to the immense financial toll of the war, the Gulden was devaluated overnight to one-fifth of its previous value (signalling the shift from Gulden Konventions-münze [KM] to Gulden Wiener Währung [WW]). Beethoven, of course, insisted that the grant be adjusted. Prince Lobkowitz was favourably inclined to do so, but both he and Prince Kinsky were themselves hard-hit by the Bankrottpatent. Kinsky died prematurely and Beethoven struggled with his estate

for several years due to the devaluation. A small sum of 2,479 Gulden WW was delivered to Beethoven in March, 1815 (Guttierez-Denhoff, 2005). The annual grant was commented on by composer Ferdinand Ries in a letter to his publisher:

My teacher Beethoven obviously now has a life-long employment here for, N.B., to do nothing. Truly a nice lot for an artist who now can simply follow his whims. Now, at last, will he be able to produce really great master-pieces. (Beer, 2000: 15)

Dedications had a long tradition in literature already in Beethoven's time. In the Republican period of the Roman Empire, authors devoted their works to friends or role models as signs of respect and deference. Financial motives lay in the background. The later petitioning for dedications developed to the point of absurdity. Financially-precarious writers often dedicated their books to prestigious and financially powerful individuals in the hopes of shaking loose some form of financial contribution. The practice of dedications was thus intermarried with that of patronage (de la Durantaye, 2006: paragraphs 131–132).

Nicole Kämpken has claimed that Beethoven, like no other composer before him, calculated the advantages to be realised from dedications. Beethoven, from the first decade of his Viennese career, used dedications as a marketing tool. The theory was that the connection with a socially elevated person promoted Beethoven's own reputation; today's advertisers similarly use celebrities to market their products. It is obvious that the dedicatees felt some obligation toward Beethoven. The two piano sonatas, op. 14 from 1799, were strategically dedicated to Baroness Josephine von Braun. Her husband, who was responsible for determining which composers and musicians would receive the benefits of the *Akademie* (concerts), offered Beethoven the chance to hold his very first *Akademie* in the *Burgtheater* in the following year. Dedications to Prince Lobkowitz (string quartet op. 18 and the 'Eroica' symphony) paved the way for the annuity mentioned above. Only the Russian Tsar Alexander I and his Tsarina Elisaveta Alexeevna showed their gratitude as dedicatees in the form of money. The piano score of Symphony no. 7 brought in 50 Ducats, and the Violin Sonata op. 30 earned Beethoven 100 Ducats. The dedicatee of Symphony no. 9, King Friedrich Wilhelm III of Prussia, sent Beethoven—according to his scribbles in a conversation notebook—'a ring with a red stone'. Beethoven sold it to the court jeweller for 300 Gulden WW, which only just paid for the production costs of the dedication plaque (Kämpken, 2005: 181–184).

7.3 Commissions

The general public preferred music accompanied by drama for the stage or the cathedral to more 'absolute' concert music. In 1801, Beethoven composed

music to be set to Salvatore Viganò's innovative ballet, *Die Geschöpfe des Prometheus*. The ballet was performed more than twenty times in the royal castle and »there is no doubt that this... placed Beethoven in the public limelight much more than a single performance of one of his symphonies« (Geck, 2009: 42).

After Beethoven's public success in 1803, with the oratorio *Christus am Ölberge*—which was sung by many German choirs during the following decade—the creator and director of the *Theater an der Wien*, Emmanuel Schikaneder (who was also Mozart's librettist for *The Magic Flute*), asked Beethoven to compose a big, 'heroic' opera. Beethoven decided to compose a *Rettungsoper* (Liberation Opera). The French Revolution had inspired many others to similar deeds. The opera *Leonore*, a title later changed to *Fidelio*, was a failure as a production. The first performance took place on 20 November, 1805, with, ironically, an audience consisting primarily of officers of the occupying French troops; most of the Viennese admirers of Beethoven had fled to the countryside. If, in the 1790s, there was enthusiasm within the Viennese bourgeoisie for the French Revolution, this had certainly vanished by 1805 (Geck, 2009; Kämpken, 2005).

In 1822, the Russian prince Nikolay Borisovich Galitsyn commissioned Beethoven to compose three string quartets (opp. 127, 130 and 132) for an agreed upon fee of 50 Ducats per opus. The payments became complicated owing to sudden changes in the exchange rates. The money order the Prince sent was made out in rubles. In the period between the confirmation of the agreement and the sending of the money order, the value of the ruble had fallen vis-à-vis the WW. Beethoven complained and was granted some compensation (Kämpken, 2005: 181–184).

7.4 Publishers' Fees

Beethoven's main source of income seems to have been the fees he received from his publishers. Some pieces were written on commission, with contracts signed before Beethoven commenced composing. Other pieces were offered for publication after they had been composed and, sometimes, even after they had been premiered. Beethoven often tried to sell the same pieces to different publishers for different national markets. He then tried to monitor simultaneous releases. This business required much personal effort from Beethoven, although he was at times assisted by his brother and by friends.

Beethoven's main publisher was Breitkopf & Härtel in Leipzig. Their business relationship has been comprehensively described by the researchers at the Beethoven-Haus in Bonn (Kämpken & Ladenburger, 2007). His business relationship with two other publishers—Haslinger in Vienna and Schlesinger in Berlin—is also covered in ample detail elsewhere (Unger, 1981). A compilation of Beethoven's correspondences with Schott in Mainz is also available (Beethoven, 1985).

The business side of composing seems to have been disagreeable to the young composer. In a letter to the publisher Hoffmeister early in his career, he complained that:

Now is the sour business completed, I only call it that as I wish that the world could be different, that there should be only one artistic magazine in the world to which the artist could deliver his work and receive what he needed; alas, one must be half a businessman and how can one cope with this – dear Lord – this I call real sour. (Beethoven, 1801)

7.5 Example: Revenues from Symphonies

The multiple sources of revenue—from publishing, dedications, concert box office receipts, etc.—can be described using the Beethoven symphonies as examples (Kämpken, 2008):

Symphony no. 1 in C-major, op. 21

First performance: 1800, Hofburgtheater, box office net n/a
 First publisher: Hoffmeister, Leipzig
 Publisher's fee: 90 Gulden KM
 Markets: all
 Dedication: Baron van Swieten

Symphony no. 2 in D-major, op. 38

First performance: 1803, Theater an der Wien, net profit approx. 1,390 Gulden KM
 First publisher: Das Wiener Kunst und Industrie-Comptoir
 Publisher's fee: 700 Gulden KM
 Markets: all
 Dedication: Prince von Lichnowsky

Symphony no. 3 in E-flat major, op. 55

First performance: 1805, Theater an der Wien (after several private concerts for nobility)
 First publisher: Das Wiener Kunst- und Industrie-Comptoir (Kämpken, 2005: 181–184)
 Publisher's fee: n/a; Härtel had, however, prior to the agreement reached with Das Wiener Kunst- und Industrie-Comptoir, agreed to pay 1,100 Gulden KM for a set of op. 55, op. 85 (*Christus am Ölberge*), and op. 56 (Triple Concerto), three piano sonatas opp. 53, 54 and 57

Markets: all
 Dedication: Count Lobkowitz, 400 Gulden (probably Bancozetteln, which were worth less than KM)

Symphony no. 4 in B-flat major, op. 60

First performance: 1807
 First publisher A: Das Wiener Kunst- und Industrie-Comptoir
 Publisher's fee: 1,500 Gulden KM (in set with opp. 58-62)
 Markets: Austria
 First publisher B: Clementi, London
 Publisher's fee: 200 Gulden KM (same set as above)
 Markets: UK
 Reprints: approx. 1,700 Gulden KM (for the full set)
 Dedication: Count von Oppersdorff

Symphony no. 5 in C-minor, op. 67 & no. 6 in F-major, op. 68

First performance: 1808, Theater an der Wien, reached financial break-even at best
 Commissioned by: Count von Oppersdorff, for at least 300 Gulden KM
 First publisher: Breitkopf & Härtel
 Publisher's fee: 450 Gulden KM (in a set with opp. 69-70)
 Markets: all except UK
 Dedication: Prince Lobkowitz and Count Razumowsky

Owing to the Napoleonic war, the market was bad and Beethoven had to agree on a cut to his fee as compared with the steady increases he had realised for his earlier symphonies!

Symphony no. 7 in A-major, op. 92 & no. 8 in F-major, op. 93

First performance: 1813 (7th), 1814 (8th); the first few performances seem to have been financially successful, in total
 First publisher A: S A Steiner Verlag
 Publisher's fee: 1125 Gulden KM (included in set of 13 pieces)
 Markets: all but UK
 First publisher B: Birchall, London
 Publisher's fee: 585 Gulden (Dutch) for the piano versions of symphony no 7, *Wellington's Sieg*, violin sonata op. 96 and Archduke Trio op. 97
 Markets: UK
 Dedication of piano score: Tzarina Elisaveta Alexeevna, 135 Gulden KM

Symphony no. 9 in D-minor, op. 125

Commission:	London Philharmonic Society, 550 Gulden WW
First performance:	1824, Kärntnertheater, net box office profit 168 Gulden WW, 500 Gulden for the second performance in the main Redoutensaal two weeks after the première
First publisher:	Schott, Mainz
Publisher's fee:	600 Gulden KM
Markets:	all
Dedication:	King Friedrich Wilhelm III of Prussia, a ring with a precious stone sold by Beethoven for 300 Gulden WW

It is more difficult to trace contracts, payments and receipts for the extremely profitable reductions of full scores for the piano or small ensemble performances held mainly in private homes.

8. Pan-Germanic Copyright Treatise

Two weeks before his death, Beethoven and fellow composers such as Czerny, Spohr, Ries and Spontini signed a petition to the *Deutsche Bundesversammlung* (Pan-German Parliament) protesting against the illicit copying of printed music. The initiator was, however, another successful contemporary composer: Johann Nepomuk Hummel (Kämpken, 2005: 181–184). The petition Beethoven signed was not posted and his role in the process has been generally overrated (Beer, 2000: p. 64). Hummel began to collect signatures from composers for the petition well before it had reached Beethoven. The version of 1825, which was signed by Kalkenbrenner, Moscheles and Pixis, starts with a bundle of flattering clichés:

The signatories have united to obediently present to the Federal Parliament the enclosed petition with a humble suggestion regarding the bringing to an end of the harmful copying of pieces of music in Germany, in the complimentary hope that the high Federal Parliament for the promotion of German Art and Music will graciously grant the petition. (Kawohl, 2002)

According to Friedemann Kawohl, the *Vereine der Bürger* (Citizens' Association) played a vital role in the further development of copyright legislation in Prussia during the first half of the nineteenth century. The associations were democratically organised and voluntary. Prussian rulers accepted the associations only in cases where they did not interfere in political affairs. *Vereine*, founded on seemingly non-political ideas, therefore became clubs where debates over politics were disguised with, for instance, cultural activities. *Singvereine* and *Liedertafeln* were common meeting-points for the male bourgeoisie who were not necessarily

interested only in singing. Associations were soon established for a multitude of purposes. Kawohl mentioned potato provisions for the poor, sobriety and the education of workers as targets of interest (2002: ch. 4.1).

Associations were also created for business purposes. The book publishers united in an association, not dissimilar in purpose to the medieval mercantile guilds. One of the most important issues the association tackled was problems with unauthorised reprinting. The legal situation regarding books in Germany was complex because of different attitudes toward copying in different countries. Austria lacked efficient laws. An Austrian court decree of 11 February 1775 codified the principle that foreign publishers were not protected within the Empire. During the comparatively liberal reign of Emperor Joseph II, another court decree of 13 January 1781 explicitly accepted the copying of permitted foreign books as a business. The city of Bamberg permitted unlimited copying (Sachs, 1973). In Nassau and Württemberg, copying was allowed assuming certain prerequisites were met (Beer, 2000). The government of Hanover in 1773 regarded protection as desirable but refrained from passing legislation against piracy until a pan-German agreement could be reached. The state of Saxony took the first step, issuing a mandate on 18 December 1773 which gave copyright protection to all book dealers printing and publishing in the state for ten years. In 1776, the first intra-German copyright agreement was reached between Saxony and Prussia (Sachs, 1973).

Hummel worked for several years on the 500-page *Ausführliche theoretisch-practische Anweisung zum Pianoforte Spiel* (Complete Theoretical and Practical Course of Instructions on the Art of Playing the Piano Forte). It was an item for which he anticipated a huge demand on the international market. After placing it in secure French hands in 1825 (with the publisher Aristide Farrenc), Hummel laboriously began to collect privileges from every single state in the German confederation. By February 1827, privileges had been granted by Baden, Bavaria, Braunschweig, Frankfurt, Hanover, Hesse-Cassel, Hesse-Darmstadt, Prussia, Saxony and Württemberg. The duration varied from six years (Bavaria) to 25 years (Baden). The book finally appeared in the autumn of 1828 (Sachs, 1973).

Music publishers of course had the same interest in copyright issues as did book publishers. In fact, the community of music publishers managed to unite, on a pan-Germanic basis, to fight against unauthorised reprinting sooner than the book publishers were able to do the same. The music publishers' treaties from 1829 (*Konventionalakte*) and 1830 (*Erweiterungsakte* – Extension Act) seem to have been a response to the lack of state regulations concerning the printing of music. Such regulations were already in place or were anticipated to come soon for the printing of books, but this was not so for the printing of music. Even before the treaties had been signed, music publishers in the German Confederation often entered into written partnership agreements. Measures were taken to advertise the names of re-printers and thus make them the targets of public contempt (Kawohl, 2002: ch. 4.1).

The secretary of the publishers' association, Friedrich Hofmeister, was convinced when 16 publishers signed the *Konventialakte* that it was only the first step and that more and more publishers would gradually come to better understand 'the meaning of mine and yours' and sign up. When the *Erweiterungsakte* was issued six months later, 43 firms had grasped the essential message. In late 1830, after the acceptance of the agreement by all but one Viennese publisher, the association against piracy counted 64 members (Sachs, 1973). Only a small number of minor publishers still did not adhere to the guild agreement. The principle was formally enacted by the royal government of Saxony in 1831. In the following year the *Deutsche Bundesversammlung* issued its first decree on the matter (Beer, 2000: 64–69). The laws which applied in the different states, however, were not uniform. Such uniformity was not achieved until 1834, when the Federal Conference of Ministers, at a meeting in Vienna, decided »that piracy be forbidden within the confines of the entire Federal territory and that the property of authors be established and protected by uniform principles« (Sachs, 1973: 59). These uniform principles were issued as the Federal Resolution of 8 November 1837, three weeks after Hummel's death.

The efforts of Enlightenment thinkers and composers, such as Hummel, to establish the author's rights—in the form of 'intellectual property'—as part of a more general concept of property were not fully successful until Joseph Kohler published his *Das Autorrecht, eine zivilistische Abhandlung* (The Author's Right, a Civilian Treatise) (Kohler, 1880). Kohler established the concept of *Immaterialgüter-rechte* (Rights for Immaterial Goods) as encompassing patents, copyrights and design rights (Kawohl, 2008).

9. Robert Schumann

As the son of a publisher, the descendant of a famous poet, and himself the first editor of *Die Neue Zeitschrift für Musik*, Robert Schumann was well acquainted with the copyright discourse of his time. He wrote to a friend in 1837, suggesting the »founding of an agency for the publishing of works of all composers who choose to submit to the statutes of the agency«, an idea similar to Hummel's idea of enhancing the originator's rights in relation to publishers (Kawohl, 2002: 295).

Schumann kept both extensive diaries and meticulous household books. The diaries encompass everything from quotes, poems and small articles to people, journeys and marriage. To these diaries Schumann attached his household books. In February 1854, Schumann was voluntarily hospitalised for severe mental illness; he remained in the hospital until his death, two years later. During this time, Clara Schumann and Johannes Brahms acted as his book-keepers.

In the diary he kept during his tour of cities within the Russian Empire, Schumann noted the net fees or the net box office revenues from his solo recitals (Table

1). The total net income from this extensive tour thus seems to have been 1825 Thaler²—the equivalent of 3,200 Gulden at the time. Schumann also listed souvenirs he purchased or received, which included a number of valuable gifts from, for example, the Tsarina, and local nobility such as Prince von Oldenburg and Countess Bobrynska.

According to the entries dating to the second half of 1844, Clara Schumann received *Wochengeld* (a weekly allowance), plus many ‘extras’, amounting to 466 Thaler. This could be interpreted as the costs of food and looking after their children, as Robert’s accounts lack such details and Clara was likely responsible for their care. One hundred and ten Thaler were given to her before a trip to the Carlsbad spa. For Clara’s birthday, Robert purchased a ring for 75 Thaler. A dress cost 18 Thaler, and his new spectacles were 3 Th. 20; Schumann paid 1 Thaler for a ticket to a performance of Mozart’s *The Magic Flute*.

A typical *Wochengeld* in 1844 was 8 Thaler. By 1853, it had increased to 14 Thaler. In 1841, the Schumann’s first year of marriage, their household expenditure on Clara’s weekly allowance represented 35% of all costs. Eating out, which they typically did once a day, comprised 11% of their expenditures, furniture 10% and rent 7% of their total costs (Scherer, 2004: 211).

Table 1. Concert fees or box office net revenues from R. Schumann’s tour of Russia, February 2-5 May 1844

Source: Tagebuch 16 – Reisenotizen VI, 1. Teil: Rußland, 25. 1. – 31. 5. 1844 (Nauhaus, ed)

1844	City	net revenue – Thaler
2 Feb	Königsberg	156
3 Feb	Königsberg	78.28
11 Feb	Mitau	184.4
12 Feb	Riga	253.12
13 Feb	Riga	244.6
14 Feb	Mitau	83.14
15 Feb	Riga	126.22
20 Feb	Dorpat	46
21, 23, 26 Feb	Dorpat	698. 8.
15 March	St Petersburg	512
20 March	St Petersburg	457
24 March	St Petersburg	617
29 March	St Petersburg	1039
20 April	Moscow	416
27 April	Moscow	517
5 May	Moscow	436

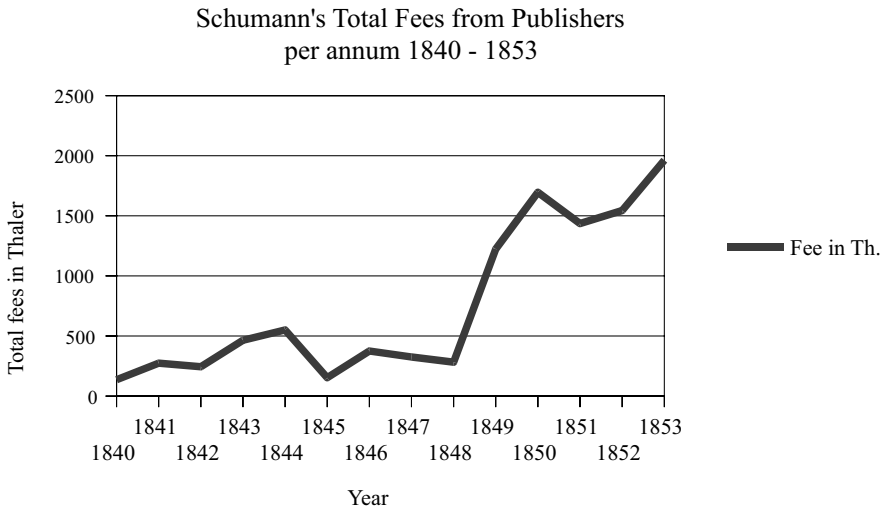
² The Dresdner Münzvertrag of 30 July 1838 established the exchange rate between the South German Gulden and the North German Thaler. The new ‘*Vereinsmünze*’ were valid in all member states in the *Deutsche Zollverein* (German Customs Union); 2 Thaler = 3.5 Gulden.

In 1844, the year of Schumann’s Russian concert tour, he published only a single piece. It was, however, a major piece—namely the opera *Das Paradies und die Peri*. The remuneration was substantial, at 550 Thaler. This resulted in an increase of the total publishing fee for that year compared with the previous year, even though he had published seven pieces in 1843.

Robert Schumann, like Beethoven, dedicated pieces in the hopes of receiving financial compensation. One such example is the dedication to King Oskar I of Sweden-Norway of Symphony no. 2, published in 1847. Oskar was a progressive and liberal crown-prince and king with a keen interest in music. He obtained a favourable review from Schumann of one of his compositions in *Die Neue Zeitschrift für Musik*. Schumann was rewarded with a gold medal from King Oskar in return for the dedication.

Graph 1.

Source: list of Schumann’s published works, Appendix



The success of Robert Schumann’s professional career is also apparent in the increase to the publishers’ fees he received: the rate of income growth for the independent variable »opus« was 0.93 per cent; the average annual growth rate was 5.7 per cent. As is illustrated in Graph 1, however, there was a sharp increase in 1849, after which the growth rate seems to have more or less normalised. The year 1849 was a very productive year for Schumann in terms of the number of works. Of the 12 pieces he published, none were major works such as an opera, a symphony or a concerto with orchestra. The most profitable was the *Liederalbum für die Jugend*, comprised primarily of educational pieces for piano students, for which

the publisher Breitkopf & Härtel in Leipzig anticipated a profitable market demand. For *each* of the three similar educational albums he produced, Schumann received approximately 220 Thaler, which is 40% of what his second opera, *Genoveva*, earned him, and 10% more than his third symphony brought in.

In 1850 Schumann was appointed *Städtischer Musikdirektor* (City Music Director) in Düsseldorf. Such a position was probably offered with some pecuniary compensation, although his household books lack any information on the topic. His disposition was hardly suitable for such a position—which included, for instance, orchestra and choir conducting. His unsuitability to the role became obvious in 1853, and it probably contributed to his attempted suicide in February 1854 and his subsequent hospitalisation.

Clara Schumann was herself a famous piano virtuoso both before and after her marriage. Robert Schumann's diaries are not particularly explicit when it comes to describing what she might have contributed to the household purse. It is clear that for most of the marriage she refrained from pursuing a career of her own. The only exception came in 1845, when Robert suffered from severe fatigue after working hard the previous year. The Robert Schumann legacy was small—practically non-existent. Following her husband's death, Clara was forced to renew her own career.

10. Composers and Publishing after Schumann

The increased awareness of the market possibilities of immaterial artistic goods, the pressure placed on legislatures by stakeholders, enforcement problems and the use which publishers (and in turn composers) made of the new regulations can be traced in the rise of the Casa Ricordi publishing house in Milan in the nineteenth century.

Upon opening his business in 1808, Giovanni Ricordi did not hesitate to infringe on the rights of other publishers. Rossini sold the rights to his opera *Semiramide* in 1822 to Teatro La Fenice in Venice, which had commissioned the work, for a total of 26,000 lire. For the price of 3,000 lire, the theatre in turn granted Artaria, in Vienna, the right to print scores for distribution in the Austrian market (which at that point included both Milan and Venice). Before Artaria had published his full *Semiramide* score, Ricordi had already put pieces from the opera, reduced for voice and piano, on the market. The same was done by Sauer & Leidensdorf in Vienna. Questioned by the *Delegazione Provinciale* in charge of theatres in Milan, Ricordi explained that only the rights to the full, original scores could be regarded as being covered by the law. Ricordi claimed that »[the law] neither mentions nor prohibits anyone from making variations and modifications on the work of others, which constitute the subject of a completely separate and new work in and of itself.« Those who issued reductions and variations had musi-

cian-spies at several performances transcribing from memory what they had heard. What was published was thus not based on the score and often not truly accurate. It is not known how Ricordi got access to the *Semiramide* material. A copyist might have provided some information or a singer may have shared his vocal part. Important in this case is that Ricordi, prior to the *Semiramide* affair, had accused Artari of printing similarly illicit parts of earlier Rossini operas for which Casa Ricordi owned the rights. There seem to have been no sequestration or damages and Ricordi continued to sell his *Semiramide* music (Gosset, 2003).

Giovanni Ricordi (and later his son Tito and grandson Giulio) managed to influence legislators in the states on the Italian peninsula and, after 1866, the unified Italian legislature to strengthen copyright laws. This was done in part to distance public authorities from all disputes between publishers. In one month in 1842, Ricordi and Lucca, another Milanese publisher, filed 35 suits against one another for reductions and variations extracted from the same score. The stronger and more explicit laws which favoured authors and publishers over producers, musicians and consumers made it possible for Casa Ricordi to buy up practically all of their Italian competitors and their music. Casa Ricordi also opened branch offices in major countries not only to promote and sell music but to proclaim the company's rights to its music (Baia Corioni & Forti, 2010).

The principles of the IPRs still in place today were internationally accepted at a conference held in Berne in 1886. The Berne Declaration not only covered publishing and printing but also the performance rights that had begun to gain acceptance in various countries in accordance with a court verdict in Paris in 1849 regarding the famous Bourget v. Morel case (Archives de Paris). After being revised at a conference in Berlin in 1908, the Berne Declaration was implemented by most Western countries—with the major exception of the US which, as late as 1989, in the face of increasing pressure from Hollywood, adopted it as part of the Trade Related Aspects of IPRs (TRIPs) agreement within broader WTO regulations.

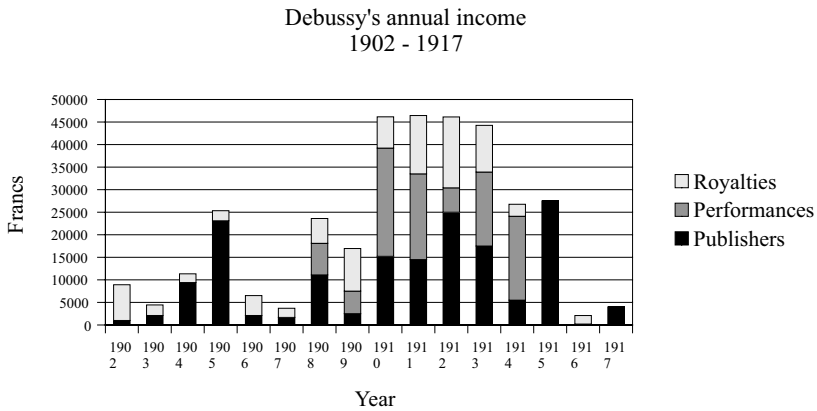
The Claude Debussy case shows that fees from publishers for the printing of music were also decisively important for *fin de siècle* composers. The right to print his music brought in almost half of Debussy's total income during the years in which he retained Paul Durand as his publisher (1902–1917). Approximately one-quarter of his total income came from his own performances as a pianist or conductor. The remaining quarter was earned through royalties accruing to his performance rights (Herlin, 2011).

Debussy was as reluctant as Beethoven and Schumann to teach private lessons. He had some conservatory assignments, but they added little to his bottom line. His performances became more frequent and lucrative following his marriage to his second wife, Emma Bardac. The marriage meant a step up the social ladder, which in turn demanded more income! Debussy seems to have enjoyed the social recognition and the fame. He balanced that good with the bad of touring and the effort required to perform. The alimony of 4,800 francs paid annually

to his first wife, Lily Debussy-Textier, following their divorce in 1905, put further pressure on Debussy's finances (Herlin, 2011: 162–165).

Graph 2 provides an alternative description to that provided by Denis Herlin (2011). It shows that the three kinds of Debussy's income played more or less equally important roles over the studied period.

Graph 2. Compiled from Denis Herlin's tables (2011)



As was the case for the other two composers, the fees paid by Durand to Debussy varied according to the perceived market value of the works. Thus *Children's Corner*, a collection of piano pieces, earned Debussy 3,000 francs in 1908, while the famous orchestral piece *La Mer* brought in only 2,000 francs in 1904. There were of course many more aspiring pianists around than there were symphony orchestras. Although George Hartmann was Debussy's primary publisher (and benefactor) until 1902, it was Paul Durand who bought the now much-cherished string quartet in 1893. The piece netted Debussy a mere 200 francs which seems to be the reason why Debussy refrained from composing more music for that kind of ensemble. His success in 1902 with the opera *Pelléas et Mélisande* assured Debussy some measure of financial security for the rest of his life. He was paid 25,000 francs by Durand in 1905 for the right to print the full score and the piano-vocal reduction. In 1910 alone, Debussy received approximately 6,000 francs, through Durand, as performing-rights royalties from opera companies in Paris, Berlin, Bremen, New York, London and Chicago (Herlin, 2011).

Debussy, as did Beethoven and Schumann before him, received his publishers' fees as lump sums. In the twentieth century this was often replaced by a system which provided the author with a fixed advance payment with a royalty (either a percentage or a fixed amount) based on the sales figures. Benjamin Britten, for instance, was accustomed to receiving relatively less as an advance payment

than did Debussy. On the other hand, he also received royalty revenues within the one-digit percentage range. Britten soon learned that if he composed songs by long-deceased poets without copyright claims he would not have to share that percentage with a contemporary lyricist (Kildea, 2002: 26).

The printing of musical scores, even in the twenty-first century, is still vital for performers of classical and contemporary art music. The printing of music for publishers, however, is of relatively far less importance today than it was for the original publishers of Beethoven and Schumann. Publishers have become composers' legal advisers and represent them in matters related, for instance, to the right for others to use a piece of music:

- for arrangements for new combinations of instruments/voices;
- on websites;
- in films or stage productions;
- in commercials; and,
- with new lyrics.

Publishers on occasion still play an important role in screening talent. Jürgen Köchel, an editor at Sikorsky Music Publishers in Hamburg, went on a business trip to Moscow in 1970, where he took an interest in the music of Sofia Gubaidulina. He found that »within the Composers' Union she was not taken seriously at that time and was subjected to harsh criticism for her 'Western compositional techniques'. She had practically no chance of having her works purchased by the cultural bureaucracy or to get any commissions« (Kurtz, 2007: 89). Köchel was instrumental in promoting Gubaidulina's career.

11. Conclusions

Although performance rights were not part of contemporary copyright legislation, both Ludwig van Beethoven and Robert Schumann received substantial income from IPRs. The general legal and business conditions pertaining to the music publishing business improved considerably in the 50 years between the 1790s, when Beethoven began his career, and the 1840s, when Schumann was at his professional peak. The paradigm shift in politics, economics and music which occurred at the end of the eighteenth century had not yet made it possible for Beethoven, as the most renowned composer of his time, to survive solely on copyright fees from publishers. He depended on financial support from the nobility in a way which resembled the pre-paradigm shift system.

Schumann, although a successful composer, was hardly the most famous among his contemporaries. He was still able to make a living, however, predominantly from what he earned from publishers' fees. Publishers had by then united to participate in the creation of stronger copyright laws. They could depend on legal protection against re-printers, which in turn made it possible for them to offer higher fees to composers.

The importance of printed music was, of course, much greater in the nineteenth century than it would be in subsequent periods. Following the introduction of music recording technology, music lovers did not have to entertain themselves and their friends with music through live performances. Before this technological shift, music publishing was a business which was of equal importance culturally and financially to the publishing of literature.³ Copyright revenue from music publishing today plays only a minute role in providing composers with adequate incomes but it was of crucial importance for Schumann and his contemporaries. Modern composers, unlike Schumann, earn royalties predominantly from record sales, broadcasts and live performances.

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³ According to Dr. Gunnar Petri, former chairman of the STIM (personal comm.).

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APPENDIX

Schumann's published works, op. 25-135

Based on the housekeeping books

Year	Month	Opus	Publisher	Fee in Th.
1840	8	25 <i>Myrthen</i> , Liederkreis	Kistner	55
1840	10	28 Three Romances for piano	Breitkopf & Härtel, Leipzig	23
1840	11	- <i>Das Rheinlied</i>	Friese	16
1840	12	30 3 <i>Gedichte</i>	Bote u. Bock, Berlin	30
1840	12	31 3 Gesänge	Cranz, Hamburg	42
1840	12	32 4 <i>Klavierstücke</i>	Schuberth, Hamburg	64
1840	12	33 4 <i>Lieder</i>	<i>incl with op 32</i>	
1840	12	34 4 <i>Duetten</i>	Klemm, Leipzig	50
1841	4	35 12 <i>Gedichte</i>	Klemm, Leipzig	54
1841	5	36 6 <i>Gedichte</i>	Schuberth, Hamburg	50
1841	9	37 <i>Gedichte aus »Liebesfrühling«</i>	Breitkopf & Härtel, Leipzig	50
1841	9	38 Symphony no 1	Breitkopf & Härtel, Leipzig	120
1842	5	26 <i>Faschingschwank aus Wien</i>	Mechetti, Vienna	29
1842	9	39 <i>Liederkreis</i> (12 songs)	Haslinger	55
1842	11	40 5 <i>Lieder</i>	Lose & Olsen, Copenhagen	40
1842	12	41 3 string quartets	Breitkopf & Härtel, Leipzig	120
1843	4	44 piano quintet in E flat major	Breitkopf & Härtel, Leipzig	110
1843	5	42 <i>Frauenliebe und -leben</i>	Whistling, Leipzig	44
1843	9	46 Andante and variations for two pianos	Breitkopf & Härtel, Leipzig	55
1843	9	- 1 st part of <i>Balladen</i>	Whistling, Leipzig	30
1843	10	43 3 <i>Duetten</i>	Simrock, Bonn	15
1843	10	47 Piano quartet	Whistling, Leipzig	100
1843	11	48 <i>Dichterliebe</i>	C.F. Peters, Leipzig	110
1844	1	50 <i>Das Paradies und die Peri</i> , 1 st pay	Breitkopf & Härtel, Leipzig	275
1844	9	50 <i>Das Paradies und die Peri</i> , 2 nd pay	Breitkopf & Härtel, Leipzig	275
1845	1	49 2 nd part of <i>Balladen</i>	Whistling, Leipzig	25
1845	5	53 3 rd part of <i>Balladen</i>	Whistling, Leipzig	32
1845	5	56 1 st part of <i>Studien</i>	Whistling, Leipzig	40
1845	8	58 <i>Skizzen für Orgel oder Pedalklavier</i>	Kistner	28
1845	10	57 <i>Belsatzar</i>	Siegel, Leipzig	28
1846	1	52 <i>Ouverture, Scherzo und Finale</i>	Kistner	110
1846	1	54 Piano concerto	Breitkopf & Härtel, Leipzig	138
1846	7	60 <i>Bach-Fugen</i>	Whistling, Leipzig	71
1846	9	55 5 <i>Lieder</i>	Whistling, Leipzig	56
1846	9	59 4 <i>Gesänge</i>	<i>incl with op. 55</i>	
1847	6	61 Symphony no 2	Whistling, Leipzig	150
1847	6	61 4-hand arrangement	Whistling, Leipzig	50

Year	Month	Opus		Publisher	Fee in Th.
1847	7	64	4 th part of <i>Die Romanzen</i>	Whistling, Leipzig	15
1847	12	63	Trio	Breitkopf & Härtel, Leipzig	110
1848	1	62	3 <i>Gesänge</i> (male choir)	Whistling, Leipzig	56
1848	12	68	<i>Album für die Jugend</i>	Schuberth, Hamburg	226
1849	2	65	<i>Ritornelle</i>	Breitkopf & Härtel, Leipzig	44
1849	2	66	<i>Bilder aus Osten</i>	Kistner	66
1849	3	73	<i>Fantasiestücke</i> (clarinet & piano)	Luckhardt, Kassel	68
1849	4	70	<i>Allegro</i> (French horn & piano)	Kistner	55
1849	5	27	<i>Lieder und Gesänge</i> volume I	Whistling, Leipzig	36
1849	5	71	<i>Adventlied</i> (sopr, chorus & orch)	Breitkopf & Härtel, Leipzig	115
1849	5	74	Spanisches Liederspiel	Kistner	166
1849	7	69	<i>Romanzen</i> for women's voices	Simrock, Bonn	110
1849	7	75	<i>Romanzen und Balladen</i>	Whistling, Leipzig	90
1849	7	76	4 <i>Märsche</i> for piano	Whistling, Leipzig	55
1849	7	79	<i>Liederalbum für die Jugend</i>	Breitkopf & Härtel, Leipzig	220
1849	11	78	4 <i>Duetten</i>	Luckhardt, Kassel	60
1849	11	80	Trio	Schuberth, Hamburg	138
1850	2	51	<i>Lieder und Gesänge</i>	Whistling, Leipzig	42
1850	4	81	<i>Genoveva</i> , opera	C.F. Peters, Leipzig	110
1850	4	83	3 <i>Gesänge</i>	Schuberth, Hamburg	37
1850	5	82	<i>Waldszenen</i> (piano)	Kistner	102
1850	5	85	12 <i>Klavierstücke für kleine und große Kinder</i>	Schuberth, Hamburg	279
1850	6	6	<i>Davidsbündlertänze</i> , piano, new edition	Schuberth, Hamburg	55
1850	6	89	6 <i>Gesänge</i>	Kistner	74
1850	7	5	<i>Impromptus</i> , piano, new edition	Hofmeister, Leipzig	20
1850	7	72	<i>Vier Fugen</i> , piano	Whistling, Leipzig	55
1850	7	81	<i>Genoveva</i> , opera, 2 nd payment	C.F. Peters, Leipzig	440
1850	8	86	horn concerto	Schuberth, Hamburg	55
1850	8	87	Ballade, »Der Handschuh«	Whistling, Leipzig	67
1850	8	89	3 <i>Gesänge</i>	incl with op 87	
1850	8	91	<i>Romanzen</i> for women's voices	Kistner	74
1850	10	82	<i>Waldszenen</i> (piano), new ed. from new publ?	Senff, Leipzig	90
1850	11	94	Three Romances for oboe and piano	Simrock, Bonn	56
1850	12	96	<i>Lieder und Gesänge (Minnespiel)</i>	Whistling, Leipzig	140
1851	1	95	3 <i>Gesänge</i> (lyrics: Byron)	Simrock, Bonn	56
1851	3	102	5 <i>Stücke im Volkston</i> for piano and cello	Luckhardt, Kassel	100
1851	3	100	<i>Braut von Messina</i>	C.F. Peters, Leipzig	110
1851	4	97	Symphony no 3	Simrock, Bonn	200
1851	6	92	Motet, »Verzweifle nicht im Schmerzenstal«	Whistling, Leipzig	70
1851	6	107_3	<i>Lied der Gärtner</i>	Arnz, Düsseldorf	17
1851	7	103	<i>Mädchenlieder</i>	Kistner	36
1851	7	98b	<i>Requiem für Mignon</i>	Breitkopf & Härtel, Leipzig	202

Year	Month	Opus		Publisher	Fee in Th.
1851	7	104	<i>7 Lieder</i>	Kistner	47
1851	8	96	<i>Lieder und Gesänge</i>	Whistling, Leipzig	39
1851	9	99	<i>Bunte Blätter</i> for piano	Arnold, Elberfeld	141
1851	9	98b	Songs from Wilhelm Meister	Breitkopf & Härtel, Leipzig	141
1851	11	105	violin sonata no 1	Hofmeister, Leipzig	141
1851	12	101	<i>Minnespiel</i>	Whistling, Leipzig	136
1852	5	109	<i>Ball-Scenen</i> , piano four hands	Schuberth, Hamburg	220
1852	1	108	<i>Nachtlied</i>	Simrock, Bonn	85
1852	3	111	<i>3 Phantasiestücke</i> , piano	C.F. Peters, Leipzig	56
1852	3	112	<i>Der Rose Pilgerfahrt</i> , oratorio	Kistner	368
1852	3	110	Trio	Breitkopf & Härtel, Leipzig	170
1852	3	115	<i>Manfred</i>	Breitkopf & Härtel, Leipzig	280
1852	6	107	<i>6 Gesänge</i>	Luckhardt, Kassel	160
1852	6	113	<i>Märchenbilder</i> , piano & viola	incl with 107	
1852	10	117	<i>Husarenlieder</i>	Senff, Leipzig	55
1852	10	119	<i>Waldlieder</i>	Nagel	55
1852	11	125	<i>5 heitere Gesänge</i>	Heinrichshofen, Magdeburg	55
1852	12	114	<i>3 Lieder für 3 Frauenstimmen</i>	Simrock, Bonn	40
1853	1	116	<i>Der Königssohn</i> , solo, chorus & orch	Whistling, Leipzig	150
1853	3	14	Scherzo from Grand Sonata No. 3, new edition	Schuberth, Hamburg	17
1853	4	106	<i>Ballade</i>	Senff, Leipzig	17
1853	4	121	violin sonata no 2	Breitkopf & Härtel, Leipzig	142
1853	5	120	Symphony no 4 Incl 4 hand piano arr.)	Breitkopf & Härtel, Leipzig	204
1853	8	123	Festival overture	Simrock, Bonn	113
1853	6	52	4 hand arr	kistner	17
1853	12	118	<i>Jugendsonaten</i> , piano	Schuberth, Hamburg	204
1853	9	124	<i>Albumblätter</i> , piano	Arnold, Elberfeld	198
1853	9	126	<i>Fughetten</i> , piano	incl with 124	
1853	9	128	<i>Julius Caesar</i> overture	Meyer, Braunschweig	113
1853	9	-	<i>Die Bach'schen Sonaten</i> , piano arr.	Breitkopf & Härtel, Leipzig	181
1853	11	127	<i>5 Lieder und Gesänge</i>	Paul, Dresden	50
1853	11	129	Cello concerto	Breitkopf & Härtel, Leipzig	109
1853	11	130	<i>Kinderball</i> , piano	Breitkopf & Härtel, Leipzig	131
1853	11	132	<i>Märchenerzählungen</i> , clarinet, viola & piano	Breitkopf & Härtel, Leipzig	137
1853	11	131	<i>Phantasie</i> , violin & orch	Kistner	147
1853	12	122	»Ballade vom Heideknaben« and »Die Flüchlinge«	Senff, Leipzig	33
1855	5	135	<i>Gedichte der Königin Maria Stuart</i>	Senff, Leipzig	149

The entry from 1855, made by Johannes Brahms, is not included in the analysis as it lacks relevance owing to the hospitalisation of Schumann in February 1854.

The Advent of Performing Rights in Europe

STAFFAN ALBINSSON

Music copyright, as well as other intellectual property rights (IPRs), has always been closely linked to technological shifts. The introduction of the printing press in the mid-fifteenth century started the process toward copyright in tangible items like books, music scores, CDs, posters, and T-shirts. These products are all private goods in that they are rivalrous and excludable. Once an item has been bought, nobody else can buy it. Broadcast rights, mechanical rights, and blank media levies also appeared as the results of new technologies. The digital revolution and the Internet call for new amendments to the current IPR legislation.

This paper tells the story of another IPR that covers goods or situations that in some aspects are non-rivalrous or non-excludable, namely the performing right. It briefly looks at technological change as a cause for the urge for performing rights but concludes that it was rather the general economic growth in Europe after the Industrial Revolution and the growth of the public concert scene that paved the way for the new legislative amendment. Although at least the initial transaction costs were high, the potential gains from the introduction of the institution of property rights in the inputs for music-making in public performances could now be beneficial for the growth of supply both qualitatively and quantitatively. Composers could devote themselves more to their trade as freelance professionals. The collective licensing agencies became second-step institutions in attempts to lower transaction costs. Thus, this paper discusses the fundamentals of institutional economics. I will describe the introduction of performing rights by means of international comparisons from France, Germany, Britain, and Sweden. Why did the latter three take so long to implement the French legislative innovation? Ethnic or national animosities will be discussed. Ostensible differences in the way composers and outsiders viewed both artistic and general moral norms seem to play an important role in determining why some countries viewed performing rights with lingering skepticism for several decades after their first introduction in France. This point is related to Polányi's theory of labor as a "fictitious commodity" and his observation of the "double movement" of liberating and restricting forces on the labor market.

Performing rights are generally divided into two categories: 1. *grands droits* pertaining to music for the stage (opera, musicals, ballet); and 2. *petits droits* pertaining to the diffusion of other forms of music productions. The grand rights are negotiated directly between the composer (often represented by a publisher) and the theater company while the small rights are the objects of collective licensing agencies, which provide customers with blanket licenses for the use of all the music listed by the agency for an agreed purpose (normally live performances or broadcasts).

Infant Performing Rights: *grands droits*

The common use of French to denote the two different kinds of performing rights discloses their place of origin. Both were French inventions. The *grands droits* were introduced in the *réglements* issued by King Louis XIV after the establishment of l'Académie Royale de Musique in 1669 (the predecessor of the current Opéra National de Paris). It seems that the Académie Royale de Musique became

increasingly difficult to manage. Through the eighteen-paragraph *Règlement concernant l'Opera donné à Versailles le 11 Janvier 1713*, King Louis XIV tried to regulate how the opera should be run, including the first *grand droit* clause (§15).¹ The composer remuneration clause was repeated (as §16) in the even more elaborate forty-seven-paragraph *Règlement sur sujet de l'Opera donné à Marly le 19 Novembre 1714*. It is likely that the *règlement* ratified and clarified a system that was already in place. The clause stipulated 100 *livres* for each of the first ten performances and thereafter 50 *livres* for each of twenty more performances. After these thirty performances, the piece belonged to the opera company, which could stage it again without further royalties. Thus the composer could be given a maximum of 2000 *livres* if the opera was sufficiently popular with the audience. Given that neither the *état* of 1713, explicitly listing all personnel by their functions and salaries, nor the *règlement* mention copyists, it is likely that the composer had to cover such costs himself. The lead singers were paid 1500 *livres*. With a successful opera the composer could thus earn more or less what the main actors received (Durey de Noinville 1757).

The struggle by dramatists, led by Beaumarchais, to gain legal possession of their plays has been documented in detail by Boncompain (2001) and Brown (2006). The financial situation of playwrights was even more insecure than that of opera composers. However, when it came to the actual ownership of their works, the circumstances were principally similar. None could expect to maintain long-term property rights in their works. This issue was not addressed until the *Decret rendu sur la Pétition des Auteurs dramatiques* was passed by the post-revolutionary National Assembly on January 13, 1791 (ratified the following week by Louis XVI). The decree was based on a report by the *Jacobin* lawyer and orator Jean le Chapelier. Article No. 4 read: "The works of living authors may not be represented in any public theater within the extent of France without formal consent in writing by the author . . ." This was the first legal safeguarding of the performing right in the hands of the originators. In July 1793 a revision was made in accordance with a suggestion by le Chapelier to specify that it "should apply to all dramatic works, whether or not they had been previously performed or printed" (Brown 2006, 147).

The organization established by Beaumarchais, the *Société des Auteurs Dramatiques*, to work for the recognition of the right for playwrights to be sufficiently remunerated (primarily) by la *Comédie-Française*, succeeded in its pursuit through the new law. A new, more operative organization, the *Bureau Central de Perception des Droits d'Auteur*, was created by composer and librettist Nicolas-Étienne Framéry to implement the new legislation. It soon reached agreements with la *Comédie-Italienne* and four other commercial theaters. These agreements stipulated that one seventh of the net proceeds of all performances should be granted to the author (Brown 2006, 144). A remuneration size in this range remains a common business praxis today. The Bureau was succeeded by the *Société des Auteurs et Compositeurs Dramatiques* in 1829.

In Britain the joint author–publisher copyright for books was codified in the Statute of Anne of 1710. The copyright for books and music prints was well established when playwrights started to claim both economic and moral rights from theatres at the end of the eighteenth century. Theater managers maintained that it was their right to stage published plays freely without either obtaining consent from the author or reimbursing him. In the 1770 *Macklin v. Richardson* case, playwright Macklin sued Richardson, editor of the *Court Miscellany, or Gentleman and Lady's Magazine*, for having stolen his unpublished play *Love a la Mode* to print the first act in his publication. Richardson had simply employed

1 The king also found it suitable, among other important restrictions, to prohibit male actors from entering the dressing rooms of female actors and vice versa.

someone to attend performances of the play and transcribe it. According to Richardson, the performance “gave a right to any of the audience to carry away what they could, and make any use of it.” Lord Commissioner Smythe, however, ruled that:

it has been argued to be a publication, by being acted; and therefore the printing is no injury to the plaintiff: but that is a mistake; for besides the advantage from the performance, the author has another means of profit, from the printing and publishing; and there is as much reason that he should be protected in that right as any other author. (Deazley 2008, 3)

Lord Smythe first established the “advantage from the performance” and then the other sources of income: printing and publishing. Thus he principally established, albeit in a backward way, an IPR for the author in the performance of his plays. Other cases dealt with the question of whether it was the published play, in which there was copyright, or something non-copyright that was staged when the text was enhanced by acting, set design, lighting, costumes, and sometimes music. Only alterations of published plays when staged were at first considered as copyright infringements. In 1830 playwright James Robinson Planché suggested a bill to alter and extend the provisions of the Copyright Act of 1814 “with respect to Dramatic Writings.” At first the Planché initiative was overlooked, but when the two major metropolitan theaters, Covent Garden and Drury Lane, tried to uphold their claims for patents on the performance of “legitimate drama” (i.e., spoken drama) in several cases against minor theaters, the House of Commons appointed a Select Committee chaired by novelist Edward Bulwer-Lytton. This came as a result of his assessment that:

The commonest invention in a calico – a new pattern in the most trumpery article of dress—a new bit to our bridles—a new wheel to our carriages—might make the fortune of the inventor; but the intellectual invention of the finest drama in the world, might not relieve by a groat the poverty of the inventor. If Shakespeare himself were now living— If Shakespeare himself were to publish a volume of plays, they might be acted every night all over the kingdom—they might bring thousands to actors, and ten thousands to managers—and Shakespeare himself, the producer of all, might be starving in a garret. (Deazley 2008, 12–13)

The Dramatic Literary Property Act (1833, first paragraph) ruled that:

. . . the Author of any Tragedy, Comedy, Play, Opera, Farce, or any other Dramatic Piece or Entertainment, composed, and not printed or published by the Author thereof or his Assignee . . . shall have as his own Property the sole Liberty of representing, or causing to be represented, at any Place or Places of Dramatic Entertainment whatsoever, in any part of the United Kingdom of Great Britain . . . or in any Part of the British Dominions . . .

This performing right was also given to published works and it was to last for the author’s or his surviving widow’s life (Dramatic Literary Property Act 1833, first paragraph). How legal matters should be conducted was specified as well as a fine for infringements of “not less than Forty Shillings” (Dramatic Literary Property Act 1833, second and third paragraphs).² The Act explicitly defined the performing right to include not only the full piece but also “any Part thereof.”

² The fourth and last paragraph included a remarkable clarification for its time: “. . . whenever Authors, Persons and Offenders or others are spoken of . . . in the Masculine Gender, the same shall extend . . . to either Sex.”

The Act provided the necessary legal framework for what was considered an IPR and how infringements were to be handled. The implementation and the policing were left to the parties involved. The playwrights immediately organized the Dramatic Authors' Society for the administration of performing rights.

The new, revised Law of Copyright of July 1, 1842, clarified "that the Provisions of the said Act [i.e., the Dramatic Literary Property Act of 1833] . . . and this Act, shall apply to Musical Compositions . . ." (Copyright Act 1842, 412). With this, the revision paved the way for *petit droits* in Britain.

The Francophile King Gustav III of Sweden established his Royal Opera in 1773. An early employment contract from 1781 concerns composer Joseph Kraus (1756–92). His primary duty according to the contract was to act as assistant chief conductor. In addition, "of every new opera that I compose the third representation shall be to my benefit" (Kraus 1781).

The British Copyright Act of 1842 was also a detailed and extensive piece of legislation regarding the parts on performing rights. In Sweden the similar act of July 20, 1855, issued by King Oscar I was much more laconic. Nevertheless, it was very much to the point and declared that "Swedish [N.B.!] dramatic works may not be publicly performed unless the author has given permission therefore." Songs composed by the king were favorably reviewed by Robert Schumann in his *Neue Zeitschrift für Musik*. King Oscar's son, Prince Gustaf, composed the song that has been sung ever since by Swedish pupils, having passed the Baccalaureate exam. Accordingly, it is not surprising that the king took a personal interest in the matters resulting in the 1855 Act "Regarding the Prohibition of Public Performance Without Permission of Swedish Dramatic, or for the Scene composed, Musical Works" (SFS/Swedish Ordinance Collection 1855, no. 79).

The Growth of Music Businesses in the 1800s

Changes in copyright law have generally resulted from technological shifts. When it comes to the introduction of the *petits droits*, however, it is difficult to identify a self-evident technological cause. F.M. Scherer has suggested that technological changes in the modes of transportation made the growth of the international virtuoso phenomenon possible. The transportation cost-efficiency was improved, for instance, between Felix Mendelssohn's mail coach journey from London to Edinburgh in 1829, which took three days, and the same journey by train undertaken by Frederic Chopin twenty years later. Chopin spent only twelve hours on a train (Scherer 2004, 145–47).

The changes in transportation technology were, however, part and parcel of more general economic growth after the Industrial Revolution. Railways and canals were introduced when enough capital was at hand and were thus the result of previous economic growth. Once they had been built, they reinforced economic growth. New socio-economic strata, primarily the bourgeoisie, financed both the new means of transportation and the growth of the public concert business. Therefore, in the case of performing rights, I suggest that they came about not due to a single radical technological shift but rather as a consequence of all the technological shifts that had made the Industrial Revolution possible and that were fostered by it.

According to Angus Maddison's estimations, the annual GDP/capita growth rates in the four studied countries were substantially higher after the Industrial Revolution than before it (see table 1). The break of periods in 1820 is due to the numbers Maddison provides, but it is also a plausible point in

time at which the Industrial Revolution started to make a substantial impact (Maddison 2007; all numbers according to the price of silver in 1990).

Period	France	Britain	Germany	Sweden
1700-1820	0.19	0.26	0.14	0.17
1820-1899	1.20	1.25	1.26	0.93

Table 1. Annual GDP/capita growth rates (%)

Music businesses grew simultaneously with many other businesses. Of particular importance for music businesses was the growth of the transport, newspaper, and banking sectors. Big and small venues were built to host both their own artists and guest performers. The state of Iowa alone had 1,200 “opera houses” a century ago (Glenn and Poole 1993, 5). Although the word “opera” in this context was used instead of the allegedly immoral “theater” these venues nevertheless hosted a wide variety of musical performances. The same goes for the *Folkets Hus* (People’s House), which the labor movement in Scandinavia built in towns and villages. The Scandinavian sobriety movement built its own similar venues. The peasant movement, likewise, created rural community centers.

Composers as Entrepreneurs: Polányi’s “Fictitious Commodification”

F.M. Scherer described the fashion among courts of both higher and lower magnitude between the Westphalian Peace of 1648 and shortly before the revolutionary late eighteenth century for creating orchestras as part of “a cultural arms race.” The orchestra added to the nobles’ prestige. In the latter part of the seventeenth century there were some 300 more or less independent states in the very loosely integrated Holy German Empire, so many orchestras were established. Much music had to be composed and many composers benefited from this in their musical and financial careers (Scherer 2004, 40).

Almost all of these orchestras were disbanded in the last decades of the eighteenth century. According to Tia deNora (1995, 43), most scholars advocate the hypothesis of an impoverished aristocracy. This forced composers and musicians to search for job opportunities elsewhere. What they probably observed was that the reduction of wealth among the nobility was not only nominal but also relative to other groups in society. By the end of the eighteenth century, mercantilism had been succeeded by market-oriented laissez-faire economics indicating a shift to a more commercialized concert production for broader and, to some extent at least, anonymous audiences. This was more or less inevitable; economic theory now advocated free competition among concert promoters. Musicians and their music have always been drawn to where money can be found, and now they turned to a more “general” public.

The most obvious example of a composer who transformed himself from an aristocratic employee into the most famous freelance composer of his time is Joseph Haydn. After three decades in permanent employment by Count Anton Eszterházy his position became unsalaried from 1790, after the death of Count Anton, and finally reduced to an annual ceremonial service. Haydn returned to Vienna to search for other income opportunities. Not least, his association with the growing commercial concert business

in England made him the pioneer freelance composer at the turn of the century (Baumol and Baumol 1994, 175; Scherer 2004, 89).

In this way, music became a good that was not only placed on the market for copyrighted printed items but that was also an input factor for the concert business. Thus musical goods became subject to the law of supply and demand described by neoclassical economics. Joseph Townsend, in his critique of the British Poor Laws, quoted Tacitus:

To promote industry and economy, it is necessary that the relief which is given to the poor should be limited and precarious. *Otherwise industry will languish and idleness be encouraged, if a man has nothing to fear, nothing to hope from himself, and every one, in utter recklessness, will expect relief from others, thus becoming useless to himself and a burden to me . . .* No man will be an economist of water, if he can go to the well or to the brook as often as he please; nor will he watch with solicitous attention to keep the balance even between his income and expenditure, if he is sure to be relieved in the time of need. The labouring poor at present are greatly defective, both in respect to industry and economy. Considering the numbers to be maintained, they work too little, they spend too much, and what they spend is seldom laid out to the best advantage. (Townsend 1786, sect. XIV, citation of Tacitus [ad 109, sect. 38] in italics; Townsend used the original Latin)

This is a harsh representation of the neoclassical view of labor as an input commodity that should be subject to competitive conditions with full mobility of factors. In this way the labor market would be self-regulating. Labor could be allocated according to the forces of supply and demand with a resulting equilibrium with no unused resources, no unemployment, and no need for the poor relief laws.

Another approach is to mirror the performing rights in the “fictitious commodification” concept according to Karl Polányi. He does not reject the neoclassical labor theory as such. In fact Polányi accepted the logics of the self-regulating mechanism of the labor market. According to Polányi, labor became commodified as a consequence of both the diversification and the growth of the labor market. However, he recognized crucial counter-movements in the interest of society that appeared parallel with the commodification of labor—hence a “double movement” system:

Social history in the nineteenth century was thus the result of a double movement: the extension of the market organization in respect to genuine commodities was accompanied by its restriction in respect to fictitious ones. While on the one hand markets spread all over the face of the globe and the amount of goods involved grew to unbelievable proportions, on the other hand a network of measures and policies was integrated into powerful institutions designed to check the action of the market relative to labour, land, and money. (Polányi 1944, chap. 6, sect. 20)

One such institutional restriction apparent in the advent of performing rights is presented below: the unification of the labor force (collective licensing agencies). It is directly targeted to be a counterforce against non-salaried exploitation of composers’ labor. It can, furthermore, be argued that the Romantic notion of the *Künstlerlehre* (artistic honor) also worked as a cultural institutional restriction. At least this restriction was favored by some art music composers in their struggle against the unification in collective IPR societies. It seems that they preferred to be without monetary remuneration and in that

clung to the Aristotelian morals based on his idea of economy, which handles limited resources, and trade, which has as its incentive sheer collection of money:

We have now considered that art of money-getting which is not necessary, and have seen in what manner we became in want of it; and also that which is necessary, which is different from it; for that economy which is natural, and whose object is to provide food, is not like this unlimited in its extent, but has its bounds. (Aristotle 350 bce, book I, chap. IX, last section)

Transaction Costs and the Unification of Composers

Thráinn Eggertsson (1990, 22) claims that in basic neoclassical economic models “there is no logical rationale for contractual arrangements such as various types of firms or even money.” Institutional economics objects to the neoclassical economics assumption of zero transaction costs. According to institutional economics, the “cost of transacting makes the assignment of ownership rights paramount, introduces the question of economic organization, and makes the structure of political institutions a key to the understanding of economic growth” (Eggertsson 1990, 14). The basic transaction costs in most sectors are connected to:

- The search for information
 - e.g., the costs for listing all pieces of music—big and small—and the owners of their performing rights
- Bargaining and contracting
 - e.g., the costs related to the contracting of all venues and all pieces of music, licensing, payment transfers
- Monitoring, policing and enforcement
 - the cost for supervising the vast number of venues and litigating illicit usage of music

The objects for the *grands droits* were easily identified. Operas were performed in a limited number of venues, which could be easily monitored. The numbers of productions and composers commissioned for new operas were limited as well. For the *petits droits* to be worth exploiting, the transaction costs had to be reduced by some institutions. Alternatively, the quantity of concerts and the prospective fees from them had to be increased to cover the transaction costs.

In fact, both happened. The growth of the concert business boosted the potential for *petits droits* income. New interpretations of prior legislation and, in some cases, new legislation targeting non-operatic performances made it worthwhile to take on policing and enforcement costs. The increased number of newspapers and their advertisements decreased the costs related to collecting information on venues. The unification of composers in collective licensing agencies reduced the search and information costs both for the performing right owners and for the users.

The bargaining and contracting costs for the collective licensing agencies had two sides. There were transaction costs not only related to the collection of fees from venues but also related to the distribution of the money collected to the various property owners, i.e., composers.

France

During the 1830s Parisian creators of art, including music, organized an association with the aim of becoming a cartel based on compulsory membership; only members were allowed to be published. According to the cartel, composers were to be awarded a share of the box office revenues or a general fee for the use of their music in public. In March 1847, according to Jean-Loup Tournier and Gunnar Petri (neither of whom indicate primary sources), the Parisian composer of songs and light music Ernest Bourget refused to pay for the orgeat syrup he had consumed at such a *café-concert* at Les Ambassadeurs on the ground that the proprietor had not paid him for the use of his music, which was performed in the café. The proprietor, M. Morel, explained that the price of the beverage was raised from the usual forty centimes to fifty centimes because he had to pay the musicians (Tournier 2006, 28; Petri 2000, 104). Bourget, according to Tournier and Petri, asked: “And composers and authors of the songs played, are they not also entitled to their remuneration?” Morel replied: “The authors? They are not of my concern. I would like to know what requirements they may have on their little songs that belong to all of us once they have been published” and “if we had to pay the authors as well, where would that end?” “In court,” Bourget obviously thought, as the case was soon heard in the Tribunal de commerce du département de la Seine. The verdict of September 8, 1847, based on the Copyright Act of 1791/93, was in Bourget’s favor, declaring that Morel had to supervise the performers so that they did not sing songs by Bourget (Archives de Paris 1).

The report from the trial in *Le Droit* tells a story somewhat different from the Tournier and Petri legend (*Le Droit* 1847). According to the journal, Bourget had been refused the drink he ordered at the café. In the evenings Morel served only guests who ordered things for which the *garçon* could not “deceive the corkscrew.” The gain from a modest *eau sucré* was “too small a thing for the proprietor to be able to present music and seats through a whole evening.” Bourget was annoyed. The next day, May 8, he wrote an angry letter to Morel in which he denied him the right to let singers perform his songs in the Café Morel. Bourget ends his letter thus: “If you believe, monsieur, that you do not have to act according to this decision, I warn you that at the first offense I will ask for the bailiff.” Morel did not respond either in letter or in action. Bourget sued both Morel and the proprietor of the Café Les Ambassadeurs, Mme Varin, in order for the Tribunal de commerce to grant him the same compensation for the outdoor performances in their cafés as he got from provincial theaters, namely, ten francs per song performed on stage. This was the tariff of the Société des auteurs dramatiques based on *grand droit* principles.

Through the February Revolution the following year, King Louis-Philippe was forced to abdicate. In the turmoil before the Second Republic was created in June, Bourget sued Morel again, in May 1848. Maybe he thought that the Tribunal de commerce would be influenced by the new revolutionary atmosphere. The case was heard on August 3. Morel and Varin had not prevented their singers from performing songs by Bourget in the 1848 open-air *café-concert* season, and the bailiff saw, heard, and recorded the prohibited performances (*Le Droit*, 1848). Bourget was granted a compensation of 300

francs from Morel and Varin, respectively. Varin, thereafter, agreed to Bourget's demands (Archives de Paris 2).

Morel was not satisfied with the second verdict of the tribunal. He was granted the right to have his case heard in the Cour d'appel de Paris on April 26, 1849. Its brief decision refers to the more extended verdict of the Tribunal on August 3, 1848. The appellate court granted Bourget an indemnity payment of 500 francs (Archives de Paris 3³; Gazette, 1849).

The first music copyright licensing agency, La Société des Auteurs, Compositeurs et Éditeurs de Musique (SACEM), was established in Paris in 1851 to reap the fruits of the verdicts (Tournier 2006, 26–27). In its first charter, works already protected by *grand droit* were exempt from handling by the SACEM. The new society, explicitly, wanted to “in no way affect the powers or rights of the Société des auteurs dramatique, as they remain today” (SACEM's Act of Constitution 1851, article 18). This exemption has been included in most, if not all, other national charters for collective licensing agencies. Thus the separation of *grand* and *petit droits* remains globally today.

The increasing international trade in artistic goods and services was also accompanied, at least from the French point of view, by a need for international harmonization of domestic legislation and international cross-border regulations. The Association Littéraire et Artistique Internationale, founded in Paris 1878 on Victor Hugo's initiative, had the objective of creating an international convention for the protection of writers' and artists' rights. Hugo's efforts were successful in that on September 5, 1887, ten nations ratified the treaty, which had been completed a year earlier in Berne. As the initiative was French, the Berne Convention was heavily influenced by the French *droit d'auteur* with its inclusion of *droit moral* rather than by the Anglo-Saxon “copyright,” which focused on economic matters only. The convention's main objective was to broaden the domestic rights of the participating countries into internationally reciprocal rights. The signatory countries had obliged themselves in a long range of bilateral treaties that were made redundant by the new convention. Many bilateral treaties were maintained with countries that did not sign the convention.

One important effect of the Berne Convention was the opening of SACEM offices in other European countries. They monitored the economic interests not only of French composers abroad but also of the domestic members of the SACEM in those countries. The money flowed via Paris. This business procedure was generally not well appreciated abroad.

Not only composers of lighter *café-concert* music benefited from the performing rights system in France. Claude Debussy, for instance, collected his income from three main sources: 50% from publishing royalties, 25% from concert fees, and 25% from performing rights fees (Herlin, 2011).

Germany

Among the many early members of the SACEM German composers like Robert Schumann, Richard Wagner, and Johannes Brahms also appeared. The *Société* did collect fees for performances of their music as well but refused to forward the money to the German members until similar laws were implemented in their countries from which French members of the SACEM could benefit.

Prussia was the first Germanic state to issue a copyright law, Gesetz zum Schutz des Eigentums an Werken der Wissenschaft und Kunst (Law for the Protection of Property in Scientific and Artistic

3 I am indebted to Professor Anne Elisabeth Andréassian, University of Paris 1 Panthéon-Sorbonne, for the deciphering of the hand-written verdict.

Works), issued on June 11, 1837 (Prussian Copyright Act 1837). It included a section on performances (§§32–34):

The public performance of a dramatic or musical work, be it wholly or with insignificant abridgements, may only take place with the permission of the author, his heirs or legal successors, as long as the work has not been published by means of printing. The exclusive right to grant this permission is vested in the author for life, and in his heirs or legal successors for a period of ten years after his death.

Paragraph 35, however, extended the protection to cover not only unpublished works: “The present statute shall also be applied in favour of all already printed . . . musical compositions . . .” The Parliament of the German Confederation accepted this Prussian law on April 22, 1841, for implementation in all the member nations (of which Prussia and Austria were dominant). It seems that the implementation of the law suffered from the general weakness of the Confederation. Composer and lawyer Johann Vesque von Püttlingen in Vienna had a contemporary view on the matter that excluded §35 from consideration: “Regarding non-dramatic (chamber, concert, and church) music there is, namely, a permission that is linked to the printed issue, and well understood by everyone, to perform the piece because this performance is the very purpose of publication . . .” (Vesque von Püttlingen 1864, 61). Püttlingen did not recommend that composers try to have the French *petit droit* enforced in the German Confederation. He argued that it was not in line with their *Künstlerehre* (artistic honor). They stood the risk of being disqualified as avaricious. It would also be counterproductive to the spreading of their works.

After the Franco-Prussian war of 1871 Otto von Bismarck and King Wilhelm I finally formed the unified German Empire. German composers and authors of dramatic works united on May 16, 1871, in the Deutsche Genossenschaft dramatischer Autoren und Komponisten (German Cooperative of Authors and Composers of Drama). This came as an effect of the new Gesetz, betreffend das Urheberrecht an Schriftwerken, Abbildungen, musikalischen Kompositionen und dramatischen Werken (Law Regarding Originator Rights in Literature, Figures, Musical Compositions and Works of Drama) decided by the North German Confederation on June 11, 1870. When it was actually enacted on January 1, 1871, it became applicable to the entire German Empire, which was formed on the same day. The provisions regarding performance rights were somewhat extended: “. . . Musical works which have been published by means of printing may be publicly performed without the author’s consent, unless the author has, on the title-page or at the head of the first sheet of his work reserved for himself the right of public performance . . .” (Copyright Act for the German Empire 1870, §50).

The possible *petit droit* fees provided by the law were not actually implemented by the composers until several decades later. The limited number of opera performances was comprehensible and easier to control than the vast amount of public concerts. The transaction costs for collecting information and policing were high. Publishers generally demanded that composers transfer performing rights to them as part of the publishing contract. Few made any claims on performance fees. The Imperial Copyright Commission noted a few months after the law was enacted that “only a minority of the composers will be in a position to tie a financial condition to the permission for a public performance . . . most of them will thank the concert promoters for making their names known to the audience” (Dümling 2003, 30).

Albrecht Dümling claimed that German composers lacked interest in the question of performance rights due to their “romantic notions of the unrealism of music as well as aesthetic discussions like the

strife between *Neudeutschen* (New Germans) and conservatives, between Wagnerians and Brahmsians, which pushed the once strong sense of justice to the background” (Dümling 2003, 30).

Wolfgang d’Albert, a century before Dümling, however, discussed another “romantic notion” when it came to the reason that French composers were the first to adopt the idea of performing rights:

The deeper psychological base for this can probably be found already in the French national character which, proud of its ancient culture, rather overestimates than underestimates every creation born out of its spirituality and transfers this appreciation to the author. (d’Albert 1907, 5)

Both Dümling and d’Albert depicted a German preoccupation with *Geist* (spirituality) rather than anything else. D’Albert continued with an appreciation for why French composers of “better entertainment music” and “light music” rather than those of “serious music” were the ones who claimed performing rights for their music:

. . . but since this class of composers is very eager to strike material gain from their art, their profit superseding their art, they are particularly concerned about the fullest exploitation of their performing rights. From this also the main fault of the French Société is derived: the exclusive emphasis on the purely commercial, financial part of the performing rights and the exploitation of that right in a purely merchant-like manner. (d’Albert 1907, 6–7)

With this kind of explicit esteem, according to the ideals of Romanticism, of the composer of serious music as being solely interested in his art and not his material circumstances and in that pursuit preferably suffering from hunger rather than abundance, it is only natural that the first to recognize the financial potential of the German law were publishers rather than, with some exceptions, composers. When the law was later revised the Verein der Deutschen Musikalien-Händlern (Union of German Music Publishers) declared in a note to Chancellor Bismarck:

After the boom which has occurred in the last decade of German concert life, §50 of the Act, regarding the right concerning dramatic-musical performances including also, by name, purely musical works, provides the authors and their successors quite insufficient protection.”

At first the Verein thus strongly advocated a more explicit *petit droit*. Later on it revised its stance and worked against both the strengthening of the *petit droit* and the collective agency to enforce it. Several clashes occurred between and among publisher cliques and composer coteries. Would a stronger enforcement be productive or counterproductive to either or both publishers and composers? Many publishers clung to their contracted possession of composers’ works. They saw no need for a collective agency. Some composers, such as Engelbert Humperdinck, Eugen d’Albert (father of Wolfgang), and Richard Strauss, worked persistently and effectively in favor of full *petit droit* implementation. Their most important friend among the publishers was Hugo Bock in Berlin, who since the 1870s had already been printing “Aufführungsrecht vorbehalten [performing rights reserved]” on all his scores.

Oskar von Hase, the owner of one of the biggest and most influential publishing houses, Breitkopf & Härtel in Leipzig, was a primary spokesman of the anti-agency movement among publishers. At the 1895 conference held by the primarily French Association Litteraire et Artistique Internationale in Dresden, he persisted in speaking against copying the French system in Germany.

Eventually it was neither publishers nor composers who broke the stalemate. It was a legislative thrust from the government. In 1896 it partook of the Paris revision of the Berne Convention and agreed to transfer it in all parts into German legislation. It also, however, publicly declared “that an extension of the musical performing rights could only be of practical importance if the protection also could be economically exploited by the founding of a German agency.” This statement from the government had a surprising result: “it suddenly changed the fiercest enemies of the agency into its warmest advocates” (d’Albert 1907, 17–18). The board members of the Union of Publishers now declared that their prior opposition was not targeted at the actual founding of an agency but, rather, at the limited knowledge and the disregard in the German music business for the French Société. They further claimed that the situation had only now become “ripe enough.” In order to prevent the composers from exerting a major influence on how the agency should be construed, the board suddenly, “despite the considerable opposition both from the composers’ side and that of publishers” and “in a super-hasty manner,” started the process to establish a collective licensing agency (d’Albert 1907, 17–18).

The Anstalt für musikalische Aufführungsrechte (Institute for Music Performing Rights), or AMFA, was finally chartered in 1903. The Viennese publisher Josef Weinberger gave a speech at a conference in Milan in 1906 declaring, “There is probably in no other business area an example of such an undoubtedly good law, the substantive significance of which is not yet appreciated. Idle in a series of states for decades, left behind and creating losses of millions . . .” (Dümling 2003, 29–31). Step by step, the AFMA took control of the situation and managed to muster much of the anticipated gains. The AFMA was succeeded after the Second World War by the present Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (Association for Music Performing and Mechanical Duplication Rights), or GEMA.

Britain

In Britain music performing rights had been enacted through the Copyright Act of 1842, five years before the famous court verdict in Paris. The implementation of that right, however, was not carried out by an agency like the SACEM. Obviously, the difficulty in retrieving correct information on who actually held the IPRs was a huge obstacle and thus represented a high transaction cost for concert promoters. In the August 1, 1876, edition of the *Musical Times*, J. Clelland reflected on the confusing advertisements in two previous issues of the paper regarding songs from the popular opera *The Bohemian Girl* with music by Michael William Balfe and a libretto by Alfred Bunn. The publisher, Boosey and Co., had stated in an advertisement “that they make no claims for the right of performance of the various English songs, duets &c., published by their firm.” In a later advertisement, “Madame Balfe, as the widow and executrix of the late M.W. Balfe, has resolved henceforth . . . to charge no fees for the execution of single songs . . . when given in concerts, and not performed on the stage.” A Mr. Frank Bodda, acting on behalf of the late librettist Bunn, nevertheless sued the Clerkenwell Benevolent Society for the penalty of 40 shillings for having used a song, or more precisely its lyrics, from *The Bohemian Girl* in a concert. Clelland concluded:

1. That Messrs. Boosey are only the publishers, and can give no permission to sing in public either the music or the words of the song

2. That Madame Balfé can only give permission to sing the music, and cannot give the permission to sing the words
3. That Mr. Bodda can only give permission to sing the words and cannot give permission to sing the music. (Clelland 1876, 567–68)

The editor added that Boosey and Co. did not own the publishing right for *The Bohemian Girl*: “They merely publish an octavo [pocket] edition of the opera by arrangement of Messrs. Chapell and Co., who possess the copyright.”

In the May 1877 issue of the *Musical Times*, an anonymous journal spokesman provided an extensive editorial on the matter. A Mr. Harry Wall, secretary of the “Authors, Composers, and Artists’ Copyright and Performing Right Protection Society” of his own construction, is considered not to be “as one might suppose, simply and solely a nuisance.” Rather, the editor claimed,

Mr. Wall—a contemporary styles him “the man Wall” but on consideration we will drop the qualifying substantive— . . . has no scruples . . . The mode in which he conducts the not very honourable, though it may be perfectly legal, business on which, in the absence of anything better or the capacity for anything better, he has embarked. . . . in order to snatch forty-shilling penalties or obtain ten-guinea subscriptions for the “Society” he has literally stuck at nothing. (*Musical Times* 1877, 214–16)

The editor presented several cases in which Wall excelled in this pursuit, for instance: “At a concert given in the village of Milton an amateur sang ‘Who’s that tapping at the garden gate?’ and soon found out that it was Mr. Wall with his stereotyped demand for penalties.” Wall had a criminal record before entering the new business of performing rights policing. In 1860 he was sentenced to eighteen months in prison for having obtained property under false pretence. His character was thus easily questioned by the established agents of the British music scene. Several publishers complained. Thomas Chappell “did not like the character of the man or the character of the proceedings.” John Boosey said, “no living composer cared to employ him” (Alexander 2010, 339). According to Peacock and Weir, exploitation of the right to perform in public had been “given a bad name by unscrupulous persons who purchased the legal right for the sole purpose of enforcing penalties against unauthorised use by unwitting performers” (Peacock and Weir 1975, 35).

The editor of the May 1877 issue of the *Musical Times*, however, also explored logic in his rhetoric by suggesting that the general transaction cost from bad or non-existent information on performing right ownership would be reduced “if it be enacted that every musical composition shall bear on its title-page not only the name and address of the holder of the copyright . . . but also the name and the address of the holder of the performing right” (*Musical Times* 1877, 214–216). The Royal Copyright Commission discussed this matter in 1878 and recommended exactly that. In 1882 Parliament enacted a bill to this end. However, publishers more often printed a notice on the sheet cover that the music “may be sung in public without a fee or licence” (Peacock and Weir 1975, 35).

A few years later the tide had turned. Although Wall himself was still despised, his line of business had become more accepted. People came to consider managers and concert producers as naïve. A letter to *The Era*, published January 30, 1886, noted that Wall had:

Opened the eyes of song writers to the fact that they are as much entitled to the protection of the law as any other of Her Majesty's liege subjects, and it therefore behoves proprietors, if only as a matter of business, to be on their guard against those unprincipled persons who would rather steal a song than pay for it, and who, knowing they are not themselves worth proceeding against, are careless of the consequences to their employers. (Alexander 2010, 343)

Ironically, in 1888 Wall, after having had his business ideas so accepted, was found to have contravened the Solicitors Act as a non-qualified legal agent. He was sentenced to three months in prison.

In the December 1883 *Musical Times*, C.T. Cobham, the producer of concerts at the local School of Arts in Hertford, complained that he had been charged £14 by the copyright owner's representative for using the song "The moon has raised her moon above" by Benedict at two concerts:

Thus, it will be seen that men are fined heavily for damaging a person whom they have really benefited. The performance of a song advertises it and directs attention to its merits in the most effective manner; therefore the act promotes the sale of that song and does good for the owner of the copyright. (Cobham 1883, 684)⁴

This opinion was in line with the business practice in Britain at the time. Whereas French publishers saw a possibility of commercializing their music through performing right fees collected by the SACEM, British publishers used the 1844 act much more defensively. Publishers were themselves the main concert promoters. They sometimes prohibited the use of their music by other promoters and thus safeguarded the collection of both the entrance fees and the revenues from increased sales of sheet music. For the composer this was detrimental, as he could only benefit from the latter kind of income, which might have been increased if publishers did not prevent the use of their music by other concert promoters. After the signing by both the UK and France of the Berne Convention in 1886, the SACEM employed an agent in Britain to collect the royalties for public performances of French music. This anomaly did not at first influence the British publishers and composers. In the 1890s, however, concerts promoted by publishers lost a great deal of attendance, and by the 1900s the potential threat from sales of gramophone records was identified. Both composers and publishers found it necessary to rally for a proper performing right regulation and a collecting agency to implement it (Peacock and Weir 1975, 46–48). The 1842 Act was extended and modernized as the new Copyright Act of 1911, with a new paragraph on performing rights:

For the purposes of this Act, "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform . . . the work or any substantial part thereof in public; if the work is unpublished, to publish the work or any substantial part thereof, and shall include the sole right,

- a) to produce, reproduce, perform, or publish any translation of the work

. . .

⁴ Today we hear the opposite argument from the piracy movement: recorded songs, when downloaded or broadcast, act as advertisements for live performances.

d) in the case of a literary, dramatic, or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered (Copyright Act 1911, paragraph 1, section 2)

In March 1914, more than six decades after the French model was set in place, composers and publishers in Britain created their own version: the Performing Right Society (PRS).

Sweden

In 1914 a royal committee presented a proposal for a new copyright act, which would include some basic performing right clauses. The bill was debated at length. In 1918 the government planned to revise the bill in a way that was detrimental to the interest of composers. Songs and dance music were to be exempt from performing rights. The composers were quick to organize the Föreningen Svenska Tonsättare (Swedish Union of Composers), or FST, which was constituted on November 29, 1918. Mr. Kant, a Member of Parliament, had motioned for the inclusion at least of songs in the new law. The Royal Music Academy decided on a pronouncement supporting Kant's suggestion. The FST followed that example and sent a declaration to the First Provisional Committee of the Riksdag (Swedish Parliament) in support of Kant. The general conception was that it would be futile also to suggest the inclusion of music for social dancing in the labor movement's People's Parks and Houses and other ballrooms. The Riksdag eventually accepted the Kant revision in its final decision of May 30, 1919 (Atterberg 1943, 3). It was a close call decided only through the single casting vote.

Several leading Social Democrats had tried to stop the act, claiming that it did not sufficiently guard the rights of the general public. MPs Carl Lindhagen, Per-Albin Hansson and Wilhelm Björck concentrated their criticism on the weak positions that authors and composers had in relation to powerful publishers. Hjalmar Branting, who was Prime Minister until one month before the Copyright Act was passed and again the following year, stressed the importance of a social perspective. Copyright legislation should not only be regarded in relation to trade and property matters: "it can be put in question if the time is right to bring forward such a purely private financial and legal approach as this . . . instead of looking at the social consequences if this approach is applied" (Fredriksson 2009, 5).

There were two major changes in the new law: (1.) a *droit moral* clause defending the composer and his or her music from distortive treatment; and (2.) a *droit économique* clause also including "fragments" of pieces in the performing rights. The law also declared that there was no longer a need for the phrase "the piece may not be performed in public without the consent of the rights holder" to be printed on scores. This had become common practice only a few years before the new act. As clause 8 of the new §32 declared that music published before 1920 and lacking such a proviso could be performed freely, the FST regarded it as pointless to form a collecting society based on the new law (Atterberg 1943, 4).

At this point in time the SACEM had branch offices in Holland, Belgium, Czechoslovakia, and Switzerland. In principle, domestic composers in these countries could also become members of the SACEM, which then collected their fees and sent them to the SACEM headquarters in Paris. The collecting agencies in Spain and Italy were heavily influenced by the SACEM. Sweden, Norway, and Denmark lacked collecting agencies. P.J. Carvil had started the Nordic Copyright Bureau (NCB) in

Copenhagen in 1915 with the same intentions as Harry Wall before him in Britain. The NCB, however, soon concentrated its efforts on the emerging record industry.

The FST chairman, Natanael Berg (who earned his income primarily as a military veterinarian), was sent to a conference of Europe's collecting agencies in Berlin 1922 to discuss copyright matters with fellow composers. He noticed sharp criticism of the SACEM from the countries where it operated outside France. It was generally believed that the SACEM strongly favored French members when it came to payoffs and other kinds of financial support. When Berg returned from Berlin, he brought with him some scarcely comforting information:

the information regarding the situation in Sweden was received with amazement mixed with ridicule. From several parties it was clearly stated that unless we in our country take action in order to guard composers' financial interest in performances, the foreigners would soon enough be forced to watch over their rights in Sweden through their own agents. (FST Annual Report 1923)

Composer Kurt Atterberg (who earned his income primarily as an engineer with the Swedish Patent and Registration Office) studied the fee and payment calculation system of the AFMA. Berg received substantial information on the subject from Holland and Belgium. He reported that "elderly women and, in the mornings, four kids" extracted concert adds from all the Dutch papers (Edström 1998, 21). Atterberg (1943, 5) put himself forward as the one who wrote the documents by which the Föreningen Svenska Tonsättares Internationella Musikbyrå (Swedish Composers' International Music Bureau Association), or STIM, was founded. In his 1943 memoirs and in other later recollections he totally ignored the crucial work once performed by the lawyer and music amateur Seibrant Widegren as the secretary of the organizing committee. The committee held most of its meetings in his flat or office. Widegren sent the invitations to the Stockholm music publishers who, at a crucial meeting in his office on February 19, 1923, agreed to the founding of a collecting agency. They reluctantly accepted the fee-split of three quarters to the composer and lyricist and one quarter to the publisher, the same shares as those decided by the AFMA. The suggestions for the STIM charter, which Widegren put forward at a meeting of FST members on March 22, 1923, were partly disputed by Atterberg but only a few paragraphs were revised by the majority of members. Widegren revised accordingly, and the STIM was thus chartered.

The STIM was swiftly put into operation. Agreements were signed with the Musiketablissemangens Förening (Association of Music Establishments, or MEF) and various regional associations of restaurateurs. Contracts were signed with counterparts in other countries. The new structure and its fees were, of course, not well liked by all. In the Riksdag two members, Norman and Holmström, motioned for "certain changes of the law concerning rights to literary and musical works" (Parliamentary Motion 177, 1925). Their idea was to let restaurants and cafés, those without entrance fees, play music freely. The response from the FST and STIM to the legislative committee clarified a range of issues.

Conclusion

Performing rights were, unlike copyrights and, later, broadcast and mechanical (gramophone) rights and blank media levies, not caused by any singular technological innovation. They were rather the results of the general economic growth that occurred in Europe after the Industrial Revolution. The demand for and the supply of opera performances and concerts increased when economies grew. Virtuoso celebrities became household names. As the music business grew, so did the incomes of many artists and publishers. Composers gradually came to demand their fair share of the revenues. Their services became subject to “fictitious commodification,” according to Polányi’s definition, as their music became market goods not only as printed scores but also as input factors in the concert business. Music was also used as a supporting additive in the value creation of restaurants and cafés. Performing rights eventually accrued to most occasions when music was played in public.

The paragraph concerning the reimbursement to the composer in Louis XIV’s *réglemens* for the royal opera is mostly a contracting and reimbursement guideline. The possible arguments for the French edge concerning performing rights were not captured by Dufey de Noinville in his *Histoire Du Théâtre de L’Opera en France* of 1757. Combined with Enlightenment ideas, Beaumarchais’s struggles and the bourgeois revolution paved the way for the first copyright act, that of 1791/93, which included a section on more general performing rights. The extremely condensed nature of the act paved the way for debates in and out of legal courts. It seems that both Louis XIV’s *réglemens* and the 1791/93 Copyright Act came as an implicit recognition of the necessity of reimbursements to composers in order to make them produce the goods that were desired. The famous verdict of the Tribunal de Commerce de la Seine of September 8, 1847, in favor of composer Ernest Bourget’s claim for economic compensation from public representation of his music was based on the 1791/93 Act. The SACEM, the French collective licensing agency, took care of the business opportunities that the verdict made possible.

A plausible reason for the reluctance of other countries to follow the French example to form agencies is the work-laden task of taking on transaction cost elimination. However, nowhere in my sources does evidence of this reason appear. The difficulties involved in the acquisition of information on where and when music is performed are recognized, but as the SACEM did manage to produce a financial surplus, it would have been a sign of indolence to use difficulties in transaction cost reduction as an argument against the domestic implementation of the French system. France, Britain, and Germany were big countries with substantial music scenes. It is likely that the potential revenues from the implementation of the SACEM system in Britain and Germany could have been profitable in the same way as it was in France. There would have been a net profit from performing right fees and licenses after the deduction of transaction costs. Other factors delayed the processes. Sweden was not only a peripheral country with a comparatively small and scattered population. It also had its Industrial Revolution later than the other countries considered here. Music was, of course, both composed and played, but Sweden lacked the requisites for commercial concert venues in numbers comparable to those of Britain and the larger countries of continental Europe.

Germany did not become a unified state until 1871. Legislation in the many independent states of the German Confederation prior to that was diverse, but the music market was generally common. This put the same heavy hand on the possibility of policing and enforcing performing rights as it had with

regard to copyright in music publishing. The publishers themselves took the initiative of monitoring music copyright in the 1830s.

A special feature of the British music scene was its heavy reliance on publishers to produce concerts. They used public performances as advertising vehicles for their printed music. They had as little interest in handing over a share of the box office revenues to composers as other concert promoters. Another such feature was the cunning actions of individual “agents,” who saw business opportunities in policing and enforcing the performing right, which was, at least implicitly, formulated in copyright acts. The fear of high transaction costs obviously did not discourage them.

The composers involved in the establishment of the SACEM produced music of a lighter kind intended for entertainment. This was definitely held against the licensing system by the composers of more serious music in other countries. The view that the French composers were of a lower standard and mostly interested in the financial aspects of composing was explicitly held against the SACEM system in Sweden and Germany. In Britain the people who actually took it upon themselves to implement the possibilities of performing right fees as a business strategy were looked upon with even more condescension than the café-music composers who established the SACEM.

The argument that IPRs incentivize music production was largely absent from discussions regarding the implementation of the SACEM system in other countries, perhaps because they implicitly accepted that this was true. This idea is almost the opposite criticism that was used explicitly against the Société, namely that the primary task of composers is something more honorable than making money. Eventually the old-school composers who maintained such ideas were succeeded by younger composers who probably recognized that the French system did not prevent Gounod, Saint-Saëns, Debussy, Ravel, Fauré and others from making music of high artistic value but also rather enriched them, at least to some extent. Richard Strauss in Germany and Kurt Atterberg in Sweden belonged to this generation.

In Germany it was the government, identifying the business possibilities that the SACEM system fostered, that finally pressured the composers and publishers to form a SACEM counterpart. In Britain the collective agency was not started until the threat from the gramophone industry made it necessary.

In Sweden it was the embarrassment of the ill-informed negligence vis-à-vis the developments on the European mainland that finally made it necessary to implement the performing right system with its collecting agency. Representatives from other countries viewed the Swedish parochial backwardness on this issue with ridicule.

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Article 3

The Resilience of Music Copyrights

Technological Innovation, Copyright Disputes and Legal Amendments Concerning the Distribution of Music

Staffan Albinsson

1. Introduction

The means of distribution of music have varied over time according to the mechanism Joseph Schumpeter (1942) labelled ‘creative destruction’. For music scores the first Gutenberg printing press was, at least to a large extent, succeeded by lithography in the nineteenth century. The analogue vinyl LP of the 1950s and 1960s has now been succeeded by the digital CD, which in turn is being challenged by internet downloading and streaming. However, when it comes to what is distributed, i.e. the content, the situation is radically different. The music of both old and new masters has been distributed over time by different technological means depending on which of them were available and in demand. Artistic products are not necessarily subject to ‘creative destruction’ even though most do not cope with ageing. Some reach a status of perennial classics. Hence, Intellectual Property Rights/IPRs covering artistic works are amended with each new technology to grant extended protection for artistic works already covered in earlier IPR versions.

This paper contains a short history of the fundamentals of the processes which led to the incorporation of new means of distribution of artistic products in the IPR regulations. It starts with the music printing technology in Venice around the year 1500. It takes a leap to the recording devices of four centuries

later. Via the introduction of broadcast devices it ends with the blank media levies. The paper describes the events in the countries that created the first legal documents for these four types of technological inventions. The source material used is mainly directly connected to parliamentary and judiciary debate.

The processes will be analysed in relation to notion of ‘creative destruction’. The general assumption is that such destruction is a factor which has less bearing on the responses to copyright law or technological evolution than on the impact that technological shifts have had on patent law. What is covered by copyright is not the technologies per se but that which is distributed by new technologies.

Also, the situation regarding stake-holder positions versus copyright issues can be related to the question of new distribution technologies. The general assumption is that they have remained fairly constant regardless of which new technology has been discussed.

I will use the term IPR consistently, albeit somewhat anachronistically, in this article. The advantage of this modern term, and possibly the need for it and its origin is that, apart from patents and trade marks, it includes both the Anglo-American notion of common law ‘copyright’ and the Continental European civil law concept of ‘authors’ right’. The concern of the former is the object, i.e. the ‘work’, whether tangibly manifest or not. The focus of the latter is the rights which accrue to the subject (Albinsson 2013: 15-17).

The Internet and the convenient, although often illicit, file-sharing of copyrighted artistic products which it made possible has put the IPR laws under stress. It is not the first and possibly not the last time that this phenomenon has occurred in connection with a technological shift. The narrative here comprises information on how new technologies have influenced music production, commodification and distribution. The main focus has been placed, however, on the legal debates and processes regarding the IPR issue. When comparing the events which took place as responses to each new technological innovation the pro and con IPR amendment arguments will be discussed. Were they similar for every new incident? Were the same kind of arguments advocated by the same kind of stake-holders after each new development?

With regard to the current digital file-share debate I suggest that such arguments could be summarised as follows:

Pro IPR amendments

1. a) secure incomes to artistic producers
- b) thus, secure future production of high quality artistic products

Con IPR amendments

1. the IPR incomes do not reach the artistic producers, they stay with content distributors

- | | |
|---|--|
| <ul style="list-style-type: none"> 2. immaterial goods are the same as material goods when it comes to issues of ownership and theft | <ul style="list-style-type: none"> 2. a) there are no such things as immaterial goods <li style="padding-left: 20px;">b) thus, when an artistic item is bought the ownership is transferred to the buyer |
| <ul style="list-style-type: none"> 3. thus, it is not ‘information’ which the artistic good distributes – it is an artistic experience | <ul style="list-style-type: none"> 3. the IPR infringes on Freedom of Speech and the free access to information which it presupposes |

Music distributors, mainly publishers and record companies, who have invested in obsolete technologies should theoretically have the most to lose from new technological shifts. However, the existence of the new technology may also imply negative consequences for the originators of artistic content – composers and musicians in our case. The interests of distributors have largely made them oppose the implementation of the new technology. The originators of what is in focus of copyright law, i.e. the ‘work’, however, often view it as yet another means of distribution which could be used for music to reach consumers. Simultaneously they wish for the means of distribution to provide sufficient income. The prerequisite for such an outcome is legal coverage of the new technology. The inventors of the new technology will, of course, try to benefit financially as much as possible from the implementation of the new means of distribution. This will probably lead them to adopt arguments which favour few obstacles to that distribution. The first impulse from vendors, producers of derivative work and consumers will most likely be to oppose any obstruction to the use of new technologies. The interests of ‘society at large’ are seen as being more long-term. They should be voiced by politicians and could include the safe-guarding of not only culture-related but also business-related interests. Prospering artistic industries result in employment and, thus, tax revenues for general welfare purposes. Are these assumptions relevant when compared to what has actually happened in historic IPR debates?

The following stake-holders in IPR debates may be identified:

- 1. Artists – originators of artistic content
- 2. Technology providers
- 3. Distributors
- 4. Vendors
- 5. Producers of derivative work
- 6. Consumers
- 7. Society at large

2. Technological shifts, IPRs and aesthetic possibilities

Although, for instance, Karl Marx and Werner Sombart had previously described the same kind of processes, it is to Joseph Schumpeter (1942) that the ‘creative destruction’ concept is generally attributed. Schumpeter wrote in ‘Capitalism, Socialism, and Democracy’ that the essential question is not how capitalism administers existing structures, but how it creates and destroys them. Schumpeter described innovation in several ways. The kinds of new combinations that generate economic development encompass the following: (1) a new good or new quality of good, (2) a new method of production, (3) a new market, (4) a new source of supply, and (5) a new organization of industry. Over time the power of new combinations evaporates. What was ‘new’ becomes part of the ‘old’.

J. David Bolter and Richard Grusin (2000: 19) maintain that ‘media technologies constitute networks or hybrids that can be expressed in physical, social, aesthetic, and economic terms’. Thus, when a new technology is introduced not only the economic conditions alter. New possibilities for aesthetic creation are also presented.

The patent provides the holder with an input monopoly regarding a kind of technology, in a broad sense, that is used in the production of an item. It is not primarily an output monopoly. The patent can, and often does, result in an output monopoly (Granstrand 1999: 49). However, nothing prohibits producers from marketing the same kind of product if they use other input technologies.

The durations of patents are much more restricted than copyright durations. There seems to be no need for longer patent durations than the standard 20 years, as the patented input technologies are mostly creatively destroyed by competitors within this time frame. Older products become obsolete and are replaced by improved products. The process can be described as in Figure 1. There is no market for new items produced by an obsolete and inferior technology.

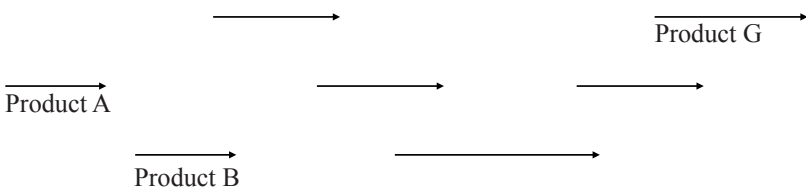


Figure 1. The creative destruction system within patents

When it comes to products which are covered by copyright and other IPRs related to artistic content, the situation is different. Whereas patents cover the IPRs of the means of distribution, copyrights, performing rights, mechanical rights, and blank media levies cover IPRs pertaining to what is distributed. This process, contrary to the patent process, can be described, as in Figure 2.

For every new music distribution invention, new stake-holders have appeared. The distribution ‘market’ has been fundamentally destabilised. New kinds of IPR principles have been introduced by legislators who have tried to strike a balance between the interests of various stake-holders. In many countries not only pecuniary rights have been implemented. Various moral rights have been introduced as well to clarify the extent of the property right.

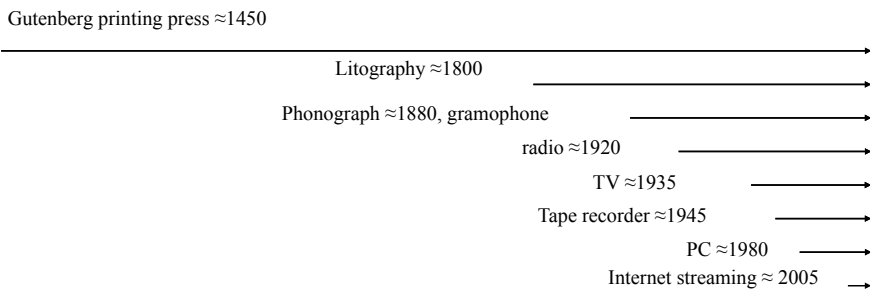


Figure 2. The amendment process of copyrights, performing rights, mechanical rights and blank media levies

The development in distribution media for music; e.g. the score, the record, the radio and the web, has not only meant a continuous evolution of faster, more easy-to-use, more accurate and cheaper ways to duplicate and incarnate the composer’s ‘message’. Bolter and Grusin (2000: 30) described how technological evolution strives for an increasing satisfaction of the human desire for ‘transparent immediacy’. We want the mediated artistic experience to be like the actual ‘work’ itself. The Daniel Barenboim and Staatskapelle Berlin CD version of Beethoven’s Fifth is much more transparently immediate than the composer’s autographed score for most of us, although the work is the same. Owing to enhanced recording technologies, the Barenboim version is also more transparently immediate than the Wilhelm Furtwängler wartime analogue rendering of the same symphony, even though Barenboim is obviously very influenced by Furtwängler.

In addition, the media have had profound influence on the qualitative evolution of music. Music is now created which is not possible to manifest without the use of a certain medium. The technological inventions in Figure 2

provide new aesthetic possibilities. Bolter and Grusin (2000: 31) describe how the fascination with media has a cultural logic of its own, namely 'hypermediacy':

If the logic of immediacy leads one either to erase or to render automatic the act of representation, the logic of hypermediacy acknowledges multiple acts of representation and makes them visible... the logic of hypermediacy multiplies the signs of mediation and in this way tries to reproduce the rich sensorium of human experience.

The evolution of recording techniques not only enhanced the quality of the LPs and CDs. It also changed the nature of live performances. Today staged presentations, especially of rock music, are highly 'mediated'.

Bolter and Grusin (2000: 45), furthermore, 'call the representation of one medium in another remediation, and [they] argue that remediation is a defining characteristic of the new digital media'. Also, they claim that the digital media will 'function in a constant dialectic with earlier media, precisely as each earlier medium functioned when it was introduced... What is new about digital media lies in their particular strategies for remediating television, film, photography, and painting' (Bolter and Grusin 2000: 50).

3. The printing technology

Music notation occurred long before the printing press. Already in the 10th century AD Gregorian chant was notated on vellum with primitive signs, ‘neums’, indicating which direction the melody was supposed to take – up or down. Two centuries later paper technology was imported from China to Europe. The Gutenbergian printing press from the mid-15th century meant a giant technological leap from earlier manual copying. Although aspects of both economic and moral IPRs had been discussed in ancient Greece and Rome (de la Durantaye 2006: 22-30), it was not until the new printing press technology that a written codification was perceived as needed.

IPR laws treat literature and music similarly when it comes to printing and publishing. Authors write literature and composers ‘write’ music. Thus, specifications regarding the inclusion of music are rare in early IPR laws¹. Thus, it is proper to begin the narrative here with some early events which accrue to authors, printers and publishers of literature as they somewhat preceded the application of the printing technology to music.

The very first publicly declared copyright was decided by the rulers of Venice in 1469, a short time after Master Johannes von Speyer established a printing shop there. Master Johannes was actually granted much more than simply a right to copy; he was given a five-year monopoly to print. In modern terms this was a typical example of ‘infant industry protection’. It was motivated by arguments that

... such an innovation, unique and particular to our age and entirely unknown to those ancients, must be supported and nourished with all our goodwill and resources and ... the same Master Johannes, who suffers under the great expense of his household and the wages of his craftsmen, must be provided with the means so that he may continue in better spirits and consider his art of printing something to be expanded rather than something to be abandoned, in the same manner as usual in other arts, even much smaller ones. (Johannes of Speyer’s Printing Monopoly 1469)

There is no reference to moral issues in this document, only to pecuniary matters. Thus, from the outset the legislative concern was focused on, pro primo, safeguarding the producer’s income in order for him, pro secundo, to be able to provide the public and the consumers with what they desired. There is little point in the *droits pécuniaires* elements of copyright regulation if they do not promote that double aim. In the language of economics, the realisation of the goals will provide commercially viable music based on consumers’

1 Some were introduced in legal texts as a bi-product of the introduction of another music-related IPR, the performing right, in the mid-nineteenth century

willingness to pay and music which can be described as a ‘merit good’. Later moral issues were intertwined with the economic concerns. Martin Luther fiercely defended his originator’s rights. In his famous ‘Warning to the printers’ of 1545, Luther complains about greedy people reprinting his translated Bible carelessly:

Avarice now strikes and plays this knavish trick on our printers whereby others are instantly reprinting our translation and are thus depriving us of our work and expenses to their profit, which is a downright public robbery and will surely be punished by God and which is unworthy of any honest Christian.... But this I must lament about avarice, that these greedy and rapacious pirate printers are handling our work carelessly. For, seeking only their own profit, they don’t care much about the accuracy of what they are reprinting, ... (Luther’s ‘Warning to the Printers’ 1545)

This might represent the first printed use of the word ‘pirate’ to refer to one who copies another person’s work without permission. 150 years later Daniel Defoe discussed literary piracy in similar terms:

‘T’would be unaccountably severe, to make a Man answerable for the Miscarriages of a thing which he shall not reap the benefit of if well perform’d; there is no Law so much wanting in the Nation, relating to Trade and Civil Property, as this, nor is there a greater Abuse in any Civil Employment, than the printing of other Mens Copies, every jot as unjust as lying with their Wives, and breaking-up their Houses.’ (Defoe’s Essay on the Press 1704: p.28)

The strife of Defoe and others for better legal coverage of the interests of authors against illegal copying bore fruit in the form of the Statute of Anne of 1709/10. Through the statute, copyright ownership was assigned to the author rather than to the publisher or printer. The author-printer copyright was granted after the item had been listed on the Stationers’ Register for a period of 14 years. After this period it was up to the author to decide whether the book should be copyrighted for another 14 years. The two-fold aim apparent in the von Speyer Decree above is also seen in the Statute of Anne: (1) the concern for the revenues of the author and the printer, and (2) the good that the author conveys to the enhancement of society. The second concern was evidenced in the duty to provide the libraries of nine major universities in England and Scotland with a copy each of all published items. Ronan Deazley has commented that the legislators:

...secured the continued production of useful books through the striking of a culturally significant societal bargain, a trade-off involving, not the bookseller and censorial state, but the author, the bookseller and the reading public. It was the free market of ideas, not the marketplace of the bookseller, which provided the central focus for the Statute of Anne. (Deazley 2008: 7)

The previous Tudor system of censorship via the Stationers Register was now not at all as far-reaching as before albeit also the new law required the same kind of listing. Thus, in the development of IPR laws related to the printing press technology we find that society in the form of the legislatures of Venice

and the United Kingdom monitored the public interest according to the idea that authors convey goods that are merited as betterments to society. The pecuniary interests of authors and publishers were accepted for a period of, at the most, 28 years. Consumer interests were also considered valid as, after these 28 years, the copyright was lifted and the artistic good was transferred to the public domain.

The use of movable type in the printing of music was developed primarily by the Venetian printer Ottaviano dei Petrucci. His technology was the most advanced during the sixteenth century. In 1498 the magistrate of Venice granted him a privilege for twenty years, by which he held ‘the sole privilege of printing music in many parts, for singing, organ, and lute.....he had with great labour and expense executed what many before him, in Italy and elsewhere, had long attempted in vain’. His first publication appeared in 1501: the *Harmonice Musices Odhecaton*. Petrucci obtained, from Pope Leo X, a privilege for the sole printing of figured music for fifteen years (Cummings 1885, Tiersot 1925).

Johann Gottlob Immanuel Breitkopf, around 1750, upgraded the movable type technology by using some 230 small sets, each a fraction of an item of notation and each capable of being used in several combinations. However, Breitkopf initially obtained more honour than advantage from his invention. He did use his new method when printing, but most of what he published and sold was produced by a great number of copyists (Chrysander 1877).

Hans Lenneberg places the introduction of the engraving method in music-printing in Italy at the end of the sixteenth century. Gradually the use of engraved copper or pewter plates became predominant, creating better copies of pieces of increasing complexity. Engraving made it possible to ‘publish on demand’ in small quantities. Furthermore, Lenneberg cites earlier research which found that the cost for the hand-made paper represented 70% of production costs and, thus, ‘the use of engraving must have almost instantly become a major incentive’ (Lenneberg 2003: 51).

The lithographic printing method was used by its inventor, Alois Senefelder, for music prints in the early nineteenth century. The subsequent choice of printing method was based on qualitative ambitions and cost-benefit analyses based on, I suggest,

costs

costs sunk in first specimen
marginal cost of copies

revenues

market size
customer price
price to retailer

Typesetting was somewhat cheaper, but for large quantities at least, Breitkopf & Härtel preferred the use of engraving for the better quality of the sold product (Hase 1968: 398). Printing was also compared with the cost of hand-

copying. Usually the latter was done by freelance copyists, most of whom were low-ranked musicians. The time taken to hand-copy a piece of music was substantially shorter than the time needed for the preparation of a printed edition. If the potential demand for a piece of music was small the advantage leaned towards hand-copying. In fact, many customers preferred hand-copied music and many publishers maintained lists of hand-copied music until the first decades of the nineteenth century (Lenneberg 2003: 74-84).

The suggestions to composers from publishers, often explicitly and to the chagrin of the former, were for simple new sonatas, duets or songs. The demand for pieces for performance at home by amateurs was huge. The market for symphonies was much smaller. Even the great Beethoven accepted this and for his first symphony he suggested the same fee as for a single solo sonata from a publisher in Leipzig.

Hans Lenneberg (2003: 25) touches on the crucial issue of whether new technologies not only remediate music in new ways but also change the nature of music composition: 'Scholars must consider, for example, whether *Salonmusik* in the nineteenth century caused the enormous proliferation of sheet music or whether the relatively inexpensive printing methods caused the increase in *Salonmusik*'.

Beethoven's *Missa Solemnis* needs 31 individual parts of which the five string parts and the chorus parts in turn must have a sufficient number of exact copies to provide for the multitude of musicians/singers. The composer let copyists prepare the material for the first performance. Beethoven's bill for the manual copying of this piece and Symphony no. 9, which was premiered in the same 1824 concert, was 800 Gulden W.W. (Moore 1987: 217). Copies, probably of the score only, were hand-prepared for ten special subscription patrons at a cost of 60 Gulden each and sold at a price of 50 Gulden. One reason for their lower cost was the musical ignorance of the patrons. The accuracy needed in the performance was lost on the patrons and their copies often had lots of errors. The printing permit was eventually obtained by Schott in Mainz.

5. The Berne Convention of 1886

The *Association Littéraire et Artistique Internationale*, founded in Paris 1878 on Victor Hugo's initiative, had the objective of creating an international convention for the protection of the rights of 'writers and artists'. Hugo's efforts were successful in that 10 nations on 5 September 1887 ratified the treaty that had been finished a year earlier. As the initiative was French, the convention was heavily influenced by the French *droit d'auteur* with its inclusion of *droit moral* rather than by Anglo-Saxon 'copyright' which was more focused on economic matters only. The convention had as its main objective to broaden the domestic rights of the participating countries into internationally reciprocal rights. Signatory countries had obliged themselves in a long range of bilateral treaties which were made redundant by the new convention. Many bilateral treaties were maintained with countries which did not sign the convention.

One important legislative feature introduced in the Berne Convention was that it did not demand, as before, a registration of or application for copyright. As soon as, in our case, a piece of music was 'fixed' physically on a sheet of paper or on a record the composer should be entitled to all forms of copyright protection in all the signatory countries. Thus Article IX declares that 'the public representation of dramatic or dramatico-musical works' are covered by the convention 'whether such works be published or not'. The same applies 'equally to the public performance of unpublished musical works' (Putnam 1896: 291). The signatory countries were: France, Germany, UK, Belgium, Spain, Italy, Switzerland, Haiti, Liberia and Tunisia. Absent from the list is, primarily, the US, which finally signed the treaty only in 1989. Furthermore, no Scandinavian country signed. Neither did Russia or the Austrian Empire. The UK (at the time Great Britain and Ireland) excluded its major overseas possessions like India, Canada, Australia, South Africa and New Zealand but included all minor protectorates. The US, Russia and Austria chose to remain outside the treaty as they were all large importers of copyrighted goods in the form of unauthorised translations printed by domestic publishers.

The Berne Convention did not concern itself with how domestic creators were treated in the signatory countries. It only safeguarded the rights of creators from other treaty countries. In that, it lay a legislative foundation which all participating countries should ratify.

6. The gramophone and the beginning of mechanical rights

The pro and con IPR arguments were tested again as part of the introduction of performing rights in France in the mid-nineteenth century. This right did not, however, occur as a result of technological innovations regarding the distribution of music, but rather as a consequence of general economic growth. This, in turn, brought with it a growth of the music business itself and of businesses which used music to enhance their own interests, e.g. restaurants and cafés. In fact, the stake-holders and the pro and con arguments listed in the introduction above also appeared in the Paris of 1847–1851 when the first performing rights debate took place (Albinsson 2012). Instead, the next major technological innovation relevant for the distribution of music was the flat, spinning disk invented by Emile Berliner in the 1890s. Obviously, the Bolter and Grusin ‘remediation’ concept is applicable to this entirely new form of music experience. New sounding music was mediated in a fixed form which could be represented in exactly the same way many times.

Prior to Berliner, Thomas Edison, in 1878, had been granted a patent for the phonograph with rolling cylinders (Gitelman 1997 and Gitelman 2008 for this section). Edison described his pioneering invention in fanciful terms by comparing it with the ancient hieroglyphs of Assyria and Babylon. There, authors wrote their cuneiform on cylinders of baked clay. However, the difference, according to Edison, was that the owner of a phonograph did not have to wait so many centuries until his dumb wax cylinders could be deciphered. Edison held tight to his own phonograph patent but fought hard for his use of composers’ works freely without regard for copyright. The copyright did not extend to the new medium, Edison claimed, as 1. he had purchased the scores and thus paid for the copyrights and 2. it is not possible, as with a score, to read the phonograph roll with one’s eyes. He showed that two recordings of the spoken letter ‘a’ had completely different tracks on phonograph cylinders and that the letter could not therefore be ‘read’ unambiguously. In legal cases, in both the U.S. and Europe, Edison and his lawyers referred not only to the legislation concerning actual copyrights but also to freedom of the press with its different national legal versions. The crux was whether phonograph cylinders and later gramophone records were ‘written’ and could be ‘read’.

In an initial court ruling, in the case of *White-Smith Music Publishing Co. v. Apollo Co.* of 1908, it was decided that rolls for mechanical pianos were not ‘copies’ but ‘performances’. Judge Holmes of the Supreme Court was not satisfied with this although, on the basis of the contemporary legislation, he felt compelled to agree to the verdict. He argued that ‘On principle anything that mechanically reproduces the [original] collocation of sounds ought to be held a copy, or if the statute is too narrow ought to be made so by a further act’. All, except those who manufactured equipment and rolls/records/sheets, were now intent on separating the concepts ‘write’ and ‘read’ in a new way. When Congress debated the bill for a new copyright law, adopted in 1909, Edison’s parable of the Assyrian cuneiform rolls was turned against him and other producers of similar equipment. The congressmen recognised that the complementary activities of ‘writing’ and ‘reading’ could obviously, in the cuneiform rolls example, be separated by many decades and even centuries. Phonograph cylinders could be read, although you did not actually understand what you read! The machine was man’s help in reading. The stake-holder role that Edison took on was that of a combined technology provider, publisher and distributor. He not only invented the phonograph and, later, used Berliner’s invention. He also monitored its commercialisation through companies of his own. These were normally based on patents which were secured in all major national markets of North America, Europe and elsewhere. His primary concern seems not to have been the originators of the music. His concern for the consumers was obviously targeted on their role as buyers of his products. Furthermore, Edison was an early exponent of the freedom of the press argument. His interpretation of that ‘freedom’ was, it seems, that whatever had been published in the press, including musical scores, could be used freely. This resembles the current argument between consumers and producer of derivative works that digital files contain ‘information’ which should be possible to use for new, second step purposes under a general ‘freedom of information’ regime. The interests of originators, consumers and society at large have been upheld by the US courts and Congress.

The Berne Convention was revised in Paris 1896 and in Berlin 1908. The revisions were largely intended to extend the Convention to include the ‘fixation’ in the form of (Article 12 of the version from 1908) ‘instruments that can reproduce the work mechanically’ (including public performances by means of such mechanical media), and Article 14, cinematographic representations.

7. Broadcasting rights

Radio broadcasting was established immediately after the First World War. Most early broadcasters resided in the United States. The first entertainment programme was, however, broadcast in Argentina in August 1920. The diffusion of the new medium was swift. In only 3-4 years radio stations had been established in most countries.

In North America, broadcasters consisted mainly of radio vendors and publishers who wanted to advertise their printed newspapers. The phenomenon of ‘remediation’ became a factor in this. Printed newspaper articles were read at least in part by human voices. Live music was broadcast. Later, recorded music was transmitted through the medium of radio.

The debates and legal disputes were characterised by this relationship. Initially there were problems with a phrase in the United States Copyright Act of 1909. The copyright owner’s permission was required for ‘public performance for profit’. ASCAP (the American Society of Composers, Authors and Publishers, founded in 1919) argued from the outset that a radio broadcast was exactly a public performance for profit interests. The U.S. Supreme Court had earlier, in *Herbert v. Stanley Co.*, determined that a restaurant that did not charge customers for the live music entertainment still had to pay copyright owners: ‘it is true that the music is not the sole object, but neither is the food, which probably could be got cheaper elsewhere...if music did not pay it would be given up. If it pays it pays out of the public’s pocket’ (*Herbert v. Shanley Co.* 1917). Before the same principle was accepted also for the new radio technology, a lower court reasoned, in the *Remick & Co v. General Electric Co.* case, as to whether a radio broadcast could be compared with someone opening a window from a room where someone else was playing. Hardly something that could be regarded as an ‘active’ violation of the law, the radio station in question claimed. Furthermore, it was argued that radio media should not pay any additional copyright remuneration. The long deliberation of the court ended with: ‘if ... the public had been excluded from the public ballroom of the hotel while the orchestra continued to play and the broadcaster to broadcast, he would have contributed to the infringement while the public was absent; but the presence or absence of an audience in the hotel cannot change the character of his acts of contributory infringement’ (*Remick & Co. v. General Electric Co.* 1926).

The Court of Appeal judge, in the *Remick v. American Automobile Accessories Co.* case, a year earlier found that ‘the artist is consciously

addressing a great, though unseen and widely scattered, audience and is therefore participating in a public performance...it is immaterial in our judgment, whether that commercial use be such as to secure direct payment for the performance by each listener, or indirect payment... ' (Remick v. American Automobile Accessoriores Co. 1925). Obviously, as in the case of the gramophone mentioned above, those who commercialised the new radio medium and used it for their own purposes opposed the extra cost that an application of IPR principles would incur. By now the originators had organised an IPR fee collecting society, the ASCAP, through which they voiced their interests. The radio medium broadcasts both live performances and recorded music. As mentioned above in the Edison case, record companies were at first generally reluctant to accept IPR fees for their use of music. However, when their products were used by broadcasters they joined composers and musicians in their claim for a fair share of the broadcaster's income. Thus, radio technology was neutral or even fundamentally positive when it came to the interests of consumers and society at large. The part of IPR laws relevant to the radio medium was the performing right. Thus major legal amendments were not necessary. The direct stake-holders in the music and broadcast businesses negotiated new performing rights agreements. Broadcasters, whether of live performances or recorded music, paid performing right fees via the same channel as concert producers, to composers, and through a new set of collective broadcast fee collecting societies with musicians as members.

The main purpose of the audit of the Berne Convention in Rome in 1928 was precisely the integration of the radio medium in the treaty. The TV medium, which was introduced a few decades thereafter, regards copyright in principle in the same way as radio but, obviously, with both picture and sound.

8. The blank media levy

Turning to the issue of blank media, we find means of distribution which in many ways resemble the internet. So let us dwell a little on this issue and dig somewhat deeper in regard to earlier technologies.

The wire recording machine was invented by the Dane Valdemar Poulsen in the late 1890s. In the 1940s the tape recorder began to make its way into the households of the Western world. In 1963 Philips introduced the cassette tape. It soon became the industry norm. The new technological shift made it possible not only to copy LPs bought onto a cassette tape for private use but also to copy from LPs belonging to others and to record radio transmission and, thus, to circumvent the established copyright fee system. Whether this was an act of piracy or not was widely debated. The entertainment industry successfully lobbied for a blank media levy to be put on all cassette tapes. Levies were first introduced in Germany in 1965 and internationally in the 1970s (Gaita and Christie 2003).

The levy is in some countries commonly referred to as a ‘tax’. But as the customer fee is transferred directly to a collecting society and from that to IPR owners, it is not, formally, a tax. A tax, in strict terms, is collected by the state or a community for unspecified purposes.²

According to § 15 section 2 of the *Urheberrecht an Werken der Literatur und der Tonkunst* (the Act on Copyright in Works of Literature and Music) of 19 June 1901 - LUG (RGBI. 1901, 227-239), the reproduction of works of literature, visual art and music for personal use without the consent of the originator was accepted. By decision of 18 May 1955 – in BGHZ 17, 266 - the *Bundesrat* (the Federal Court), however, proclaimed that the exception for personal use was not applicable when it came to tape recordings of protected works. It was accepted that the legislature could not, when LUG was issued at the turn of the century, have anticipated the potential impact of the exploitation of protected works from the new recording machines. Basic principles of copyright had to be upheld also when new technologies were introduced (Reschke 2010: 48-50).

2 In Sweden the common use of the word “kassettskatt” (cassette tax) is a lingering reminiscence from the first decade of blank media legislation. The ‘Law 1982:691 concerning tax on certain cassette tapes’ expired at the end of 1992. Thereafter, the matter has been an integral part of the Law (1960:729) “concerning copyright [stricter translation: originator right] for literary and artistic works’ as a section concerning ‘compensation accruing to the production and import of devices for the recording of sound and images’. The §§ 26 k-n provide the legal base for the separate blank media levy collecting society, Copyswede.

A government draft of the Copyright Act of 23 March 1962 (Bundestag 1962) suggested that the exemption regarding the use of tape recorders should be removed. The private copying for personal use should be considered irrespective of the type of reproduction process used. However, the bill also suggested that originators should be able to claim compensation. The *Bundesrat*/Federal Council rejected this proposal on the grounds that a compensation claim directed towards private use of tape recorders could not be enforced in practice. Furthermore, there were doubts whether the remuneration could be made in accordance with cultural policy considerations.

The revised *Gesetzes über Urheberrecht und verwandte Schutzrechte* of 9 September 1965 (Urheberrechtgesetz 1965) included a section on the compensation claim by the originators against manufacturers of devices that are suitable for private copying of protected works. A ‘constitutional complaint’ from ‘Firma U.’ was directed against this paragraph. In the *Bundesverfassungsgericht*/Federal Constitutional Court verdict delivered 7 July 1971, it is stated that

After detailed deliberations and consultations with experts, the Judicial Committee of the *Bundestag*/Federal Parliament, after some initial concerns, accepted the view that it is within the aim of the new law to improve the legal protection of copyright and, thus, it is not compatible to exempt private tape recordings from the law....With the invention of tape recorders a development has been initiated that will lead to a shift toward increasing commercial reproduction in the private sector. A few years from now low-cost devices for home recording of television programs are to be expected, which will undoubtedly be used widely. If the unrestricted freedom to reproduce for personal use is retained, this development could bring about a serious erosion of copyright revenues. (Tonbandervielfältigungen 1971)

The Judicial Committee, in accordance with the opinion of the Federal Government in the proposed draft of 1962 (above), advocated compensation claims which in principle should be targeted against the device users. As this was regarded impractical, the committee instead proposed to provide the originators with a compensation claim against the manufacturers of devices suitable for private copying. It seems that the *Bundesgerichtshof*/Federal Court, in a decision of 29 May 1964 (BGHZ 42: 118), mapped out a system where purchases of tape recorders should only be accepted with registrations of personal identities in order to personalise compensation claims. The *Bundestag*/Federal Parliament, however, turned down this solution, considering it a severe trespass into the private sphere of the device user.

The *Bundesverfassungsgericht* verdict of July 1971 (above) finally established that the originator of copyrighted works is entitled to payment of a fee from the sale of devices which are capable of making copies of broadcasts or of audio recordings. The right should be exercised only through a collecting society. The society created for this purpose is ZPU (*Zentralstelle für private Überspielungsrechte*/Central Office for Private Copying Rights).

The verdict was not incorporated in the *Urheberrechtsgesetz*/Copyright Act until the 1985 revision as §54 *Vergütungspflicht*/payment obligation. It demanded ‘*angemessenen Vergütung*/ reasonable compensation or, alternatively, equitable remuneration’ from the manufacturers of devices to originators of copyrighted works. In the 2008 revision, the text explicitly mentions storage media for digital files apart from the earlier tape/video recorders.

The debate regarding the blank media levy system has been revitalised by the internet explosion and the extensive file-sharing that it made possible. In principle the copyright issues regarding the internet are much the same as regarding the cassette tape. The former analogue copying, however, meant a noticeable loss of sound quality. The copy was not identical to the original in this respect. The ‘transparent immediacy’ was reduced for each copy of a copy. Furthermore, the copying of a piece of music took as much time as the duration of that piece and the labour was somewhat more manual than in the case of copying of a digital file. Nevertheless, the cassette copying debate was a preamble to the current internet file-sharing debate. In the German case, the first issue was to decide whether the tape copying was already covered by the 1901 LUG right to replicate a bought item for private use. As the cassette tape could also be easily be used for the copying of records belonging to others and broadcast music the LUG was regarded as being insufficient. The music industry’s position was, fundamentally, the same as in the present internet debate. Cassette copying was detrimental for originators, musicians and record producers. The legislature, as an exponent of society at large, accepted this view. Consumers in the developed Western countries expressed most of the arguments they now express in the current file-share debate. The main opposition evolved around a fact which is discussed also regarding digital storage media. Namely, that cassettes could be used for other purposes than copying. But since cassette copy-sharing was not a big issue, the consumers’ case was not spoken so loudly as at presently. It was not until the new file-share debate in the 2000s that the economic, legal and moral grounds for IPR laws were questioned and opposed by the Piracy movement. This movement advocates the abolition of all or most IPR laws. That stance was more or less unheard of when the cassette levy was introduced³. Some organisations, like the Collective Performing Right Licensing Society STIM in Sweden, have suggested that Internet Service Providers/ISPs should be included in the levy system as they facilitate peer-to-peer copying of copyrighted material. There is, however, a counterargument in the fact that many content providers do not seek financial compensation but put their works freely on the internet to

3 My personal recollection is that most of us who copied actually regarded that act as morally dubious and nothing to boast of in public.

reach the widest possible audience. As with performing rights, it is possible to dispose of the right to be compensated. If you do not register your song with a collective licensing agency there will be no remuneration if it is played. The agencies, however, do not differentiate between registered or unregistered music towards licensees, who pay flat, blanket rates. The licensees, in this case, pay for music which should be free of charge and the composers are not granted their fair share. In some countries the levy collectors are under an obligation to allocate part of what they collect for cultural policy purposes. Maybe it is possible to argue that this is the part of the collected remuneration which could be claimed by those who do not bother to register works. Digital storage media can be used for lots of purposes apart from private copies of copyrighted music, films or computer software. They are also used widely to store documents, private photos/videos and statistical data. Compared to the position with cassette tapes, this predicament is even more substantial in digital media.

The levy system is practised in many countries with the major exception of the UK, which does not need a blank media levy system as copying for private use is not allowed. The levy principles do not differ much among nations, but the items included in the system do. In Germany there are fees on PCs, printers, copying machines, CD burners and portable digital memories, apart from cassettes, CDs and DVDs. In Sweden only the latter items were part of the levy system until 1 September 2011, when also the portable digital memories were included. At least this was what the levy collector Copyswede intended. It is still, as of spring 2013, not fully accepted by the producers and vendors.

Both the bases for the levies and the fees charged differ substantially between countries. The levy revenues per capita within EU countries with levy systems in 2009 ranged from €0.02 in Romania to €2.60 in France (Kretschmer 2011: 14). The blank media levy system has shown a strong resilience. New kinds of media have been included in national levy laws after their market introductions. At least one country, Belgium, equates mobile phones with mp3/mp4 audio players (Moniteur Belge 2009: 80498). Will more countries recognise this ‘possibility’ in the future?

The tariffs are usually based on a percentage of sales prices. Technological advances have made storage capacity relatively cheaper over time. Thus, the compensation to content providers has diminished in value.

9. Discussion

Whenever new media which exploit artistic products have been presented they have stirred up heated debates involving copyright holders, inventors, manufacturers, users, consumers, courts of law and the legislatures. New arguments pro or con IPR protection were created for every new distribution medium.

The Edison and Berliner inventions did not result in a total ‘creative destruction’ of the printing press technology for the distribution of music. Live amateur home-performances for the entertainment of individuals, families and guests were gradually replaced by the gramophone and, later, by the radio. Nevertheless, musicians had to play on the recordings and they regularly needed printed music. Printed music is still in demand for other purposes than recorded music. The radio medium did not destroy earlier means of music distribution. While the gramophone was preferable if you wanted to play a favourite song an indefinite amount of times, the radio presented a variety of music which it was not possible for the listener to decide on. The radio needed both printed music and recorded music to perform its task. It, therefore, was clearly a complementary means of distribution rather than something which creatively destructs scores and records in the Schumpeterian sense. Both the gramophone and the radio were technologies which remediated music in new formats.

Therefore, the stances of the stake-holders listed on p. 4 have been more or less static despite the technological shifts discussed. However, the arguments they promote in these and other IPR debates have been more situation and technology specific. For instance, in the current file-sharing debate, some consumer advocates claim that free copying of digital files should be accepted as these should be regarded as marketing vehicles for the promotion of live performances. Conversely, in the 1880s, in the debate in Britain regarding the introduction of the French performing right system, the consumer opposition claimed that there should be no IPR fees for live concerts as the function of these was to promote the sale of music prints, i.e. the tangible and copyable item (Albinsson 2012). The positions that various stake-holders seem to have taken in the processes described in this article are listed in table 1.

The position of consumers has mostly been negative regarding efforts to make IPRs cover the consequences of technological innovations. Of course, such amendments increase prices somewhat to the immediate discomfort of consumers. However, many consumers most likely recognise the need for composers, musicians and innovators to be sufficiently compensated

for desirable music to be put on the market. Once new IPR laws have been implemented, the prior consumer arguments more or less rest in silence until a new innovation occurs. Although piracy, in action, may be continuously and widely present, it is often claimed that the vast majority of consumers will most likely accept, both in principle and in practice, the new terms of trade provided by IPR laws. However, this claim is unsubstantiated and needs further research.

As seen in the Edison case above, inventors and manufacturers have a strong interest in patents covering their own pecuniary interests while they leave the interests of originators aside. Composers and musicians are left to fight for their own interests. In the present file-sharing debate Internet Service Providers, at least in the Swedish case, are strongly negative about an IPR levy being placed on their services for consumers.

It seems that copyright holders have, generally, not regarded new technological means of distribution negatively. Rather, they have tried to embrace them as new sources of income streams. In the Swedish case, the collective licensing agency STIM has declared a neutral stance towards various old and new forms of music distribution⁴. The STIM has not sprung to the defence of record companies in the current file-sharing situation. Instead it has now successfully negotiated a fee system with Spotify. Thus, the STIM, and its composer and lyricist members, seem to have accepted the Schumpeter 'creative destruction' concept (Strömberg 2012).

Judiciary systems of various countries have been forced to intervene when they have been confronted by IPR owners. Both common and civil law frameworks favour the idea of reliance on precedent. The common law *stare decisis* is in this respect what *jurisprudence constante* is in civil law. In the case of the piano rolls mentioned above, Judge Holmes of the US Supreme Court issued a verdict based on old IPR law and its precedents and, in addition, suggested amendments to better cover the new situation created by the invention. The role of courts, however, is that of interpreters of laws and not as creators of laws. Thus, courts, in principle, should have a neutral vantage point when confronted with the IPR issues of new inventions. It seems that this has been the case in all the disputes related above.

Obviously, the choice of a positive, negative or a neutral attitude towards IPR amendments as the result of technological inventions is a mirror of the potential monetary effect for each category. However, in the case of those involved in political decision-making the positive attitude reflects a wish to strike a productive balance between producers and consumers so that the IPR protection will bring goods that had otherwise not been produced to society and to consumers. The negative attitude of other stakeholders, in this case, is

4 According to the STIM CEO, Kenth Muldin, in conversation

regarded as counter-productive by the legislatures. What consumers demand will not be produced if the artists are left uncompensated. Furthermore, it is likely that legislatures regard IPRs as positive for the creation of artistic industries with the potential for large scale employment, tax revenues and, at least in some cases, contributions to national pride and unity.

Table 1. General status of stake-holder attitudes toward IPR protection of new music distribution technology

	Patents for distribution medium	Copyrights for distributed content
Copyright holders	neutral	positive
Inventors of technology	positive	negative
Manufacturers	positive	negative
Distributors	negative	negative
Consumers	negative	negative
Courts of law	neutral	neutral
Legislatures	positive	positive

The preceding political processes before new laws have been enacted have had lengthy durations and have been filled with hearings, investigations and reports. As new technological means of music distribution in all cases have, eventually, been granted IPR coverage the position of the legislature must be regarded as IPR positive. The focus of this study has been on legal processes. It is likely that many of the arguments in the more public debates which preceded them have also appeared in court proceedings.

Business disputes and media debates, for instance, may include other arguments and, perhaps, more colourful and pithy formulations of stances than the polished legal documents. Thus, further research into that vast area of source material would be of great interest for an even better understanding of the matters discussed here.

The file-sharing debate, which has brought the Swedish Pirate Party into the European Parliament, is not yet history. However, if the pattern of earlier technological shifts applies also to the current process new IPR amendments will be issued or, at least, current IPR laws will be interpreted to cover the internet. Most consumers will, eventually, accept the idea of originator compensation and, thus, prefer distributive services for which they pay fees. At least, they will do it for fear of litigation. The Piracy movement will, most likely, suffer from this consumer adaption to legal requirements. However, its ideas will remain a kind of ideological sediment which will be stirred up again at the next technological shift.

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Swings and roundabouts: Swedish music copyrights 1980–2009

Staffan Albinsson

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Abstract For this study, data from the annual reports of the STIM (the Swedish Performing Right Society) (By Swedes it is read as a word: ‘stim’ and not as four separate initials S.T.I.M.) were collected and analysed. If the general hypothesis that a digital technology shift has resulted in illegal downloading holds true, there should be a decrease in total revenues for composers from record sales. This is what the STIM data show. There has, however, been a simultaneous growth in income from other sources, which compensates for the loss from record royalties. This study also includes a unique data set from the STIM showing revenues for individual music IPR owners. The general finding is that a very small group of composers receives a very large share of the copyright revenues. Music as a ‘winner-takes-all’ arena is apparent.

Keywords Intellectual property rights · Music copyrights · Business history

1 Introduction

The contribution of this paper relates to the data-based study of two issues related to intellectual property rights (IPRs) pertaining to music:

1. IPR revenues have decreased since the start of the millennium owing to illegal file-sharing on the Internet.
2. The distribution of IPR revenues is skewed in favour of a small number of receivers who collect a large share of the total income, creating a heavy tail, winner-take-all situation.

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A data set was compiled from information available in the Swedish Performing Right Society (the STIM)'s official annual reports. The STIM also gave me access to unique data on the distribution of payments. The data sets are limited in their number of variables, observations and, regarding the data set related to the second issue above, the length of time for which data are available, but they tell a compelling story in relation to the two main research issues.

The STIM data relate well to Liebowitz (2005, 2008, 2010), Rob and Waldfogel (2004) and Zentner (2005, 2006), who find evidence that file-sharing actually harms the record industry. However, in the STIM case, the loss of income for composers was compensated for by an increase in performing right revenues from broadcasts and live performances.

Regarding the skewed income distribution issue, the findings in this study, in general, follow the 'winner-takes-all' pattern that Sherwin Rosen (1981) describes in his ground-breaking article 'The Economics of Superstars'. Ivan Pitt (2010) presents similar findings.

2 Collective music IPR licensing in Sweden 1980–2009

The STIM has licensed the general, 'blanket', use of music in its catalogue to a wide variety of users. Use primarily includes public performances and broadcasts. The two main categories are often intertwined. When, for instance, a hairdresser turns on the radio to entertain her client, and the broadcast is a transmission of a live concert, three sets of fees are paid: by the concert promoter, the broadcaster and the hairdresser. Since 1995, the STIM has, unlike its counterparts in many other countries such as the US, distributed record sales royalties among its members. The fees have been transferred from the Nordic Copyright Bureau (the NCB), which is the collecting agency. Since 2003, the STIM has also administered IPR licensing for internet music providers, primarily for downloaded music files from iTunes and streamed music from the Spotify platform.

The STIM has a small number of non-Swedish members. Their fees are listed separately. A small number of Swedish composers are not STIM members. Instead, they collect their IPR revenues from some foreign counterpart. All collective music IPR licensing agencies form a close network. Licence fees for music by STIM members, which is broadcast abroad, are collected by the appropriate foreign STIM counterpart. The fees are transferred to the STIM, which distributes them to the IPR owners.

Broadcast music and music played in live performances in major venues are habitually registered piece by piece, and the information is delivered to the STIM that distributes the proper fees accordingly. The STIM also skims daily papers for concert ads from more temporary promoters to whom the STIM sends IPR fee requests. Many IPR owners also provide the STIM with supporting information on performances of their music.

Different pieces of music have different levels of IPR compensation. The STIM has an advisory board of composers from various genres who suggest, for example, what the compensation for the performance of a symphony should be compared

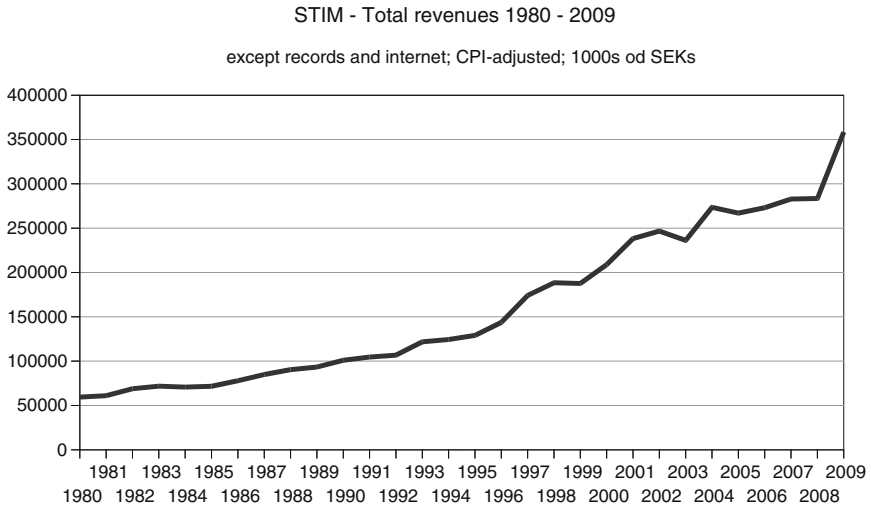


Fig. 1 STIM total revenues excluding records and the internet, 1980–2009 (STIM annual reports)

with that of a pop song. The key issue is the artistic complexity of the category in question. The compensation for 1 min of symphonic music is three times as much as that for a minute of music in the least complex category.

The number of STIM members is presented in the annual reports. The number who have actually collected an income was not divulged until the very latest report within this study. The number of members increased between 2003 and 2009 with an average annual growth rate of 5.2 %. The number of members actually receiving income from the STIM increased by 4.2 % between 2008 and 2009, so, although the STIM's total revenues have increased considerably, the number of revenue receivers has increased as well.

The data set for this study was collected from the STIM annual reports (see Table 2 in the appendix). Figure 1 shows the rapid growth of music IPR revenues collected by the STIM during the last 30 years. The average annual growth rate was 6.4 %. With record (from 1995) and internet (from 2003) royalties included, the average annual growth rate reduces to 3.8 % during the period from 1995 to 2009 (Fig. 2). However, the record sale dropped after a peak in 2001 but instead increased income came from broadcasts and live performances (see Fig. 3).

The proportions of total revenues from the five market segments studied changed fundamentally between 2003, when internet royalties were introduced, and 2009 (see Fig. 4).

The decline in CD sales could have a number of causes besides illicit file-sharing, and these are discussed below:

- The price of CDs may be too high—CD prices have, however, been more or less constant during the period studied.
- CD quality may have deteriorated—this is not apparent.

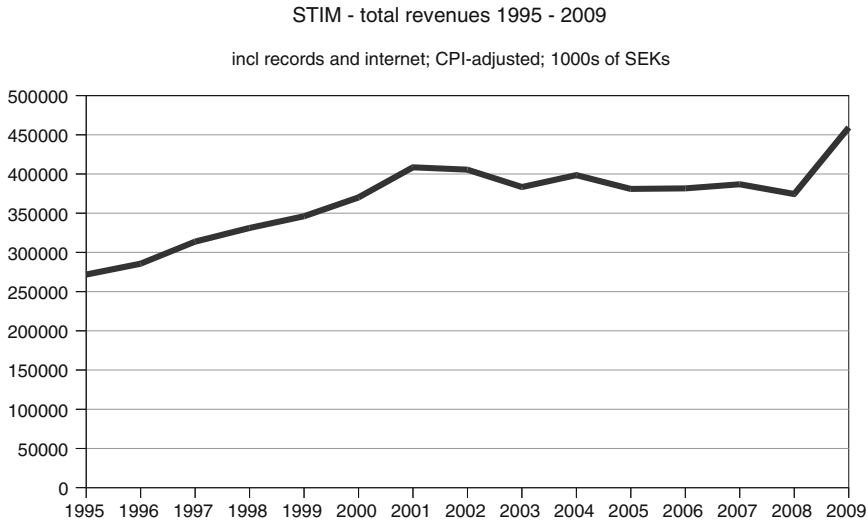


Fig. 2 STIM total revenues, including records and the internet, 1995–2009 (STIM annual reports)

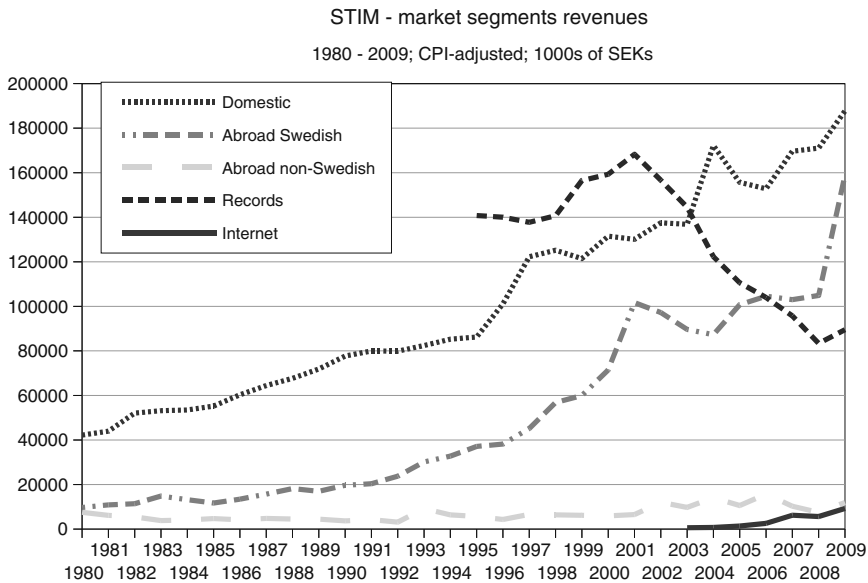


Fig. 3 STIM revenues by market segments, 1980–2009 (STIM annual reports)

- Music on CDs may have deteriorated—if so, there would not be a substitution of CDs by P2P downloading, as the music would be equally bad regardless of the means of distribution.

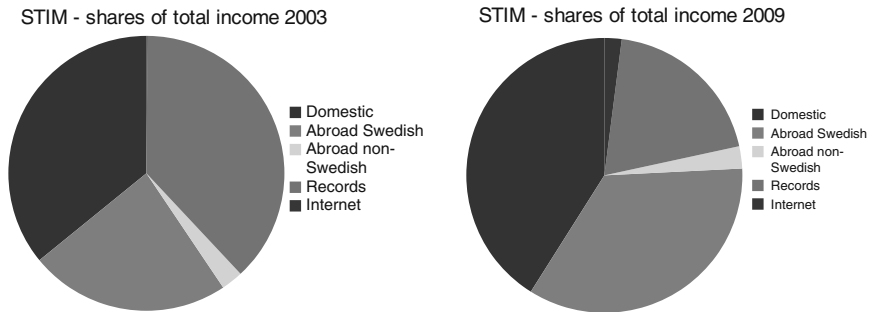


Fig. 4 STIM revenues by market segments, 2003 and 2009 (STIM annual reports)

- There may be new means of distribution, which are more practical, cost-efficient and well-targeted (no surplus songs as on a CD—only the desired ones).

Joel Waldfogel (2011), exploring airtime, sales and critical acclaim, finds no indication of a decline in the quality of music produced post-Napster compared with that produced pre-Napster (with 1999 treated as the crucial shift year). However, it might be that the main quality aspects that are conserved after the shift are connected with whether the music is new. Waldfogel identifies the novelty-vintage matter as a ‘depreciation effect’, but does not discuss the demand for music in relation to a consumer appreciation of things regarded as up-to-date or in tune with the zeitgeist. Whether actual musical qualities are also embedded in the newness of the music is not clear. Furthermore, Waldfogel finds a shift from major labels to independent labels due to reduced costs of production, marketing and distribution.

Andersen and Frenz (2010 p. 735) find, using survey data on consumer attitudes in Canada, that ‘P2P file-sharing is not to blame for the decline in CD markets’. They claim that the sampling possibilities provided by P2P networks make them marketing vehicles rather than substitution tools. Oberholzer and Strumpf (2007), too, observe little evidence that file-sharers undermine the record industry. The Andersen and Frenz view, based on alleged consumer preferences, is definitely not supported by the STIM data. There was a huge decline in royalties for composers from record sales from 2001 to 2008. The STIM data thus relate better to those of Liebowitz (2005, 2008, 2010), Rob and Waldfogel (2004) and Zentner (2005, 2006), who find evidence that file-sharing actually harms the record industry.

Obviously, illegal file-sharing has been much more of an isolated record industry problem than a problem confronting composers. The latter fared rather well, as the average annual growth rate of the total IPR revenues during the 30-year period studied was 6.4 %. What was lost from record royalties was instead gained from other sources. IPR owners have benefited substantially from new general collective IPR contracts covering, for instance, commercial TV and radio. Domestically based commercial TV was introduced in Sweden in 1990 (TV4). Commercial radio was introduced in Sweden a few years later. Prior to that, state-owned public service companies had had a broadcasting privilege.

Alan B. Krueger (2005) finds a shift after 1997 to radically higher ticket prices at rock concerts. There is a small exponential rise in ticket prices based on how famous the artist/group is. Krueger argues that this is because of what David Bowie predicted in 2002, after the fall of record sales, would be an effect of internet music piracy: 'Music itself is going to become like running water or electricity', and he advised performers, 'You'd better be prepared for doing a lot of touring because that's really the only unique situation that's going to be left' (Krueger 2005 p. 26). Montoro-Pons and Cuadrado-Garcia find the same 'Bowie effect' in Spain, where total revenue for live concerts between 2000 and 2005 increased by an average annual rate of 11.1 % while revenue from pre-recorded music fell at an average annual rate of 4.4 % (Montoro-Pons and Cuadrado-Garcia 2011 p. 21). There is probably a Bowie effect embedded in the STIM data, although its size is unknown.

3 Income distribution from IPR revenues distributed by the STIM: A winner-takes-all arena

The marginal cost of the production of copies of sheet music and recorded music has diminished constantly over time. The cost of producing the original score or recording has always been substantially higher than the cost of production of the first copy of it. With every technology shift, the copying cost has decreased. Now, the cost for copying a digital file is almost zero. For every such technology shift, the pressure on producers of IPR-protected goods has increased. Simultaneously, the persistent shift towards technologies providing ever-growing economies of scale in terms of production or distribution will create a 'natural tendency for one producer, supplier or service to dominate the market. The battle is to determine which one it will be.' (Frank and Cook 1995 p. 33).

The producer who wins the battle for market attention normally ends up in a winner-take-all situation. The Matthew 25:29 effect is apparent: 'For unto every one that hath shall be given, and he shall have abundance'. The path-dependency force is vital to music. The more successful you are, the more successful you become.

Sherwin Rosen (1981) describes in detail the economic elements that Alfred Marshall predicted, as long ago as 1947, would lead to an increasingly skewed relation between the revenues of a limited number of first rank suppliers and the rest. They include technological changes that influence both demand and supply shifts. Rosen also points to the qualitative aspect: it is not really possible to replace one talent/supplier with another.

Many of us use music in our identity formation. We prefer one or a few genres to others. Within each genre preference, group members tend to have mental shelf space that only holds a very limited number of composers, songs and artists. Marketing by producers, critics' reviews and consumer word-of-mouth tend to make our consumption pattern the same as that of others. The crucial importance of information for sales is described by David Giles (2007) for the music industry and by W. D. Walls (2010) for DVDs. Montoro-Pons and Cuadrado-Garcia discuss the post-modernist music consumption pattern where more and more people have multi-genre preferences (Montoro-Pons and Cuadrado-Garcia 2011 p. 22). As Peterson

Table 1 STIM payments 2009 sorted by income levels

Stratum	Number of receivers	Total revenues
>1,000	23	101,027'
500'-999'	33	39,214'
250'-499'	67	42,283'
100'-249'	260	58,264'
50'-99'	304	28,346'
25'-49'	493	22,465'
10'-24'	1,100	20,375'
5,000-9,999	1,191	9,678'
2,500-4,999	1,579	6,006'
1,000-2,499	2,634	4,479'
500-999	2,112	1,553'
100-499	4,996	1,288'
<100 SEK	9,187	226'

and Kern (1996) find, fewer and fewer people are prepared to be confined to high-brow versus middle- or low-brow culture consumption. They become post-modern *omnivores* (Peterson and Kern 1996). Their mental shelf spaces are still limited, resulting in a decreased depth of knowledge, so their screening processes will probably be even shallower than those of the single genre fan. This offers a further advantage to those who are already the established winners.

The 6.4 % average annual STIM growth has been spread among an increasing number of receivers. There is no information in the STIM publications on actual numbers before the last few years. The STIM has, however, provided a special data set for this paper with information on the number of receivers and the distribution of income. Table 1 shows 1000s of SEKs.

Most receivers get very little. Ninety-five per cent of them received fewer than 10,000 SEK (approx. € 1,000) in 2009. At the other end of the scale, a small number of domestically and, in some cases, internationally, extremely successful composers received a very large share of the total IPR revenues. In 2009, 0.2 % (56) of the receivers collected 36 % of the money.

This is a typical 'power law' case (see, for instance, Newman 2005). The distribution of revenues, as observed in Fig. 5, is far from the normal bell curve shape. The exponential-like power at hand here is a common trait of all 'winner-take-all' arenas.

According to the German performing right society's 1996 year book, 5 % of its members received 60 % of the total distribution. Kretschmer and Kawohl claim to 'have calculated that in both the UK and Germany between 500 and 1,500 composers can live substantially off IPR royalties' (Frith and Marshall 2004 p. 44). If the same rate is applicable to Sweden, there would be between 30 and 90 composers who were able to support themselves from IPR revenues. This study supports the Kretschmer and Kawohl findings for the Swedish context.

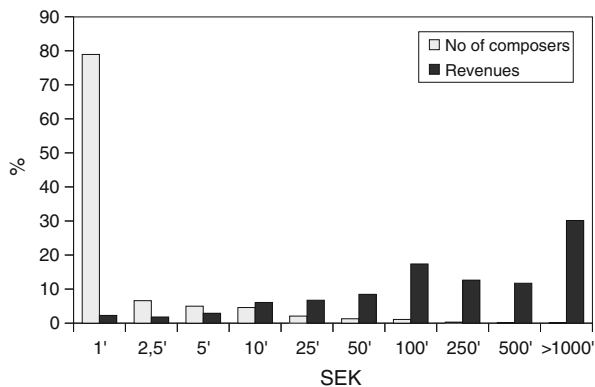


Fig. 5 Distribution of STIM revenues 2009

4 Conclusions

During the last 15 years, the STIM has distributed the IPR revenues from record sales among its members. The data presented in STIM publications reveal that the claimed loss of income from record royalties after the digitization of home media equipment and the internet revolution is a fact. Nevertheless, the total income for composers from IPR has risen substantially during the period. The number of IPR owners connected with the STIM has increased as well. This suggests that the music business as a whole is thriving, while the record industry is under pressure from the new online options.

The hitherto unpublished dataset on the payment distribution included in this paper has made it possible to show that IPR revenues have only rhetorical importance for most composers, and only mean substantial revenues for a limited few. Only 1 % of STIM members collect IPR incomes on a level that could make it possible for them to have a decent, good or even affluent standard of living. Sixty-five per cent of STIM members received less than 1,000 SEK (approx. 100 EUR) in 2009. This increasing ‘winner-takes-all’ phenomenon is primarily the result of the technological shifts that have occurred and the changes in IPR legislation that have taken place to counteract the consequences of these shifts.

The size of IPR income may not be the only important element to consider. Small amounts can result in the recognition of a person’s ambition to be regarded as a composer. A pay cheque from the STIM is recognition of a composer’s being just that. It acts, regardless of the size of the payment, as a round of applause from the invisible audience.

Appendix

See Table 2.

Table 2 Table of royalty payments from STIM 1980–2009, CPI-adjusted (base 2009), 1,000s of SEKs

Years	Domestic	Abroad Swedish	Abroad non-Swedish	Records	Internet	Total income
1980	42,203	9,691	7,526			59,420
1981	43,945	10,861	6,165			60,971
1982	52,068	11,382	5,447			68,897
1983	53,152	14,810	3,823			71,785
1984	53,463	13,196	4,044			70,704
1985	55,214	11,686	4,725			71,625
1986	60,284	13,419	4,150			77,853
1987	64,434	15,681	4,766			84,881
1988	67,659	18,156	4,503			90,318
1989	71,863	16,976	4,451			93,290
1990	77,690	19,645	3,671			101,006
1991	79,964	20,354	4,247			104,565
1992	79,868	23,751	3,107			106,726
1993	82,426	30,163	9,178			121,767
1994	85,259	32,753	6,369			124,382
1995	86,218	37,116	5,664	140,776		128,997
1996	101,118	38,167	4,321	140,029		143,605
1997	122,274	45,151	6,610	137,729		174,035
1998	125,192	56,815	6,394	140,714		188,402
1999	121,467	59,947	6,184	156,480		187,599
2000	131,484	71,458	5,908	159,291		208,850
2001	130,100	101,658	6,514	168,279		238,272
2002	137,511	97,224	12,024	156,678		246,759
2003	136,857	89,635	9,738	144,515	581	236,230
2004	172,208	87,243	14,074	122,328	711	273,525
2005	155,660	100,739	10,568	110,582	1,376	266,967
2006	152,818	104,551	15,710	103,978	2,558	273,078
2007	169,650	102,998	10,251	95,723	6,206	282,899
2008	171,048	104,907	7,485	83,378	5,632	283,440
2009	187,756	158,817	11,918	89,502	9,261	358,492

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Article 5

Sound Earnings?

The Income Structure of Swedish Composers 1990–2009

When busker is beaten, it shall always be proper...
He shall never pray for more justice
than a whipped bondwoman
Elder Westrogothic Law
(Ling and Nilsson 1983, 62, my translation)

1. Introduction

Swedish composers, like their musician peers, are much better off today than in the Middle Ages. Nevertheless, the thirteenth-century Elder Westrogothic law, or at least the attitude it conveys, is occasionally referred to by Swedish music professionals as an early token of a still prevailing lack of esteem and, thus, financial remuneration from society at large and even from consumers of music. Are there any lingering tokens of this today or do Swedish composers fare better now?

The point of departure for this paper and its first hypothesis is the basic monetary incentive theory which holds that the prospect of revenues will result in more output. Will increased musical output depend on a prior increase in royalty income for composers, i.e. a positive pecuniary experience of prior outcome? The opposite case is also studied: will increased income come from increased output? A second research question in the paper, which is also of interest when the importance of IPRs is discussed, is whether royalty incomes

play a substantial role in the total incomes of composers or not. The data for these two matters could only be collected through individual mandates from voluntary participants.

Three factors are generally considered to be influential when it comes to the size of composer incomes in Sweden: gender, level of education and choice of domicile. Male composers are expected to earn more than female. But to what extent? In most professions higher level of education will increase income. Is it the same for composers? Finally, the expectation is that a composer living in the national capital, Stockholm, will earn more than others. Data on these issues have been collected and used as control variables in econometric analyses.

The main bulk of the paper is concerned with quantitative analyses of the new data set. Furthermore, some qualitative aspects of non-monetary incentives for the creation of art music are discussed. This was inspired by a casual conversation with musician friends who claimed that they accept a performance offer based on three criteria:

1. is it well paid?
2. will it boost their market value?
3. will it be fun?

The sum of assessed values for all three aspects should be large enough for the proposed gig to be booked.

The conclusion of a symposium, ‘What constitutes evidence for copyright policy?’, last November at Bournemouth University was that there is a general lack of evidence pointing to desirable changes in IPR law. The symposium took the UK Intellectual Property Office’s/ILO guidance document on standards of evidence, ‘clear, verifiable and able to be peer-reviewed’, as vantage point (Kretschmer and Towse 2013). Hopefully the data here will satisfy the ILO standard.

The studied cohort is a distinct member group of the Swedish Performing Rights Society (STIM/Svenska Tonsättares Internationella Musikbyrå), namely, the members of the Swedish Union of Composers (FST/Föreningen Svenska Tonsättare). They are, as potential ‘merit good’ providers, the concern of cultural policy decisions while the vast majority of STIM members create commercially more viable music and, thus, they are rather in focus for the Ministry for Enterprise. Furthermore, it is a group which due to its relatively small size has been possible to investigate with the method here based on signed mandates for individual data collection. The target group is described in sections 2, 6 and 7.

In 2009 there were 59,054 STIM members. 25,169 of them, or 43%, received some compensation. The findings here are based only on the FST members who constituted 0.5% of the STIM members and 1.2% of those who received any amounts. Most of them collected less than 1,000 SEK in 2009.

31% received between 1,000 and 50,000 SEK. 93 STIM members (0.2%) were the real winners: more than 0.5 million SEK was transferred to each of them (STIM 2009).

Previous data on composer incomes both from Sweden and other countries exist albeit not in abundance. Some basic Swedish data on the composer income issue, mainly from Statistiska Centralbyrån (Statistics Sweden), were recently presented by the Konstnärsnämnden (the Swedish Arts Grants Committee) (Heggemann 2009a; Flisbäck 2011). Data on gender issues related to the income of artists were also recently provided by the Konstnärsnämnden (Flisbäck 2010). The Konstnärsnämnden data cover all artistic professions and only rarely do they provide information for composers specifically. Fredrik Österling's report *Komponisterna i Sverige/Composers in Sweden* (2009), also for the Konstnärsnämnden, provides in-depth knowledge of the labour market for composers of art music in Sweden but does not present more data on composers' income than Heggemann (2009a). However, Heggemann's data are for one year only (2004), whereas the data for total income in this study cover 20 years: 1990–2009. The data on all income sources for the main sample group cover five years: 2005–2009. The main focus of this study is the importance of revenues from intellectual property rights (IPRs) on the total incomes of Swedish composers and on their professional performance. This question is not discussed in any of the Konstnärsnämnden reports. However, the data collected for this study in part also shed some new light on issues discussed in these reports.

David Throsby and Anita Zednik (2010) provide an extensive study of Australian artists with the general finding embedded in its title: *Do you really expect to get paid?* They provide specific information for composers, although their definition also, unlike this study, includes songwriters. Kretschmer et al. (2011) present data on 5,800 British designers, fine artists, illustrators and photographers. Furthermore, Kretschmer (2005) presents relevant but somewhat older data for music artists in Britain and Germany. Kretschmer and Hardwick (2007) cover 25,000 British and German writers (excluding 'writers' of music). A Dutch survey on copyright holders' attitudes toward digital rights management/DRM (Weda, Akker, Poort and Risseuw 2011) provides some relevant data.

This paper is based on new unique data provided by the Swedish Performing Rights Society (STIM/Svenska Tonsättares Internationella Musikbyrå). Collective performing rights licensing agencies are private enterprises and their files are thus not public. The agencies normally refuse access to their archives based on judicial and business secret grounds. Thus, the possibilities to carry out scientific research regarding the effects of performing right fees have been limited or even absent. The STIM has now provided data for a large

share of Swedish composers of art music with mandates from them for this study as legal requisites.

This paper, furthermore, presents data that disclose that composers of art music in Sweden on average do not belong to the poorest segment of workers in their country. On the contrary, the average composer earned 9.3% more in 2009 than the average employee in Sweden. Other findings discussed include the strong winner-takes-all-situation, i.e. an extreme range between those few who earn the most and the vast majority who are financially much less fortunate, and the effect of a growing music stock over time on the income at a late age. Information on the gender issue and the effects of education and domicile is also presented based on the data material.

2. Composers of art music

The Swedish Performing Rights Society (STIM/Svenska Tonsättares Internationella Musikbyrå)¹ has three main member organisations: the Swedish Union of Composers (FST/Föreningen Svenska Tonsättare), the Swedish Society of Popular Music Composers (SKAP/Svenska Kompositörer av Populärmusik) and the Swedish Association of Music Publishers (smff/Svenska musikförläggareföreningen). A very large majority of listed titles and subsequent revenues in the STIM database stems from SKAP members. They are almost ten times as many as their FST colleagues. Although the artistic demarcation line between SKAP and FST membership may be rather flexible, the overall principle is clear enough: the SKAP organises composers of popular music and the FST members compose art music. Most current members of the FST have an academic degree from a school that carries the tradition from the famous classical composers of opera, orchestral and chamber music. The FST membership is granted by an artistic jury. As the music composed by FST members is not yet 'classical' in a strict sense, the music studied in this paper will be, as is now common in the music business, labelled (occidental) 'art music'.

Art music is a general label assigned to music in the tradition Germans call *Hochkultur*, sometimes translated into 'Art with a capital A'. It should, generally, have a higher degree of both complexity and demand for performers' skills than music of other genres. Art music is not folkly. It does not, primarily at least, strive for entertainment. Art music does not seek popularity. Fame might thus be a medal with both a flip-sided successful income effect for the composer and a flop-sided questioning among other composers of whether the music is *really* arty as it has reached a level of popularity. The idea that an artist in a *beaux arts* craft should suffer in order to create important work still holds some sway.²

It would be misleading to label all music composed by SKAP members 'commercial'. However, as their music is supposedly a more 'popular' kind, the incentive to create most likely, apart from popularity itself, stems from the potential income from records, concert tickets and broadcasts. All three generate demand-driven IPR revenues. Contrarily, the creation of art music

1 STIM is pronounced as a word: stim

2 Claimed by composer confidants in a survey I conducted for the FST in 2009. Eighty FST members presented formulations regarding professional attitudes and assessments concerning past and future incomes. The FST collected the material on my behalf but anonymised the results before conveying them (Swedish language).

is, generally, funded mainly through commission fees, temporary employment, grants and stipends. As we shall see in graph 5, most FST members earn income from other professional activities apart from composing.

The hard struggle to which composers have to commit themselves in order to gain respect for all their efforts to bring art and joy to the people seems eternal. This is, however, shared with most professionals within artistic businesses and also by those who work in other sectors in which the results are 'merit goods' with, at least alleged, intrinsic positive externalities rather than goods with more direct and obvious monetary effects. As for most consumers the inclusion in the artistic world as a member of an audience or a collector makes the artistic items 'positional goods' (Hirsch 1977. 27; Frank 1985. 7), the provision of such goods rubs off positional merits onto their creators. Thorstein Veblen (1899) identified that for some goods (thus 'Veblen goods') the demand also increases when the price increases.

3. The data

The data in this study come from four sources:

3.1. STIM

In order to acquire access to individual information from the STIM database, the FST members were asked to sign letters of attorney or mandate. Such proposals were sent to the 303 FST members (excluding members living abroad). Four members explicitly refused to participate. One hundred and twenty-seven or 43% did send back signed letters. The number of people studied here is thus not big but its large share of the full cohort in question should make the sample reasonably representative. This issue is further developed in section 5.

Data on revenues from Internet streaming were also provided from 2005. Due to the lack of income from this source for 98% of the composers and very small amounts for the 2% who did collect something, this variable has not been used in the analyses.

The STIM registers data individually based on official individual tax identification numbers. Thus, in this sample the amounts provided by the STIM for the study may have been paid out to the person, to his/her registered firm or to his/her private company.

3.2. The Swedish Tax Agency

The data collected from the tax agency were of two kinds. The general information on annual taxation data on the aggregate individual level (not separate listings of income from various sources) from the income year 1990 onward is readily available for anyone to read at the tax agency's service points all over Sweden. These data were collected for all the FST members plus a control group. The control group was randomly selected from non-FST members born on the same day and of the same sex as a corresponding FST member.

The letters of mandate had a tick box granting access to non-public tax information from the last five years (2005–2009) on all the various actual sources of individual income. These data were sent to me from various tax authority regional offices and transferred to the data set.

If the composer has registered as a one-person firm the STIM revenues can be booked in the firm rather as salaries. To be able to benefit privately from the STIM remuneration the individual in this case, however, sooner or later has to transfer the firm-based assets to ordinary taxed income.

3.3. The Swedish Music Information Centre (*Svensk Musik*)

General data on the individual outputs of FST members were collected from the Swedish Music Information Centre, a STIM affiliate promoting Swedish music both domestically and, primarily, internationally. These variables are accumulative. The data were collected according to the year of publishing, first performance or, simply, registration with the STIM.

Name	Source	Period	Collected for	Description
<i>output_STIM; total number of pieces with compensation from STIM</i>	constructed	1990-2009	all FST	5*orchestral+chamber+team
<i>output_total; output_STIM plus operas</i>	constructed	1990-2009	all FST	10*opera+5*orchestral+chamber+team
<i>age</i>	constructed	1990-2009	all	income year (1990-2009) minus year of birth
<i>age_squared</i>	constructed	1990-2009	all	
<i>total IPR revenue from STIM</i>	STIM	1990-2009	confidants	
<i>total taxed income</i>	Tax Agency	1990-2009	all	
<i>sex</i>	Tax Agency	time-invariant	all	1= male, 2= female
<i>celebrity</i>	Google	time-invariant	all FST	number of Google hits on name as of December 2011
<i>domicile</i>	Tax Agency	time-invariant	all FST	address of February-March 2011 1= Capital Stockholm; 2= Gothenburg, Malmö, 3= regional centres; 4= small towns and countryside
<i>education</i>	MIC	time-invariant	all FST	level of higher education 1= domestic and international education; 2= domestic education; 3= domestic education, not composing; 4= no education
<i>mandate</i>	confidants	time-invariant	all	1=FST member, mandate; 2= dito no mandate; 3=ditto explicit refusal; 4= non-FST reference group
<i>taxed income from STIM</i>	Tax Agency	2005-2009	confidants	
<i>taxed income from municipalities; normally from educational work</i>	Tax Agency	2005-2009	confidants	
<i>taxed income from churches; normally as organ players</i>	Tax Agency	2005-2009	confidants	
<i>taxed income from universities or conservatoires; normally education</i>	Tax Agency	2005-2009	confidants	
<i>taxed income from miscellaneous sources related to music</i>	Tax Agency	2005-2009	confidants	
<i>taxed income from miscellaneous sources not related to music</i>	Tax Agency	2005-2009	confidants	

Table 1. Variables used in the analyses

Notes:

- All variables, i.e. including those collected but not used in the analyses or only used in the construction of aggregated variables are listed in the appendix.
- *mandate*: the non-FST reference group was collected randomly from the same Tax Agency source that provided the data for FST members.
- *Grands droits*/big rights accrue to music for the theatrical stage, e.g. operas, operettas and musicals, whereas *petits droits*/small rights cover all other kinds of music and performances. See Albinsson (2012b) for the history behind the division.
- orchestral works, chamber music and electro acoustical music/EAM are referred to as *petits droits* items compensated through the STIM system.
- operas are not part of the STIM collection of *petits droits* fees. They are compensated through direct *grands droits* negotiations with theatres.

- *output_STIM*: Both STIM and the agreement on tariffs for commissions between the employers' union, Svensk Scenkonst, and the composers' union, FST, differentiate remunerations between various kinds of music mainly based on the degree of 'complexity'. The STIM, furthermore, claims that the grading aims to compensate composers of pieces that demand heavy work efforts and that have limited possibilities to be performed. Thus, the factor 5 here for *orchestral* was chosen to compensate for longer duration, a higher degree of complexity and higher per minute royalties for symphonic pieces.
- *output_total*: the factor 10 for the number of operas was chosen to compensate for longer duration, a higher degree of complexity and higher total fees from commissions and royalties.
- All monetary amounts (SEK = Swedish krona) were adjusted according to the CPI with 2009 as the base year. They were recorded in thousands. The collected observations for the chosen variables form an 'unbalanced panel' data set.

4. Method

I ended a previous article based on STIM data with the following statement (Albinsson 2012):

The size of IPR income may not be the only important element to consider. Small amounts can result in the recognition of a person's ambition to be regarded as a composer. A pay cheque from the STIM is recognition of a composer's being just that. It acts, regardless of the size of the payment, as a round of applause from the invisible audience.

The idea that IPR law pertaining to music may be appreciated also by composers who do not actually gain much financially from it is discussed in a Dutch survey on copyright holders' attitudes toward digital rights management/DRM (Weda, Akker, Poort and Risseuw 2011: 29). Most respondents, including composers, wished for actions to be taken against file-sharing websites and their consumers. A considerable proportion of the respondents endorsed the use of DRM, although the data also reveal that the winner-take-all syndrome is also apparent among Dutch artists leaving most royalty receivers with pittance.

This study is guided by a kind of 'incentive function' based on this notion and the above-mentioned musicians' criteria for accepting a gig. Monetary compensations are not the only possible incentives. Model (1) describes what may actually incentivise composers – both those who are obviously successful and those who are seemingly less fortunate.

Model (1) $P = f(M_1, M_2, M_3, \dots, R_1, R_2, R_3, \dots, P_1, P_2, P_3, \dots)$
where

P = propensity to produce
M = monetary incentive factors
R = recognition incentive factor
P = pleasure incentive factors

This idea is supported by, for instance, Eva Hemmungs Wirtén (2009, my translation):

The downside of such an argument [i.e. the monetary incentive] is that it tends to reduce creativity to a question of money, period. However, there is a variety of reasons besides the purely economic for people to write, to film and to paint. As in science, where symbolic rather than economic capital is the primary goal, the creativity in the cultural sector can be based on the desire to create, to share, to develop and see one's own ideas have an impact on other people's works.

Of course, the notion of incentives other than pecuniary is not new. Some authors refer to the fact that there are non-monetary considerations in the choice of an artistic profession. However, the nature of such considerations has not been much explored. Pierre-Michel Menger (2006) lists the most important: the variety of work, a high level of personal autonomy in using one's own initiative, the opportunities to use a wide range of abilities and to feel self-actualised at work, an idiosyncratic way of life, a strong sense of community, a low level of routine, and a high degree of social recognition for successful artists. In sections 11 and 12 some of these aspects are elaborated to some extent.

Diane Leenheer Zimmerman (2011) claims that

... in recent decades and outside the intellectual property literature, the findings of researchers in psychology and behavioural economics have cast considerable doubt on both the existence of 'rational profit-maximizers' who routinely make their choices based on economic criteria ... What these scholars posit instead is that the expression of human creativity is primarily driven by intrinsic rather than extrinsic factors.

Zimmerman discusses the differences between extrinsic and intrinsic incentives. However, a well-defined distinction between the two cannot easily be made. Is the process of recognition incentive extrinsic or intrinsic? Is it a push or pull force for the production of music?

In this study it is possible to investigate quantitatively only the monetary incentive factors. The recognition incentive is discussed mainly qualitatively. However, as will be shown below, recognition often manifests itself in extra-compositional money. The celebrity variable here is measured crudely by the number of Google hits of composer's names. It should not be generally interpreted as an indication of output quality. Nevertheless, celebrity does indicate recognition of what is regarded as interesting music by the contemporary zeitgeist.

The data in this study do not shed direct light on pleasure incentive issues. That field is open to further investigation. I will, however, mention some plausible scientific findings from other authors (sect. 11).

The data are presented in two ways:

- *Descriptive statistics* – some of the findings are presented in tables and graphs 'as they are'. Normally variables in this case are grouped or sampled but they are not actually processed in any way. The chosen descriptive measures provide inputs for interpretation and analysis. This step is limited to what the imaginative eye can see.
- *Econometric models* – correlations and causality patterns have been checked by the use of panel data regression models. The models are motivated, processed and analysed according to the standard procedure. For the sake of consistency the models presented are all based on random-effects GLS regressions. Year dummies have been included in the analyses of all regression models. They are, however, omitted in the presentations.

5. The sample

The composers who provided mandates for the collection of confidential data relate to the other groups according to table 2.

The group that provided signed mandates differs somewhat in age from the non-mandate group: the median age is two years older. Correspondingly, their mean year of membership is two years further back in time. Operas generally provide more income than other kinds of output. Thus, the almost equal mean number of operas for the two groups is beneficial for the analyses. The more extensive output for the mandate group when it comes to chamber music should be noted. Chamber music especially does not, however, generally bring in much income per piece.

Those who did not provide mandates are slightly more successful financially and celebrity-wise. The output is a little smaller for them but it pays off marginally better. As perhaps could be expected, those who did provide mandates earn somewhat less, especially compared with the output numbers. They may have chosen to participate in this study in order to obtain some clues to the reason. There is a slightly higher concentration of mid-range incomes in the mandated sample than for those composers who did not provide mandates (table 3). Generally the differences between the two groups are not troublesome. The mean total, taxed income of the mandate group is 96% of the non-mandate group.

The most disturbing facet of the data-set is that female composers in the mandated group have total taxed incomes that are higher than those in the non-mandated group. For male composers it is the opposite. Thus, the gender issue has been omitted in the analyses of STIM incomes. However, this will be discussed below, in section 8.1, regarding total taxed incomes for all FST members.

The income penalty for composers in comparison to non-composers is 30%, see table 2. Although the average composer earned 9.3% more in 2009 than the average employee in Sweden (SCB 2011c) the comparison with the reference group is much more negative. Thus, the data here suggest that compared to other individuals of the same sex and age the choice of the composer profession is highly financially disadvantageous.

Randall K. Filer (1986) found in a 1979 survey that the combined group of American musicians and composers earned 68% less than the general workforce. Thus, there was an income penalty of 32%.

Table 2. Summary statistics of groups

	FST members		Non-member group
	<u>mandate</u>	<u>no mandate</u>	
number in sample	127	168	119
median age 2009	52	50	52
female	13.4%	14.9%	
mean year membership	1993	1995	
higher education	69.3%	72.0%	
celebrity, mean no of hits	909	1019	
mean no of operas	1.4	1.3	
mean no of orch	9.3	5.6	
mean no of chamber	41.2	21.2	
mean no of eam	1.1	1.1	
mean taxed income SEK	232400	242750	341100

Table 3. Income distribution for samples in 2009

Taxed income SEK	FST members %		Non-member group
	<u>mandate</u>	<u>no mandate</u>	
< 50000	11,6	13,5	5,0
50000-150000	14,0	14,0	4,2
150000-300000	26,4	18,1	19,3
300000-500000	29,5	31,6	35,3
> 500000	18,6	22,8	36,1

According to Hans Abbing, a visual artist and cultural economist, the same was found for the bigger cohort of ‘artists’ by Wassal and Alper in 1992. However, Abbing claims, the ‘penalty’ could just as well be regarded as the value which the well-informed artist finds in other rewards, such as private satisfaction, recognition and status. Governments dislike poverty and value the arts. Hence, many subsidise artists who are not successful financially. Furthermore, Abbing found empirical evidence which shows that, because of the high value artists give to non-monetary rewards, more subsidy only makes the stock of artists bigger without increasing the average income (Abbing 2003).

6. Composers v. others

FST members had a mean taxed income during the full time span of 70% of that of the non-member reference group. The mean taxed income of 30,500 SEK per month for FST composers below the normal retiring age of 65 is significantly higher than the mean monthly pay of the professions with the lowest incomes. Composers earn 50% more on average than, for instance, sewing machine operators, horticulturists, hotel cleaners and head waiters in Sweden (SCB 2011a). However, they earn only 37% of what the average stock broker is paid and 55% of the average physician's salary (SCB 2011b).

In the data processed here FST members show an income distribution Gini coefficient in 2009 of 0.40, while the same for the reference group is 0.33. The income distribution in the Nordic countries is significantly more equal than that in most other countries. According to the OECD StatExtract the US had a Gini coefficient in the late-2000s of 0.45 and that of the UK was 0.46. Eurostat presents a 2009 Gini coefficient for Sweden of 0.25. The coefficient for the whole of the EU was 0.30 that year.

As mentioned, the Gini coefficient for Swedish composers in 2009 was higher than for the working population as a whole. Thus, the income was not as evenly distributed among composers. The importance of the winner-takes-all phenomenon in the music business, as discussed in my previous macro-level paper, is even more evident in the distribution of IPR revenues. This was measured for the mandated group. Its Gini coefficient in 2009 was 0.76. The same measurement for all the STIM income receivers, i.e. composers of all genres, was a staggering 0.94 (Albinsson 2012. 14).

Kretschmer and Hardwick present Gini coefficients for copyright revenues from ALCS (UK collecting society) for British authors, 0.78, and from VG Wort (German collecting society) for German authors, 0.67. In contrast, the national Gini coefficient for all employees in the UK was 0.33; in Germany it was 0.31. According to Kretschmer and Hardwick, 'this suggests that current copyright law may exacerbate risk' (Kretschmer and Hardwick 2007. 17-18). Kretschmer et al. (2011. 42-50) provide a measure of the Gini coefficient at 0.59 for 5,800 British designers, fine artists, illustrators and photographers, compared to a Gini coefficient of 0.36 for the UK working population.

Thus, the 'Matthew 25:29 effect', coined by sociologist Robert K. Merton, is apparent also among composers: 'For unto every one that hath shall be given, and he shall have abundance.' However, for composers of art music it is actually not as overwhelming as it is for composers of more commercially

viable music. The simple reason for this is that none of the individuals in this study had a total revenue from the STIM of more than 250,000 SEK in 2009, while among all the approximately 60,000 STIM members 0.5% (123 individuals) had incomes of such magnitude (Albinsson 2012). These ‘outliers’, who have a strong influence on the statistics, are absent in the art music case. The average STIM revenue for all the receivers in 2009 was 13,780 SEK, while for the art music composers in this sample the mean STIM income was 63% of that: 8,770 SEK. The median STIM income in the latter case of 2,685 SEK is another indication of the highly skewed IPR income distribution.

7. Control variables: the influence of gender, education and domicile

7.1. Gender

Of the time-invariant variables, gender is the most important when it comes to the influence on income. In contrast to education and domicile, the sex coefficient is statistically significant. Thus, being a woman is significantly negative when it comes to the earnings from composing (see table 4).

Thus, the data reveal that gender plays an overwhelming role in determining the size of a composer's total taxed income levels. Gender has been more discriminative for female composers than for women in other professions. Not only is the share of women among composers small, at 14.2%, while the share of women among all the employed in Sweden was 47%. The income they collect is only 58% of the average income for men in their profession (female mean income: 147,000 SEK; male mean income: 253,000 SEK). For the full Swedish workforce, women's incomes (re-calculated to full employments) are 86% of men's incomes (SCB 2011d).

Domicile outside of the capital Stockholm is, contrary to expectation, found to have a positive coefficient and thus incomes of Stockholman composers are, on average, lower. There is also a positive coefficient for education. The way the variable is constructed, this means that there is an income penalty on increased education. Further scrutinised this variable will, however, reveal a somewhat different picture (see section 7.2.)

Medlingsinstitutet (The National Mediation Office) (2010, 9) reports that 'if using the standard weighting method which takes into account differences in occupation, sector, education, age and working hours the pay difference is 5.9 percent'. Obviously, this indicates a glaring contrast between the average income of Swedish female composers and their male colleagues.

For many decades the general political ideology in Sweden has been that men and women should have the same professional opportunities. Furthermore, they should be given equal monetary compensations in the same professions. As in some other countries there is now a law against gender discrimination in the labour market. However, it is according to the Medlingsinstitutet (2010, 14) not correct to draw the conclusion from the statistics that women are

generally discriminated against in the labour market. Differences may depend on actual differences in individual skills and productivity.

Table 4. The effects of gender, education and domicile on income

Dependent variable: logged total taxed income
 Random-effects (GLS), using 6195 observations
 Included 295 cross-sectional units
 Time-series length = 21

	<i>Coefficient</i>	
const	2,8688	***
sex	-1,0711	**
domicile	0,1666	
education	0,1986	

Notes:

*** = statistical significance at the 1% level,

** = statistical significance at the 5% level ,

* = statistical significance at the 10% level

Table 5. Female average incomes in relation to male average incomes, %

	<u>Composers</u>	<u>Non-composers</u>
1990	50,85	69,64
2000	50,77	56,57
2009	65,89	79,70
full period	57,91	66,14

Shackleton (2008) discusses whether female choices of life-styles differ from the life-style choices of most men. If they do lower female incomes cannot, according to Shackleton, be regarded as gender based monetary discrimination.

A similar pattern was found by Kretschmer and Hardwick (2007: 29). British female professional authors earn on average 77.5% and their German colleagues 80.6% of their male counterparts. The more they concentrate on their authorship the smaller this share becomes. Female main-income authors earn on average only 59% (UK)/69.5% (Germany) of their male counterparts.

KVAST/The Association of Swedish Women Composers was formed in 2009 to work for an increased share of music by female composers on the Swedish art music scene. Although there is no explicit claim on the KVAST web-site that old-fashioned patriarchal managements give favours to members of their male networks it is this thought that directly comes to mind when reading the data KVAST provides. Of the pieces played by Swedish orchestras

in the 2008/2009 season only 1.2% were written by female composers. For works composed after 1950 the share was 6% (kvast.org).

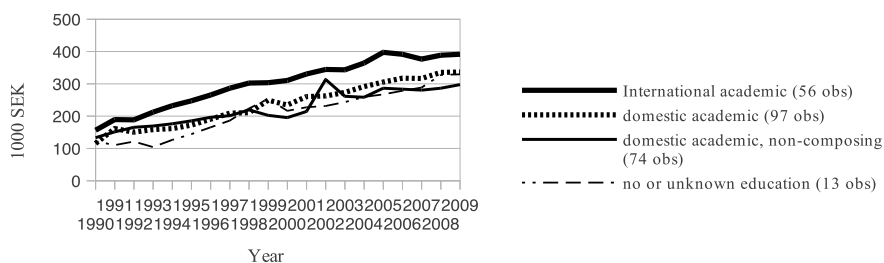
Fredrik Österling (2009. 42) reports that 37% of Swedish art music pieces, which had their first performances during 2003-2007, were composed by women. 91% of the pieces by male composers were financially remunerated by the bodies responsible for the first performances. The corresponding percentage for female composers was a mere 49. Of all uncompensated first performances 80% were composed by women. This supports Kristina Hultman’s finding: ‘That some have precedence over what is objectively good is not in question. [Their] Perspectives on cultural diversity, gender equality and class risk music [which is labelled by such classifications] being associated with amateurism’ (Hultman 2006. 170).

7.2. Education

As seen in Table 4 education lacks statistically significant explanatory power regarding the level of individual incomes. The data are scrutinised descriptively in graphs 1.1 and 1.2. It should be noted that the increases over time for all the cohorts in graphs 1 and 2 are due to human capital growth effects (see section 9 below) and increases in the accumulated stock of output for the individuals studied and not to a possible general wage drift for the composers’ profession.

Many composers spend up to five years in the composition masters programmes of conservatoires. Some undertake complementary education abroad. In graph 1.1 we see a positive effect of higher international education on the total taxed income. In 1990 the mean income in this category was 36% higher than for those in the domestic academic category. In 2009 the difference had decreased to only 16%. In graph 1.2 we see no actual nominal growth in the income from the STIM. Thus, the general growth in the total taxed income in graph 1.1 and this lack of growth in graph 1.2 gives a diminished share of STIM revenues of the total taxed income (table 6).

Graph 1.1. Effect of education on mean income



Graph 1.2. Effect of education on STIM revenues

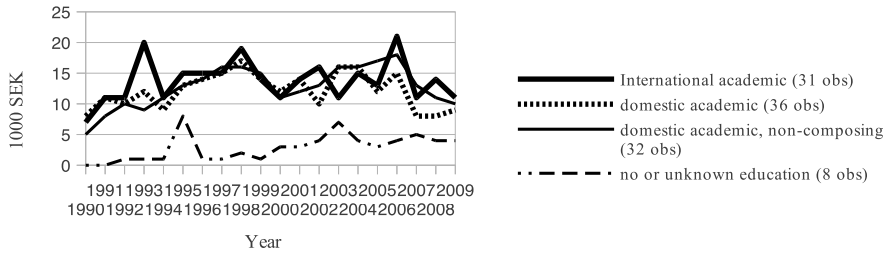


Table 6. The STIM revenue share of the total taxed income for education categories

Education	1990	2000	2009
international academic	4,49	3,55	2,81
domestic academic	6,96	5,13	2,68
domestic academic, non-composing	3,76	5,64	3,37
no or unknown education	0,00	1,39	1,22

Ruth Towse maintains, that ‘We know from research on artists’ labour markets that the human capital model of investment in education does not apply to artists’ works in the arts’. Intermediaries between the artist and the audience and the consumers themselves place little or no value on formal education and ‘paper qualifications are irrelevant for art works; what counts is the artists’ reputation and track record’ (Towse 2001). The data here generally confirm Towse’s observation. However, the human capital model of investment in education may play a role in composers’ arts-related work and non-arts work (see graph 1.1 and section 11.2).

7.2. Domicile

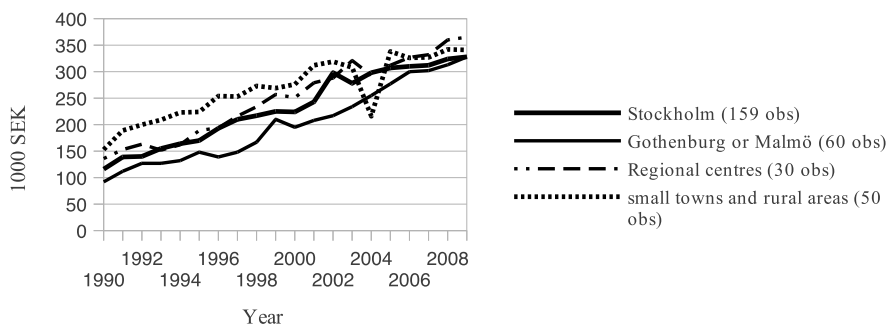
According to Christiane Hellmanzik (2010) there was a cluster premium for paintings produced and auctioned in Paris between 1946 and 1975 of 27%. Furthermore, she found that the cluster premium in New York peaked during the same period at 74%.

Karol Jan Borowiecki (2013) claimed that classical composers born between 1750 and 1899 ‘who worked in a cluster benefited significantly in terms of written compositions and have been creating around one additional work every 3 years. The location benefit is even greater for top composers ... whereas no such benefits can be consistently found for lower-ranked artists’.

Borowiecki attributes this phenomenon, at least in part, to the winner-take-all character of classical music.

In this study the domicile variable tends not to support the general opinion among artists that it is beneficial career-wise to live in the national capital. The disparity between the categories has decreased over time, so that in 2009 there is practically no difference between the four different domicile options (table 7).

Graph 2.1. Effect of domicile on total taxed income



Graph 2.2. Effect of domicile on STIM revenues

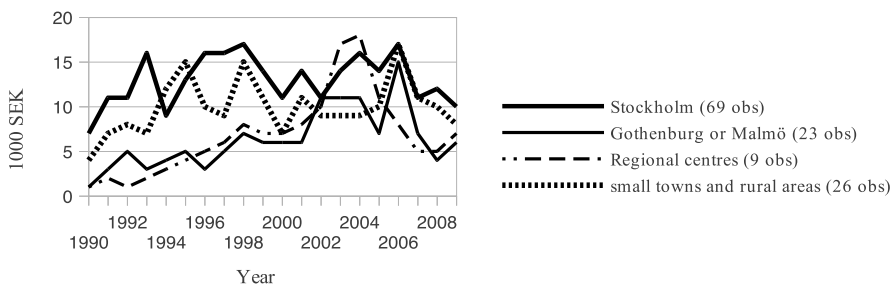


Table 7. The effect of domicile on total taxed income (index Stockholm = 100)

Year	Stockholm (159 obs)	Gothenburg or Malmö (60 obs)	Regional centres (30 obs)	Small towns and rural areas (50 obs)
1990	100	79	117	132
2000	100	87	112	123
2009	100	100	111	104

8. The effect of age on income

As for most professions, age should matter for composers. Age is a proxy variable for qualities connected to the growth of human capital. Primarily, individual skills increase formally from education and informally from the accumulated experiences of performing work tasks. Learning from professional networks, which increases over time, plays a vital role. Hence, the income is also likely to increase each year. This is covered by the age variable. The general pattern in studies of age and income is that, after a peak a few years before retirement, the income normally starts to decrease. This non-linear effect is measured by the age² variable. Thus, in a regression model we would anticipate a positive coefficient for age and a negative one for age².

Table 8. Effect of age on total taxed income

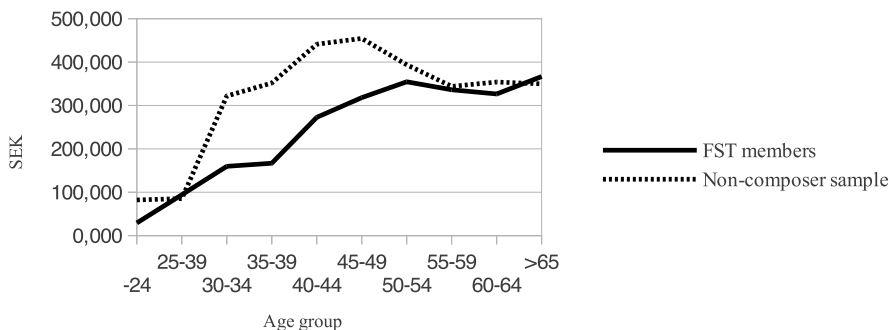
Dependent variable: total taxed income			
Random-effects (GLS), using 6195 observations		Random-effects (GLS), using 2499 observations	
Included 295 cross-sectional units		Included 119 cross-sectional units	
Time-series length = 21		Time-series length = 21	
<u>COMPOSERS</u>		<u>NON-COMPOSERS</u>	
	<i>Coefficient</i>		<i>Coefficient</i>
const	-151,349 ***	const	-298,532 ***
age	10,3938 ***	age	23,34 ***
age squared	-0,0472296 ***	age squared	-0,237056 ***

For the reference group of non-composers, the positive effect of age is much stronger than it is for composers, see table 8. A likely explanation is that composers lack the kind of career ladder which is common to many other professions. A teacher may become a dean, a second lieutenant may eventually be promoted to squadron leader and a newly certified physician may over time climb the ladder to become the medical director of a hospital. The composer is more confined, even trapped, in his/her line of work.

The decline in income at a late age is much stronger for non-composers. The composers' incomes never reach the peak level of others, but, on the other hand, they hardly decrease at all after retirement. This is in great contrast to most other professions. Composers probably benefit greatly from the fact that their trade is intellectual in kind rather than being hard on the body. However, the effect of the growing stock of music over time that is covered by IPRs must play a role. Although the pieces lose their novelty after the first few years, they nevertheless are liable for royalty revenues when played. What, for

instance, a dentist, a miner or a teacher produced 20 years ago does not pay off in the present other than as returns on set-aside savings. A 20-year-old piece of music brings in new income when played now.

Graph 3. Average incomes Swedish composers versus non-composer sample, panel data for 1990-2009



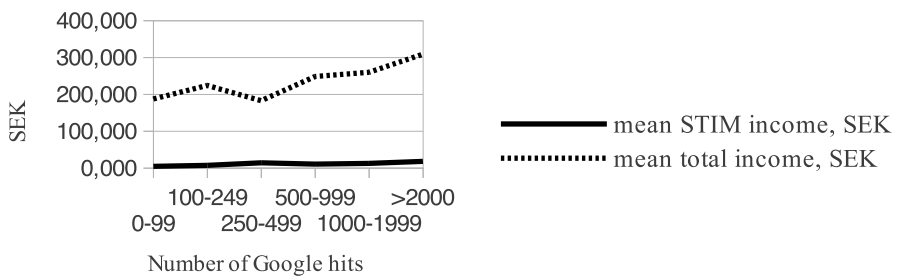
An American study from 1979 of the combined group of musicians and composers shows an earlier peak age (45-50 y.a.) than this study (50-55 y.a.). After the age of 65 the American group earned 59% of what the general, retired worker earned while during their peak earning years the income penalty was 16% (Filer 1986). For Swedish FST members this study shows a 10% income penalty for the peak years and no income penalty for the retired group (see graph 3).

9. The celebrity variable

The celebrity variable used is simplistic; hits on Google. The variable ranges from 3 to 15,300 with a mean of 909. Although this skewness gives statistically significant results in only one econometric model below, there seems to be a clear correlation between the celebrity variable and the income variables, see graph 4. Hellmanzik (2010) found the same pattern regarding auction prices for visual artists in Paris and New York between 1988 and 2007. Published column-inches mattered greatly. A one inch increase in the average celebrity³ coverage of artists brought a premium of 3.1% for artists located in Paris and a striking 9.6% for those working in New York. In this study a 15% increase in the *celebrity* variable produced a 1% increase in the variable *output_tot*. Thus, there was a positive correlation between increases in celebrity and total taxed income (see table 12).

There has been an astonishing dip in total taxed income with a simultaneous increase in STIM royalties for composers with a lower celebrity count compared to those who have had either fewer or more hits, see graph 4. We may perhaps see a level of recognition here where composers experience some success and grant themselves the opportunity to risk their stake at their profession of choice. But those who strive for even higher total incomes realise that money is rather to be found in other activities.

Graph 4. The income – celebrity correlation



The confidants have been divided in six groups according to the numbers of hits (see table 9). These groups are used as dummy variables in the econometric models below.

³ Hellmanzik, somewhat daringly, uses the word 'quality' instead of 'celebrity' for the variable measured by column-inches

NOTHING NEW UNDER THE SUN

Table 9. The celebrity variable

No hits	mean STIM income, SEK	mean total income, SEK	STIM %	No obs
0-99	4,412	186,960	2,36	19
100-249	7,066	223,580	3,16	23
250-499	13,924	182,400	7,63	20
500-999	10,426	247,860	4,21	28
1000-1999	12,297	259,230	4,74	24
>2000	17,729	308,460	5,75	13

10. The monetary incentive case

The most claimed economic justification of IPRs is the monetary incentive they provide for increased output (Landes 2003; Scotchmer 2006; Balganes 2009; Svensson 2012). The IPR legislation fences out pirates through the proprietisation of the output of the composer. Artificial scarcity is created (Plant 1934). The musical oeuvre is made into a commodity that is transferable when the financial return is favourable. At least some products created under the protection of IPR legislation obviously sell well and thus satisfy the manifested consumer demands.

The monetary incentive has a micro-level implication for the individual composers. The argument is also relevant on the societal macro level. The incentive function will increase the output and thus boost music industries and their labour markets. This in turn is beneficial to consumers and the IPR legislation will provide cultural goods that may have intrinsic merit values.

10.1. Output as an effect of prior royalty income

What is tested in model (1) is the basic notion that a new piece of music will be composed if a prior positive experience of STIM incomes provides an incentive to create. In this case the time and labour invested in the creation may be expected to pay off. If a new piece is inspired this year ('first difference' in variable total output of pieces compensated through the STIM, i.e. not operas) by a recorded STIM income from last year, the regression analysis coefficient of the latter variable will have a positive sign.

Table 10. Output as an effect of prior royalty income, multivariate model

Dependent variable: new piece (excl. opera)
i.e first-difference of variable output_STIM
 Random-effects (GLS), using 2540 observations
 Included 127 cross-sectional units
 Time-series length = 20

	<i>Coefficient</i>	
constant	-2,7723	*
logged total STIM revenue, year -1	0,0381	
domicile: Stockholm	-0,1230	
domicile: Gothenburg or Malmö	0,5330	
domicile: regional centre	0,3825	
education: international and domestic	-1,6296	
education: domestic	1,2461	
education: domestic; music but not composing	0,6937	
celebrity, level 2	-1,1483	
celebrity, level 3	0,8893	
celebrity, level 4	-1,0074	
celebrity, level 5	0,3472	
celebrity, level 6	0,5869	
age	0,1936	***
age squared	-0,0016	***

The variable ‘logged total STIM revenue last year’ does have the expected positive sign but it lacks statistical significance. Thus, when control variables are included the result becomes somewhat inconclusive, see table 10. Obviously other factors apart from the monetary revenue have substantial explanatory power for the output variable. According to this model prior income from performing rights is of very limited causal importance for the composing of art music.

10.2. Royalty income as an effect of output

The monetary incentive notion may be shown to hold true also if royalty incomes increase when new pieces are added to a composer’s portfolio, i.e. the reversed causality pattern of that in section 10.1. The rationale is that the output can be seen as an investment necessary for the ex post IPR revenue.

In this model lags of the independent variable are included. The unlagged variable indicating the output created the same year as the income being studied is omitted. Only output from the previous three years is included. As might be expected the reversed model, as compared to 10.1, provides a reasonable foundation for the idea that a new piece of music results in additional royalty income. Pieces created a few years ago can have a positive effect on present royalty incomes. The year-2 lag even has some statistical significance. As in the model in table 10 above, the control variables abstract some but not all of the explanatory power of other independent variables.

Table 11. Royalty income as an effect of output, multivariate model

Dependent variable: logged total STIM revenue

Random-effects (GLS), using 2159 observations

Included 127 cross-sectional units

Time-series length = 17

	<i>Coefficient</i>	
constant	-7,8640	***
First diff STIM output, year -1	0,0176	
First diff STIM output, year -2	0,0266	*
First diff STIM output, year -3	0,0252	
domicile: Stockholm	-0,0387	
domicile: Gothenburg or Malmö	0,4216	
domicile: regional centre	0,1250	
education: international and domestic	-0,3255	
education: domestic	-1,3095	
education: domestic; music but not composing	-1,0703	
celebrity, level 2	1,0531	
celebrity, level 3	1,8818	
celebrity, level 4	0,7521	
celebrity, level 5	0,5412	
celebrity, level 6	0,1534	
age	0,2323	***
age squared	-0,0022	***

As in the 10.1 model, the place of domicile and level of education seem to be of some importance as explanatory factors for STIM royalties. Additional education abroad seems to have a negative effect on royalty incomes compared to all other educational levels including no higher education (reference dummy group). However, none of these observations are statistically significant.

10.3. Alternative monetary incentives

Suzanne Scotchmer discusses three alternatives to IPR income as monetary providers for artistic creation: salaried commissions, *ex ante* contests and *ex post* prizes (Scotchmer 2006. chap. 2). The number of possible monetary prizes in Sweden is practically nil. If grants and stipends are considered to be *ex ante* ‘contests’ according to Scotchmer (they are mostly given based on competing applications), the situation is more favourable. Some are provided without any specific output demands.

Salaried positions can be tax funded or they may be given by private sponsors. Some time-limited composer-in-residence positions occur in Sweden but they are extremely rare. A dozen FST composers have been awarded salaries from the ‘guaranteed income for artists’/*konstnärslön* system provided by the national government. The system was principally abandoned in 2010. No new guarantees have been granted thereafter. The guarantees are not utilised at all or in full by all beneficiaries as income from other sources is deducted. As IPR income is one such source the state does not demand that what is composed by those with the guaranteed incomes should be considered bought out and immediately transferred to the public domain.

A disadvantage with the tax funding of music creation instead of the present royalty system is that it is not only the tax payers who get free access but also everybody else, e.g. foreign consumers. Decisions by the state regarding who will be compensated will always be met with controversy. In the copyright system remuneration is given much more undisputedly, namely according to observed demand based on consumer taste.

The guarantees are paid out by the same institution that also provides a large amount of time-limited stipends and project-specific grants. It is not possible, in the data here, to differentiate one from the other. However, most major stipends and grants as well as most salaried commissions are included in the total taxed income variable. They are listed by the tax authority as tax exempted. Unfortunately for this study, many smaller stipends and grants are not reported to the tax authority as they are not taxable incomes. Only 4.7% of taxed incomes were related to IPR revenues during the 1990–2009 period. The percentage actually declined from a peak of 5.6% in 2006 to only 2.7% in 2009. Thus, the direct importance of IPR incomes to the total income has diminished in recent years.

Voluntary contributions form another alternative compensation model (Liebowitz and Watt 2006). Liebowitz and Watt identify a free-rider problem regarding tipping in music-making. No tipper can expect a personal gain from a contribution. So the act must be one of altruism based on the idea that future music output will be enhanced. Author Stephen King once tried to offer a

novel chapter by chapter if sufficient contributions came in. However, the money flowing in was not a river but a creek. So he gave up on the idea.

There are composers of art music who, like singer-songwriters, also perform their own music or the music of others. However, the vast majority of art music composers are highly specialised in their trade. They leave the performance of their music to equally highly specialised musicians. In this way present-day composers are unlike Shakespeare or Molière, who achieved earnings from what they had written and published, what they had staged and what they had performed.

It is possible to bundle the copyrighted work with, for instance, physical complements, advertising and informational complements. An easily copied CD may be sold with, for instance, unique autographs, posters, accessories or discounted concert tickets. In the copyrighted work more or less well hidden words from sponsors can be amalgamated. The sponsor will then pay the originator a pecuniary compensation (Liebowitz and Watt 2006). At least one of the FST composers plan to issue a limited-edition CD with a lithographic sleeve in collaboration with a visual artist. .

Liebowitz and Watt also provide a thorough discussion on techniques to save the copyright system at least in part in the digital future. They mention indirect appropriation: ‘The ability to copy originals has two effects – it reduces the number of originals sold (a substitution effect between originals and copies), but it provides possible indirect appropriation – that is, it may increase the willingness to pay for each original (since more use can be made of it).... It is, however, difficult to see how the market failures implied by the public good aspects of copyrightable creations are addressed in those models, if indeed they are.’

Liebowitz and Watt also discuss the idea of digital rights management/ DRM, i.e. legal protection under IPR law. In the digital world, DRM mainly consist of ‘anti-copying mechanisms in the form of code or encryption written on the same device as the intellectual property...’ (Liebowitz and Watt 2006). DRM have been less used than could be expected. There are two principal forces working against DRM: 1. hackers manage to circumvent the encryptions in a short time, and 2. DRMs prohibit the ‘fair use’ of the content which has been allowed previously or, even, secured by law, for instance, the copying for private use of legally bought items (Scotchmer 2006, 215).

10.4. Total income as an effect of output

Information on taxed total incomes is made public for all Swedish tax payers. Thus, when the effect of output on total incomes is calculated, not only royalty incomes from the STIM, but also the non-mandated FST groups can be included in the analysis. The total taxed income variable includes most major grants and stipends as well as the *grands droits* royalty income from operas. An opera commission means both substantial work-hour pay and *grands droits* royalties (which are transferred directly to the composer and, thus, do not appear in the STIM data). The commission contract most often includes royalties for a specific number of performances of the first production. Furthermore, *grands droits* performing rights are claimable for all subsequent productions.

While the evidence is not statistically significant as to whether additional music results in raised royalty incomes (see table 11) it does have a statistically significant effect on the formation of total incomes of the members of FST. Moreover, we find a positive correlation between increased celebrity and total income. The effects of new (successful) pieces of music seem to have a bearing on other kinds of incomes rather than on STIM royalties. Thus, the composer's creation of music can be seen as a screening vehicle for other, often more lucrative, forms of employment. Although some grants are targeted at young composers at the beginning of their careers, most are given to composers with proven track records.

The only additional information with some statistical significance is the fact that it has been disadvantageous for a composer to live in Gothenburg or Malmö in comparison with villages and rural areas (the domicile reference group in the model).

In the Throsby and Zednik (2010, 42) study of Australian artists, composers claim that they spend, on average, 37% of their work hours on the 'most desired arts occupation'. Their expressed wish was to spend 63% of their work hours in professional field. Although this aspect is not part of the data in this study the same tendency is most likely also the case for Swedish composers. Furthermore, the Australian composers were the artist group with, by far, the highest share of copyright collecting society membership. They were also the most satisfied with current copyright protection (Throsby and Zednik 2010. 61).

Table 12. Total taxed income as an effect of output, multivariate model

Dependent variable: logged total taxed income

Random-effects (GLS), using 5900 observations

Included 295 cross-sectional units

Time-series length = 20

	<i>Coefficient</i>	
constant	-8,7326	***
first diff total output, year -1	0,0237	***
domicile: Stockholm	-0,6630	*
domicile: Gothenburg or Malmö	-1,0334	**
domicile: regional centre	-0,2823	
education: international and domestic	0,2999	
education: domestic	-0,7253	
education: domestic; music but not composing	-0,7935	
celebrity, level 2	-0,0582	
celebrity, level 3	0,4374	
celebrity, level 4	0,8147	**
celebrity, level 5	1,3404	***
celebrity, level 6	1,0398	**
age	0,5488	***
age squared	-0,0051	***

11. The recognition incentive

Some people detest art music while others merely lack interest in it. However, many consider art music to have many intrinsic values, such as: ‘art is good for people, art has quality, art is right, art is beautiful, art is deep, art creates profound human emotions, it enriches, it civilizes, art is autonomous, art is authentic, art is unique, art is not commercial etcetera’ (Abbing 2010. 7). It does not really matter whether the virtues are merely alleged. As long as there are enough people who maintain such ideals to create a market for such ‘merit goods’, there will be suppliers of them. The monetary return may be small but the boost in the individual’s social esteem – and thus most likely in self-esteem as well – may be considerable and should be recognised as an incentive (Towse and Holzhauser 2002. xix). Marilyn Monroe, in one of several frequently quoted statements that were attributed to her in the article by Gloria Steinem in the August 1972 issue of *Ms. Magazine*, put this phenomenon more bluntly: ‘I’m not interested in money, I just want to be wonderful.’

Fred Hirsch takes on another view when coining the concept of ‘positional goods’ as outputs of the positional economy: ‘The positional economy ... relates to all goods, services, work positions and other social relationships that are either (1) scarce in some absolute or socially imposed sense or (2) subject to congestion or crowding through more extensive use’ (Hirsch 1977. 27).

Rasmus Fleischer discusses the difference between industrial and artistic goods (2012. 28, my translation):

Industrial commodity production is characterized by anonymity. The buyer of an industrial product is, in principle, indifferent as to who devoted his time to the making of it ... Art is subject to opposite principles: individuality and originality. That something is recognized as a work of art means that it remains associated with an artist’s name.

It is hard to imagine an artistic product not directly and explicitly associated with its creator. The composer is an intrinsic part of his musical ‘product’. The name of a successful composer signals quality which may or may not be at hand in a singular piece of his output. Thus, composer names are brands in their own right.

For the art music lover the ‘merit’ of it may lie not only in the artistic experience per se but also in the social recognition, and thus its positional value, that attendance at a performance, supposedly, provides. This merit is conferred on the composer. One purpose of awards and prizes is to indicate that a composer’s production has merits in itself. Harold D. Lasswell describes

how a system of recognition that is separate from the creator has to be in place for a new product or process to be accepted as creative (Lasswell 1959. 209–210). Bruno Frey maintains that ‘awards work better as an incentive instrument than monetary payment, when the recipient’s performance can only be vaguely determined’ (2007. 7). As what constitutes the actual qualities of most claimed merit goods is difficult to settle undisputedly, Frey’s claim is also valid for art music. In fact, being accepted and received as members of the FST is a kind of award for Swedish composers.

As many authors have discussed (e.g. Frank 1985; Frey 2007; Besley and Ghataak 2008; Auriol and Renault 2008; Frey 2010; Kosfeld and Neckermann 2010), the prospect of non-financial awards may be incentive enough. Awards are given *ex post* based on actual achievements. The possibility of an award acts as a motivational pull force. Kosfeld and Neckermann (2010. 2) claim ‘that the award has a particularly strong effect on individuals who are more likely to win the award’. Honorary awards providing a degree of status will most likely transform themselves into future material advantages. Awards and prizes enhance the winner-takes-all forces. Richard Caves describes how ‘gatekeepers’ enhance the opportunities for the chosen few in classical music (2000. 71-73).

The *motivation crowding theory* claims that being paid for some ‘merit service’, for instance for blood donation (and thus not for blood selling), will decrease the number of service providers. In the search for higher non-monetary meaning, the composers’ profession is akin to work in voluntary organisations. Bruno Frey claims that ‘awards are less likely to crowd out the recipients’ intrinsic motivation than monetary compensation’ (2007. 7).

In a sociological experiment, Bernardo Huberman et al. find ‘that people tend to over-invest resources whenever ‘winning against others’ is involved, because winning confers status’ (Huberman et al. 2004. 112). Robert Frank (1985. chap. 1–5) states that it is the relative and not the absolute ranking that people value. Huberman et al., furthermore, find a common and distinct egalitarian Scandinavian mindset that is most likely valid among the individuals in this study as well. Thus, although Swedish composers live in a culture in which awards and prizes are met with considerable scepticism and the actual differences between those who are awarded and those who are not may be smaller than in many other countries, a *relatively* higher ranking is still maintained in favour of those who receive them. They may be the victims of another cultural trait allegedly claimed by Swedes themselves: ‘the Royal Swedish Envy’. Nevertheless, being envied may enhance their self-esteem.

The wide winner-takes-all concept incorporates externalities based on general reputation. The number of composed pieces may influence the outcome but only if it includes pieces that enhance a composer’s standing in

the music society. Quantity could matter but quality should matter more. In accordance with the way the art music scene is constructed in Sweden, as in Europe generally, there are ample opportunities for complimentary work in education, concert production, venue administration, journalism and the like. To be able to add a scent of ‘highly esteemed composer’ to one’s CV is likely to be an asset that will pay off. Richard Caves describes this as an ‘A list property’ as opposed to being on the B list (2000. 81).

There is also the C list with amateurs! The artistic fields attract a lot of hobby labour. Filer (1986) claimed: ‘The community theatre is a well-accepted part of American life while the amateur insurance salesman is not.’ The latter is probably not attractive because of intrinsic non-monetary values. Menger (2006) saw a growth of supply of artists in France for the 1986-2000 period which was much higher than the increase in demand for them. As a result, the median income decreased. Françoise Benhamou (2006. 71) points at a general reduction in the duration of project contracts as a reason for the negative trend.

11.1. Self-expressed motivations for the value of composers for society

I have found no readily available variable that captures the merit good values or any good proxy variable. However, in an earlier study of the attitudes of members of the FST towards their profession they were asked to express their own motivations (footnote 1). Many of the 80 anonymous composers in the sample responded with formulations well within the merit/positional goods concept, for instance:

- ‘Artistic activity is generally immensely important as a creator of values and as a pioneering force in society.’
- ‘Artists are prophets necessary in the new society. In an increasingly consumistic and economic spiritual climate the composer has a central task: to open a slot into a numinous reality, to provide catharsis.’
- ‘Creative people express themselves through art and contribute to the spiritual survival of society.’
- ‘Composers give people insight into other values than the materialistic and short-termed.’
- ‘When searching for truth in one’s art one becomes extremely careful in relation to what is considered true or false in one’s surroundings.’
- ‘During financial crises like the current we need visions, hope and relief.’

The same kind of quotes could possibly also be provided by members of the public interested in art music and by policy makers within culture. One respondent commented on the recognition factor compared with the financial outcome of the profession:

- ‘We are a kind of pauper aristocracy – everybody wants our jobs but no one wants our salaries.’

It should, however, also be noted that a small minority of the composer sample presented much more masochistic views:

- ‘Composing is a luxurious and narcissistic endeavour ... rather unnecessary in a wider societal perspective.’
- ‘The composer has an exaggerated view on his/her importance.’
- ‘Currently pointless.’

It is possible to manipulate the celebrity variable, as measured by Google hits. It can be boosted if the composer is active on the Internet with a home page. It does not necessarily measure the quality of music output – only the level of celebrity. Quality and celebrity are perfectly correlated only in the ideal world. With these reservations it is still possible to state that, according to the findings in table 12 above, increased total income walks hand in hand with increased celebrity.

11.2. Occupational risk management

The opposite reason for income other than from actual composing activities is, of course, problems in finding enough and suitable employment for creative music-making. For the successful with ‘A list properties’, additional income may come from prestigious occupations in the music business. For the less fortunate B-listers, money is found in less skilled work, such as bus driving, care assistance or telemarketing. If we leave out the variables with low levels of income and thus with minor overall importance⁴ and unemployment relief^{5,6} for its high values for a small number of individuals and a very low average, we are left with graph 5.

The IPR revenues from the STIM at 8.9% did play a substantial role in the total incomes for the studied composers during the 2005–2009 period. However, other sources of income were also important: teaching in local music schools, musicianship in parishes, income from other music-related sources and income from miscellaneous sources not related to music at all. It is in this latter variable that we find the extra-musical professions in which

4 Taxed income from SAMI, FST, publishers, schools and voluntary adult education appears in the appendix variables list

5 Taxed income from unemployment benefits appears in the appendix variables list

6 Throsby and Zednik (2010, 56) found that 20% of Australian composers experienced an unemployment period during 2004-2009. The Swedish percentage was somewhat lower at 17%. However, most received unemployment relief for short periods and with small amounts.

some composers are forced to work from financial necessity. The relatively few university positions relevant to composers are highly important to those who actually occupied them.

Of course, the income structure is fundamentally different for those aged over 65. Income from pension programmes is of fundamental importance but substantial income still comes from other sources, not least from the STIM at 5.6%, for this cohort as well.

The data here only reveal the kind of employer and not the kind of professional activity. In the Throsby and Zednik study of Australian artists (2010. 66) composers were found to work in non-composing but creative work in, for instance, architecture (11%), advertising (22%), health and welfare (17%) and education and research (17%).

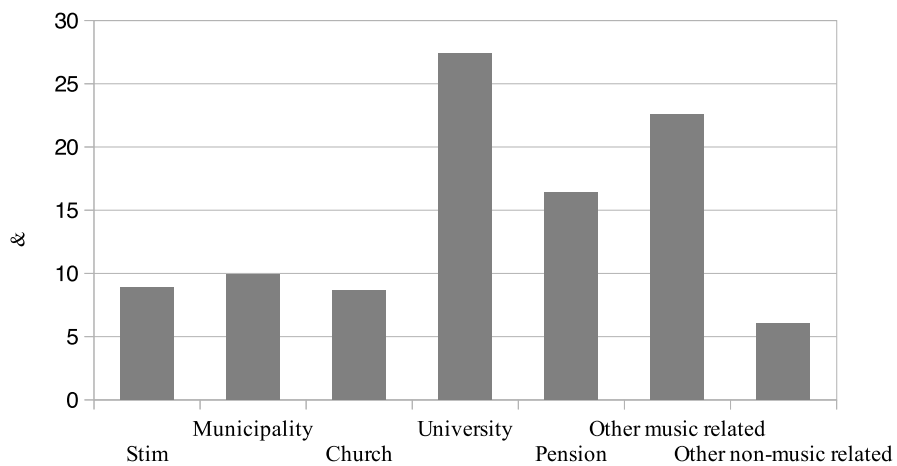
Menger describes artists as multiple jobholders who resemble entrepreneurs. If the latter group 'as property owners spread their risk by putting bits of their property into a large number of concerns, multiple jobholders put bits of their efforts into different jobs' (Menger 2006). Moreover, he not only identifies the arts v. non-arts earnings dichotomy but suggests that a threefold division of earnings is apparent, namely those derived from:

- the creativity itself and the artistic products
- arts-related work, e.g. teaching and management tasks in artistic organisations
- non-arts work

The risk portfolio is the vehicle composers use to cope with financial uncertainty throughout their careers. Throsby (1994) found that when relative wages increase for non-artistic jobs the multiple jobholder spends less time on that activity. In that case it simply takes less time for artists to muster the amount of earnings that they need in order to pursue what they perceive of as their main job.

Kretschmer and Hardwick (2007. 132) found that 40% of professional authors, i.e. those who dedicated more than 50% of their labour to writing, from both countries received 100% of their income from their main job.

Graph 5. Shares of total income 2005–2009, composers aged <65 (mandate group)



12. The pleasure incentive

All professionals within music started as amateur pupils. They are most likely to have been inspired more than discouraged by their idols. Somehow, they believed that they could walk in the footsteps of their role models and maybe become (as) successful. Foremost, however, they thought that making music was great fun! It brought pleasure in itself. Without that feeling of pleasure they would hardly have endured the struggle that accompanied making music their profession. Some of that emotion has to be involved in all the subsequent creative work. There will probably be little or no motivation left for the composing process if it is lost.

Human nature is not likely to be easily captured in economics theories, Thorstein Veblen (1898) claimed. Man on the verge of doing something ‘is not simply a bundle of desires that are to be saturated ... but rather a coherent structure of propensities and habits which seeks realisation and expression in an unfolding activity.....The activity is itself the substantial fact of the process’. He criticised classical economic theories for the difficulties it has when trying to incorporate ‘the organic man, with his complex of habits of thought, the expression of each is affected by habits of life formed under the guidance of all the rest’. Everyone involved in music knows that there is more to the making of it than only the money it might generate. There is a whole bundle of desires to be considered. Economics still lack proper explanations of why Homo Economicus is not a correct description of most creative artists – especially those who are not the winners in the struggle for recognition. If substantial or sufficient money for most is not the cause for creative work within music, what is? I have a musician friend on a symphony orchestra pay-roll who describes his salary as ‘the monthly insult’. Something else than money makes him commute to the concert hall. He belongs to a species much more common than Homo Economicus. Johan Huizinga labeled this species Homo Ludens – the ‘playing man’ (Huizinga 1938).

The idea of wage compensation for risky jobs and jobs with disagreeable features has affected economics at least since Adam Smith and Karl Marx. The modern ‘disamenity compensation theory’ seems to hold true in the composers’ case but in its reverse mode. There is little or no physical risk involved in the act of composing. Many are drawn to it because it provides an outlet for creativity and, simply, brings pleasure. As thus amenities rather than disamenities are involved, the theory accepts low pecuniary compensation.

Richard Caves claims that ‘a taste for creative work increases the amount of effort supplied by diverting it from humdrum tasks: *‘the starving artist’* syndrom. The prevalence and strength of tastes that affect the qualities and quantity of creative effort we call the *art for art’s sake* property’ (2000. 4).

The creativity phenomenon was first studied scientifically by psychologist J. P. Guilford, who in his first major article also expands its importance to incorporate economics: ‘The enormous economic value of new ideas is generally recognized. One scientist or engineer discovers a new principle or develops a new process that revolutionizes an industry, while dozens of others merely do a passable job on the routine tasks assigned to them’ (Guilford 1950. 446). He finds many traits that constitute causal or, at least, describing factors connected to a creative personality, e.g. a fluency factor, a novelty factor, a flexibility factor, a synthesising ability factor and an analysing ability factor (Guilford 1950. 452–453). Behaviourist B.F. Skinner’s reinforcement factor is described by Jock Abra: ‘... subjects indulge in ‘trial and error’, randomly emitting various responses until accidentally stumbling upon one that is reinforced, which then becomes more likely in that situation’ and ‘no mysterious disease called ‘talent’ is differentially endowed. Creative achievements simply reflect advantageous environments and reinforcement histories’ (Abra 1988. 407–8).

Lately creativity has also been the object of phenomenological research. Nelson and Rawlings criticise creativity research for neglecting this approach, stating that it has thus ‘passed over first principles— a rigorous investigation and understanding of the *experience* of creativity. The phenomenological perspective poses such questions as: how is creativity experienced? What are the essential features of this experience? What role does this experience of creativity play in an individual’s being-in-the-world (the ‘lived meaning’)?’ (Nelson and Rawlings 2007. 219).

It is from this perspective that the emotions involved in the creative process and invested in the creative product can be studied. Nelson and Rawlings, using a small sample of only 11 artists, describe several components of the artistic process that bring some kind of pleasurable emotion. This sensation is described by the artists as a ‘flow’ or being in ‘the zone’. Self-consciousness is broken down. There may be a state of ‘liberation from the self’ for some or ‘being in touch with oneself’ for others. However, at some point a more analytical mental process must be added in order to assess whether or not the artistic product is something that should be presented to the public.

Phenomenological research is closely related to the concept of ‘meaning’ (Simon 2009. 45–46). Judit Simon presents a graph based on the analysis of creativity based on interviews with 18 artists, table 13.

Others, for instance author Elizabeth Gilbert in a TED talk (2009), use religious connotations, such as ‘genius’ or ‘inspiration from God’, to describe how the artist is not fully in control of the creative process. What are described are, largely, work-process emotions that, when ‘the flow’ occurs, bring pleasure of some kind.

Table 13. General structure of the meaning within individual creativity (Simon 2009, 77, my translation)

main feature 1: <u>discrepancies and inconsistencies</u>			
characteristic	1.1	<i>tension</i>	
	1.2	<i>dissolving the structure</i>	
	1.3	<i>driving force</i>	
	1.3.1	commitment	
	1.3.2	search	
	1.4	trust	
main feature 2: <u>wakeful mood in the creative room</u>			
characteristic	2.1	<i>focused attention</i>	
	2.1.1	flow	
	2.1.2	change in time and space	
	2.2	<i>vitality</i>	
	2.2.1	exploration	
	2.2.2	activity	
	2.3	<i>dialogue</i>	
	2.3.1	openness	
	2.3.2	personal expression	
main feature 3: <u>progression and growing</u>			
characteristic	3.1	<i>breakthrough</i>	
	3.2	<i>liberation</i>	
	3.3	<i>the creative result</i>	

13. Conclusions

Although there is reason to suppose that the basic monetary incentive idea advocated by economic theory and by those in favour of intellectual property rights (IPRs) in music is relevant to composers of art music, that statement is not fully conclusive according to the findings of this study. The prospect of revenues may result in more output (table 11). As the measured IPR revenue effect of marginal output is small, the force of the incentive should be regarded as weak. It is probable that most art music composers regard IPR incomes only as bonuses and as rounds of applause, as it were.

Thus, Ruth Towse's findings in her pioneering 1990s work also hold true for Swedish art music composers of today: '... the vast majority of musicians [including composers] earn relatively little from their copyright and performers' rights. The large sums of royalty income that copyright law enables to be collected goes mainly ... to a small minority of high earning performers and writers.' Towse did not rule out the case for copyright. She saw IPR law as an important 'framework for transaction' but concluded that copyright and performing right at 'their present value can only be a marginal incentive to supply' (Towse 2000).

The question of whether or not increased IPR revenues will crowd out the need for extra-compositional sources of income is not clearly answered in this study. However, the alternative notion that more IPR income results in higher complementary income from other sources is shown in the analyses. Thus, the composer's creation of music can be seen as a screening vehicle for other, often more lucrative, employment. The labour invested in a new piece of music will not mainly be directly remunerated from either the venues and broadcasters or the audiences but, instead, from employments in other arenas where an A-list reputation is the decisive quality when a composer is considered for a non-composing job. That is another kind of monetary incentive: a non-IPR monetary incentive which most likely is more important for composers' output.

It is overwhelmingly clear that gender plays a huge role in composers' income levels. Gender has been more discriminative for female composers than for women in other professions (table 4). The income female composers in Sweden receive is only two-thirds of the income men in their profession collect on average. For the full Swedish workforce, female incomes are 86% of male incomes (SCB 2011d). The prospect of financial monetary return probably plays an even smaller role in incentivising new compositions for women than for men.

Human capital theory claims that investing in formal education will pay off later in life. The data show that the mean total incomes are somewhat higher for those who have the longest and most relevant education (graph 1.1). This difference largely disappears when only IPR revenues from the STIM are studied (graph 1.2).

A typical view among Swedish musical artists in general, composers included, is that career-wise it is beneficial to be based close to opera companies, symphony orchestras, major venues, music conservatoires and public service radio/TV. These, of course, occur more often in the biggest cities, with an emphasis on the national capital. The data in this study do not provide any proof of this assumption regarding either total income (graph 2.1) or IPR revenues from the STIM (graph 2.2) for any part of the studied period. Both the IPR revenues and the total income levels have converged considerably.

The topic of the duration of copyright has generated heated discussion since the introduction of printing privileges in medieval Italy. Individual incomes over life spans typically show growth from the late teens. After a peak in the mid-50s, for most of us our incomes tend to decrease. This non-linear pattern can be observed when combining the age and age² variables. The loss of income at higher ages is much smaller for composers than for the studied reference group (table 8). The peak, however, occurs on a much lower level. This pattern is most likely due not only to the possibilities of IPR revenues long after a piece of music is first performed but also to the fact that composing is intellectual rather than physical in kind and it can thus be maintained into old age.

The present data show an increase in the total income from an increase in the celebrity variable (table 12). It may well be that composers of art music strive for an increased level of recognition with indirect pecuniary effects more than for the direct monetary compensation from IPRs.

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Appendix

All variables collected or constructed for this study

Name	Source	Period	Collected for	Description
<i>IPR revenue from concerts</i>	STIM	1990-2009	confidants	IPR revenue from concerts
<i>IPR revenue from record sales</i>	STIM	1990-2009	confidants	IPR revenue from record sales
<i>IPR revenue from radio and TV</i>	STIM	1990-2009	confidants	IPR revenue from radio and TV
<i>IPR revenue from live concerts and broadcasts abroad</i>	STIM	1990-2009	confidants	IPR revenue from live concerts and broadcasts abroad
<i>total IPR revenue from STIM</i>	STIM	1990-2009	confidants	total IPR revenue from STIM
<i>total taxed income</i>	Tax Agency	1990-2009	all	total taxed income
<i>number of operas composed</i>	MIC	1990-2009	all FST	
<i>number of orchestral pieces composed</i>	MIC	1990-2009	all FST	
<i>number of chamber music pieces composed</i>	MIC	1990-2009	all FST	
<i>number of electro-acoustical pieces composed</i>	MIC	1990-2009	all FST	
<i>output STIM; total number of pieces with compensation from STIM</i>	constructed	1990-2009	all FST	5*orchestral+chamber+cam
<i>output_total</i>	constructed	1990-2009	all FST	10*opera+5*orchestral+chamber+cam
<i>age</i>	constructed	1990-2009	all	income year (1990-2009) minus year of birth
<i>age squared</i>	constructed	1990-2009	all	
<i>taxed income from STIM</i>	Tax Agency	2005-2009	confidants	
<i>taxed income from SAMI f.i.e. Royalties from performance as artist on rec</i>	Tax Agency	2005-2009	confidants	
<i>taxed income from FST</i>	Tax Agency	2005-2009	confidants	
<i>taxed income from publishers</i>	Tax Agency	2005-2009	confidants	
<i>taxed income from municipalities; normally from educational work</i>	Tax Agency	2005-2009	confidants	
<i>taxed income from churches; normally as organ players</i>	Tax Agency	2005-2009	confidants	
<i>taxed income from private or municipal schools</i>	Tax Agency	2005-2009	confidants	
<i>taxed income from non-governmental voluntary adult education</i>	Tax Agency	2005-2009	confidants	
<i>taxed income from universities or conservatoires; normally from education</i>	Tax Agency	2005-2009	confidants	
<i>taxed income from state or private retirement programs</i>	Tax Agency	2005-2009	confidants	
<i>taxed income from unemployment benefits</i>	Tax Agency	2005-2009	confidants	
<i>taxed income from miscellaneous sources related to music</i>	Tax Agency	2005-2009	confidants	
<i>taxed income from miscellaneous sources not related to music</i>	Tax Agency	2005-2009	confidants	
<i>sex</i>	Tax Agency	time-invariant	all	1= male, 2 = female
<i>birth</i>	Tax Agency	time-invariant	all	year of birth
<i>domicile</i>	Tax Agency	time-invariant	all FST	address of February-March 2011 1 = Capital Stockholm; 2 = Gothenburg, Malmö, 3= regional centres; 4= small towns and countryside
<i>education</i>	MIC	time-invariant	all FST	level of higher education 1= domestic and international education; 2= domestic education; 3= domestic education, not composing; 4= no education
<i>mandate</i>	confidants	time-invariant	all	1=FST member, mandate; 2= dito no mandate; 3=dito explicit refusal; 4= non-FST reference group
<i>celebrity</i>	Google	time-invariant	all FST	number of Google hits on name as of December 2011

VARFÖR MUSIKUPPHOVSRÄTTER?

KORT IDEOLOGISK OCH EKONOMISK HISTORIK

Staffan Albinsson

Man får lätt uppfattningen att debatten om upphovsrätternas vara eller icke vara är ett nytt påfund som kom i samband med att fildelningen på internet uppstod runt senaste sekelskiftet. Det är möjligt att Hollywood och de stora multinationella skivbolagen är bovar som lägger beslag på pengar som rätteligen borde vara musikskaparnas eller stanna hos konsumenterna. Denna artikel tar inte ställning till det. Men det är iallafall inte dagens multinationella producenter som hittat på den upphovsrättslagstiftning både vi och de allra flesta andra länder har. Upphovsrätten, även den som avser musik, är mycket äldre än så. Upphovsrättsregleringarna och de animerade debatterna om dem har följt varandra hand i hand.

Då Platons elev Hermodoros av Syrakusa under fjärde århundradet f. Kr. skrev ner mästarens föreläsningar och publicerade dem i form av handkopierade kopior, den dåvarande tekniken, bröt en moralrättslig debatt ut. Hermodoros hade inte Platons tillstånd att vare sig nedteckna eller publicera. Även om Hermodoros knappast tog ifrån Platon några stora inkomster blev han av samtiden betraktad som en ärelös individ. Cicero (106 – 43 f. Kr.) klagade hos sin förläggare Atticus över att ett av hans tal hade publicerats utan hans samtycke och han krävde en förklaring. Ett tidigt exempel på att producenternas och konsumenternas intressen inte alltid är desamma utgörs av Vergilius (70 – 19 f. Kr) nationalepos Aeneiden. Vergilius testamenterade det ofullbordade manuskriptet till två vänner med det uttryckliga förbehållet att det inte skulle publiceras. Vännerna upprätthöll författarens

begäran ända till kejsar Augustus intervenerade och såg till att texten offentliggjordes. Augustus såg sig själv som representant för *res publica*, dvs folket. Enligt kejsaren fanns det ett allmänt intresse av att Vergilius arbete publicerades. I sin biografi över de grekiska filosoferna karakteriserade Laertius (200-talet e. Kr.) stoikern Zena av Kition (333 – 264 f. Kr.) som en litterär tjuv och gav honom tillmälet *andropodistes* – slavrovare eller, på latin, ”*plagium*”. Att för egen vinning plagiera vad någon annan skapat med hjälp av den egna tankekraften betraktades som en allvarlig överträdelse (de la Durantaye, 2006; s. 22 - 30).

Våra upphovsrättstvister kan vara tuffa. Men aldrig så våldsamma som (legenden om) tvisten mellan den irländske munken Columba som runt år 560 handkopierade den psaltarsamling som skapats av hans avlidna lärare Finian. Det av Finian grundade klostret Movilla Abbey bestred Columbas rätt att behålla kopian. Fejden avslutades år 561 i det blodiga slaget vid Cúl Dreimhne. Inför en kyrklig synod valde Columba att gå i frivillig exil som missionär i Skottland (Hunter, 1986).

Då Gutenberg runt 1450 utvecklade tryckpressen och därigenom kunde mekaniskt mångfaldiga texter i stället för att de som tidigare skulle behöva kopieras för hand skapades det också ett behov av en slags upphovsrätt. Den nya tekniken krävde investeringar i kunskap, utrustning, lokaler, personal och förbrukningsvaror. För att tryckarna skulle kunna få täckning för sina kostnader krävdes att inte konkurrenter tryckte samma alster så att upplagorna för varje tryckare blev för liten för lönsamhet. De ledande i samhället såg genast ett behov av regleringar så att tryckandet överhuvudtaget kunde komma igång. Det första skriftliga belägg vi känner till för detta är de styrandes i Venedig beslut 1469 om att ge Mäster Johannes från Speyer ensamrätt under fem år för sitt tryckeri eftersom:

En sådan uppfinning, unik och speciell för vår tid och helt okänd för äldre, måste stödjas och få näring från vår goda vilja och våra resurser och (...) densamme Mäster Johannes, som lider under stora utgifter för sitt hushåll och lönerna till sina hantverkare, måste ges tillräckliga förutsättningar så att han kan fortsätta med större entusiasm och betrakta tryckkonsten som något som ska utvecklas snarare än något som bör lämnas. (Johannes av Speyers tryckmonopol, 1469).

De styrandes text andas inte moral utan enbart ekonomiska förutsättningar. Det är uppenbart att samhällets representanter redan väldigt tidigt såg ett behov av att reglera för att, för det första, skydda producentens inkomst för att han, för det andra, skulle kunna förse allmänheten och konsumenterna med vad de efterfrågade. Det finns heller inget behov av och mening med kopieskyddsdelen av upphovsrätten, den bokstaviga delen av anglo-amerikanska begreppet copyright, om den inte ger båda dessa resultat. Under resten av 1400-talet uppstod en lång rad liknande beslut från styrande över hela kontinenten beträffande tryckprivilegier. Ottaviano dei Petrucci, även han i Venedig, skapade år 1500 de första typerna för tryckning av noter. Nottryckarna fick vartefter samma typ av privilegier som boktryckarna.

Begreppet ”pirat” har även det anor långt tillbaka i tiden. Martin Luther kämpade hårt mot dem som olovligen lät trycka kopior av hans böcker. I Luthers ”Varning till tryckarna” från 1545 står bland annat:

Men över detta måste jag beklaga mig, eftersom dessa giriga och rovlystna pirattryckare hanterar vårt arbete vårdslöst.

150 år senare klagade den engelske författaren Daniel Defoe över en del tryckare som "pirattrycker böcker i mindre storlekar och med sämre papper för kunna sälja dem billigare än originaltrycket (Defoe, 1704: s. 28).

I den engelska förordningen *Statute of Anne* från 1710 kom för första gången rätten till en text att förbli hos författaren snarare än hos förläggaren även om den förra fått ersättning av den senare. Rätten avsåg en tid av 14 år som kunde förlängas, om så begärdes, ytterligare 14 år.

Upplysningstidens stora filosofer hade mycket att säga om upphovsrättsfrågor. Immanuel Kant menade, som somliga i dagens fildelningsdebatt, att konsumenten som köper en konstnärlig produkt ska ha rätt att förfoga över inte bara den fysiska varan i sig utan även över innehållet. Kant var i denna tanke dock rätt ensam. Den stora filosofmajoritetens idéer formulerades av tysken Gottlieb Fichte. Han delade upp begreppet "bok" i tre delar (Fichte, 1793):

- *Idéerna* som presenteras i en bok – då de lästs blir de inte bara författarens utan även läsarens ägodel.

- *Formen* i vilken idéerna presenteras – formen är en avbild av författarens personlighet och hans ande/andlighet vilka inte kan kopieras och formen ska därför skyddas av upphovsrätten

- *Det fysiska objektet* – boken kan köpas och läsas; men den kan även säljas vidare och till och med eldas upp utan att författaren ska ha rätt att opponera. Köparen tillskansar sig dock enbart sitt exemplar och har ingen rätt att kopiera det.

Denna tredelning kan utan problem överföras till noter, skivor och t o m digitala filer.

Skaparens rättigheter utvecklades vidare i Frankrike omedelbart efter revolutionen. Den korta och kärnfulla lagen från 1791 (med betydande revision 1793) beträffande rätten till konstnärliga produkter gav kompositören ett livslångt ägande till sina verk. Den innehöll vidare

för första gången en klausul om arvingarnas rätt att förfoga över samma verk. Denna *post mortis autoris*-rätt skulle gälla i tio år efter kompositörens död. Dessutom gavs polisväsendet rätt och skyldighet att ingripa mot pirater av olika slag. Lagöverträdarnas böter fastställdes.

Upphovsrätterna i nästan alla länder, med undantag av några i Syd- och Centralamerika där rätten var för evigt, fick därefter tidsbegränsningar som normalt avsåg skaparens livslängd och ett antal år därefter för arvingarna. Poeten och whig-politikern Thomas Babington Macaulay, utvecklade i ett ofta citerat tal i *House of Commons* år 1841 för- och nackdelarna med rätten till en tidsbegränsad äganderätt:

‘it is good that authors should be remunerated; and the least exceptionable way of remunerating them is by a monopoly. Yet monopoly is an evil. For the sake of the good we must submit to the evil; but the evil ought not to last a day longer than is necessary for the purpose of securing the good.’ (Macaulay, 1841/2010, s. 168)

De flesta ekonomer är nuförtiden överens om att det som Macaulay kallade ”monopol” hellre bör betraktas som ett ”privilegium”. I det ligger att man i en sekellång dispyt om huruvida skaparens rätt till sitt verk är naturrättsligt eller moralrättsligt grundat nu tenderar mot det senare. Privilegiet ska gälla under en tillräckligt lång tidsperiod för att skaparens intresse ska skyddas men perioden ska, å andra sidan, vara så kort som möjlig för att också allmänhetens intressen ska tillgodoses. Ett monopol är vanligtvis något som producenten tillskansat sig och det är, menar liberala ekonomer alltsedan upplysningstidens Adam Smith, aldrig i konsumenternas intresse. Privilegiet ges däremot frivilligt från allmänhetens företrädare för att producenten ska få finansiell möjlighet att skapa något som kan komma att vara efterfrågat av konsumenterna och som utan privilegiet inte skulle kunna produceras.

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Den första artikeln av vikt rörande kopieringsrättigheterna baserad på ekonomisk vetenskap publicerades av Sir Arnold Plant år 1934 (Plant, 1934). Hans viktigaste poäng var att kopieringsskyddet skapar en konstgjord knapphet (*scarcity*) medan den vanliga äganderätten administrerar något som redan i sig självt är en knapp eller begränsad resurs. Denna artificiella begränsning är grunden för musikindustrins utveckling. Åtminstone till det den är idag. Utan dagens upphovsrätt hade musiklivet sett radikalt annorlunda ut. Att musiken som skapats också varit i någon mån annorlunda är sannolikt. Annan upphovsrätt, eller ingen alls, hade påverkat musikutbudet både kvantitativt och kvalitativt. Med kvalitet menar jag 'av olika slag' och inte nödvändigtvis 'bättre eller sämre'.

Framföranderättigheterna

Det rättsliga skyddet mot otillet mångfaldigande av varor baserade på konstnärligt skapande (det bokstavliga och ursprungliga innebörden av begreppet *copyright*) kompletterades så småningom med rättigheter för skaparna att bestämma om var, när, hur och till vilken ersättning deras verk skulle kunna framföras på scen (*performing rights*). I denna process var det fransmännen som drev utvecklingen både före och efter revolutionen. Numera talar vi om stora rättigheter (*grand droits*) och små rättigheter (*petit droits*). I det förra fallet handlar det om rättigheter inom olika former av scenkonst. I det senare om rättigheter vad gäller framföranden av kortare stycken, oftast rent konsertanta.

Förändringar i upphovsrätten kommer vanligtvis som resultat av teknologisk utveckling som t ex tryckpressen, grammfonen och radion. Vad gäller utvecklingen av framföranderätten är det emellertid lite vanskligt att peka på någon liknande direkt teknologisk förändring. F.M. Scherer påpekar dock att utvecklingen av allt snabbare och bekvämare

transportmedel i form av järnvägar och vattenvägar under 1800-talet spelade stor roll för den kraftiga utvecklingen av konsertlivet och virtuosernas berömmelse. Transporternas kostnadseffektivitet förbättrades avsevärt mellan det att kompositören Felix Mendelssohn 1829 tog postdiligensen mellan London och Edinburgh – en resa som varade tre dygn – och hans kollega Frederic Chopins tågresa samma sträcka tjugo år senare. Chopin tillbringade 12 timmar på tåget (Scherer, 2004; pp. 145-147). Men tågen, liksom utvecklingen av det offentliga konsertlivet, var primärt båda resultatet av den ekonomiska utvecklingen i Europa efter den industriella revolutionen. Det är troligt att kompositörerna såg en möjlighet att få del av virtuosväsendets ökande inkomster.

De första som fick rätt att få betalt för att ett eget verk framfördes inför publik var de franska tonsättarna på nationaloperan i Paris. I slutet av 1600-talet tycks operan ha blivit allt svårare att administrera. Ludvig XIV ansåg sig nödsakad att 1713 förtydliga operans villkor i ett reglemente med 18 paragrafer; däribland den första, § 15, avseende vad som därefter kommit att benämnas "stor rättighet/*grand droit*"¹. Klausulen stipulerade att kompositören skulle erhålla 100 *livres* för vardera av de tio första föreställningarna och därefter 50 *livres* styck för ytterligare tjugo föreställningar. Om verket gavs i så många föreställningar kunde kompositören nå upp i en ersättning som motsvarade ungefär vad de ledande aktörerna erhöll (Durey de Noinville, 1757).

En dag år 1847 besökte populärmusikkompositören Ernest Bourget en *café-concert* på krogen *Les Ambassadeur* varvid han hörde sin egen musik spelas av kapellet. Som en slags kompensation vägrade Bourget att betala för förtäringen. Restauratören anmälde saken för myndigheterna. Den lokala handelskammaren accepterade emellertid Bourgets begäran. Marken var därmed jämnad för framföranderätter även utanför musikteatrarna. Några franska kompositörer tog omgående initiativ till *La Société des Auteurs, Compositeurs et Éditeurs de*

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Musique (Sacem) som skapades 1851 för att skörda frukterna av handelskammarens utslag (Tournier, 2006: s. 26-27).

Britterna såg sin Law of Copyright från 1842 som något som generellt avsåg dramatiska framföranden och således var inriktad mot de stora rättigheterna. Några rättsfall visade dock att domstolarna tolkade lagen så att den inte enbart omfattade sceniska framföranden utan även rent konsertanta. Någon motsvarighet till Sacem uppstod dock ej. I stället upptäcktes en ny affärsmöjlighet av en del enskilda aktörer som såg till att skaffa rätten att företräda kompositörer och deras verk. Den mest berömde var en Mr. Wall – en herre som tillbringat tid i fängelse för att ha falskeligen skaffat sig äganderätter av helt andra slag innan han upptäckte möjligheten att göra sig en hacka på att se till att konsertarrangörer betalade lagenliga böter för otillåtna framföranden av musikaliska stycken som han representerade. I ett nummer av *The Musical Times* från 1877 skriver redaktören om flera tillfällen när Wall överträffade alla sina illa sedda kolleger, bl a skrev han

‘At a concert given in the village of Milton an amateur sang “Who’s that tapping at the garden gate?” and soon found out that it was Mr. Wall with his stereotyped demand for penalties’.

Redaktören klagar dock på förläggarna för att de inte regelmässigt försåg sina noter med information om till vem man skulle vända sig för att få rätt att framföra stycket offentligt. Denna idé gjordes till lag 1882. Det vanligaste blev emellertid att förläggarna lät trycka att stycket ‘may be sung in public without a fee or licence’. Man såg nämligen länge live-framförandet som reklam för den materiella notprodukten². Några år senare hade vinden vänt och i ett nummer av en annan tidning, *The Era*, skrev redaktören att Mr. Wall:

‘Opened the eyes of song writers to the fact that they are as much entitled to the protection of the law as any other of Her Majesty’s liege subjects, and it therefore behoves proprietors, if only as a matter of business, to be on their guard against those unprincipled persons who would rather steal a song than pay for it, and who, knowing they are not themselves worth proceeding against, are careless of the consequences to their employers’. (Alexander, 2010: p. 343)

Bernkonventionen 1886

På initiativ av Victor Hugo (numera kanske, i synnerhet bland musikintresserade, mest känd som författaren till Samhällets olycksbarn/*Les Misérable*) bildades 1872 *Association Littéraire et Artistique internationale* i syfte att skapa en internationell överenskommelse för att skydda upphovsmäns och konstnärers rättigheter till sina verk. Det tog halvtannat decennium innan Hugos tanke manifesterades i den första Bernkonventionen. Eftersom initiativet var franskt kom konventionen att präglas snarare av *droit d’auteur* (författarens rätt) som inkluderade flera moralrättsliga delar till skillnad från den anglo-amerikanska vars begrepp *copyright* var (och är) fokuserat mera på de rent ekonomiska frågorna. Bernkonventionen reglerade främst de allt viktigare internationella aspekterna av upphovsrätten och ersatte en stor mängd bilaterala avtal.

En mycket betydelsefull punkt i den nya konventionen var att den inte krävde att det som skyddades skulle vara registrerat någonstans. Den första formuleringen, artikel 4 i 1886 års version, talade om skydd i alla länderna för vilka som helst produktioner inom de litterära, vetenskapliga eller konstnärliga områdena som kan publiceras genom något

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slags tryck eller reproduktion. I Berlin-revisionen av 1908 talas det i stället om (artikel 2) att verket i sin aktiva form ska vara "fixerat" i skrift eller på annat sätt. De ursprungliga signaturländerna var Storbritannien, Tyskland, Frankrike, Belgien, Spanien, Italien, Schweiz, Haiti, Liberia och Tunisien. USA betraktades länge som ett piratvänligt land. Först 1989, då de egna film- och musikproducenterna sedan länge var internationellt dominerande exportörer, anslöt man sig till Bernkonventionen. Sovjetunionen anslöt sig först på 80-talet. Även Folkrepubliken Kina var påfallande sen med sin anslutning 1992. Sverige ratificerade avtalet 1904.

Grammofonens intåg och de mekaniska rättigheterna

Vinylplattan har fortfarande sina fans även om den i våra dagar efterträts som ledande teknik av den digitala filen på CD eller dataminne. Den platta, snurrande skivan uppfanns av Emile Berliner under 1890-talet. Först på banan med talande maskiner var emellertid Thomas Edison som 1878 fick patent på fonografen som läste av rullande cylindrar. Edison beskrev sin banbrytande uppfinning i fantasifulla ordalag genom att jämföra med mänsklighetens allra första hieroglyfer i Assyrien och Babylon. Där hade författarna skrivit ned sin kilskrift på cylindrar av bränd lera. Skillnaden var dock, enligt Edison, att man inte behövde vänta många sekler på att hans stumma vaxcylindrar skulle bli dechifftrade. Edison var mån om sitt eget fonografpatent men kämpade tufft för att få använda kompositörernas alster fritt utan hänsyn till upphovsrätt. Någon sådan hade de inte i det nya mediet menade Edison, eftersom han, för det första, köpt noterna och därigenom betalt för upphovsrätten och att man, för det andra, inte som vad beträffar noten, kan läsa av fonografrullen med ögonen. Han påvisade att två inspelningar

av den talade bokstaven “a” gav helt olika spår på fonografrullen och att bokstaven därför inte kunde läsas av entydigt. I rättsfallen, såväl i USA och Europa, hänvisade Edison och hans advokater inte bara till lagstiftningen beträffande den egentliga kopieringsrätten (*copyright*) utan även till tryckfrihetsförordningarna. Kruxet var huruvida fonografrullen och senare grammofonskivan var en “skrift” som kunde “läsas”. I ett första domstolsutslag, i fallet *White-Smith Music Publishing Co. v. Apollo Co.* av 1908, fastställdes att rullar för mekaniska pianon inte var “kopior” utan “framföranden”. Domaren Holmes i *the Supreme Court* var missnöjd med detta samtidigt som han utifrån gällande lagstiftning kände sig tvungen att samtycka till utslaget. Han menade att

“On principle anything that mechanically reproduces the [original] collocation of sounds ought to be held a copy, or if the statute is too narrow ought to be made so by a further act”.

Alla utom de som tillverkade apparaterna och rullarna/skivorna var nu inställda på att skilja ut “skrift” från “läsning” på ett nytt sätt. Då kongressen debatterade lagförslaget till ny upphovsrättslag, beslutad 1909, visade det sig att Edisons liknelse med de assyriska kilskriftsrullarna vändes mot honom och andra producenter av liknande apparater. Ledamöterna menade, att de komplementära aktiviteterna “skrivande” och “läsande” uppenbarligen kunde separeras av många decennier. Fonografrullarna kunde således läsas utan att man faktiskt behövde förstå vad man läste! Maskinen var människans hjälp i läsandet. (Gitelman, 1997).

Bernkonventionen reviderades i Paris 1896 och i Berlin 1908. Revideringarna syftade bland annat till att utöka konventionen till att även omfatta “fixeringen” i form av (artikel 12 av versionen från 1908)

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”instrument som kan reproducera stycket mekaniskt” (även det publika framförandet med hjälp av ett sådant mekaniskt medium) och, artikel 14, ”cinematografiska representationer”.

Radion och mediatransmissionsrätten

Det dröjde till efter första världskriget innan något som liknade våra dagars radioföretag såg dagens ljus. De flesta fanns i USA. Men det första underhållningsprogrammet sändes faktiskt i Argentina i augusti 1920. Inom bara 3-4 år hade radiostationer etablerats i de flesta av världens dåtida länder inkl de nordiska.

I Nordamerika drevs radiosändarna av dem som ville sälja radioapparater till den breda allmänheten och av tidningshus som ville göra reklam för papperstidningarna. Debatterna och de juridiska tvisterna kom att präglas av detta förhållande. Man hade till en början problem med en formulering i *the United States Copyright Act* från 1909. Där krävdes upphovsrättsägarens tillstånd för *'public performance for profit'*. ASCAP (*the American Society of Composers, Authors and Publishers*, bildat 1919) menade redan från början att en radiosändning var just ett offentligt framförande i vinstintresse. *The US Supreme Court* hade redan tidigare i fallet *Herbert v. Stanley Co.* fastställt att en restaurant som inte tog betalt av kunderna för den levande musikunderhållningen ändå måste betala för den till upphovsrättsägarna:

‘it is true that the music is not the sole object, but neither is the food, which probably could be got cheaper elsewhere... if music did not pay it would be given up. if it pays it pays out of the public’s pocket’ (jmf Bourgets rättsfall i Paris 1847 ovan).

Innan samma princip accepterades även för den nya radioteknologin förde en lägre domstol ett resonemang om huruvida radiosändningen skulle kunna jämföras med att någon öppnade ett fönster från ett rum där någon spelade. Knappast något som kunde betraktas som ett 'aktivt' brott mot lagen, menade radiostationen i fråga. Radiomediet borde därför inte betala någon extra upphovsrättsersättning, hävdade man. Domstolens långa resonemang avslutades med:

'if ... the public had been excluded from the public ball-room of the hotel while the orchestra continued to play and the broadcaster to broadcast, he would have contributed to the infringement while the public was absent; but the presence or absence of an audience in the hotel cannot change the character of his acts of contributory infringement'.

I appellationsdomstolen fastställde domaren att :

'the artist is consciously addressing a great, though unseen and widely scattered, audience and is therefore participating in a public performance...it is immaterial in our judgement, whether that commercial use be such as to secure direct payment for the performance by each listener, or indirect payment....'

(alla citat s.196-197: Davis, 1929).

Huvudändamålet för revisionen av Bernkonventionen i Rom 1928 var just integrationen av radiomediet i fördraget. TV-mediet, som introducerades ett par decennier därefter, är beträffande upphovsrättsprinciper i princip detsamma som radiomediet fast, uppenbarligen, med både bild och ljud.

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Ekonomisk betydelse för kompositörer/låtskrivare

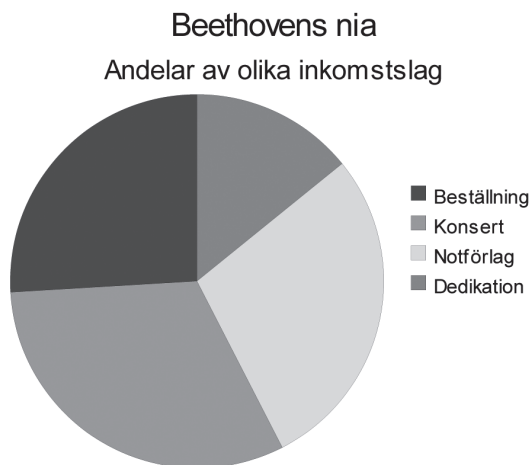
Då jag ovan citerade Mäster Johannes av Venedig privilegium av 1469 anförde jag att upphovsrättens syfte är tvåfaldigt: 1. skydda producentens inkomst så att han/hon 2. ska kunna förse konsumenterna med vad de efterfrågar. Det finns inte heller något behov av upphovsrätt om den inte ger båda dessa resultat.

Låt oss ta ett exempel på vilken roll upphovsrätten spelade för tonsättarna då endast den tryckta noten kunde skyddas. Beethovens nionde symfoni, den med den berömda slutkören som nu blivit EU-hymn, beställdes av London Philharmonic Society för ett kontrakterat belopp om 550 Gulden. Uruppförandet och en repriskonsert, vilka dock inte gavs i London utan i Wien, gav en nettointäkt till Beethoven om summa cirka 670 Gulden. Förläggaren Schott i Mainz betalade 600 Gulden för rätten att sälja noter på alla marknader. Beethoven dedicerade verket till Kung Fredrik Wilhelm II av Preussen som skickade en ring med en röd ädelsten som tack. Den lät Beethoven omgående sälja för 300 Gulden. Uppenbarligen spelade den licens som Beethoven sålde till Schott en stor finansiell roll. Se figur 1. (Albinsson, 2011a).

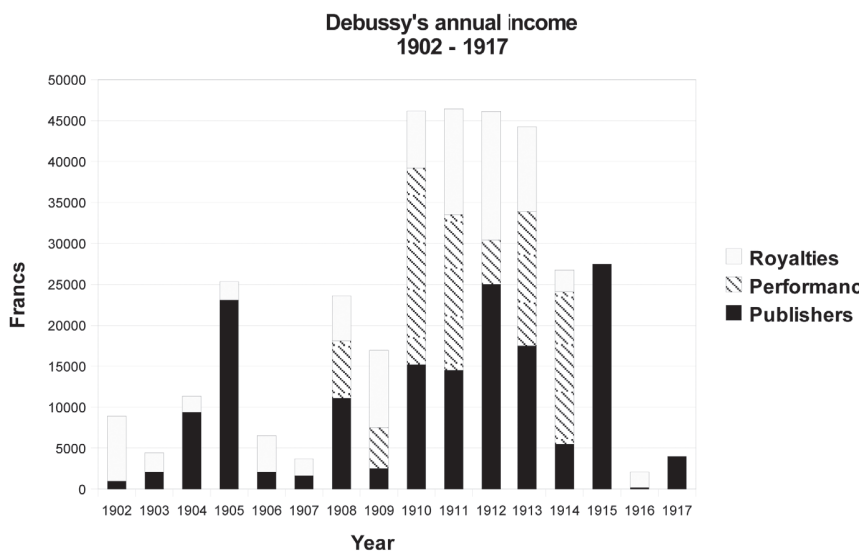
Då Debussy verkade i början av 1900-talet hade framföranderätten etablerats åtminstone i hans hemland Frankrike. Hans stora framgång med operan *Pelléas et Mélisande*, uruppförd 1902, gav honom, som framgår av figur 2, en god finansiell grund för det fortsatta komponerandet.

Debussy återupptog det aktiva konserterandet några år senare. Hans andra fru Emma hade större pretentioner än den första och Debussy delade hennes ambitioner att leva ett liv på en högre social nivå. Så behovet av inkomster blev större! Överlag bestod Debussys inkomst över den studerade perioden till hälften av upphovsrättsintäkter från notförlagen, till en fjärdedel av upphovsrättsintäkter från framföranden

Figur 1



Figur 2



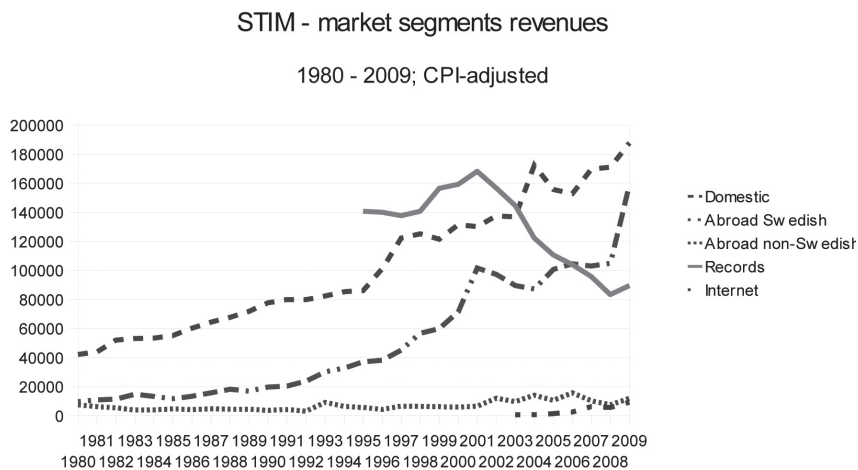
Varför musikupphovsrätter?

och till en fjärdedel av konsertgager (Herlin, 2011).

För STIMs medlemmar av idag betyder upphovsrättsintäkterna väldigt lite för det absoluta flertalet. 95 % av dem tog emot mindre än 10 000 SEK per person år 2009. I andra änden på skalan finns ett litet antal ytterligt, inhemskt och en del även internationellt, framgångsrika låtskrivare. 0,2 % av STIM-medlemmarna fick ta emot 36% av alla pengar som delades ut av STIM 2009. För dem är förstås upphovsrättsintäkterna avgörande för yrkesvalet! Enligt årsboken 1996 för GEMA, den tyska motsvarigheten till STIM, erhöll 5% av dess medlemmar 60% av intäkterna. Kretschmer och Kawohl hävdar att de har material som visar att mellan 500 och 1000 kompositörer och låtskrivare kan leva hyggligt gott från upphovsrättsersättningarna (Frith & Marshall, 2004: s. 44). Mina svenska siffror tyder på en liknande andel i vårt land (Albinsson, 2011b).

I en ännu ej färdigställd artikel kommer jag att presentera en studie av medlemmarna i FST/Föreningen Svenska Tonsättare och jag påvisar i den att svenska konstmusikkompositörer med en total inkomst om mindre än 50 000 SEK hade en avsevärt högre andel av sina inkomster från STIM än de med högre totala inkomster. Skillnaderna har dessutom ökat från 1990 till 2009. Det verkar alltså som att den upphovsrättsersättning FST-medlemmarna får från STIM är mycket mera jämlig än de totala inkomsterna. De flesta, men långt ifrån alla, skaffar sig betydande inkomster från andra inkomstkällor som t ex musiker och/eller lärare. Materialet tyder även på att FST-medlemmarna har en svagare inkomstutveckling än andra men att deras inkomster inte minskar lika mycket då de blir äldre som andras. Detta är rimligtvis ett tecken på att mängden upphovsrättskyddat material man skapat naturligtvis ökar med åren och att skyddet över tid gör att en tonsättare (och deras arvingar!) kan skörda frukterna av sitt arbete längre än vad som gäller för de flesta andra yrken.

Figur 3.



Avslutningsvis vill jag återkoppla till den inledande referensen till den illegala fildelningen. Figur 3 visar hur upphovsmannakollektivet i STIM under 2000-talet hittills lyckats kompensera det otvetydiga och kraftiga bortfallet av inkomster från CD-försäljning (“mekaniska rättigheter” i figuren) med lika kraftiga ökningarna av intäkterna från framföranderättslicensiering för konserter och radio/TV. De upphovsrättslicenser man förhandlat sig till från legal internetförsäljning av musikfiler och streaming av musik har ökat men spelade under den undersökta perioden bara en liten, om än lovande, roll (Albinsson, 2011b).

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ⁱ = Introductory chapter

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What we currently experience regarding the debate on digital and online copyright has novel aspects related to the new technology. However, the debate as such is not new. Such debates, as is narrated in *Nothing New under the Sun*, seem to have been a companion of mankind for at least as long as our history has been recorded. Pro and con arguments have been influenced by new subject matters, such as technological innovations and their consequences. Nevertheless, many fundamental principles guiding intellectual property right laws have, largely, remained unaltered.

The main contribution of the research presented in this set of articles lies in the analyses of Swedish data from the last three decades, pertaining to composers' incomes in general, and their intellectual property right revenues in particular. Readings of the older history of music intellectual property rights, with a focus on economic issues are also presented.

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