Intermediary Liability Blog

The Evidence Hub for Policymakers

Creative Works, Copyright and Innovation: What the Evidence Tells Us

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The Internet has given birth to an explosion of creativity – or is it more of an implosion, as some argue?

Creative-industry lobbyists are fond of talking up a "value gap," arguing that revenue generated online through advertising is not being shared out equitably by platforms with creators – or, to be more precise, with the publishing companies that own catalogues of material and represent artists. This, in their view, has a deleterious effect. It has led to a fall in funding of quality cultural content; it is inequitable to the artists whose material is attracting the audiences; and it has provided safe harbor to a tsunami of illegal content and dubious media where high-quality, well-curated cultural works once stood.

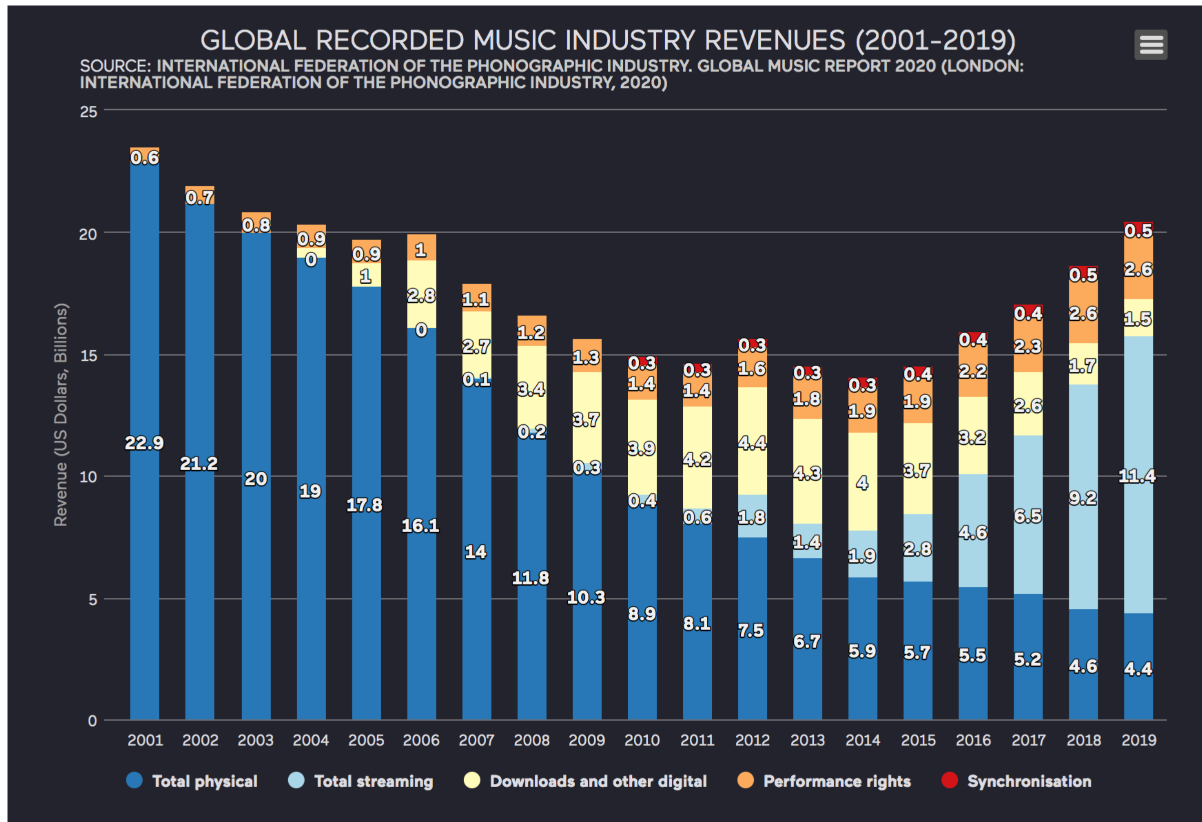
But do the facts support this case?

The evidence points to some interesting conclusions. At first, piracy did blow a hole in the creative arts – or at least in the models that existed for monetising cultural offerings up until the spread of digital technology and peer-to-peer file sharing. As recently as 2001, the music-recording industry saw $23.5 billion [€26.1 billion at the then existing exchange rate] in annual revenue – mostly from the sale of CDs. But Napster and peer-to-peer file sharing put an end to that gig. Consumers loved the ease, speed and breadth of choice of file sharing. And maybe even some artists liked it, too (many, like the artist formerly known as Prince, supported the early rise of direct downloading). But could the industry afford to give away work in which it had invested so heavily? And what about the artists themselves? How would they be paid?

For a while, regulators hacked away at the problem – looking to tighten laws here and there and setting up agencies, such as France's High Authority for the Dissemination of Works and the Protection of Rights on the Internet (HADOPI), to certify that sites were built around content for which the site owner had legally retained copyright. This had some effect, but in the end the heavy regulation approach proved to be a sideshow. Vastly more successful was the business model innovation that went on alongside it, in particular the effort to monetise content through new vehicles, such as subscription-service streaming and ad-revenue sharing. This brought a host of benefits – and a few disadvantages. On the positive side, it made consumers very happy. The catalogue available to them was enormous, and the targeting precise thanks to data analytics and purchasing

histories. The price was right, too: unlimited content for a month or so at the cost of roughly one CD or video.

But the economics of the business changed, too. After hitting a modern low of $14 billion [€10.5 billion] in 2014, music-industry earnings have increased year-on-year at a steady pace.



Revenues are still off their 2000 peak. But the trend is in the right direction. And the value of offerings to consumers has risen by 40%, representing a massive expansion of available content reaching historically unprecedented levels of consumer choice and value.

But have the new economics led to less quality content and poorer artists?

The streaming platforms, for one, have invested heavily in high-end content, and the shows they produce are more than making the quality cut. *Fleabag* is a case in point. This Phoebe Waller-Bridge-led vehicle went direct from Edinburgh fringe to Amazon Prime – and walked away with a staggering trove of accolades, including "most outstanding comedy series" from the Primetime Emmy, Golden Globe, Screen Actors' Guild (SAG), Critic's Choice awards and more. *Roma*, a brooding art-house film directed by Mexican director Alfonso Cuarón, was nominated Best Picture at the Academy Awards (the first streaming service-funded production to be received this way) – and went on to win the coveted Golden Lion at the Venice International Film Festival. Other high-end productions funded by platforms include Netflix's *The Irishman* (10 Academy Award nominations, including best picture); Amazon Prime Video's *The Marvelous Mrs Maisel* (Primetime Emmy, Screen Actors' Guild, Golden Globe awards for "best television series") and Apple TV's *The Morning Show*.

But what about the artists? The fact is, the revenue sharing that goes on in these industries often takes place under a cloud of secrecy and untransparency. This is not entirely the platforms' fault; they operate only with the good grace of publishing companies and major studios, all of which have granted rights to their catalogue but usually on the condition that the amount of money re-distributed is treated as a "commercial secret" subject to strict non-disclosure agreements. So we can't tell you much about the amounts platforms are paying to the studios – or what happens to that revenue after it goes to those studios (i.e., how much of that money reaches artists and which artists receive it). What we can tell you is, if you are a YouTube Partner Programme organisation (with 1000 subscribers who have watched 4000 hours of your videos in the last 12 months), Google will pay you around $18.00

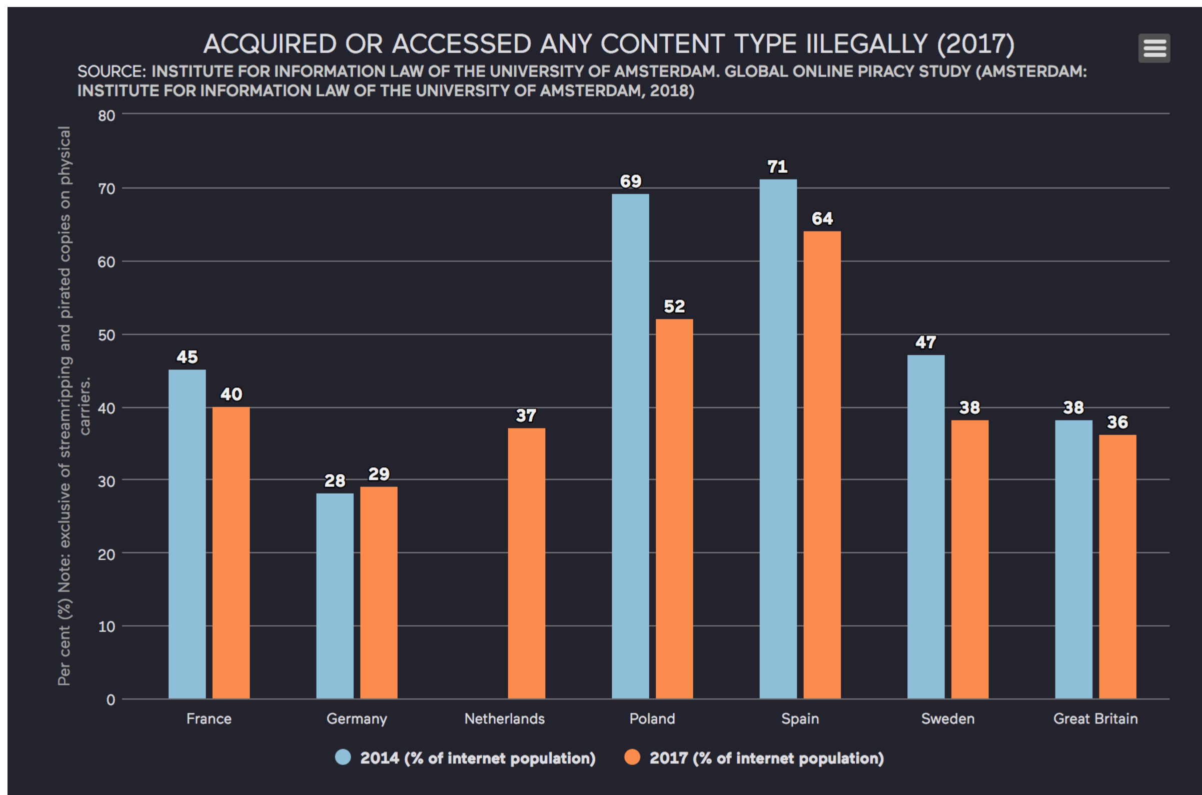
[€16.65 at the May 2020 exchange rate] per thousand "ad views," according to industry sources (the amount varies based on a complex formula). Globally, it calculates to roughly 68% of the AdSense revenue generated per ad, according to industry analysis.

The mechanics are similar at Spotify; industry sources report the company pays around 52% of the revenue it makes to record companies (two of which hold equity stakes in Spotify); the money is then handed out to artists, who receive "15% to 50%" of the record company's cut depending on a complex formula. On its website, Spotify adds: "In many cases, royalty payments happen once a month, but exactly when and how much artists get paid depends on their agreements with their record label or distributor. Once we pay rightsholders according to their streamshare, the labels and distributors (collection societies and publishers, in the case of songwriters) pay artists according to their individual agreements. Spotify has no knowledge of the agreements that artists sign with their labels, so we can't answer why a rightsholder's payment comes to a particular amount in a particular month."

Other business models raise different questions. TikTok, an app owned by China's ByteDance, enjoys 800 million users worldwide. Like other platforms, it makes money by placing ads against user-generated content, but that revenue isn't shared. Instead, TikTok expects "content creators" to be remunerated offline by agreeing to promote and/or wear products in their videos – through product placement, in other words. Most of what you see "influencers" doing on TikTok was paid for – you just don't know by whom. And the quality of the content – if I may say so – is often of limited cultural value.

So what's the bottom line? The Internet has opened up a vast platform for content distribution on a global scale – and a complex mechanism for monetising it. Contrary to the lines of attack spread liberally around some corridors of power, the Internet has been both useful and profitable for small artists – many of whom are able to find bigger global audiences for niche and native-language offerings that used to remain strictly local. Cultural productions have not suffered either; major productions – often thanks only to the support and vision of the platforms, which compete for audiences now, too – continue to be funded. The quality and range of content on offer has never been so great.

But the business model behind all of this creativity is rather different. The margins are lower – driven by new supply and aggressive competition. But there are margins. Piracy, which defined the early days of the Internet, is on the wane, with many, many consumers turning enthusiastically to relatively cheap, easy-to-access online distribution.



But there is less room for middle men. Less easy profit for old-school content distributers. And, when it comes to local journalism, the bedrock of democracy, the new terms of reference have been catastrophic. Big-brand journalism like *Le Monde* and *The Guardian* has adapted – for them the Internet is a place to reach a global audience and leverage a known brand. But local journalism – whose audience is by definition limited – has not fared so well and may require a public intervention if we are to save it.

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This blog post appeared on the Intermediary Liability Evidence Hub, an interactive website managed by The Lisbon Council, a Brussels-based think tank, to gather available evidence and data points on the issue of intermediary liability. Its website is https://evidencehub.net/.