

# Nothing New under the Sun

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Essays on the Economic History of  
Intellectual Property Rights in Music

Staffan Albinsson



UNIVERSITY OF GOTHENBURG  
SCHOOL OF BUSINESS, ECONOMICS AND LAW

NOTHING NEW UNDER THE SUN



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Property Rights in Music

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GOTHENBURG STUDIES IN ECONOMIC HISTORY 8

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Cover design and layout: Siri Reuterstrand  
Insert design by: Malin Augustsson  
Printed in Göteborg, Sweden 2013 by Ineko  
ISBN: 978-91-86217-07-5  
<http://hdl.handle.net/2077/32756>

‘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'

Gothenburg Studies in Economic History 8 (2013)

ISBN: 978-91-86217-07-5

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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’.<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup> 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

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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.<sup>3</sup>

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.

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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.<sup>4</sup>

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

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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 time<sup>5</sup>. 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.

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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.<sup>6</sup>

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:

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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.

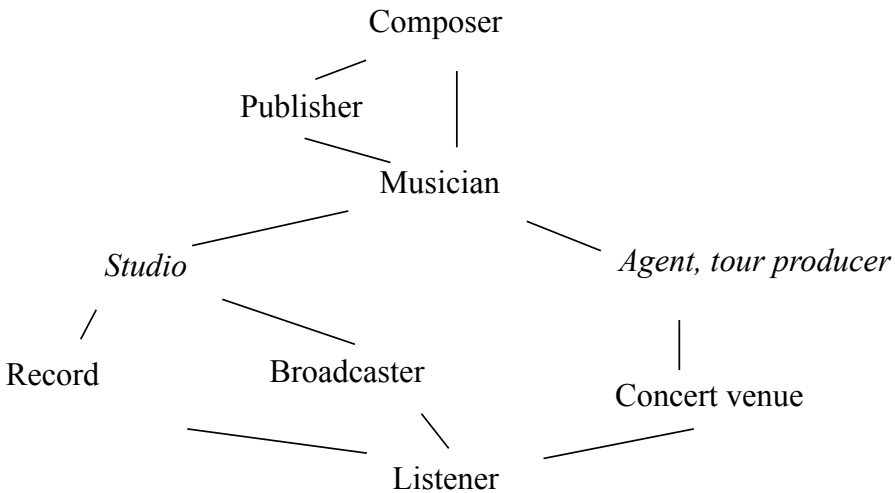


Figure 1. The value-adding chain of music production

### 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.<sup>7</sup>

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).

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<sup>7</sup> 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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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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ISBN 978-91-86217-07-5

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