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# **Alternative remuneration systems for use on the Internet**

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# Presentation structure

1. Copyright policy.
2. Distribution of content on the internet.
3. Copyright tax.
4. Specific issues related to the copyright tax.
5. Arguments for and against the copyright tax.

# Copyright policy

## Aim.

- › Stimulate creation of creative works and make the created works available to the public.

## Instrument.

- › Exclusive rights allow right holders to control and monetise the use of their works.

## Inherent contradiction.

- › Availability of the works is achieved via control of access.

# Distribution of content on the internet

- What is different about distribution of content on the internet?
  - › Content is subject to non-rivalrous consumption.
  - › Content can be copied indefinitely and without additional cost.
  - › The internet is global and decentralised.
  - › Internet users are often anonymous.

**It is much more difficult to control the distribution of content and enforce exclusive rights on the internet.**

# Distribution of content on the internet

- Digital rights management.
  - › Increased use of technology to impede unauthorised access to the content.
- Shift the burden of copyright enforcement onto internet services providers.
  - › Use of notice and take down, website blocking, etc.
- Public enforcement of copyright.
  - › Use of governmental agencies to enforce copyright online.
- Mass (volume) litigation against copyright infringers.
  - › Sue a multitude of defendants in single proceedings.

# Compensation without control

Lawrence Lessig (The Future of Ideas)

# Copyright tax

## **Short explanation.**

Allow non-commercial copying and exchange of creative works on the internet. Every internet user will pay a small amount of money. This money will be aggregated and distributed among artists to provide incentives to create new works.



# Copyright tax – specific issues

## How to collect money for the copyright tax?

- Increase of one of existing taxes (e.g. income tax).
  - › More efficient.
  - › Easier to administrate.
  - › Larger cross-subsidy effect.
- Specific tax on the products and services used to exchange films and music.
  - › Lesser cross-subsidy effect.
  - › More expensive to administer.
  - › Internet connection services will become more expensive.

# Copyright tax – specific issues

## **What rights should be provided to the users?**

■ The rights required to share, download films and music and create derivative works.

- › Copying (reproduction).
- › Making available.
- › Distribution.
- › Creation of derivative works.

# Copyright tax – specific issues

## How to distribute accumulated funds?

- The goal is to provide fair remuneration.
- The funds will be distributed in accordance with the frequency of use of the works.
  - › Should we count downloads and uploads or only actual use (consumption) of the works?
  - › Each work can be marked using registration system and digital fingerprinting technology.
  - › Frequency of use of the works can be assessed by internet service providers, using surveys and sampling.
  - › Should user preferences be taken into account? Should polls be used to help to determine fair remuneration?

# Copyright tax – specific issues

**How will right holders and internet users participate in the new regime?**

■ Different options.

- › Compulsory.
- › Opt-out.
- › Opt-in.

# Copyright tax – specific issues

## Compliance of the copyright tax with international copyright treaties?

- Three-step test (Art. 9(2) of the Berne Convention).
  - › “It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works [1] in certain special cases, provided that [2] such reproduction does not conflict with a normal exploitation of the work and [3] does not unreasonably prejudice the legitimate interests of the author”.
- Prohibition of formalities (Art. 5(2) of the Berne Convention).
  - › “The enjoyment and the exercise of these rights shall not be subject to any formality [...]”.

# Arguments for the copyright tax

1. More people will have access to creative works.
2. In general, every consumer will pay less for more entertainment.
3. Every artist would be compensated.
4. Artists would be less dependent on intermediaries.
5. Reduction in transaction and copyright enforcement costs.
6. Increased demand for products and services which can be used to share content online.
7. Amount of copyright infringements will decrease.

# Arguments against the copyright tax

1. Cross-subsidisation of access to online content.
2. Internet connection services and related products will become more expensive.
3. The artists will lose control over the use of their content.
4. Difficult to implement in a single country.
5. Intermediaries will lose important sources of their income.
6. Difficult to determine the exact amount of fair compensation.
7. The office which collects and distributes collected funds will have a lot of power.

# Further reading

■ **Neil Weinstock Netanel**, Impose a Noncommercial Use Levy to Allow Free Peer-to-Peer File Sharing. As published in Harvard Journal of Law & Technology, Vol. 17, December 2003. Available at SSRN: <http://ssrn.com/abstract=468180>.

■ **Alexander Peukert**, A Bipolar Copyright System for the Digital Network Environment. Hastings Communications and Entertainment Law Journal, Vol. 28, No. 1. Available at SSRN: <http://ssrn.com/abstract=801124>.

■ **William Fisher**, Promises to Keep: Technology, Law, and the Future of Entertainment. Stanford University Press 2004.



Thank you for your attention.

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