

How should musicians be paid to create digital works?

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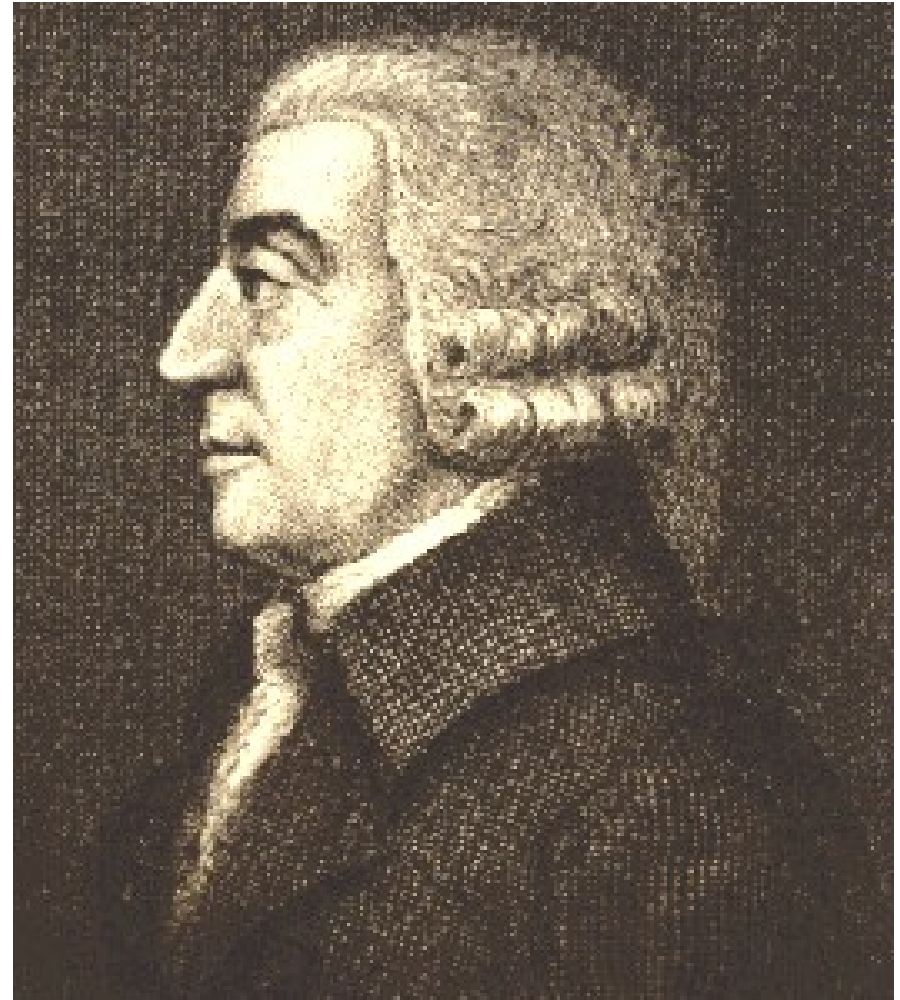
Banff Centre
New Media Institute Workshop
Interactive Screen
July 4, 2002

“Practical men, who believe themselves to be quite exempt from any intellectual influences, are usually the slaves of some defunct economist.”

John Maynard Keynes

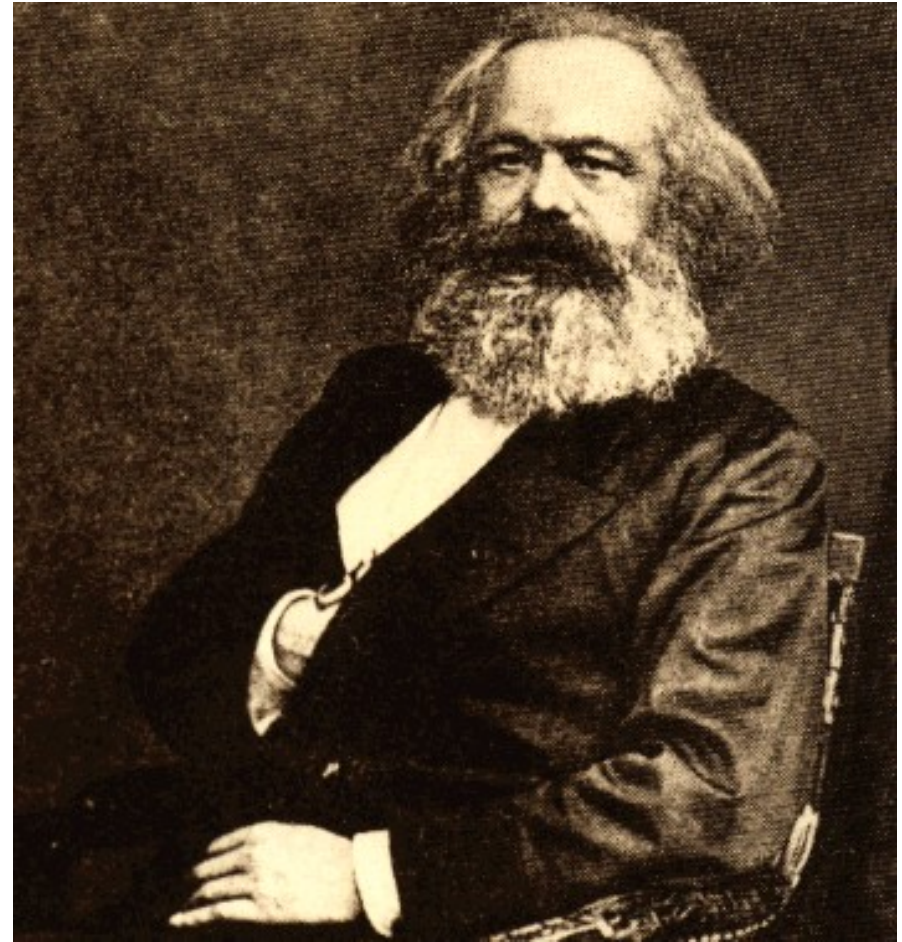
Adam Smith

- Does not trust the State
- Explains power of prices to guide efficient allocation of resources
- Sees continual conspiracy for monopoly



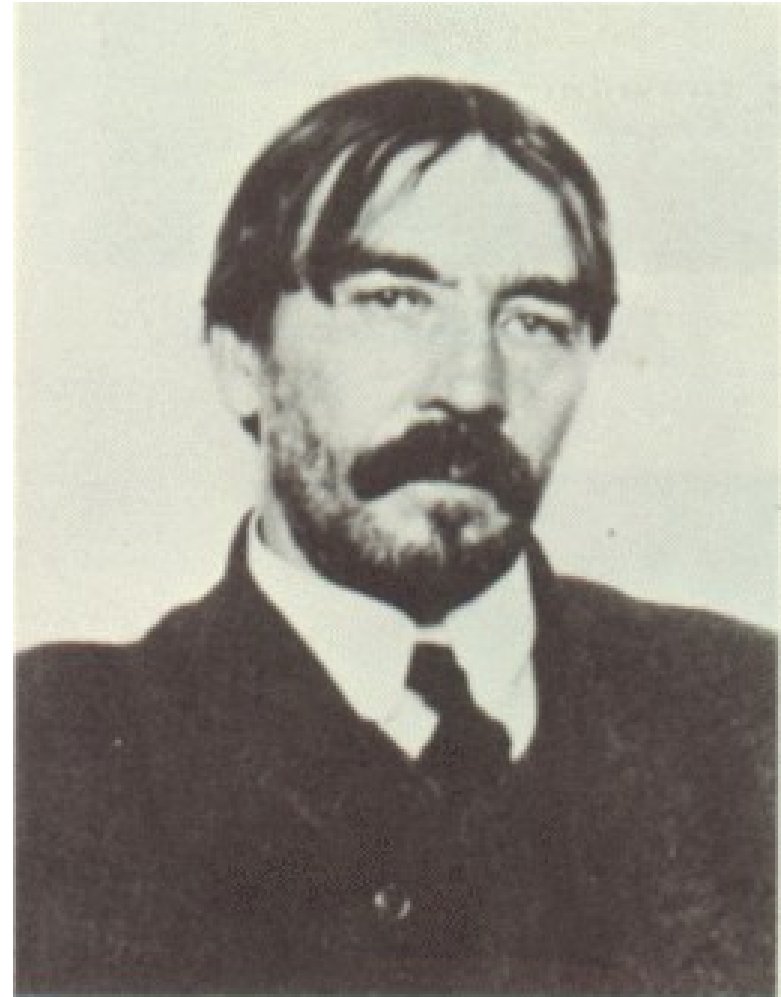
Is capitalism your friend?

- Karl Marx saw some flaws



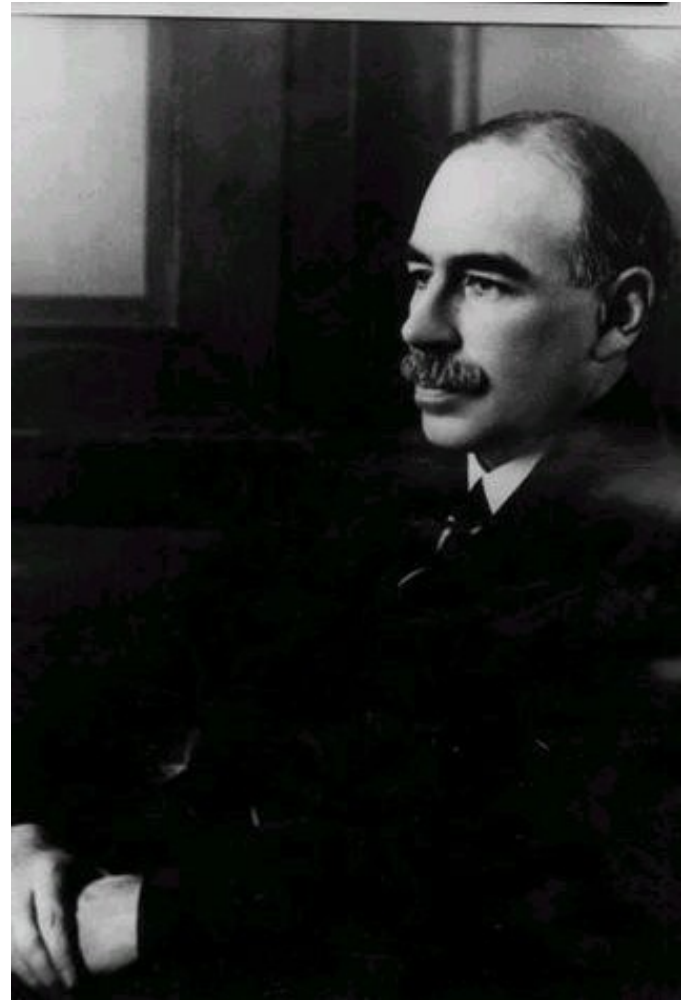
Thorstein Veblen

- Emphasized role of marketing, producers and sellers shaping preferences
- Instinct for workmanship?



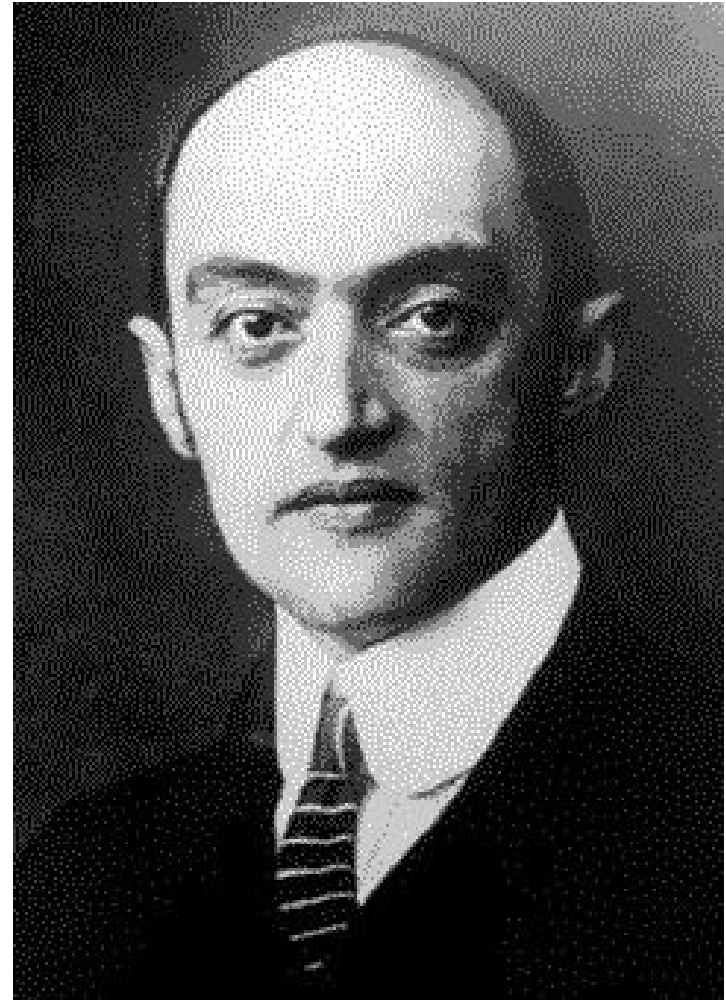
John Maynard Keynes says governments can fix problems

- Hero to generation of
interventionist
economists



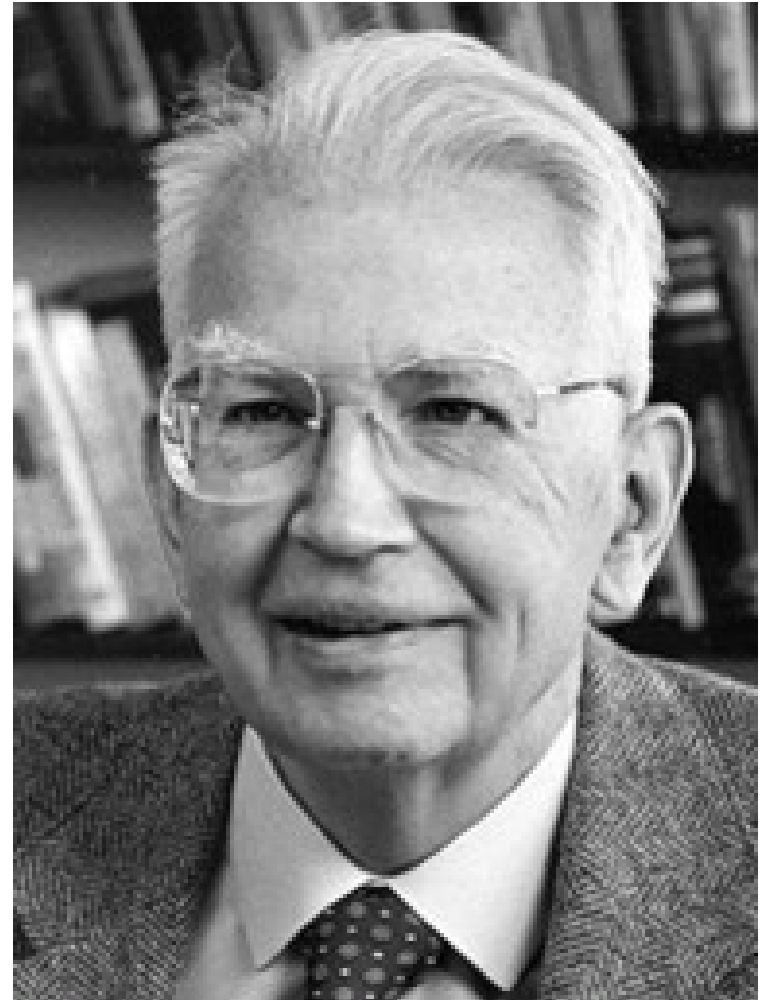
Joseph Schumpeter

- Emphasizes dynamic nature of markets
- “Creative destruction” is nice justification for monopoly power
- Not impressed with Stalin



Transaction costs are important

- Ronald Coase wins a Nobel prize by drawing attention to the importance of transaction costs in economics.
- The “firm” is an effort to avoid transaction costs from market transactions.



Economics of the performing arts

- William Bowen and William Baumol focus on limits of productivity in performing arts



William Bowen Photo
courtesy The Mellon
Foundation



Markets and Market Failures

- George Akerloff wins Nobel prize for simple paper on the market for used car “lemons”
- Explains to economists that markets can screw up, for example when people can't be trusted to tell the truth.



Joe Stiglitz on information, uncertainty, poverty, development

- Gets boot at World Bank
- Shares Nobel prize with Akeroff and Spence in 2001.
- Some economists prove equilibrium exists, others prove it doesn't exist
- Is second kind



Information as a public good

- Economists recognized that some goods were “non-rival in consumption,” and shared at no cost.
- Information goods sometimes referred to as public or quasi-public goods.
- But who pays to create information?



Public goods are rationale for public domain

- Software can be reused
- HTML code can be reused
- MP3 files can be shared
- Scientific data can be shared
- Inventions can be copied

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How much extra does it cost?  
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But some creators will want to be paid

- And some non-creators will want to “own” works that have commercial value

Battles brew over intellectual
property

Who owns the law?

- West Publishing was central to a long battle over access to the government documents, and in particular, legal documents
- Tried to end public domain
- Internet campaign defeats many evil plots



Battles over Access to Medicine and Patent Rights



Bill Gates creates the evil empire

- Seeks to “cut off Netscape's air supply”
- End of innocence for software users



Would you have invested?



Microsoft Corporation, 1978

RMS invents copyleft

- Richard Stallman wants the freedom to share, modify, create and use software.
- Uses the power of copyright and contracts to create GPL
- Coders buy-in to avoid embrace and extend



Linus Torvalds creates Linux



- Decides to copyleft kernel

Explaining benefits of open software development

- Eric Raymond writes “the Cathedral and the Bazaar”
- “with enough eyeballs, all bugs are shallow”



Peer to Peer file sharing



- People decide to become pirates

Software is shared

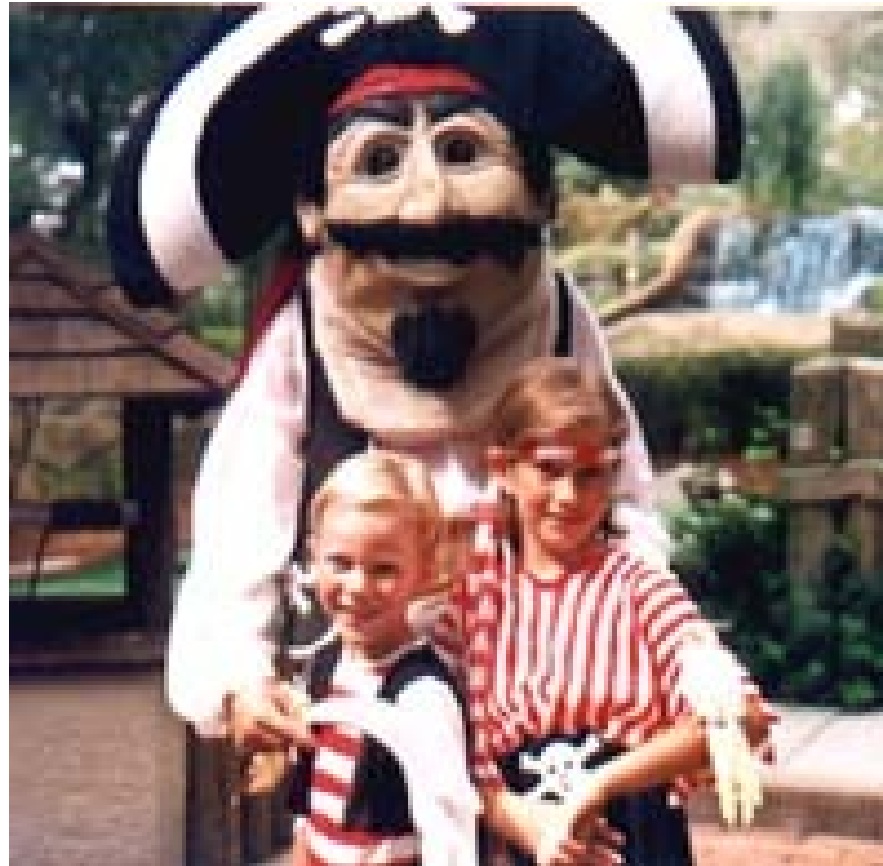


Pirates start software companies



- Even asked to testify before Congress

Kids become pirates



Even Nuns do it



Mike McMahon / AP

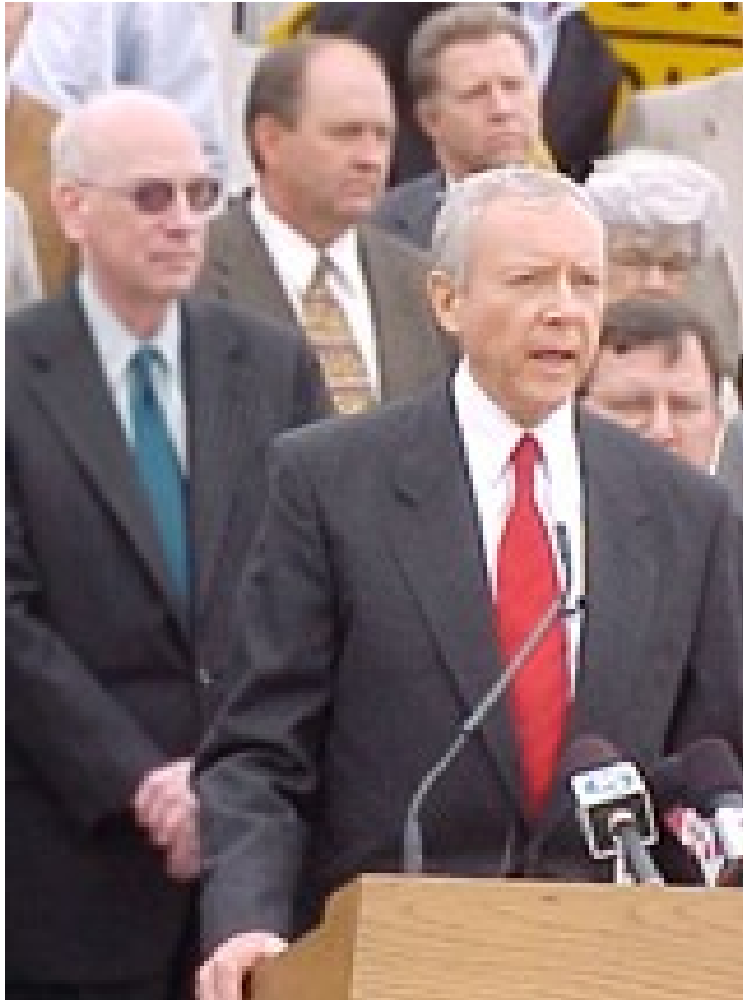
Will the police outsmart hackers?



Will P2P networks force musicians to rely upon new “gift” economy?



Compulsory licensing bill is introduced in US Senate



- Former Senator Hatch staffer is hired as lobbyist for Napster, and gets said former boss to introduce bill

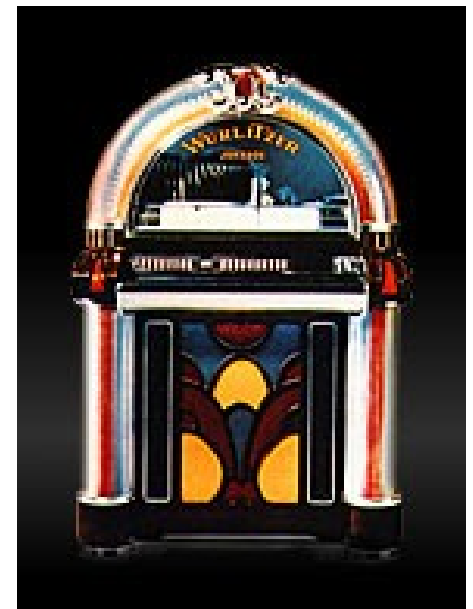
Orrin Hatch's music

- One of the first musicians to back compulsory license for Napster



Examples of compulsory licenses for music

- Compulsory licenses are often created in response to technological innovation



Trade framework

- Countries have obligations to support persons who who create/own such works



WTO TRIPS Article 13

(copyright) Limitations and Exceptions

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

The Berne Convention

Article 11bis

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

Article 13

(1) Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of any words, the recording of which together with the musical work has already been authorized by the latter, to authorize the sound recording of that musical work, together with such words, if any; but all such reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the rights of these authors to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

Article 15 of Rome Convention

Article 15

[Permitted Exceptions: 1. Specific Limitations; 2. Equivalents with copyright]

1. Any Contracting State may, in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this Convention as regards:

(a) private use;

(b) use of short excerpts in connection with the reporting of current events;

(c) ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts;

(d) use solely for the purposes of teaching or scientific research.

2. Irrespective of paragraph 1 of this Article, any Contracting State may, in its domestic laws and regulations, provide for the same kinds of limitations with regard to the protection of performers, producers of phonograms and broadcasting organisations, as it provides for, in its domestic laws and regulations, in connection with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with this Convention.

How would a compulsory license work

- People pay to use p2p services to share music.
- Money is paid to musicians

How should listeners pay?

- Based upon purchases of computer equipment or bandwidth?
- Subscription service?
 - Flat rate?
 - According to downloads?
- Tax Revenue?

Who gets the money from a compulsory license?

There are lots of different ways this
can be done.

Different people, different countries
and different communities have
different ideas about what to support

Governments could allocate funds to artists



A traditional compulsory license would base compensation on volume of use.

- The most popular songs get the most money.
- Some privacy issues.
- Payments for elevator music measured by sampling.



But alternative approaches might be
more interesting

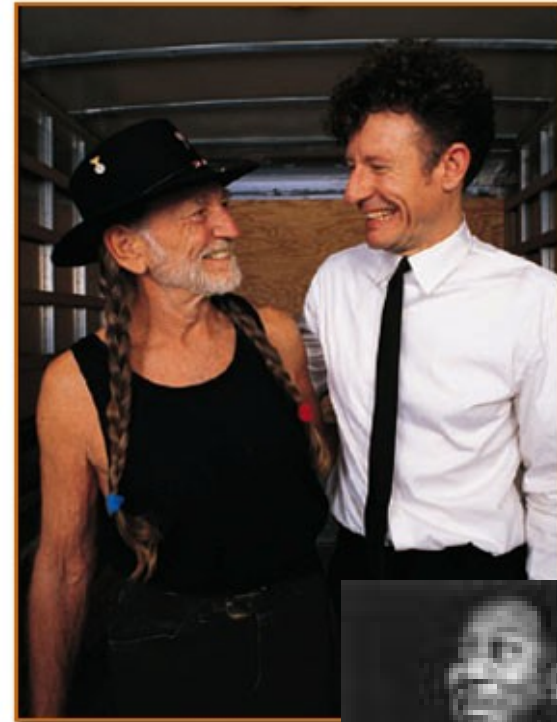
Funds could support projects that are not successful in marketplace

- Performance centers, recording studios, etc.
- Experimental music
- Recording folk music



Artists could allocate funds

- Possibly with help from their representatives



Raeanne Rubenstein



Elites could choose

- People know know more than we do could choose



Eileen B. Mason, NEA



Mary E. Hofstetter, Banff Centre

Listeners could decide

- Listeners could choose artists directly
- Listeners could choose projects that support musicians
- Listeners could select intermediaries



Choice of intermediaries works in other areas

- Companies who sell stocks choose regulators to list shares.



- Exchanges compete for public trust and investment



日本経済新聞社



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Competition between intermediaries could determine how money was distributed

- Intermediaries would announce different methods of allocating funds
- Governments would regulate such issues as transparency and accountability



Governments might set minimum allocations

- At least 30 percent based upon traditional distribution
- At least 10 percent to support non-commercial music productions
- At least 5 percent for retirement fund for burned-out musicians
- A minimum contribution to session musicians



In the beginning, experiment, but then evaluate

- See what people do on their own
- Can listeners create a better system for compensating musicians than Sony/BMG?

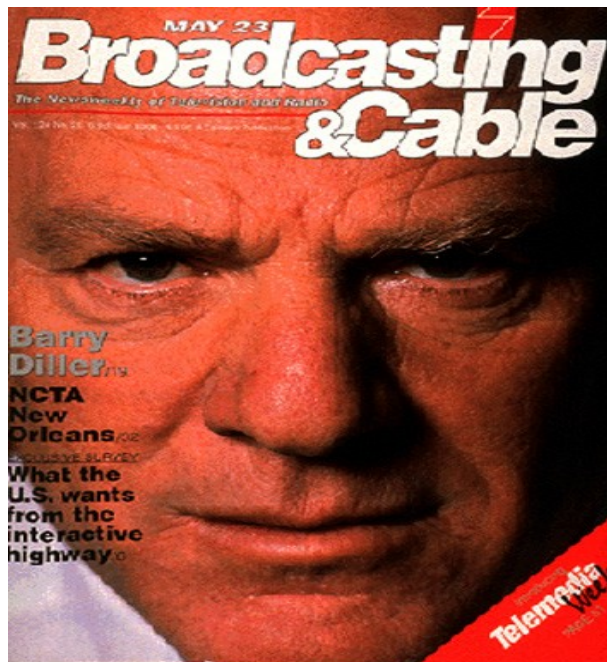


Create a role for musicians to bargain

- Bargain over price of the compulsory license
- Negotiate over the minimum allocations to various systems
- Suggest systems of compensation that are more fair than current market outcomes



In the end, free the musicians and fans from the people who are taking the life out of music



Jean-Marie Messier,
chairman and
CEO of Vivendi
Universal



Rolf Schmidt-Holtz, BMG