UNLEASHING THE BENEFITS OF NEW TECHNOLOGIES IN THE AUDIOVISUAL MEDIA INDUSTRY
INTRODUCTION

A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technological advances create new products and segments of the industry, fuel increases in usage and spending on media products, but at the same time erode existing markets, segments and business models. The introduction of digital technologies, web, IP and broadband has so far had a disruptive impact on many aspects of conventional business practices in the audiovisual industry (that is, the film and TV sectors), such as windowing, territorially, business models based around the bundling of content for off-line and one-to-many distribution networks.

History has repeatedly shown that the erosion of conventional media markets as a result of the introduction of new technologies is a continually evolving long-term process. What history has yet to demonstrate is whether and how the current crop of new technologies will increase total media industry revenues and profits, or whether these new technologies will simply increase the supply of media products available to consumers at the expense of the revenues of players in the audiovisual sector. Or perhaps these developments may cause the audiovisual sector to alter its business practices, models and patterns of distribution and thus spur the growth of its current revenue levels.

This paper aims to provide a description of how the introduction of new technologies has impacted the media industry in the past, and how the media industry's responses have been reflected in corresponding revisions to copyright legislation – these changes have been induced by introductions of new technologies. In particular, the paper seeks to raise a number of issues that still require responses from policy makers. This paper suggests a number of areas where policy makers could look next, hurdles that have been created by a number of current conventional practices in the media industry. In this way, policy makers could ensure that technological advances unleash a range of benefits that can be realized by consumers, industry and society at large.

By ensuring that policies in the audiovisual sphere focus on stimulating the growth of on-demand, multi-screen and interactive media offerings in national and global markets that are legal, competitive, and attractive in the sense of offering timely access to a diverse range of legal content, they will unleash positive market forces that will spread the benefits of new technologies to consumers, industry and society.

BACKGROUND: THE MEDIA INDUSTRY AND TECHNOLOGY ADVANCES

Technological advances have brought a raft of changes that are putting media organizations under severe pressure in practically every sector of the industry, from newspapers, magazines and books to radio, TV, music and film. Markets are fragmenting, audiences are shrinking, and choice is exploding. There is increasing competition for audience attention: more platforms and more products mean more content and more ways to access media content.

While it is tempting to focus on the internet as the key technological advance driving disruption in the media industries, the turmoil actually results from a tangle of interconnected technological advances including digitalization, the Web, IP and broadband.

Digitalization is arguably as significant a development as the internet for the media industry, although perhaps less tangible. First, it means reducing all types of information into binary form. Once in this format, it can be manipulated and stored by computers, different forms of information – pictures, sounds and text – can be combined into new types of products, and these can be stored, transmitted and retrieved in perfect fidelity to the original from any point on the globe.

Digitalization has far-reaching and profound implications for the future of mass media. Content becomes platform and screen agnostic – that is, no longer tied to any particular industry-specific distribution platform, including the internet. Internet-connected mobile devices supported by mobile broadband are an increasingly significant platform for the consumption of all kinds of media content. Mobile broadband connectivity is becoming a primary means of connection to the internet and content platforms in particular environments, notably countries where mobile connectivity is leapfrogging that provided by fixed, work and educational institutions.

Second, it becomes possible to customize content to match particular tastes – something that has found enormous favor with audiences. This development chips away at the foundations of the established media, which are based on the mass distribution of an identical message to many recipients for consumption at the same time.

Third, these developments allow consumers to interact with the media they consume, and as a result engagement and participation have become fundamental dimensions of many media products.

The growth in access to broadband and the growth in broadband capacity only accelerate these pressures – indeed broadband in itself is becoming a key driver in the convergence process. The spread of broadband has fast-tracked the use of IP technology for streaming or downloading broadband-hungry applications such as music, television and movies. Because broadband allows advanced services such as video on demand, it has also spurred growth in on-demand consumption, to a point where the majority of broadcasters either already offers or is planning soon to offer some proportion of their programming on an on-demand basis.

While traditional linear consumption still dominates mass media markets, and while the majority of consumers prefer not to interact or actively engage with the media they consume, taken together, these developments do constitute a long-, if not medium-term problem for incumbent media organizations. They raise questions about the future of specialized broadcast (one-to-many) networks, which threaten to shift from strategic asset and barrier to entry to, increasingly, a legacy liability.

The growth of broadband and associated digital and IP technologies casts doubt on a number of well-established practices in the audiovisual sector, such as windowing (which rests on the ability to control and protect each release window from new competition). The limited, patchwork or isosyncratic availability of legal on-demand digital media offerings has in some cases left consumers with the options of sticking with less convenient off-line delivery, or illegal distribution.

MEDIA INDUSTRY’S SYMBIOTIC LINK WITH TECHNOLOGY

The media industry is normally understood as comprising organizations that develop and distribute content designed to inform and entertain particular audiences – that is, organizations that create mediated content to engage consumers. The fact that the sector’s prime activity is content generation means that issues concerned with content, its creation and its effects on audiences and society, tend to dominate industry discourse. Technology in comparison tends to enter such discussions as an enabling, contributory or – as has been the case in recent years – disruptive factor.

It is surprising that the media industry tends to define itself primarily in terms of content, and relegates technology to a supporting role. Especially since a look back over the history of the sector in the past 100 years shows that technology has exerted a powerful and sometimes decisive influence on organizations, their strategies, and the outcomes of those strategies.

Each of the three core dimensions that constitute the sector – content, distribution systems, and the devices that display content – came into existence because of technological invention, and continues to be subject to technologically-induced change.

While the industry may underplay its dependence on technology, advances in technology have long been used to give products a competitive edge. Crudely put, technological advances often set the stage and prescribe the scope of strategic action for media organizations. Murdoch’s vision of a pay-tv platform in the UK that would challenge the BBC’s dominance was made possible in large part because of advances in satellite and encryption technology.

While it is tempting to focus on the internet as the key technological advance, it is important to recognize that the growth of broadband and associated digital and IP technologies are a key driver in the convergence process. The spread of broadband has fast-tracked the use of IP technology for streaming or downloading broadband-hungry applications such as music, television and movies. Because broadband allows advanced services such as video on demand, it has also spurred growth in on-demand consumption, to a point where the majority of broadcasters either already offers or is planning soon to offer some proportion of their programming on an on-demand basis.

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The nature of these “outsiders” has changed over time. The phonograph, the cinematograph, broadcast television and radio, the compact cassette, the compact disc, cable and satellite broadcasting transmission and the digital downloading of MP3 music files are all innovations that share a common history – all were perceived as threats to then incumbents that might disrupt status quo copyright privileges.1

Current developments in the fields of on-demand audiovisual media services and broadband-enabled fixed and mobile devices threaten to repeat this pattern, whereby actors in audiovisual content creation and distribution may seek to protect their businesses by controlling access to, or uptake of, new technological innovations and platforms, thus sealing off opportunities to new entrants. New entrants to the audiovisual sector are therefore seeking inclusion in these critical discussions, and request that their perspective should be reflected in deliberations on the privileges of copyright law.

The concept of copyright is a legal structure created primarily to protect investments and cover costs incurred in content creation and distribution. Questions concerning fair competition, consumer choice and the efficiency of media and distribution markets have traditionally had a secondary position on the regulatory agenda. However, from a regulatory perspective, development and digitalization, on-demand services, convergence, internet, mobile TV and IPTV have important questions such as:

- Are consumers given a fair choice of what, how and when they access legal digital content?
- Is there effective competition in media programming and distribution markets?
- Are transaction costs appropriate or higher than necessary?
- Are consumers expected to continue to pay for the mere opportunity to consume?
- Are consumers willing to pay for a digital media product more than once if it is made available on multiple platforms/screens?
- Is there a regime of fair use, and if so, is it seriously impaired by the use of proprietary DRM technologies?

THE MECHANISMS OF COPYRIGHT AND EXCLUSIVE RIGHTS

The attribution of copyright as a right of return on investment for the owner of a work is in practice distinguished from the original rights of the author/creator of the same work. The economic rights are not always, or even rarely, owned by the creators of a work. Authors and Performers are the creators of copyright content, who normally do not take any economic risk in the exploitation of their work but invest in it through their creativity and originality.

- Producers and Distributors are the licensees or employers of the Authors and Performers, and are the economic rights holders. They are normally attributed with neighboring rights, meaning they are both owners and buyers of rights, in many cases even mass users of copyrighted content.
- Collecting societies – or Collective Management Organizations (CMO) as they are also called – are justified by the need for functional mass clearances; they represent Authors and Performers in various scenarios, depending on the situation and the country; in some cases by law and in other cases by mandate from the members.

A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. Past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away. A retrospective glance at key events in the media industry over the past 100 years shows a persistent pattern: technology gives, and technology takes away, but it seldom takes everything away.
The first and major concerns within the EU Commission are the implications of cross-border access for copyright-protected content. An efficient copyright regime is a key driver towards one Digital Single Market. A well functioning legal market for audiovisual content will help to control and reduce the growing illegal market. It will also improve cross-border access to content. In a global networked environment, one where mass markets are fragmenting, the opportunity to aggregate global niches is an important strategic option for media organizations whose cost bases are predicated on achieving a certain critical mass of consumers. Thus it is a benefit for distributors to be able to reach consumers, who are thinly spread over the world.

Exhaustion principles allow the free transborder movement of physical products containing copyrighted content. No such exhaustion principle applies to intangible, e.g. digital, content, and rights owners have traditionally sold rights separately in different geographic territories. As part of its work with the Digital Single Market, the EU Commission has assigned a study on multi-territorial licensing of audiovisual content. If exhaustion principles are to be applicable to digital content, the copyright regime will need to be harmonized across the EU member states, allowing for seamless cross-border access to audiovisual content.

SUMMARY

Consumers should have access to a legal, up to date, competitive and diverse choice of content offerings. In addition they expect to be able to make a free choice of when (e.g. on-demand) and how (on which device) to consume the content of their choice. However, this is exactly where the conventional media industry is failed by firmly holding on to conventional audiovisual industry practices. To date, efforts to revise European, US and most other markets’ copyright legislation have focused on preserving the audiovisual sector’s long-standing methods of protecting, distributing and monetizing their content, which has unfortunately further reinforced the underlying problem, i.e. the perpetuation of an increasingly inadequate business practice in a fundamentally changing market.

The persistent focus on upward revisions of copyright laws has resulted, among other things, in:

- Insufficient growth in the digital market, e.g. the provision of legal, timely, attractive and competitive digital media offerings to any – or multiple – screens.
- The protection of conventional distribution methods, e.g. off-line and linear one-to-many distribution channels, has limited competition.
- Excessive pricing of digital media products. Consumers are paying for potential consumption, per screen/technology and double taxation, e.g. direct licensing in combination with the use of excessive levies.

SUMMARY (CONT')

These are the areas where policy makers should look next. By removing existing hurdles in regulatory and policy regimes that currently empower economical rights holders to conserve conventional, and hinder the emergence of new business practices and business models in the audiovisual industry, positive benefits from technological advances can be realized and shared by consumers, the media and ICT industries, and society as a whole.

Policies that focus on stimulating the growth of legal, competitive, diverse and timely on-demand, multi-screen and interactive media offerings in national and global markets will unleash the necessary market forces that will realize the benefits of new technologies for consumers, industry and society.

REFERENCES

1 Digital Copyright, Professor Jessica Litman, 2006, Prometheus Books.

2 See also Cable Europe’s comments on the Commission’s reflection document on “Creative Content in a European Digital Single Market, Challenges for the Future.”

3 A few examples of recent disputes are: the CISAC prohibition decision by the Commission of July 16, 2008 (COMP/C2/08.068 – CISAC); The Magil judgement by the Court of Justice (C-244/01 P and C-242/01), and the reference for a preliminary ruling (C 52/07) from Marknadsdomstolen in Sweden (TVB, Kanal 5 v. Skim).


5 Both the Commission and members of the European Parliament receive letters, complaints and questions frequently from European citizens asking why audiovisual media is available in some territories or just in some exclusive platforms (including physical) and not in others, while supply is possible and demand exists. See Creative Content in a European Digital Single Market: Challenges for the Future, A Reflection Document of DG INFSO and DG MARKT, October 22, 2009, page 9.

6 See Indecore Project: http://www.indecore.org/ or view articles php and ADL, white paper “Untying the Gordian Knot” http://www.adlinfo.com/campaign/televisionary/#/regulation/contributions/3?dc9f2e287f3_4ca9_ad47_d89f_1f72c0bba5b6

7 See BEUC discussion paper on Fair Compensation for Copyright-Protected Material.

8 Also the Commission admits that community rules on copyright have harmonized the scope and tenor of the exclusive rights without, however, providing effective protection of the rights by means of uniform exceptions. In its study for the Commission, the RHR report on the “Recollecting of Copyright and related rights for the knowledge economy” concludes that a Community copyright legislation is needed and should replace the current directives. Besides its derogatory effect, a regulation of this kind might provide for a certain “helix” of rights and regulations, in order to rectify the overprotection resulting from 15 years of “upwards” harmonization. (The Recollecting of Copyright & Related Rights for the Knowledge Economy; RHR, November 2006.) See also EBU Modern Copyright for digital media Legal analysis and EBU propose March 2010 and Creative Content in a European Digital Single Market, Challenges for the Future, A Reflection Document of DG INFSO and DG MARKT, October 2009

9 Study on Multi-territory licensing for the online distribution of audiovisual works in the European Union, under progress (see more at http://www.euweaset.eu/ report/M1.html and a presentation from a seminar on June 2 2009 http://europa.eu/ipu/eu/compar/libraries/studies/index_en.html#multitenant


AUTHOR

REINE SUMMER is a Director of Government and Industry Relations, Group Function Sales and Marketing, at Ericsson. He has a global responsibility in the policy area of media, content, media convergence, IPTV and mobile TV. He is responsible for related policy research, policy formulation and policy promotion in areas of telecom regulation, TV-broadcast regulation, media regulation, copyright, advertising, state aid and consumer privacy. He is also General Manager for Government Affairs in Australia and New Zealand, responsible for spectrum, telecom and media/content regulation. Previously he has held a number of different assignments across different Ericsson business units and market Units, such as Director of Sales Strategies and Senior Market Analyst. Summer holds an MSc degree from Reading University, UK, in International Business and Finance, with focus on topics such as Business Strategy and Economic Policy.

EXPERT CONTRIBUTORS:

The opinions in the paper are represented by Ericsson; the following experts have contributed with factual expertise:

LUCY KÜNG has spent nearly two decades exploring the criteria that lead to sustained superior performance in the media and creative industries. Areas of special interest are strategy, leadership, and the impact of technological change. She is Professor of Media Management and Economics at the Media Management and Transformation Centre at the University of Jönköping, Sweden, Professor at the Institute for Media Management and Transformation in New York, Senior Research Fellow at Ashridge, UK, and Adjunct Faculty Member at the University of St Gallen, Switzerland. In addition, she is Executive Board Member of the Swiss Broadcasting Corporation (SRG-SSR-iidee Suiss) and from 2008-2010 was President of the European Media Management Association.

HELENE H MIKSCHE is a Senior Legal Counsel at law firm Bird & Bird, specializes in providing legal services to clients within the media sector. Having served as an in-house counsel and Head of the Legal department for a total of 14 years at Swedish broadcaster TV4 AB, she now represents various clients within the media industry, in the field of production, distribution, talents, social media, etc. Her practices, both from a commercial and a regulatory perspective, are media, entertainment and copyright law, publicity/privacy rights, free speech right and defamation, trademark and unfair competition law. She is a member of the Board of the Swedish Copyright Society, the Advisory Board of the Radio and Television Authority and frequently lectures in Media Law at Stockholm University and Uppsala University.
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