

The economic value of internet in cultural industries

Executive Summary – September 2012

Università Commerciale
Luigi Bocconi

ASK
**Art, Science
and Knowledge**

www.ask.unibocconi.it

Paola Dubini
Lilla Montagnani
Cinzia Parolini
Francesco Saviozzi
Aura Bertoni
Simone Autera
Alessandra Giarin
Ada Palumbi

Reading Guidelines

This Executive Summary is a synthesis of a broader report prepared by ASK Research Center at Università Bocconi on the digital evolution of content industries and on the implications for copyright legislation. The research has been financed by Google Italy.

To download the whole report (Italian version only) please visit www.ask.unibocconi.it.

The starting point: content digitization

- Progressive transition to digitization in content production, distribution and access
- Separation of content and medium
- Emergence of new content production and publication patterns (User Generated Content (UGC) and selfpublishing)
- Entry of complementary players:
 - Aggregators leveraging mainly on selfpublication and UGC and financed by advertising
 - Specialized or multifunction device manufacturers incorporating platforms and interfaces for content access
 - Carriers (TLC companies)
- Challenges for incumbents to adapt to the new competitive environment
- Lively debate on the role of copyright and of enforcement policies on value creation for different players

Goals of the research

- The research addresses the following issues:
 - How are different content industries evolving, given the spreading digitization?
 - What is the role of digital platforms in the emerging context?
 - Are digital platforms able to create markets for original creative content?
 - How can the evolution of copyright contribute to the evolution of cultural industries in the digital setting?

ASKBocconi

1. CULTURAL INDUSTRIES

The object of analysis

Cultural industries are a broad and dynamic field, whose boundaries are hard to define. To describe and quantify it, the EU suggests the following framework:

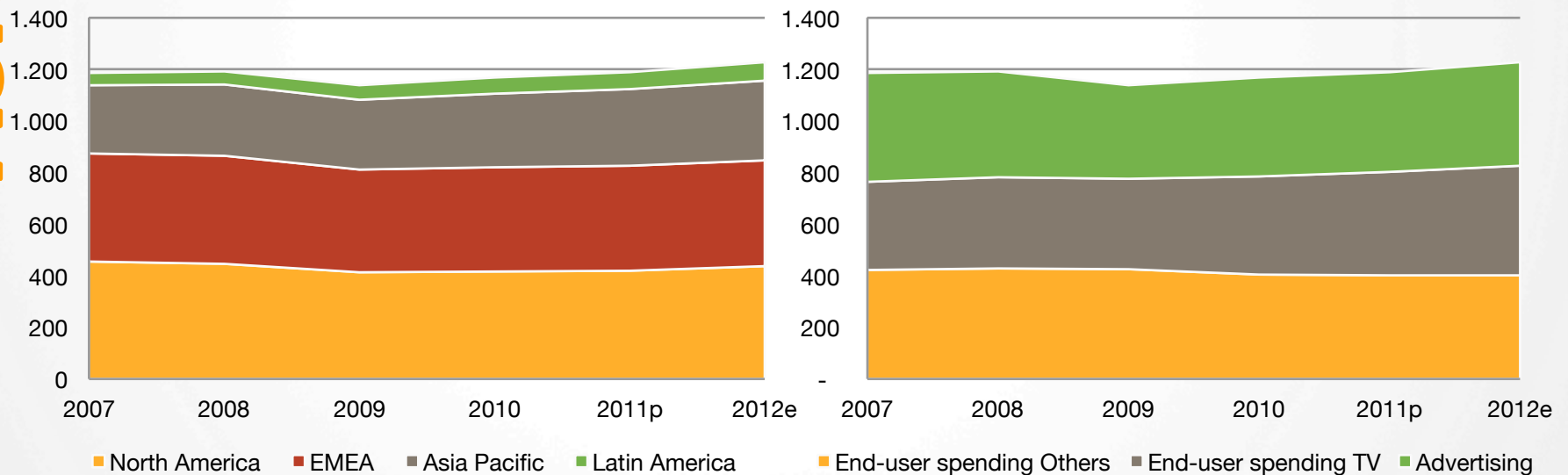
	The domain	The industries	The key actors
Cultural sector	Arts	Visual arts	Exhibitions, Galleries
		Performing arts	Opera, theater, Dance, Ballet, Festivals
	Heritage	By nature/age	Archaeological sites, Libraries, Archives, museums
		Typical productions	Crafts/ agricultural products
	Cultural industries	Film and video	Producers and distributors, different segments
		Broadcasting/radio/digital TV	
		Videogames	
Music			
Books			
	Newspapers		
Creative industries	Creative industries stricto sensu	Design	Producers and distributors, different segments
		Architecture	Design houses
		Advertising / communication	Concept, production and distribution of campaigns
	Related industries	Consumer electronics	Design, manufacturing, distribution
		ICT	Industry specific software companies, platforms,
		TLC	

ASK adaptation on *The Economy of Culture in Europe*, Jan Figel report, 2006

Cultural industries

Global trend

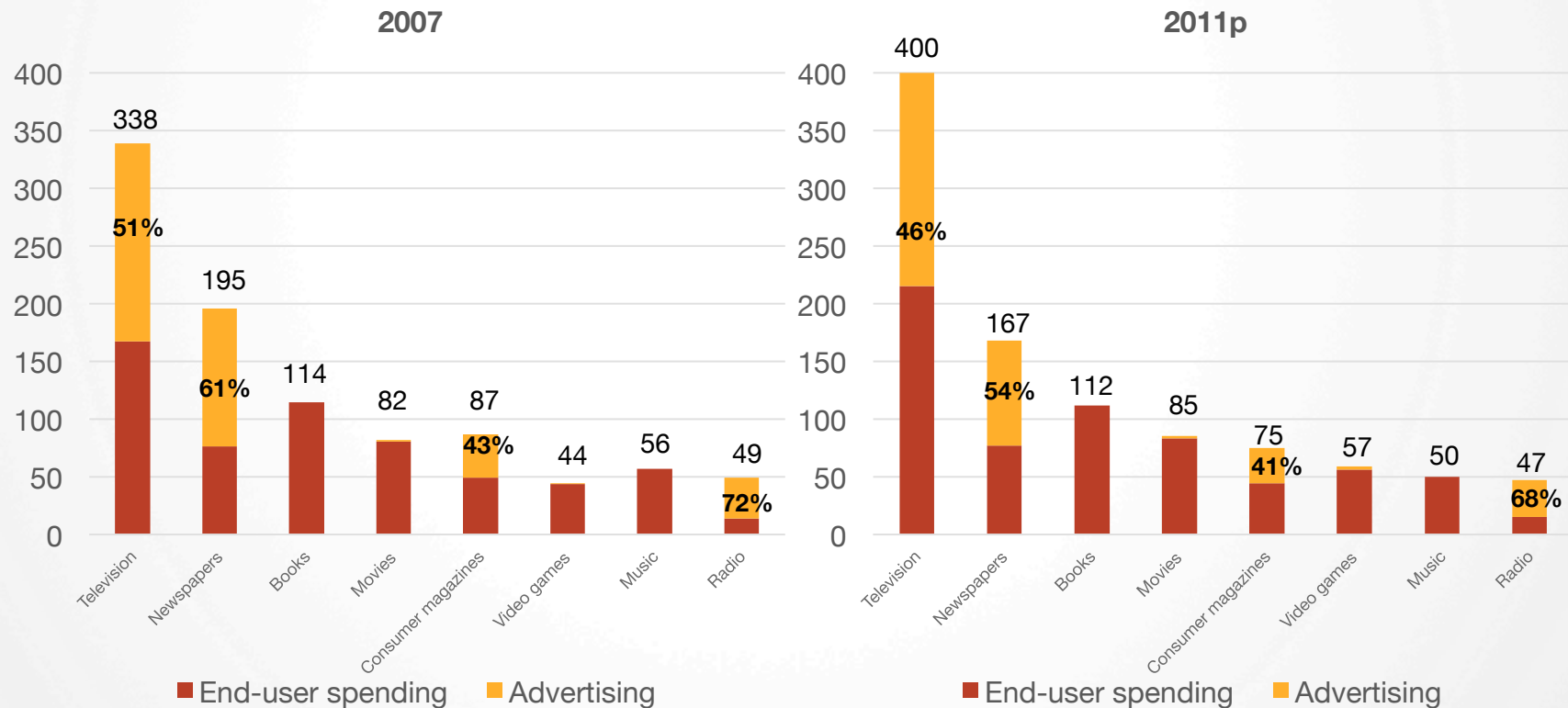
- Between 2007 and 2011:
 - The Asian (+12%) and the small Latin-American (+37%) markets are growing, while the European (-2%) and, mostly, the North-American (-8%) markets are shrinking
 - User consumption of TV increases (+18%), while consumption of other types of content (-5%) and advertising (-9%) shrinks



Overall global content industries revenues by geographic area and source. Data for 2012 are estimated. Source: Ask on PriceWaterhouseCoopers, Global Entertainment and Media Outlook, June 2012

The relationship between consumer spending and advertising

- The share of end-user spending versus advertising on total revenues changes across industries
- The industries in which advertising has the highest impact are TV, newspapers, consumer magazines and radio. In all these industries between 2007 and 2011 the incidence of advertising has decreased significantly



Total revenues of the major content industries and distribution between end user spending and advertising ind. ASK on PriceWaterhouseCoopers, Global Entertainment and Media Outlook, June 2012

The challenges in estimating the value created by cultural industries

- The presence of global digital platforms makes the quantification of the value created by content industries quite complex
- Revenues are a partial indicator of value created:
 - Cost reductions affecting price and therefore revenues reduction determine a reduction in consumer spending, but not necessarily in the value created
 - Emerging phenomena (such as self publishing) are not accounted for in statistics

The ongoing debate

- As a consequence of the structural transformations affecting all content industries, profitability and the relative strength of different players are changing
- Incumbents operating in mature markets – who have built their competitive advantage in industries defined by the traditional medium – are under pressure and experience a reduction in advertising revenues, as well as in consumer spending
- Industry transformation drives a reduction and a shift in the flow of advertising revenues. The online advertising market is heavily concentrated at the global level
- Increasing content crossmediality leads to the generation of new business opportunities beyond the traditional industry boundaries
- The opening of digital markets determines the emergence of new market segments that are hard to quantify (for instance self publication)
- In certain industries, incumbents blame the unauthorized distribution of content for the reduction in demand. Nevertheless, its impact is still hard to quantify. More specifically, right holders criticize the ineffectiveness of existing means to enforce online copyright

The role of copyright

Technically, norms on copyright:

- Are at the core of the development of cultural industries, as they represent an incentive to original content creation and its rewarding system
- Regulate the circulation of creative content
- Allow balancing between content protection and content accessibility

With regard to competitive dynamics, norms on copyright have an influence on:

- The roles and the economic sustainability of the different players inside the industry value system
- The framework of competitive interaction between incumbents and newcomers
- The sustainability of business models associated with content production and distribution

Our hypotheses

- Content digitization in production and distribution processes is a structural irreversible and growing phenomenon, albeit with different effects across industries
- Cultural industries transformation as an effect of digitization determines a radical change in cost structures and in the redistribution of value across industry (and non-industry) players
- The increase and growth of legal digital offering of content is a critical prerequisite for the growth of content industries
- Digital platforms may define markets for the emergence of new content streams with a potential commercial success; therefore they may be considered as:
 - Scouts for content industries
 - Promotion and distribution channels for content
 - “Entrepreneurial gyms” for new content producers
 - Fundraisers for financing new titles/productions
- The broadening of legal digital content calls for a reform of the copyright regime, in addition to online copyright enforcement

Methodology

The research has been carried out by analyzing:

- The evolution of the impact of digitization on a selection of cultural industries (Music, Book Publishing, Videogames, Video and TV content, Newspapers).
- The economic role of two digital platforms (Youtube and Kickstarter) offering innovative ways to distribute, select and finance new creative content
- The current norms regulating the responsibility of internet intermediaries and the proposals regarding copyright enforcement and the gatekeeping role of intermediaries
- Current projects to modernize copyright, aiming at the development of the digital economy of content and considering the nurturing role of internet intermediaries for creativity

ASKBocconi

2. THE EVOLUTION OF CULTURAL INDUSTRIES

The music industry

- The music industry has suffered from digitization and has experienced a significant reduction in global sales in recent years, both in leading and in lagging countries from the point of view of sales in digital format. Evidence from the US in 2011 shows a growth in sales volumes for the first time
- The distribution of non authorized copies has always been very relevant in this industry and the phenomenon has increased with the format shift. Fight against piracy alone, though, is not effective in contrasting customer behavior in the long run, and is not sufficient to recover lost revenues, unless a legal digital offering and new business models are developed concurrently
- Unauthorized copies are only one of the causes of the loss of revenues by the industry. Another reason is the diffusion of single tracks as opposed to albums as the typical music purchasing unit. Markets like the US, that have based the development of a digital market on single tracks, have witnessed a stronger drop in revenues than markets pushing streaming/subscription-based services, such as Sweden
- The shift from ownership to access via streaming (as in the case of Spotify) sets the basis for a strengthening of legal digital offerings and it allows for a partial recoup of lost revenues; at the same time though, streaming services put a pressure on content prices.
- Digitization processes also allow for a significant growth in the opportunities of creative expression and in the direct access to markets for artists

The Book Publishing Industry

- The main segments in the industry (trade and schoolbooks) have been affected by digitization in recent years. Data on the sales of ebooks show a significant growth in the US and UK and in other countries
- Contrary to the music industry, book industry does not seem to show a dramatic increase in the number of unauthorized copies, also because in this case the development of a legal digital offering for content has anticipated and not followed demand for digital content.
- The shift to digital content challenges traditional business models because:
 - It makes self-publishing and publishers' disintermediation feasible and increasingly meaningful
 - Radically changes publishers' bargaining power towards distribution. Distribution in turn shifts from local and fragmented to global and concentrated
 - It is more difficult for publishers to control price levels
- Up until now, publishers, even in more developed markets, have digitized paper books, without modifying their structure. The so called «enhanced e-books» still represent a marginal share of the market. Publishers are currently defining multimedia and multiplatform offerings and developing their own selfpublishing platforms
- Product innovation is critical to contrast the growing competition from the other cultural industries for consumers' attention
- The ongoing transformation makes the publication of titles with even very small potential markets economically more convenient. Also, it is possible to sustainably keep a title inside the catalog for a significantly longer time span than in the past
- The existence of global distributors and the possibility to publish in digital format allows publishers to directly manage their authors across multiple markets

The videogame industry

- Unlike other content industries, videogames were “born digital”, even though the industry is still strongly dependent on the physical distribution of DVDs at a local level. Digitization of access and distribution has been less traumatic than in other industries
- The emergence of new digital platforms (iOS, Andoroid, among others) leads to the development of new creativity and new start ups, to the diversification of offering and business models associated with the “casual gaming” market segment. The sustainability of emergent players has yet to be demonstrated (see Zynga)
- Incumbents (publishers and device manufacturers) are facing the issues of being competitive in new offering segments such as casual gaming and of redefining their role in the context of the current industry transformation
- Digital distribution could be utilized by publishers and traditional platforms to capture the value generated by the specialized physical distribution channels
- Given the key role played by physical retailers in guiding platform adoption and customers’ loyalty to physical stores, the transition to digital distribution will hardly be smooth

Video and TV

- Internet may develop in parallel with TV and the two media are not mutually exclusive at the moment; while the offering of digital content online is growing, TV consumption grows in all countries analyzed. The Internet advertising market is growing steadily, but not at the expenses of the TV advertising market
- New digital players emerge, aggregating, managing and distributing paid content (ex. Netflix, Amazon) or exploiting both online advertising and UGC (ex. YouTube, DailyMotion, Vimeo)
- Some incumbents have developed joint platforms formed by a diversified set of payers to share investments and to offer a broad and accessible digital offering to end users (ex. Youview in Great Britain)
- The evolution of content offering depends on a lively competitive interaction between incumbents and newcomers, stimulating innovation processes and the creation of new business models
- The existence of an accessible market for rights is crucial for the development of a legal digital offer. The role of exclusive rights transactions is particularly critical and may limit emerging players in developing a complete and attractive offering

Newspapers

- Journalism is benefitting from internet induced phenomena: democratization of news production and access, active participation, immediate news circulation. Many start ups are emerging as a consequence of these forces
- Some traditional newspapers have been able to benefit from the multiplication of sources of information to strengthen their reputation and their brand
- The possibility to access news in mobility several times per day changes the relationship between users and news, and calls for a redefinition of offering
- Newspaper are trying to collaborate with institutions and citizens, and increasing their ability to cover events, check facts, investigate news
- These social changes induced by the web have a strong economic impact, negative (loss of revenues) but also positive (new comers, cost reduction for incumbents)
- Given the growth in information wealth, it is difficult for incumbents and newcomers to identify viable business models, due to limited digital advertising revenues and the increase in competition for users' attention and advertising
- The main digital platforms operate on a global scale, while the traditional business models still maintain a local focus

	Music	Book publishing	Videogames	Video and TV contents	Newspapers
Market trends	<ul style="list-style-type: none"> • Overall turnover reduction • Advanced stage of digitization 	<ul style="list-style-type: none"> • Stable turnover • Initial stage of digitization 	<ul style="list-style-type: none"> • Increasing turnover • A market born digital, but in transformation 	<ul style="list-style-type: none"> • Stable turnover • Initial stage of digitization (variable according to local contexts) 	<ul style="list-style-type: none"> • Substantial reduction of turnover (advertising market) • Advanced stage of digitization and industry transformation
Strategic challenges	<ul style="list-style-type: none"> • Definition of new business and offering models (access vs ownership) • Partnerships with complementary players (device, platforms) • Balanced management of unauthorized contents distribution • Management of product unbundling • Management of new music discovery processes 	<ul style="list-style-type: none"> • The role of e-tailers in value creation and distribution • Disintermediation threats by authors • Competition with other media for users attention • Cost management during transition to digital formats (for incumbents) • Management of the reduction of artificial scarcity 	<ul style="list-style-type: none"> • New platform wave (casual gaming) • Integration of different gaming segments (hardcore games vs casual games) inside the same offering with completely different competition and pricing models 	<ul style="list-style-type: none"> • Interaction between incumbents and newcomers • New consumption and interaction models • Rights market openness • Broadband connection and device penetration • Management of time windows • Management of content life cycle • Sunk costs related to traditional transmission infrastructures • Partnership management 	<ul style="list-style-type: none"> • Maintaining legitimization and reputation of the newspapers • Identifying market spaces for differentiation and specialization • Multiplication of competitive frontlines • Cost management in the transition from analog to digital formats (incumbent)
Opportunities from digitization	<ul style="list-style-type: none"> • New full-digital markets • Author management at the international level 	<ul style="list-style-type: none"> • Product enrichment • Author management at the international level 	<ul style="list-style-type: none"> • Transition to digital distribution (incumbent) 	<ul style="list-style-type: none"> • New market segments for online subscription 	<ul style="list-style-type: none"> • International brand strategies

ASKBocconi

3. DIGITAL PLATFORMS AND NEW CREATIVE PROJECTS

Digital platforms and the development of creative projects

- There are several types of digital platforms
 - Publication/content sharing: YouTube, Flickr
 - Fundraising: Kickstarter, Indiegogo
 - Communication/community: Facebook, Twitter
 - E-commerce: Amazon, iTunes
- Although different platforms have their own specificities, they are all characterized by mutual contamination. For instance, YouTube and Amazon include community management, while Facebook can be used as a distribution channel (for games, gadgets or so)
- Digital platforms show interesting opportunities for creative projects. In this part of the research we have focused on two types of platforms: publication/content sharing (YouTube) and crowdfunding (Kickstarter)

Digital platforms for publication/sharing

Digital platforms for sharing content play four key roles:

- Publication platform
- Promotion channel for authors and titles
- Access to a huge amount of indexed content
- Market and promotion for UGC content

Via a series of algorithms, platforms:

- Centralize and index content tagged by uploaders
- Segment users by watched content and suggest extra content
- Build hit parades based on number of clicks, allowing the emergence and identification of most viewed content
- Categorize content based on tags, therefore organizing and filtering content
- Create communities around segmented content
- Reward uploaders even with micropayments

In some instances, the same platform may play several roles

Mingling branded and UGC

- Given their technological characteristics, platforms allow the mobilization and organization of a market for UGC, at the same time protecting right holders using platforms to promote branded content
- In order to analyze the contribution of digital platform to the emergence and the creation of a market for original UGC, content has been categorized as:
 - *Branded*: content professionally produced within content industries
 - *User generated*: non professional content. UGC may be classified as a function of the level of originality:
 - Original (new content characterized by originality and creativity)
 - Derivative (content reinterprets characters, narrations, themes, formats from successful branded or other UGC content)
 - Reality (content deals with news or everyday personal life)

An explorative research: YouTube

- **Unit of analysis:** the top 100 viewed videos for each month of 2011 among those uploaded each month, still available on the platform in July 2012
- Two categories considered:
 - Do-it-yourself (DIY): video-tutorials on different topics (make-up, fashion, cooking etc.)
 - Music

The choice of categories is related to the hypothesis that UGC videos are unevenly distributed across categories. This means that platforms may play a different role as a function of the category considered.

- Overall the sample consists of 1.779 videos
- Each video has been classified in terms of:
 - Number of views in the month in which they were uploaded
 - Number of views in July 2012
 - Length of video
 - Nature of content uploaded (*branded or user generated content*)

Results from the analysis on Youtube

- Extremely rich and diversified offering of content with a very short life cycle
- High competition for attention with an impact on content selection and on the interplay between economic players
- More than the half of the most viewed content is original UGC, with big differences across categories (over 80% in DIY, 12% in music)
- The role of YouTube differs as a function of type of uploader:
 - *Producers of branded content*: self promotion and distribution platform, allowing for revenue sharing and routing to other platforms (social networks, traditional distribution channels). YouTube enables promotion or new authors/content, management of specific authors/ management of backlist
 - *Uploaders of UGC*: “gym” for the diffusion of new content in a hypercompetitive environment, characterized by the concurrent presence of already visible branded content. Creating visibility for original UGC requires that authors develop editorial and marketing capabilities, innovative and engaging formats, exploit seriality, and invest in customer relationship
- A growing number of producers of UGC who achieved success within YouTube are recruited by incumbents and produce content also for traditional platforms (i.e. Clio Makeup) or develop ex novo multiplatform strategies (i.e. Giallo Zafferano)

Crowdfunding

- Crowdfunding: the informal soliciting of funding, typically online, by groups of people for social, personal, business or entertainment purposes” (Spellman 2008)
- Crowdfunding is increasingly used as a source of fundraising by producers, artists, performers to bypass publishers. Financing is normally obtained by crowds and not by professional investors to receive donations or contributions in exchange of goods and services
- One of the principles of crowdfunding is the appreciation by individuals and groups of creative projects and the support by a high number of micro funders. The contribution of each funder is limited and usually free. Crowdfunding typically consists of an exchange:
 - The author gives a “perk”, ranging from a credit for the project, a sample, to the access to the project backstage
 - Fans play the role of angel investors; in the vast majority of cases, the financing consists of a donation, while in some cases fans become partners of the project and share the entrepreneurial risk associated with the venture

Kickstarter

- Kickstarter opened in 2009. In 2010 it gathered 28 million US\$ and in 2012 aims for 150 million US\$
- Up until 2011, the categories Film & Video and Music were by far the most relevant both in terms of donations and of number of projects financed
- The average size of projects is maximum in the categories Technology e Design, which became more relevant during 2012. In these two categories it is easier for proponents to offer rewards such as copies of the product and this makes it easier to obtain a financing
- Kickstarter hosts projects by professionals and amateurs. Up until July 2011, 85% of projects gathered less than 10.000 US\$. This is considered an indicator of the high incidence of amateurs and startupper
- In 2011 Kickstarter declared over one million donors. Most donations are minimal, although there are thousands of donations over 1.000 US\$ and hundreds higher than 5.000 US\$. In 2011, 16% of donors had backed more than one project. This may be an indicator that sponsors of cultural projects may be starting to use Kickstarter as a scouting platform for new ideas

Crowdfunding. Main conclusions

- Crowdfunding platforms have a high potential for the growth and development of new projects in creative industries and represent an alternative to publishers and producers to finance new creative ideas
- Crowdfunding offers a higher artistic freedom to artists and more options on how to distribute content. It sets the basis for an early revenue stream and for a higher percentage of revenues than in traditional industries
- Moreover, crowdfunding platforms increase the potential market of donors
- Funding schemes in crowdfunding represent an innovation for initial marketing activities for creative projects. Promotion for the artist and her creation takes place earlier than the launch of content and gives to funder/ customers a sense of expectation and early involvement. Double Fire (a videogame company which gathered 3 million US\$ on Kickstarter) promised a continuous update on the game development to its supporters and offered the possibility to take part via streaming and online video to the actual execution of the project

ASKBocconi

4. COPYRIGHT PROTECTION FOR ONLINE WORKS

ASK Bocconi

4.1 FROM COPYRIGHT ENFORCEMENT ONLINE ...

Copyright protection for works online and the role of intermediaries (1)

- Online protection for copyright works is the result of a difficult balance among diverse and somehow conflicting interests. More precisely, special consideration should be given to the following elements, together with their impact on the protection of digital content:
 - Digital works can easily circulate in the online environment, both as such and in the many products they can be incorporated in
 - Traditional copyright law is not adequate for online distribution of digital content. This not only makes hard its enforcement on the web but it also impedes the exploitation of the web potential
 - The daily evolution and transformation of online business models require to align a legal framework conceived for the offline realm to the emerging technical and market changes
- The above elements require:
 - On the one hand, to re-balance the public interest to protect fundamental rights and the private interests to protect copyright
 - On the other hand, to protect copyright without impeding the entrepreneurial innovation that can flourish on and via the Internet

Copyright protection for works online and the role of intermediaries (2)

- In this context, it becomes vital to define a regulatory framework where national legislations comply with the standards emerging from the international fora, but which are also consistent with the purposes of the information society at large. In sum, this legal framework should enable those activities typical of the online environment, thereby facilitating creativity while fulfilling the needs of all the involved parties. The prevailing confusion around rights and responsibilities on the Internet poses obstacles to the emergence of new forms of creativity and entrepreneurial ventures
- The current legal framework is not adequate to the needs and activities carried out by the many involved parties, among which online intermediaries are crucial as they intermediate both lawful and unlawful Internet activities.
- More precisely, this legal framework is the result, on the one hand, of the need to shield intermediaries from liabilities for unlawful activities occurring online (via the so-called safe harbors), and, on the other hand, of the right holders' attempt to limit the scope of such safe harbors when they cannot enforce their rights directly against infringing users.

The current liability regimes: USA v UE

USA and the vertical approach

- The 1996 *Communications and Decency Act* introduces a general safe harbour for Internet intermediaries
- The 1998 *Digital Millennium Copyright Act* (DMCA) introduces a specific safe harbour for copyright infringement by requiring the adoption of a “notice & take down” procedure, by which the intermediary who is aware of the presence of infringing material or knows any fact or circumstance that would make infringing material apparent, must expeditiously remove the allegedly copyright infringing material

UE and the horizontal approach

- Directive 2000/31/EC on electronic commerce introduces a regime of limited liability for online intermediaries.
- In particular,
 - art 14 introduces the obligation to remove digital material for the intermediary who has actual knowledge of the unlawful source
 - art 15 asserts that Member States shall not impose a general obligation of monitoring the information that Internet intermediaries transmit or store nor a general obligation to actively seek facts or circumstances indicating illegal activity

Internet Intermediaries and the non authorized distribution of copyright content: the remedies currently available (1)

- The scenario of practicable remedies – as well as those under study – that can be used to limit unauthorized distribution of copyright works in the web is characterized, on the one hand, by the increasing involvement of online intermediaries in the removal and prevention activities, and, on the other hand, by the escalating invasion of the users' private sphere. Specifically, the following are the remedies currently available:
- Notice & notice (N&N). Today, the self-regulation mechanism known as N&N is applicable law after Bill C-11 has been passed to reform Canadian copyright law. In case of allegedly infringing material, this remedy implies a notice dispatch from the right holder to concerned intermediaries, that will forward it to the user. It is considered a successful remedy since minimally invasive and significantly deterrent.
- Notice & take down (N&TD). N&TD is a well-described procedure introduced under section 512 of the DMCA. Distinctively, such mechanism provides users the opportunity to affirm their rights filing a counter-notice. On the contrary, in other jurisdictions where N&TD-alike mechanisms have been introduced, such a warranty is rarely offered to Internet users.

Internet Intermediaries and the non authorized distribution of copyright content: the remedies currently available (2)

- Notice & disconnect (N&D). N&D has been adopted in France and is the typical example of “graduated response”, i.e. that category of measures that provide for the disconnection from Internet access after three strikes. In particular, once a user has received a notice, he is required to suspend the allegedly unlawful behaviour so not to encounter in the sanction. The other EU Member States have decided to renounce to such a remedy not only for the strong debate that followed its adoption in France but, rather, for the introduction, within the European electronic communication framework, of the so-called “Internet freedom clause”. This clause maintains that Member States shall not violate the rights and fundamental freedom of the Charter of Fundamental Rights of the European Union when permitting right holders to enforce intellectual property rights, that is, in a way that affect final uses in terms of access or use of electronic communication services.
- Blocking of websites that host copyright material without authorization. It is the remedy that has been endorsed by Turkey since 2004 and, later on, by Spain (ley Sinde of 2011), while its adoption has been suspended in Italy and rejected in the US (SOPA). Besides the violation of fundamental rights that such a remedy may entail, it is not even effective for limiting unauthorized distribution of copyright works because of the decentralized nature of the Internet and the sophisticated tools nowadays available.

Internet Intermediaries and the non authorized distribution of copyright content: the remedies currently available (3)

- Filtering. This remedy compels intermediaries to adopt devices for monitoring transient electronic communications in order to prevent unauthorized distribution of copyright works. Although right holders pushed for such duty to be adopted, the European Court of Justice held that filtering obligations are not only against the balance between copyright protection and the principle of Internet intermediaries' neutrality set by the E-commerce Directive, but also violate fundamental rights of the European citizens encompassed in the Charter of Fundamental Rights of the European Union.
- Lastly, right holders have started requiring, besides the strengthening of Internet intermediaries' liability, further measures to be implemented and that would specifically address search engines, online payment systems, and web marketing agencies. For instance, it has been requested to search engines to display results considering the linking to unlawful material as penalizing element as well as to include measures to block financial transition towards websites involved in the distribution of unlawful materials.

The failure of the remedies currently available for copyright enforcement online

- The remedies above mentioned perform the function of consigning Internet intermediaries the role of “gatekeeper” of the Web. This does not only raise costs for entrepreneurial activities and initiatives, but it also leave unsatisfied all online stakeholders. In particular:
 - Cultural industries enterprises and majors keep seeking enforcement solutions that are quickly overcome by the technological progress inner to the nature of the Web
 - Emergent professional authors run the risk of reduction of entrepreneurial opportunities by the growth of barriers limiting access to content online
 - User-creators, further limited in the access to content, have fewer chances to contribute to cultural development
 - Final users, in turn limited in accessing knowledge online, are not satisfied from the legal offer of content online both qualitatively and quantitatively

ASK Bocconi

4.2 ... TO THE MODERNIZATION OF COPYRIGHT LAW

From the enforcement of copyright on the Web to the alignment of copyright to the Web

- Given that digital technology and the Internet have profoundly modified the dynamics of creation and distribution of copyright works, that current copyright regimes are unlikely to enable the exploitation of all the potential generated by such changes, and that this is against all involved stakeholders' interest, a change of perspective is due when facing the issue of unauthorized circulation of protected works
- It is necessary to integrate within the traditional debate on the remedies for online copyright enforcement the arguments that highlight the potential role of nurturer of Internet intermediaries, and to focus on those provisions that are at the core of cultural industries, i.e. copyright law, so to adapt them to the ongoing market and technological changes
- Indeed, copyright performs a significant role since, by touching upon fundamental rights such as freedom of expression, it is crucial at social and economy level. It derives that an adequate legal framework is a pre-requisite for productivity and, hence, economic, social and cultural growth

The Way Forward: Copyright Modernization (1)

- Accordingly, the call for “modernizing copyright” does not simply refer to a propitious chance to be taken, but rather to the concrete need for a fair balance that all the interests involved in the online activities convey. In order to build a fully-fledged digital economy, as well as a complete digital single market within the EU, fundamental principles come into play and their concurrent accomplishment entails an overall equilibrium in which copyright law should act as a means to the end of economic, social and cultural enhancement.
- At the moment, the need for modernizing copyright law has been explicitly manifested in:
 - Canada, where Bill C-11 was adopted
 - United Kingdom, where a plan to reform national copyright law has been launched by the Government after, and in the light of, the recommendations expressed within the Hargreaves review
- All in all, any plan to “modernize” copyright law should consider the role of Internet intermediaries by clearly defining the actual content of those safe harbors given to them, and, most of all, by setting a legal framework in which the critical intermediation function performed by online service providers is rightly promoted. As a result, Internet intermediaries might become proper “engines” of those activities operated on the web, and they would even develop into nurturers of online creativity.

The Way Forward: Copyright Modernization (2)

- The modernization of copyright implies its transformation from a protection tool for digital works to an incentive tool for online creativity, and it requires:
 - To make a distinction between exclusive rights (legal concept pertaining to traditional copyright law) and rights to fair remuneration for the use by third parties (emerging practice in the web). Whereas, in the offline sphere, copyright exclusivity did not raise such harsh troubles, in the online environment it comes to represent a lost opportunity since impeding an appropriate supply of creative works for demand's expectations
 - To build a system of exceptions and limitations to copyright for assuring to creative works such essential levels of dissemination that are necessary to develop further creations and to ensure the enjoyment of the fundamental right to culture
 - To adapt licensing practices to digital technology since it has enabled an extraordinary increase in the number of creators, ways of creation and fruition.

Copyright Exceptions and “Fair Uses” in Modernisation Schemes

- Yet, while copyright has a pivotal role in the performance of cultural industries, it must be considered in its entirety. The significance of copyright law resides in the exclusive rights that it provides as well as in the exceptions to the rights that it confers. Exceptions permit uses whose importance outweigh the interest in enforcing copyright, even in terms of economic growth (as demonstrated by the report “Fair Use In The U.S”)
- The same nature of the Internet assigns increased economic impact to copyright exceptions therefore any project of modernisation should include a specific chapter on this subject and should consider its relevance for reinforcing the digital economy (and the digital single market in Europe) and to concretely contribute to cultural, and economic, development.

Canada: from fair dealing to a generally broad approach to exceptions:

- “Expanded Educational Exceptions”
- “mash-up” exception
- format and time-shifting exceptions

UK: expanded list of permitted acts by *fair dealing* by means of the

- private copy and format-shifting exceptions
- exception for research for non-commercial purposes (data mining)
- parody and pastiche exception
- exception to libraries for storage activities

The Distribution of Copyright Works in the Digital Environment: Which Role for Licensing? (1)

- While digital technologies enable information to freely flow on the web, such potential is drastically reduced by traditional copyright rules when requiring prior consent of the right holders for the distribution and use by third parties of copyright works (self-explaining examples are derivative works and mash-ups)
- As rights clearance is particularly cumbersome for users, eventually they share copyright works without prior authorisation by the owners, making the distribution of these works illegal.
- As a matter of fact, both promising licensors (i.e. right holders) and licensee miss, respectively, sources of income and successful business initiatives based on copyright works distribution. This is reflected in the frustrating search for a match point between demand and supply of digital contents and in the following consumers' defeat about accessing to copyright works.
- Even so, various efforts to remove the cause, and not just the symptoms, of this regrettable situation are emerging in these years. Indeed, they are striving to sort out the severe obstacles to authorisation instead of focusing on the unauthorised access to and use of digital copyright works.

The Distribution of Copyright Works in the Digital Environment: Which Role for Licensing? (2)

- In particular, the Hargreaves Report has envisaged an automated e-commerce website or network of websites which allows licensors to set out the rights they wish to license and allows licensees to acquire those rights from the licensors (*Digital Copyright Exchange*).
- Furthermore, there have been attempts to apply the Extended Collective Licenses (ECLs) model beyond the Nordic countries' borders. ECL rules enable agreements made by right holders' organisations which represent a "substantial amount of right holders" to incorporate also right holders who are not members of these organisations. Upon refitting, ECLs embody a possible solution in the fields of digitalisation projects and for the problems associated with orphan works.
- Finally, on 11 July 2012, the European Commission has proposed a directive on collective management of copyright including measures to modernise collecting societies in order to facilitate multi-territorial and multi-repertoire licensing in the EU.

5. CONCLUDING REMARKS

Key results on industries dynamics

Changes in boundaries, key players, offering

- Traditional and digital content value systems are increasingly interconnected. Multifunctional devices and crossmedia e-tailers together with the qualitative and quantitative increase in supply increase intermedia competition for customers attention and advertising
- Digitization and digital intermediaries force a structural transformation inside industries, but not necessarily a substitution between traditional players and newcomers
- With different speed and intensity, offerings are evolving
 - Consumers enjoy a wider choice in terms of variety, access opportunities, availability of free and paid content pricing schemes, with big differences across geographic areas. Opportunities for personalization and offering segmentation increase
 - Information asymmetries and barriers associated with artificial scarcity and time windows in content distribution decrease and are increasingly less tolerated by customers. Limitations in the digital legal offering may lead to opportunistic behaviors in non authorized use and access to content
 - The end user is more involved in offering segmentation, signaling, tagging, content production, selection and funding
- Incumbent-new comers-intermediaries dynamics change across industries and across countries and show different patterns and speed of change

Key results on industries dynamics

Impact of digitization on revenues, costs and margins

- Production and distribution costs progressively reduce, as some activities are bypassed or become less relevant in the value creation processes
- Revenues may reduce because:
 - Pricing models change (i.e. singles are sold instead of albums)
 - Pressures on prices increase (vendors of hardware and software reduce the price of software to stimulate sales of hardware)
 - Customers expect prices to decrease as a function of the reduction of marginal costs
 - There are not yet relevant effects in terms of demand elasticity in consumption per customer as a function of price decrease
- The reduction in prices and costs may translate into a reduction of margins for incumbents; during the digital transition they have to manage simultaneously two markets: a traditional one - subject to economies of scale and therefore under pressure due to the reduction of volumes/ revenues - and a digital one, which requires dedicated investments.
- In many cases no dominating standards exist for digital channels and formats, thus forcing incumbents to invest to innovate and to experiment new business models

Key results on industries dynamics

Incumbents, pure players, users and authors

- Pure digital players and aggregators have very different business models, cost and revenue structures if compared to incumbent:
 - Relevance of a digital platform characterized by extreme standardization of processes and based on technical algorithms for content provision
 - Active participation of users to value creation: users contribute to the quality of offering
 - Extremely high critical mass to absorb fixed cost and therefore global scope
- These actors in many cases put in place new offerings (YouTube for videos, social media for videogames, Amazon for selfpublished books) that might compete with traditional players
- Pure players and digital platforms, together with a more active role of users and new opportunities for authors, challenge the traditional roles of publishers. In this process of role and boundaries redefinition, publishers are still responsible for content organization and certification
- Incumbents need to develop a different relationship with their customers, based on a higher involvement and service orientation, as the offering turns from product to service
- At the same time, traditional publishers can exploit digital platforms as complementary distribution and promotion channels for their authors and their content

Key results on industries dynamics

Growth and innovation

- Growth opportunities for content markets are predominantly linked to the possibility to widen legal markets for content consumption and a regeneration of advertising markets
- As supply and distribution channels increase drastically, artificial scarcity and regulation don't seem to be the appropriate solution; rather, wider competition should act as a driver for business model innovation by each industry player
- Strategic initiative in the development of new entrepreneurial opportunities in the digital context may be developed by incumbents (such as BBC for TV in the UK) or by newcomers (such as Netflix in the home video segment) or by digital distribution platforms (such as Amazon)
- Growth may be associated with:
 - The ability to develop new business models
 - The possibility to offer access to content and not (only) ownership
 - The diffusion of devices and broadband

Key results on industries dynamics

The editorial roles

Notwithstanding inter industries differences, publishers play different roles:

- Scouting
- Content selection
- Content aggregation (book titles, TV channels, mix of articles in a newspaper..)
- Financing of production and promotion and related entrepreneurial risk
- Support in product development (editing, fact checking, indexing, composition, postproduction and so on)
- Certification of date of publication and of content integrity
- Supply chain management of physical product (production, logistics and distribution)
- Titles and authors' promotion via a consolidated network of relationships (TV, radio, specialized journalists, opinion leaders and so on)
- Rights management (device, geographic markets, time windows)

Digital platforms and the emergence of creative contents

- Digital technologies and the Internet have determined a proliferation of actors and content available:
 - Search engines have introduced an alternative, algorithm-based mean of content aggregation
 - Social networks and sharing platforms allow:
 - The emergence of new content/authors
 - The transfer to users of some of the activities related to content management (tagging, indexing, assessment, comments and so on)
 - Promotion of titles, also with viral marketing techniques
 - Crowdfunding initiatives enable the crowd to finance new titles. The risk of failure is managed by diluting the risk among several actors and not via a single actor (the publisher) who manages several titles
- Dematerialization significantly reduces the relevance of supply chain management activities
- These changes increase the attractiveness of selfpublication and the emergence of original content validated by the interaction of a huge number of users
- Rights management and the definition of specific roles associated to specific players become more complex.

Copyright for digital content

- The current regulatory framework is unsatisfactory
 - For incumbents, protesting for the inability to stop unauthorised circulation of copyrighted material
 - For emerging professional content creators, who are insufficiently protected in the digital world
 - For users-creators, to whom digital technologies offer new opportunities for content development, in a complex and uncertain environment
 - For users-consumers, who do not find adequate changes in the legal digital offering of creative content
 - For internet service providers, whose activities are increasingly limited by a growing number of requests to cooperate in preventing unauthorised circulation of protected content
- In the last years, new initiatives have emerged aiming at removing the causes of this situation, instead of focusing on unauthorised circulation of titles.

Right holders and internet intermediaries

- In the attempt to reduce unauthorized circulation of copyrighted material on the web, right holders have first tried to hold responsible those who are not authorized to distribute content. As it is difficult to identify them, they then hold responsible internet service providers
- In addition to this, right holders are also addressing specifically search engines, online payment systems and web marketing agencies
- Tools for copyright enforcement are designed to give internet intermediaries a mere role of gatekeeper on the web
- One alternative option is to give them the role of nurturers and to develop a legal framework favoring content circulation (both copyrighted and new original content)

A legal framework for value creation

- In order to open up the legal market for digital content, the regulatory framework is fundamental in providing efficient and clear norms for all players involved
- If the development of a legal digital market for copyrighted content is considered a priority, then the regulatory framework should aim at:
 - Clearly defining the boundaries of action for intermediaries, assigning them a role of creativity nurturers instead of mere web gatekeepers
 - Encouraging right holders to include third parties in the use of copyrighted materials, allowing the emergence of new models for content creation, distribution and selection
 - Fostering circulation and the emergence of derivative products as an incentive for new titles creation, via a careful definition of exceptions for non competitive uses of content

Università Commerciale
Luigi Bocconi

ASK
**Art, Science
and Knowledge**

www.ask.unibocconi.it