

Music Labels and Digital Competitors

Tracing the Great Rollercoaster
of the Last 20 Years*

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Abstract

This paper examines the tense relationships between the large music labels and the emerging digital companies. Looking back at the anti-digitization feelings in the music industry of the last twenty years, it proposes a radically different picture than what those sentiments feared. It argues that the collapse of global music revenues between 2001 and 2014 reflects the “excessive” expenses imposed on many consumers by the rigid format of CDs—too many songs or too high quality for every day listening for the taste of many consumers who then started to look at alternatives to CDs. The paper relates this evolution to the increasingly excessive duration of copyrights which has strongly induced the research labels to be less efficient and diligent.

It then looks forward by comparing the business practices of the labels and digital companies for the three main market functions ensured by these firms. First, when informing the consumers of the existence of the cultural works produced, the digital companies are much more efficient than the labels, hence have compensated the informational deficits of the latter. Second, when fighting piracy, the subscription policies of the streaming companies

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distributing the musical works copyrighted by the labels have substantially contributed to the fight against piracy. However, when distributing the works produced under their own copyrights, digital companies are likely to succumb to the same fatal attraction as the labels—overpricing until massive piracy forces them to rectify. Finally, when paying the music revenues to their authors, digital companies could help to rectify the bad management practices that labels have left to proliferate for their own narrow interests.

Keywords

Digitization, music labels, streaming services providers, information, piracy, singers and composers, copyrights.

Introduction

Over the three last decades, the most crucial source of change in the interactions between culture, society, and the economy has undoubtedly been digitization. In the 1980s and 1990s, digitization occurred mostly in the goods sectors—CDs replacing cassettes, digitized equipment for printing, recording, or filming instead of mechanical equipment. This required a notable restructuring of the related manufacturing sectors, but it left relatively unscathed the large incumbent “cultural” companies—music labels, book publishers, or film studios—involved in the creation and distribution of the cultural works *per se*.

Then there has been the shift toward internet-based technologies to access these cultural works, challenging the usual “physical” access channels—individual stores or retail chains. This restructuring was largely unanticipated by the large incumbent global cultural companies and is best illustrated by the tense relationship between the music labels and the digital companies on which this paper focuses on (but the same fundamental issues have also emerged in the book and film industries). Buttressed by their market power based on increasingly tight copyright laws, the largest music labels, predominantly located in the United States (US), Europe, and Japan, have resisted these changes for as long as possible.

As a result, the evolution of the music sector has been described as “apocalyptic” until the mid-2010s (Johnson 2015): overall global music revenues collapsed from USD 28.9 billion in 1999 to USD 14 billion in 2014 (IFPI 2021, p.11). The music labels have complained that this apparently endless plunge was the result of “unfair” competition from digital companies. Such sentiment has been echoed by a number of successful singers and composers. This powerful coalition of money and fame has disseminated the view that, by facilitating piracy at a scale never seen before, the digital companies have deeply undermined the economic basis of the previous prosperous decades—portraying digitization as the major or even sole culprit for the deep troubles of the music industry.

Yet since 2015, global music revenues have grown again while digitization has been deepening its reach and has been a key engine of this recent

U-turn. Such an evolution contradicts the complaints of the previous period. This market reversal after a free fall of fifteen years raises thus a first series of questions that this paper addresses. Have the major music labels misinterpreted the source behind the collapse of the market? Have they explored alternative explanations to the argument of the “unfair competition” from the digital companies? In particular, have the labels made a thorough review of their own business practices: have they checked whether they have been as efficient and/or diligent as they should have been for defending the commercial success of their authors?

The second series of questions that this paper examines are forward oriented. Now that the digital companies are firmly involved in all activities of the music industry—not only distribution, but also granting copyrights and producing new music—what could be their impact on the industry as a whole? Have some of their business practices been a welcome counterbalance to the lack of efficiency or diligence of the traditional labels? Answering this second set of questions requires a look at the three main market functions of the firms involved in the music sector: informing the consumers of the existence of cultural works produced, fighting piracy by adopting pricing policies that prevent as much as possible illegal behavior, and paying a fair share of the music revenues to their authors in an efficient as possible manner.

This paper is organized into six sections. Sections 1 to 3 focuses on the first set of questions raised above: the evolution of the global music revenues, an explanation of the collapse from 2001 to 2014 which is consistent with the rebound thereafter, a brief economic analysis of the current copyright laws which is much needed to fully grasp what has happened. Sections 4 to 6 deal with the second series of questions. They compare today’s business practices by the labels and digital companies for each of the main market functions: “informing” consumers, fighting piracy, and paying a fair share of the music revenues to their authors. This paper focuses on economic arguments. But, at every step of its development, it stresses the crucial consequences of all these changes for the “culture” of a country, its cultural creativity and diversity.

Lastly, a much deserved word of caution. The issues dealt with in this paper are extremely complex. A short article cannot give justice to all of them. As a result, the approach has been to focus on issues too often ignored in the literature: the excessive burden imposed on consumers by a rigid CD format, the costly side of the copyright laws from a cultural perspective, and the day-to-day bad management practices of the labels—all issues necessary to have a complete assessment of the current situation from an economic point of view and to develop a point of view insisting on cultural creativity.

Section 1. Global music revenues since the early 2000s: The great rollercoaster

Figure 1 illustrates the evolution of the overall revenues for the global music industry from 2000 to 2020 (IFPI 2021). It shows a sharp plunge since 2001, followed by a rebound since 2015. Adding all the revenues—CDs, streaming, performance rights, etc.—helps to understand the mounting concern among the music labels: the overall music revenues reached a nadir in 2014 when they were roughly 60 percent of those in 2001.

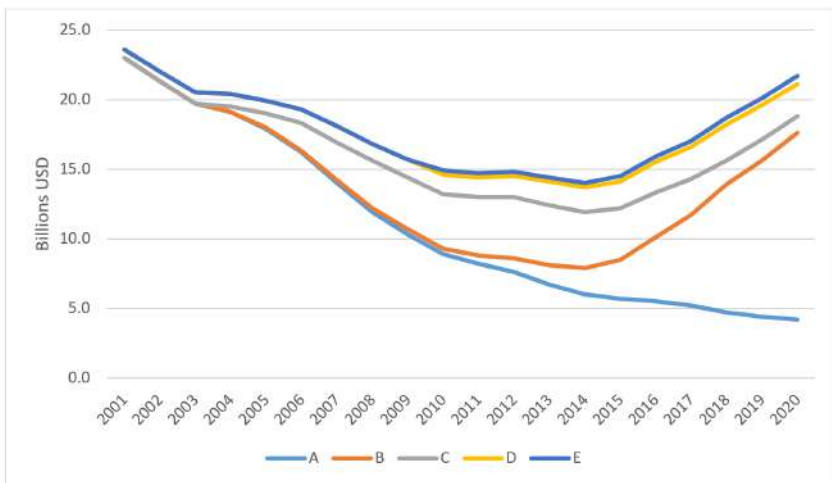


Figure 1. Global music revenues

Source: IFPI, 2021. Note: The presentation differs slightly from IFPI in order to make more visible the restructuring process of the music industry over these twenty years. Curve A represents the “physical” (CD & disks) sales, curve B the sum of the physical and streaming sales, curve C the sum of the physical, streaming and download sales, curve D adds the sum of the previous sales and the performance rights, and curve E adds on the synchronization rights.

This overview based on aggregate revenues has induced most of the commentators to focus their criticism on digitization and all online activities. The most famous illustration of this defensive stance occurred on July 11, 2000, when US Senator Orrin Hatch of the US Senate Judiciary Committee handed the microphone to the heavy metal band Metallica’s drummer, Lars Ulrich, to talk about the online service Napster which had only been established the previous year. Ulrich explained how his group discovered that their entire catalogue of music was available for free on Napster (Johnson 2015). Though Napster’s lifespan was very short (for reasons explained in Section 5, it closed down its service in July 2001), the damage in terms of digitization’s reputation was done, with many famous singers and composers echoing Ulrich’s complaint. In 2014, Taylor Swift attracted media attention by loudly quitting Spotify—then a streaming company struggling for survival—and stating that “music should not be free,” and that “individual artists and their labels will someday decide what an album’s price point is” (O’Neil 2014, Delbyck 2017). Ironically, only three years later, she reversed her position and returned to Spotify, presumably because, as shown by Figure 1, streaming revenues were becoming fast the main source of music revenues.

Two major transformations should have sent warning signals that the criticism focusing on the impact of digitization was too simplistic. The first was during the years 1994-2000 in the US music market. Since 1985 there has been high and uninterrupted growth in US music revenues which came to a complete halt in 1994—that is, several years before 2000 or 2001 which can be seen as the starting point of substantial online music activities (Waldfoegel 2018, p. 41).¹ In other words, serious problems were evident in the US music market long before the emergence of digitization. Figure 1 shows that the collapse of music revenues has been largely driven by physical (CD) sales. But

it also shows that the other components of the overall music revenues have exhibited vigorous growth that has required the support from digital companies. In particular, Figure 1 shows that concerts and physical events have increasingly regained the economic importance that they have not enjoyed since the 1950s due to the success of the recording industry—a coming back that could only be seen as very positive from a cultural perspective.

The second warning signal came from Korea. Retrospectively, these fifteen years of intense criticism against digitization are a source of great astonishment because none of the large music labels—allegedly “global”—seem to have paid attention to what was going on in Korea in the 1990s and 2000s. The Korean music companies have actively embraced digitization a decade or so before their counterparts in the Europe, Japan, or the US. By the early 2000s, they have already developed new strategies which have demonstrated the possibility to be both profitable and culturally innovative in a digitized environment subjected to weaker copyright practices than those prevailing in Europe, Japan, or the US (Parc and Kawashima 2018). Crucially this radically different environment has not limited the global rise of the Korean pop industry nor held back Korean creativity and innovation. For instance, the number of K-pop groups has increased from 17 (2009) to 66 (2014) (The Seoul Shinmun 2015; Parc and Kawashima 2018).² This truncated view of the global music market held by the major labels has prevented them to make a thorough review of their business practices—in particular whether their activities have actually been more the source for their difficulties than digitization.

Section 2. The collapse of music revenues (2000-2014): an alternative interpretation

The data in Figure 1 has been widely used by observers to explain the apocalyptic evolution of the music revenues. Such an interpretation assumes that selling CDs and digital music are similar operations. However, this is a flawed perception. Before the internet, music consumption almost exclusively relied upon selling “music-as-a-product:” the price of a CD reflects the fact that it “embodies” a bundle of songs (10 to 12 in general) that consumers

can listen to for an undefined duration (as long as the CD is in good shape) and can be consumed at an undefined frequency (the consumer can listen to the CD many times or only once). By contrast, internet-based “streaming” consists of selling “music-as-a-service:” the fee to be paid to a streaming provider is paid for a specific song provided for a defined duration and frequency.

As selling music-as-a-service is such a radically different business than selling goods, digital companies have had to design new types of payments—a process that has taken time to develop and refine (see Figure 1). At first, “online stores” started to sell songs to be downloaded by their regular consumers. Then, other companies gave to consumers the possibility to pay “subscription fees” for accessing the kind of music they want to listen to. In its latest versions of this second type of payments, consumers pay these fees to digital (streaming) companies which allow them to extract directly the musical works they want from the catalogue of music they provide. In this case, a vast catalogue of music is an absolute pre-condition for the success of the streaming service providers—a key point of the tensions between music labels and their digital competitors (see section 5).

Comparing pre-internet “prices” and post-internet “fees” makes thus no economic sense because the services offered by these two distribution channels are radically different. In 2000 consumers who wanted to listen to a song at home had to buy a CD album (worth 15 to 18 USD) with other songs they did not necessarily like, a sound quality which can be too high for everyday listening, and years of usage beyond their initial interest. In 2020, for much less than one USD, the same consumers could access the desired song through a streaming website, with sufficient enough quality, and for the desired limited period.

In other words, the technical quality of CDs has imposed vast “unwanted excessive costs” on the consumers of music. The problem is that the excessive costs associated with CDs have left consumers with no money for buying other songs—hence, a tremendous restriction on the diversity and creativity for the music industry. By contrast, streaming revenues represent a much

more accurate measure of the “true” value of the demand for music expressed by the consumers.

This result suggests the need for a reinterpretation regarding the collapse of the revenues observed during the transition period 2000-2015. This plunge reflects more the existence of the “excessive” costs of CDs in the early years of the period than some kind of digitization-generated depression at the end of the period.³ Note that this drastic reinterpretation is consistent with the growing dissatisfaction among consumers revealed by the sharp halt in the US music market during the second half of the 1990s, before the proliferation of digital music. And the fact that the aggregate revenues of the music industry in 2020 are close to catching up with the aggregate revenues in 2000 (see Figure 1) reflects the fact that, once the restructuring among the various components of the music demand—less CDs, more streaming and performance rights—has been achieved, the music industry is coming back to its overall level of business activity in 2000. That this restructuring has been painful for some parts of the music industry—the CD makers and the artists reluctant to participate to live events—is undeniable. But the industry has not been ruined—the “creative apocalypse that wasn’t” (Johnson 2015).

Section 3. The roots of the problem: the impact of the current stringent copyright regime

This reinterpretation of the plunge in music revenues raises then a series of questions on the respective business practices of the labels and of the digital companies that are of primary importance for understanding the present and future of the music industry. These questions require a careful analysis of how the copyright regime works that is provided in this section (for a remarkable history of the copyright issue, see Baldwin 2014).

In a nutshell, this regime relies on two pillars. First, copyright law grants the “sole and exclusive copyrights” to the “authors,” mainly the composers and singers in the case of the music industry. Their intent is to create a society in which the authors are at the top of the decision-making process in the music industry and are rewarded appropriately.

There is, however, a second pillar that makes largely irrelevant the first one by putting in place a radically different decision-making process. It is based on the “private contract” by which each “author” devolves the “effective use” of their copyrights to the record label. The standard language of these contracts is unambiguous (Parc and Messerlin 2021):

The Author hereby grants and assigns to the Publisher, its successors, representatives, and assigns, the sole and exclusive right to publish (i.e., print, publish, and sell) the Work in the English language in all forms in the [country in question] during the full term of copyright and any renewals and extensions thereof, except as provided herein.

These contracts clearly shift the effective decision power from the authors to the labels: once they have been signed, a “very unequal bargaining” situation prevails between the singers/composers and their labels (Towse 1999, 2003). The labels can then take alone all the decisions concerning the physical production, distribution, marketing, and payment of the authors’ earnings. The only—possible—exception to this unequal balance of power are the few singers or composers who are successful enough to have some negotiating leverage with their labels.

To sum up, private contracts transform “copy-rights” from “author-rights” into “label-rights” (a broadly similar situation exists in the film and book industries). It is crucial to realize that the main reason for this shift to ‘label-rights’ has nothing to do with the authors: its goal is to protect the labels holding the copyrights from any attempt by rival labels to distribute or market the works during the duration of the copyright (at least 70 years after the author’s death). In this respect, the history of book publishing is particularly illuminating. A frequent practice from 1450 (the invention of the printing machine) until the mid-nineteenth century (the first full-fledged copyright laws) has been the publishing of successful texts by several publishers at the same time (and not always with the consent of the authors). For instance, the best seller of the late 1400s—*Ship of Fools* (1494) by Sebastian Brant—was printed by more than 40 publishing houses between 1494 and 1574 (80 years, that is, almost the current duration of copyrights).⁴

Based on this second pillar, the major music labels have considerably strengthened their dominant position by imposing an increasingly longer “duration” of copyrights.⁵ Such a situation has not been propitious to healthy pro-competitive business practices among the labels when determining their pricing policy and their cost management practices. On the pricing side, labels are induced to fix high prices allowing them to enjoy “supra-normal” profits. On the cost management practices—a criticism rarely made, but just as crucial—the lack of competition does not induce labels to be as efficient and/or as diligent as possible when managing the commercial life of their copyrighted works. This aspect is reinforced by the fact that copyrights are a clear case of the so-called “principal-agent dilemma” where an “agent” (the label) acting for a “principal” (the singer or composer) is better informed on the principal’s activity than the principal. This situation is a source of intrinsic and systemic inefficiency in the industry (Parc and Messerlin 2021). Combining these price and cost aspects means that the labels can be best described as monopolistic firms suffering from systemic cost inefficiencies.

Figure 2 helps to visualize these various elements. The vertical axis represents the earnings (say in US dollars) of the work. The horizontal axis shows the time (say years), with OD representing the whole legal duration of the copyright. In the real world, the flow of revenues generated by a cultural work such as a song has roughly a bell-shaped curve (Australian Productivity Commission 2016, Gowers 2006): it starts from zero dollar when the work is launched (time Q), grows, reaches a peak (time R), and then declines. The commercial life of the song ends at time S. After time D, the song is no more copyrighted: it falls into the public domain and any firm or individual can distribute the musical work without paying fees to the initial copyright holder(s) if they find a profitable opportunity to do so. In this case, the musical work begins a whole new life in a fully competitive environment, illustrated by the curve DYZ.

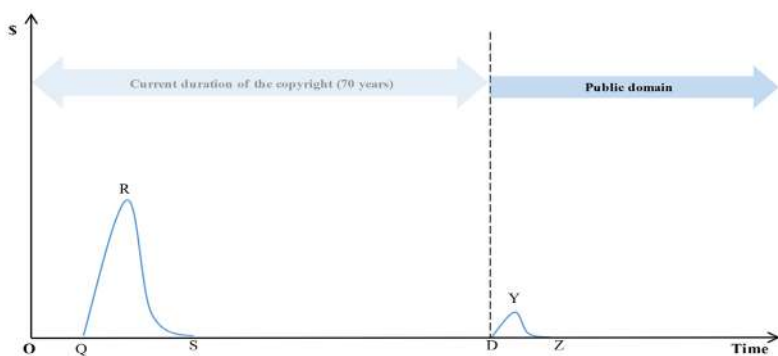


Figure 2. Copyrights: the reality

Source: Parc and Messerlin, 2021

It should be stressed that the commercial life QS for the vast majority of musical works is very short (a few months or years) compared to the almost century-long legal duration OD of the copyright. Such a situation creates two problems. First, the works that only achieve “average” success and thus possess a limited commercial life have to wait many years—illustrated by segment SD in Figure 2—before acceding to the public domain and having the possibility to escape the systemic flaws of the monopolistic and inefficient labels. This long delay imposes a huge cost on the composers and singers in terms of missing opportunities for promoting their production. In fact, segment SD is so long that it is almost like a death warrant for most of these works. More importantly, it represents a continuous impoverishment of the cultural creativity and heritage for the whole society since most of these average works will fall into oblivion.

Second, and paradoxically, this remote public domain is also a huge cost for the vast audience of the few highly successful works. This is because the copyright holders and the labels of these successful works will do their best to extend the copyright period and their associated “supra-normal” profits by using many tricks. One of the best illustrations of this behavior

in the music industry is provided by Maurice Ravel's *Bolero*, one of the most widely performed musical piece in the world (Predota 2020). *Bolero* was first performed in 1928, as part of a ballet production. When Ravel died in 1937, unmarried and childless, the copyrights for the work were transferred to his brother Edouard who thought for a while to use these revenues to fund a "Nobel Prize" for music. Ultimately, he made his nurse the solo beneficiary of the Ravel estate. In 1960, when Edouard died, a fight erupted between the nurse's family and Ravel's distant relatives. After a protracted legal dispute, the nurse's husband (the nurse died in 1964) won the court case in 1970. Ironically, the *Bolero* saga caught the eye of an official from the French Society of Authors, Composers and Publishers of Music who left this organization to establish a conglomerate of firms first in Gibraltar and later in the Virgin Islands that would manage *Bolero*'s revenues estimated to be worth roughly 55 million US dollar (for the period between 1960 and 1970). With third party interest, the years 1970-2016 witnessed renewed attempts to expand further the duration of *Bolero*'s copyrights by invoking "co-authors"—such as the painter of the scenery of the 1937 ballet performance. Had these efforts to prolong the copyright duration been successful, it would have delayed its release into the public domain until 2039 at least. Fortunately, these efforts failed and finally *Bolero* entered the public domain in 2016—79 years after Ravel's death, including an additional copyright duration of eight years granted to all music works for "compensating the effects" of World War II. This saga makes it hard to believe that a scheme so easy to manipulate can be said to provide robust support for culture. Clearly this makes a case for a need to reform the system.

Section 4. Informing consumers

The following sections shift the analysis to the future relationship between labels and digital companies. To what extent digital companies have improved and could further improve the main functions of the music market—the first one being informing the consumers of the existence of cultural works produced? Indeed, from a cultural perspective, the largest upheaval generated by digitization has occurred in the capacity to inform consumers as well

as producers about the vast universe of works which are in existence. In this respect this section stresses that the almost endless “informing” capacity of the internet services providers has been a powerful counterforce to the inefficient or negligent behavior of the music labels. The informing function can be distinguished into two broad categories.

First, “pure” advertising activities seek to highlight the existence of a work to the largest possible group of consumers and producers of musical works. When searching the internet for a song or a musical work, consumers and producers alike can find at almost no cost a host of related songs, texts, movies, and “grey literature” (unpublished papers or documents) that the search algorithms hosted by the digital companies suggest are of potential interest. The information capacity of the digital companies is much higher than the corresponding capacities of the labels for obvious technological reasons: the algorithms for Google, YouTube, or Naver are much more powerful than those of the labels. Moreover, the information produced by digital companies is not limited to the production of works by a specific label, but it includes the production of the works among all of them—allowing comparisons and cross-fertilizations.

This feature is essential for a clearer understanding of national and global cultures, as shown by the very recent case of *Bambi, a Life in the Woods* (1923) which entered the US public domain in 2022 with some other 400,000 sound recordings (Center for the Study of the Public Domain, Duke University, <https://web.law.duke.edu/cspd/>, Hiltzik 2022). It is amazing to note that, throughout the 95 years of its copyright period, *Bambi* has witnessed only two translations of the book, both by the same editor Simon and Schuster, one in 1928 and the other one 91 years later, in 2019. Presumably, the 2019 translation was a preemptive move by the editor as the book entered the public domain in 2022. Remarkably, since January 2022, two more translations have been proposed by two different editors, allowing a better comparison between the book of *Bambi*—a rather somber story featuring brutal hunters and heartless nature—and the Walt Disney movie—where hunters are heard but not seen and nature is compassionate.

The fact that digital companies have vast research-processing capacities has another major positive impact on music production. Revealing works from the distant past that were previously inaccessible or forgotten is a powerful counterforce to the “chilling” effect of tight copyright laws on music production. Before digitization, risk-averse music producers would have hesitated to unleash their creative ideas out of fear that they could be embroiled in costly legal trouble as there was always a chance that they might inadvertently infringe upon the copyrights of forgotten works by other music producers (Rethink Music 2015).

The second advertising activity consists of “promoting” musical works. This is usually done by making the works available for sale (CDs) or through fees (streaming), but it is also increasingly pursued through entirely new business strategies made possible by digitization. For example, works could first be released free-of-charge on the internet to attract the attention of potential consumers and then be integrated into other activities, such as physical events (concerts) with a fee-paying audience. This is a common practice in the Korean pop industry and has been the case since at least the 1990s (Parc and Kim 2018) where K-pop groups upload their latest songs onto the internet for free and then organize concerts, “tours,” or events for a fee. In this context, a much larger set of relations has emerged between the music producers and the consumers based on “fandoms”—between the artist and each fan as well as among the fans themselves—generating vast revenues and changing the social and artistic environment of the music industry (Otmazgin and Lyan 2019). In this respect, it must be stressed that these fandom-related activities are not included in the global music revenues, which is a systematic under-evaluation of the contribution by the digital companies to the music industry.

Of course, making works more visible via the internet for a longer period increases their chances to be sold and thus reenergizes their commercial life. However, from a cultural perspective this commercial aspect may not be the most important one. Rather, it is the capacity to boost creativity and diversity that has been neglected by inefficient labels that should be stressed. As illustrated in Figure 3, the informing activity of the digital companies

shifts the bell-shaped curves of every musical work both upwards and rightwards.⁶ An upward shift reflects the increased awareness on the existence of the work at time t , hence its increased likelihood to be purchased. A rightward shift mirrors the increased awareness of the existence of the work on a longer period. The combined result is the shift of all the bell-shaped curves to the north-east—from QRS to QUV (with V being located either between S and D, or above D as shown in Figure 3 if the information effect of the digital companies is large enough).

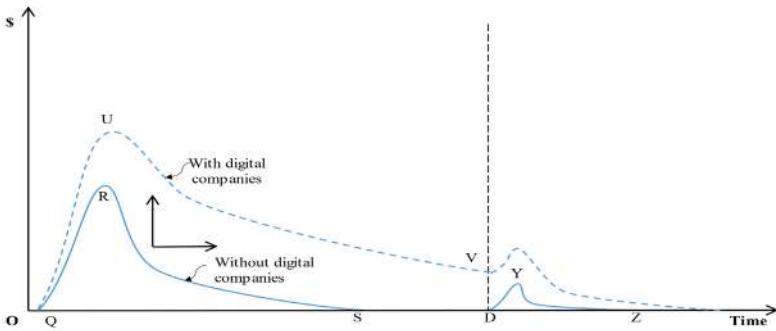


Figure 3. The “advertising” effect by digital companies

Source: I would like to express my deep gratitude to Prof. Jimmyn Parc for allowing me to use this figure from his forthcoming work.

This combined north-east shift needs to be carefully assessed. It illustrates the gains in efficiency that, everything else being constant, the labels can achieve due to the information activity of the digital companies. These gains should thus not be confused with those created by technological changes in the case of music, such as saving on the costs of printing CDs, transporting them to retail outlets, and stocking them until they are purchased. Figure 3 does not reflect this kind of improvement. Rather, it focuses on the gains in efficiency that the labels and the music producers can derive from more

effective information on all the existing copyrighted works collected by the digital companies, like Google or Naver.

From a cultural perspective, this improvement has two key effects. First, the rightward shift of the QRS curve is particularly crucial for the “average” musical work—those which have had a potential that has not been properly highlighted due to inefficient or careless distributors. A longer visibility means a longer memory of past achievements, hence more opportunities for these neglected works to be “re-discovered.” This is particularly important for the cultural life of a country if one considers—as this paper does—that “average” works are the critical base that prepares the ground for new ideas and approaches in subsequent musical works. The “culture” of a country should not be seen only through the lens of its successful works. That would miss many aspects of the evolutionary process of this culture and indeed would probably make it very hard to understand correctly.⁷ In other words, expanding the visibility of all past works sets the opportunity for a richer and more robust “accumulable” culture in the future (Parc and Moon, 2019).

Second, the north-east shift of the bell-shaped curves for the “average” works are likely to be larger—in proportion—than its equivalent for the very successful works. This is because the labels tend to be more efficient and/or diligent for successful works than for average works simply because they have much more at stake in terms of their own revenues. In short, digitization reduces the discrimination by the music labels in favor of the most profitable works: it benefits proportionally more the authors having created “average works” with some untapped potential than the successful authors. This is a conclusion that may surprise people who tend to perceive digitization as always reinforcing the existing discrimination among the works.

This analysis raises a final question. What have been the business reactions of the historical labels to the informing capacities of the digital companies which are equivalent to free advertising? Have they “passed on” to their authors and consumers some of the gains from the free offering they have benefited from? And/or have they used the information on the works which compete with those produced by their authors in order to sharpen their future supply? For the time being, these questions do not seem to have

attracted much attention in the public debate—an omen not propitious to the music industry as a whole and to the welfare of its consumers.

Section 5. Fighting piracy

The second key function of a label is to fight the piracy of the works it has copyright over. Piracy has been by far the dominant accusation among the labels against digital companies in the early 2000s and was mostly fueled by Napster’s business model which was launched in June 1999. It was a digital service based on an easy-to-handle peer-to-peer file-sharing technology, allowing users who had computers and access to download music for free—an unsustainably low price or fee for producing music in the long run. In fact, Napster’s life was very short—it ended in July 2001—and there has been no attempt to relaunch such a platform.

Napster’s failure has revealed the fact that, to be sustainable, the business strategies of the online streaming companies should satisfy two conditions, not one: their fees should be low enough to attract consumers from the labels but high enough to convince the labels—which own 75-80 percent of all the music rights—to put their copyrighted works on the streaming platforms. In 2014, Spotify’s streaming service offered this right balance of qualities: instant access, positive user experience, modest subscription fee, and a vast catalogue. The right mix of these features has been a powerful force to reduce piracy by making it a substantially less attractive option for most music consumers. Following this, Spotify then needed three more years to reach an agreement with the US music copyright holders in order to consolidate its business for the long term, and to convince critics that the new streaming music industry could offer tangible returns for authors, labels, and consumers in a sustainable manner.

This brief overview shows that digital companies have significantly contributed to the fight against piracy when they distributed works copyrighted by labels. Would that still be the case when digital companies copyright the works of their “own” music producers? To answer this question one needs to understand that the magnitude of piracy depends crucially upon the pricing policies among the initial copyright holders. If the labels price

their copyrighted works based on “reasonable” costs and “normal” profits (as in competitive markets), then piracy will remain limited. By contrast, if the prices of the copyrighted works are based on “supra-normal” profits and “excessive” costs—two factors that copyright laws encourage as shown in Section 3 above—then large-scale piracy can easily prosper. In short widespread piracy is a self-inflicted injury that companies holding copyrights impose on themselves.⁸

Three revealing episodes of the labels’ monopolistic behavior in the CD markets during the whole 2000s illustrate this point. First, in 2000, the six major world music labels were sued by the US and EU competition authorities for price collusion in the CD retail sector—a practice that has increased the CD sale price in the US by an estimated 2 to 5 USD (for a total price around 15 to 18 USD) (Federal Trade Commission 2000). The industry reacted with a series of mergers which brought down the number of major music labels to three (totaling 85 percent of CD sales in the US). This move can be seen as a legally acceptable substitute to fix prices. Second, in the mid-2000s, CD producers in the EU have lodged complaints against alleged dumping by CD exporters from other countries (China, Hong Kong, and Malaysia in the 2005-2006 EU antidumping cases). Although these complaints have not led to the imposition of formal antidumping duties, they have generated a “chilling” effect on foreign exporters as so often happens (Messerlin 1990). This has induced these exporters to restrain their supply and/or to increase their prices in the EU—in short to soften their competitive pressures in the EU markets. Third, the substantial and persistent differences among CD retail prices in the various EU Member States during these years are reflective of a long-lasting lack of competition among the firms operating in these markets: none of the labels has sought to take advantage of this situation by importing into the more expensive markets in the EU CDs from cheaper countries in the bloc as a way to reduce the price differences among the regional markets.

The success of the digital companies in taming piracy has depended upon one crucial condition: the catalogues of musical works held by the digital providers should be vast enough to compensate the low fees per stream by

ensuring that their online works receives a very large number of streams. To achieve this result, digital companies have faced a major obstacle: thanks to the private contracts, the “effective use” of copyrighted works has been in the hands of the labels—the *de facto* owners of 75-80 percent of copyrighted musical works. The last two decades have thus witnessed very tough negotiations between the labels and the streaming operators on the access to musical works.

These conflicts have been so intense that they have led digital companies to circumvent labels by investing directly into the production stage of the music industry, hence copyrighting music works. In this context, would the digital companies pursue the same business approach as the major labels? The above analysis of the copyright laws presented in Section 3 and 4 leaves little doubt that, once in the business of copyrighting singers or composers, digital companies are likely to follow the same behavior as the music labels—possibly to the point of setting subscription fees high enough to fuel piracy again in the streaming sector.

Section 6. Paying the authors

Over the last decades, the labels have pursued several bad management practices in paying their authors. These practices have been made “necessary” to cope with the fact that the labels have not invested enough to have an accurate, transparent, and checkable system of information on the earnings of their authors. What follows describes briefly the most prevalent bad practices—the “dirty secrets” of day-to-day copyright management that are described in great precision in a thorough study by Rethink Music (2015) on which the following paragraphs are based.

First, the information on the commercial success of the works provided by most labels does not generally allow the authors to actively monitor their earnings in a rigorous manner. The labels often provide a long list of revenues and costs that authors have a hard time to doublecheck, digest, and analyze, even more so because this information is often not produced in a friendly digital form.⁹

Second, this lack of information has been made more costly by the complex legal structure of the different copyrights in place. In the music industry, the two basic rights—sound recording and musical composition—often are combined with at least half-a-dozen other rights, such as those related to mechanical reproduction or public performance (for a thorough presentation of all these rights in the British case, see Monument 2017). Each of these rights generates revenues according to specific rules for the various beneficiaries concerned. This arcane system leads to wide differences between the revenues granted to the authors by the labels.

Third, as one should expect, all these complexities have led to endless errors and omissions in the calculated earnings. The risk of mistakes has been compounded by the fact that the labels often use a system of explicit or implicit “advance payments.” In the case of the authors, advances are often paid at the beginning of their contracts—transforming authors’ revenues into *de facto* loans and the copyrights into quasi-financial assets for 70 years or more. The labels have also shifted a notable share of the financial burden of their investments to physical retail stores by imposing them to buy more copies of the newly released music works than they could reasonably sell, and to pay these copies in advance (and return them at a later stage).

Fourth, these advance regimes raise the thorny question of adjusting the advances received to the revenues actually earned by the authors during the commercial life of their works. Labels tend to cope with these difficulties in very casual ways. Revenues that could not be quickly attributable to an author are placed into escrow accounts until the right copyright holder is found, hence generating long delays before finally paying them. In the case where there is no clue on who to pay, the “orphan” revenues are distributed among authors of the labels according to formulas having little economic sense (such as distributing these revenues among all the authors of the label proportionally to their earnings, that is, giving the lion’s share to the most successful authors) or even allocating these orphan revenues to the labels themselves.

Finally, further bad practices have been extended to the musical works broadcasted in shopping malls or public events. In most OECD countries,

copyright regulations deal with these cases by requiring that the organizers of these events pay the revenues to the right holders through the so-called “collective collecting societies” (CCS). Ideally, the CCS should get the most accurate information on the true occurrences of all the musical works broadcasted in each mall or event. However, they have instead often relied on crude sampling methods for measuring the occurrences of the works in a limited number of malls or events judged as “representative” and extrapolating these samplings to all the other cases. In fact, there are countless anecdotes on strange CCS decisions. For instance, in 2005, Pierre Merejkowsky was asked to pay a fee of 1000 euros for having whistled for seven seconds the “*Internationale*”—the well-known hymn of the international socialist movement—in the film *Insurrection Resurrection* (2004) for which he was actor and director (Vulser 2005). The reason invoked was that, as the composer of the “*Internationale*” died in 1932, his work was not yet in the public domain (it entered in 2014).

The main conclusion of this brief overview is that the bad management practices of the labels have been very hostile to “culture.” In particular, they have tended to reinforce the discriminatory treatment of the earnings in favor of the labels and their successful authors and heirs, and against their “average” authors—those that this paper considers as a key reservoir of cultural creativity and diversity in the country. It is also important to note that these bad practices tend to be more prevalent in the case of authors outside of the country in which the label is based.

Can these practices be amended—and if yes by whom? A preliminary condition would be to build an efficient and transparent information system based on a harmonized nomenclature of all the conceivable rights and earnings in each national cultural industry. It happens that digital companies have shown their capacity to manage streaming services which, in terms of informational requirement, are much more demanding than those required by CDs. For instance, it is reported that a single typical song generates 700,000 separate revenue streams per year. However, the possible contribution of the digital companies to the improvement of the day-to-day management of the authors’ earnings depends critically on the cooperation of the

labels which should not be taken for granted since the labels extract some benefits from the current bad management practices.

Conclusion

This paper provides two sets of results. First, it challenges the general perception held toward the evolution of global music markets over the past two decades. It argues that their collapse between 2001 and 2014 reflects more the existence of “excessive” expenses imposed upon the music consumers at the beginning of this period rather than the existence of depressed revenues at the end of the period. The rigid format of CDs has imposed on many consumers an overwhelmingly high level of expenses compared to their “true demand” of music—too many songs per CD, too high quality, and excessive durability. This explanation fits well with the complete halt in the growth of the US music market between 1994 and 2001, that is before the onset of online digitization. Second, in using digitization as a scapegoat for the troubles of the global music markets, the major labels have been unable to make a much-needed critical review of their business practices. This is also partly explained by the tight enforcement of copyright laws which has induced labels to be systematically less efficient and diligent than they should have been. This second factor has greatly contributed to make particularly dramatic the collapse of the revenues and the adjustments needed.

The second set of results deals with the current and future relationships between the labels and the digital companies regarding the three main functions pursued by these two types of companies.

First, digital companies have been able to provide access to an abundant information on virtually all existing cultural works regardless of the copyright and for free of charge. In this respect, these digital companies have exerted a powerful counterbalance to the inefficiency or negligence of the major labels. From a cultural perspective, this effect is particularly crucial for the works which are not among the few successful ones—the “average” works. A longer visibility of these works is important for the cultural life of a country if one considers—as this paper does—that they are the critical

foundation that prepares the ground for a richer “accumulable culture” in the future (Parc and Moon 2019).

Second, there has been the widespread fear among the labels and many authors that digitization would ruin the music industry by fueling piracy. In this respect, the Napster episode—though it lasted only roughly one year and has not reemerged—has left deep scars. Today though, it should be observed that when digital companies distribute musical works that are initially copyrighted by the labels, the modest “subscription fees” they charge have constituted an effective anti-piracy policy. This shows that the true solution to piracy remains in the hands of the cultural companies—whether labels or digital companies—rather than governments. By contrast, when digital companies are investing in their own production of copyrighted works, they are likely to follow the precedent of the major labels—the copyright laws created intrinsic incentives to “over-price” the access to the works, whoever the copyright holders are.

Finally, can digital companies avoid the many day-to-day bad management practices toward paying their authors as pursued by the major labels over the past fifty years—difficulties for the authors to monitor their earnings, endless errors and omissions, and debatable practices on what to do with the earnings of the forgotten or unknown authors? The capacity of digital companies to manage huge databases makes them good candidates to improve the situation. However, to be successful, this role would need the active cooperation of the labels that should not be taken for granted because these bad management practices have been profitable to them, either by reducing their operating costs or by increasing their revenues.

This paper has focused mostly on the behavior of firms—incumbent music labels or new digital companies. Future research could explore whether there is a role for governments on these issues. One role would be to contribute to building well-designed international standardized nomenclatures covering all types of copyrights and their associated earnings. A second role—much more ambitious—would be to reduce the powerful incentives existing in the current copyright laws which induce firms to inefficiency or negligence. As argued in a previous paper (Parc and Messerlin 2021), redu-

cing the duration (at present at least 70 years after the death of the authors) of the copyright laws would be a huge step forward in this respect.

Notes

1. To our knowledge, IFPI has not published the equivalent of Figure 1 for the years 1994-2000.
2. A similar evolution with US popular music has been thoroughly examined by Waldfogel (2018).
3. Indeed, the music labels have recognized the burden imposed on consumers by the “full” CD format, hence they launched various formats, such as the Mini CD single which was designed to be a replacement for the 7-inch record.
4. See Library of Congress, <https://www.loc.gov/item/2021666796/#:~:text=Following%20the%20first%20edition%2C%20which,%2C%20Dutch%2C%20and%20Low%20German.>
5. The fact that the longer the duration, the stronger the monopoly power of the label vis-à-vis both its authors and the competing labels explains why the last century has witnessed a series of successful efforts by labels to lengthen the duration of copyrights: 14 years in 1790, 28 years in 1831, 47 years in 1968, 50 years in 1970 and 70 years (initial term) in 1998 in the US and extended to all other industrial countries.
6. In Figure 3 as in Figure 2, the location and shape of curve QRS has two meanings. On the one hand, it reflects the intrinsic “attractivity” of the musical work for consumers: the more attractive a song, the higher and longer its bell-shaped curve of revenues compared to the curves of the other songs. On the other hand, they mirror the “quality” of the business practices by the labels—how efficiently and diligently the label in question has been handling the distribution and marketing of the copyrighted work at stake. For the same song, a more efficient and/or diligent label gets a bell-shaped curve higher and/or longer than a less efficient and/or more negligent label. This analysis can be illustrated in Figure 2 (and 3) by drawing a set of bell-shaped curves ranking the labels by their efficiency and diligence at any period: the least efficient and diligent label would be illustrated by a curve close to the origin O, and the most efficient one by a curve far away from O.
7. In fact, this explains why rediscovering ancient culture places so much effort in the study of the inherited “average” works.
8. Of course, these basic considerations vary depending on specific factors: the consumers’ attitudes with respect to piracy can vary from country to country; the fact that pirated works may be of lower quality than original works may not always matter (the “higher” quality may not have value for consumers); the most expensive part of piracy is often related to the distribution of the pirated works, not to their production; and, last but not least, the cost of eliminating pirated works.

9. This explains the huge number of managers hired by singers and composers in order to better understand and monitor their revenues. However, these managers are often an additional source of institutional difficulties and of costs for the authors.

Works Cited

- Australian Productivity Commission, 2016. *Intellectual Property Arrangements*. Inquiry Report, No. 78, December. Canberra: Productivity Commission.
- Baldwin, Peter. 2014. *The Copyright Wars: Three Centuries of Trans-Atlantic Battle*. Princeton University Press, Princeton and Oxford.
- Delbyck, Cole, 2017. Taylor Swift returns to streaming services, as Katy Perry drops album. *Huffington Post*. https://www.huffpost.com/entry/taylor-swift-returns-to-streaming-services-as-katy-perry-drops-album_n_593a9632e4b0c5a-35c9e9c73.
- Federal Trade Commission, 2000. Record companies settle FTC charges of restraining competition in CD music market. *Federal Trade Commission*. <https://www.ftc.gov/news-events/press-releases/2000/05/record-companies-settle-ftc-charges-restraining-competition-cd>.
- Gowers, Andrew, 2006. *Gowers Review of Intellectual Property*. London: HM Treasury.
- Hiltzik, Michael, 2022. “Winnie the Pooh” is finally in the public domain, a remainder that our copyright system is absurd. *Los Angeles Times*. <https://www.latimes.com/business/story/2022-01-03/winnie-the-pooh-public-domain>.
- IFPI (International Federation of Phonographic Industry), 2021. *Global Music Report*. <https://www.ifpi.org>.
- Johnson, Steven. 2015. The creative Apocalypse that wasn't. *New York Times*. August 19. http://www.nytimes.com/2015/08/23/magazine/the-creative-apocalypse-that-wasnt.html?_r=2.
- Library of Congress. About The Ship of Fools. *Library of Congress*. <https://www.loc.gov/item/2021666796/#:~:text=Following%20the%20first%20edition%2C%20which,%2C%20Dutch%2C%20and%20Low%20German>.
- Meh.com, 2021. Bambi: The Life of a Copyright in Disney's Forest, September. *Meh.com/forum*. <https://meh.com/forum/topics/bambi-the-life-of-a-copyright-in-disneys-forest-part-1>.
- Messerlin, Patrick, 1990. Antidumping Regulation or Pro-cartel Law? The EC Chemical Cases, *The World Economy*, Vol. 13.4, pp. 462-92.
- Monument, Sarah. 2017. UK music royalties made easy! Sonic Efficiency, Help For Writers Ltd.
- O'Neil, Lorena, 2014. Taylor Swift explains why she dumped Spotify. *The Hollywood Reporter*. <https://www.hollywoodreporter.com/news/music-news/taylor-swift-explains-why-she-747398/>

- Parc, Jimmyn and Nobuko Kawashima, 2018. Wrestling with or Embracing Digitization in the Music Industry: The Contrasting Business Strategies of J-pop and K-pop, *Kritika Kultura* 30/31: 23-48. <https://ajolbeta.ateneo.edu/kk/articles/82/953>.
- Parc, Jimmyn and Hwy-Chang Moon, 2019. Accumulated and Accumulable Cultures: The Case of Public and Private Initiatives toward K-Pop. *Kritika Kultura* 32: 429-452. <https://121.58.232.187/kk/articles/83/994>.
- Parc, Jimmyn and Shin Dong Kim, 2020. The Digital Transformation of the Korean Music Industry and the Global Emergence of K-pop. *Sustainability*. <https://www.mdpi.com/2071-1050/12/18/7790>.
- Parc, Jimmyn and Patrick Messerlin, 2021. The True Impact of Shorter and Longer Copyright Durations: From Authors' Earnings to Cultural Creativity and Diversity. *International Journal of Cultural Policy*. <https://www.tandfonline.com/doi/full/10.1080/10286632.2020.1829608>.
- Predota, Georg. 2020. Composers in the Court room: Ravel's Bolero. *Interlude*. July 18, <https://interlude.hk/composers-in-the-court-roomravels-bolero/>.
- Otmazgin, Nissim and Irina Lyan, 2019. Fan Entrepreneurship: Fandom, Agency, and the Marketing of Hallyu in Israel, *Kritika Kultura* 32: 288-307. <https://ajol-beta.ateneo.edu/kk/articles/83/1002>.
- Rethink Music, 2015. *Fair music: Transparency and payment flows in the music industry*. Berklee Institute of Creative Entrepreneurship, https://static1.squarespace.com/static/552c0535e4b0afcbed88dc53/t/55d0da1ae4b06bd-4bea8c86c/1439750682446/rethink_music_fairness_transparency_final.pdf.
- Towse, Ruth, 1999. Copyright and Economic Incentives: An Application to Performers' Rights in the Music Industry. *Kyklos* 52(3): 369-390.
- Towse, Ruth, 2003. Copyright and Cultural Policies for Creative Industries. In: Granstrand O. (ed) *Economics, Law and Intellectual Property*. Boston, Dordrecht, and London: Kluwer Academic Publishers. pp. 419-438.
- Vulser, Nicole. 2005. Siffloter "L'Internationale" peut coûter cher. *Le Monde*. April 8. http://www.lemonde.fr/cinema/article/2005/04/08/siffloter-l-internationale-peut-couter-cher_636777_3476.html.
- Waldfogel, Joel. 2018. *Digital renaissance: Why data and economics tell us about the future of popular culture*. Princeton University Press, Princeton and Oxford.