

Revisiting Alternative Compensation Schemes – an interdisciplinary approach

Institute for Information Law (IViR)
Copyright in an Age of Access: Alternatives to Copyright Enforcement
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As the last decade shows, the internet and (local and international) copyright¹ rules are at odds with each other. (Bodó, 2011; Johns, 2010; Lessig, 2004; Patry, 2009) It is easy and straightforward for internet users to access copyrighted materials without payment, and this fact poses significant legal, economic and social challenges to policy makers, rights holders, authors, online/offline intermediaries as well as individual internet users (Bodó & Lakatos, 2012; V. R. Grassmuck, 2010; Huygen et al., 2009; Joseph Karaganis, 2011; Leung, 2009; Liebowitz, 2006; Page & Garland, 2008; Peitz & Waelbroeck, 2004; Siwek, 2006; Smith & Telang, 2009; Svensson & Larsson, 2012). There have been many different efforts by rights holders to reinforce copyright protection in the digital domain, so far with little success. The expansion of copyright protection in national legislations and through international agreements is being met with increasing public opposition. Technological protection measures, designed to prevent free access are easy to circumvent. The enforcement of copyrights is costly (both in terms of public and private resources), difficult, privacy invasive and mostly ineffective.

Amongst the many proposals to solve this impasse, Alternative Compensation Schemes (ACS) aim to legalize currently infringing social practices (such as downloading, sharing, modification of copyrighted works) in exchange for a small, recurring fee paid by internet users. In the last few years, many serious ACS proposals were put forward, outlining what the authors thought to be best among the legally feasible alternatives². Most of these proposals, however, suffer from the same limitations: (1) they have a strict legal focus; (2) they represent a top-down design approach, where experts try to find “the best” possible legal solution; (3) the possible economic impacts are hardly taken into consideration; (4) they lack any evidence on the public support of the proposals.

In 2012, the Information Law Institute of the University of Amsterdam received a TOP grant (no: 407-11-050) to revisit the topic of Alternative Compensation Schemes, and to try to correct the apparent deficiencies of the previous studies. The project is built upon the basic assumption, that the success of doctrinal legal research is severely limited in the context of Intellectual Property protection in times of rapid technological change. We think that though the breakdown of the copyright system appears to be a fundamentally legal problem, it cannot be addressed without taking into account the social and economic realities in the domain of cultural production and distribution. Even the most carefully planned legal solution could fail, if it disregards technology trends, the basic realities of the digital economy and the motivations and expectations of relevant stakeholders. Also, as the last decade also warns us, without the moral support of internet users, even the most carefully designed policies could spectacularly fail.

¹ The term copyright is mostly used in common law countries. In continental law the term authors’ rights and neighboring rights are being used. For the sake of simplicity we’ll use copyrights to denote all kinds of intellectual property rights in the cultural domain.

² See for example (Eckersley, 2004; Fisher III, 2004; Netanel, 2003; von Lohmann, 2004) and for a review (V. Grassmuck, 2009; Quintais, 2013).

Acknowledging this situation, the TOP project is made up of three intertwining, interdisciplinary research threads. In the *legal* thread we have (1) mapped and evaluated the ACS proposal from the last decade and (2) distilled the differences between the numerous proposals into a list of core ACS attributes (Handke, Quintais, & Bodó, 2013; Quintais, 2013). ACS proposals differ in terms of what subject matter they aim to cover (music, audiovisual content and/or books), what rights they provide to users (downloading, sharing and/or modification of content), they differ in the payment mechanisms, in the distribution of revenues and of course in the amount of remuneration, amongst others. Within each core attribute there are a number of alternatives, each alternative representing substantially different legal, economic and social potentials and possible consequences.

The main goal of the second, *sociological part* of the TOP project is to do a survey based on the alternative ACS configurations that can be constructed from these basic legal building blocks. The survey will answer some of the most basic questions in our research, such as: *How does the design of the ACS affect its acceptance? Which ACS design will be acceptable for those groups on the internet, which pose the greatest headache for uncompensated artists, rights holders? How the different components of an ACS are valued relative to each other? How much revenue would different ACS configurations provide to rights holders? How does the compulsory introduction of a certain ACS affect media consumption habits and thus already established revenue channels?*

There are plenty of consumer surveys focusing on the causes and effects of media piracy (Bounie, Bourreau, & Waelbroeck, 2006; Bounies, Bourreau, & Waelbroeck, 2012; British Music Rights, 2008; Hennig-Thurau, Henning, & Sattler, 2007; Huygen et al., 2009; Kantar Media, 2012; Joseph Karaganis, 2011; Liebowitz, 2011; Poort & Leenheer, 2012), ACS related survey work, however, is very scarce. The few existing studies (British Music Rights, 2008; Entertainment Media Research, 2011, 2012; Joe Karaganis & Renkema, 2012; Swedish Performing Rights Society, 2009) focus only on a general willingness to pay (or simply just support) for a broadly described compensation scheme, without providing any information on the details. We believe, however, that beyond significant sociocultural differences (which make it difficult to locally interpret the results of a survey done abroad), the attributes we have identified have a significant impact on the support of an ACS solution. Measuring the relative utility values of different ACS attributes would be a first of this kind of a survey in this field.

The survey, scheduled to be conducted during the Fall of 2013 has 3 distinct parts. Part 1 is a general survey of media consumption both through online and offline, legal and illegal channels. It focuses on music, audiovisual content and print consumption, and aims to establish the most relevant consumer groups in the case on an ACS: those who already use legal for-pay content services³, and those, in whose consumption illicit channels play a significant role.⁴

Part 2 of the survey uses Choice Based Conjoint Analysis method to establish the relative utility values for the different ACS attribute combinations. This choice of methodology represents a novel approach in legal research and an unusual choice in traditional survey work as well. CBC allows us

³ An ACS which is non-voluntary for the users, or it is voluntary but cheaper than existing legal offerings may affect the future of these services.

⁴ The LISS panel has some media consumption related data from the past, such as the Leisure time expenditure longitudinal study (Project Number 25), and the Social Integration and Leisure core longitudinal study (project Number 4, questions 124- 131, 203-206, 241-282, 389-90). Our study has a much stronger focus on media consumption, a rapidly changing phenomenon in itself, therefore previous LISS data will be helpful in situating our findings in the larger trends of media consumption changes.

to deal with a large number of different ACS alternatives. It also enables us to measure the utility values of the different attributes and their levels independently (ie: what is the value of including books in an ACS?; how respondents value higher privacy protection?) as well as in the context of other attribute levels (ie: how does the willingness to pay change if we include modification rights with audiovisual works?)

During the analysis we will examine the highest utility alternatives among the general population as well as among the key groups identified in the first part of the survey. This also allows us to test the relative public appeal of all of these alternatives, and thus we can avoid the pitfalls of previous studies, where the “legally straightforward” proposal was not met by public support, or there was no empirical evidence to support the need for substantial legal innovation.

The outcome of the survey will yield significant results in itself, but it also serves as the main input for the *third leg of the TOP project*, the economic, welfare analysis of different scenarios. The aim of the welfare analysis is to calculate the economic effects of different scenarios, such as a mandatory introduction of an ACS, the effect of a voluntary ACS on existing consumption patterns, changes in consumer and producer welfare as well as social welfare. The results will also add to the ongoing discussion on collective rights management, and the future of levies in the digital environment. (Handke et al., 2013; Handke & Towse, 2007; Helberger & Hugenholtz, 2007; Hugenholtz, Guibault, & van Geffen, 2003)

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