Legalizing the Non-Commercial Online Use of Works: Towards a Universal Right of Remuneration.

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Research and analysis

Online copyright infringement tracker survey (6th Wave)

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Sixth tracking study into the extent of online copyright infringement, digital behaviours and attitudes among people aged 12+ in the UK.

Documents

The online copyright infringement tracker W6 report (March - May 2016)

PDF, 1.09MB, 60 pages

As with the payment group metrics outlined in Section 2.1.2, we can create 'legality' groups by assessing the proportion of online content they each consumed legally[11]:

Table 4.2.1a: Legality groups – proportion who consumed content legally/ illegally (past three months)

↑ Sig. increase (from 2015)
↓ Sig. decrease (from 2015)

	Music	Films	Programmes	Computer Software	Books	Video Games	Any
Base 1 - all who consumed	1925	1271	1775	582	631	675	3040
100% legal	80%↑	76%	80%	81%	88%	82%	75%
Mix of legal and illegal	7% ↓	8%	8%	5%	5%	7%	16%
100% illegal	13%	15%	12%	14%	7%	10%	9%
ANY ILLEGAL	20%↓	24%	20%	19%	12%	18%	25%
Base 2 - 12+ internet users	4670	4670	4670	4670	4670	4670	4670
100% legal	29%	19%↑	28%	9%	11%	10%	44% ↑
Mix of legal and illegal	3%	2%	3%↑	1%	1%	1%	10%
100% illegal	5%	4%	4%↓	2%	1%	1%	5%↓
ANY ILLEGAL	8%	6%↑	7%	2%	2%↑	2%	15%

Base 1: All who have downloaded or streamed/accessed types of content in the past three months.
Base 2: All internet users (aged 12+)

- There has been no change in the proportion of 12+ content consumers who have infringed for any of the categories: 25% of consumers of these categories online have consumed some illegal content, 9% exclusively illegal content.

- The highest levels of infringement are for the music, TV programmes and film categories at 8% of all internet users, 7% and 6% respectively.

- Looking at that another way, 24% of people aged 12+ who have consumed films online have done so illegally, and 20% for both music and TV programmes.

- The lowest levels of infringement are within the books category at 12% of all those aged 12+ who have downloaded or streamed/accessed books in the past 3 months.

11 We derived figures for illegal files by looking at differences between claimed total number of files with claimed

Legalizing Non-Commercial Online Use Assumptions

1. Dissemination of work by non-professional 'users' is (and will remain) largely uncontrollable.
   - Enforcement either hugely uneffective and/or leading to disproportionate social costs
     - Affects integrity of Internet, privacy, freedom of expression
   - Mass-scale content sharing is inherent feature of open Internet
2. Overall welfare effects of mass online infringement may be positive rather than negative.
3. Creators have right to fair remuneration

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Earlier proposals to legalize & compensate file sharing

- Non-commercial file sharing levy (Netanel)
- Tax-and-reward system (Fisher)
- ‘License globale’ (Aigrain)
- Content/culture ‘flat-rate’ (Grassmuck, others)

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Existing Models of Legalization + Remuneration

- Private copying
  - Media and equipment levies
- Photocopying schemes
  - Statutory licenses, levies
- Cable retransmission
  - Mandatory collective licensing
- Broadcasting ("radio model")
  - Voluntary blanket licensing

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Existing Legalization Models: Common features

- Individual licensing/enforcement not efficient, impossible or undesirable
- Promote access to broad catalogues of works
- Preserve users' privacy and data protection
- Preserve technological/network integrity
- Guarantee fair remuneration to authors
- *All models have spread into digital realm*

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Main Features of Proposed Model

- Statutory license (or other non-voluntary scheme) generally permitting *online uses*
- Subject matter: music, video, images, text
  - Games, software, database excluded
- For *non-commercial* purposes
  - Cf. art. 5(2)(b) InfoSoc Directive
  - So no legalization of for-profit content services

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Main Features of Proposed Model (2)

- Fair remuneration to authors, performers, other right holders
  - Through collecting society
  - Payable by ISP's (access providers)
    - 'Deep pockets'
    - ISP's main target of enforcement measures
    - Billing relationship with subscribers → transfer costs to consumers
- Tariff: flat fee
  - Perhaps categorical exemptions (e.g. narrow-band)

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Normative considerations

- EU copyright law reflects mix of utilitarian and justice-based rationales for copyright:
  - Exclusive rights are means to an end, not axiomatic
  - ACS would promote production and dissemination of creative works
  - ACS would provide just reward for creators
    - Probably much fairer than via existing 'legal' streaming services
- 17 EU Charter: IP protected as property
  - *Luksan* (CJEU): IP right may be replaced by right to fair remuneration if in the public interest

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ORIGINAL ARTICLE

Going means trouble and staying makes it double: the value of licensing recorded music online

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Abstract This paper discusses whether a copyright compensation system (CCS) for recorded music—endowing private Internet subscribers with the right to download and use works in return for a fee—would be welfare increasing. It reports on the results of a discrete choice experiment conducted with a representative sample of the Dutch population consisting of 4986 participants. Under some conservative assumptions, we find that applied only to recorded music, a mandatory CCS could increase the welfare of rights holders and users in the Netherlands by over €600 million per year (over €35 per capita). This far exceeds current rights holder revenues from the market of recorded music of ca. €144 million per year. A monthly CCS fee of ca. €1.74 as a surcharge on Dutch Internet subscriptions would raise the same amount of revenues to rights holders as the current market for recorded music. With a voluntary CCS, the estimated welfare gains to users and rights holders are even greater for CCS fees below €20 on the user side. A voluntary CCS would also perform better in the long run, as it could retain a greater extent of market coordination. The results of our choice experiment indicate that a well-designed CCS for recorded music would simultaneously make users and rights holders better off. This result holds even if we correct for frequently observed rates of overestimation in contingent valuation studies.

The first part of this title paraphrases The Clash's "Should I stay or should I go" (Mellor and Jones 1982).

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7 Conclusions

The results of our choice experiment indicate that a well-designed CCS for recorded music would make users and rights holders better off. A monthly CCS fee of ca. €1.74 as a surcharge on Dutch Internet subscriptions would raise the same amount of revenues to rights holders as the entire revenues in the Dutch market for recorded music in 2012. A conservative estimate of mean WTP reported in our choice experiment is €9.25 for a mandatory CCS and higher for CCS options that are voluntary on the user side.

Previous reviews of applied contingent valuation methods report mean overestimations of WTP by a factor of up to 3.26. If overestimation in our case would be equal to that amount, our main conclusion regarding the desirability of a CCS holds comfortably. It holds up to an overestimation of ca. 5.3 for both the mandatory and voluntary CCS options. It is particularly noteworthy that a