

# Recent Copyright Trends on the Internet

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2007 was the beginning of the end of DRM. Now the world is going flat. Mass-scale file-sharing on BitTorrent or Winny and remixing on YouTube, Nico Nico Douga and PiaPro are the most novel and far-reaching media-cultural practices so far to emerge from the digital revolution. Both threaten the role of the corporate gate-keepers in the culture industry. Those use copyright law to protect their vested interests. Creative destruction (Joseph Schumpeter) is inevitable but that is not a reason to do away with copyright altogether as it remains the only instrument authors and performers have to protect their interests against the exploiters of their works. As an alternative, a collective solution to rewarding creativity is gaining ground.

Digital Rights Management (DRM) was the single solution that the IT industry and the copyrights industry devised for the digital realm. Developed since 1990, cryptographic encapsulation of works like music and videos promised an unprecedented fine-grained control over „intellectual property.“ This solution path was encoded in international copyright law when the 1996 WIPO Internet Treaties legislated a special protection of DRM technology. DRM is not only privacy-invasive and expropriates users' equipment, as became clear through a series of disasters like the Sony-BMG rootkit case in 2005.<sup>1</sup> Technologically bullying customers also turned out to be genuinely bad for business.

Recognition started when EMI announced at MIDEM 2007 that it would sell its music without DRM. The other three music majors followed throughout the year. Software, text and music have all tried and abandoned DRM. They have learned the lesson that cryptographic protection for mass market digital goods is useless and stupid.

In time for MIDEM 2008, the International Federation of Phonographic Industries (IFPI) revealed its strategy. It is now globally lobbying for ISP liability. ISPs should be made to filter copyright content and disconnect infringers.<sup>2</sup> The first outcome was the 'Olivennes Agreement' announced in France in November 2007. The French ISPs agreed to filtering and to the so called 'three strikes approach': first a warning to an alleged copyright infringer, then a temporary disconnect, and if the person continues she is disconnected for good. The subscribers whose contracts have been terminated are to be included in a national directory in order to prevent them from contracting with any other ISP.<sup>3</sup>

Society is shifting its information and communication infrastructure to the Internet. Education, culture, economy are going online. How can such a society possibly justify excluding potentially millions of its members from the Internet? In spite of the blatant absurdity of this approach, the UK has followed suit with a draft law to the same effect.<sup>4</sup> Also in Japan the four largest telecom associations have announced to introduce the “three strikes.”<sup>5</sup>

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1 [http://en.wikipedia.org/wiki/Sony\\_BMG\\_CD\\_copy\\_prevention\\_scandal](http://en.wikipedia.org/wiki/Sony_BMG_CD_copy_prevention_scandal)

2 [http://www.ifpi.org/content/section\\_resources/dmr2008.html](http://www.ifpi.org/content/section_resources/dmr2008.html)

3 <http://www.edri.org/edriagram/number5.23/french-agreement-piracy>

4 [http://technology.timesonline.co.uk/tol/news/tech\\_and\\_web/the\\_web/article3353387.ece](http://technology.timesonline.co.uk/tol/news/tech_and_web/the_web/article3353387.ece)

5 <http://www.yomiuri.co.jp/dy/national/20080315TDY01305.htm>

In this situation the proposals for a flat-rate compensation system for the Internet appear in new light. The idea is the same as with the private copying exception. When in the 1950s tape recorders made private copying of music possible for consumers, it was made legal and in exchange users were made to pay a levy on recorders and on recordable media ensuring a compensation to authors through collective management. File-sharing and remixing pose the same issue today. The answer is analogous: a flat-rate payment of about 800¥ per month paid to the user's ISP and distributed by collecting societies to the creatives whose works are being shared. Users have the option not to pay if they don't file-share. Music industry veterans like Jim Griffin and Peter Jenner, law scholars, consumer organisations and collecting societies for years have called this the only possible solution.<sup>6</sup>

The model reached its most advanced stage in France. The "Alliance Public Artistes," a broad coalition of 15 organisations of creators and consumers proposed the "licence globale." It commissioned studies on its legal, technical and economic feasibility, and gained parliamentary support from Socialists as well as Conservatives. In December 2005, their amendment to the French copyright law implementing the global license was passed into law. When the rights industry found out, they raised hell and the decision was reversed.<sup>7</sup>

The model is still being pursued in France: SPEDIDAM, one of the music collecting societies in the Alliance did a survey in which 75.5% of Internet users in France said they are ready to pay a monthly optional levy in exchange for legalising peer-to-peer file sharing.<sup>8</sup> Even the Attali Commission established by President Sarkozy proposed the flat-rate as a way to reconcile economic development and free legal downloading.<sup>9</sup>

The Internet levy is being proposed the world over, including by the Songwriters' Association of Canada<sup>10</sup> and the Swedish Performing Rights Society.<sup>11</sup> In the UK a very secretive „Value Recognition Strategy Group“ reporting to CEOs in the music industry „calculated that the monthly rate required to close the value gap from a flat rate fee on either ISPs or manufacturers would be extremely low.“ Alas, „the report concluded that any attempt to implement such a flat rate which would cover all ISP users and/or all devices would not be feasible in the commercial world owing to the structural and legislative changes that would be required to enable it.“<sup>12</sup>

The explanation for this refusal is likely that the „commercial world“ wants to do it their way without end-users, lawmakers and collective rights management organisations involved. The first B2B flat-rate came when Universal announced its Total Music service in September 2007 through which it will license its complete catalogue to ISPs and device makers for a flat fee. The first deal followed in December 2007 with Nokia. Buyers of certain of its mobile phones will get unlimited free downloads from UMG's entire catalogue for 12 months, after which they can keep the music. Nokia pays UMG 5\$ per month and customer.<sup>13</sup>

Warner Music went a step further by hiring Jim Griffin, formerly Geffen Music's digital chief and long-time promoter of a flat-rate in late March 2008. His task during his three-year contract is to set up a system with a monthly fee paid on top of ISP charges in exchange for unlimited music

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6 <http://www.crosscommons.org/acs.html>

7 <http://www.lalliance.org>

8 LIVRE BLANC sur le peer to peer, 26.10.2007, <http://www.legalis.net/pdf/P2P%20livre%20blanc.pdf>

9 [http://www.premier-ministre.gouv.fr/en/information/latest\\_news\\_97/the\\_attali\\_report\\_316\\_59074.html](http://www.premier-ministre.gouv.fr/en/information/latest_news_97/the_attali_report_316_59074.html)

<http://www.liberationdelacroissance.fr/files/rapports/rapportCLCF.pdf>

10 <http://www.songwriters.ca/studio/proposal.php>

11 <http://www.stim.se/stim/prod/stimv4eng.nsf/alldocuments/1D66451CBE1B0F81C12573F4002E1CCC>

12 Music.ally Report, Issue 178 - 18 October 2007, <http://musically.com>

13 [http://www.businessweek.com/magazine/content/07\\_43/b4055048.htm](http://www.businessweek.com/magazine/content/07_43/b4055048.htm);

<http://arstechnica.com/news.ars/post/20071204-nokias-unlimited-comes-with-music-plan-misses-the-boat-due-to-drm.html>

downloads.<sup>14</sup>

With respect to peer-production sites the industry has taken a very different approach from Napster. First it pressured YouTube with billion dollar copyright law-suits. But then, starting with Warner Music in September 2006, all major labels signed blanket licensing deals. The rights of authors were likewise licensed by collecting societies like British MCPS-PRS and German GEMA in late 2007. At the same time, a similar licensing agreement was concluded between JASRAC and Nico Nico Douga. These licenses refer not only to music videos provided by the labels themselves but also those uploaded by users and even to user-generated remixes.

The good news: users are now free to share and remix while paying only with their attention to advertising and loss of privacy. The bad news: They may only do so on the Web 2.0 services that have been granted a license. The labels still reserve the right to have videos they disapprove of taken down, so there is no legal certainty for users. Indie labels that have not had enough bargaining power to conclude such an agreement are left in the cold.

„End-users“ will anyway have to foot the bill in the end. When you buy one of Nokia's phones you will have to pay for music even if you don't download any. When you buy a product advertised on YouTube you will have to pay the music fee folded into the product's advertising budget even if you're not using YouTube at all. And a deal between two corporations is obviously going to be less transparent, less accountable, less fair to authors and musicians than a legal flat-rate administered by a collecting society under member control and public oversight.

We have to think about a new division of what needs to be public, what should be collective and what can be private. Rewarding creativity is important, and a levy is only part of the mix to be explored.<sup>15</sup> But what is crucial is the freedom to share and to remix. They are the foundation of the emerging read-write society (Larry Lessig).<sup>16</sup>

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14 <http://www.portfolio.com/news-markets/top-5/2008/03/27/Warners-New-Web-Guru>

15 See the recent “Economies of the Commons” conference in Amsterdam,  
<http://www.debalie.nl/artikel.jsp?podiumid=media&articleid=212552>

16 [http://www.wizards-of-os.org/programm/panels/authorship\\_amp\\_culture/keynote\\_the\\_read\\_write\\_society.html](http://www.wizards-of-os.org/programm/panels/authorship_amp_culture/keynote_the_read_write_society.html)