



## **A COPYRIGHT EXCEPTION FOR MONETIZING FILE-SHARING: A PROPOSAL FOR BALANCING USER FREEDOM AND AUTHOR REMUNERATION IN THE BRAZILIAN COPYRIGHT LAW REFORM**

Volker Grassmuck

*Volker Ralf Grassmuck is a media-sociologist focusing on the digital revolution and the ensuing changes in cultural practices. He has conducted research on the knowledge order of digital media, on copyright and the knowledge commons at Free University Berlin, at Tokyo University, and at Humboldt University Berlin and is currently a visiting professor in the Grupo de Pesquisa em Políticas Públicas para o Acesso à Informação (GPOPAI) at the Escola de Artes, Ciências e Humanidades (EACH) of the Universidade de São Paulo (USP). He can be reached at <ralf.grassmuck at usp.br>. He wishes to thank the members of GPOPAI for invaluable insights and great discussions, in particular Maria Carlotto, Pablo Ortellado, Felipe Sentelhas, and Jorge Machado. Very special thanks go to Bráulio Araújo who translated the text into Portuguese. This piece is based on a “Request for Comments Draft” dated March 18, 2010, which appears at <http://www.vgrass.de/?p=193>.*

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## I. A NEW SOCIAL CONTRACT

*The dissemination of free music on radio and TV is regulated, they [the industry] get money for it, but nobody in the media is claiming that music is being given free to the consumer.*

—Pedro Alexandre Sanches

*They refused to understand the Internet as a means of communication. They refused to sit at the table and propose, discuss and collect money through ECAD [the Brazilian music collecting society]. They refused the right of ECAD to collect money on the Internet. If there is any, it's a tiny amount, when in fact they should have joined and forced ECAD to become a distributor.*

—Pena Schmidt<sup>1</sup>

Copyright law was the core element in the social contract between authors and audiences that was negotiated in the 18th and 19th centuries. It worked well in regulating the relationship between commercial parties in the culture industry. The digital revolution has fundamentally changed the media — technological basis of the production, distribution and consumption of cultural goods. Private persons, whose actions have until recently been outside the scope of copyright law, can now be producers and global distributors of creative works. Therefore a new social contract concerning culture has to be negotiated.

The overall goals of this contract remain the same: to ensure the possibility of all citizens to have access to and participate in the knowledge society and their freedom of expression, to ensure the freedom of a diversity of authors and artists to create and their right to an equitable remuneration for the use of their works, and to ensure the freedom of technologists to innovate, in particular the freedom of the Internet that has brought us a wealth of novel ways to communicate, cooperate, and do business.

Also the two core elements of this contract remain: the willingness of authors and artists to create works and the willingness of audiences to pay them for doing so. This payment will continue in a range of ways, from market transactions, donations, corporate sponsorship to forms of collective redistribution like public funding and collective rights management.

For a large number of uses by a large number of individuals of a large diversity of works the conventional response of copyright law is collective management. When in the 19th century composers were unable to individually collect a remuneration from each cafe house and bar that performed their music, they joined hands and formed the first collecting societies that since then collectively collect the money for the community of music authors. When in the 1950s audio tape recorders became available for private use, enabling people to make non-commercial reproductions in their homes, in response the private copying exception was invented in 1965. Neither could the technology or their use for making reproductions be prohibited, nor could authors or even their collectives go after each individual owner of a tape recorder to collect their fair remuneration. Therefore the German legislature decided to permit private copying and required the producers and importers of tape recorders to add a copyright levy to the price of their devices. The music collecting society collects this levy and redistributes it to its members. This private copying exception was quickly adopted throughout Europe and other droit d'auteur countries.<sup>2</sup> The levy was later extended to other recording devices like photocopying machines and video recorders and to recordable media.

Collective rights management organizations (CMOs) thus developed as crucial institutions in the social contract between authors and audiences, ensuring authors a fair remuneration for mass-scale secondary and tertiary uses of

their works<sup>3</sup> and ensuring audiences the informational freedom of private copying. Because of their special status, CMOs are subject to legal regulation and public approval and oversight. Internally they are membership organizations with democratic decision-making. Currently in Germany there are 13 CMOs for different work categories (music works, music recordings, text works, images, movies and other audio-visual works). Peer-to-peer (P2P) file sharing is a mass-phenomenon comparable to private copying, practiced by about half the Internet population.<sup>4</sup> The adequate response is again a collectively remunerated copyright exception.

## II. REPRESSION DOES NOT WORK

Today there is a discrepancy between copyright law and the widespread practice of file sharing. So far attempts to resolve this discrepancy were directed at repressive measures in order to make cultural practices conform to the law: in the form of technology (Digital Restrictions Management (DRM)), deterrent campaigns à la “Pirates are Criminals,”<sup>5</sup> and mass-scale civil and criminal proceedings. None of these have had any measurable impact on file sharing. But instead of recognizing the failure and changing the approach, the same logic is bringing forth evermore extremist forms of repression. Excluding infringing citizens from the Internet for up to one year was pioneered in France and is now being called for by culture industries in many countries, including Brazil. The secretly negotiated multi-lateral Anti-Counterfeiting Trade Agreement (ACTA) is intended to introduce this digital death sentence globally. Deep Packet Inspection (DPI)<sup>6</sup> for filtering file sharing out of the Internet is now being tested by UK Internet Service Provider (ISP) Virgin Media<sup>7</sup> and others.

All this is done under the unproven assumption that repression will improve sales opportunities for copyrighted products and with the proclaimed but equally unproven intention to increase revenues of authors and artists. A much more likely and, indeed, observable result of repression is not a decrease of file sharing but an increase of tracker-less P2P networks<sup>8</sup> encrypted and anonymous P2P file sharing,<sup>9</sup> of closed trackers,<sup>10</sup> file-hosting, sharing on Usenet, offshore hosting,<sup>11</sup> and hard disk-copying. Repression predictably calls in the next round of the technological arms race. As U.S. law scholar Lawrence Lessig explains, the criminalization of the whole generation of our children “can’t stop these activities, it can only drive them underground.” He points out one dramatic effect it does have: the erosion of the trust in the legal system.<sup>12</sup> If cultural reality cannot be made to conform to copyright law, then copyright law has to be adapted to reality by legalizing what can not be prevented anyway and at the same time ensuring an equitable remuneration to authors.

## III. THE FILE-SHARING EXCEPTION

The model has been discussed under different names: “alternative compensation system” (William Fisher<sup>13</sup>), “noncommercial use levy” (Neil Netanel<sup>14</sup>), “licence globale” (Alliance Public Artistes<sup>15</sup>), “culture flat-rate” (privatekopie.net and FairSharing.de), “contribution créative” (Philippe Aigrain<sup>16</sup>). Variations of its details are, of course, being discussed, but the contours of the general model have emerged by now. Following the precedent of the private copying exception, the goal is:

**a legal permission for private online sharing of published copyright protected works for non-commercial purposes subject to a collectively managed levy.**

The permission refers to private, natural persons, thus excluding companies and other legal institutions. It refers to published works, ensuring the right of first publication to the author. Secondary and tertiary uses are already regularly collectively managed. It refers to non-commercial uses: anybody earning money from the use of another’s work will

continue to be required to obtain a license. “Sharing” refers to both up- and downloading. While downloading is already covered by the private copying exception in some countries,<sup>17</sup> permitting uploading requires an exception to the exclusive right of making available. “Online” refers to networks using the Internet protocol, both wire-based and wireless. “Levy” refers to a fixed sum to be paid by the beneficiaries of the permission and allocated by CMOs to authors based on the measured popularity of their works. Finally the permission should be implemented in copyright law in order to achieve legal certainty for authors, performers, exploiters and Internet users alike.

## **A. THE CULTURE FLAT-RATE IN COPYRIGHT LAW**

Three models for implementing such a file-sharing permission in copyright law have been suggested.

### **Mandatory collective management of the exclusive making-available right**

This was first implemented by Hungary. Silke von Lewinski from the Max Planck Institute for Intellectual Property in Munich analyzed the Hungarian provision and found it in accordance with international and European copyright law.<sup>18</sup> The French Alliance Public-Artistes commissioned a legal study from France’s most renowned copyright scholar André Lucas who also found mandatory collective management compliant with French, European, and international law.<sup>19</sup> This model was supported by French Members of Parliament from both the socialists and the conservative parties who passed it into law in December 2005. Alas, the decision was reversed soon after.

### **Extended collective licensing**

This instrument has been widely used in Nordic European countries since the early 1960s for broadcasting and cable re-transmission and has recently been applied to the reproduction of works for educational purposes and the digitization of works in libraries, museums, and archives.<sup>20</sup> It extends a license concluded between a CMO and a group of users of certain rights to authors, performers and exploiters who are not a member of the CMO. These non-members usually have the right to opt-out of such an agreement. With respect to file sharing, this model has been discussed particularly in Italy,<sup>21</sup> leading to two bills introduced in parliament in July 2007 and in April 2008.

### **Copyright exception**

A third option is to model a file-sharing exception on the time-tested private copying exception. This has been tested by Alexander Roßnagel and his team at the Institute of European Media Law (EML) on commission from the German and European Parliament factions of the Green Party.<sup>22</sup> Their study has shown that such an exception is feasible within the framework of existing German and European law, even though it requires changes in both. They conclude that “[t]he introduction by law of a culture flat-rate therefore requires amendments to both national and European law, yet it remains nothing less than the logical consequence of the technological revolution ushered in by the internet.”

It seems that by subjecting the complete scope of the making-available right to mandatory collective management, the first model is going too far, while the second model is not going far enough. Permitting exceptions to the exception would still require policing the boundary between licensed works and those that have been opted-out of the agreement. Therefore a clearly defined copyright exception is the best option to achieve legal certainty for all parties involved.

## **B. WHICH WORKS TO INCLUDE?**

Empirical research shows that nearly all categories of copyright protected works are being shared to varying degrees depending on the characteristics of the different P2P protocols.<sup>23</sup> Therefore the permission should extend to all categories that are also covered by the private copying exception. Whether computer software and games that have been exempted from the private copying permission and thus also from receiving a share from the levy should be included is up for discussion with the respective industries.<sup>24</sup>

### **C. WHO SHOULD PAY?**

The beneficiaries of the permission, i.e., the individual private Internet users, owe the creators of the works they share. Internet Service Providers (ISPs) do not download music or movies, just as the makers and operators of photocopying machines, audio recorders, and MP3 players do not copy. The argument of a “contributory liability” is not convincing: by the same token the providers of electricity, search engines, computer monitors, chairs, etc., would contribute to file sharing. Conversely, no Internet users would cancel her broadband subscription if P2P were to disappear.

However, for practical reasons, one cannot expect consumers who acquire these devices, media and services to pay the copyright levy in a separate transaction. Therefore legislatures in many countries have tasked the producers and importers of devices and media with collecting the private copying levy. For reasons of transparency and fairness, German copyright law since its 2008 reform requires that end-consumer bills separately indicate the copyright levy included in the price for these products.<sup>25</sup> Likewise, ISPs and mobile phone companies that provide Internet access to private homes are the logical parties to add the file-sharing levy to their monthly customer bills and transfer the money to the CMOs. LAN houses provide a large number of Brazilians who cannot afford broadband at home with access to the Internet. Assuming that their clients actually use file-sharing applications for up- and downloading copyright-protected works (this needs to be empirically assessed), LAN houses, like ISPs, should add a copyright levy to the price they charge. The rate, however, cannot be so high as to exclude a significant portion of the population from Internet access altogether. Just as with the current plans for establishing a national broadband service, public policy has to balance the interest of society to include all citizen in the opportunities of the digital age with the interests of authors and publishers as well as those of ISPs and LAN houses.

### **D. ARE THEY WILLING TO PAY?**

The Swedish music collecting society STIM in a survey published in February 2009 found that 86.2% of responding Internet users are willing to pay a monthly copyright levy entitling them to file sharing.<sup>26</sup> This willingness has also been shown when bands like Nine Inch Nails and Radiohead released albums for free download and received significant amounts of voluntary payments from their fans. The online indie label Magnatune.com releases all its albums under a Creative Commons license expressly permitting file sharing, which effectively makes payment voluntary. Magnatune also allows its customers to pay a price of their own choice on a scale from 4-14 Euros. Rather than paying the lowest possible price, the average payment is between 8 and 9 Euros, clearly indicating that listeners are willing to pay creators a price they deem fair.

The same willingness was shown for computer games when in October 2009 the developer 2DBoy offered its game “World of Goo” on a pay-what-you-like basis. Remarkably, it found the average price paid higher for GNU/Linux users than for Windows users and, mapping average payment per country onto per capita GDP, it found the “generosity factor” to be exceptionally high in Brazil.<sup>27</sup> Quite the opposite from industry claims that what is gratis is considered worthless, one can conclude that people acculturated in free and sharing culture are more aware that creators need to be remunerated and more willing to behave accordingly.

### **E. BUT I DON'T SHARE**

The copyright levy should be mandatory for all Internet users. Just like permitting opt-out for individual works, making payment optional would require policing the boundary between those who pay and those who do not, which would largely defeat the public policy purpose of the file-sharing exception.

An objection often raised against a levy mandatory for all Internet users is: “I don’t file-share. Why should I pay?” This should be alleviated by differentiating the rate by access speed. Email-only dial-up access should be exempt. Given that half of all Internet users file-share already and nearly 90 percent are ready to pay for legalized P2P, one can expect the number of people to whom this objection applies to shrink even further once a file-sharing exception is introduced. Also non-file-sharers benefit from decriminalization and wider access by gaining a richer cultural sphere.

Cross-subsidizing is already common in many cases. Taxes of citizens without children are used for funding schools. Someone who buys a detergent in a supermarket pays for the advertising-funded movie on “Free TV” that she is not watching. The private copying levy on a recordable DVD is due even if the buyer uses it for a back-up copy of her own data. Finally, if 86.2% of the Internet population are willing to pay for the right to file-share, may the other 13.8% stop it? If so, by the same logic we would not have public broadcasting, opera, health care, police or national defense.

## **F. HOW MUCH?**

Objectively, it is impossible to determine the positive impact due to its “discovery effect” versus the “damage” of file sharing that a levy might compensate.<sup>28</sup> Subjectively, the pay-what-you-like models give an indication as to how much certain works are worth to certain people. In actuality, rate setting in collective management is a very difficult procedure. In case of the private copying levy, rates are negotiated between CMOs and the associations of device and media producers. For the file-sharing levy, negotiations would include not only ISPs but also artists and Internet users who are paying in the end. Also public mediation by the newly proposed Instituto Brasileiro de Direito Autoral (IBDA) would be helpful, if not even essential, for successfully concluding an agreement in the public interest.

Ever-since Fisher calculated the fair amount to be roughly US\$5 per month,<sup>29</sup> five has been the magic number in the debate, varying between dollars, pounds, euros, reais, etc. For a Brazilian household that can afford broadband Internet access, five reais per month is not a prohibitive amount. Assuming 6.6 million households with broadband Internet access in Brazil,<sup>30</sup> R\$5 per month yields an annual amount of R\$396 million.

Revenues for music CDs and DVDs reportedly decreased by 31.2% (or R\$141.7 million) to R\$312.5 million in 2007,<sup>31</sup> while in 2009 ECAD (Escritório Central de Arrecadação e Distribuição<sup>32</sup>) was able to distribute 17.06% (or R\$46.34 million) more revenues from collective management of music rights to its members than in the previous year.<sup>33</sup> Movies generated revenues of R\$966 million in 2008 at the box office, which was an increase of a full 25% over the previous year.<sup>34</sup> Movie DVDs reportedly saw a drop by 10.83% from 27.2 million units sold in 2007 to 24.7 million in 2008.<sup>35</sup> Conservatively assuming a sales price of R\$40.00 this amounts to a decrease by R\$120 million. The Brazilian book market showed a slight annual increase as well, by 6.03% to R\$2.286 billion in 2007.<sup>36</sup> The increases in cinema and book revenues occurred in spite of widespread file sharing, and there are reasons to assume that also the decrease for recorded music and movie DVDs are unrelated to it.<sup>37</sup> But even if one assumed that file sharing is the single cause for the decline of the market for music and movie discs (by approximately R\$261.7 million) and that the levy would have to compensate for it, the levy proceeds of R\$396 million would be more than sufficient to do so.

A realistic approach, of course, cannot start from such a simplistic and flawed assumption. It will have to take into account the complex dynamics in each of the sectors and include the whole range of revenue channels for creative works like live performances, cinema screenings, commissioned works, merchandizing, etc., that have been shown to be positively impacted by file sharing.

For the music industry it has been shown that the revenues from 2000 to 2008 remained stable, with the decrease in recorded music made up for by increased revenues from live music and collective management.<sup>38</sup> Recorded music

sales are shifting rapidly from CDs to digital distribution. Commercial download services, by ensuring quality, speed and freedom from malware, will be able to compete with legalized P2P, which, being open networks, will continue to suffer from these three issues. After all, iTunes was established at a time when P2P use was already widespread. In particular new business models based on fairness, benefit sharing, and transparency like Magnatune and those promoted by the Fair Music Initiative<sup>39</sup> will increasingly attract both artists and paying audiences. According to the International Federation of the Phonographic Industry's (IFPI) 2010 annual report, album downloads globally rose an estimated 20% in 2009, with Internet and mobile downloads and streams now accounting for more than a quarter of all recorded music industry revenues worldwide.<sup>40</sup> An important public policy goal is cultural diversity. Since 2000, the worldwide annual release of new music albums has more than doubled.<sup>41</sup> Thus the digital environment is clearly promoting diversity. The increase is due to the activities of independent labels and, since it occurred during the time of the rise of file sharing, one can conclude that file sharing is helping rather than hindering cultural diversity.

Last but not least, a realistic approach has to start from recognizing the fact that current levels of authors' income are far below the average national income in all professions, that a few stars gain a disproportionate percentage of the revenues, that female authors earn significantly less than their male colleagues, and that the typical author's income has been decreasing since 2000.<sup>42</sup> These facts are unacceptable for a society that defines the culture and creative industries as its central dynamic. In fact, audiences are aware of this unbearable situation of authors and artists, leading to voluntary payments that are on average higher than the forced payments in services such as iTunes.<sup>43</sup> Therefore, it is not unlikely that negotiations about fair rates for the file-sharing levy that primarily involve artists and audiences will result in higher rates than if collecting societies and industry associations were to conduct them alone.

Thus, rather than "compensation" of alleged "damages," the system should strive to create "sustainable resources for creative activities in the digital era" that ensure that this creativity can flourish and grow.<sup>44</sup> The seemingly simple question "How much?" actually leads to the core of the social contract between artists and audiences that is currently being negotiated.

## **G. WHO SHOULD RECEIVE PAYMENTS?**

The levy is due to those who create the works that are shared under the new exception, i.e., authors and performing artists as well as the "auxiliary service providers in the creative process" as German law professor Thomas Hoeren aptly called exploiters. Authors (composers and lyricists, literary authors, film makers, photographers, etc.) and publishers as well as musicians and record labels are joined together in their respective CMOs.

The pool of lump-sum payments by Internet users thus has to be distributed first to the CMOs for the different work categories (music, audio-visual works, text, images, etc.) based on the measured proportion of these work categories in file-sharing networks and then within the CMOs to the individual members based on the actual popularity of their works.

In Germany, the 13 existing CMOs pay at least 50% and up to 100% of their proceeds to authors, while the remainder goes to the exploiters (publishers or record labels).<sup>45</sup> In the case of ECAD, the situation is more confusing because its members are not authors, musicians, and exploiters directly, but ten associations of these groups.<sup>46</sup> This two-tiered structure creates additional obfuscation concerning money flows and leads to overall administrative costs of close to 30% that appear to be among the highest in the world.<sup>47</sup> While it is hard to understand in the analog world how authors and musicians are willing to accept a system in which nearly one third of the money due to them for the use of their works goes into the apparatus for collecting it, it is clear that in the digital online realm collective rights administration will be automated to a maximum degree, ensuring that the maximum amount possible reaches those who actually create cultural goods.

However, the most recent figures about the percentages of the proceeds that ECAD and its member associations actually distributed in 2005<sup>48</sup> indicate also that in Brazil more than two thirds of the money for author rights go to authors and more than half of the money for neighboring rights goes to musicians.

In order to counteract the star effect of very few artists receiving the largest share and to foster cultural diversity, the community of creators organized in the CMO might decide to make payouts regressive, i.e., the percentage per unit would decrease with increasing popularity.<sup>49</sup> In addition to the remuneration for creators, a part of the collective funds is used for cultural, educational, and social purposes: for supporting young artists, the production of new works, and the environment of creation and dissemination itself.<sup>50</sup> Record labels and publishers are not opposed to flat-rate licensing per se, as we can see in the growing number of contracts with telecommunications companies like Nokia (“Comes with Music”), Internet Service Providers like Neuf Cegetel in France and TDC in Denmark, and with service providers like Spotify in which complete music catalogs are licensed for a flat-rate paid by the user or embedded invisibly in the price for other products and services (like Nokia’s mobile phones or the products advertised on and paying for streaming services). These Business-to-Business (B2B) flat rates are expressly positioned as legal alternatives to P2P file sharing. In fact, they have nothing to do with the cultural practice of sharing. If users can download songs at all, these are usually wrapped in “terminator DRM”: if they leave their ISP, the license expires and they lose all the music they collected from the service.<sup>51</sup> For authors and musicians, these B2B flat rates make remuneration nontransparent because the contracts are clouded in non-disclosure agreements.

Secrecy and control of authors and consumers — that is what industry likes about these B2B flat rates, and this is why they dislike a copyright law-based file-sharing flat rate that is collectively managed and publicly supervised and ensures authors at least 50% of the revenues.

## H. MEASURING

In order to allocate the levy fairly to authors, performers and publishers, the number of downloads of their works needs to be measured as accurately as possible. CMOs are already distributing some of their proceeds based on actual usage data. Concert organizers and DJs, for example, have to produce playlists so that the artists whose works are performed can get paid. But performance rights on radio and TV are often, including in the case of ECAD, subject to “indirect distribution” based on a sample of broadcast stations and a sample of the most frequently played songs. In the case of music played in commercial establishments, such as restaurants and stores and in the case of the private copying levy, distribution is the most imprecise, based on conjectures from sales and airplay. The latter two methods lead to systematic distortions that favor the most popular artists to the disadvantage of independent label artists. In the Internet environment, empirical measurements can be much more precise, encompassing, and fair, avoiding the distortions of the so called black-box money of the analog age, ensuring payments to artists deep into the Long Tail and thereby supporting cultural diversity.

A number of methods have been suggested and tested for this purpose. P2P market researchers like Big Champagne<sup>52</sup> and infringement investigators like Logistep<sup>53</sup> monitor P2P from within, creating detailed reports for their clients. Big Champagne CEO Eric Garland leaves no doubt that the Internet is better empirically suited for close measurement than any other medium.<sup>54</sup> Once P2P has been legalized, cooperation from file-sharers themselves could be recruited as well. They would install a module that plugs into Vuze, BitTorrent, Miro, Ares, Mozilla Firefox, and other applications used for downloading. This module logs the metadata of each work<sup>55</sup> the user downloads from the Internet and sends an anonymized monthly report to an administrative site that then calculates the total number of downloads in a given territory. Audioscrobler is an example of such a voluntary reporting agent deployed by Last.fm.<sup>56</sup> Noank, a prototype

file-sharing flat-rate system developed by Fisher and field tested in Hong Kong, also includes a detection and reporting module that plugs into any media player of the user's choice, including iTunes and Windows Media Player.<sup>57</sup> Both of these log only music, and they log the songs the user listens to rather than downloads. Whether plays or downloads should be the measure of popularity on which to base payouts is up for debate. Nevertheless, how often a DVD is watched or a CD listened to in the private sphere is currently irrelevant to both copyright law and remuneration. A shift from number of reproductions to number of plays would need a solid justification.

A third method suggested, among others, by French economist Philippe Aigrain also uses plug-ins, but is based not on open participation but on a representative sample of households who volunteer to have their media use monitored.<sup>58</sup> Aigrain argues that fraud attempts, which this system would surely attract, can be countered by using the data of only 5% of the panel members, chosen randomly. Large-scale collusion or automated generation of fraudulent data is fairly easy to detect and will be subject to deterrent sanctions. He then calculates a feasible sample size that, even if 95% of the data were discarded, would still detect works that are downloaded only several thousand times per year, thus ensuring a positive impact on cultural diversity.<sup>59</sup> During the introduction of the file-sharing levy these and possibly other methods of measuring will be used concurrently in order to check the results against each other and optimize the methodology to ensure fraud prevention, remuneration of the greatest possible diversity of cultural expressions, and cost-effectiveness.

## I. COLLECTIVE RIGHTS MANAGEMENT

It is evident that the significance of collective rights management is greatly increasing in the digital age. When WIPO established its Copyright Collective Management Division (CCMD) in 1999, it explained its rationale thus: "The experience of recent years has increasingly confirmed that the individual exercise of rights is impractical; ... Collective management is an essential tool for the efficient exercise of rights; collective management societies therefore play an important and very useful role, both for authors/creators and for users. This is definitely why they have experienced considerable development in parallel to the increased use of works made possible by new technology."<sup>60</sup> A recent report by a French government commission urges the expansion of existing and the creation of new collective management arrangements in order to simplify online licensing, including the proposal to subject the making-available right to mandatory collective management.<sup>61</sup> The Brazilian Ministry of Culture (MinC) also made it clear in its discussion paper for the current copyright law reform<sup>62</sup> that it favors the extension of collective management. It proposes to expand the scope of the private copying exception and introduce a collectively managed levy on it. It also encourages the formation of a CMO for the public performance rights of audiovisual works, one for reprographic rights — hoping "to finally resolve the conflict between the owners of literary works and the teachers and students of educational institutions" — and additional CMOs for other categories of works.

At the same time, criticism in particular of music CMOs by their members and users is also increasing. In Germany concert organizer Monika Bestle initiated a public petition initiated in 2009 urging the Bundestag to review the conduct of the music CMO GEMA and start a comprehensive reform of that organization.<sup>63</sup> The petition received more than 100,000 signatures.<sup>64</sup> It will lead to a public hearing in the first quarter of 2010.

Like many other music CMOs across the globe, ECAD is criticized for its lack of transparency, internal democracy, and equity in distributing proceeds to its members. Its conduct gave rise to several parliamentary investigations. The most recent one by the Legislative Assembly of São Paulo in April 2009 led by congressman Bruno Covas concluded that the collective management of music rights is in a "state of institutional anarchy."<sup>65</sup> The final report states that "this anarchy allows ECAD to exceed its financial, legal and statutory obligations, giving rise to irregularities and evidence of crimes such as forgery, tax evasion, embezzlement, illicit enrichment, conspiracy, formation of a cartel

and abuse of economic power.”<sup>66</sup> To address this issue, the MinC proposes to create a new regulatory agency, the Instituto Brasileiro de Direito Autoral (IBDA) under the Ministry of Culture. It will supervise, regulate and promote the collective administration of rights, provide administrative dispute mediation and organize the registration of works. The latter would greatly aid in the identification of works in the measurement of downloads and in allocating the levy share to its beneficiaries.

If collective management is crucial for the future of creativity in the digital age, then an institutional framework ensuring internal democracy, fair representation, transparency in the allocation of funds, and public oversight is crucial for the future of collective management. The IBDA promises to be a key instrument on the way towards this goal.

### III. CONCLUSIONS

The MinC’s proposals for reforming the Brazilian copyright law constitute an important framework for the emerging new social contract between authors and audiences. However, the MinC has shied away from addressing the pressing issue of mass-scale user-distribution of copyright protected works.

This paper is intended to encourage the MinC and others involved in the copyright law debate to consider a collectively managed file-sharing exception as a model for striking a balance between authors’ rights and users’ rights with respect to this important digital challenge. The debate on this model was initiated ten years ago by copyright law scholars and soon joined by members of the music community and other creative sectors, members of CMOs, consumer and Internet user organizations, economists, technologists, and eventually by political parties. Today large-scale open debates take place on a new social contract over creativity: in the broad alliance of artists, consumers, and the Internet community “Création Public Internet” in France;<sup>67</sup> in the ongoing effort to negotiate an agreement between creative communities and the public that seeks to improve access to and income for knowledge goods under the name “The Paris Accord”;<sup>68</sup> and in the forum “Artists-to-fans-to-artists” initiated by musician Billy Bragg.<sup>69</sup> Members of Parliament in countries like France and Italy are tabling bills to implement file-sharing permission in copyright law. The Isle of Man is about to start a trial on it.<sup>70</sup> In Brazil the process of reforming copyright law exceptions and the collective management system is well underway. The country should seize the opportunity, adopt a model whose time has come, and lead the way into an equitable future that combines the freedom to create and the freedom to share.

The decisive question is how we as citizens of the knowledge society want to see ourselves: Do we prefer to see ourselves as consumers with the choices of products and services the market offers, and as objects of market research, advertising, surveillance, technological restrictions, deterrent campaigns and juridical repression? Or do we see ourselves as partners in an arrangement where we all provide creative artists, whose works we enjoy and share with each other, with decent working and living conditions to create them?

<sup>1</sup> Pedro Alexandre Sanches, *é pau, é pedra, é pena*, *Entrevista com Pena Schmidt*, PEDRO ALEXANDRE SANCHES (March 20, 2009), <http://pedroalexandresanches.blogspot.com/2009/03/e-pau-e-pedra-e-pena.html>.

<sup>2</sup> See Bernt Hugenholtz, Lucie Guibault & Sjoerd van Geffen, *THE FUTURE OF LEVIES IN A DIGITAL ENVIRONMENT* 11-12 (Institute for Information Law, University Amsterdam 2003), <http://www.ivir.nl/publications/other/DRM&levies-report.pdf>.

<sup>3</sup> The primary use is the sale of a work by its author to a publisher or the sale of a recording by a band to a record label. A secondary use is the broadcasting of a music record by a radio station or the private copying of a record onto audiotape. A tertiary use is the recording of a radio broadcast of a record onto audiotape.

<sup>4</sup> *E.g.*, in a UK study from spring 2008 commissioned by industry organization British Music Rights (BMR),

63% of respondents admitted to downloading music from P2P file-sharing networks. Press Release, University of Hertfordshire, What does the MySpace Generation really want? (June 17, 2008), available at <http://www.herts.ac.uk/news-and-events/latest-news/MySpace-Generation.cfm>. In Brazil, according to Nielsen (IBOPE) NetRating in March 2008, 41.4% of all residential Internet users in the country were using P2P and file-hosters to download music, films and TV series. Guilherme Felitti, P2P: 9,4 mi de brasileiros baixam conteúdo pela internet, diz Ibope, IDG Now! (May 5, 2008), <http://idgnow.uol.com.br/internet/2008/05/05/p2p-9-4-mi-de-brasileiros-baixam-conteudo-pela-internet-diz-ibope/>. According to Ipoque's measurement, South America ranks third among the regions studied behind Eastern Europe and Southern Africa, with 65% of its Internet traffic generated by P2P. Hendrik Schulze and Klaus Mochalski, Internet Study 2008/2009 5, IPOQUE (2009) available at <http://www.ipoque.de/userfiles/file/ipoque-Internet-Study-08-09.pdf>.

<sup>5</sup> "Raubkopierer sind Verbrecher" is an ongoing campaign by the marketing company of the German movie industry. See <http://www.hartabergerecht.de/>.

<sup>6</sup> In contrast to shallow packet inspection, which only looks at header information, DPI devices inspect the actual content of Internet data packets and allow their users to report, redirect, rate limit, and block any content that meets pre-defined criteria. DPI is used by ISPs, enterprises, and governments for a variety of purposes, including the detection of spam, viruses and other forms of attacks, criminal investigations, prioritizing certain applications like Voice-over-IP while slowing down or blocking peer-to-peer traffic, injection of personalized advertising, surveillance, censorship, and copyright enforcement.

<sup>7</sup> Chris Williams, *Virgin Media to trial file-sharing monitoring system*, THE REGISTER (Nov. 26, 2009), [http://www.theregister.co.uk/2009/11/26/virgin\\_media\\_detica/](http://www.theregister.co.uk/2009/11/26/virgin_media_detica/).

<sup>8</sup> A technique known as distributed hash tables (DHT) makes it possible to locate files by querying other peers in the BitTorrent swarm, removing the need for centralized trackers. See Nate Anderson, *Pirate Bay moves to decentralized DHT protocol, kills tracker*, ARS TECHNICA (Nov. 17, 2009), <http://arstechnica.com/tech-policy/news/2009/11/pirate-bay-kills-its-own-bittorrent-tracker.ars>. The Pirate Bay has moved to this next-generation architecture. To a user, the index of The Pirate Bay (<http://thepiratebay.org/>) feels like before, but now it does not host torrent files any more, but only "magnet links." The Pirate Bay is thus nothing more than a search engine for .torrent files, like Google (<http://www.google.com/search?q=filetype%3Atorrent>).

<sup>9</sup> For example, OneSwarm (<http://oneswarm.cs.washington.edu/>) is a privacy preserving friend-to-friend network (F2F) developed at the Computer Science Department of Washington University with a grant from the US National Science Foundation (NSF). OneSwarm uses public-private keys to encrypt participant's IP addresses, manage them in a distributed hash table (DHT), and encrypt the file-exchanges with SSL.

<sup>10</sup> Adam Frucci, *The Secret World of Private BitTorrent Trackers*, GIZMODO, (Feb. 19, 2010), <http://gizmodo.com/5475006/the-secret-world-of-private-bittorrent-trackers>.

<sup>11</sup> Bobbie Johnson, *Internet pirates find 'bulletproof' havens for illegal file sharing*, THE GUARDIAN (Jan. 5, 2010), <http://www.guardian.co.uk/technology/2010/jan/05/internet-piracy-bulletproof>.

<sup>12</sup> See, e.g., Lawrence Lessig, Address at re:publica 09 (Mar. 2, 2009), quoted at: Volker Grassmuck, *The World Is Going Flat(-Rate)*, IP WATCH (May 11, 2009), <http://www.ip-watch.org/weblog/2009/05/11/the-world-is-going-flat-rate/>.

<sup>13</sup> WILLIAM W. FISHER III, PROMISES TO KEEP (Stanford University Press 2004).

<sup>14</sup> Neil Netanel, *Impose a Noncommercial Use Levy to Allow Free Peer-to-Peer File Sharing*, 17 HARVARD J.L. & TECH. 1 (2003), available at <http://jolt.law.harvard.edu/articles/pdf/v17/17HarvJLTech001.pdf>.

<sup>15</sup> <http://www.lalliance.org/>

<sup>16</sup> Philippe Aigrain, *Internet & Création* (Editions InLibroVeritas 2008), available at [http://www.ilv-edition.com/pdf\\_ebook\\_gratuit/internet\\_et\\_creation.pdf](http://www.ilv-edition.com/pdf_ebook_gratuit/internet_et_creation.pdf); see also Patrick Zelnik, Réponse de l'UFC Que Choisir (2009), available at [http://www.creationpublicinternet.fr/blog/public/mission\\_C\\_I\\_reponse\\_UFC-Que\\_Choisir.pdf](http://www.creationpublicinternet.fr/blog/public/mission_C_I_reponse_UFC-Que_Choisir.pdf)

<sup>17</sup> For example, Switzerland and the Netherlands. S. Allard Ringnalda, Mirjam Elferink, and Madeleine de Cock Buning, *Auteursrechtinbreuk door P2P filesharing, Regelgeving in Duitsland, Frankrijk en Engeland nader onderzocht*

20(WODC 2009), available at <http://www2.law.uu.nl/priv/cier/Documenten/PDFned/RAPPORT%20Filesharing%20WODC%20DEF%2090902.pdf>.

<sup>18</sup> Silke von Lewinski, *Mandatory Collective Administration of Exclusive Rights – A Case Study on its Compatibility with International and EC Copyright Law*, UNESCO E.COPYRIGHT BULLETIN, No. 1, January – March 2004, available at [http://portal.unesco.org/culture/en/files/19552/11515904771svl\\_e.pdf/svl\\_e.pdf](http://portal.unesco.org/culture/en/files/19552/11515904771svl_e.pdf/svl_e.pdf).

<sup>19</sup> Carine Bernault & Audrey Lebois, *Peer-to-peer et propriété littéraire et artistique. Etude de faisabilité sur un système de compensation pour l'échange des œuvres sur internet*, Institut de Recherche en Droit Privé de l'Université de Nantes, June 2005, available at <http://alliance.bugiwweb.com/usr/Documents/RapportUniversiteNantes-juin2005.pdf>; English translation, March 2006: [http://privatkopie.net/files/Feasibility-Study-p2p-acis\\_Nantes.pdf](http://privatkopie.net/files/Feasibility-Study-p2p-acis_Nantes.pdf).

<sup>20</sup> <http://www.kopinor.org/layout/set/print/content/view/full/2090>.

<sup>21</sup> Promoted by the researchers at NEXA: Center for Internet and Society at Politecnico di Torino; *Nexa 'position paper' su file sharing e licenze collettive estese*, NEXA: CENTER FOR INTERNET AND SOCIETY AT POLITECNICO DI TORINO, <http://nexa.polito.it/licenzecollettive> (last visited Apr. 9, 2011).

<sup>22</sup> Alexander Roßnagel, Silke Jandt, Christoph Schnabel, & Anne Yliniva- Hoffman, *The Admissibility of a Culture Flat-Rate under National and European Law*, Institute of European Media Law, Mar. 13, 2009, available at [http://www2.malte-spitz.de/uploads/emr\\_study\\_culture\\_flat\\_rate.pdf](http://www2.malte-spitz.de/uploads/emr_study_culture_flat_rate.pdf); the German original version is available here: [http://www.gruene-bundestag.de/cms/netzpolitik/dokbin/278/278059.kurzgutachten\\_zur\\_kulturflatrate.pdf](http://www.gruene-bundestag.de/cms/netzpolitik/dokbin/278/278059.kurzgutachten_zur_kulturflatrate.pdf).

<sup>23</sup> On eDonkey the largest category is music. BitTorrent supports larger files, so the largest categories are audio-visual and software works, including games. See, e.g., Hendrik Schulze & Klaus Mochalski, *Internet Study 2008/2009, IPOQUE* (2009), <http://www.ipoque.com/userfiles/file/ipoque-Internet-Study-08-09.pdf>.

<sup>24</sup> The German game developer association GAME supports both the file-sharing exception and the inclusion of games. See Interview by VRG with Malte Behrmann, Executive Director, GAME (June 19, 2009).

<sup>25</sup> For the same reason of transparency, some Brazilian movie theaters indicate on the movie ticket the copyright levy paid to ECAD for the music performed in the screening.

<sup>26</sup> Press release, STIM, *Music users willing to pay for legal file sharing* (April 20, 2009), available at <http://www.cisionwire.com/stim/music-users-willing-to-pay-for-legal-file-sharing>.

<sup>27</sup> *Pay-What-You-Want Birthday Sale Wrap-up*, 2D BOY (Oct. 26, 2009, 9:47 AM), <http://2dboy.com/2009/10/26/pay-what-you-want-birthday-sale-wrap-up/>.

<sup>28</sup> Studies have shown consistently that those who downloaded from P2P networks are significantly more likely to buy a CD or a game, go to a concert and go to a movie than non-file-sharing internet users. See, e.g., Dutch Ministry for Economic Affairs, *Ups and Downs. Economic and cultural effects of file sharing on music, film and games* (2009), available at [http://www.ivir.nl/publicaties/vaneijk/Ups\\_And\\_Downs\\_authorized\\_translation.pdf](http://www.ivir.nl/publicaties/vaneijk/Ups_And_Downs_authorized_translation.pdf).

<sup>29</sup> WILLIAM W. FISHER III, *Chapter 6: An Alternative Compensation System*, PROMISES TO KEEP 21, available at <http://cyber.law.harvard.edu/people/ffisher/PTKChapter6.pdf>.

<sup>30</sup> Comitê Gestor da Internet no Brasil, *Pesquisa sobre o Uso das Tecnologias da Informação e da Comunicação no Brasil TIC Domicílios e TIC Empresas 2008*, São Paulo 2009, available at <http://www.cetic.br/tic/2008/index.htm>.

<sup>31</sup> Associação Brasileira dos Produtores de Discos (ABPD), *Estatísticas e Dados de Mercado* (2006), [http://www.abpd.org.br/estatisticas\\_mercado\\_brasil.asp](http://www.abpd.org.br/estatisticas_mercado_brasil.asp).

<sup>32</sup> <http://www.ecad.org.br/>.

<sup>33</sup> *Números do Ecad apontam recorde: Valor distribuído aos artistas em 2009 foi 17,06% maior do que no ano anterior*, Estadão (March 6, 2010, 12:00 AM).

<sup>34</sup> *Público de cinema cresce mais de 25% no País em 2009*, A TARDE (Jan. 13, 2010), <http://www.atarde.com.br/cultura/noticia.jsf?id=1337032>.

<sup>35</sup> (Source: Ancine and União Brasileira de Vídeo.) The majority of this drop is attributed to the concentration process in the rental sector by Lojas Americanas acquiring Blockbuster in 2007, leading to a sharp decrease in the number of video rental shops and a corresponding drop in sales of DVDs to these companies. End-consumer sales dropped

from an all-time high of 21.5 million units in 2007 to 20.1 million in 2008. The end of the novelty of the DVD and of the sales bubble it created is another factor in the complex market dynamics, leading to a drop of the retail price. Competition from Internet, computer games and other forms of home entertainment taking up ever more of consumers' time is yet another element. "Piracy" is only a marginal factor concludes Sousa in her analysis. See Ana Paula Sousa, *Efeito dominó – Como a queda do mercado de DVDs no Brasil pode afetar o cinema*, REVISTA FILME B (May 2009), <http://www.filmeb.com.br/portal/html/materia10.php>.

<sup>36</sup> Câmara Brasileira do Livro Sindicato Nacional de Editores de Livros, *Produção e Vendas do Setor Editorial Brasileiro*, Relatório, São Paulo 7 (Aug. 2008).

<sup>37</sup> See Felix Oberholzer-Gee & Koleman Strumpf, *File-Sharing and Copyright* (Harvard Bus. Sch. Working Paper, No. 09–132, 2009), <http://www.hbs.edu/research/pdf/09-132.pdf>.

<sup>38</sup> See, e.g., DANIEL JOHANSSON & MARKUS LARSSON, *THE SWEDISH MUSIC INDUSTRY IN GRAPHS: ECONOMIC DEVELOPMENT REPORT 2000–2008*, 6 (2009). The dynamics in other countries are comparable to those in Sweden, as the upcoming research report of GPOPAI will show for the Brazilian music industry.

<sup>39</sup> <http://fairmusic.net/manifest/lang-pref/en/>.

<sup>40</sup> IFPI, *DIGITAL MUSIC REPORT 2010* (2010), <http://www.ifpi.org/content/library/DMR2010.pdf>.

<sup>41</sup> Oberholzer-Gee & Strumpf, *supra* note 37, at 1.

<sup>42</sup> Martin Kretschmer & Philip Hardwick, *Authors' Earnings from Copyright and Non-Copyright Sources: A Survey of 25,000 British and German Writers* (CIPPM / ALCS, 2007), available at [http://www.cippm.org.uk/alcs\\_study.html](http://www.cippm.org.uk/alcs_study.html). This study is the largest of its kind, and one of the first that systematically sets authors' income in a context of earnings data available for other professions, and in other countries. It is also the first study able to control the results against collecting society payments, as well as tax, insurance and labour force data held by government statistical offices.

<sup>43</sup> Leah Belsky, Byron Kahr, Max Berkelhammer & Yochai Benkler, *Everything in Its Right Place: Social Cooperation and Artist Compensation*, 17 MICH. TELECOMM. TECH. L. REV. 1 (2010).

<sup>44</sup> Philippe Aigrain & Suzanne Aigrain, *Sharing and the Creative Economy: Culture in the Internet Age* 23 (January 29, 2010), [http://paigrain.debatpublic.net/?page\\_id=171&lp\\_lang\\_view=en](http://paigrain.debatpublic.net/?page_id=171&lp_lang_view=en).

<sup>45</sup> Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (GEMA), the German CMO for music works, pays roughly two thirds to authors, i.e. composers and lyricists, and one third to publishers. GEMA, *GEMA Jahrbuch 2009/2010*, 279 (2010), available at [bignmusic.com/Services/Docs/GEMA\\_Jahrb\\_09\\_10.pdf](http://bignmusic.com/Services/Docs/GEMA_Jahrb_09_10.pdf). Gesellschaft zur Verwertung von Leistungsschutzrechten mbH (GVL), the German CMO for music recordings, pays 50% to performers and 50% to record labels for broadcast and rental, and 64:36 in favor of musicians for public performance. GVL, *GVL Verteilungspläne 2008*, 2 (2008), <https://www.gvl.de/pdf/verteilungsplaene-2008.pdf>. Verwertungsgesellschaft Wort (VG Wort), the German CMO for text works, pays 70% to authors and 30% to publishers; revenues from clipping services go to 100% to authors. VG Wort, *Verteilungsplan der Verwertungsgesellschaft Wort 2009*, 1 (2009), [http://www.vgwort.de/files/verteilungsplan\\_vgwort\\_2009.pdf](http://www.vgwort.de/files/verteilungsplan_vgwort_2009.pdf).

<sup>46</sup> See *Associações Integrantes*, ECAD.ORG, <http://www.ecad.org.br/ViewController/Publico/conteudo.aspx?codigo=21> (last visited April 8, 2011) (listing the six "effective" and four "administrative" member associations). The two associations that receive by far the largest share of ECAD's distributions are União Brasileira de Compositores (UBC) and Associação Brasileira de Música e Artes (ABRAMUS).

<sup>47</sup> Neither ECAD nor its member associations publish annual reports. ECAD states on its website that of the total proceeds, 17% is intended for ECAD and 7.5% for its member associations for their administration expenses. The remaining 75.5% are paid out to the affiliated rights holders. *Distribuição*, ECAD.ORG, <http://www.ecad.org.br/ViewController/publico/conteudo.aspx?codigo=25> (last visited April 8, 2011). This yields a total administrative overhead of 24.5%. Calculating the differences between annual arrecadação and distribuição from 2004–08 yields actual administrative costs withheld by ECAD varying from 23.26% in 2006 to 16.44% in 2005. *Resultados*, ECAD.ORG, <http://www.ecad.org.br/ViewController/publico/conteudo.aspx?codigo=52> (last visited April 8, 2011). The total amount distributed by member associations in the years 2003–05 shows that the administrative overhead

of the member associations has grown from 7.83% in 2003 to 12.75% in 2005, leading to total administrative costs of between 31.07% in 2003 and 26.29% in 2004. See *PERCENTUAIS SOBRE O VALOR TOTAL DISTRIBUIDO - AUTORAL E CONEXO*, ABRAMUS.ORG (2003, 2004, and 2005), available at <http://www.abramus.org.br/arquivos/2003.pdf>, <http://www.abramus.org.br/arquivos/2004.pdf>, and <http://www.abramus.org.br/arquivos/2005.pdf> (last visited April 8, 2011).

<sup>48</sup> *PERCENTUAIS SOBRE O VALOR TOTAL DISTRIBUIDO - AUTORAL E CONEXO*, ABRAMUS.ORG (2005), <http://www.abramus.org.br/arquivos/2005.pdf> (last visited April 8, 2011).

<sup>49</sup> This is how GVL, the German CMO for music recordings, pays its artist members. Based on the reported income from the primary exploitation of their works, musicians and vocalists who earn up to € 50,000 per year get 100%, artists with an income between € 150,000 and 200,000 receive only 25%, and artists with an income beyond that receive only 10%. GVL, GVL Verteilungspläne 2008, 1 (2008), <https://www.gvl.de/pdf/verteilungsplaene-2008.pdf>.

<sup>50</sup> As required by law, German CMOs currently set aside 10–25% of the common funds for such purposes; Aigrain proposes to use 50%. Aigrain, *supra* note 16.

<sup>51</sup> This creates a strong lock-in effect. When a customer is dissatisfied with her current ISP or gets a better cost/performance ratio from a competitor, she will think twice about moving if the price is the loss of large parts of her music collection. These terminator DRM policies call for scrutiny as anti-competitive activities.

<sup>52</sup> BIGCHAMPAGNE: MEDIA MEASUREMENT, <http://bigchampagne.com/> (last visited April 9, 2011).

<sup>53</sup> LOGISTEP: ANTIPIRACY SOLUTIONS, <http://www.logistepag.com/> (last visited April 9, 2011).

<sup>54</sup> See Interview by Music Ally with Eric Garland, Chief Operating Office, BigChampagne.com, (Jan. 12, 2010), MUSIC ALLY, <http://musically.com/blog/2010/01/12/metrics-eric-garland-bigchampagne/> (last visited April 9, 2011).

<sup>55</sup> *E.g.* based on audio- and video fingerprints, i.e. digital summaries of works that allow their identification without the need to embed identifiers like digital watermarks into files. Compare AUDIBLE MAGIC, <http://www.audiblemagic.com> (last visited April 9, 2011) (detailing a commercial P2P service), with MUSICBRAINZ, <http://musicbrainz.org/doc/AudioFingerprint> (last visited April 9, 2011) (describing a free P2P software implementation).

<sup>56</sup> Last.fm: audioscrobbler plugin, WIKIPEDIA: THE FREE ENCYCLOPEDIA, [http://en.wikipedia.org/wiki/Last.fm#Audioscrobbler\\_plugin](http://en.wikipedia.org/wiki/Last.fm#Audioscrobbler_plugin) (last visited April 9, 2011) (“Last.fm can optionally build a profile directly from a user’s music played on their personal computer. Users must download and install a plugin for their music player, which will automatically submit the artist and title of the song after either half the song or the first four minutes have played, whichever comes first. When the track is shorter than 30 seconds (31 seconds in iTunes) or the track lacks metadata (ID3, CDDDB, etc.), the track is not submitted. To accommodate dial-up users, caching of the data and submitting it in bulk is also possible.”).

<sup>57</sup> See *generally How It Works*, NOANK MEDIA, <http://www.noankmedia.com/howitworks.html> (last visited April 9, 2011) (explaining how the Noank system works technologically).

<sup>58</sup> Aigrain, *supra* note 16, at 93.

<sup>59</sup> *Id.*

<sup>60</sup> World Intellectual Property Organization, Permanent Committee on Cooperation for Development Related to Intellectual Property: Promotion and Development of Collective Management of Copyright and Related Rights, 3 (May 31–June 4, 1999), [http://www.wipo.int/edocs/mdocs/mdocs/en/pcipd\\_1/pcipd\\_1\\_7.doc](http://www.wipo.int/edocs/mdocs/mdocs/en/pcipd_1/pcipd_1_7.doc) (last visited April 9, 2011).

<sup>61</sup> See *generally* Patrick Zelnik, Jacques Toubon, & Guillaume Cerutti, Creation et Internet, Rapport au Ministre de la Culture et de la Communication, (January 2010), <http://www.culture.gouv.fr/mcc/Espace-Presse/Dossiers-de-presse/Rapport-Creation-et-Internet> (last visited April 9, 2011).

<sup>62</sup> Diagnóstico das discussões do Fórum Nacional de Direito Autoral e subsídios para o debate. Documento apresentado no III Congresso sobre Direito de Autor e Interesse, 10.11.2009.

<sup>63</sup> Deutscher Bundestag, Petition: Civil Law – Society for Musical Performing and Mechanical Reproductions, <https://epetitionen.bundestag.de/index.php?action=petition;sa=details;petition=4517> (last visited April 9, 2011) (“Der Deutsche Bundestag möge beschließen...dass das Handeln der GEMA auf ihre Vereinbarkeit. mit dem

Grundgesetz, Vereinsgesetz und Urheberrecht überprüft wird und eine umfassende Reformierung der GEMA in Hinblick auf die Berechnungsgrundlagen für Kleinveranstalter, die Tantiemenberechnung für die GEMA-Mitglieder, Vereinfachung der Geschäftsbedingungen, Transparenz und Änderung der Inkasso-Modalitäten vorgenommen wird.”).

<sup>64</sup> *Id.* (listing as of April 9, 2011, 107,816 signatures).

<sup>65</sup> *CPI do Ecad chega ao fim*, BRUNO COVAS, <http://brunocovas.com.br/CPI-do-Ecad-chega-ao-fim/> (last visited April 9, 2011).

<sup>66</sup> *Id.*

<sup>67</sup> Création Public Internet, <http://creationpublicinternet.fr/> (last visited April 9, 2011).

<sup>68</sup> See generally Paris Accord Discussion Draft (Oct. 20, 2009), [http://www.tacd-ip.org/files2/paris\\_accord\\_2009\\_oct20.pdf](http://www.tacd-ip.org/files2/paris_accord_2009_oct20.pdf) (last visited April 9, 2011), and Working Discussion Draft For: The Paris Accord (June 17, 2006), <http://www.tacd-ip.org/files2/ParisAccord-june17draft.pdf> (last visited April 9, 2011).

<sup>69</sup> a2f2a, <http://a2f2a.com> (last visited April 9, 2011); Jennifer Ditchburn, *Billy Bragg, Canadian songwriters push for new approach to downloading*, THE STARR, (Nov. 20, 2009), <http://www.thestar.com/news/canada/article/728763--billy-bragg-canadian-songwriters-push-for-new-approach-to-downloading> (last visited April 9, 2011).

<sup>70</sup> See John Timmer, *Inside the Isle of Man's £1/month unlimited music plan* (Feb. 25, 2009) <http://arstechnica.com/media/news/2009/02/inside-the-isle-of-mans-1month-unlimited-music-plan.ars> (last visited April 9, 2011).