

**Presentation to the National Academies on their study, "The Impact of Copyright Policy on Innovation in the Digital Era"**  
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This project is about the interrelationship between copyright and innovation, copyright and technology. To address this, the project should take stock of how the Internet and online innovation have created huge benefits for our society, including for artists and copyright holders; what are the conditions that are driving that beneficial innovation in the market; and then assess solutions to the challenges that remain.

The National Academies is taking the right approach by looking to define real metrics by which they can measure a "successful" copyright system, and methodologies to develop those metrics. I'll try to give you a few ideas in this talk.

I want to outline some ways to look at that, and along the way point up some data and research avenues that I hope this group will pursue. The Digital Dilemma book that NAS published in 2000 had an incredible amount of foresight, but so much has changed since then, in surprising and fantastic ways.

**1. The Internet has changed the way we create and engage information, and a lot of it has been awesome. Artists and entrepreneurs are using the Internet to create fantastic new things. Just look at platforms like iTunes and YouTube, which have launched careers and created entirely new markets that reach a huge audience.**

Today, there are more artists, on more platforms, creating more works, than ever before. By that measure -- looking at whether we have sufficient incentives that lead to creativity and access to content -- copyright remains incredibly successful. A few metrics:

- Tens of millions of blogs.
- 24 hours of video uploaded to YouTube every minute.
- This spans the gamut from non-commercial creativity to content creators trying to promote their works and make money, and everything in between.
- Take Justin Bieber, for instance. Justin Bieber was discovered on a homemade video uploaded by his mother on YouTube. He was then signed by a record label, and his debut release in 2009 was certified platinum in the United States, making him the first artist to have seven songs from a debut album chart on the *Billboard* Hot 100.
- Take TuneCore as another example. Tunecore is a site that helps independent artists sell their works online, by helping them get their music into iTunes, Amazon, and other online stores. Today, there is more music being released in one day via TuneCore than via any single major over a year. Within three days more music has been released than via all the majors combined, and within a month, more music has been released just via TuneCore than all the majors and indies combined.
- So, in terms of quantity of cultural production, copyright is doing well. In addition, in terms of quality, we are doing better than ever -- we now have the most incredible diversity of content at our fingertips, the ability to access and distribute content across a global market. While "new" online creativity does not always constitute High Art, some does, and one man's trash is another man's treasure. The great thing is that, because of the Internet, we have a platform for all types of creators.
- **Research avenues for NAS:**

- Quantifying how the Internet has reduced costs for artists and created opportunities - lower production/distribution/marketing costs, and thus lowering the barriers to market.
- Value to consumers of content explosion

**2. Another important metric of success is “are there sufficient financial incentives to sustain a broad, diverse array of creativity?” Here, too, things appear to be getting better. Of course, there have been significant challenges for traditional media companies, and there is no silver bullet. But new services and technologies are creating new opportunities, and media companies are adapting.**

- 10 years ago, many assumed that you couldn't “compete with free” - now, look at iTunes, Amazon, Kindle, Netflix, YouTube are helping content creators make money.
  - **Music:** Today, iTunes is the biggest music retailer in the US, accounting for 25% of the overall music sales market. There are now over 400 legitimate music services online, and revenue has reached an estimated US\$4.2 billion -- 940% growth in the last 5 years. ([IFPI](#)). Global digital music retail revenues may reach \$32.5 billion by 2014. [[Research and Markets](#)]
  - **Video:** Revenue will grow from \$2 billion this year to over \$17 billion by 2014. ([In-stat](#))
  - **Books:** The e-book market is expected to rise to \$9 billion by 2013. ([MediaPost](#))
- Other revenue streams for artists and content creators remain strong.
  - Between 1999 and 2009 concert-ticket sales in America tripled in value, from \$1.5 billion to \$4.6 billion ([The Economist](#))
  - In 2009, the movie industry set new records at the box office -- \$29.9 billion worldwide revenue, including over \$10 billion from US and Canada sales. ([MPAA](#), [Reuters](#))
- Meanwhile, new revenue streams and ways to address unauthorized use of content continue to evolve. Consider YouTube for example.
  - Major TV and movie studios, along with all 4 major record labels, and thousands of other content creators of all stripes are uploading their content to YouTube, so that they can (a) promote their works and (b) allow ads to be run alongside the video. The content partner gets the majority of the revenue from the advertisement, and this complements the sales revenue they are getting.
  - 2 billion monetized views a week (50% growth over the past year)
  - We have also developed Content ID. YouTube Content ID System is the largest, most sophisticated, and fastest-growing online video management platform in the world. Working in cooperation with rights holders, our Content ID system helps them identify when their content is used on YouTube and lets them choose whether to block, leave up, or monetize those videos.
    - Over 1,000 media companies are now using Content ID -- including every major U.S. network broadcaster, movie studio, and record label
    - Rightsholders choose to leave up and make money from user-generated content in the majority of cases, rather than choosing to block it. In other words, they've turned user generated content into a new revenue stream.
- **Research avenue:** Rather than just stating you can/can't compete with free, NAS could examine more rigorously what is or isn't working in the market, real data about how consumers consider convenience and other factors in making their decisions. For example:
  - (1) Michael D. Smith, "Converting Pirates Without Cannibalizing Purchasers: The Impact of Digital Distribution on Physical Sales and Internet Piracy" (2010) [Take home point: Consumers will buy legitimately if you give them a quick and easy digital path]

- (2) Howie Singer, VP of Warner Music, Presentation to FCC on consumer purchasing habits, <http://bit.ly/bodyUY> [87% are among legit consumers; only 13% are “self-avowed pirates”; consumers want convenience and connection]

### 3. So what are the legal conditions that are allowing innovation in the market to happen?

- The prospectus already talks about some of these -- limits on secondary liability, the DMCA safe harbors, fair use, and other limitations and exceptions.
- These limitations are critical to the development of the Internet and online platforms -- from Internet access providers, to bulletin boards, to video hosting sites, to social networks, to online marketplaces, and many many more. It's critical to allow open platforms to continue to flourish, so that they can keep creating more opportunities for people to speak out and reach audience.
- A recent study, using a methodology created by the World Intellectual Property Organization, found that industries that depend on limitations and exceptions contributed *\$4.7 trillion* to the economy.
- **Research avenues:** examine the economic contributions of services that depend on limitations in copyright, and assess the chilling effect of uncertain liability and statutory damages on innovation. Robust data about the chilling effect are hard to come by -- competitors don't want to talk, the fact that companies need licenses from repeat players mutes criticism; and it is hard to measure what wasn't built because of a lawsuit. That said, you might be able to pursue useful case studies here, interviewing select start-ups and venture capitalists.

### 4. What are other challenges that remain? I would encourage you to focus on a central challenge, one that Cary Sherman also brought up: copyright as gridlock economy, creating barriers to legitimate services due to the current morass of licensing systems.

- In many cases, it is difficult if not impossible to map sound recordings and sound recording ownership to the music publishing ownership of the songs embedded in those recordings. We also have problems because the global licensing system is disaggregated in many ways. This creates a lose-lose situation: the sound recording right holder might want to, e.g., license YouTube, but we can't monetize the video without all the relevant rights, so artists can't get paid, and users don't get convenient ways to access/use the content.
- This is a problem that cuts across other media as well, and goes beyond the more familiar challenge of “orphan works.” In many cases, the works on not orphans, but high transaction costs remain.
- **Research Avenues:**
  - Assess what the social loss amounts to in music, but also consider other areas (e.g., out-of-print books, difficulty licensing pre-90s movies).
  - Assess possible solutions: What role can new rights clearing intermediaries, databases, and legislation play here?