Broadband technologies transforming business models and challenging regulatory frameworks – lessons from the music industry

MusicLessons – Deliverable 8a

Impact assessment on policies, directives and business models – First thoughts

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Abstract: This report is the eighth deliverable in the project Musiclessons, presenting preliminary conclusions from the results from seven earlier reports. A second report will include results from workshops and dissemination activities.

Work package 5 (WP5) focused on data collection and research into new business models analysing Internet applications labelled Peer-to-Peer (P2P) or file sharing. P2P applications leverage unused resources and user creativity present at the edges of Internet as discussed in WP 2. A key task was to understand technical developments and correlations with consumer behaviour and changes in value chains and business models. WP3 established a coherent picture of the users of P2P, their motives and the effects on the general pattern of music and content consumption. In WP4 policy incompatibilities were identified; this involved identifying existing legal and technical constraints on improved policy decision-making, particularly in the area of balancing conflicting demands.

This report presents the most important conclusions and policy recommendations, which may not be obvious to outsiders observing the media industry in times of rapid technological change. Some sectors of the media industry (music, film) have seemingly suffered more from this change than others, responding with rhetoric, intentionally incorrect interpretation of statistics and heavy lobbying, rather than accepting consumer preferences. Decision-makers can draw hasty conclusions from not being aware of all the facts. Not so obvious is the change of the web from a one-way, read-only medium to a more two-way, participatory, collaborative and interconnected medium. Cultural diversity has moved from main-stream and traditional media to the Internet as users have become both creators and consumers of content. Some current legislation builds on old technology resulting in unnecessary incompatibilities with today’s realities, as well as the protection of old business models in established industries rather than supporting creativity, innovation and emerging business models.

Keyword list: Information Society policies, IPR legislation, P2P, Music, Internet, User behaviour, Business models
Executive summary

1. The personal computer has brought about new patterns of user communication and user interaction. The technological advances have gradually increased the spectrum of content in the user activities, from primitive PC software and games of the early times to advanced multimedia objects of today. The new technology offers increased opportunities for the users; a corresponding weakened control of the content is experienced by the suppliers.

2. A lesson learnt from our research activities is that content in digitalised form is complementary to, rather than substituting content in physical form. Users are prepared to pay for the digitalised content if the conditions are fair and the users’ interests are recognised and respected by the suppliers. In most cases it means that the content industry is required to adapt their marketing routines, pricing regimes etc to the new situation.

3. Peer-to-peer (P2P) is a key technology to meet the future challenges on the Internet capacity. ADSL is a business model that does not meet the requirements from the emerging user participation in content creation and must be replaced by symmetrical communication solutions.

4. Another lesson learnt is how oligopolistic industries with far reached control of distribution and marketing channels react on the emerging technologies and new patterns of user behaviour:
   
   a) By legal means trying to impede the development and use of the new technology.
   
   b) By slowly offering legal alternatives, but on conditions in order to minimize the perceived negative impact on physical distribution and to maximize the obstacle for new competitors.
   
   c) By experimenting with Digital Rights Management Technologies with the aim to control who is consuming the item sold, how, when and where.
   
   d) By co-ordinated lobbying activities on a global level to influence politicians to adopt changes in the Intellectual Property regimes in their favour.

5. Musiclessons’ conclusions and recommendations to the European Commission are:
   
   a) Needs of creators and innovators are not necessary the same as the needs and demands of major content owners. A content owner such as a publishing house is a business model for distributing the author’s work. The economy depends less on this specific manner of distribution than it does on the work of authors who provide the economy with creative input. Regulatory means should not be used to protect any particular business model.
   
   b) With the introduction of information technology, structural changes are inevitable, thereby threatening the positions of established actors but at the same time offering opportunities for new business to develop. Who defends the interests and promote all those small and upcoming companies that we, as yet do not know? The political focus should highlight the needs of emerging firms and industries rather than on support for incumbent businesses and their models.
   
   c) Policy makers must avoid drawing hasty conclusions from statistics demonstrating simplistic causal relationships between new technology and negative effects on existing business.
d) Technology development is always ahead of the legal regime. The result is that visions based on the reality of today’s technology tend to get out of phase with the legal regime. There is an urgent need to seek improvements in the Intellectual Property framework in the context of rapid technological change and globalisation.

e) We question the assumption that users of new collaborative software (Peer-to-Peer i.e. file sharing) are incompatible with the existing legal copyright protection scheme and mutually incompatible with the notion of legal one-to-one distribution systems.

f) Users of collaborative software do not comprise homogenous groups but consist of different categories including those who are the most important consumers, purchasers and early adopters of cultural goods and new delivery mechanisms. By dismissing them as criminals one is doing a major disservice to creativity and the important goals of cultural diversity in the EU.

g) Cultural diversity has moved from main-stream and traditional media (television, radio and newspapers) to the Internet. The web has moved relatively quickly from a predominantly one-way (client – server), read-only medium to a more two-way, participatory, collaborative and interconnected medium (server – server).

h) EU policy incompatibilities must be addressed. Lacking coherence only benefits the big, predominantly non-European content owners at a time when there is a trade deficit regarding media products.

Acknowledgement

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A user driven web

New patterns in user activities

The MusicLessons project has enabled us to expose the fundamental change in patterns of user participation in the creation of content. What originally appeared during the 1980’s in small groups of computer enthusiast is now proliferating among large segments of the populations in the industrialised world. This has been possible due to improvements in PC technology, e.g. processor speed and storage capacity, together with advances in communication such as broadband technology, the Internet protocol and other software innovations.

Users have responded in the development of new patterns of user communication and user interaction. The technological advances have gradually increased the spectrum of content in the user activities, from primitive PC software and games of the early times to advanced multimedia objects of today.

Now the digitisation of media together with globalisation trends is creating radically new market conditions for the commercial actors where new distribution channels are one obvious effect. Perhaps more important are the new forms of user behaviour in the process of selecting and customising content, and to an increasing degree, in the creation of content.

The average user is both a creator and consumer of new content. The web has moved relatively quickly from a predominantly one-way (client – server), read-only medium to a more two-way, participatory, collaborative and interconnected medium (server – server). This is not highlighted or even observed in the i2010-A European Information Society for growth and employment. Research in new collaborative environments should take this into account. Today’s proposed research directions do not envisage the average user to be part of collaborative environments.

User driven media and entertainment

The web will become a user driven media and entertainment channel. A large number of media areas start to evolve. Some old will erode and society will experience many new clashes between the users’ interests and large established private actors. The following list shows where the users are active.

<table>
<thead>
<tr>
<th>New media areas on the web</th>
<th>Examples</th>
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<tbody>
<tr>
<td>New portals</td>
<td>Digg.com</td>
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<tr>
<td>Directories</td>
<td>Open Project Directory (dmoz.org)</td>
</tr>
<tr>
<td>Encyclopaedias</td>
<td>Wikipedia.com</td>
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<tr>
<td>Hand books</td>
<td>Wikitravel.com</td>
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<tr>
<td>Photography</td>
<td>Flickr.com</td>
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<tr>
<td>Short films</td>
<td>Atomfilm.com</td>
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<tr>
<td>Broadcast</td>
<td>Youtube.com</td>
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Many of these areas are potential users of peer-to-peer technology since server based solutions costs too much and income is low – at least in the beginning.

A large number of new media areas will start to evolve. Some old will erode and society will experience many new clashes between the users’ interests and large established private actors.

Many of these actors are potential users of P2P technology since client-server based solutions (hub and spoke structure) costs too much and income is low – at least in the beginning.

Traditional advertising will not be able to pay for all the new development. Users will be bored and conventional advertising will be complemented by embedded advertising.

**Users are not unwilling to pay for content**

The existence of free and open content on the Internet can at first sight look like a main obstacle to any legal content business and thus this phenomenon should be counteracted in every possible way. But one lesson from what happened when music became digital is that there has not to be a contradiction between legal music business and the opportunity of a free access to music, provided that the users and the consumers desires are respected. Interviews with heavy file shares show that even those who are downloading hundreds of tunes are willing to pay for music if it can be done in an easy way, the selection is great and diversified, the quality high and the price is fair.

Understanding users preferences and what they are willing to pay for provides an important input to designing business ideas and business models. This gives input not only to the offerings but also delivery mechanisms and what technology to use.
Business reactions

**PC and piracy: A twin birth**

The new technology offers increased opportunities for the users and a corresponding weakened control of the content is experienced by the suppliers. This process is alternatively described as the “empowerment of the users” or “digital piracy” depending on from which side the opinion is expressed.

From the very start these user activities have been looked upon with dismay by the established business companies. The so-called digital piracy was born with the first PC software, when an angry Bill Gates, then 19 years old, wrote an open letter to the Homebrew Computer Club in 1975 accusing members of theft.

One can expect so called digital piracy to continue. The ordinary user will have difficulties to assess if a specific content is copyright protected or not. Old and traditional content is generally not clearly labelled like for instance content created with a Creative Commons licence. The traditional media industry must be influenced to clearly mark up their content in such a way that there is no doubt which rules shall apply.

During the 1980’s and 1990’s little attention was paid to these developments outside the affected industries. Both the computer software and computer games industries were new and experienced a strong expansion compared to almost any other business sectors which probably contributed to the small amount of attention that was paid to their complaints. The next media sector to be affected was pornography, by tradition a commercial area with very little transparency about market developments, business figures, working conditions etc.

It was not until the new user activities expanded into the music field in late 1990’s that a greater public became aware of what was going on. A few years later the film industry got involved as well. Now the business models of established industries were challenged, industries with strong degrees of vertical integration between different divisions, with huge amounts of capital invested in production and distribution facilities and with tough market requirements in terms of high and stable return on investment from the capital markets.

**Lawsuits against technology**

Among the first strategies of the entertainment industries were lawsuits. Historically this is nothing new – the audio and audio-visual cassette met the same response twenty years earlier. Lawsuits were directed firstly against firms that could be related to the software technology used for the distribution of content among users, then against individual users. In parallel, information campaigns were directed to the public and heavy lobbying activities targeted national and international legislative institutions.

The main messages to the public have been that a) the sales of records, films etc are suffering due to illegal file sharing of copyright protected content, b) artists, composers and other creators are deprived due remunerations for their works and c) people working in the distribution chains such as cinemas and record stores are loosing their jobs.
Major characteristics of such information campaigns have been

1. Statistics from surveys of file sharing activities, but only referring to figures that are supporting their claims, never mentioning facts in the same surveys that support alternative or conflicting interpretations.

2. Quoting (the very few) independent scientists that support their claims, never mentioning the great number of independent scientists, research institutions (such as the OECD) drawing other conclusions.

3. Repeating simple false slogans such as “file sharing is theft” and “nobody pays for something he or she could get for free”.

The reason for using rather sloppily the term “theft” instead of the correct description “copyright infringement” is probably the ambition to induce a stronger moral aversion among the public against file sharing.

The lobbying activities are aiming at the achievement in the short run of a stiffened application of copyright infringement, and in the long run to strengthen the Intellectual Property regulations in their favour. Above all major content owners desire to hinder a shift from producer-led marketing to consumer-led marketing.

Knowledge of these realities is often very low among politicians and decision-makers. Input comes from the media and strong lobbying organisations. Very little attention is paid to non-biased reports. New knowledge is seldom sought after. As a result lobbyists get too much elbow-room.

Different reactions from other media industries

New digital technology has not only affected the classical entertainment industries. Other examples of industries that are affected are newspapers, photography and digital books. Interestingly these industries have been far keener to find new business opportunities and adapt to new user behaviour not using lawsuits than their colleagues in the traditional audio-visual industries.

IP telephony is causing the telecom operators large reductions of income. New user behaviour on the net causes the operators to abandon the old traditional copper network. Telecom operators have embraced the new technology starting to introduce IP telephony simply because it gives them a possibility to enter new markets by bundling services (“Triple Play”) in a more effective way.

The broadcasting industry is probably the next in line to experience a transformation similar to the telecom operators. Some1 of them are realising that the new technology is vital for their survival and start to experiment with customers.

The broadcasting industry is internally building up knowledge of how to exploit P2P technology to transform the distribution of content so that high-quality audio and video files and streams can be distributed at affordable costs. Broadcasters will pay less for bandwidth and will have more incentive to invest in original content.

1 BBC with the peer-to-peer experiment iMP
Effects of peer-to-peer activities on music sales

Peer-to-peer stimulates the interest of music

In contrast to the claims of the music record industries, the results from Musiclessons show that file sharing of music in the P2P networks stimulates the interest for music. Even if old favourites are most popular, many down loaders also discover new music and new artists, and many of them later buy a CD or visit a concert with this artist. It also happens frequently that down loaders buy music that they have downloaded and already listened to. Most often it happens for heavy down loaders, which once again show that file shares also are big spenders on legal music downloads.

The majority of file shares say that they buy the same amount or more music than before, but there is a minority of 10-35 percent who say that their downloading have decreased their purchases. How strong this negative effects is on music sales is however impossible to say.

For the understanding of the drivers of file sharing, i.e. what motivates users to share digitised content, as well as the effects from file sharing, it is necessary to distinguish between those whose major interest is the content – games, music, films - and those with a major interest in computers. In the first case, consumption of content is the objective with the computer as a tool, while the reverse situation holds for the second category. Here management of computers and new challenging applications are the preferred activities and content being means.

Among the computer enthusiasts a strong tendency of content accumulation is observed. High capacity hard disk drives are often filled up with different kinds of content to an extent that is far beyond the possibilities of personal consumption. An un-proportionate part of the file sharing traffic can be attributed to this category. Documented data of this kind is seldom available but informal estimates from broadband operators indicate that 10% of the file sharers generate 90% of the traffic.

For those who go for the content, two groups can be observed. The samplers use file sharing as means for filtering e.g. songs, now and then ending up buying records with favourite artists, composers or songs. Here the file sharing complements or replaces other ways of sampling, e.g. listening to the radio or borrowing records from friends. In the many surveys of file sharing of mp3 files available, a majority of the samplers say that they buy approximately the same mount of records as before, while the other part claim that they buy more records than before due to the file sharing. The file sharing allows them to discover a broader supply of music than by traditional media.

The other group are called free-riders, claiming that the file sharing have replaced – entirely or a part – of what was earlier spent on records. However, within this group it is often said that the expenditure on entertainment has not been reduced but is distributed in another way, for example more money is spent on concerts or on other media. Monthly bills for mobile phones are probably play an important role in how the younger age group use their wallets.
The music industry was too slow to meet the new demand

It is obvious from the findings that the important reductions in record sales in some countries during the early 2000’s cannot be attributed to file sharing practices. Among those who are interested in music there are three tendencies - more/unchanged/less records bought. These trends more or less balancing each other. The computer enthusiast would not in any case have bought the records in proportion to what they are storing on the hard disk. They cannot afford it, nor can they earn money on it.

Even insiders from the media industry admit the relevance of such observations. A study commissioned by the Canadian recording industry’s trade body in 2005 concluded that boredom caused by records being played over and over again on the radio was a far greater threat to music sales than file sharers’ activities.\(^2\)

The decline of music sales happened when a new compressed digital format, MP3, was introduced and no legal attractive music sites were there online to meet the demand of the young consumers. The future is then not so much in the hands of the file shares but in the hands of the music business.

Be sceptical and do not trust all statistics, especially not in times of rapid changes. And do not believe in simple causal relationships.

During the last years more and more people have got access to broadband and there has been a steady increase in the number of file shares with small dips when some individual has been charged by the content industry. At the same time the number of sold music units have also increased in USA, provided that both digital and physical units are counted.\(^3\)

Research shows that there are numerous examples how content distribution through different media channels helps these channels to mutually reinforce each other. The availability of a newspaper on the web does not reduce sales of paper issues and the borrowing of books in the library stimulates – not replaces – the sales of books.

The substitution effect is hard to find and the misgivings about the devastating effects of music file sharing have not been justified. This is a lesson that can be learned also in other business areas.

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\(^2\) Consumer Study of Radio and Music Survey Results. Canadian Recording Industry Association, February 2006

\(^3\) Recording Industry Association of America, 2006
Qualities of P2P Technology

**P2P is necessary in an “on demand” society with “no lock-ins”**

Simple capacity discussions show clearly that the peer-to-peer technology will be important and necessary in the future. The tainted reputation it has been given by the established content industry could have severe negative implications in the immediate future.

Operators report unofficially that ~80 percent of the traffic in the network comes from P2P. This type of traffic is steadily increasing and sometimes goes temporarily down when the debate on file sharing and IPR is high. ~20 percent of the traffic is client-server oriented according to the old Internet paradigm.

If we try to scale these figures on a global basis, with ubiquitous entertainment on demand as the Bangemann report primarily suggested as driver for convergence, simple calculations will show that client-server solutions will never scale. Peer-to-peer technology will be necessary.

In a peer-to-peer environment the user and the creators co-operate. The users pay for the distribution infrastructure and secure the long-term storage of content in their own servers.

But not only network capacity and users efforts are important. One application area, which probably has lost some of its value as a tool, is for example for distance learning "illegal" according to the content industry and many politicians, and also problems with knowing which rules can be used when students share copyrighted materials.

**ADSL is not a broadband technology to build on for the future**

ADSL is an old business model from mid 1980s. ADSL was invented for the telecom operators to compete with cable operators. The asymmetric communication (a lot downstream to the customer and just a little upstream) supports only the operators and not the customers. It is not only peer-to-peer networks that require symmetric network capability. Today there are many new services that requires symmetric communication which did not exist mid 1980. IP-telephony is one example. File sharing networks is another. Several of the applications mentioned earlier – photography, broadcast and video – require high upstream capacity:

Even working from home requires often high upstream capacity. Many that work from home and produce for instance large documents hesitate to upload these from home due to the time it takes. The same goes for sending e-mails with large attachments from home.

In broadband statistics it is often said that that 90+% of the customers have or can have “broadband” at home. Most of these figures relates to ADSL. For the future real symmetric broadband (~100 Mbit/s) should be supported and not ADSL.

Governments must realise that current investments in broadband based on ADSL will be obsolete and encourage new symmetric broadband technologies instead. The report i2010-A European Information Society for growth and employment proposes "A Single European Information Space" but does not recognise users needs for symmetric high bandwidth communications, which will be necessary in the future for rich and diverse content and digital services.
Structural changes from technology shifts

*Technology shifts follow logical patterns*

During its short history, information technology (earlier; electronics, computer technology) has initiated profound changes in the production and distribution of goods, services and knowledge. In the 1970’s – 1980’s the manufacturing industries were affected and during the 1980’s – 1990’s the same occurred in office work. We are now experiencing how radical changes is taking place in fields of content creation giving users new tools and roles on a global scene.

As in the previous applications of information technology, structural changes are inevitable, thereby threatening the positions of established actors but at the same time offering opportunities for new business to develop. With increased user participation and user control, the crucial innovative part of new business focus on new ways of interaction with the users and experimenting with new and better adapted business models.

This process has been described as “creative destruction” with the old structures eventually being replaced by the new ones. However, during the early stages of economic and social change, analysts often pay more attention to what is going away than what is struggling to be born. To use Schumpeter’s phrasing, it is easier to see precisely the destructive side of creative destruction, than it is to see the creative side.

*Business strategies for emerging technologies*

One of the lessons learnt from our research project is how an oligopolistic industry, that has acquired a far-reaching control of distribution and marketing channels, reacts to the emerging technology and the new patterns of consumption induced.

In a first phase legal measures are taken to impede peer-to-peer technology and associated software development. In a next step legal alternatives are offered, but to prices much higher than what would be motivated by the new technology and in the interest of the consumers. Instead the price level of mp3-songs are set to minimize a possible negative impact in the sales of traditional records, and to maximize the obstacles for new competitors to enter the market.

During the whole process there is a continuous experimenting with DRM-technologies, with the aim of exerting increased control on who is listening to the music item sold, how, when and where. Our research points in certain directions what the user will accept. We have previously mentioned the intense lobbying activities to bring about changes in the Intellectual Property regulations for the further sharpening of the legal weapon.

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Policy-makers must understand users concern regarding DRM and act accordingly. If controlling and intrusive DRM systems are accepted means of protecting content and its use, then there is an imminent risk the users will escape to more anonymous P2P networks (“darknets”).

The record industry has chosen the strategy of collective power of a conglomerate or group of related companies to achieve (unreasonable?) synergy advantages via coordinated control over rights ownership, rights exploitation (production rights), and in some cases distribution rights. This strategy stands in sharp contrast to the newspaper experience. From the very start of the Internet, the newspaper industry has been experimenting with the digital technology for new forms of distribution of their creative content and the testing of new business models. This process has not been without conflicts with the creators of the text and image content; i.e. the journalists and photographers, regarding copyright issues. But nowhere the argument is heard that “reading a newspaper on-line is theft” and that “digital piracy is killing the newspaper industry”.

When a new disruptive technology strikes on a vertically and horizontally integrated business it is evident that some pipe will burst somewhere. Finding an immediate cure can seem to be hopeless. Fighting back is one popular strategy but being adaptive and open for experiments could be far more advantageous for industry, society and innovation in the long term.

The iTunes example

Apple has showed that well-constructed dedicated download sites can very well compete with the file sharing networks. With iTunes, a user friendly way to organize all kind of digital music they have now acquired 85% of the legal digital music market in US. Of particular interest in the Apple case is the wide diversity of choice purchases reflect – the old 80/20 Top Hits/every thing else rule does no seem to be valid any longer when consumers have a greater range of choice, old and new. This will inevitably affect the business models with a few super stars sold globally that the major record companies seek to defend.

On the other hand, Apple’s iTunes experience has a downside for creators (composers and artists) – their share of what consumers pay is extremely small and the producers share correspondingly high. Whilst a large record company can retain up to 65% of the download fee, composers can end up getting less than the credit card company that handle the transaction. This could force many creators to seek other alternatives to reach an audience, via for examples solutions such as Creative Commons.

But iTunes is not without competition. When mobile telephones reach the same quality for sound reproduction it is expected that the user will prioritise the mobile telephone.

Competition comes maybe not so much from costs but from how much space there is in the users pockets for carrying around gadgets.
Policy recommendations

Europe’s content industry at a crossroads – passive support for old business models or promotion of new opportunities?

The European Commission and the member governments are now facing two alternative ways of promoting the European content industry. One way is the safeguarding of the traditional market order with passive users. They may either pay for those products and services the industry chooses to supply and accepting the conditions, or refrain from buying. With this alternative the main role of information technology should be to simplify the development of any DRM measures that guarantees the control of suppliers of the content. Expanded legal support should be offered to the content industries to defend their Intellectual Property Rights.

In the first case the media industry will decide the cultural range and limit availability through traditional channels. In the second case the cultural range will be larger through user participation. New applications and content will be stimulated as well as new distribution methods.

The other way of action is to recognize the opportunities of new user participation stemming from the advances in information technology and the new patterns of user interaction. Now the strategy of public measures should be to encourage user engagement in content development and content distribution instead of creating obstacles. These measures could be of both a technical and a regulatory nature.

We could also be witnessing a more profound change in society, with a political divide between younger generations who have grown up with the Internet and its various applications, and older generations, not least politicians, who seek to hinder the habits of millions. The possible societal and political ramifications of this need to be carefully analysed.

Who will promote all those emerging firms and industries that we still are not aware of?

The difficulties of recognizing the new opportunities, perhaps at the expense of strong business interests should not be underestimated. The established industries are well organised with many supporters, sometimes on influential political levels. The question then becomes: who will talk in favour of all those emerging firms and industries that we still are not aware of? This is probably the greatest challenge of the European Commission on this subject.

Comparing the different strategies of the newspapers industry and record industry provides a good argument to agree with the US Committee for Economic Development in a recent report on digital Intellectual Property. The Committee warns against quick legislative or regulatory solutions for the problems of digital copyright, as such measures
“...pose risks to innovation and economic growth and are likely to have unintended consequences in a period of rapid technological change,...”

Further the Committee concludes that

“We should not turn to law or regulation to protect any particular business model.”

**A new IPR regime?**

New initiatives such Creative Commons may show a way forward and ideas may be taken from the Open Source environment in computer software and applications. Consider how much copyright protected material is listed by search engines like Google and Yahoo. If a search engine shall avoid copyright protected material the server owner must specify which material not to list. The server owner seldom knows this. A Creative Commons approach could solve this – i.e. content is always accompanied with rules specifying how it may be used.

<table>
<thead>
<tr>
<th>DRM is in conflict with open content and software developed under the Creative Commons and Open Source regimes. To grant an unbiased and neutral view it is vital to understand that DRM involves social, economic, legal and technical aspects and must be solved with an interdisciplinary approach.</th>
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There is a reason to examine whether improvements in the existing Intellectual Property framework could be made, especially in the context of rapid technological change and globalisation. A recent initiative by the British Government in this context is worthwhile considering.

First, the Intellectual Property as a critical component of Europe’s present and future success in the global economy is acknowledged, especially in the creative industries. Then it is emphasized that

“The IP framework must balance the need to encourage firms and individuals to innovate and invest in new ideas and creative works with the need to ensure that markets remain competitive and that future innovation is not impeded.”

This echoes statements from the European Commission during the 1990s, when it was emphasised that IPRs must be respected, but not in such a rigorous way that the development of new business models is hampered.

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<th>The situation mid 2000: The legal regime is supporting large content owners. Technology is allowing many consumers to circumnavigate the regime. New business models reflecting new technology at odds with the legal regime. The rights of content owners must balance reasonable interests of consumers (protection versus “fair use”).</th>
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Musiclessons research raises serious questions about EU policy incompatibilities.

The overall goals of the Lisbon Agenda are very general and very clear. When they get subdivided into different areas of the various Commission directorates, the coherence starts to falter. We have identified a number of cases where speedy coordination and possible policy reappraisal is necessary.

- The Information Society directorate is keen to promote broadband, and make it an interesting proposal for investors. Peer-to-peer applications are driving broadband, and will continue to do so as they become more and more widespread.

- The legal authorities, backed up by heavy lobbying from the content industry, and directives from WIPO dating from the mid-1990s, are enforcing legislation aimed at making file-sharing illegal. The notion that a file with copyrighted material may not be down/uploaded without all the rights holders permission makes it impossible for the average user to distinguish between content which rights holders desire to be available and the opposite.

- A rigid interpretation of copyright law has put a major focus on monopoly institutions such as music copyright collection societies, but neglected the more subtle forms of market manipulation which large, vertically integrated media conglomerates can and do exercise. In September 2005, the Internal Market Directorate expressed concerns with the slow growth of the on-line music market. Their solution was not to simplify licensing systems by allowing any collecting society to become a one-stop shop in Europe. This, they wrote, could lead to a collapse of tariffs and hurt creativity. In January 2006, in response to a licensing complaint for a large broadcaster, the Competition Directorate recommended an enforced dismantling of agreements between collecting societies so that any of them could offer a 1-stop shop solution. This reflects a serious lack of policy coherence at directorate level

- The notion of cultural diversity is probably accepted as being of importance by all directorates. Cultural diversity is most prominent in the various file-sharing networks – thus the new features of legal downloading sites reflecting a far greater product range than traditional music Top 20 lists.

- The above are just a few examples of what we regard to be a serious trend, which must be speedily addressed.

A lack of coherence only benefits large predominantly non-European content owners at a time when there is a trade deficit between Europe and her trading partners regarding media products.