

Vart är vi på väg?

Ett regelverk för kreativitet eller
tvärtom?

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Internätdagarna 20061024

The EU i2010 agenda (reflected in national agendas)

“Heading towards a ubiquitous European Information Society”

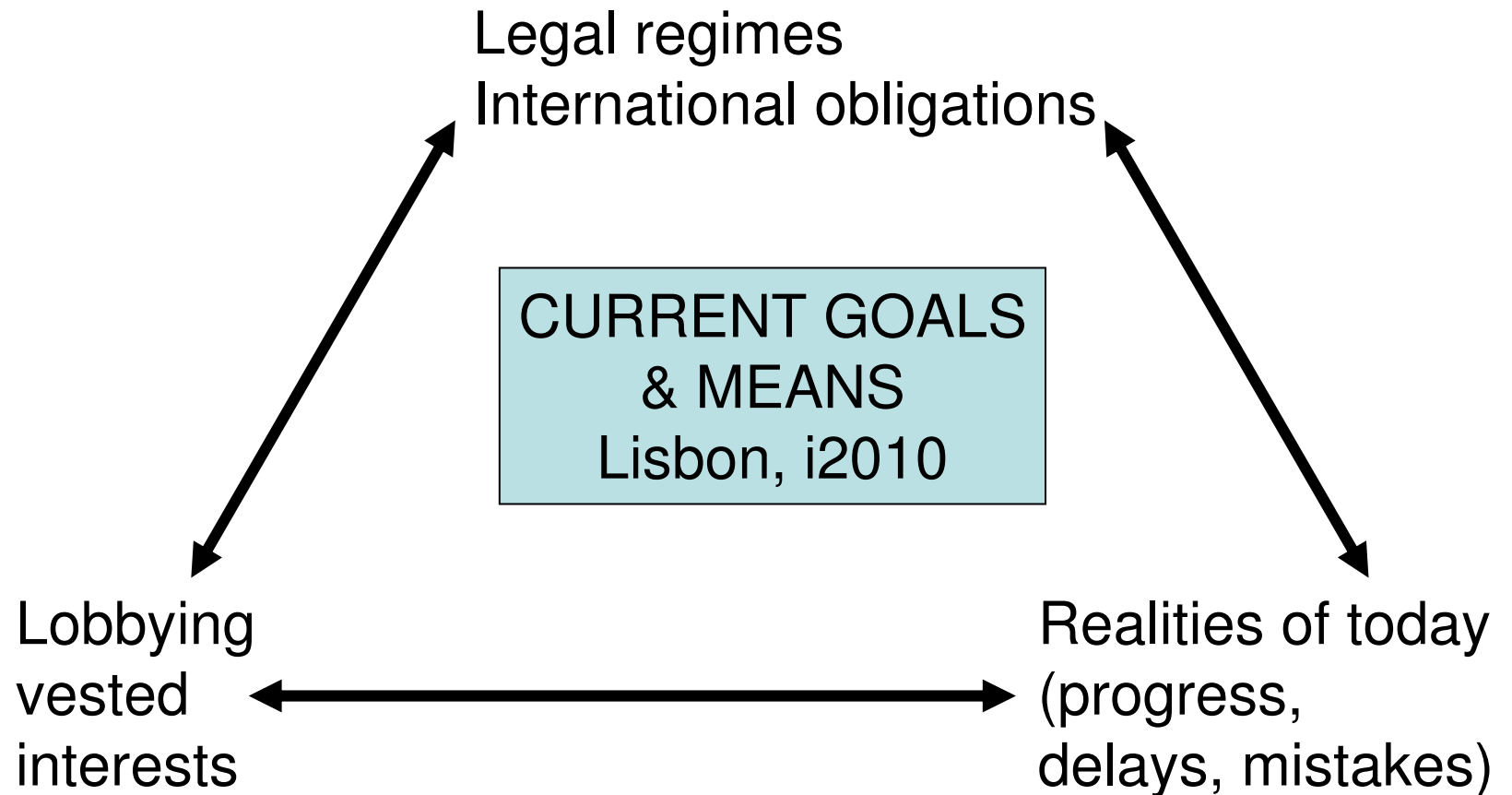
Convergence is happening, but time to shift to a higher gear.

IPRs must enjoy strong protection

Citizens must become creators.

Are we kidding ourselves?

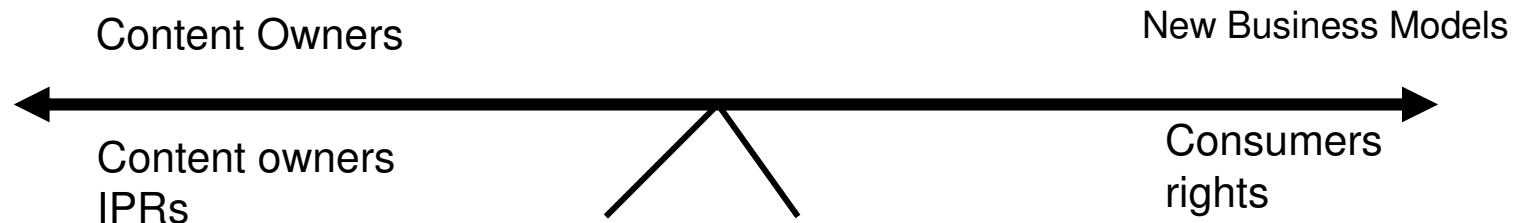
Opposing forces can lead to policy incompatibilities



The **changing** IPR balancing act

mid-late 1990s.

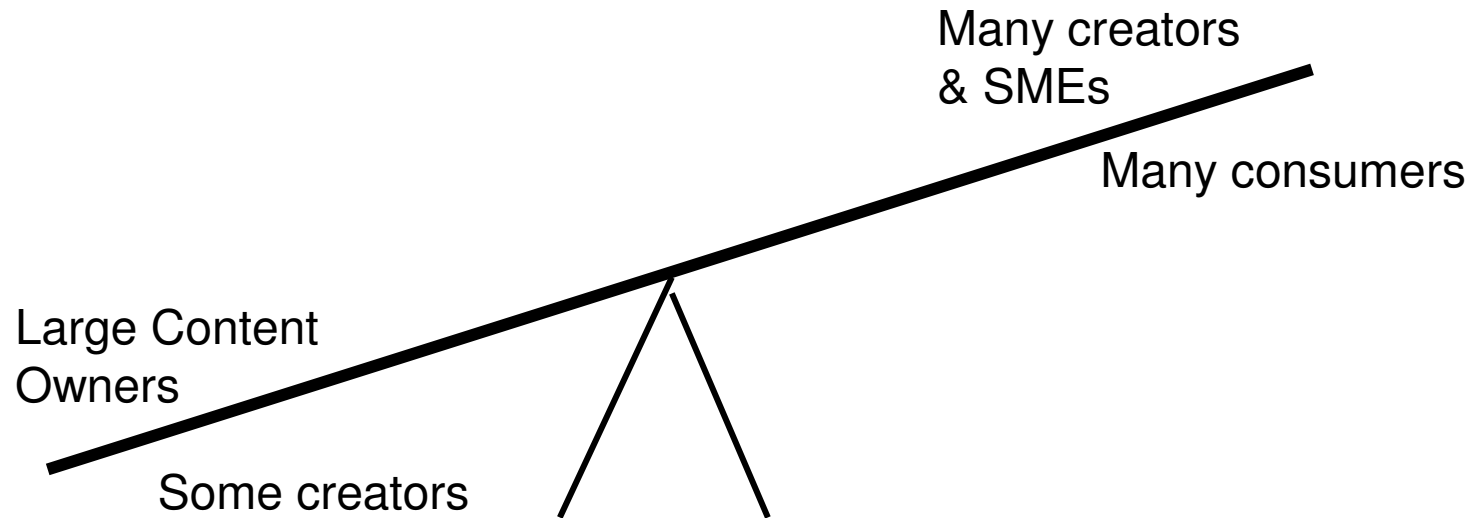
IPRs must be protected but not so stringently that impede the development of new business models



mid 2000

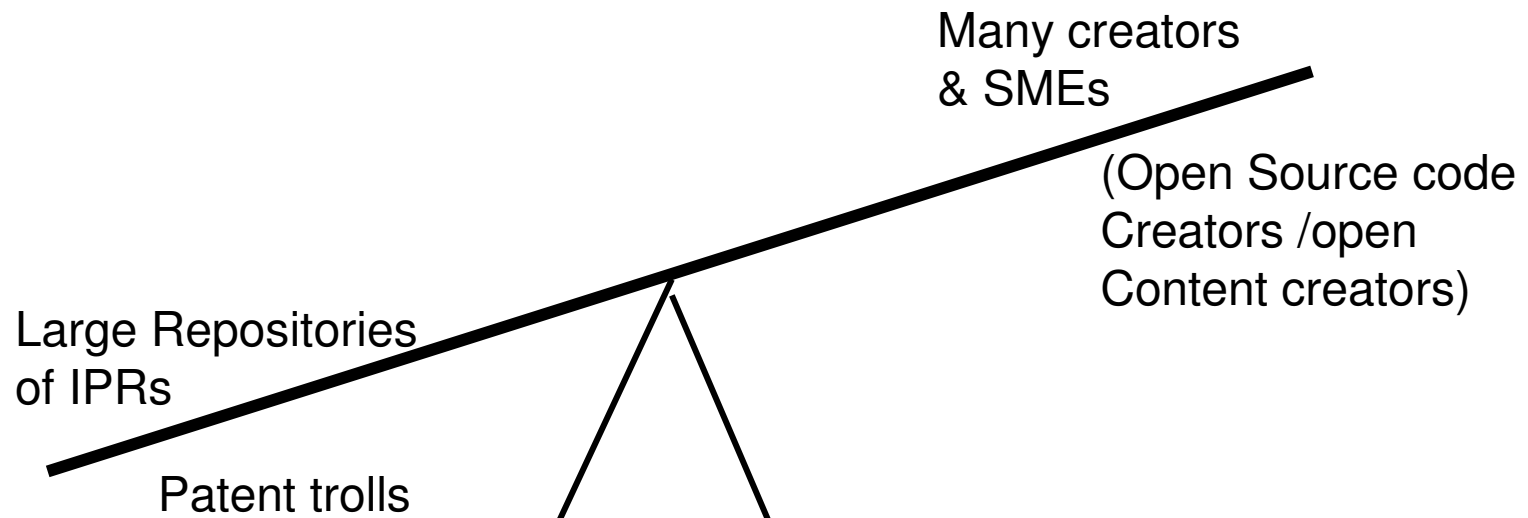
The rights of content owners must balance reasonable interests of consumers (protection versus “fair use”).

Where are we now?



The legal regime is supporting large content owners. Technology is allowing many consumers to circumnavigate the regime. New business models reflecting new technology at odds with the legal regime. Innovation could be a victim - improving existing ideas is the basis of creativity!

Where are we now?



Content owners with large repositories of rights (e.g. Major music publishers. NB! Universal - BMG proposed merger!)

“Patent Trolls” = companies that buy up patents with no intention to use to create products but where they intend to extract a revenue stream from genuine manufacturers, “ideally” patents that are essential to standard-setting procedures.

Infrastructure goals and copyright laws

- Broadband roll out is the key to to a competitive knowledge-based society.
- BUT, broadband traffic is being driven by new forms of collaborative software such as Peer-to-Peer applications, vital for the propensity to invest.
- Large content owners spread a false message that all down- and uploading of copyrighted materials in P2P networks is illegal
- One cannot criminalise millions of citizens who are **not** involved in commercial piracy - respect for the whole legal system suffers.
- P2P users are not a homogenous group. Many are the most active consumers of culture (cinema, legal downloading sites etc)
- P2P networks and “legal” one-to-one sales sites **NOT** mutually incompatible. SMEs thrive in the P2P environment.

Lobbying - whose voices are heard?

It seems clear that many Commission arguments have been heavily affected by the voices of major content owners and network suppliers.

Observation 1

The needs of creators are NOT necessarily the same as the needs and demands of major content owners.

Observation 2

Suppliers of connectivity (ISPs etc.) have used to “lack of conduit responsibility” (WIPO 96 and EU Copyright Directive 2002) as an argument to stop all discussions of economic obligations towards content owners whose materials are used indirectly to sell broadband services.

A win-win solution where content is used to speed up broadband deployment (with revenue sharing) has thus been off the agenda.

Infrastructure policy, copyright and cultural diversity

- Cultural diversity has moved from traditional media and sources to the Net (= economic/creative potential)
- One-to-one delivery services can never compete with the range of choice on the Net, or delivery efficiency.
- P2P delivery services despite a tarnished reputation will be a fact of life in many sectors.

OBSERVATION

Legal regimes and technology are often out of phase, as in the case of many uses of new collaborative software. When such incompatibilities are proven to exist, then the copyright regime should be reinterpreted or adapted to Knowledge Society goals.

i2010 **Bold** goals of citizens' access to content, and ability to create and distribute own content

i2010: fight illegal online down- & uploading of content

Strictly, **all down/uploading** is illegal if all copyright owners have not given expressive permission.

- how does a consumer that the “own content” from an active creative consumer can be downloaded legally?
- Many SMEs (e.g. Small record companies) rely on making material available for free over the Net, using this to market music groups. Consumer fear of breaking the law could hinder development of these new business models.
- Major content owners fear loss of marketing control. It's all about control!
- Circumnavigating DRM protection devices a criminal offence - what happens to innovation based on improvements?

If a strict interpretation is applied.....

One would need to:

- a) Close down Google (immense amounts of copyrighted materials available, including music and videos)
- b) Close all P2P networks (driving broadband roll-out)
- c) Close e-mail and messaging services

In other words, force the Net to grind to a halt!

Can critical mass defend services which are essential but not strictly legal?

- “Pirate Bay (Sweden) contra Google (USA).

Search engines leading the searcher to sites.

- YouTube. User-created content, often based on existing copyrighted materials. Universal Music (USA) threatened to sue YouTube for millions of dollars (August 2006)
(October 2006) Google buys YouTube - Universal does deal to allow Universal videos in YouTube plus share of advertising revenues

BUT how many good European ideas can die in the process?

The case of PearLyrics(Austria)

2005 Invented and made available by Austrian programmer Walter Ritter (31) - simple programme allows web search for lyrics when song downloaded from iTunes (Apple).

Late 2005. Warner-Chappell send cease and desist letter to Ritter and Apple. Later apologise to Ritter (not illegal).

Within days, Apple removed links to PearLyrics little widget.

Ritter “This is a hobby of mine - I like to create applications That provide good usability”

And, a year later.....

PearLyrics continued

Apple have not replaced the links.

Instead a deal has been done with US company
GraceNote (provides meta data, fingerprint services
for identifying music etc.)

Ritter comment (October 2006)

“Maybe I should have made it available as open source,
not closed source - then people could have improved it.
And it would have been so widely available in different
variants, that no-one could have stopped it.”

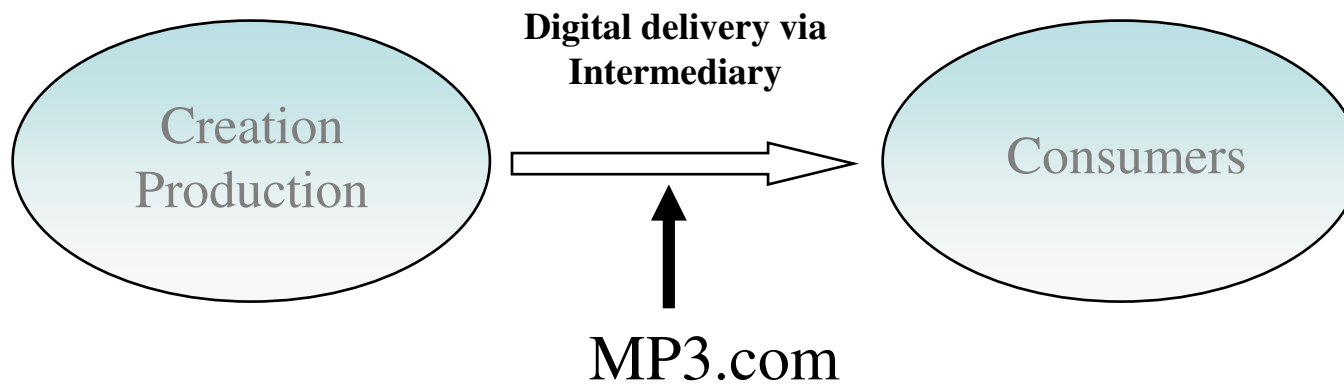
What happened to disintermediation?

What happened to support for innovative European SMEs?

Are we following a route which will really increase Europe's competitive advantage in a global context?

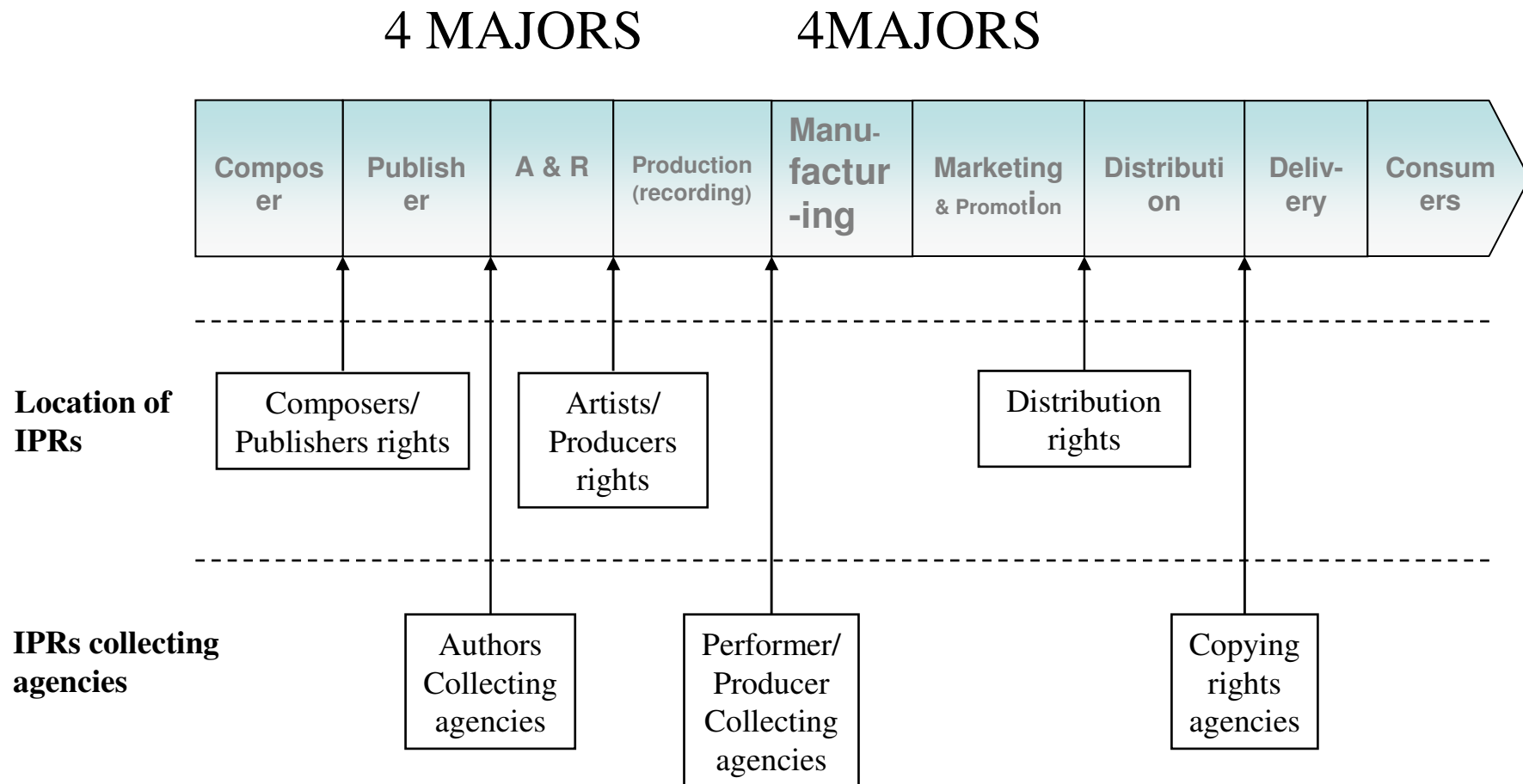
The dis-intermediated vision

Simple value chain



Note: **MP3.com** closed by Universal Records in 2004.

Traditional MI value chain



Recommendation - a new look at the IPR regime

The notion of balance must once again be revisited in the Commission's analysis.

Policy-makers should study the need for balance between:

- Protection of content and emergence of new business models
- Protection of existing content and the ability for innovators to be creative, improving ideas (no creativity occurs in a vacuum)
- SME's & individual's interests in the digital environment versus major global owners of copyrights' interests.
- DRM control and DRM monitoring (citizens understanding of and support for copyright will evaporate if the regime is seen to be unreasonable).

The route to collective dominance!

The case of the audio, & audio-visual industry

From Napster to a united Universal Music (records/videos)
+ Universal Publishing + BMG Publishing (1 1/2 + million
Copyrights).

Napster closed 2002 (legal suit RIAA)

Napster bought by Bertelsmann (2002)

“brand” sold to Roxio (2003) - CD burner software developers

Bertelsmann sued by UMG because of Napster (2003)

Roxio sell CD burner activities, open Napster 2 (subscription)

2006 Universal proposes merger with BMG Publishing

Condition from parent company:

UMG Music (record company) withdraws Napster litigation.

Result a vertically integrated company with huge power in the
Market, & ability to exercise collective dominance.

A reflection on music creators and their contribution to a developing Europe.

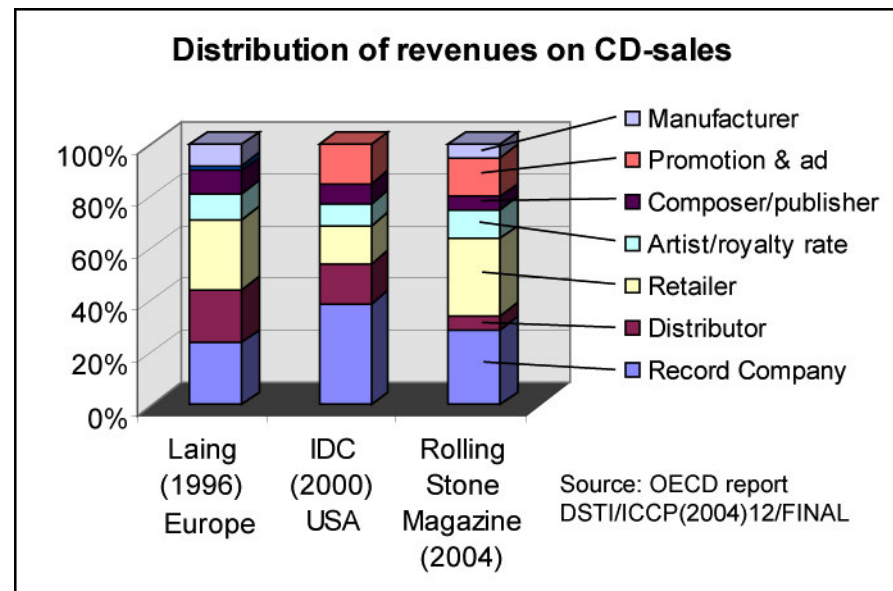
Quote i2010 report: “.. *A greater need than ever to get Europe's ICT policies right to catch up with major global competitors*”

Facts: Of all global music authors' collecting society revenues **60%** come from Europe. (3.9 billion €). **23%** the USA (1.5B€)
But Europe pays out **22%** and receives **12%**, USA
Pays out **7%** and receives **23%**. A severe trade imbalance

Composers are a vital creative basin, offering talent, multiple genres, cultural diversity with economic potential. i2010 should focus on the SME sector in the creative industries, rather than listening so intently to the demands of leading incumbents. More and more individuals are producing content and enjoying the theoretical possibility to reach an audience.

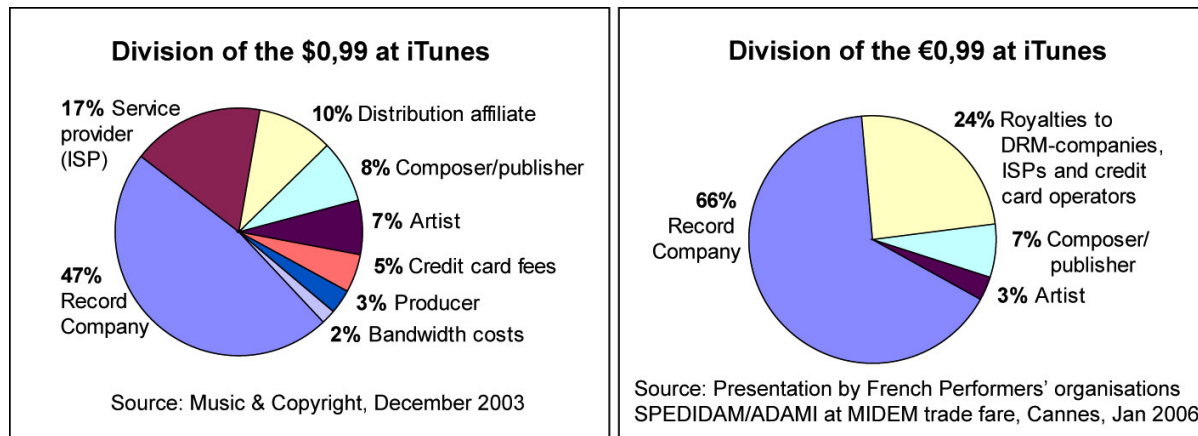
The Physical world of CDs

Producers 20 - 30%



The Digital download world

Producers almost 50 - 70%



Composers can get less than the credit card company!!

Reversed business models - a major target for incumbents.

Old model/strategy:

Record record with artist with global potential.

Release simultaneously everywhere

Promote heavily via radio/TV

If sales take off, consider live tour.

New model:

Record artist with global or niche potential

Recordings available via the Internet.

Market concerts via Internet.

Radio plays take off - sales of physical CDs can follow

A new world of customer driven marketing or more of the same?

On-line sales of music / requests via P2P networks:

- Older music predominates.
- Wide range of purchases
- Harder to market the new super star by restricting competition from the market
- Opportunities for SMEs, but...
- The IPR regime, + collective dominance of a few major players could totally stifle innovation.