

DIGITAL MUSIC IN TURBULENCE

Searching for EU-driven solutions for a
working copyright system in music

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Abstract		
<p>The music industry is experiencing very turbulent times. The modern technologies have brought new possibilities for independent users to access, modify and redistribute digital music in ways that were not even imagined just fifteen years ago. The rights holders have reacted to this by enforcing copyright laws to as large an extent as they can as the old business models, such as CD's, have shown substantial decline in sales income. Commercial users providing consumers with new services have had, at times, trouble in licensing these services on an international basis.</p> <p>The aim of this study was to identify the problematic issues in copyright law that do not suit the digital environment and that possibly stall the development of the digital music industry. The study also aimed at finding out how the EU is reacting to the situation, and how possible changes in copyright laws might affect the present situation. Three stakeholder groups were identified, namely consumers, commercial users and rights holders. The research employed a qualitative study with two semi-structured interviews. The first one was with a Finnish lawyer with experience in music industry and the second one with a team working within the European Commission on an EU-driven initiative "Creative Content Online".</p> <p>It was found that there were a few clear problems with the copyright law at the moment, which affect on the availability of content online, as well as on what is deemed illegal at this stage. The licensing structures were found to be a major issue along with royalty distribution. There seemed to be no direct actions that the EU could take at the moment, but the aim is to follow closely on the developments and initiatives of the member states and thus find the best practices.</p> <p>Finally, it is recommended that further research should be conducted on the effects of the current and future EU-initiatives, as well as that the opinions and expectations of all three stakeholders should be studied more closely. Further study is also recommended on how the major companies within the music industry could promote the development of future business models alongside with legislative developments.</p>		
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<p>Musiikkiteollisuus on tällä hetkellä epävakassa tilassa. Kuluttajien on mahdollista saada, muokata ja jakaa digitaalista musiikkia tavoilla, joita ei olisi jokin aika sitten voitu edes kuvitella. Oikeudenomistajat ovat joutuneet tukeutumaan tekijänoikeuslain rikkomiseen liittyviin pykäliin, kun samalla perinteiset musiikin tulomallit ovat osoittaneet ehtymisen merkkejä. Palveluntarjoajilla on vastassaan omat haasteensa lisensoidakseen sisältöä kansainvälisiksi haluamiin palveluihinsa.</p> <p>Tämän tutkimuksen tavoitteena oli selvittää tekijänoikeuslain nykyiset ongelmakohdat suhteessa digitaalisen musiikin käyttöympäristöön. Lisäksi tavoitteena oli tutkia sitä, miten EU-tasolla reagoidaan tilanteeseen ja miten mahdolliset muutokset tekijänoikeuslaissa vaikuttavat nykytilanteeseen. Näitä asioita tarkasteltiin kuluttajien, palveluntarjoajien ja oikeudenomistajien kannalta. Tutkimus oli tyypiltään laadullinen ja sisälsi kaksi puolistrukturoitua haastattelua. Ensimmäisessä haastateltiin suomalaista musiikki- ja viihdealan asianajajaa ja toisessa EU-komission alaisuudessa toimivaa työryhmää, jonka tehtävänä on edistää luovan sisällön mahdollisuuksia verkkoympäristössä.</p> <p>Tutkimuksessa ilmeni muutama selkeä ongelma tekijänoikeuslaissa, jotka vaikuttavat sekä sisällön olemassaoloon verkossa että siihen, mitä pidetään laittomana toimintana verkossa tällä hetkellä. Lisensointimallit ja -rakenteet sekä tekijänoikeuskorvausten kohdentaminen oikeudenomistajille olivat suurimpia ongelmia. Tutkimuksen perusteella EU:lta ei näyttäisi olevan tällä hetkellä suoraa mahdollisuutta muokata olemassaolevia tekijänoikeuslakeja, vaan tavoitteena on seurata jäsenmaissa tapahtuvia aloitteita ja poimia sieltä parhaiksi pidemmillä aikavälillä todetut toimintatavat.</p> <p>Tutkimuksen pohjalta suositellaan jatkotutkimusta nykyisten ja tulevien EU-aloitteiden vaikutuksista tekijänoikeuslakiin sekä syvempää tutkimusta kolmen tässä tutkimuksessa määritellyn sidosryhmän odotuksista ja mielipiteistä tekijänoikeuslain kehittymisen kannalta. Lisäksi suositellaan tutkimusta siitä, millä keinoilla suuret musiikkiyhtiöt voisivat edistää uusien musiikin tulomallien kehittymistä lainsäädännöllisten muutosten rinnalla.</p>		
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1 INTRODUCTION

The purpose of the copyright law, as described by Laddie, Prescott, Vitoria, Speck and Lane (2000) is to “encourage and reward authors, composers and artists who create original works as well as the entrepreneurs---who risk their capital in putting those works before the public” (p. 5). In addition, the copyright law is in place to grant a creator certain exclusive rights in order to prevent others from exploiting the work for a limited time (Ibid). These exclusive rights give the authors a possibility to exploit their works for that limited time (Norman, 2005, p. 1). Copyright belongs to the broader category of intellectual property rights, thus it is treated as property in terms of trading commodities. These economic rights can be bought, sold, assigned and licensed for a fixed period of time (Ibid).

Copyright law has not concerned the consumer up until the digital era but this has now changed (Oesch, Heiskanen and Hyyrynen; 2008, p. 18-19). Lessig (2008) explains how technology now enables the manipulation of digital products, such as music records, and that this enables consumers to easily do more than what copyright law allows. He points out that the same natural restrictions that applied to the analog products do not apply to digital technology. This is because before it was both impossible and illegal to copy music and other analog media, it is now just illegal (p. 38). Vivianne Reading, the former commissioner for DG Information Society and Media in European Commission, states that the current copyright laws are turning consumers into pirates. She argues that the growing internet piracy is a vote of censure to the existing business models and legal offerings (Digitoday, 2009).

Artists are also having problems in remunerations in the new digital platforms: “Lady Gaga was recently paid approximately \$167 in Spotify-generated royalties by the Swedish Performing Rights Society. This despite the fact that the hit song "Poker Face" was played more than one million times on the music service over a five month period” (Robles, 2009). How well the business models are developed in the future will be partly decided by the efficiency of the new players in the digital content platforms to be able to license the content they are providing and selling. According to the European Commission (2009b), certain changes in the licensing structure need to be made in order to enable better circulation of content. This study aims to identify the problematics of copyright law in music on the EU level as well as to find out what have been and will be the solutions in the EU to provide balance to the current copyright debate.

2 LITERATURE REVIEW

2.1 History of copyright law

Originally having emerged from the needs of book publishers, copyright law, as well as copyright as a concept, is generally considered to have started as the adoption of the Statute of Anne by the British Parliament in 1710. This act gave any published works a protection of 14 years, with an option to renew it once, considering the author was still alive. Any works published before the year 1710 would receive an extra period of 21 years. The Statute of Anne protected the works from being copied and sold onwards without permission (Gordon, 2008, p. 2). This act gave relatively narrow rights to the copyright owner. There was merely a restriction on how the book could or could not be printed or reprinted and then used commercially. Nothing restricted other uses of the work at the time (Lessig, 2004, p. 87).

Harmonization of copyright law in Europe started in 1886, when the Berne Convention for the Protection of Literary and Artistic Works was agreed upon by eight European signatory countries. It was based on three principles, namely mutual protection, automatic protection and independent protection. The Berne Convention set the term of copyright to as long as the author's life plus 50 years. It is considered to be the most important copyright convention, and the majority of national copyright laws are based on it (Norman, p. 138-139).

However, the Berne Convention was rather complex and, therefore, many countries had trouble in complying with all the provisions. At the time, the North and South

American countries had their own conventions that were harmonised in 1952 with the European countries in the Universal Copyright Convention. The minimum term of protection was set to life plus 25 years and the convention incorporated some of the Berne principles (Norman, 2004, p. 140).

2.2 Copyright law in music

For recorded music, the concept of copyright is considered to have started after the advent of the cylinder phonograph in the late nineteenth century. There was a new industry born in manufacturing and selling of phonographs, and this resulted in the need of adding these to the scope of copyright. In the UK, this was implemented in the 1911 Copyright Act. The act provided some amendments to the Berne Convention and it added “records, perforated rolls and other contrivances by means of which sounds may be mechanically reproduced” to the scope of copyright (Laddie et al, 2000, p. 349).

In the case of sound recordings, performing rights are an important part of copyright, since they provide protection for public performance of the recorded works. According to Laddie and co-workers (2000), the author of sound recordings is the producer, who makes the necessary arrangements for the making of the recording (p. 355). Performing rights allow producers and performing artists to control the use of a sound recording. They also have the right to obtain remunerations for these uses. The uses include making physical and intangible copies, broadcasting as well as on demand streaming and downloading (European Commission, 2009b, p. 4-5). The latter two are

of significant importance in today's world, since these digital consumption methods have increased largely (IFPI, 2010, p. 8).

Although phonograph industry had started already in the early 20th century, it was not until 1961 that the production and performing rights related to sound recordings were harmonized internationally for the first time. This happened in the Rome Convention that provided performers the exclusive right to authorize fixations of their performances as well as broadcasters the exclusive right to authorize broadcasts. In addition, the convention gave the exclusive rights of reproduction to the performers, phonogram producers and broadcasting organizations (Norman, 2004, p. 140). Yet, even this harmonization has not been entirely successful as the convention has had trouble in attracting signatories. Many countries have not been able to comply with its terms or have decided that it is not in their interest to do so (Norman, 2004, p. 140).

The scope of copyright has gone through major changes since the Statute of Anne, when copyright covered only the printing of books for commercial use. In turn, it now covers all creative works reduced to a tangible form (Lessig, 2004, p. 136). In addition to the right to publish the work, it now gives the owner the exclusive right of control over any copies of that work or any derivative works (Ibid).

Lessig (2004) explains that in 1710 there was a right to use a particular machine to replicate a particular work, namely a book. This was what copyright was about at that time and it did not go beyond that narrow area or scope of usage. He goes on saying that the current copyright includes a large collection of restrictions on the freedom of

others, as it grants the author the exclusive right to copy, the exclusive right to distribute and the exclusive right to perform (p. 87-88).

There are certain uses that are not regulated by copyright law, for example those of public interest. It must be secured that property rights are not used oppressively or contrary to countervailing public interests (Laddie et al, 2000, p. 9). This is why there are limitations and exceptions to the protection of copyright that allow certain kind of use of the copyrighted material. These permitted uses include, for instance, fair dealing for purposes of criticism, incidental inclusion in another work and educational purposes (p. 364).

2.3 Licensing

Whenever someone other than the copyright owner wishes to use a copyrighted work, they need to obtain a license in order to use it. In music, the license has to be sought from several parties, namely from the authors, the performers and the record producer, in order to obtain the necessary rights (Lueder, 2006, p. 8). The author holds the rights to the song and has the right to reproduce the work and communicate it to the public (Lueder, 2006, p. 9). The reproduction right is also known as the mechanical right which gives the right to reproduce and distribute a copyrighted musical composition on phonographs to the public (AMRA, n.d.). The author also holds the making available right, which means that authors and phonograph producers can authorize or prohibit the dissemination of their works and other protected material through interactive networks such as the internet (IFPI, 2003, p. 1).

All of the aforementioned are usually administered by a collecting society on behalf of authors, composers and publishers. The form of exploitation also plays an important role in rights clearance, as a separate license has to be negotiated for each form of exploitation. Thus, there are a multitude of rights belonging to several different rights holders that need to be cleared in order to use a song, and this makes especially the online exploitation of musical works complicated. In addition, these rights are administered mostly on a territorial basis (Lueder, 2006, p. 9).

The related rights, also known as the rights of performers and record producers, remunerate these parties whenever a sound recording is used. This includes making physical and intangible copies, broadcasting as well as online streaming of the sound recording. These rights of record producers are administered by separate collecting societies (Lueder, 2006, p. 9-10). Therefore, the way in which copyright and related rights are commercially exploited across Europe remains very heterogeneous and licensing has mostly been undertaken on a territory-by-territory basis (Ibid).

The licensing structure described above is traditionally made easier by reciprocal agreements between the collecting societies. Whenever copyrighted works are used in another territory, the collecting society active in that territory will enter into a reciprocal agreement with the collecting society that manages the rights of those copyrighted works. This enables the exploitation of the works in territories other than the originating country (Lueder, 2006, p. 11).

Thus, the world music repertoire can be licensed globally as most collecting societies have developed networks of interlocking agreements by which rights are cross-

licensed between societies in different Member States and outside the EU. Collective societies have formed alliances such as CISAC (International Confederation of Societies of Authors and Composers, for author's rights in musical works) and BIEM (Bureau International des Sociétés Gérant les Droits d'Enregistrement et de Reproduction Mécanique, for mechanical rights) which has led to a creation of model agreements, covering cross-border licensing as well as the collecting and distributing of royalties (Lueder, 2006, p. 11).

2.4 The traditional way of consuming of music

If simplified, up until the 21st century, music was consumed in a traditional way that was very different from what is happening now. Lessig (2008) describes this traditional culture in the following manner: "There's a part of culture that we simply consume. We listen to music. We watch a movie. We read a book. With each, we're not expected to do much more than simply consume" (p. 36).

From the birth of the phonograph, the main form for consuming music has circled around the physical product, be it a wax cylinder, cassette or a vinyl. The so-called code embedded in those products ensured that they were merely played and listened to, usually at private premises. Any sharing (other than simple lending of the product to a friend) or copying did not really make sense due to the fact that the sound quality would not have been as good as in the original product. Lessig (2008) describes the copying of these Read-Only (RO) tokens difficult. First of all, any consumer-generated copy was inferior to the original, and second of all, the technologies to enable a consumer to copy an RO token were extremely rare (p. 37). In addition, al-

though analog musical products could have been legally shared, every lending meant at least a temporary loss for the lender. Lessig (2008) goes on saying that these features in analog products affected consumers' ability to be anything apart from mere consumers (p.38).

2.5 The new way of consuming music

Inarguably, the way music is consumed today is very different from what it used to be. The digitalization of music and the modern tools currently at the market have provided everyday consumer methods to make one-to-one copies of recordings from CD's, MP3 files and even from earlier formats, such as cassettes and vinyls. This, along with the development of the internet, has led to a myriad of new ways to distribute and consume music. As European Commission (2009b) paints the picture in their recent report on the future of a digital single market, digital technologies bring a number of changes to the way creative content is created, exploited and distributed. Traditional players such as authors, producers, publishers are creating new content, but also user-generated content is emerging and having a new and important role alongside professionally produced content (p. 3). Consumers also wish to access creative content on any media platform and wish to choose the time when they view, read or listen to that content (European Commission, 2009b, p. 10).

The shift in consumption can be seen in the recent report by IFPI (International Federation of the Phonographic Industry), the representing organisation for the recording industry worldwide, which states that the digital sales in 2009 accounted for 27 percent of the music sales worldwide, compared to 21 percent in 2008 (IFPI, 2010, p.

10). Reportedly, the CD sales have continued to decline, as the global music sales during the first half of 2009 were down 12 percent despite the increased digital consumption (IFPI, 2010, p. 10).

The ubiquity of the internet has had an impact on consumers' access on content, including music. This has led to a situation where national borders no longer pose a practical hurdle in terms of accessing content. Anything uploaded to the internet is, by default, accessible anywhere around the globe. This has created a growing need in viewing content online. Consumers have begun to attempt to circumvent territorial restrictions of transmission rights, and there is also a growing grey market for devices used for that purpose. This suggests that there is a demand for multi-territory distribution of audiovisual media services (European Commission, 2009b, p. 9). "In the digital age, citizens want to access the same content on different platforms or across borders and should expect to be able to do so without impediment" (European Commission, 2009b, p. 10). In addition to accessing content, people seem to have an emerging need to also share and modify the content they are accessing. According to European Commission (2009b), user-created content and interactive services are having an increasing social, cultural and economic impact on content industries, as consumers expect more freedom and flexibility to express themselves on these platforms (p. 10).

As Lessig (2008) describes the products consumed in a traditional way as Read-Only tokens (p. 37), the new way of consuming music is not so much consuming music as it is interacting with music. According to him, consumers of today add to the culture they read by creating and re-creating the culture around them (p.28). Lessig calls this form of culture as RW culture, or Read/Write culture (Ibid). He goes on saying that

this RW culture is growing quickly and there are already successful artists emerging. He mentions Girl Talk, a 25-year-old engineer from Pittsburgh who makes so-called “mash-ups” by mixing samples taken from other songs. Girl Talk has been successful, as his song Night Ripper was named one of the year’s best by Rolling Stone and Pitchfork. Night Ripper consists of 200 to 250 samples from 167 artists. These samples are remixed together in order to create a new piece of art (Lessig, 2008, p. 11). This new artform was, however, in contradiction with the current copyright laws because no permission was asked from the authors of the samples he used. Therefore Apple pulled Night Ripper from the iTunes Music Store and eMusic did the same a few weeks before. One CD factory refused to press the CD (Lessig, 2008, p. 12).

2.6 Stakeholders and their positions

As the business environment is changing and the consumption of digital music is increasing, there are several stakeholders who have varying needs in terms of accessing content, creating new business opportunities and protecting intellectual property rights. According to the European Commission (2009b), new online services require a more dynamic and flexible framework in which they can legally offer diverse, attractive and affordable content to consumers, and this is in many instances an important part of the response to widespread illegal downloads. Therefore a careful analysis is required on the challenges faced by the three main groups in the value chain: consumers, commercial users and rightholders (European Commission, 2009b, p. 9).

Although the emergence of modern consumption methods makes this distinction a somewhat more vague, as pointed out by Oesch and co-workers (2008, p. 5), a three-

fold stakeholder field can be defined for the purposes of this study where consumers stand for the audience, commercial users stand for the parties who have a business in disseminating the content to the public, and rights holders represent the authors, artists as well as the record companies and the publishers who hold rights for musical works. Along with the growth of the internet and the business opportunities emerging in that environment, there are now more stakeholders compared to the previous. Positioning these stakeholders into different subcategories of users and rights holders is increasingly difficult. According to Sorvari (2005) stakeholders can be divided into content producers (the rights holders), disseminators (the commercial users) and receivers (the consumers). These roles, however, can overlap. For instance, a media house can simultaneously be a consumer and a rights holder (Oesch et al, 2008, p. 5-7).

2.6.1 Rights holders

Rights holders can be regarded as the most important group of stakeholders since works that express creation would not be existent in the first place were it not for the individual effort of these parties (Oesch et al, 2008, p. 4). Rights holders in creative content, such as authors, performers, producers of audiovisual works, phonogram producers and publishers wish to maintain a control over the negotiations by which they run their businesses. These parties are still trying to find the best ways to benefit from the digital environment, and because of this they are currently operating with caution (European Commission, 2009b, p. 13). What seems to be the major issue for these parties is the lost control over the distribution of musical works. Lohmann (2008) points out that the music industry has never been enthusiastic about a system that entails losing control over the distribution of music (p. 4) and that, for example, file sharing, despite all the lawsuits, is more popular than ever (p. 1). He continues by say-

ing that new digital technologies are going to make copying digital music easier and cheaper every year (Ibid).

The chairman and chief executive of IFPI, John Kennedy notices a change, a transformation in the music business that has been due to the changes in technology. In the latest yearly report by IFPI he writes that the music industry has now listened to the consumer and licensed music in new formats for new channels. He mentions the latest figures which state that, for the first time, over a quarter of record companies' revenue came from digital channels. In addition to embracing the possibilities given by the new technology, he also points out that piracy is stalling the further development of these innovations and is affecting market growth (IFPI, 2010, p. 3). The general intention of the rights holders to try to keep controlling the distribution of digital media is well mirrored in Kennedy's closing comment: "To unlock the enormous potential of digital music, we have to address piracy both on P2P networks and in other forms. That is where, today, we look to governments for action" (Ibid).

2.6.2 Commercial users

Commercial users can be defined as the intermediaries who distribute the content from the rights holders to the end consumer as stated above. The problems with the current copyright law for these stakeholders lie in the territorialization of the licensing of music, as pointed out by European Commission (2009b). They point out that even though there are no technical barriers to the circulation of content online, performance rights in music continue to be licensed on a territorial basis in Europe. The multitude of rights and rightholders to be administered causes complexity in the licensing of digital content, blocking commercial users' access to a wider choice of content (Euro-

pean Commission, 2009b, p. 10). This is why, according to the European Commission (2009b), commercial users need easier and quicker rights clearance structures so that they can obtain rights for diverse creative content from all around the world and offer it throughout Europe on digital networks. (p. 9) However, this does not seem to be self-evident since the territorial restrictions for the use of creative content are often the result of commercial decisions by rightholders and providers of audiovisual media services. This has happened even though creators often grant worldwide rights to their publishers, collecting societies or producers (European Commission, 2009b, p. 10).

2.6.3 Consumers

According to Oesch and co-workers (2008, p. 6), the consumers or “the audience” have had to be taken into consideration when formulating the copyright law, since they are the end users of artistic works. The importance of this has increased: before the digital era, the consumers did not have to know anything about copyright and they could merely base their actions on private copying and private use (Oesch et al, 2008, p. 18-19). The needs of consumers have increased along with the development of the internet and they want access to a wide choice of content any time and at any place within the EU (European Commission, 2009b, p. 9).

Consumers seem to be in a lack of knowledge of what is permitted use in the online environment and what is not. This is demonstrated by the amount of information requests and complaints that the European Commission receives from European citizens asking how they can comply with copyright rules in uploading user-generated content online. The answer, more often than not, seems to be anything but simple (European Commission, 2009b, p. 10).

2.7 Contradictions in the current copyright law

There are a few important changes that the internet has brought to the copyright scene. Kemppinen (2006) writes that the digital environment may have taken away the tools for regulation as well as the basis for certain copyright terms. He mentions three aspects, namely publishing, copying and distribution that are all happening at once in the digital environment (p. 367). Publishing, as understood in its traditional terms, is no longer solely controlled by the rights holders. The internet makes it possible for anyone to disseminate content to other consumers. “The challenging but nevertheless indisputable reality is that the very idea of reliably and consistently controlling the distribution of music files on the Internet is basically a technical impossibility as well as a social, political and cultural minefield” (Leonhard, 2009, p. 2).

In addition to the fact that it is more difficult to control the distribution of digital artistic works, the copyright field poses special challenges in terms of licensing music and sound recordings. According to the European Commission (2009b), the online dissemination of music with its multiple layers of ownership causes the biggest challenges with respect to online licensing. (p. 4) This is because the rights of authors (the rights to the song as a composition) are managed internationally, whereas the public performances of musical works are licensed on a strictly national basis (p. 6). This is complicated by the fact that most online forms of dissemination require the simultaneous clearance of the digital reproduction right and the "making available" right, and even though the Internet has brought new channels of digital distribution, the contractual divide remains (European Commission, 2009b, p. 5).

Improving the situation does not seem to be easy, as the situation appears to be confused in the matter of a cross-border rights clearance. In the music sector, legal incentives, such as the 2005 Online Music Recommendation adopted by the European Commission, have not met with approval from all stakeholders (European Commission, 2009a, p. 3). Leonhard (2009) confirms the same story, identifying inadequate licensing as the main problem with the internet, saying that the biggest obstacle for the monetization of music on the Internet during the past fifteen years has been the absence of new licensing schemes that would fit the so-called “digital natives’ ” ways of consumption (p. 2).

Even if licenses are sought, they do not always seem to remunerate all rights holders appropriately, as exemplified by the music streaming service Spotify: “On Spotify, it seems, artists are not equal. There are indie labels that, as opposed to the majors and Merlin members, receive no advance, receive no minimum per stream and only get a 50% share of ad revenue on a pro-rata basis (which so far has amounted to next to nothing)” (Lindvall, 2009).

2.8 EU actions and initiatives to date

There have been several EU-driven developments concerning copyright law during the last 15 years. “Directive on the harmonisation of certain aspects of copyright and related rights in the information society”, or Directive 2001/29/EC adopted in 2001, was set to harmonize the basic economic rights, namely the right of reproduction, communication to the public and distribution between member countries. In addition to this, it introduced special protection for digital rights-management systems and

dealt with the exceptions to copyright quite extensively (van Eechoud et al, 2009, p. 9).

In 2008, the Commission released the 2008 Communication on Creative Content Online in the Single Market, which created a stakeholders' discussion and cooperation platform. These stakeholders included creators, rights holders, content providers, consumer associations, internet service providers, broadcasters and the telecommunication industry. New business models, legal offerings and piracy were discussed among other issues within the platform (European Commission, 2009b, p. 8). In July 2008, the Commission released its CISAC decision, where it prompted the collecting societies and other music licensors to rearrange their licensing practices. The decision aimed to promote competition and pan-European licensing, by ending the practice whereby each national collecting society has the exclusive right to license the world repertoire to commercial users located in their territory (Ibid).

Territorial restrictions currently pose problems in licensing of musical works, and European Commission has launched efforts to overcome these issues. According to van Eechoud (2009) the European Commission is in a better position to successfully remove these than individual Member States are (p. 20). Solutions have been discussed in the Online Commerce Roundtable, with participants in digital music distribution. In addition to this, the Commission has also commissioned a study to assess options relating to the licensing of audiovisual works. This includes the option of creating an EU-wide or multi-territory licence, in addition to the territorial license (European Commission, 2009b, p. 9).

In October 2009, the European Commission published a reflection paper (European Commission, 2009b) addressing specific legislative needs for creative content online. A wide range of submissions with comments and feedback from governmental bodies, companies, associations as well as independent citizens was received by January 2010 (European Commission, 2010).

3 RESEARCH PROBLEM

The development of the internet has shifted the balance of control over distribution in digital music products. This has had a negative influence on the sales of sound recordings, because on the one hand, there are digital alternatives to physical audio products, and on the other hand, the music industry has yet to succeed in monetizing these digital alternatives well enough. The enforcement of the current copyright law has resulted in massive fines and even jail sentences of regular users, some knowingly and others unknowingly having broken the current copyright law by downloading music or other content or making it available online. On the other hand, consumers want to explore and have access to a wider range of material than what is currently legally available online. Commercial users are developing new business models and ways of delivering music to the audience, but there are issues in how well artists are remunerated on these new platforms. This is not the first time a new innovation has collided with the current predominant views on copyright law. Thus, as in the past, there might well be a way of balancing the situation in a way in which all three stakeholders, namely the rights holders, the commercial users and the consumers would be satisfied.

According to evidence, there are currently a few clear problems with the copyright law in relation to the online consumption of music. The aim of this study is to identify the problematics in copyright law that do not suit the digital environment and that possibly stall the development of the digital music industry. It will also be studied what kinds of changes in copyright law in the European Union are seen as important and in what kind of a timeframe those changes are likely to take place. The aim is also

to learn how previous and ongoing changes and initiatives have influenced the issues raised above.

4 METHOD

The study was conducted by using a qualitative research method following the qualitative research methodology. Since the goal was to find out about what is currently happening within the EU on the topic at hand, a certain level of “insider” perspective was needed. The following description by Creswell (1998) for when a qualitative method should be applied confirms this: “The investigator spends many hours in the field, collects extensive data, and labors over field issues of trying to gain access, rapport, and an “insider” perspective” (p. 16-17). Although the researcher spent only a few hours in the field conducting the interviews, a good comprehension on the topic was achieved by using the methodology described below.

Creswell (1998) also encourages to apply a qualitative approach to emphasize the researcher’s role as an active learner who can tell the story from the participants’ view rather than as an “expert” who passes judgment on participants (Ibid). The latter applies especially well to this study, since it has to reflect the several stakeholders and their multifaceted expectations and needs. The topic is somewhat delicate at the moment with passionate, and opposing, opinions from different stakeholders. Thus it was found valuable for the researcher to retain an open mind and an attitude for active learning.

The research consisted of two interviews, where the first one was with a Finnish lawyer, Mikael Kolehmainen who has an extensive experience in the music industry legislation. The aim of the interview was to form an idea of the general issues at hand in the copyright law related to modern methods of consuming music. According to Cre-

swell (1998) a qualitative study is useful if the topic needs to be explored and theories might not be available (p. 17-18). This is largely how the situation is currently in copyright law, since the balance between easy access through technology and protecting creators' rights is yet to be found. This means there are no existing and functioning practices, let alone theories, for the topic at hand. The interview was conducted as a semi-structured interview that was also recorded on audio. Cohen and Crabtree (2006) describe the semi-structured interview as a formal interview where the researcher uses an interview guide, namely a list of questions and topics that need to be covered during the interview. The interviewer may also stray from this guide when found appropriate (Ibid). One of the advantages of this method is that questions can be prepared ahead of time (Ibid).

The interview consisted of the following themes that directed the conversation:

- problematic areas in copyright law in relation to digital music
- handling of copying digital items in copyright terms
- artists' satisfaction with royalties from digital music
- harmonization of copyright law on the EU level

The second interview focused on the EU and on what initiatives in this matter were coming from this side. For this, a team of six people was interviewed. They are focusing on an initiative called "Creative Content Online" within the European Commission's DG Information Society and Media. The interview was conducted as a semi-structured focus group interview setting up the possibilities for discussion and debate on the topic as well. Gubrium and Holstein (2001) define the focus group interview as

a research technique that collects data through group interaction on a topic determined by the researcher (p. 141).

The interview consisted of the following themes that directed the conversation:

- changes in the consumption of music
- positions of the three stakeholders in the changing environment
- contradictions between copyright law and changes in consumption
- changes in the EU policy
- harmonization of copyright law on the EU level

A team focusing on the creative content was a logical choice, since their main area of interest was the narrow field of music and entertainment industry and its development. The acquiring of up-to-date information and knowledge on these issues was thus ensured.

5 RESULTS

5.1 Interview with Mikael Kolehmainen

Mikael Kolehmainen is a lawyer working for a Finnish intellectual property law boutique Benjon Ltd. He currently works mostly on tasks relating to entertainment law, especially music law, giving counselling for artists, record companies and publishers on contractual and strategic issues. He is also taking part in the Development Strategy for the Creative Economy project by the Ministry of Employment and Economy. The purpose of the project is to develop the operating environment of the creative enterprises, evolve new product development and financing models, and to improve the effective use of creative work and expertise in the labour market. (Ministry of Employment and Economy, 2010).

5.1.1 Licensing practices

Kolehmainen sees the main problems in the current copyright scheme relating to the licensing of rights. He points out that this is especially relevant in music industry since the ownership field of copyright is more complex than on many other entertainment fields. He reminds that there are several people that hold different rights to a single music piece or product, thus the licensing and the distribution of income are challenging. According to him, the licensing practices have become outdated really quickly along with the recent developments in technology. He says that it is difficult to even apply the current contract models to the changed environment. Kolehmainen finds that an important part of making the current licensing scheme clearer and ensuring that all parties receive their share is unifying these licensing practices. They should be clear to

everyone with a possibility to follow real time databases where the royalties for all EU-based content, for instance, are available.

5.1.2 Mechanization and performing rights

The dichotomy of mechanization and performing rights is an issue in itself according to Kolehmainen, as he thinks they are more difficult to detach from one another and currently can occur in the same event at the same time in the digital environment. The current application of a mechanization fee runs into problems with the digital environment. Every copy triggers the copyright law's mechanization part, and how this works out in practice on the internet was not pre-seen when the copyright law was invented. Kolehmainen points out that the law has been artificially applied to function in the new digital environment. He brings out a possibility that it might not make sense to charge of every click of a mouse because this is hard to monitor and it would also be prohibitively expensive. Kolehmainen suggests a reflection on whether or not mechanization is at all a relevant aspect of copyright law in the digital environment.

5.1.3 Distribution of royalties

Kolehmainen was asked about Spotify and their current issues with royalty distribution to the artists. He finds the problematics in the current licensing practices which are based on the relative portion of an artist's catalogue to the whole catalogue of Spotify. Kolehmainen points out that the maintenance of the rights owners' database and the current royalty model should be developed, since the current way it is done will start to lessen artists' creativity sooner or later. Regarding data protection, Kolehmainen mentions that there are so-called fingerprinting solutions to have the infringing material deleted if necessary. However, he feels that using these methods to follow

what is being consumed, listened to and watched in order to distribute the royalties respectively, is more challenging.

5.1.4 Harmonisation

According to Kolehmainen some harmonisation exists within computer programs, for instance, on an EU directive level. This means that they are not laws, but more of a guideline to which direction the national laws should be moving. The copyright laws are mostly national at the moment, which adds up to the currently 27 individual copyright laws within the EU. Kolehmainen brings up an EU-wide copyright law as a possibility and points out an option of preserving the national copyright laws parallel to this EU copyright law. However, he does not take sides in whether or not this could be a viable option. He mentions trademark law as an example where a combination of national and international practices is applied.

On a large scale, Kolehmainen thinks that whatever is decided within the EU does not change the fact that the copyright issue is a worldwide issue due to the ubiquity of the internet. A certain amount of protectiveness could also be witnessed from the EU's part towards countries outside the EU as the copyright discussion evolves. Here he refers to the changes in the exhaustion principle, which now states that whenever a product is sold or published for the first time within the EU, the copyright owner loses their right to control any further distribution in the EU countries. The exhaustion principle used to apply worldwide before the EU was founded. This "world embracing" policy, according to him, has thus changed. When it comes to worldwide collaboration, he states that the field would have to change a great deal, since it now seems that everyone is covering their own back. However, he still sees that the general attitude

has shifted: while it used to be about counterfeiting piracy with legal actions and aggressive and restrictive DRM (digital rights management) methods, the industry seems to be coming to an acceptance of the situation.

He reminds that when it comes to developing copyright law, the focuses on different stakeholder groups in national and international projects might differ from each other, as European projects have a strong emphasis on consumers, whereas, for instance, Finnish projects focus more on enabling the operations of the rights holders. The responses to the challenges posed by the internet differ from country to country, ranging from “three strikes” law initiatives, where the internet user’s connection is shut down after three incidences of illegal downloads or uploads, to “free internet” views, where the internet is regarded as a fundamental right of an individual.

5.1.5 Where to go from here

Kolehmainen points out examples of how copyright law has been more or less successfully implemented in other fields of entertainment. He brings up computer programs as an example of having a differentiating copyright law and certain norms that are designed for that environment, and suggests that something similar could be done to digital music content as well. This could include bundling certain rights into what he describes as “digital music rights”. Those, he assesses, could then be easier to clear for internet usage. Another example is the gaming industry, which, according to him, has been able to operate in the digital world since the rights related to it were born digital and the field has been digital from the beginning. Similarly, Kolehmainen thinks music should now be considered as if it had always been only in digital form in order to form an idea of how the copyright law could be reconstructed.

Kolehmainen mirrors the situation in copyright to a textbook conflict situation from a psychological viewpoint by saying that the industry is coming to a negotiation phase. He thinks the economic depression might have been a sound element and a facilitator for a cultural industry's uprising, since there seems to be more emphasis on culture and its development as an industry as well. He feels optimistic about the future development of copyright laws as well.

5.2 Interview with Creative Content Online team

The Creative Content Online team is a group of people working within the European Commission's DG Information Society and Media (DG INFSO) in the Audiovisual and Media Policies unit. The team is currently working on an initiative called "Creative Content Online", which addresses four main areas requiring EU action, namely the availability of creative content, multi-territory licensing of creative content, digital rights management systems as well as piracy and unauthorized file-sharing (European Commission, 2010). The team is led by Marcel Boulogne, in addition to whom four other members took part in the interview in the European Commission in Brussels on December 9th 2009. These members were Burak Ozgen, Holger Albrich, Alberto Lopez and Emmanuel Joly.

5.2.1 Licensing practices

Ozgen explains that in music the performing rights are managed nationally. This means that there is usually one collecting society representing all world repertoire in that country. For a commercial user this means having to license the performing rights in each country of operation. This, according to Ozgen, is slightly more flexible with the mechanical rights which can be subject to pan-European licensing if the licensed material is UK, US and other Anglo-American repertoire. However, for all European repertoire the commercial user has to apply rights from the national collecting societies. This makes the licensing field fragmented for commercial users.

There have been efforts to make multi-territorial licensing easier. Currently, GEMA (a German collecting society for authors and composers) and SABAM (a Belgian col-

lecting society for authors and composers) are licensing both the performing right and mechanical right. Major record labels use pan-European licensing agencies to license their repertoire more flexibly. However, Ozgen sees this as making the system even more fragmented, since not all world repertoire is anymore available for licensing in the operating country, but some of the repertoire might have to be licensed from another country. Albrich points out reciprocal agreements as an option to resolve this issue. However, Ozgen goes on saying that the major companies do not wish to be part of reciprocal agreements anymore since this hinders their control over licensing of their content as well as their control over the licensing prices. He also points out that the technical infrastructures of the collecting societies in each country differ from one another and that this may also play a role in the preferences of the major companies. According to Boulogne, the Online Music Recommendation, a Commission initiative from 2005, might have functioned as a catalyst for these parties to withdraw their rights from the collecting societies and start using the above-mentioned pan-European licensing agencies.

Ozgen goes on saying that piracy continues to burden this structure of licensing legitimate music, since it is easy to access unlicensed content. He mentions the reflection paper (European Commission, 2009b) as a Commission-driven method for devising new structures to overcome these problems. He thinks, for instance, that a change should be made to the law between a company selling pirated music to people and, on the other hand, people sharing the music with each other. Currently, these are subject to the same making available right, which, he argues, is not how it should be. He sees the situation could be improved by licensing the facilitators that are setting up the possibilities to share the files. However, according to Ozgen, the technology providers do

not currently have the making available rights and are not liable in terms of copyright. Furthermore, there are now initiatives to make internet service providers liable in terms of copyright, not in order to license content but in order to enforce consumers who access infringing content online.

5.2.2 Mechanization and performing rights

When asked about mechanization, Ozgen refers to the copyright directive from 2001, which states that these rights are unified into a single “making available right”. This, according to him, is defined under performing rights. However, in an online service the content needs to be reproduced whether it is a streaming or a downloading service. This brings the two-fold licensing structure back to the table, where the performing rights and mechanical rights need to be cleared. He refers to the Reflection paper (European Commission, 2009b) suggesting that these rights could be tied into a single transaction.

Regarding the question of handling the copy in copyright terms, no clear solution is found as to what could be done to make it applicable in the digital environment. Boulogne mentions distribution right as something that should be focused more on in the future. He, however, sees that this is not easily accepted by the major companies, the rights holders, and this provides challenges to changing the copyright law. Then again, he feels that these major companies should ascertain they receive revenue from their products in the future as well and that these kinds of changes in copyright law are one important step.

5.2.3 Distribution of royalties

Ozgen comments on the Spotify's case that the tariffs and the royalty rates have been available for all parties, as they can be found, for instance, in the web pages of the collecting societies and are thus publicly available. However, negotiations play a major role in this, since a permission must be asked from the record labels as well. Ozgen continues that when one provides a service such as Spotify, licensing the music is different from licensing for a radio station. The income that the record labels receive might be related to the advertising revenue of the service and not simply to the number of plays. Boulogne goes on saying that it is too soon to tell how these tariffs could be harmonised by EU level initiatives.

5.2.4 Harmonisation

The Copyright Directive from 2001 has faced its challenges according to Boulogne. He says that the member states were quite low in transposing and implementing the directive, which would imply that it was introduced too soon. He continues that there are certain elements of copyright that have been harmonised but that there is a long way to go before reaching a single European copyright. In addition to having the member states onboard, there is the issue of being in line with the international conventions. Ozgen confirms this and says that in most cases there is no need for being in contradiction with them. However, he feels a change is needed on an international level. He analyses that the nature of the response of an EU-wide copyright would depend largely on how it would be introduced. If it was introduced in a way where Europe is one territory and the national copyright laws were replaced, it would be in line with the international conventions, but, on the other hand, it would doubtfully be compatible with the EU member states. Boulogne amends that copyright strongly re-

lates to culture, which is traditionally the responsibility of the member states. Thus, there are a number of issues to be solved before achieving full harmonisation.

5.2.5 Where to go from here

Boulogne says that copyright was never against consumers but against competitors, and the digital technology has just recently brought consumers into concerns with copyright issues. He points out that the changes that have happened in the last fifteen years are not over yet. In this light, it is difficult to come up with a new structure for something of which the future evolvement is unknown. Ozgen feels in the same way, stating that any regulatory change at this point seems quite difficult, although it also at the same time seems to be necessary. Anything that is done now, he feels, can easily be outdated soon. For example, the Copyright Directive from 2001, according to Boulogne, was a difficult compromise that resulted in a number of vague terms and many exceptions that were adopted from the legislation of the member states. To change these, he feels, will be extremely difficult. He does not see that the directive would be reviewed at any time soon. On a broader view, Boulogne points out that trying to regulate matters, now that the developments are still ongoing, is not the first option. He thinks many of the problems related to the topic are related to the implementation of the legal framework and not so much to the framework itself.

When it comes to piracy, Boulogne feels it is not possible to stop it, but it is possible to curb it. He says that EU is currently following closely where the initiatives of different countries lead to. According to him, EU is limited to observing the different approaches and finding the best practices out of those examples. He feels that there is a large gap between protecting the legitimate interests of the rights holders and, on the

other hand, protecting the rights and privacy of the consumers, and that having legitimate alternatives to piracy is already a big step towards decreasing it. Boulogne brings up an example of the English rock band Radiohead, who put their latest album online and people could choose how much they wanted to pay. At the same time it was downloaded on bit torrent sites. When the CD came out, people paid for that as well as for the deluxe edition. Ozgen adds that the album was leading the charts on every platform, free and paid.

6 CONCLUSION

The copyright scheme is in general in an unstable phase. This perhaps holds true the most in the music industry since music files, for example MP3's, are small enough to be transferred quickly on the internet, compromising most of the paradigms circling around the traditional music distribution models. The consumers have learned to distribute and redistribute music with the help of their home computers to others without going through the middlemen, the rights holders, who have been holding the exclusive rights in controlling the distribution of their works. Copyright, in its original form, was not against the consumers but against the competitors as Boulogne mentioned. However the new technologies have brought the consumer "into copyright", as he puts it. The consumers have now more choice and more freedom in exploiting music than what the rights holders would have wanted or expected. This has created the clash of interest that has even been, quite rightly, referred to as the "copyright wars" by Lessig (2008).

In the research it was found that certain elements of the copyright law do not fit the digital environment. One major issue is the separation of the mechanization right and the performing right. Both of those rights still need to be cleared separately in order to licence digital content online, even though they occur simultaneously in streaming music services, for instance. This makes the copyright field unnecessarily fragmented and complicated.

Music business is about making money with music and products circling around it. This is why commercial users are in an increasingly important position in terms of

how music is consumed, accessed and listened to. Both Kolehmainen and Ozgen emphasize the importance of new licensing structures for music in the online environment. Ozgen points out the problematics of the current licensing systems in order for the commercial users to easily get licences for EU-wide services. Even new initiatives from the European Commission, such as the Online Music Recommendation from 2005, seem to have made things more complicated than easier, as Ozgen explained. Whether or not this is true, the example demonstrates well how complicated the licensing structures are in their current state. The copyright law, and even the current licensing systems, were created at a time when there was no internet. This is why multi-territory licensing was not the first issue a commercial user had to take care of. Any kind of distribution of copyrighted works could be done on a territory-by-territory basis, which is quite complicated for an internet service, by default aiming to reach 27 countries and 27 different copyright laws in EU alone. Licensing is one of the main issues that needs to be reinvented in one way or another. There are suggestions that in order to generate revenue from “illegal” online activities, these activities need to be licensed, not prohibited. This would mean that anything downloaded or shared is registered in one way or another, so that the licence fees can be pooled and then distributed to the rights holders, very similarly to how the performing rights organisations are managing radio plays and restaurant performances. This is where the transparent databases on the usage of the copyrighted material come in as Kolehmainen mentioned. This could enable the distribution of online royalties in the future.

In addition to having a functioning licensing system, the royalties need to be distributed according to the usage of the protected works. This is the most important issue for most of the rights holders, since the contradictions between consumers and rights

holders have mostly to do with lost revenue. The recent discussion around music streaming service Spotify and its disappointingly low royalties for artists demonstrates how immature the royalty system is for the online services. Since Spotify runs on advertising money, it seems that there is just not enough of that to be divided among all artists. According to the interview with the team of Creative Content Online, there seems to be little that can be done at the moment on EU level to improve the situation. The legislative approach seems to be to observe and assess the various national initiatives from the EU member states.

This could be the realistic view, but more optimism might be needed at least in terms of bringing the three stakeholders closer to each other in their demands and expectations. This might even require financially risky actions from rights holders as well as commercial users, but on the contrary these parties are acting very cautiously at the moment. This has, from the author's viewpoint, led to the stagnant state where these parties are protecting their own interests in any way they can. The attitude and the shyness of large companies to go and bet on new innovations is clearly mirrored in the position EU is currently taking in this debate as well.

From a broader point of view, it would seem that all three stakeholders are waiting on each others to act on their behalf. The rights holders are expecting for more aggressive actions from legislators towards unlicensed downloading, the consumers are waiting for better content offerings and the commercial users want easier licensing options, which is at least partly dependent on how the issues of the first two are resolved. Time will tell how the balance will be struck, and especially, how long it will take.

7 LIMITATIONS

This study was limited to a single team working for the European Commission within the initiative “Creative Content Online”. The first interview served as a preparation for the second interview, and the conclusions were mostly based on the latter. This team represented none of the three stakeholders in this study, which enabled the author to study the copyright law’s problematics as clinically as possible. On the other hand, it is tenuous to state that the team members would have been totally unbiased, although their answers mostly implied facts discovered within their work. Retrospectively, the interview was substantially limited in time, on top of which some topics were left uncovered due to inadequate time management. A better preparation of fewer topics could have provided a more in-depth discussion than what was now achieved. The sample in the study can be regarded as quite limited in order to say with full confidence that the results acquired are the most accurate possible. On the other hand, the sample was fairly representative and of a high quality regarding the context of the study.

The study focused on certain aspects of copyright and was quite rigidly about the technical details in copyright law. The overall situation is far more complex, where the current and emerging business models and their development as well as the political rhetoric play an important role in resolving the ongoing copyright debate. This includes important questions on for example whether or not commerce should be driving the changes in the law or vice versa. However, for the purposes of a bachelor’s thesis, the topic also had to be narrowed down to a specific area.

When it comes to the objectiveness of the study, the personal opinions of the author could have affected the contents of the literature review as well as the questions posed in the interviews. Also, the interviews were recorded on audio and this, according to Gubrium and Holstein (2001), might alter the conversation and create a particular context for what is being said (p. 91). The effects of recording a conversation can also be different for different respondents (Ibid).

8 RECOMMENDATIONS

Further research should be done on the effects of the initiatives in the copyright law on the EU level. This should include broader questionnaires and possibly interviews including all three stakeholders involved in the process: the consumers, the rights holders and the commercial users. The reflection paper published by the European Commission (European Commission, 2009b) and the numerous inputs from different stakeholders will, according to the document, be taken into account in the preparation of the legislative programme for the next Commission. The actual effects of the paper and the contributions should be mirrored in the future to upcoming legislative initiatives. This would give a clearer picture on whether or not the now intended changes actually are taking place as well and on what the future direction of copyright law will be.

It would also be beneficial for the future to study also the sociological and political aspects of the copyright debate, since the development of these issues is largely dependent on the major companies through which most of the money in music industry circulates. From the author's viewpoint, fighting piracy or enabling adequate income for the rights holders should not only be about changing the law, but also about changing the business and creating new opportunities. Thus, it should also be studied what sort of risks these major companies, who can be both the rights holders and the commercial users, should be expected to take in order to change the general field of digital content. This could also prove to be vital in terms of finding out better solutions towards having all three stakeholder parties satisfied.

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APPENDICES

APPENDIX A: INTERVIEW WITH MIKAEL KOLEHMAINEN

MK = Mikael Kolehmainen

VVJ = Ville-Veikko Järvilehto

MK: Joo eli pakkolisensointi on yks malli mikä on mahdollinen. Eli sieltä jollain tällasella korvauksella sais aina käyttää sitä sisältöä. Missä vaiheessa se tulis päälle, niin on ehotettu että esim tietokonetta ostaessa siinä tulis tällanen ylimääräinen euromäärä joka siitä siirrettäisiin oikeudenhaltijoille. Tai ISP:t eli verkkoyhteyksien mahdollistajat, niin niiltä siirtyis jokaisesta internet-yhteydestä joku könttä oikeudenhaltijoille, mut sekään ei poista tietenkään kysymyksiä siitä et se on niin hankala lisensoitava se musiikki, et siinä on niin monta eri oikeudenhaltijaa siinä et miten se jaetaan sekin tulo, et se pysyy se ongelma siellä, eli lisenssien hankaluus on ydinongelma musiikkiin liittyen. Mut mikä, onko sulla musiikki lähinnä fokuksena siinä vai?

VVJ: No lähinnä mutta ongelmathan on aika lailla samat muissakin sisällössä.

MK: Musiikki on niinku ehkä siinä kaikista hankalimmassa tilanteessa. Muualla on luoto jo sellasia tai ei oo niin... ensinnäkään se oikeudenomistajuuskenttä ei oo niin hankala, et jos verrataan elokuvaan, ja tää käsitellään myös siinä EU-komission lokakuuisessa raportissa, et siinä verrattiin myös elokuva-lisensointiin tätä. Et siellähän on mahdollista että tuottajalle siirtyy neuvottelu-oikeus, kaikki oikeudet siirtyy sille tuottajalle, et on tällanen yks henkilö jonka kanssa voidaan neuvotella siitä lisenssistä, joka ei oo nyt sit taas mahdollista musiikin suhteen. Mitä ideoita sulla on, mihin suuntaan oot taipumassa, mitä haluaisit tutkia?

VVJ: Oon miettiny kolme asiaa jotka oli selkeitä mutta jotka netti on muuttanut. Julkaisu, kopiointi ja esittäminen, ei pysty hallitsemaan erillisinä asioina, vaan ne tapahtuu yhtä aikaa jos sisältöä laittaa nettiin.

MK: Kyllä, eli tossa on tavallaan yks tapahtuma, joka on käsiteltävissä vielä niinkuin tekijänoikeuskäsitteiden mukaan nykyäänkin, mut se on välillä vähän semmonen keinoiteltu tai semmonen ei niin istuva, et väkisin sovitetaan ne tekijänoikeustermit siihen eli mekanisointipuolella nähdään että olevinaan sitten johonkin mekanisoituu ja johonkin syntyy kopio ja sitten sitä kautta yritetään saada sitä mekanisointipuolta digitaaliseen maailmaan. Kun itse jossain striimauksessa niin eihän siinä nyt sit oo taas mitään mekanisointiosuutta jos ihan puhtaasti ajatellaan sitä, ja siks osa kommentoijista on sanonu ja menis niin pitkälle että poistais nää erityyppiset oikeudet välittää yleisölle ja niin pois päin ja tulis vaan yks tällanen digital music right, joka sitten katkais kaikki nää joka on aika pitkälle menevä ehdotus mut tällanenkin on heitetty ilmoille.

VVJ: Voitais käydä järjestyksessä läpi nää. Aattelin alkuun ottaa esittelyä. Mikä sun oma työnkuva on täällä ja miten liittyy musiikin tekijänoikeuksiin?

MK: Benjon Oy:ssä oon töissä. Ollaan niinsanottu putiikki-immateriaalioikeusfirma. Putiikki tarkoittaa sitä että keskitytään puhtaasti immateriaalioikeuksiin. Tietysti joihinkin sen mukana tuomiin oikeudenaloihin. Mutta pääpaino siellä. Teen työssäni paljon ns viihdejuridiikkaa ja siinäkin erityisesti musiikkijuridiikkaa, eli neuvon artisteja ja levy-yhtiöitä ja kustantajia ja kaikkia tällä alalla toimijoita lähinnä sopimusoikeudellisissa asioissa kun sitten myös taas jossain strategisessa puolessa ja oon tällä hetkellä myös tossa Työ- ja Elinkeinoministeriön Luova Talous -hankkeessa jossa sitten mietitään luovan talouden problematiikkaa ja ihan isolla kädellä tälleen kotimaisista lähtökohdista ja kotimaisia etuja ajaen niin oon siinä mukana, ja siltä pohjalta tässä pyrin vastailemaan.

VJ: Ja kiitoksia kun ehdit varata tän ajan. Mitkä on sellasia pääteemoja jotka musiikin tekijänoikeuskysymyksissä on pinnalla?

MK: Joo no toi digitaalisuus on numero yks, että sen tämä mullistajuus, että se on mullistanut koko teknologia-, tai kentän niin kovasti. Teknologian tulo muutenkin että siellä teknologia on mennä niin paljon eteenpäin että on ehkä hankala sovittaa niitä nykyisiä sopimusmallejakaan, et kaikki lisenssikäytännöt, tapa miten on toimittu koko kentällä on vanhanaikaistunut niinku todella nopeesti. Eli jos ennen nähtiin tärkeänä jotain radiokanavia artistien nousulle niin ne on täysin hyödyttömiä tällä hetkellä voidaan sanoa. Et siis ne on merkityksellään vajonnu hyvin alas. Kun sitten taas jotku muut toimintamallit on tullu tärkeeks. Ja teknologian myötä ja digitaalisen maailman myötä on tullut sitten myös tää piratismia, ja miten siihen vastataan on sitten taas toinen kysymys, että kaikki musiikki on yhtäkkiä tullu ilmaiseksi saatavaks, jossa on palattu jollain tavalla sinne radioaikaan, että musiikkia saa kuunneltua ilmaiseksi, et vielä enemmänkin et siellä sä voit kuunnella ihan mitä sä haluat että sulle ei pakoteta et sun pitää kuunnella jotakin, et voit kuunnella mitä haluat milloin haluat, ja se on ilmaista, niin tottakai tää on tullu hyvin hankalaks toimia vanhoilla malleilla et pitää keksiä uudet revenue-lähteet sitten, tulomallit.

VVJ: Miten tekijänoikeuslain puolelta jos mietitään termistöä, mikä siellä kokee kolauksia tällä hetkellä?

MK: Mekanisointikorvausten niinkun, koska ei oo enää fyysisiä tallenteita puhtaasti sanottuna, niin miten sitten nää mekanisointikorvaukset siinä maailmassa voi toimia et siitä on jouduttu nyt sit tekee, ehkä vähän väkisinkin sovittamaan siihen. Ne pystytään kyllä sovittamaan siihen mutta se ei oo ehkä kaikkein luonnollisin sovittaminen ja sit samoin että tää esittäminen tapahtuu nyt sitten juuri silloin ku kuluttaja haluaa sen tapahtuvan. Ja jostain tuolta sitten cloudista tulee se musiikki että striimattuna tai muuta et se on tullut. Mekanisointi ja esiintymiskorvausten dikotomia on niinku ongelmaks muodostunut koska niitä on vaikeampi enää irrottaa, irrottaa toisistaan näitä oikeuksia vaan monta oikeutta käsitellään yhdessä tapahtumassa.

VVJ: Sitten kysymys Spotifysta ja siitä että mistä se raha tulee. Lady Gaga oli saanut vain pari sataa euroa miljoonasta soitosta Spotifyssa. Saadaanko rojaltyjärjestelmää uusittua siten että rahaa tuloutuisi tuotakin kautta artisteille?

MK: Noissa on just se hankaluus että siihen ei oo kukaan antaa mitään ratkaisua että miten niitä rahoja aletaan jakamaan, koska ne lisenssit se nykyinen lisenssikäytäntö on sellanen että sinne on koko kustantajan katalogi lyöty sinne, ja sitten siitä saadaan niinkun suhteessa koko katalogiin tuloutuu ne rahat. Et suomalainen Mokoma on ilmeisesti saanut 40 senttiä ja sitä on suomalaiset kuunnellu spotifysta todella paljon just Lady Gaga joka on varmasti paljon soitettu niin on sitten saanut 140 euroa et kyllä siinä on selvä ongelma et pitäis jotain uusia lisenssimalleja keksiä se on, tai lähinnä niiden oikeuksien hallinta, et olis joku yksittäinen taho jossa olis mahdollista käydä nää ensinnäkin ettei tarvis monimutkasesti clearata näit juttuja eri tahoilta, että vois tehdä ne yhdestä paikkaa. ja se tuloutuminen olis selvää sieltä että ne saatais sitten jyvitettyä oikeille henkilöille, eli niinku oikeudenhaltijatietojen ylläpito ja ehkä sen koko royaltymallin muuttaminen ois ajankohtaisia. Mut en osaa sanoa mikä se ratkaisu on mutta jotain selvyyttä näihin asioihin tarvitaan niinku nyt, et se ei kyllä voi toimia et se alkaa jossain vaiheessa sitten rikkoa artistin luovuutta, jos sitä pidetään tekijänoikeuden yhtenä syynä että siitä saadaan korvaus luovuudesta niin ei varmaan näin voi toimia. Sitähän monesti yritetään et jos se raha ei tuu itse niistä soitoista tulee sitten muuta kautta. Esimerkiksi sitten tukis artistin keikkailua, tai sitten voitais mennä vielä pitemmälle et se tukis sitä levyjen myyntiä, jos ois muihin maihin soittoa, niin nehän nyt on argumentteja, mutta eihän nyt tietenkään jos se on korvaavaa levyille se ilmainen vaikka Spotifylla soitto niin ei sitä voi hyvällä omallatunnolla sanoa et se nyt tukis mitään levyjen myyntiä. Samoin jos keikkailua tukee, okei, mahdollisesti keikkoja saadaan enemmän. Mut jos kaikki artistit alkaa käyttää samaa mallia niin tää on aika nopeesti saturoitu tää markkina, etä Tavastialla jos olis joka päivä joku kova nimi niin eihän siellä kellään riittäis rahat käydä niillä kaikilla. et ei sekään tuu ole se malli, et mikä se sit tulee ole, niin hankala sanoa. Toimijoille on tullut 360-diili, koska nyt on tosi hankala tehdä vanhoilla malleilla niin otetaan varmuuden vuoksi sitten kaikki oikeudet siltä varalta että keksitään nyt se tapa millä näillä oikeuksista saadaan se raha. Eli tämmösiä hätäratkaisuja on kyllä keksitty mut ei vielä ihan varmasti sitä parasta ratkaisua.

VVJ: Miten näkisit säveltäjien kannalta, eikö siinä ole riittävästi syytä siihen että jostain on tehtävä korvauskäytäntöjen kanssa?

MK: Kyllä juuri näin, se on se kenttä on muuttunut niin paljon et koko lisenssimalli joudutaan heittää roskikseen, ja ehkä jopa koko oikeuskenttää joudutaan miettimään todella pitkälti uusiksi. Tekijänoikeudessa on muutenkin semmosia oikeuksia joita käsitellään aivan omanlaisenaan siellä on tietokoneohjelmia käsittelee aivan oman tyyppinen normistonsa. Samaa jotain voitais ehkä kuvitella että joudutaan nyt tekee sitten digitalisoidulle kontentille. Joku ihan oma normikenttänsä joka poikkeaa sitten joiltain osin muusta tekijänoikeuslaista, ja on omat poikkeutensa siellä minkälaisia käyttöä niille sallitaan ja minkälaisia oikeuksia voitais bundlata yhteen että siellä oiskin tämmösiä digital music rights -tyyppisiä yksiä oikeuksia jotka olis helpompi clearata ja mielenkiintoista katsoa miten se etenee.

VVJ: Mutta ongelmana edelleen tulojako oikeudenomistajien kesken?

MK: Kyllä, se on edelleen oma juttunsa.

VVJ: Voisiko miettiä sopimuskäytännön puolelta, artisti tekee kustannus-/levytyssopimusta että siellä tulee selkeäksi jaot, miten digitaalisesta soitosta jaot menevät?

MK: Näin varmaan tulee jossain vaiheessa olemaan tai se on pakko tulla. Ja se on ollut huolenaiheena just että miten tää muu kenttä saatais näitesti pakettiin mut se että miten voidaan just varmistaa miten kaikki saa sen oman osuutensa, niin se vaatii sen että lisenssikäytäntöjen pitää olla yhtenäisiä, selviä kaikille ja sitä pitää pystyä seuraamaan. Ja siitä pitää olla seurantastruktuuri, tietokannat jotka kaikkien nähtävissä ja ajantasalla ja kattais kaiken esimerkiksi kaiken eu-alueella olevan kontentin. Et se tulee sit olemaan, mut se ei sit niinkään tuu ole juridisesti haastavaa et se on enää vaan käytännön juttu et millä se nyt sit tehdään.

VVJ: On ollut paljon puhetta suoja-ajan pidentämisestä, on muuttunut se miten digitaalista sisältöä käytetään, muokataan ja jaetaan, Kuka hyötyy suoja-ajan pidentämisestä?

MK: Se on hyvin marginaalisen joukon hyötyalueita se. Jenkeissäkin kun pidennettiin suoja-aikaa, niin nimikin oli kuvaava, siitä tuli Bono Copyright act. Se on nää hyvin menestyvät kaverit joilla on todennäköisesti isoja taloudellisia intressejä, jää sitten jollekin rahaa siitä toiminnasta heidän elinaikanaan. Mut hyvin marginaalinen se on. Ja nykypäivänä kaikki on hyvin nopeata, tyylit muuttuu, musiikki muuttuu, sitä muutetaan koko ajan. En näe sitä minään ratkaisuna. Tekeekö se mitään konkreettista merkitystä muuten kuin niille muutamalle toimijalle. Sen relevanssi tälle koko musiikkikeskustelulle on hyvin marginaalinen eikä musta ratkaise mitään tämän hetken ongelmia. Se on mielenkiintoinen nyanssinsa siellä mutta se on joidenkin kaverien ehkä tämmönen eläke- tai tällanen perintöprojekti, mutta ei millään tavalla suuri huolenaihe koko musiikkiteollisuudelle yleensä.

VVJ: Mut miten sitten kuluttajan näkökulmasta tavallaan huolenaiheena että suoja-aikaa pidennetään niin eiks se oikeestaan heikkänä, heikentääkö se kuluttajan asemaa?

MK: No suuressa mittakaavassa ei varmaankaan, en usko että sitä nostetaan missään vaiheessa niin paljon että se rupee olemaan nykyiseen verrattuna aivan mahdoton tilanne että se on esimerkiksi tuhat vuotta tai jotain muuta joka sitte sitois kontentin tosi pitkään et sitä ei voitais käyttää vapaasti. Mutta totta kai sitten jos sitä pidennetään niin sen verran se rajoittaa sitten tai hidastaa sitä prosessia että ne tulee public domainiin nää oikeudet, niin siinä mielessä se hidastaa niiden uudelleen käyttöä. ja uuden luomisen pohjana olemista että jollain tavalla tietysti näin on. Mutta sitten jos mietitään ihan niinkun sivilisaation ajassa pitkällä tähtäimellä tuskin hirveän suurta, ellei sitten suoja-aikaan tehdä jotain ihan järjettömyyksiä lisätä just tuhanteen vuoteen, sitten rupeis olemaan koko sivilisaation kannalta aika kyseenalaisia ratkaisuja. mutta 70 tai 90 vuotta niin ei oo niin iso kynnyskysymys.

VVJ: Mites sitten kun puhuttiin tosta että tällanen eläkeprojektista niin missä määrin näet onko mukana korruptiivista toimintaa, isoilla toimijoilla on varaa ostaa aikaa oikeuksilleen. onko se sitten ongelma?

MK: Lobbauksella noi hommat on mennä eteenpäin. Itsestäänselvä asia.

VVJ: Puhutaan kopioinnista. Jos joka klikkaus luo kopion, miten tekijänoikeuslaki suhtautuu tähän tällä hetkellä?

MK: Jokaisesta kopiosta menee mekanisointimaksu mutta katotaanko se, nythän se on vain muotoiltu että kun kopio syntyy. Tekijänoikeus ei oo alunperin nähnykään tällasta mahdollisuutta kun tekijänoikeuslaki on syntynyt, se on nyt väkisin sovellettu tähän. Jos sitten siitä tulee este toimimiselle, jos se ei oo vaan järkevää että jokainen klikkaus tois jonkun summan rahaa, joka on siinä mielessä et niitä on vaikea seurata ja siin mieles et siit tulee niin prohibitiivisen kallista siitä toiminnasta niin täytyy ehkä miettiä miten se mekanisointi suhtautuis koko tähän digitaaliseen kenttään, onko se oikeasti sellainen oikeus joka on millään tavalla relevantti ja pitääkö siinä suhteessa olla just näitä poikkeuksia. Viittaan edelleen tietokonepuolella olevaan erilaiseen tekijänoikeusnormistoon. Varmaan joku tämmönen vois olla realistinen vaihtoehto, et niitä vähän niinku uudelleen digitoinnin puitteissa mietitään, että soveltuuko ne ja miltä osin soveltuu.

VVJ: Onko fair uselle suomenkielistä vastinetta, tunnistaako kotimainen laki käsitettä?

MK: Jenkkikäsité, meillä ei sellaista suomessa oo, et meillä on rajattu vaan yksinoikeus ja se on tämän muotoinen, ja siitä on otettu tiettyjä elementtejä pois jotka on sallitun käytön piirissä, mutta niinsanottua fair use käsitteistöä ei oo, et meillä on selvästi laissa sanottu mitä sä saat tehdä, sallitun käytön lista. Mut ei oo sellasta niinku eteeristä käsitettä.

VVJ: Tulee siitäkin näitä eroja kun oikeusjärjestelmissä on eroja?

MK: Kyllä, joo.

VVJ: Miten harmonisointi toimii tällä hetkellä EU-tasolla fair dealing -käsitteelle joka on tavallaan fair use:n vastine, tai tekijänoikeuslaissa yleensä?

MK: Se on kans yks tällanen mielenkiintoinen, tällä hetkellä tekijänoikeuslait on pitkälti kansallisia, siellä on jotain harmonisointia, esim tietokoneohjelmien osalta, mutta ne on direktiivien tasolla pääsääntöisesti. Joten sieltä ei oo ns täyttä harmonisointia oo tullu, et jotain sellasia suuntia minne maiden pitää mennä. Se on haastavaa, että 27 jäsenmaata, kaikissa on omanlaiset tekijänoikeuslait ja jokaisessa vähän omat painotukset, sitten niissä maissa että miten käsitellään. Voidaan käsitellä reiluusperiaatetta ja Suomessakin on kohtuullisuusperiaate joka tuo tiettyjä samanlaisia elementtejä mikä on kohtuullista ja muuta. Mutta sekin on yks vaihtari että EU:ssa tehtäis EU-tekijänoikeus joka kattais sitten kerralla koko EU:n ja sieltä tulis sitten yks EU-tekijänoikeus jota käsiteltäis sitten yhtenä. Sekin mainittu EU:n lokakuuisessa paperissa. Mutta ei nekään siinä uskaltanu lähteä miettimään et miten se sit käytännössä menis, olisiko siinä rinnalla kansallisia kuitenkin, esim tavaramerkkipuolella on EU-yhteisön tavaramerkki ja sitten on vielä kansallisia rinnalla. Et olisko joku tämäntyypp-

pinen että vois olla rinnalla jotain, niin on mietitty. Se olis EU-alueella helpoin mutta se että me ratkaistaan jotain EU:ssa ei välttämättä kuin vähän pienennä sitä ongelmaa että nää on maailmanlaajuisia kysymyksiä, digitaalisuus tarkoittaa käytännössä sitä että kaikki on kaikkien saatavilla aina, kaikkialla milloin tahansa, kyllä tää varmasti vaatii täysin ylikansallisen ratkaisun jossa EU ei yksin voi toimia vaan tässä pitää olla oikeestaan kaikki maat mukana, ja miettiä tää kenttä uusiks että olis helpompi lisensoida yli rajojen. Mut oisko sitten yks tämmönen aika hurja ratkaisu mahdollisuus olis jota vois miettiä tällanen maailmanlaajuinen tekijänoikeus, jota käsiteltäis yhtenä. Se vois olla aika haastava käytännössä mutta olis yks teoreettinen mahdollisuus.

VVJ: Jos ajatellaan että saatais EU:n sisäinen tekijänoikeuslaki niin olisiko se kuitenkin ensiaskel EU:n puolelta tähän kokonaisuuteen vai pitäiskö siinä suoraan miettiä esim WIPO:n tyyppisten järjestöjen lähtemistä siihen?

MK: No jos haluaa joku helppo ensiaskel joka saatais kohtuuvähällä vaivalla niin varmasti EU olis helpoin koska on jo tämmönen täysiharmonisointiin perustuva tää koko organisaation ja systeemi. Ja olis ehkä helpompi lähteä keskustelemaan kun siitä saadaan jonkinlaisia kokemuksia että miten voitais soveltaa ylikansallisesti. Se että mitä EU:n sisällä sopii ja harmonisoi keskenään on toinen puoli kolikkoa mutta itse asiassa EU on aika protektiivinen mitä tulee EU:n suhteeseen EU:n ulkopuolisiin tekijöihin et esim aiemmin Suomessakin oli exhaustion että missä tahansa maailmaa oli ensimmäinen kappale myyty niin sä et enää saanut siihen tavaraan asettaa mitään ehtoja vaan sen sai uudelleen tuoda esimerkiksi Suomeen vaikka olisit myynyt sen jenkeissä. nyt EU:n myötä tulikin sitten tämmönen et se suppeni se maailmankansalaisyhteisö, että tuli että jos se on euroopan sisällä julkaistu niin sit se menettään sen oikeuden puuttua sen jälleenyntiin mutta ei jos USA:ssa olis myyty, että se supistui eikä ollu enää niin maailmaansyleilevä se näkökanta. Et luultavasti sellanen protektionismi myös tulis tässä olemaan yks ongelma sen jälkeenkin. Että vaikka EU:n sisällä toimis, EU on kuitenkin vaan yks pieni markkina, että tuolla on isoja markkioita missä musiikkia käytetään euroopan ulkopuolella että ei tää sillain ratkaisis ku pienen osan ongelmista.

VVJ: Yhteistyö voisi olla vaikeaa?

MK: Kentän pitäis hyvin paljon muuttua. Jos se on niin paljon muuttunu että kaikkien toimijoiden pitää yrittää suojata omaa selustaa, niin se tulee olee varmasti hankala, aina kun tällasia murroksia sattuu, niin yrittää sit tukeutua. Joka nähdään tässäkin kun oli nää DRM-keskustelut yritettiin hirveesti niinku digisaation ongelmia tällasilla suojausmekanismeilla torpata ja haastettiin vaikka ketä oikeuteen kaikista loukkauksista ja painettiin kovalla kovaa vastaan mutta nyt on huomattu että näillä metodeilla ei sitä pysty tekemään etä nyt joudutaa miettiä näitä uusia, että ei kukaan nykyään sano että DRM olis joku ratkaisu tähän ongelmaan ainakaan tosissaan. Se oli se alkuvaihe, nyt tullaan hyväksyntävaiheeseen. Olisi mielenkiintoista katsoa, kun on tää psykologiasta tuttu vaiheet konfliktitilanteeseen ihmisen joutuessa, tässä olisi varmasti seurattavissa samat vaiheet koko yhteisöön suhteutettuna. Nyt tullaan hyväksyntä- ja neuvotteluvaiheeseen et ilmeisesti siellä mennään.

VVJ: Siitä on merkkejä kuitenkin näkyvissä?

MK: On ihan selvästi, et nyt, se että taloudellinen taantuma teki tälle keskustelulle hyvää että Euroopassa ja Suomessa tajuttiin että teollisuus ns konepaja, old school-teollisuus ei voi, ei enää pysty ehkä turvaamaan tätä meidän elintasoja ja hyvinvointia, täytyy kehittää myös muita alueita, koska teollisuus alueena ei oo enää kovin houkutteleva. Työvoimakustannusten ja muiden takia, että pitää muita keksii. Nyt todella isolla mennään tän luovan talouden suhteen ja tähän nyt satsataan niin Euroopassa kuin Suomessakin varmasti tullaan näkemään jotain merkittävää mitä se on olla hyvin laajalla alueellakin, käydään verotuksesta sosiaaliturvaan, ja sit käydään ihan tekijänoikeudellisia asioita et varmasti aika paljonkin muutetaan ja harmonisoidaan luovaan talouteen liittyvää lainsäädäntöä.

VVJ: Miten paljon keskitytään kuluttajiin?

MK: Varsinkin näissä Euroopan projekteissa on hyvin vahvana tää kuluttajaelementti, et painotetaan että tää ei missään tapauksessa oo tällanen et sovitaan artistien ja firman kanssa niistä oikeuksista, vaan pidetään tapetilla se kuluttajalähtöisyys tässä, että kuluttajalla pitää olla mahdollisuus saada helposti kontenttia ilman että sitä rajoitetaan millään tavalla että se on lähtökohta. Suomalaisissa projekteissa en niinkään näkis että olis niin tapetilla et enemmänkin luovan toimijan toiminnan mahdollistaminen. Et Euroopan tasolla ollaan enemmän kuluttajan asialla.

VVJ: Joka sit lopuks koko leikin kuitenkin maksaa?

MK: Kyllä. Joo.

VVJ: Palveluiden ei tarvii olla ilmaisia mutta mielenkiintoista nähdä miten se raha sitten kerätään. Sekö tulee olemaan iso kysymys?

MK: Se tulee olemaan. Nähdään miten tää tulee toimimaan. Kuluttajat on valmiita maksamaan, et jos se on helppoa ja hyvälaatuista ja turvallista ja selvää se homma ei ole mitään estettä sille että kuluttaja maksaisi siitä mitä haluaa.

VVJ: Jos mietitään nuoria, eivät välttämättä enää ydinryhmä joka maksaa, vaan vähän samaan tapaan kuin “osta lapselle tv-lupa vuodeksi”-kampanja, ostettaisiin lataus-
soikeudet vuodeksi esim eteenpäin että pääsee kättelee leffoja.

MK: Näitä malleja varmasti tullaan näkemään, ja ne muokkautuu ajan mittaan. Se tulee olemaan yks, koska ei enää pystytä varmistamaan sitä toimintaa mitä siellä verkossa on niin sit varmuuden vuoksi otetaan tietty maksu. Edelleen näissä on se että miten jyvitetään rahat oikeudenhaltijoille, on se haaste.

VVJ: Vaatii sitten teknisiä ratkaisuja?

MK: Suojauspuolella on helpompi, jos on tällasia firgerprinting-juttuja että saadaan se loukkaava materiaali pois sieltä. Mutta se mitä kulutetaan mitä sisältöä kulutetaan eniten niin sen seuraaminen voikin sitten olla hankalampaa. Mut ei sielläkään varmaan tollasia teknisiä fingerprint juttuja yritetään soveltaa ja tollasena käyttöön perustuvana sen täytyykin olla että se provisio tulee niille oikeuden haltijoille ei niinkään että

niiden tuotanto edustaa jotain osuutta jostakin suuremmasta katalogista koska se ei puutu itse sen kuunteluun vaan siihen että ne on joskus jotain tehnyt joka on tietty prosenttiosuus jostain kokonaiskatalogista. Et tule ole sellasia mietittäviä kysymyksiä kyllä.

VVJ: Mites royalteista, onko tullut vastaan onko artistit digipuolella tyytyväisiä?

MK: Ei oo tullu vastaan ongelmia, ainoa mikä on tullut on Spotify. Kaikki tykkää siitä ja se on sairaan siisti “en osta enää ikinä” lauseita kuulee kun kaiken saa Spotifysta, mutta sitten on se toinen puoli kun artistit on vähän hämmentyneitä et onks tässä nyt ne hillot mitä tästä tuli, muutamia euroja, se on hämmentävää. Toisaalta Spotify on uusi palvelu, todella innovatiivinen rohkea veto, aika näyttää tuleeks se, mikä se rahoitusmalli tulee ole, kyllä se täytyy jostain se raha tulla artisteille se raha sitäkin kautta, että ne joutuu varmasti miettimään uusiks sen mallin.

VVJ: Ja että se tapahtuu ennen kuin kaikki artistit vetää musiikkinsa pois sieltä. Tuleeko joku follower ja vetää maton jalkojen alta, jos laki tulee myöhässä mukaan?

MK: En tiedä diileistä mutta ilmeisesti ne on maksanu oikeeta rahaa näistä oikeuksista niin näille jossa nää kustannusoikeudet makaa, mut miks se ei tuloudu artisteille, minkälaiset kuviot siellä on taustalla. Sen pohjalta vois analysoida.

VVJ: Huhu Spotifyn sopimuksista on, että levy-yhtiöt ovat saaneet etuostooikeuden edulliseen hintaan Spotifyn osakkeisiin, jolla kierretään artisti mainostulojen avulla.

MK: Nää on just näitä royaltyongelmia, yksi näistä, toi puoli royaltien jyvittäminen on hankala. koska se on niin hankala niin on sitten päädytty tollaseen ratkaisuun joka on joillekin toimijoille aika kohtuuton. Jos soitetuin artisti saa 100 euroa, on jotain menny pieleen. Näitä kaikkia joudutaan miettimään nyt uudestaan.

VVJ: Ilmeisesti niin että siinä kentässä pyörii niin vähän rahaa, pitäis pumpata lisää rahaa?

MK: Koko radiokenttä on mielenkiintoinen, kun on analogikanavia jotka striimasi netin kautta lähetystään, ja sitten on taas tämmöset palvelut jotka on täysin musiikki-soitintyyppinen ratkaisu joka on cloudissa, siinä on just se ettei laki oo pysyny mukana ollenkaan, ei sovellu nykytilanteeseen.

MK: On niinsanotut three strikes -lait, jossa tietyn määrän kun töppäilee niin katkeaa internetyhteys, et on tällasia hyvin drastisia kuulostaa tällasilta DRM-tyyppisiltä ratkaisuilta, ja sitten on tää suomalainen näkökanta että internet yhteys on jopa perusoikeus ja pitäis olla kaikilla ja siihen kajoaminen tuntuis vieraalta, nää kaksi käsitettä kiistelee.

Digitaalisuus on kaiken ytimessä, miten tekoikeuslaki siihen soveltuu, minkälaisia muutoksia vaatii. ja sen kautta tuoma tällanen toiminnan universaalisuus tuo haasteita näihin mitkä on ollut täysin territoriaalisia lakeja, niille laeille, ja lisenssikäytännöt ja oikeudenhaltiajärjestöt jotka on myös ollu territoriaalisia joutuu toimimaan kentässä

jossa se ei enää toimi eli joudutaan nää kaikki repii auki ja järjestää uudelleen, ja se että mikä on eri toimijoitten se mitä kuluttaja haluaa, mistä se raha luodaan, eli siis koko musiikkibisnes, vanhat mallit joudutaan, ei siinä mitään ettei tätä olis ennen tapahtunut onhan tässä tullu teknologiaa viimeisen sadan vuoden aikana hirveesti, aina on jouduttu miettimään uusiks, nyt ollaan vaan hirveen isossa mullistuksessa. Saatiin radiot soittamaan sun biisejä ja sillä saatiin myytyä levyjä sitten käytiin keikalla, homma oli aika helppoa. Nykyään levyistä ja päätuotteesta on tullu kovaa vauhtia tavallaan merkkareita, kivoja muistoja, erikoisjuttuja. Se nähdään jo, bändit tekee tosi hurjia pakkauksia niistä ja panostetaan niihin et ne on enemmän merkkareita itsessään ja musiikki on siinä kiinni, sitä ei sillä medialla enää myydä. Musiikki itsessään saadaan kyllä jostain muualta edullisesti tai ilmaiseksi. Tää tulee ole erittäin mielenkiintoinen juttu. Jos mietitään mikä tulee olemaan toinen tällenen pelikenttään on hyvä verrata miten pelibisnes voi toimia online-maailmassa niin luontevasti, se on ehkä hyvä vertaus, siinä niinku sanoinkin niin ongelma ei oo realisoitunu ja homma toimii koska oikeus syntyi digitaalisena, koko pelikenttä on ollu alun alkaenkin digitaalinen. On alusta asti mietitty kuntoon. Siihenkin verrattuna täytyisi nyt miettimään niinkun musiikkia ei olis ennen ollutkaan vaan sitä olis vain digitaalisena, siltä näkökannalta pitäis pystyä käsittelemään tää homma. Siitä tulee kyllä haasteellista. Hyvä tai huono, joku ratkaisu sieltä tulee. Jänniä aikoja eletään, jotain kokonaisuudistuksia sieltä tulee tekijänoikeuslaissa ja muuten.

APPENDIX B: INTERVIEW WITH CREATIVE CONTENT ONLINE

VVJ = Ville-Veikko Järvillehto

MB = Marcel Boulogne

BO = Burak Ozgen

HA = Holger Albrich

AL = Alberto Lopez

EJ = Emmanuel Joly

VVJ: From my viewpoint there have been changes in consumption of music. What are the most relevant changes in consumption of music from European viewpoint?

MB:

A number of changes happened. The legitimate field, the shift from buying albums to buying songs, which has a big effect on the revenue of the record labels. On the other hand piracy of course, and let's say these things have brought uncertainty, the revenues have gone down, especially physical sales, and digital sales not replacing the loss in physical sales. And that's not foreseen actually, so let's say the boom the music industry had seems to be over. And this has resulted in a sort of protecting what you know and trying to keep the control which they had, which is extremely difficult in the digital environment and let say the consumer has changed in a massive way and I think those are the biggest changes.

BO:

I think the consumption of music has changed from collecting the music to trying the music. People used to buy music to collect and put it on their shelves and now they just get the music just to try, that's why so much music is listened to only once you'll never hear again most of the songs of three gigabytes on your hard drive so that's also one of the changes in consumption.

HA:

But I think that as well this collection issues is appearing more and more. You only talk about consumption in the sense of buying the music and not of listening. I think that in the last years in the last ten years the mobile listening of music has increased a lot cause before you had the Walkman like ten years ago, then you had the diskman, but only with the MP3, then it is much easier to when you go jogging. I think it's really important that all it's consumption is much more easy and the purchase of music and the access in easier as well. But it's much more volatile. I still have my vinyl collection in my mother's basement of 200 vinyls, it's like a museum now.

AL:

Yeah, I think that's one of the key words, mobility. Digital natives are consuming in a new way that brought people more accustomed to just hear in the radio or just streaming. Also is important for the business models, mobility.

VVJ: It was mentioned that music is listened to only once. Do you think that music is thus less valuable for people. Is it a different kind of approach that you never come back to it.

HA:

In the sense less valuable that people are not willing to pay more than necessary cause they have the opportunity to pay less than 20 years ago they didn't have this opportunity. So this sense it's maybe better accessible.

MB:

But you have also other things, when you might be just listening ten, twelve CD's of your collection of hundreds of CD's, by putting them on your computer or MP3 player they actually open up their collection as well, and this may have had an effect also on buying new music the fact that you the digital possibilities have opened up possibilities to listen to music that you didn't know you had. With the developments like the iTunes Genius that where you can have playlists that you would never have thought of yourself, there is a shift, I'm not sure where, I don't think music is less valuable, maybe people will spend less money for it, I'm not sure that, let's say, in a world where you also have piracy where the money is the only measure of the value of music.

HA:

It's a question of how market works how much you are willing to pay, but on the other hand, you see that live concerts are increasing and people spend more money on them than they used to spend, they go to Rolling Stones and U2 and Boss and all these fossils. All these old groups are very successful, it means that there is rather the live event that they are willing to pay so much.

MB: The consumer experience is the most important thing.

VVJ: Let's move on to stakeholders fluently from this consumer experience. It has been argued that there's a conflict between stakeholders in this scene. In music industry we can talk about consumers, authors and shareholders. For example in the Reflection paper consumers, rightholders and commercial users, do you agree with the threefold setting.

MB:

We didn't focus on music as such, we focused on copyright and if you focus on copyright, let's say the rightholders would be both the authors and the shareholders, and then the commercial users the people who bring the music from the rightholders to the end consumer. That's one step. Let's say the latest scope of interests is even bigger than these three, it could be four it could be five, depending how deep you want to go.

VVJ: What are the expectation of consumers in digital music?

BO:

Well I think it's been about what digital technology brought as one of the things that they want to have widest possible options and they want to reach the content from anyplace from anywhere. They want to have very easy access and clear info on how they are getting the content, and possible and very reasonably they also expect while they are doing this legitimately. It should be feels like free and also they should be protected against viruses and spam when getting the content. I think that's the general expectations.

VVJ: How do you feel how the authors have responded to this emergence of new technologies? Meaning the artists in music.

MB: Well the on the one hand there is this idea that the digital, in the digital environment you no longer need the record labels to get to the end consumer. Whether this is totally true, I'm not sure, this may be let's say starting up actually for getting into the eye of the established players. But in the end there's always let's say I think there's an interest of having a company behind you that actually promotes you and makes sure that you become a success. You've also seen, as Holger said, the revenue in physical sales is decreasing in contract with authors, artists, and the record companies are now also wanting a stake in the live concerts and all these things which frequently were extremely profitable for the artists when you have become established. Other than that it's pretty much an uncertain world, and more uncertain than it was. There's on the one hand there's the possibility for bigger diversity and on the other hand let's say it's always the big names that will get the promotion.

VVJ: Do you feel that the promotion from the big players is important for mega success.

BO: I mean it's certainly not like times before that you can only be famous by contracting with big companies. Now there are some other possibilities that you can actually get through some side promotion ways or some other new innovative ways to reach other people around the world. But still if you making music for earning money, for earning life to, which is the case for the most of the musicians, it's also very smart idea that you contract with a publisher, even if you do your recordings on your own, so music companies and some of the other intermediaries are there because there's a need there. In some conferences for instance, in some meetings I've met recently some young musicians who are spending, who are members of every possible social networking sites, are promoting themselves from myspace etc, the people they get digital advice from tell them you should answer every email that is sent to you, you should be responsive, you should provide them thanks , and then they are saying, yeah, I haven't had any time to write music or to make rehearsal in the last month, so now, it's just like this the way of getting the music to people has changed, and also now new companies and new businesses are emerging online, so now for instance as a young artist you can never put your own song to iTunes or to Napster or to Deezer, you should use one of the rights aggregators in order to register, they don't accept sin-

gle applications anymore, so, these are all different things changing the environment now. Maybe it's not more gatekeeper situation than before in very few places, there are more possibilities but this is a transformation period and it's also been taken by some other businesses right now. So maybe, I don't know if it is the best way, but there is a reason behind that promotions and for getting yourself through, you need help of some other people too I think.

HA: I think in general there is still need for professional intermediaries but there are some examples where on your own you can have success by putting your own music on the Youtube but I think it is rather singular. Are there really successful artists that have come out of this, out of Youtube, are there many examples?

BO: Yeah, there are.

Marcel: You have some young starlets that have even gotten a contract from Justin Timberlake.

AL: But I see an interesting way compared to an old situation of how we are promoting music. That Sade for instance is promoting new song which will appear in February in the newspapers, so the morning newspaper is free, I'm talking about a Spanish newspaper, you can hear the first song of Sade which will appear on February, so musicians are also working with other digital stakeholders. It's a new way of doing. Taking into account and combining these abilities of digital stakeholders.

VVJ: So how about these stakeholders, record companies and equivalent? What is their position what are they aiming for right now?

MB: There's been a tendency since the industrial revolution that at the end of the business model all the money which the company has will go into litigation instead of innovation. They try to keep, to protect what they have, rather than let's say already to see what is coming and seek to get a stake at that and I think that's exactly what we see, they had with the CD they had sort of wind for gains that they got such an enormous amount of money, everyone bought everything they offered and they didn't have to do that much for the value chain work as it did, and all of a sudden all those certainties are now gone, so its very difficult for them let's say to run to the future when they don't actually know what to future holds for them. So they are betting on every card, there's no chance which card will win. So it's an extremely difficult situation and sometimes I think things have to get even worse for them to actually make the step and look to the future more.

VVJ: Why was it so easy selling CD's in the 90's.

MB: Because I think after vinyl CD's brought portability, it was a format which was very easy which people were happily paying more for a format than it actually cost. In the beginning there was this part of the price, because they were very highly priced I remember, part of the price was actually meant for the CD shops and entertainment

stores to get rid of the stock of vinyl and change everything to CD's. So this price actually never lowered. So this was a thing which people were still willing to pay.

EJ: It was the time when you were willing to invest all your money in music. I don't think it's so much the case now.

HA: I think it was a major step from vinyl to CD, maybe people's willingness to pay money for music, cause they're mobile you could copy them much more easy, than was the case with vinyl.

BO: It's a convenience issues mostly, and also promotion of a new product too, so.

VVJ: You mentioned about the willingness to pay, so what is different now, why aren't people willing to pay?

EJ: Maybe it's a sociological question, that what you do with your student money today.

HA: I think it's a question of the offer, it's quite easy in technical sense to purchase and offer music, even by piracy for free, so we'll trust that the possibilities determine the price that people are willing to pay.

MB: Piracy is a major shift, a teenager in my environment, her computer broke down, and she got a new iPod, and she wanted to fill it with her music that she had on her computer. 200 songs in total, and there she said, well I don't have my songs anymore and 200 euros is a lot, so she didn't go to iTunes, but in two seconds she had installed Limewire on her new computer and she made a list of all the songs she had and she had them on there on the same day, and everything was as it was before. This is, and when you talk to her, and say "you know this is illegal", she says "yeah, but everyone does it" so the way that social acceptance of something that is illegal or unauthorised, if you want to be politically correct, is always with the music industry if you say unauthorised downloading they say copyright theft, which makes the discussion frequently very difficult, but this is also a major change which on the one hand it does not mean that people who like girl in my example that they will never buy music. They might spend a lot of music because they are interested and they will buy. But not as much as they did before as people did before, because that was simply the only channel, you would buy CD's maybe afterwards you would copy CD's. but the possibilities for getting music for free have increased so much that it is impossible to disregard that.

HA: There are two falses in the arguments in the music industry which are not corrected the first one is that they consider that every stolen or every pirated song would have been purchased which is nonsense, nobody would buy 20000 songs ...

MB: But there's also a thing concerning as Burak said, some people will listen only once to a song, many things which are downloaded will never be listened to, but still they are downloaded. And this happens for films or music, so the chances that people

will listen to music and actually a bit higher than with films. Nothing's sure anymore actually.

HA: You can't translate this amount of music to figures and then another thing is that when we steal a car and the car is gone, everyone is aware it is a theft, but when the music has not disappeared, so...

Marcel: It's a psychological difference.

AL: Some countries it is considered that if you are able to get something for free, you are more clever than the others.

HA: One thing that we discussed recently that compared, normally the only the original counts. But for music it's different, in a peer group if you are the only one who is paying for music you are the idiot. But if you compare it to clothes, when you have like Adidas with four stripes, then you are the idiot. With clothes you must have the original to be cool, with music it's the contrary. It's quite interesting.

MB: There's a difference between physical good and digital good.

BO: This is the strategy that the recording industry is in the UK in awareness raising. Because now pirates are very cool characters, people search the pirates of caribbean, pirate character, everybody likes them, and people are usually proud of being a cool guy. So that's why they are using a character called Knock off Nigel, who is inviting a girlfriend into a house and putting on a film, and the film is just crap, in the middle it stops and then he gets really embarrassed, and he buys present, which is a counterfeit perfume, and the girl has a problem on her neck and everything cause of the stupid Nigel, so that's their strategy against that.

HA: Same is with the promotion in German cinemas. I don't know if you know this mother with two little children standing and singing happy birthday, and you see they are singing to a father who is in jail and they ask the mother how long until father comes home, well three more times of singing and then he will come back. Funny but very messy.

VVJ: We talked about shareholders, the new ones, different disseminators of music, if you will. What are their, do they have some kind of edge now in distributing digital music and being a middle man in that.

MB: If you talk about let's say social networks or bringing the music to the people in new ways. what record companies would say, "these people they are not interested in music in the creation they should be interested in getting advertising for the content which sells and content which is interesting" so if look at it from the point of established the old industry, they see people making money, but not contributing in any way to the value chain, to the actual creation of the music, whether this is totally true I don't know, I think that there are many different options you have the sort of crowd funding sites, where people make things happen which otherwise would not have happened. And so also the way that the established music industry, the former moguls

built it, they bet on sure things, so this means that things like the X Factor brings a lot of things, it brings a lot of money, it may not bring a lot of quality or a lot of diversity, so on the other hand you let's say there's a "plether" of music, on the other hand they are focusing on an even smaller part of it than before. What from a consumer point of view let's say these new entrants they open everything up, they understand consumer behaviour far better than the established players from before. And I think this is key for any success not only in the music field but for in any content related matter, is companies that actually understand consumers, companies like Google but also Apple, there aren't that many actually that do it well. And they may have things which go wrong, but they don't come with things unless they really satisfy the consumers. It's difficult to say more, actually, what is good and bad about it.

VVJ: Does someone want to amend this

Burak: I think there is also such a difference in the new digital world from these commercial users' like shareholders' or intermediaries' point of view, so there is new players which are much more doing this for the sake of music and art and innovation, there is a story, there was a guy somewhere, who was directing a theatre in a small village very successful putting a lot of plays there and one day some guy came with cameras and records the shows and after that everyone can watch them, and the other guy became a very successful tv producer making very nice tv shows and series and movies and afterwards he changed this according whatever it comes. So there are these people who are in the music industry who are dealing with that and then some new opportunities come up using that like Spotify, Last Fm, Pandora, use this innovative things, which are trying the business through licenses and then by promoting all kinds of bands and trying to make people discover music and there are also some other intermediaries in this new world which are much more technology based, rather than art based, so they are all the means of technology, they know that people want content, and then they use their abilities to get the content to people, which are not always that much artist friendly, but usually very much consumer friendly, moreover actually provoking consumer friendliness, so Youtube and Google could be a good example of that or ISPs could be a good example.

MB: The importance of price, what these new players understand that for the consumers the price needs to be low and it will be more about volume than the actual asking a higher price for some pieces of music, this for right holders for people who have exclusive rights, they are actually forced to go down to a level and to have no pricing as a possibility of, the idea that that tool is no longer available for them, is very difficult to have them. however, for I think you can ask more, if you give a different user experience, if there's a special deluxe box set or extra features. So lots of innovation needs to be found in order to get more revenue than they would normally get. Because the price setting by iTunes which I think is a smart one, makes it easy and makes it, to pay one euro is compared to piracy for most people it's doable at least if you do it on a per song basis.

VVJ: Let's move to the law. We talked about expectations for stakeholders. What are the contradictions between these changes in consumption and copyright law. what are the biggest challenges?

BO: Well I think we can just wrap up all these questions in the contradiction section, the point is as said, people want to, and are able to get the content whenever from wherever they want so there's always possibilities of another territory getting the content from Brazil, he gets it from Argentina and sharing the thing, there's content everywhere, so the thing is the copyright law gives artist territorial rights, territorial protection which is provided by international conventions and in line with the copyright directives in the EU so and well this is for the protection part of that for the case of infringements and to pursue your rights but this doesn't mean that the artist cannot give territorial licenses to some intermediaries, for licensing agencies or media companies which they usually do. What is different in music is actually the music rights are mostly administered by collecting societies representing performing rights and mechanical rights and performing rights are legally and traditionally managed by the collecting societies which are established nationally. So in this kind of setting there is usually one collecting society representing one territory and it represents all the world repertoire, in that country, the commercial users there, so and the thing is you need to licence these performing rights in every country you want to have an operation, so for mechanical rights it is a little bit more flexible, if it's physical you can withdraw it and licence it from one place for all repertoire in Europe for the CD's for physical copies, because it's subject to exhaustion of rights as a product. For digital copies, for online music, it's only possible for the UK repertoire within Europe and also for US repertoire and other Anglo-American repertoires actually withdraw your rights and then give it to one licensing agency for pan-European licensing but for European repertoire it is again assigned to the national collecting societies. So it makes it very fragmented for commercial users who want to get licenses for all worlds repertoire content and make a service available overall Europe for all consumers. That's the main problem relating to music and digital environment, and plus there is this piracy issue, which makes it very much easier for the people and it little bit more burdens the structure of licensing for legitimate music so it makes the edge higher and sharper between that so this is also the reason and the aim of the Reflection paper to devise some new structures to overcome these problems.

VVJ: In addition to territory, there is of course piracy or filesharing or however you want to call it, Isn't it so that every time you share there is a mechanisation according to the current copyright law?

BO: Yeah, that's the reproduction right. These online rights are actually, according to convention and copyright directive it is making music available online. As a right it is called making available so you might know. How it is licensed and how used in practice is because it is defined under performing royalties, so it is defined there, so it is licensed as performing right but every time you produce it, there's a reproduction too, so because it's on demand, you also need to reproduce the content every time that you use it so that ties actually performing and production together as one thing every time that you use it. And in the existing structures the right is licensed two parts, the mechanical and performing rights. So there are two parts in that, so one of the options is as mentioned in the Reflection paper is to tie them under a single transaction so every time you license one part the other one goes with that so.

VVJ: How would that work in practice?

BO: There are some collecting societies licensing both like GEMA or SABAM. They are licensing actually as an organisation both parts of the rights so when commercial user comes they are able to provide both sides of that one single thing, and in some countries they are like two different collecting societies and in those cases they usually try to cooperate for that kind of structures, but nowadays there are also these possibilities for pan-European licensing agencies as I said for Anglo-American repertoire of the major companies where they actually withdraw their mechanical rights and give it to one pan-European licensing agency. EMI uses a company called CELAS, Universal is going to use SACEM and the mechanical right society in France SDRM, Warner uses a kind of standard, and every collecting society that is able to fill those requirements is able to license Warner's repertoire on a pan-European basis. And UK does it for the British repertoire on its own. So this kind of structure makes it a little bit more fragmented than easier actually, because now before you needed to get 27 different licenses from 27 different national collecting societies for a pan-European licence, but for each country you were able to get the world repertoire which is consisting all the repertoire in the world. Now you need to go to all different countries for some of the repertoires and you need to go to one country, you need to get some repertoire from there, other ones somewhere else for all Europe, other content from somewhere else for all Europe, so it didn't help much actually.

HA: But it still can be resolved this problem by reciprocal agreements, no?

BO: Yeah, this is the reason why the major companies withdrew their rights, they don't want to be subject to reciprocal agreements.

VVJ: Why is that? What is the issue with reciprocal agreements then?

BO: Well, one of the problems is they want to have more control for licensing of their content. And they want to have more control in setting the prices, and the digital usages they want more certainty usually and more capable collecting societies able to licence their rights across Europe so it's, for instance the German collecting society's technical infrastructure is usually different than Slovak collecting societies technical infrastructure for instance, so that's one of the reasons, but this usually has been sort of extra income for major companies in the offline world, and they were able to collect all those unallocated monies from small collecting societies for claiming that ok, our music is played most. But now I think they are using the same arguments to get more control in using their own content because they are four majors that are representing 80% of the world music market, and that's very difficult for an online operating not to license major repertoire and that's how we get more control but taking it from the control of the collecting societies which represents both authors and music companies but now you can represent yourself and work on a more commercial basis.

VVJ: But the majors seem to have a lot of power still in terms of negotiating about these licensing issues.

BO: Absolutely.

VVJ: How would you feel, from your viewpoint, how should we handle the copy, in the future. As mentioned, it's easy to make hundreds or thousands of copies and every time you stream or download you make a copy, if you share a file if you make it available you potentially are making millions of copies. So how do you feel, how should the approach be about the copy. Should we abandon the copy, and kind of try to build a different kind of monetising structure or try to supervise every making of a copy?

MB: Having more of a distribution right rather than focusing on that rather, the majors I think see that as communism, they've actually, anything that would take rights away from them, sometimes there are worse words than communism for such fate. The problem is with if you look at copyright, let's say the consumer, the digital environment has brought the consumer in the relationship in the copyright into copyright, because to this day protects authors and protects publishers that and actually it was always against competitors rather than against consumers. So this is a relatively new thing, fourteen years old or something that copyright, 300 years old so to have such a new thing changing such an old thing is very difficult, because you, let's say the changes which have happened in the last fifteen years they are not over yet, so to come with a new structure which now for something which you do not know how it will evolve in the future is very difficult, so I don't know a clear answer to that actually. I just see the problems with it.

VVJ: I guess that's the general way how it goes, it's hard to come up with clear ideas or solutions for what is happening. But it seems to be clear that it's really hard to control the copy, as of this new changes in technology, do you agree or disagree with this?

MB: Well, in any case the right holders will have to face reality and they will have to make sure that they get revenue from what they produce, rather than, there was a conference last week this futurist said, Gerd Leonhard that the copyright holders are focusing on keeping control when they should focus on getting revenue from their content. So to have control in the digital environment does not necessarily equal having revenue. and you have this analogy: when the winds change some people build shelters, others build windmills, and this is the situations where we are. What it would mean to build windmills in a difficult environment is...especially if you were in a tornado, but...

BO: Yeah, it's changing very quickly, and also the kind of regulatory change it seems also quite difficult at this moment, you see that it seems that it's necessary, but it's very difficult to say how. because whatever you do, might be very easily outdated. which is....

VVJ: quite soon.

BO: Yeah, which is I'd well personally, creation of the making available right as it is right now, it was created in 1996 in an international convention and it was much more dealing with the online sale type of usages. Well it was for the digital or the internet user, but for instance at that time there was not clear P2P service, technology, so the problem now is because copyright always in much more for the usages and much

more for the commercial usages, and usages for the wider public, so there you have a very obvious difference between a company selling pirated music to people, and there are people sharing their music with each other. There's a clear difference there. But when you look from the legal point of view, both of them are subject to the same making available right. Because they are making the work available to the public from a place and a time individually chosen by them, without authorization of the authors, so that makes them in a position so what you can do afterwards, probably you might try to license the facilitators who are actually setting up this situation for people to share that music to make that available, so there are two possibilities for that one, one of them is you could be hosting a web page and really doing that and sharing these things between the people so then you could be responsible for that one like as Napster was responsible and now changed to legal environment, the other thing is you just create the technology drop it there and then people just like get the software which could be used for anything, but also used for file-sharing and music sharing, so, um, the existing wording of the convention in its agreed state, the provision of the sole technology as not to make it liable in terms of copyright so that's why you don't have kind of legal basis at least in terms of intellectual property right to make like for instance ISP's or like the technology companies liable for the copyright so they are not supposed to have the making available rights because they only give the technology, so this is also the thing. That's why now new things are trying to make ISPs liable on different basis from an enforcement or like criminal point of view, so but that's one of the things so you make something, but it comes in ten years very difficult to work with, so...

VVJ: On eu level, have there been some developments already in these issues, so far?

MB: In licensing, we have two initiatives, the 2005 online music recommendation, this according to some, this was a catalyst for the music publishers to withdraw their rights from the collecting societies and start let's say exert more control and having things like CELAS, which let's say actually increased fragmentation. So on the other hand these were developments which were already going to happen even if the recommendation would not have been there. But it could be that this recommendation has made it more quick. Then you have the CISAC case. Maybe Burak wants to say something about that? There is an initiative for the collecting societies where the commission is now considering, where the parliament has requested, which was actually intended to replace in 2004, which is a directive on the management and transparency of the collecting societies and both to address the concerns of the copyright users and to ensure that there's a cultural diversity is an element that could play a role in such a directive. As far as other parts of copyright law, the 2001 copyright directive, the chances that that will be revised within a short time are very low. It was a very difficult compromise to get that directive which resulted in a number of vague terms and a lot of exceptions which actually is a qualification of the different exceptions which existed in the member states. And to change these things will be extremely difficult. The fact that the member states were rather low in transposing this directive and implementing this directive also means that it was deemed too soon to come actually with a total review of this directive and we had a application report which is rather light but as far, let's say copyright harmonization is only on certain elements and there's no, most elements of copyright have not been harmonized, for that reason of

course the copyrights in the member state copyright in member state, copyright law is based on international treaties, there is a degree of harmonization but it's not a full harmonization we are still a long way away from having a single European copyright which is something we mentioned in the Reflection paper but which will take a lot of time actually.

VVJ: Is it possible to implement before actually harmonizing internationally since there are also international conventions that somehow regulate the copyright laws in Europe and in individual countries? How would it actually work?

BO: You can't be in contradiction with the provision of the international convention. You don't have to be either, in most cases, you just need to devise some new ways at the moment, but it certainly requires change at international level.

EJ: A new EU copyright title, would it be in contradiction?

BO: Well, that's a question actually, that changes according to how you introduce that actually, if you introduce it alongside the national copyrights or as a one single territory, Europe as one single territory and then replacing the national copyrights, so that would be, if you say Europe is one territory, that could be...

EJ: Difficult...

BO: Yeah, by replacing it you say one territory, one copyright, it would be compatible with the international conventions but I don't know if it would be compatible with the EU and the member states, feel they are...

VVJ: Will this be one of those bigger issues, of kind of building a federal state. Which is maybe problematic in many ways?

BO: Yeah...

MB: Copyright is strongly related to culture, and culture is responsibility of the member states, so if we, so there is an issue there even though in the Reflection paper we mentioned article 118 of the Lisbon treaty is opening up possibilities for having a single European copyright, but there are a number of things to be addressed before this would be reality, to say the least.

VVJ: I spotted on the agenda of "Creative content online" on the website about the piracy part, what is adequate protection and how would that work in relation to developing the services that enhance the digital environment?

MB: With my example of the young girl and limewire, we cannot stop piracy and it can only be curbing piracy and hoping let's say that one point in someone's life there's a moment when they will start paying. Like when I was a student I didn't have a legitimate copy of windows because already for me to buy a computer was too much, so, but, now you have cheaper versions, student/family versions so companies adapt to that as well but it's, we have been following the different initiatives in the member

states we have the enforcement directive, we have now also an observatory on piracy, on counterfeiting piracy and including illegal up/downloading, you can see that the member states are going about it in different ways, the French way, the ways it's done in France and the way it's done in UK is different and what we've limited ourselves at the moment is to see whether there are any best practices to, to get the best practices out of these examples, on the other hand in the parliament concerning amendment 138 in the telecom package where it sort of was mentioned that internet access is a fundamental right which cannot simply be taken away from you if you would be downloading illegally.

BO: Without the court decision..

MB: So and let's say there's quite a large gap between protecting legitimate interests of the right holders, and on the other hand protecting the rights and privacy of the consumers infringes. The balance has not been struck yet between those interests. But it's an issue which will come back for the music industry to compete with free is something which is very difficult if not impossible, but on the other hand they have no other choice but to try to compete which means very low prices, formats which consumers like, the way we looked at it in content online initiative is to, we feel that having legitimate alternatives to piracy is already a big step towards not eradicating it but to decreasing it. We've also heard examples that for instance where you had the experiment of Radiohead where they put things online and you could pay what you wanted for it, and at the same time it was downloaded on bittorrent sites but when the CD came out people also paid for that, and when there was also deluxe edition people also paid for that.

BO: It was topping every platform, free and paid.

MB: If you're popular in bittorrent you're popular everywhere. The key is to make money out of it and to make revenue.

VVJ: How about Spotify, there have been some problems in Spotify's royalties in terms of how much it pays out for artists, recent reports stated of Lady Gaga was it even millions of plays, Lady Gaga receiving not more than 250 euros for that amount of streams. Clearly it's a question of how the royalties are distributed, so are there frameworks for how this streaming royalties how they work, or are there different pro rata laws that should be developed.

BO: We can find those numbers from the pages of the collecting societies they every year release their performing and mechanical royalties' tariffs. so you can find those tariffs from collecting societies. Apart from that you also need the permission of the record label to put their content there, so it's mostly on negotiation basis.

VVJ: They have known the tariffs all the way long?

BO: Yes, for the general thing, this is a long issue for now but for the performing rights the mechanical rights you usually set the tariffs and also have negotiations for different services because if you're giving this kind of service it's different than li-

censing a radio for instance, so they get the money from the advertising revenue and then pay out from that one, and the amount of money that you are paying might not always be exactly relating to the number of usages but it could be much more like the percentage of the income, or like that kind of things, so there are different things that devise and you can check the PRS website, they have good detailed info on how they deal with that one but there are many problems with Youtube convincing to pay the price that they had and in the end they discussed quite a long time and they agreed on a price and Youtube pays that one, but Spotify ok in UK, but not ok in small countries that they operate. That's also the power of the companies in the market.

VVJ: Are there ways to make EU wide tariffs on these streams?

MB: It's too soon to tell. These are relatively new developments which to try to regulate things let's say it's normally not the first option. frequently many problems are not actually related to legal framework but they are related to the implementation of the framework and dealing with new situation to, so we would need to have a lot of reflection before coming to there.