

**The Adjustment of Copyright Protection in Music Industry as
Affected by the Technology and the Internet: Social Network Analysis
and Economic Approach**

Year of Enrollment:

2011-2012

Program:

International Economic and Business Law (IEBL)

Student's ID Number:

2LA11042R

Student's Name:

Desrezka Gunti Larasati

Supervisors:

Prof. Shinto Teramoto

Paulius Jurčys

Date of Submission:

8 August 2012

**The Adjustment of Copyright Protection in Music Industry as Affected by the
Technology and the Internet: Social Network Analysis and Economic Approach**

Desrezka Gunti Larasati

2LA11042R

International Economic and Business Law (LL.M.) Program

Graduate School of Law



Table of Contents

1	Introduction	5
1.1	The Business of Music Industry and Digitalization	5
1.2	Research Questions	10
1.3	Constructed Terms	10
1.4	Methodology	12
1.4.1	Social Network Analysis	12
1.4.2	The Law and Economics	16
2	The Reality of Music Industry: Observation on the Models and Relationships.....	20
2.1	The Dependency Relationships Between Record Labels, Producers of Phonograms, Publishers, and Musicians	24
2.2	The Dependency Paths of Music Distributions by Music Distributors	26
2.3	The Other Dependency Paths of Music Distributions	29
2.4	The Dependency Paths of Music Dissemination by Broadcasting Organizations	33
2.5	The Dependency Paths of Music Delivered through Live Concerts and Performances	34
2.6	The Dependency Paths of Music Distribution and Dissemination through Internet Intermediaries and Internet Service Providers	36
2.7	The Paths Supporting the Development of Amateur Musicians and Potential Musical Works..	39
2.8	The Dependency Paths for the Users and Consumers to Access and Enjoy Music	41
3	The Impact of the Internet and Technology to the Paths of Music Flow	43
3.1	Identification of Essential Actors in the Paths Between Musicians and the Users and Consumers	43
3.1.1	Conventional Paths and the Essential Actor in the Stage of Music Creation	43
3.1.2	Conventional Paths and the Essential Actor in the Stage of Music Distribution and Dissemination.....	46
3.1.3	Conventional Paths and the Essential Actors in the Stage of Music Consumption	47
3.2	Analysis on the Internet and Technology as ‘Shortcuts’ to the Paths of Music Flow	48
3.2.1	Shortcuts in the Stage of Creation.....	49
3.2.2	Shortcuts in the Stage of Distribution	53
3.2.3	Shortcuts in the Stage of Consumption.....	57

4	The Competing Paths: Social Network Analysis and Economic Approach.....	61
4.1	Transaction Costs and Competing Paths in the Stage of Creation, Distribution, and Consumption of Music	62
4.2	Competing Paths in the Stage of Creation	63
4.3	Competing Paths in the Stage of Distribution	71
4.4	Competing Paths in the Stage of Consumption.....	78
5	The Adjustment of Copyright	84
5.1	Transaction Costs in the Paths and Models of Music Flows.....	84
5.2	Revisiting the Exclusivity of Copyright	85
5.3	Revisiting the Scope of Exceptions to Copyright	88
5.3.1	The Three-Step Test.....	89
5.3.2	Fair Use Doctrine	91
5.4	Evidence-based Policy Making	93
5.5	The Underlying Theory	96
5.6	The Proposed Model: Enhancing ‘Channel Capacity’	97
6	Conclusion: Final Remarks	100

1 Introduction

1.1 The Business of Music Industry and Digitalization

Music industry has become one of the considerable parts of economic activities, in which it contributes to the development of culture and entertainment, as part of the creative industries. The music industry creates and develops the markets of supplying and demanding of music both in form of goods, such as albums and merchandises, as well as services through music concerts and performances. These triggering music market demands are not limited within one nation or territory, but include worldwide markets, in which consumers of any age or generation involve. The Internet¹ and cloud computing² (or the ‘cloud’) technology even can fully assist those supplies and offers of music directly to the consumers worldwide in short period of time. An artist or band in one country could have fans and listeners residing in many countries, and could even utilize the Internet to expand their markets and popularity, as well as improve the business and the earnings. Music industry is not only about art, culture, and entertainment, but also business and competitions to win the consumers and the markets of creative industries.

Music business has been proven to contribute on a nation’s economy. For instance, in the UK, being at the second place worldwide after the US as the source of repertoire (including music), recent reports have shown that UK consumers have bought more music per capita than almost anywhere else in the world, making music contributed at least £5 Billion annually to the UK’s economy, of which £1,3 Billion comes from the export of music

¹ For the purpose of this research, it is necessary to define the term **Internet and cloud computing**. One approach is to see the Internet as a working infrastructure of transporting digital information, in which it functions as a communication technology. This communication takes place in the network between one computer to another, and the meaning of the information communicated is completely irrelevant to its transport, since it is determined by the software which receives the information. Any type of information which can be translated to digital form can be transported via the Internet, such as text, numerical, data, images, sounds, and video. Furthermore, any additional functions which are effected via the Internet are not performed by the Internet itself. They are ‘services,’ which are provided by one or more of the actors or players involved. All these services are performed by the exchange of digital information (Chris Reed, *Internet Law: Text and Materials, Second Edition* (Cambridge: Cambridge University Press, 2004), 4-8).

² Historically, the cloud has been used as a metaphor to denote the Internet since the late 1960s and early 1970s when several scientists invented the technologies behind the network of networks. A cloud was considered to be a useful and vague enough symbol which could be used to summarize all the resources, cables and gadgets which connected the computers at the nodes of the network. (Patrik Wikstrom, *The Music Industry, Digital Media and Society Series* (Cambridge: Polity, 2009), 2-3). These days, the cloud includes other meanings, including applications and services offered from data centers all over the world. The idea of the cloud simplifies the many network connections and computer systems involved in online (connected to the Internet) services. Any user with an Internet connection can access the cloud and the services it provides. Since these services are often connected, the users can share information between multiple systems and with other users. For instance, cloud computing may include online backup services, social networking services, online applications, etc (Source: techterms.com).

abroad³. According to the studies sponsored by the *World Intellectual Property Organization* (WIPO) on the economic contribution of copyright industries to the nation's Gross Domestic Product (GDP) and employment, in particular the music industries (along with theatrical productions and operas) have contributed in average around 5,71 % to the GDP and 8,82 % to the employment⁴. As relates to the business and employment, music industry is the home for various business actors encompassing: publishers, record labels and companies, music distributors, telecommunication companies providing music services, as well as media and broadcasting companies. With digitalization and the Internet's essential growth, the industry also has stimulated the occurrence of music Internet intermediaries as well as music-related Internet service providers⁵. The core part of all of these is the musicians and artists or performers, who deliver the music as art and entertainment to the consumers and give the reasons for those consumers to keep accessing, enjoying, and purchasing the music, including attending the live concerts and shows. Any kind of activities within music industry's businesses, including recordings, reproductions and manufactures of physical albums and merchandises, distributions of works through shops and stores or online distributions, synchronization to other creative products, such as films, advertisements, and games, as well as publications, broadcasts and disseminations of music to the consumers, could provide chances of employment and sources of revenue⁶.

As regards the impact of digitalization, for example in Indonesia a research was conducted in 2009. The Director General for Information and Communication Technology Applications from the Ministry of Communication and Information of Republic of Indonesia conducted the

³ Source: UK Music, *Liberating Creativity* (policy), accessed on February 29th, 2012, ukmusic.org. Furthermore, With the existence of top selling Artists, such as Grammy Award's winner *Adele* (whose album reached point of sales up to 2,5 million copies in 2011), UK music seriously has contributed to the nation's economy. General statistics also showed that big amount of money has been spent for music financing. In 2011, the amount reached US\$ 134,4 million, while for 2012 the music financing reaches US\$ 83,25 million. Then, the last updated midyear report from *Billboard* also mentioned that overall music sales on 2011 reached the amount of US\$ 821 million. (Sources: Steve Jones, *Music Industry's Sales Are Up, Up, Up This Year*, the USA Today, posted on June 7th, 2012, accessed on March 13th, 2012, usatoday.com; Paul Resnikoff, *Uh-Oh: Music Financing is Down 38,41% in 2012*, posted on Friday, March 9th, 2012, accessed on March 11th, 2012, digitalmusicnews.com; and Steve Jones, *Music Industry's Sales Are Up, Up, Up This Year*, the USA Today).

⁴ The studies were conducted among 30 countries, excluding Japan and Western European countries, such as UK, France, and Germany. The use of GDP as the indicator of assessing the impact of music industry to the nation's economy is quite essential, since according to the WIPO Deputy Director, Culture and Creative Industries sector, *Dimiter Ganchev*, the GDP is basically the 'sum of all the goods and services produced, which form the source of wealth of the nation.' With around 5 % of GDP's contribution, music business and market could be one of the important pillars for nation's economic growth. (Source: Studies on the Value of Copyright Industries-Part I, posted on February 23th, 2012, on CISAC's website, cisac.org).

⁵ More variative and innovative online music services have occurred as people more consider the Internet as useful tool and media to distribute and promote music to the consumers. As examples, recent online services emerged are Spotify, Rdio, and Last.fm, which offer subscription for music streaming.

⁶ In this research, the context of music industry and activities do not include performing musicians in terms of classical music or operas, since they have different characteristics with the commercially distributed music.

research, and according to such research, 82% of users in Indonesia listen to music using digital devices, and 32% of them use the computer, which is the most often used device compared to others. At the second place is MP3 players, followed by mobile phones⁷, and CD's placed in the last position indicating that only less people use it to listen to musical works. Since most people use the computer, MP3 players, as well as mobile phones, it could be stated that the digitalized musical works available, for example in the Internet, becomes the most desirable form to enjoy and access the musical works⁸. Recent reports also mention the increasing sales of digital music files online in several countries, such as the UK, India, South Korea, Thailand, Mexico, and Australia. Overall the digital sales has been reported to have increased for 9,2 % in 2009 to US \$4,3 billion, which is more than 10 times of the digital market in 2004⁹. Further, the report of *Billboard* and *Nielsen SoundScan* also mentioned that until 2011, digital album sales grew 19 % to US \$ 50,3 million from US \$ 42,2 million, and now account for 33 % of album sales. As for the digital track sales, they grew 11 % to US \$ 660,8 million from US \$ 597,4 million in the previous year¹⁰.

The digitalization and the Internet, as well as cloud, have changed the way of 'conventional' business model of music industry, which in previous mainly based on physical sales of albums, and exclusivity of distribution and dissemination of music ensured by copyright¹¹. The Internet and cloud have lowered, even vanished the barriers of dissemination of music, and enhancing networks between consumers and users to easily access and obtain the music. Once uploaded to the Internet, music will be rapidly spread out even worldwide, and could flow easily within such networks. If before, the users and consumers could only access and

⁷ As informed by a local press (*Antaraneews.com*, posted on December 8th, 2010): the economic value of digitalized music through one of the telecommunication companies in Indonesia, in the form of *Ring-back Tone* by 2010 reached IDR 600 billion, or equivalent to more than USD 66,7 million. The use of digital media can actually increase the economic gains that the musicians can get, however, with the appropriate strategy.

⁸ The research was part of study on the impact of digitalization upon music, presented by speaker *James F. Sundah*, representing the Ministry of Communication and Information of Republic of Indonesia, at the workshop on the Management of Intellectual Property in the Music Industry – 'How to Make a Living from Music,' held by WIPO in cooperation with Ministry of Culture and Tourism of Republic of Indonesia, at Hotel Aryaduta Jakarta, October 20-21, 2009.

⁹ Helen Gammons, *The Art of Music Publishing-An Entrepreneurial Guide to Publishing and Copyright for the Music, Film, and Media Industries* (London: Elsevier Ltd., 2011), xix.

¹⁰ Steve Jones, *Music Industry's Sales Are Up, Up, Up This Year*, the USA Today.

¹¹ The considerably secured income streams, which those actors *could have* controls over the source of revenues, are for example the income from recording sales of physical phonogram copies, as well as the income from the managed performances and broadcasts of the musical works, which are considerably controllable in terms of non-free flows of the works, as otherwise happen through the Internet. The authorizations and licensing schemes given by the rights holders under the copyright to the respective parties could exclude the competitors from the market. Therefore, reducing the risk of losses. Through the Internet, for example by way of file-sharing activities and uploading and downloading music online, consumers could access, enjoy, and acquire the music through new digitalized platforms repeatedly and directly through their digital devices, including from online streaming music or downloading sites, thereby inducing decline on physical record sales and demand of paid-music from official distributors or broadcasters.

obtain music through certain exclusive platforms, now they can have and enjoy them directly through the Internet and cloud. Such users and consumers even could acquire the music freely through networkings of Internet and cloud, and it is argued that it could threaten the revenues of musicians and other actors in music industry¹². The music content provided could also be considered as ‘illegal,’ since some of them are considered unauthorized under the copyrights’ licensing schemes¹³. As *Patrik Wikstrom* mentioned, in the world of abundant information (in this case, music), users and consumers would barely pay for basic access of music, since it flows freely in the Internet and cloud. The solution depends on how the music is presented and delivered as service, so that the users and consumers could be encouraged to pay for the music they enjoy.

Therefore, new insights to deal with the circumstances have been mentioned, including suggestions of new and innovative business models of utilizing the Internet and cloud to distribute music products and services to the users and consumers, and use the technology to reduce the costs for production, distribution, as well as promotion of music. Apparently, these have been seriously taken into consideration by some actors, since more and more innovative medias and platforms have emerged to digitally provide music to the consumers. In separate notes, there were also other much ‘enforcement’-related actions that have been conducted, including the shutting down of file-sharing sites, such as LimeWire and Napster, and developments of flexible online licensing schemes and collecting societies’ organizations for legal contents online. There are also attempts to make the Internet Service Providers involve

¹² As UK’s PRS for Music Chief Executive, *Robert Ashcroft*, stated that the Internet has allowed the free flow of information and entertainment content, and increased demand for music has been accompanied by a distortion in its market value. He mentioned that in PRS for Music’s annual *Adding up the UK Music Industry* report, published on August 2011, it was found that both piracy and competition from other forms of entertainment continue to diminish music revenues, in which recorded music income fell by nearly eight percent on 2010, as consumers spent less on CDs and DVDs. Even though UK has become the global leader in per capita spend on digital music, the value has not been adequate enough to compensate for the decline in sales of physical media. (Robert Ashcroft, *The Big Issues*, posted on September 26th, 2011, via m-magazine.co.uk, accessed on March 8th, 2012, m-magazine.co.uk). It was also reported in 2009 that the global recorded music trade revenues was US \$17 billion, a decline of 7,2 % from 2008, and physical sales continue to fall by -12,7 %, which is a slowing decline from -15 % the year before. (Helen Gammons, xix.)

¹³ The free flows of musical works through the Internet outside the licensing and royalty schemes required under copyright Laws has been called on causing piracy and online copyright infringement. Certain countries have created some innovative policies to deal with this problem. For instance, in France, the Internet Service Providers, the government, and rights owners’ organizations, signed a declaration on 23 November 2007 in order to combat illegal online distribution in an agreement form. Such agreement shall be one of the French laws in 2008. As for Japan, in order to terminate the internet access by heavy *peer-to-peer* (“P2P”) users, a new multi-sector council has joined the National Police Agency’s Security Measures Committee. At this point, the Japanese Society for Rights of Authors, Composers, and Publishers (“JASRAC”) of Japan has a role to exercise notice-and-take down procedure, with the cooperation from the internet service providers (“ISP”), and under the ISP’s limitation law. (CISAC News, *Industry and Regulators Urge ISPS – Stamp Out Piracy* (CISAC, France: June 2008).

in eradicating the ‘infringement’ activities by the Internet users¹⁴. Since it is impossible to stop the free flows of works through the Internet, and that music users and consumers now have mostly use the Internet to access and acquire the music, the proposed solutions may be to adjust how the music industry and business actors, as well as musicians do their business activities and connect to the users and consumers to meet their demands, while at the same time adjusting the copyright framework to fit the changing circumstances, where the flows of works are becoming more flexible and dynamic, and the exclusivity in music industry’s market may not be as restraining as before.

This research is aimed at providing new perspective in dealing with the music industry’s contemporary debates concerning the change of business models, and copyright’s legal enforcement, protections, or licensing schemes that are appropriate with respect to the use of the Internet and cloud computing technology in meeting the consumers’ demand within the music market. Since the Internet and cloud technology are related to the networks of users and consumers and paths of music flows within it, this research will apply the social network analysis to identify the dependancy relationships, economically and legally¹⁵, between the actors in music industry. Then, in discussing the business and economic aspect, the element of transaction costs¹⁶ incurred within the networks and paths of music flows will also be analyzed. The identification of paths and music flows within the actors and users or consumers in music industry will include the relevant activities such as accessing, acquiring or obtaining the music, as well as disseminating of music. Through this research, it is expected that the respective stakeholders in music industry could obtain new reference and

¹⁴ In the US, According to *Cary Sherman*, Chief Executive of the *Recording Industry Association of America* (RIAA), by July 12th 2012, major US Internet Service Providers (ISPs) will voluntarily begin serving as copyright police for the entertainment industry. The *Motion Picture Association of America* (MPAA), and even the White House, have already supported this measure. However, there could be other issues arisen concerning the reaction from the users and consumers. (Andrew Coutts, *Major ISPs to Turn Into Copyright Police by July, Says RIAA*, posted on March 15th, 2012, accessed on March 15th, 2012, digitaltrends.com).

¹⁵ The legal questions would be related to the legality of the contents provided through the Internet and cloud computing, as well as the legality of actions from parties who access and acquire the music. Whereas, the economic questions would be related to the effort to maintain the business, generating revenues for the musicians and other actors in music industry, or in other words, making users and consumers pay for the music they have accessed, enjoy, and acquired.

¹⁶ The transaction costs as relates to the copyrights and music could be categorized under three stages (which will be described further on the next pages), which are: transaction costs as relates to the creation activities, transaction costs as relates to the costs of distributing the works to public, and the third one is the transaction costs for users and consumers in accessing, enjoying, and acquiring the works. According to the literatures, such as: Bobby Borg, *The Musicians’s Handbook – A Practical Guide to Understanding the Music Business*, and Helen Gammons, *The Art of Music Publishing*, for instance in the creation and production of musical works, record labels or production companies, spend some money as investment to develop the works. Such activities could also be included in the scope of ‘music publishing,’ which involves the process of making the musics available to the public by sale or other means (Helen Gammons). Since the objective is to deliver and disseminate the music to the public, there are also costs for distributing and disseminating the works. As for the users and consumers (or, public), they will access and acquire the music also with certain costs.

perspective in justifying the utilization of the Internet and cloud computing in music-related activities, as well as its relation to the legal framework of copyright, and the desirable adjustments upon it.

1.2 Research Questions

Several key issues that this research will try to elaborate encompass:

1. Identification of role and position of each actor, users, and consumers in music industry, and the existing, possible dependency relations as well as transactions (or activities) with regard to the networks and paths of music access and dissemination between them.
2. Analyzing the appropriate adjustments of copyright protection in connection with the networks and paths of music dissemination affected by the Internet and technology, on grounds of transaction costs of the actors, users, and consumers in music industry.

1.3 Constructed Terms

For the purpose of this research, several related terms will be constructed to avoid any ambiguity.

a. **Musicians**

In this research, the definition of ‘musicians’ refers to both the authors and performers. The authors are those who compose the music and/or write the songs, or also known as the composers and songwriters. As for performers, they are those who perform the songs or music. Pursuant to the International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations – October 26, 1961 (or the so called **Rome Convention**), performers are the singers or musicians who sing, deliver, or perform the musical works.

b. **Creators**

The term ‘creators’ is purposed to include those who technically contribute on the making of songs, albums, or music as relate to the synchronization activities on the

making of motion pictures, commercial advertisements, music for games, and other similar works, aside from the musicians.

c. Users

In this research, the notion of ‘users’ refers to those who access, acquire, and utilize music for commercial purposes or not for private use as end users. However, as regards the end users, in this research, the term users is also aimed to encompass the end users or consumers, who use the music for further creation activities, such as covering or mixing of music to be shared and disseminated through social medias and networks. Further, those who could also be included as music users encompass: distributors of music and music shops, who use the music for sales-related activities; broadcasting organizations, who use the music to gain revenues from the broadcasts; and Internet sites or Internet service providers, who seek revenues from the use of music. The music users also could include other entertainment places which use music as part of their services, such as karaoke shops, clubs, hotels, pubs, restaurants, or department stores. This term may also encompass other parties, aside from those mentioned earlier, who use the music for other commercial purposes and activities to gain revenues, such as for motion pictures, advertisements, or games.

d. Consumers

The term ‘consumers’ refers to the music end-users, including fans of musicians. They access and acquire the music ultimately for the purpose of personal entertainment and private use. The use of music is not intended to gain any kind of economic revenues, and not for commercial purposes. The consumers may also be considered as those who particularly have the willingness to buy and pay some money to obtain and enjoy the music, including through purchase of CDs or digital albums, attending live concerts or performances of the musicians, joining any music subscription service, as well as purchasing any merchandise or artistic goods relating to the musicians or the songs/albums.

e. Actors in music industry

In this research the term ‘actors’ in music industry (or, actors) refers to the musicians, creators, producers of phonograms, record labels, publishers, distributors of music,

Internet intermediaries and Internet service providers, as well as related media companies and production companies or other parties who use the songs or music for synchronization activities. The actors herein are defined according to the networks and flow of works in music industry and business in accordance with social network analysis as the methodological approach.

1.4 Methodology

In this research, two approaches shall be used, which are:

1. The Social Network Analysis, and
2. The Law and Economics.

The Social Network Analysis¹⁷ will be applied to identify the possible networks and paths of music dissemination among the actors in music industry, as well as the dependency relationships between them. After identifying such possible networks and paths, the next stage will be to find out which networks and/or paths that are actually used and preferred by the actors as relates to the flows of music, and which are not. The identification to which networks and/or paths used is based on the observation to the reality and practical conditions in music industry. Then, the economic approach of transaction costs will be used to analyse and elaborate the reasons or factors why certain actors prefer certain networks and/or paths compared to others. According to such identification and analysis, the research will then propose the model of networks and/or paths, which could be an alternative to the appropriate adjustment, as well as balancing the conflicting economic rights of actors in music industry. Below are the brief explanations on those two approaches as relates to the copyright and music industry.

1.4.1 Social Network Analysis

¹⁷ Departing from the anthropological theory introduced by Radcliffe-Brown, the social network analysis is aimed to investigate the concept of social structure through the metaphors of ‘fabric’ and ‘web’ of social life. Further development by anthropologists and sociologists place the analysis to describe the ‘interweaving’ and ‘interlocking’ relations through which social actions were organized. Pursuant to those, it could be stated that the network analysis is based on relations, showing systems of agents (or actors), in which they have relations to each other, and could be parts of larger relational systems. (John Scott, *Social Network Analysis, a Handbook (second edition)* (London: Sage Publications Ltd, 2000), 3-5).

Under the copyright legal framework, the musicians and creators of music could establish deals or agreements as relates to the implementation of exclusive rights provided by the copyright¹⁸. Such exclusive agreements, which could be in the form of licensing deals, result on the existence of ‘authorized’ paths and ‘unauthorized’ paths with respect to distribution and dissemination of music to the users and consumers. It was argued that such exclusive authorization and licensing schemes are necessary to ensure the musicians and creators being economically incentivized, since such exclusivity could reduce the risk of competitions in distributing and disseminating the works. With regard to the recent debates, the free flow of music through the Internet and cloud have been argued as disincentivizing the musicians and creators because it increases the competitions, and that many other paths outside the ‘authorized’ ones have occurred. Opposing the argument, it is believed that free flow of music could promote more diversified creative activities, while ensuring that the users and consumers could access the music appropriately¹⁹.

Pursuant to the social networking approach and the sociograph theory, the actors, users, and consumers in music industry could be represented as ‘points’ to which they have ‘lines’ toward each other, and so channels or connections could be recognized between them²⁰. These lines or channels/connections may describe the relevant paths or flow of music, in which each of them has dependancy relations to each other. For instance, specific paths identifiable could be the paths of distribution of musical works, paths from the users and consumers to access the works, as well as other paths of dissemination of the works. From the paths, particular roles of each actor as relates to their positions within the networks and

¹⁸ For instance, such exclusive rights include the *mechanical* and *performance rights*. From the *mechanical rights*, the authors and musicians may gain economic values in the form of royalties from the use of (portions or all) of their works on phonogram recordings, as well by other parties for the purpose of motion pictures productions and advertisements (or the so called ‘synchronization’ activities), or song covers and use of composition samples, music sheets productions, and even merchandising. Whereas for the *performing rights*, the Rome Convention guarantees the economic rights of the musicians or artists for their performances on the works, as well as to prevent any form of copies of those performances and their broadcasts to the public without their consents (See Article 7 of the **Rome Convention**).

¹⁹ Shinto Teramoto, lectures of *Contemporary Issues in Intellectual Property Laws – A Social Networking Perspective: Sociograph and Sociomatrix*, given at Graduate School of Law, Kyushu University, International Economic and Business (LL.M.) Program 2011-2012, on October 12th, 2011.

²⁰ One of the theorists, namely *Jacob Moreno*, introduced the use of ‘sociogram’ to represent structural features in diagrams analogous to those of spatial geometry, with individual represented by ‘points’ and their social relationships to one another by ‘lines’ (or, ‘arcs’). Furthermore, Moreno also considers that the mapping of these structures into a sociogram allowed a researcher to visualize the channels through which, for example, information could flow from one person to another and through which one individuals could influence another. Moreover, Moreno also emphasized that the construction of sociograms allowed researchers to identify leaders and isolated individuals, to uncover asymmetry and reciprocity, and to map chains of connection. One example of his principal sociometric concepts was the sociometric ‘star,’ in which the actor becomes the recipient of numerous and frequent choices from others and who, then, held a position of great popularity and leadership. (John Scott, 3-10).

relations, may also be identified. By using the sociograph and sociogram approach, the focus will be on the relationships between the actors, users, and consumers.

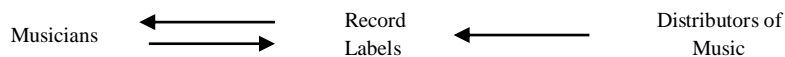
The social network analysis to copyright involves several key concepts below²¹:

1. A line or ‘arc’ describes a direct relationship between the actors, users, or consumers.



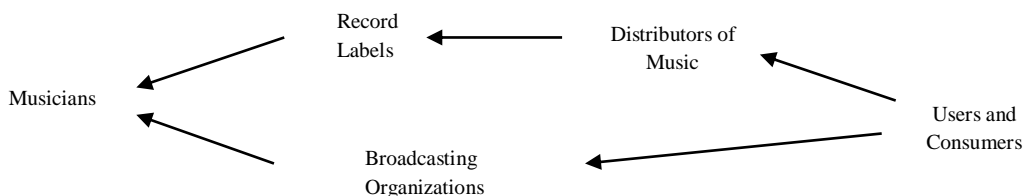
*The arrow’s direction indicates that publishers depend on musicians to obtain the works.

2. A ‘walk,’ which refers to the route that enables actors, users, or consumers to reach the goal of flow of music. Furthermore, in the context of communication, by identifying a ‘walk,’ the actors who intermediate the flow from the originator to the recipient could be indicated. A ‘walk’ could also have a redundant route, in which the works are amplified through repeated activities.



*A ‘walk’ for distributors of music to access and obtain the musical works. There could be redundant route between musicians and record labels as relates to the development of music, since record labels in some cases could have influences in the recording process of the music.

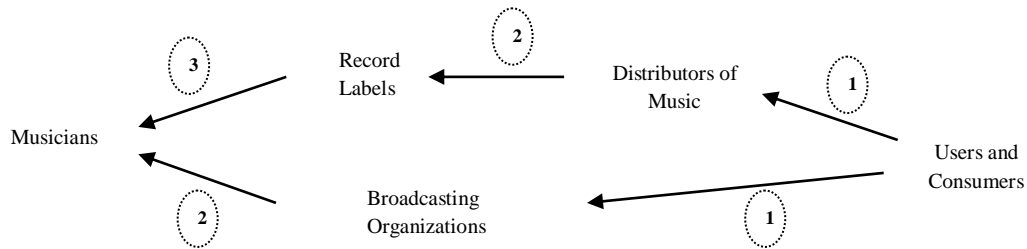
3. A ‘path,’ refers to a ‘walk’ in which each point representing each actor and each line (or ‘arc’) is distinct. The ‘path’ could show the existing and possible ways of reaching the goal of flow of music. In the condition where there are multiple paths, in which the actors, users, or consumers could choose either to use one path, or use the other, it indicates the ‘channel capacity’ of flow of music.



*The users and consumers could access the music through different ‘paths.’ The first path is through music distributor, and the second path is through broadcasting organizations, such as radio.

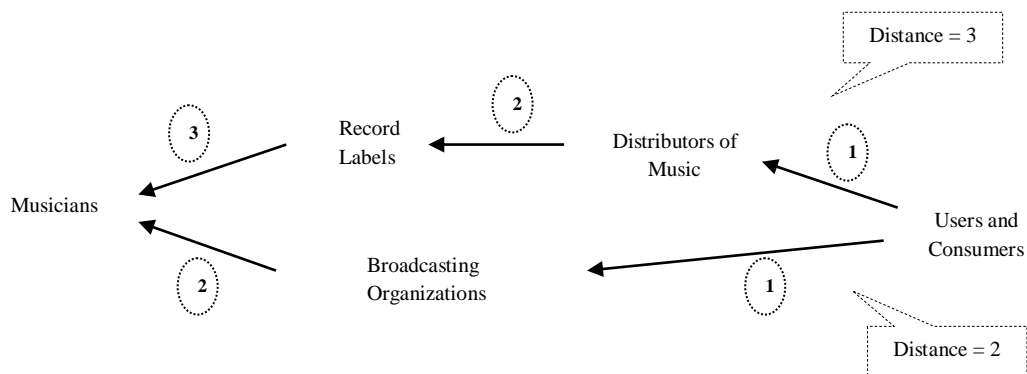
²¹ Shinto Teramoto, lectures of *Contemporary Issues in Intellectual Property Laws – A Social Networking Perspective: The Tools to Investigate Social Networks*, given at Graduate School of Law, Kyushu University, International Economic and Business (LL.M.) Program 2011-2012, on October 19th, 2011.

4. A 'length' of the 'path,' is technically the number of lines ('arcs') that exist in the path. The 'length' of a 'path' could indicate the number of intermediaries who connect the recipient and the originator of information (or, musical works). For instance, if the total length is '1,' then it is considered that the recipient is directly connected to the originator.



*Different 'length' of 'paths.' The first one has total length of '3' with two intermediaries, while the second one has total length of '2' with one intermediary.

5. A 'distance' between two points (which points represent actors, users, or consumers in the sociograph), is the length of the shortest path that connects them. If there are two 'arcs' in a 'path' of flow of music, then the 'distance' is two. A shorter 'distance' would likely to assure better quality of communication²².



In the social network analysis, there is also concept of 'shortcuts' of 'paths' for the flow of information, which could contribute to a shorter 'distance' between the source of information and the recipient. The concept of 'channel capacity' provides an idea of different existing and potential paths of the networks of information, or in this case, the flows of music. As relates to the economic considerations, the 'channel capacity' could provide options of 'paths' and variative 'distance', including possible 'shortcuts' for the actors, users, and consumers in connecting to each other, with varied transaction costs.

²² It could be debated whether the copyright could create or facilitate a distance of flows of works that could assure the quality of communication, since it also depends on the number of actors involve or granted by rights to produce or distribute the music.

1.4.2 The Law and Economics²³

As mentioned earlier, the analysis using economic approach will be based on the considerations to **transaction costs** of the ‘paths’ in the flow of music between the actors, users, and consumers of music industry. The actors, users, and consumers would likely to choose the ‘paths’ that lead to lower transaction costs. However, as mentioned earlier, the copyright legal framework creates the exclusivity²⁴ of flow of works, which reduces the ‘channel capacity’ to the music, and such exclusivity could induce higher transaction costs for other actors, users, or consumers, who are not authorized or licensed to access and use the music²⁵. In this research, choices of ‘paths’ and flow of music by certain actors, users, or consumers will be elaborated based on such transaction costs.

As a basic principle, according to the law and economics theory, particularly the *Coase Theorem*, the transaction costs generally include the costs of identifying the parties with whom one has to bargain, the costs of getting together with them, the costs of the bargaining process itself, and the costs of enforcing any bargain reached²⁶. With regard to music industry, this means that the transaction costs relate to the activities of identifying the respective actors in music-related activities, the construction of interactions, relations and/or transactions with such identified actors, including negotiation or process of reaching agreement between them, as well as the enforcement of such agreements or consents reached, which may include the legal-context enforcement, and its mechanisms. Under the economic analysis on copyright law, the occurrence of transaction costs could be analyzed under these three stages, which are:

²³ The economic rationale of copyright relates to the exploitation of the works created, in which the right holders possess exclusivity and monopoly position to enforce others, who want to access or use in any kind of way (including modification or alteration to the works), pay certain amount of money under the scheme of licensing or royalties. This economic rights are aimed to be the incentive for the authors and creators (or future authors and creators) to create and disseminate their works to the society.

²⁴ The copyright is essential in exclusion of competitors from the market that could reduce the risk of failure of the business in music industry. *Volker Lehmann*, in his master thesis titled “Copyright in the Music Industry,” categorized three different markets with regards to music industry. The first is the ‘market of the fans,’ which refers to the users and consumers of musical works. The second one is the ‘intra-business market,’ which is the market from musicians to musicians, where performers ask others for licenses to perform, cover or use in any possible way their original work in order to create something new. Then, the third is the extra-business market, where broadcasting organizations, such as radio and TV stations ask for licenses to commercially broadcast musicians’ works. (Volker Lehmann, *Copyright in the Music Industry* (Auflage: Grin Verlag, 2005).

²⁵ For instance, distributor of music which is not licensed to distribute the music from record labels, will seek deals with other distributor to obtain the music, and such activity requires more cost rather than when it deals directly with the record labels.

²⁶ A. Mitchell Polinsky, *An Introduction to Law and Economics* (Wolters Kluwer Law and Business, 2011), 14.

- a. The stage of music creation, which include transaction costs occurred in the process of creating the works²⁷;
- b. The stage of music distribution, which refers to the costs occurred in distributing the works, and
- c. The stage of music consumption, which refers to the transaction costs as regards the access and use of music particularly by the users or consumers²⁸.

The transaction costs at the stage of creation may include the costs incurred by the actors in identifying with whom they have to make deals to access, acquire, or create music or its sound recording, as well as the costs of the bargaining process with such parties, and the deals enforcement. For instance, a record label will have to identify which publisher it has to approach to find the appropriate songwriter, and which artist that record label thinks will fit the song. The musicians who compose their own songs would also want to engage into appropriate deals with certain record label for the development and promotion of their music. Such processes require certain transaction costs. There will be certain deals or agreements required during music recording process between the publishers, musicians, and record labels, and in the exercisement of such deals, there could be certain spending that the parties must pay, for example the recording fund that record label must give to the musicians and producers in the process of sound recording. Under the record deals, record labels make investment for the sound recording creations, as well as its distribution and promotion to the public. The amount of investment, especially in the major record label, is usually big and it should be recoupable from the revenues of sound recording sales.

At the stage of distribution²⁹, the actors incur certain transaction costs in respect to finding the appropriate partners in distributing and disseminating music to the users and consumers.

²⁷ In this context, the writer distinguishes between the costs of creation (also called as 'cost of expression'), and transaction costs in creating process. The cost of creation could have wider scope than the transaction cost of creating, since transaction costs mainly focus on the relationships of the involving actors (or parties).

²⁸ See footnote no. 16.

²⁹ The costs of distributing the works are often low. This is because, once the musical works (sound recording, or the phonograms) are created, the creation of such works (which supposed to require costs of creation) could be incorporated into another copy virtually without cost (no additional costs of creation required). Once copies are available to others, it is often inexpensive for the users or consumers to make additional copies, especially in this digitalized era (William M. Landes and Richard A. Posner, *An Economic Analysis of Copyright Law*, The Journal of Legal Studies, Vol. 1 Jan. 1972, Chicago: University of Chicago Law School, Published for the University of Chicago Law School by the University of Chicago Press, 326-327).

These partners will act as intermediaries (or *gatekeepers*³⁰) that connect the musicians with the users and consumers, and make it possible for the users and consumers to access and obtain the music. In this thesis, the stage of distribution includes making of reproductions of music in any kind of form to make it accessible and available to the public. Technically, the costs in making such reproduction could be lower than the costs of making sound recording itself. However, in this stage the focus will be more on how the actors could make available (distribute and disseminate) the music to the users and consumers, and in achieving such goals, with whom and what kind of deals or relationships that they should construct, which will also be analyzed on grounds of transaction costs.

The transaction costs at the stage of music consumption relates to the costs that should be born by the users or consumers of musical works in accessing, obtaining, enjoying, or making use of the works. With regard to that, the use of the Internet, such as the Internet intermediaries' sites, may considerably reduce the transaction costs to access and obtain the musical works. However, there are certain issues concerning the access by the users and consumers. As mentioned earlier, once the users have already obtained the copy of the works (either in the form of digitalized data files, i.e. mp3, or CD), they actually can make additional copies to the song, and including share them through the Internet both for the purpose of private use, or commercial activities (which may be regarded as infringement of copyright). In order to prevent such copying activities, which is argued may threaten the economic revenue to cover the costs of creation; the musicians, publishers, or record labels, could limit the access for the users and consumers to access and obtain the music. In this context, the copyright is essential as legal tool in facilitating such limitation and authorization³¹. This relates also to the limitation of 'channel capacity' to the music. However, it appears the limitation and authorization of access may affect the transaction costs, in which the actors should seek sufficient deals or relationships with the appropriate

³⁰ In the relationships with musicians, the 'gatekeepers' could give additional resources to the project or activities in which they involve, and most likely these gatekeepers have the positions that enable them to decide and choose whether to have deals or contracts with certain musicians or not. This is crucial, especially in conditions where copyright law facilitate the exclusivity in making music available to the public, because gatekeepers could choose which music that will be 'passed on' or disseminated to the users and consumers, and which are not. Such power support them to create a condition of 'artificial scarcity,' when they control the availability of music in conventional business model of music industry. Included as gatekeepers are record labels, broadcasting organizations, and music distributors (Richard E. Caves, *Creative Industries – Contracts Between Art and Commerce* (Cambridge: Harvard University Press, 2000), 19-20, and William Patry, *How to Fix Copyright* (New York: Oxford University Press, 2011), 16).

³¹ However, it also should be noted that this could lead to disincentive for future creations, which is also contradictory to what copyright is aimed in regards to the society, that is to promote the creative industries. The balance between access by the users and consumers and incentive to the musicians is always becoming the issue.

partners that could support such limitation or authorization of music access. Furthermore, transaction costs will also occur in exercising and enforcing the deals. This inevitably will also affect the transaction costs in creating the music, as well as its distribution. Since the access to the existing music could be limited, the costs for future creations of the music will economically increase³². More licensing scheme, royalty system, as well as negotiating process will be required to access, acquire, and make use of the existing music³³, and this includes the effects on the enforcement costs of such copyright's schemes, all in the stages of creation, distribution, as well as consumption of music.

Addressing the contemporary debates and dilemmas in music industry, the economic approach of transaction costs is expected to be used as legal tool in analyzing the necessary adjustment to the copyright protection, as well as analyzing the choice of paths and 'channel capacity' of music industry's networks and flow of music between the actors, users, and consumers, as affected by the Internet and technology.

³² According to the copyrights' conventional economic approach, The alternative legal principal to overcome the dilemma of cost of creation is to maximize the benefits from creating additional works, minus losses from limiting access and administering copyright protection. (William M. Landes and Richard A. Posner, 326).

³³ Another important assumption of the Law and Economic approach is the 'strategic behavior.' In this context, the actors of music industry holding the exclusive rights also tend to have 'strategic behavior' to maintain and increase their economic revenues. Such strategic behavior could be part of the efforts to exclude competitors from the market. This could affect the transactions costs in creation, distribution, as well as consumption of the musical works.

2 The Reality of Music Industry: Observation on the Models and Relationships

In order to analyze the required adjustment of the copyright law, at the first stage the observation of the practice and reality of music industry is essential. In this chapter, the social network analysis will be used in identifying and elaborating the paths and networkings of the flow of music between the actors, reaching the users and consumers, as well as indicating the dependancy relationships between them in the process of creation, distribution and consumption of music. According to the literature, there are many varied 'walks' (or routes) and paths for the users and consumers in accessing music. Conventional model of music dissemination, for example physical distributions of music in the form of CDs or Vynils, as well as publications of the music through televisions or radios, are no longer the only platforms or medias that the users and consumers could access in enjoying and obtaining music. Having been intermediated through the Internet and cloud computing technology, even nowadays the musicians could directly connect to the users and consumers in delivering and communicating their music. They could also access and find out the latest music or works that musicians have created, including to access and enjoy the music in much ease conditions, where it could be accessible anywhere at anytime.

The previous business model of music industry, or as *Patrik Wikstrom* refers as the 'old music economy'³⁴ between the actors in music industry involving publishers, record labels, distributors, as well as broadcasting organizations and media companies, have to adapt and modify their ways of business affected from the development of technology, including the Internet and cloud. The key point differentiating the current circumstances is that, those actors now could in many ways utilize the technology to help raise and improve the business. However, as a consequence of such technology, access to the songs has become much easier, which somehow, could incur unauthorized use and distributions of music that may infringe the copyright law. It was argued by *Cary Sherman* from the Recording Industry Association of America (RIAA), that free flow of music through the Internet contributes to the number of piracy actions, which then cause devastating impact to the music industry³⁵. However, this is

³⁴ Patrik Wikstrom, *The Music Industry – Digital Media and Society Series* (Cambridge: Polity Press, 2009).

³⁵ As Cary Sherman from the Recording Industry Association of America (RIAA) in a TV Show 'Keen On' hosted by Andrew Keen on end of February 2012, mentioned: "The fact is that piracy has had an enormous, really a devastating impact on the industry, because paying for music has become voluntary. It's a tip jar. If you don't want to pay for it you don't need to because you can always find online any of the music that you want,," ([Leigh Beadon](#), *RIAA's Cary Sherman: We Really Just Want To Give Consumers What We, Er, They Want*, posted on Monday Mar 5th, 2012, accessed on March 6th, 2012, [techdirt.com](#)).

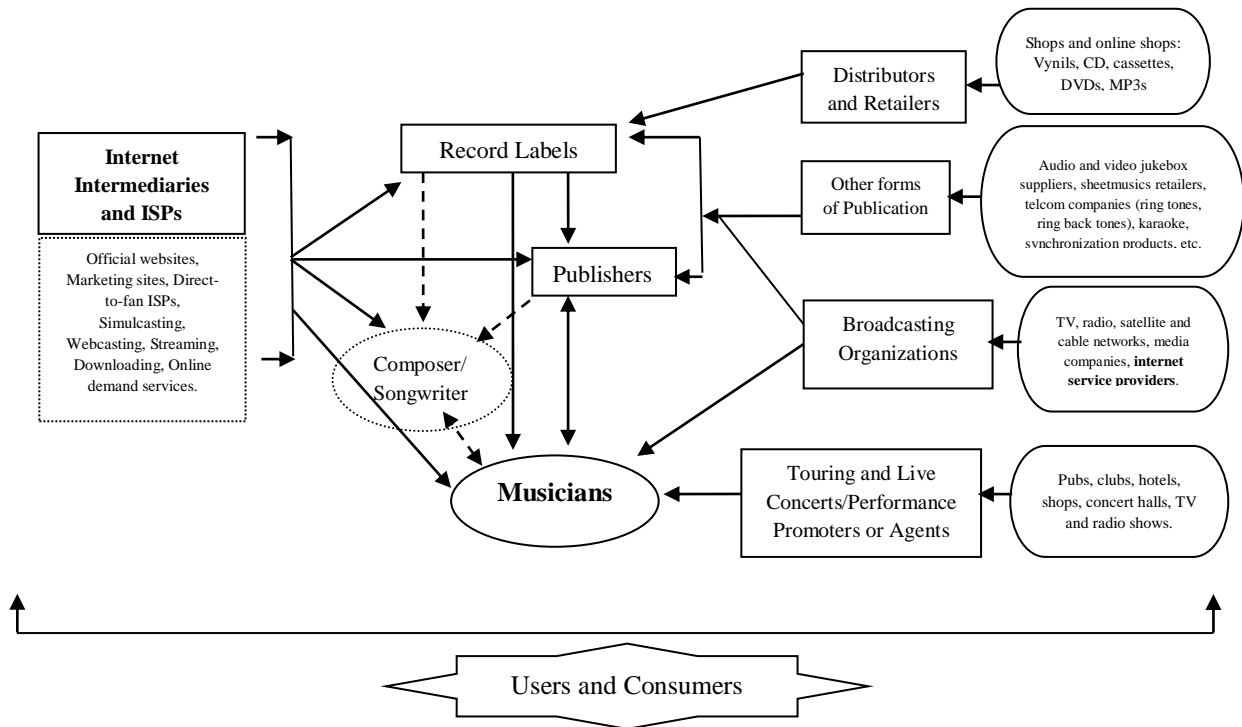
still arguable, whether the Internet indeed brings such ‘devastating’ economic impact and piracy, or simply the issue relies on the adjustment to the shift in music business influenced by the existence of such technology. The proposed idea to deal with the changes is on how to stimulate business conditions in which consumers are willing to access and pay for the legal contents, and not merely focusing on legal enforcement to the unauthorized and infringing activities. This (and other similar) point of views have been proposed by technology specialists, as well as other experts, such as *Salam* and *Ruffini*, by way of changing the focus not on the enforcement of copyright and eradicating the so considered ‘piracy,’ rather, to find innovative business models that can adapt the industry well to the recent digital era and demand of music market nowadays.

Another solution has also been mentioned, which is, namely, to design conditions and strategies of providing the music, including interaction with the musicians, in any innovative ways that could encourage the users and consumers to pay willingly pay for the services and music. This suggested model is formulated in ‘how to connect with fans’ and ‘give them reasons to buy,’ resulting in revenues for the musicians³⁶. Regardless of those varied offered solutions, certain level or stage of adjustments are considered inevitable, meaning that some ‘conventional’ ways of dealing with the business basing on exclusivity of copyright will no longer be sufficient, thus the development and experiment of new business schemes will be essential³⁷. Before getting into the details of copyright adjustments and business model issues, the sections below will firstly elaborate the flow of music reaching the users and consumers, and dependancy relationships between the actors based on the social network analysis. The identification and analysis on such paths of musical works’ access are in accordance with the reality of business and activities in music industry.

³⁶ Mike Masnick, *The Futures of Music Business Models (And Those Who Already There)*, posted on January 25th, 2012 via techdirt.com, accessed on March 5th, 2012, available at techdirt.com.

³⁷ As Helen Gammons in her book, *The Art of Music Publishing*, mentions that the change in music industry will mean some things will cease, and new things will replace them (Helen Gammons, xvi).

The Dependency Relationships: Flows of Music (Basic Graph)

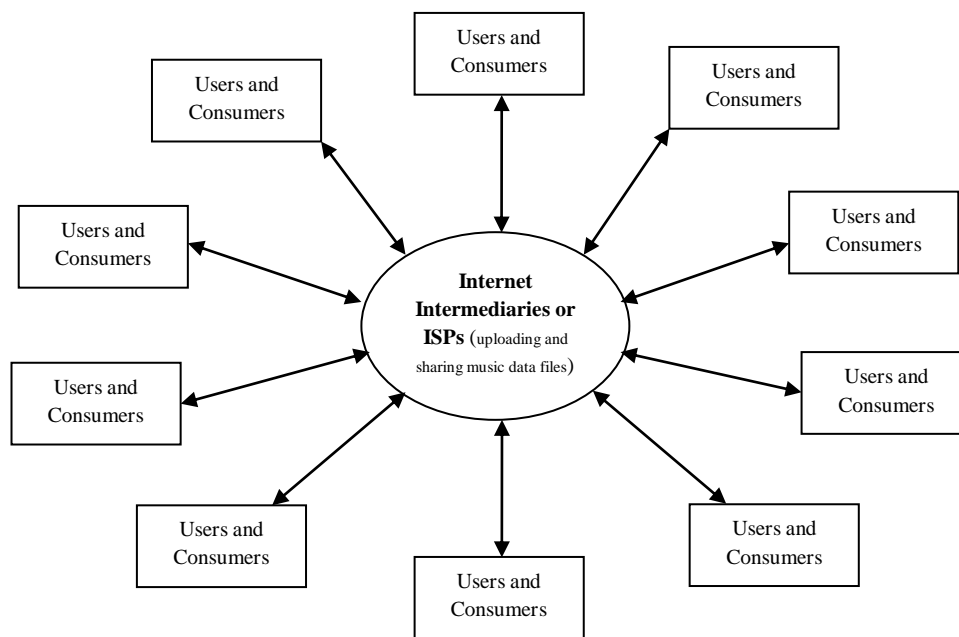


*In this graph, the lines and arrows indicate how the actors could access or obtain the works from the other actors.

Technological devices and platforms, including the Internet and cloud, have brought new platforms for the musicians to deliver music to their consumers, including fans. For instance, they could access the online music service, such as music streaming and subscription sites, or musicians' official web pages, anytime and from anywhere they want. Starting from few decades ago where music was distributed in the forms of physical forms through distributors and retailers, now consumers can choose which form and through which media they like to access and enjoy the music. The 'conventional' platforms are no longer the only choices, consumers could have music in MP3s or .wmv formats and insert them to their ipods or mobile phones, carry them anywhere and anytime they want to listen. Furthermore, consumers can also enjoy the performances of their favourite musicians not only from television and radio, or directly in live concerts, but also from the content providers sites using the Internet's streaming service, such as Youtube or Dailymotion. The internet intermediaries also have provided the possibility and facilitation for the users and consumers to upload and share the music they acquire to other users and consumers, either for pure free entertainment or for gaining revenues, in which such users and consumers could also share their music, both from covering or deriving other musicians' songs, or from their own

personally created music. An example is the video-streaming site Youtube, which has such *user-generated contents*' service³⁸. Furthermore, these users and consumers uploading and sharing their personal works (as may be inspired or derived from other works), could be further considered as the amateur musicians³⁹. They could also share and communicate their music through social network sites, such as Facebook or Myspace, outside any official record deals with the record labels⁴⁰.

The Flow of Music Between Users and Consumers Through the Internet



As for the musicians, they could exploit such new platforms through the Internet to market their music and build fan base. The Internet makes it possible for the musicians to disseminate their music worldwide in just count of minutes. Quoting from what *Quincy Jones*

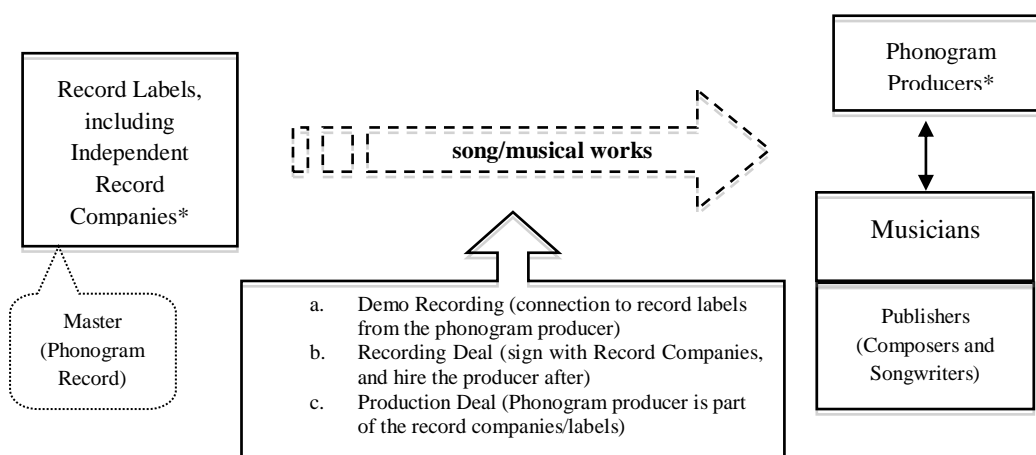
³⁸ As a reference, to be categorized as a *user-generated content* activity, the content that users or consumers have uploaded should be publicly available in the Internet, such contents possess certain amount of creative effort, and those contents are created outside any professional practice (Niroshan Balasubramaniam, *User-Generated Content, Business Aspect of the Internet of Things*, prepared for the *Eidgenössische Technische Hochschule Zurich* and *Swiss Federal Institute of Technology Zurich*, 2 April 2009, available at im.ethz.ch).

³⁹ One example to amateur musician covering Japanese Anime Songs, which then be recognized by record label and ended up signing deals with the label to release her own album, is *Himeka*. She followed “The Second All Japan Anison Gran Prix”, an annual competition that gathers aspiring singers from all over Japan, and use the Internet (through online streaming site, YouTube) as media to communicate herself to the society. She then ended up first out of 3,186 competitors. Sources: <http://www.sonymusic.co.jp/Music/Info/himeka/profile.html>. YouTube’s video of *Himeka* could be seen from this link: http://www.youtube.com/watch?v=J4ENzGnvKzM&feature=results_main&playnext=1&list=PL0E726B8A7BC0A290

⁴⁰ A new comer band called *Dimanche* from Indonesia promote and deliver their music through social networks such as Facebook and Myspace. The users and consumers could access and enjoy their music through this one network link: http://www.facebook.com/DimancheMusic?sk=app_2405167945. The band also joins as member of Last.fm, one of the innovative online music services, which give recommendations of music to be accessed for those who join as members. Another example is *Amanda Palmer*, who has no official deals with any record labels, and relying on the Internet networkings to promote her music, as well as raising funds for her music project through a site called *Kickstarter*.

said, “*Music is the only product that is consumed before it is purchased*⁴¹,” it is essential for the musicians to let the users and consumers experience and enjoy their music to achieve higher objectives on finally make the consumers, including fans, contribute revenues to the musicians for the music consumed and enjoyed in reasonable and innovative ways. The recent trend of demands for music by the consumers is worth to be taken into consideration on structuring music dissemination. Besides the existing business models and networking that have already been developed, the Internet and technological tools and medias as the innovative networking routes are worth to be exploited and utilized in any creative way possible. Further sections will elaborate the existing and possible networking paths of music flow in the music industry.

2.1 The Dependency Relationships Between Record Labels, Producers of Phonograms, Publishers, and Musicians



*The phonogram producers and record labels depend on the musicians, as well as publishers (as relates to composers and songwriters) to obtain the song/musical works in the process of sound recording.

Generally, the musicians could encounter deals with the following parties:

a. Publishers

Music publishing include activities of assisting and facilitating the creation of musical works by way of representing the musicians, in particular the composers or songwriters, and administering their economic rights from the exploitation of the music, as well as assisting in making the music available to the public. The publishers, by music

⁴¹ <http://www.quincyjones.com/>.

publishing agreements⁴², could take over and manage the rights of the musicians in the exploitation activities. In this case, publishers manage the economic exploitation or profits of the musicians and the use of their works, such as through sound recordings, commercial advertisements, and other synchronization activities like the use of the works for games or motion pictures. In the graph, it was shown that the publishers depend on the musicians in accessing and obtaining the songs or compositions to be further exploited. When representing the composers or songwriters, the publishers will promote the songs for example to be used in a sound recording by other musicians. For instance, in rock music, it is more common for the musicians to write most, if not all, of his or her songs. In that case, the publishers' role is to administer the catalogue of the musicians' songs, including licensing the use of the songs by the other actors. Music publishers could require the whole of copyright to be assigned to them, with agreements to split royalties from exploitation of musical works 50/50 with the composer or songwriters⁴³.

According to *Helen Gammons*, amongst the role of publishers are the administration and registration of copyright of musicians they represent, collecting the mechanical royalties from the use of the songs in reproduction activities, as well as public performance royalties through broadcasting organizations, collecting incomes from the synchronization activities, giving license for sheet music printings and translation or song covers by other musicians in other countries, and surely to promote the musicians and their compositions or songs to the society and the respective stakeholders⁴⁴.

b. Record Labels

The record labels involve in the process of music recording into phonogram form (or, the 'Master'), and to make copies of the phonogram, for the purpose of distribution and promotion, dissemination, and communication to the users and consumers. The earning gained will be resulted from the selling of copies, as well as other forms of exploitation on the recording, including the synchronization activities. In the graph, the record labels

⁴² Several key contracts of music publishing agreements encompass: single song assignment, exclusive writer contract, co-publishing agreement, administration agreement, subpublishing contract, collection agreement, and synchronization agreement. (Helen Gammons, 85).

⁴³ Julie E. Cohen, et al., *Copyright in a Global Information Economy* (New York: Aspen Publishers, 2006), 445.

⁴⁴ Helen Gammons, 57-60.

depend on the musicians (directly), or on the publishers (in case of composers or songwriters), to obtain and access the song/musical works.

In regards to the relationships between musicians and the producers of phonogram, under contractual context, once the record labels gain access to the musicians' works, the musicians (could be represented by the publishers) may enter into certain recording deals, which types of deals could be in the forms of: (1) 'demo recording' in which the producer of phonogram may record a demo and shop the demo tapes to the connections (could be record labels or production companies) he or she has; (2) 'recording deal,' if the musicians enter into a recording agreement directly with the record labels, in which the musicians are assigned to hire the producer of phonogram⁴⁵ or; (3) 'production deal' in which the producer of phonogram is the part of an actual production company, which will sign and develop the musicians, record the demo, and enter into recording contracts with record labels on musicians' behalf⁴⁶.

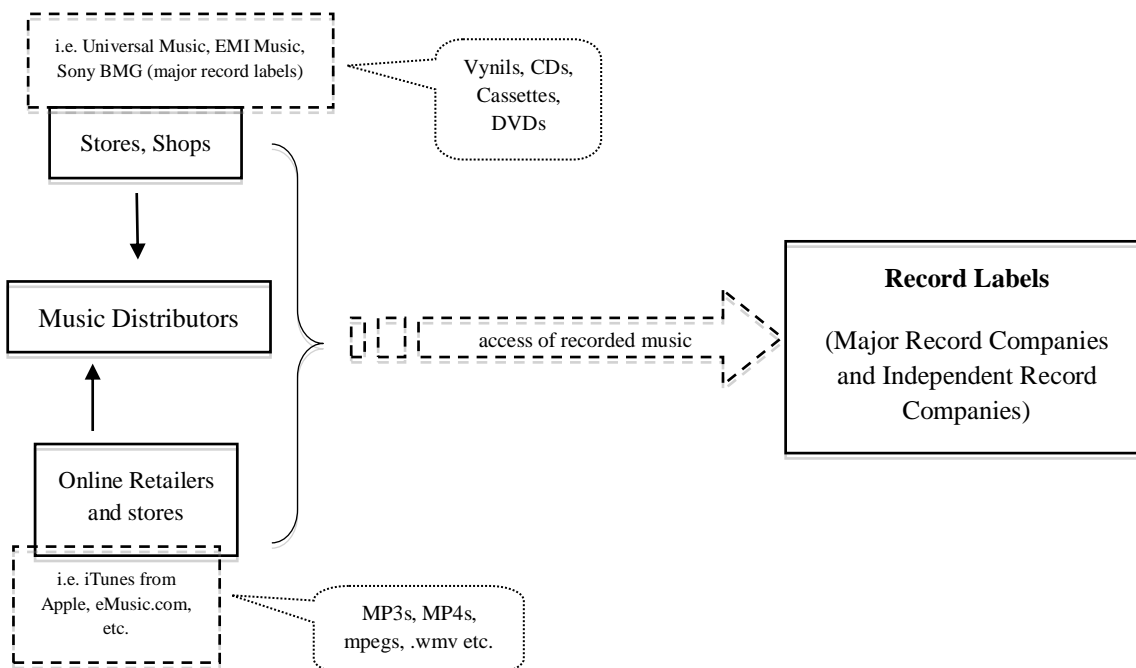
2.2 The Dependency Paths of Music Distributions by Music Distributors

In general, the distribution activities may include restoring physical copies' stocks, shipping to suppliers, manufacturing of physical albums, as well as handling the fulfilment and delivery of orders from stores and online retailers. However, the types of record labels' companies may influence the paths for music distributions. The Major Record Companies, or major labels, who seek musicians that commercially viable and can give greater potential of quick returns on the investments that the companies have made, are usually parts of larger corporations that run a system of distribution channels, regional offices, international divisions, and other music business, such as music publishing. Therefore, the majors could be considered as having much wider music distribution paths. Through its distribution channels, the majors distribute the copies of sound recordings to the music stores and shops in physical

⁴⁵ In this case, the musicians are obligated under contract to hire an experienced producer of phonogram to guide them during the entire process of recording, as well as to deliver the product having commercial value that meets the expectation of record label. For such purpose, the record label gives the recording fund as an advance to the musicians, in which it shall be used to cover all the expenses during recording process, including the producer's advance. The earnings that musicians get from selling of recording products will then be used to recoup such recording funds given by record label.

⁴⁶ Bobby Borg, *The Musician's Handbook-A Practical Guide to Understanding the Music Business* (New York: Billboard Books, 2003), 163.

forms, as well as in digital to the online stores, such as Apple's iTunes store. Examples to the major labels are Universal Music, Warner Music, as well as Sony BMG⁴⁷.



*In this graph, the lines and arrows indicate how the distribution actors could access and obtain the recorded music.

Different with the majors, Independent Record Companies, or Indies, have more willingness to sign record deals with underdeveloped talents and bands, which music are mostly outside the mainstream. The Indies are usually independent from the majors, and the records are usually distributed through smaller regional distributors, meaning narrower scope of paths. However, in some cases, it is also possible for Indies to have a joint venture with the majors for the purpose of additional funding⁴⁸, or in case of *upstream deals*⁴⁹. An example of Indies that hits big success is the XL Recordings, which developed a talented UK singer and musician, *Adele*.

⁴⁷ Recently, the changing circumstances of music industry and digital phenomena have made one of the major labels, EMI, broken up, and it will be sold to the highest bidder of record companies. (Heliene Lindvall, *Behind the music: What mattered in the music industry in 2011 – and some predictions for 2012*, posted on Thursday 29 December 2011, accessed on March 8th 2012, guardian.co.uk).

⁴⁸ Bobby Borg, 177.

⁴⁹ In *upstream deals*, the Indies function as the developer of creative and talented musicians that could have potential music market and fans, and when those musicians start to get much bigger and popular, the majors will take over from the Indies and continue developing and promoting such musicians. Those *upstream deals* take place between the majors and the Indies. In such case, the 'upstream' may also occur in condition when at first the Indies and majors have distribution deal, then transform into a production deal. (Patrik Wikstrom, 67, and Donald S. Passman, *All You Need to Know About the Music Business – Revised and Updated* (New York: Free Press, 2009), 201).

The platforms to offer and distribute music have been evolving from the vinyls, modern flexible vinyls, cassettes, VHS, Beta, CDs, mini disks, DVDs, blu-rays, downloadable digital data files, music streaming, until the emerging of cloud computing music service⁵⁰. As mentioned earlier, the conventional way of distributing physical copies to the stores and shops are becoming only one of the options to reach the users and consumers. Record labels could utilize the Internet technology to widely distribute and market the music. In the graph, it could be seen that there is dependency from the distributors of music to the record labels, either for physical or online sales, to obtain the recorded music and then to sell and market them to the users and consumers⁵¹.

Current reality of music industry's business as relates to distribution and sales indicate a quite complicated conditions. Statistics from the International Federation of the Phonographic Industry (IFPI) on 2010 mentions that the so considered 'piracy' influenced by the technological phenomena has made some collapse to the local industries, for example in Spain, where the local artist album sales in the Top 50 fell by 65 % between 2004 and 2009⁵². The Internet technology also has been called as depriving the incomes of the musicians as well as record labels, since it cause physical records sales experiencing declines, and a lot of the so called 'illegal downloading' activities happen, which are outside the authorized and licensed paths of copyrights licensing schemes. Even so, the new platforms, which are the sales and marketing through the Internet or digital sales, have arisen in considerable rates.

In many countries, the statistics have indicated that the sales base has shifted from physical to digital revenues, and in UK the digital channels now account for 25,3 % of all music sales. From the latest figures of British Recorded Music Industry (BPI), it was shown that the digital album downloads have grown, with 15 albums selling more than 100,000 digital copies in 2011. This changing base of sales does not mean that the old platforms of music delivery (vinyls, CDs, and such), are no longer commercially bought. Even the sales of vinyls have arisen by more than a third (43,7 %) during 2011 to 337,000 copies, which was the highest improvement showed since 2005. As for music CDs, *Geoff Taylor*, the chief executive of BPI, stated that the CDs remain to be the nation's favoured format, which

⁵⁰ Helen Gammons, xvii.

⁵¹ Apple, through its iTunes Stores, has become the market leader in the sale of online content. Since the launch of the iTunes Music Store in 2003, Apple has sold over three billion of music downloads. (Ibid., 53).

⁵² Ibid., xix.

accounts for 76,1 % of total sales on 2011, which reason behind it may be because the British music fans consider album of musicians (in the form of CDs, or vinyls⁵³) as the richest way on how they connect to the musicians' works, and that CDs reflect physical ownership that is important to the fans⁵⁴.

Besides UK, in 2009 other music industries' markets in five different countries also experience increased digital sales that exceeded the amount of physical decline, which was a landmark point. Those five countries are India, South Korea, Thailand, Mexico, and Australia. Even though on 2010 IFPI reported that the global music market fell by 7,2 % in 2009, growth was seen in 13 countries, hidden by the huge downturn in the market of USA and Japan⁵⁵. Such complicated statistics of increasing and decreasing sales and revenues of music industry indicate the fact that the music industry is still in the process of changing and adaptation, in which through technology and digitalization, music industry and in particular music distribution and dissemination activities, are facing new different platforms of reaching the users and consumers and meeting the market demands. In digitalized conditions where there exists freer flow of music and abundant information, the exclusive paths of music distribution activities simply will need adjustments, as it will be inefficient to enforce exclusive authorizations of music access in such kind of more 'loose' and hardly controllable networking music market.

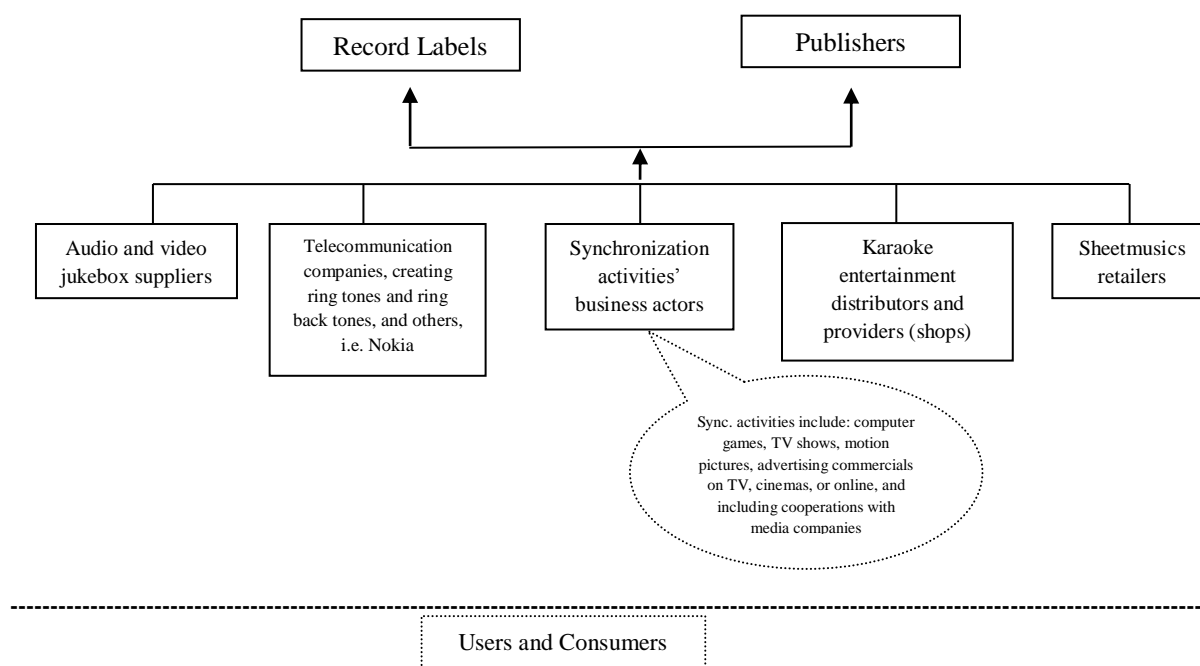
2.3 The Other Dependency Paths of Music Distributions

From the graph, it could be seen that suppliers of audio and video jukeboxes, karaoke entertainment distributors and providers, sheetmusics retailers, telecommunication companies, as well as media companies, including those actors intending to use the musical works (either the sound recording or the compositions) for computer games, films, or commercial advertisements, depend on the record labels and publishers to access and obtain such works.

⁵³ Recent research shows a resurgence of music physical sales through vinyls. Such resurgence is assumed to occur because of the Consumers or fans' tendencies to have physical object that can relate them with their favourite musicians. (Paul Resnikoff, *Digital Music Created the Resurgence in Vinyl...*, posted on Sunday, March 18th, 2012, via digitalmusicnews.com, accessed on March 26th, 2012, digitalmusicnews.com).

⁵⁴ Sam Jones, *UK music sales decline for seventh successive year despite downloads*, posted on Monday January 2, 2012, accessed on March 8th, 2012, guardian.co.uk.

⁵⁵ Helen Gammons, xix.



The interesting issues recently being raised are the diminishing roles of record labels and publishers as the source of access and obtaining music for the purpose of utilization and exploitation by telecommunication companies and media companies. Certain factors may be the cause, encompassing:

1. The musicians start to make direct contact or connections to the telecommunication companies or media companies for the exploitation of their works, since record labels are considered having their own specified requirements to develop certain musicians, and that musicians do not have appropriate space to engage and involve in the creative process and development of their music, for example as relates to the marketing and distribution of reaching the users and consumers. The distribution and division of income may also be one of the concern⁵⁶.

⁵⁶ Considering also the accounting principles and division of profits, including the recouping scheme of investment that record labels and record companies have, most likely put the musicians and artists on difficult conditions. Statistics provided from *theroot.com* mentioned that in America, (using the standard of RIAA accounting principle), the revenues portion that the musicians and artists could get from the exploitation of sound records is only about 13 %, while the record labels could earn until 63 %. This 13 % of the portion is also subject to further division for the personal manager, lawyer, publisher, as well as the producer. It is unbelievably so little that musicians and artist can actually earn from the exploitation of their works. (Cord Jefferson, *The Music Industry's Funny Money*, posted on July 6th, 2010, accessed on March 1st, 2012, theroot.com). Furthermore, most record labels and record companies still hardly compromise on the new business model affected from the development of Internet and technology. Thus, musicians and artists could prefer more independent record labels, in which they are not dictated as major labels do. (Mike Masnick, *If Major Labels Are All About Helping Artists, Why Do We Keep Seeing Artists Calling Out Their Labels For Screwing Them?*, posted on Wednesday, February 29th, 2012, accessed on March 1st, 2012, techdirt.com).

2. The telecommunication companies and media companies are starting to have and develop their own record labels and publishers division to meet their needs of music for business, with advantage of not be required to fulfill certain deals or licensing schemes with the music record labels and publishers. This could save certain cost, such as the transaction cost of bargaining into deals, as if the music is obtained from record labels or publishers.
3. Those telecommunication companies and media companies have already developed their distribution channels worldwide, and considering the expertise they have as relates to their business and media activities, their own-developed output (music) products may be considered as having the content that better meet the consumers' needs.

These means that in certain stages, there could be direct paths with shorter distance, meaning as 'shortcuts', for the telecommunication companies and media companies to access and develop music cooperating with the musicians. Observing from the abovementioned reasons, even without the assistance of Internet and cloud, the business itself starts to be constructed with lower transaction costs, which could be otherwise happened if it is under licensing and deals with record labels or publishers in terms of negotiating the deals. Further objective is surely to have shorter distance with the users and consumers. For instance, one of the artists cooperating with the telecommunication and media companies is Madonna, in which Vodafone (a telecommunication company) played a key role in the release of Madonna's album called 'Hard Candy.' Madonna also signed an all-encompassing deal⁵⁷ with Live Nation Inc. (a leading live entertainment and eCommerce company), which include Madonna's brand, albums, touring, merchandising, fan club and website, DVDs, music-related television and film projects, as well as associated sponsorship agreements. One of the reason Madonna has chosen to sign the deal was because she considers her partnership with Live Nation Inc. could create endless possibilities for her music to reach the fans⁵⁸. None of Vodafone or Live Nation Inc. are having the pure 'conventional' types of record labels or publishers models.

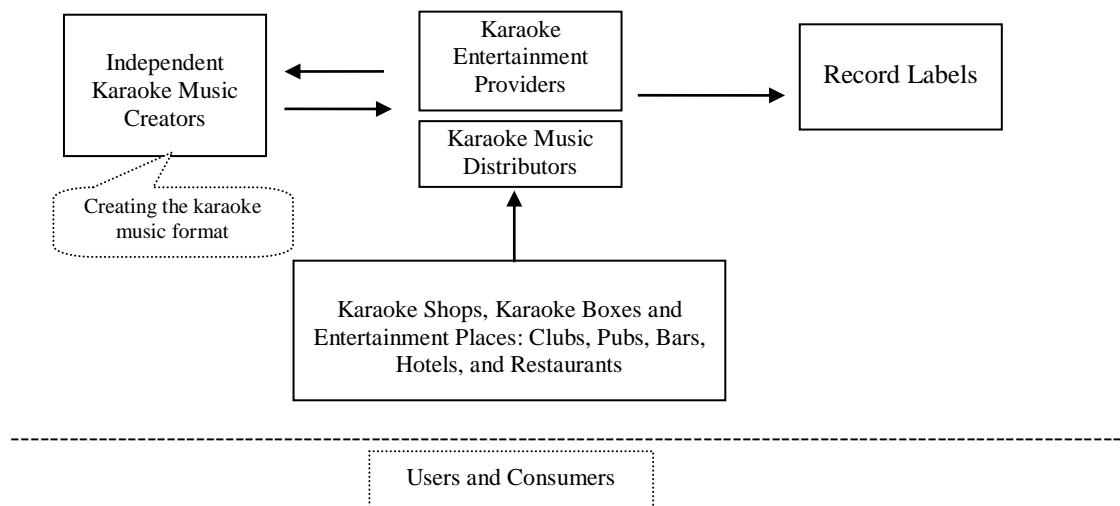
⁵⁷ Or the so-called the '360-degree' model, which has become more common in music industry nowadays. The 360-deals was initially introduced by record labels, however recently the concert promoters, such as Live Nation or private equity firms, such as The Edge Group or Ingenious Media have also adopted the model (Patrik Wikstrom, 138-139).

⁵⁸ Helen Gammons, 54.

The other path for distribution and dissemination of music is through karaoke, which has been essentially functioned as one of the entertainment forms to publicize and disseminate music to the users and consumers. Even in some countries like Japan and Korea, karaoke is considered as important media to deliver music to the society due to society's great interest on karaoke entertainment activities. In the process of making the music available through karaoke, there are several parties playing important roles. The karaoke music creators access and acquire the music through record labels, in the form of copy of the sound recording. The karaoke music creators, which could be either, those who are independently running the business as karaoke music producers, or business actors running karaoke entertainment business, then processed the copy of sound recording into karaoke music format⁵⁹.

The karaoke music format is then distributed to the karaoke shops, including music shops and stores, and entertainment places, such as bars, restaurants, and karaoke boxes, so that users and consumers could access and enjoy them. In practice, karaoke CDs are sold through special distributors and dealers, which also sell professional and home karaoke equipments. In addition, those who run the business of karaoke music producing could also set up a special place for karaoke entertainment, or karaoke boxes.

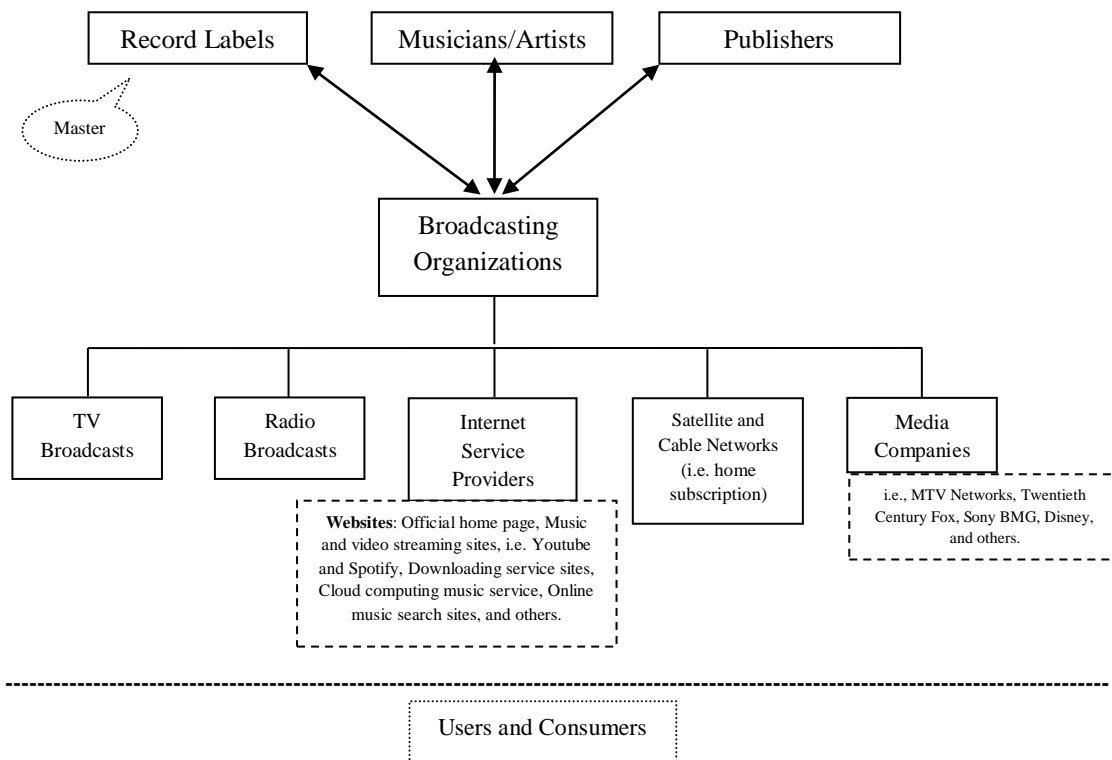
The Dependency Paths of Music Flows Through Karaoke Entertainment



⁵⁹ The sound recording of the songs are mixed and edited using the standard study gear and editing tools, including the CD+G (compact disc plus graphics) authoring software, as well as the required hardwares, to record the karaoke disc and create the master. The creators of such karaoke music format could sell their services to other parties, such as the karaoke entertainment providers, as well as sell them as marketable karaoke discs to the shops or stores. (Will Connelly, *CD+G=\$*, posted on Thursday, October 13th 2011 via emusician.com, accessed on March 25th, 2012, emusician.com).

The revenues coming from karaoke shops and karaoke music used in entertainment places or karaoke places and boxes are then being collected through the help of collecting society organizations, such as JASRAC in Japan, or the Harry Fox Agency in the US⁶⁰. Even though karaoke CDs' (and other forms) sales volume is growing, the market of karaoke (in certain countries) is still not considered as contributing considerable pie's slice to be included as part of the conventional sound recording distribution system⁶¹.

2.4 The Dependency Paths of Music Dissemination by Broadcasting Organizations



In the graph, it is shown that the actors, which are musicians, publishers, record labels, and broadcasting organizations, have dependency relationships to each other with respect to the dissemination of music to the users and consumers. There are three different routes (or 'walks') on how broadcasting organizations depend on the record labels, musicians, and

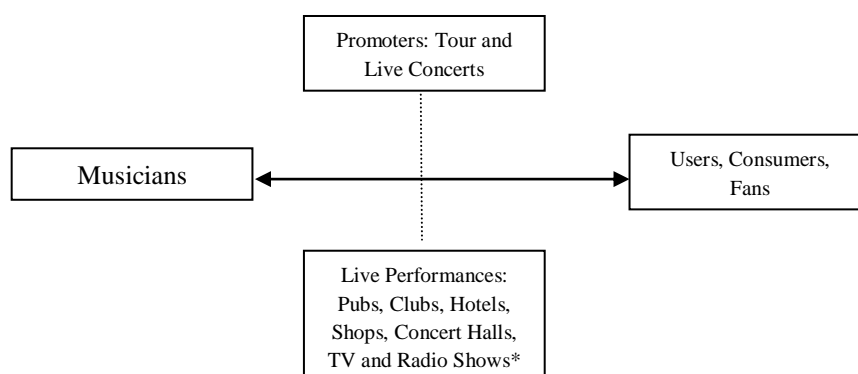
⁶⁰ In the process of collecting royalties from the use of music for Karaoke purposes, JASRAC of Japan establishes specific licensing schemes for the karaoke entertainment activities. Up to now, a total of 200,000 bars, restaurants, and other establishments where karaoke entertainment is offered, already have license agreements with JASRAC, achieving a nationwide average licensing rate of approximately 90 % for this category, and a total of 9,200 karaoke boxes have license agreements with JASRAC, achieving a nationwide average licensing rate of approximately 95 %. These establishments conclude annual agreements with JASRAC and payment of licensing fees on a monthly basis. For the royalties collected from karaoke entertainment at bars, pubs, and karaoke boxes, etc., JASRAC receives the data of work titles used at the karaoke machines in the venues and number of use from the online karaoke operators, and makes royalty distributions based on the data. (Source: JASRAC's website, jasrac.or.jp).

⁶¹ Will Connelly, *CD+G=\$*, via emusician.com.

publishers to access and obtain the works. The first is those organizations dependency on the record labels producing master of musicians' works, including in the digitalized forms. Secondly, the dependency of broadcasting organizations to the publishers in accessing the performance records of the music or compositions, sheetmusics, as well as more personal information of the musicians. Then, thirdly, the dependency of broadcasting organizations directly to the musicians to access and broadcast the musicians' works. Under copyright, certain licensing schemes as relates to the broadcasting authorizations from those three different paths are necessary.

Furthermore, the direct dependency of broadcasting organizations to the musicians could be seen from direct appearance (i.e. interview), and performance of the musicians on TV and radio. The role of broadcasting organizations are essential to deliver musicians' songs to the users and consumers or fans, from which they could access the works not just once, but few times, for example through the TV or Radio programs, or online music service of musicians songs and videos on Internet intermediaries' sites, such as Youtube and Spotify. The media companies, who use the music for synchronization activities, could also well-contribute in marketing the musicians' songs through any kind of advertisements, games, or motion pictures. It is from these broadcasting organizations that musicians are being recognized and loved by their fans. Therefore, there are mutual dependency between such actors, in which record labels, musicians, and publishers also rely on those broadcasting organizations to be recognized and well-known by the users and consumers, as well as obtaining market shares for the music. The development of Internet and cloud provides even more innovative ways for the users and consumers to access the musicians' songs. Further section will elaborate more the emerging innovative Internet intermediaries and Internet service providers that help musicians reach the users and consumers in shorter distance and paths.

2.5 The Dependency Paths of Music Delivered through Live Concerts and Performances



*These live performances includes those which are performed by the original musicians, or those who cover the song works.

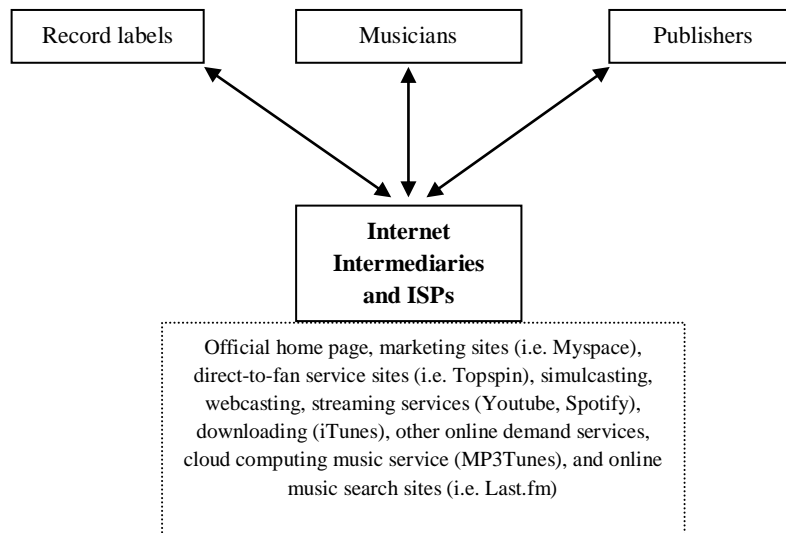
This path of music flow could be the most enjoyable form for the users and consumers, since they could directly access, listen to the songs, and watch the musicians play their music. The musicians who have wonderful live performances and concerts, such as UK's rock band *Muse*, could have thousands of fans attending their shows, despite it means extra money (more costs of consumption) for those fans to attend the concerts. In this sense, the promoters of concerts, as well as those who run business of pubs, clubs, or radio shows, depend on the musicians (and may also, the publisher who represents the musicians – in case of deals or promotional contracts) to have them perform their music in the shows. On the other side, the musicians, record labels, and publishers also rely on the promoters or agents to organize a tour of live concerts. Several statistics show that live performances have increased during these recent years. One of the reasons may be because such form of service is the most preferable form for the music users and consumers to enjoy music – since it gives different experience than as if it is on digitalized format, and also considering the shift that occurs in the industry, where physical copies of music no longer become the main media to access music.

Previously, live music was considered as one of the methods to promote the industry's most important product, which is the physical recording copies. However, in this recent changing music industry, the copies of recorded music has been shiftedly used to stimulate the sales of live concert tickets⁶². Despite higher costs of consumption in purchasing the tickets and attending the venues, music users and consumers are simply willing to pay for them, and this could even happen repeatedly. The promotions of music through Internet and cloud have also contributed in stimulating those users and consumers attending live performances, since they can see, for example the record of previous live performances of the musicians from the

⁶² While the sales of recorded music have been diminished in the last decade, the revenues from live music have been rapidly growing, which two reasons could be the cause: (1) that the average price of concert tickets has increased, and (2) that more musicians giving more concerts so that the number of shows are multiplying (Patrik Wikstrom, 136-137). A research project focusing on Artists' Revenue Streams has recently been conducted through which could be observed that live performance monies have contributed considerable amount of revenues for the musicians. An example of the research could be accessed via this link: <http://www.digitalmusicnews.com/uploads/a0/4e/a04e1aa53187e731a1aef5fe94fe0aa2/ARScasestudyJazz.pdf>.

Internet video streaming sites, which then influence their judgments and decision making to pay for attending the next live performances by the musicians.

2.6 The Dependency Paths of Music Distribution and Dissemination through Internet Intermediaries and Internet Service Providers



Edgar Berger, one of the executives from Sony Music, who runs the company's international business, said that the Internet technology has created tons of new opportunities⁶³. This statement is not without any ground. By using the Internet technology, record labels, publishers, and primarily musicians, could connect in much easier ways with the users and consumers. Digitalized features provided could very much help musicians deliver and market their music to the users, as well as building fan base. Through Internet intermediaries and Internet service providers, musicians could create their official web pages, which include important information about their personal stuff and also the songs they created and sing. One of the examples of a self-promote intermediating site via Internet is Myspace.

Musicians can also use the social networking sites, such as Facebook and Twitter, to introduce themselves and their music to the users and consumers. Once they have been known and recognized, it will be easier to build fan base, which could be the source of more revenues, such as from live concerts and performances. These indicate there are shorter distance and paths for the musicians in reaching their potential fans and consumers. The Internet intermediaries and cloud services, in this case, have become the 'shortcuts' (further

⁶³ Mike Masnick, *Sony Music Exec: The Internet Is Full Of Opportunities & Not A Problem; Intransigent Collection Societies, However...*, posted on Monday, February 27th, 2012, accessed on February 28th, 2012, techdirt.com.

elaboration on ‘shortcuts’ in chapter 3). One example of musicians embracing the use of Internet is the Brazilian technobrega musicians⁶⁴, who exercised free distribution of music through online services, since if more and more people recognize their music, more and more of them will come to see them play live shows, which could be an alternative source of income.

Since it becomes easier and cheaper for the users and consumers to access and obtain the songs from Internet and cloud, such routes or ‘walks’ could be the most desirable paths for the users and consumers to listen and enjoy the musicians’ works. In this case, to achieve the goal of accessing and enjoying music, the users and consumers use the Internet and cloud technology platforms mediated by the Internet intermediaries or Internet music service providers. This is essentially different with the conventional path based on physical copies distribution. In the new path of using the Internet and cloud, the essence is more on access of music anytime and anywhere, without urgent necessity to obtain the physical copies to listen and enjoy the music. Some actors in music industry seemingly have realized this changing trend, therefore smartly utilizing the streaming service and online music services, such as Rhapsody and Spotify, to gain acknowledgment for the music, and further obtaining popularity. The music streaming through such sites do not mean that there is absolute zero revenue for the musicians. Even though the amount is different with the one that they received from physical sales of phonogram record’s copies, the musicians can still earn from the streaming subscription services paid at reasonable price with desirable features (such as monthly-paid subscription basis), from the users and consumers. The existence of certain collecting societies, such as the PPL (*Phonographic Performance Limited*) in UK, also assist those musicians to collect money from music and video streaming services via the Internet. The distributions and music service through such sites could also encourage users and consumers spending much more money, for example to attend the concerts, or just simply purchase the specialized features of musicians limited albums’ offers.

As *Patrik Wikstrom* mentioned, there is a ‘media engine’ rule applies, and the Internet and cloud could assist the ‘media presence’ of music and musicians, thereby increasing the ‘audience reach,’ or simply access and recognition of the users and consumers to the music,

⁶⁴ Mike Masnick, *Brazilian Technobrega Musicians Embracing Free Distribution Even More*, posted on Tuesday August 24th, 2010, accessed on April 25th, 2011, techdirt.com.

and this could lead to ‘audience approval,’ or receptions by those users and consumers. Once they have already enjoyed the music and decided to become the fans, positive ‘audience reactions,’ such as purchasing of limited edition albums or attending live performances, are just one step closer of making the money⁶⁵.

The thing is, As *Helen Gammons* mentioned in her book, *The Art of Music Publishing*, few of the problems that music industry is facing are the inability to think strategically, inability to put the customers and the music fans first, as well as contracts and deals that tend to alienate the musicians. It is important to note that the users and consumers of music are the core parts of making money in the industry, therefore, the preferable strategy to keep improving the business would be to provide what those users and consumers desire. Musicians who realize on the important of building fans worldwide may prefer to share and disseminate their music outside of the conventional mainstream, and use the emerging innovative site (*direct-to-fan sites*), such as Topspin, which objective is to create and build connection to the users and consumers or fans. Other innovative online music service is Last.fm, which provides the users and consumers with application to search for music and musicians worldwide. There is also MP3Tunes, which exists as the cloud music service, where it lets users and consumers store their own music in the “cloud,” as well as allowing them to store and manage links to the streaming music found online. These innovative sites could ‘heat up’ what Wikstrom’s referred as ‘media engine.’ However, those sites somehow are still subject to debates since much of the content may be considered ‘unauthorized’ until certain licensing procedures, at the least, are executed⁶⁶. In regards to these, further questions of legal or illegal contents shall be subject to possible adjustment to the copyright legal framework and licensing schemes, which will be further discussed in chapter 5.

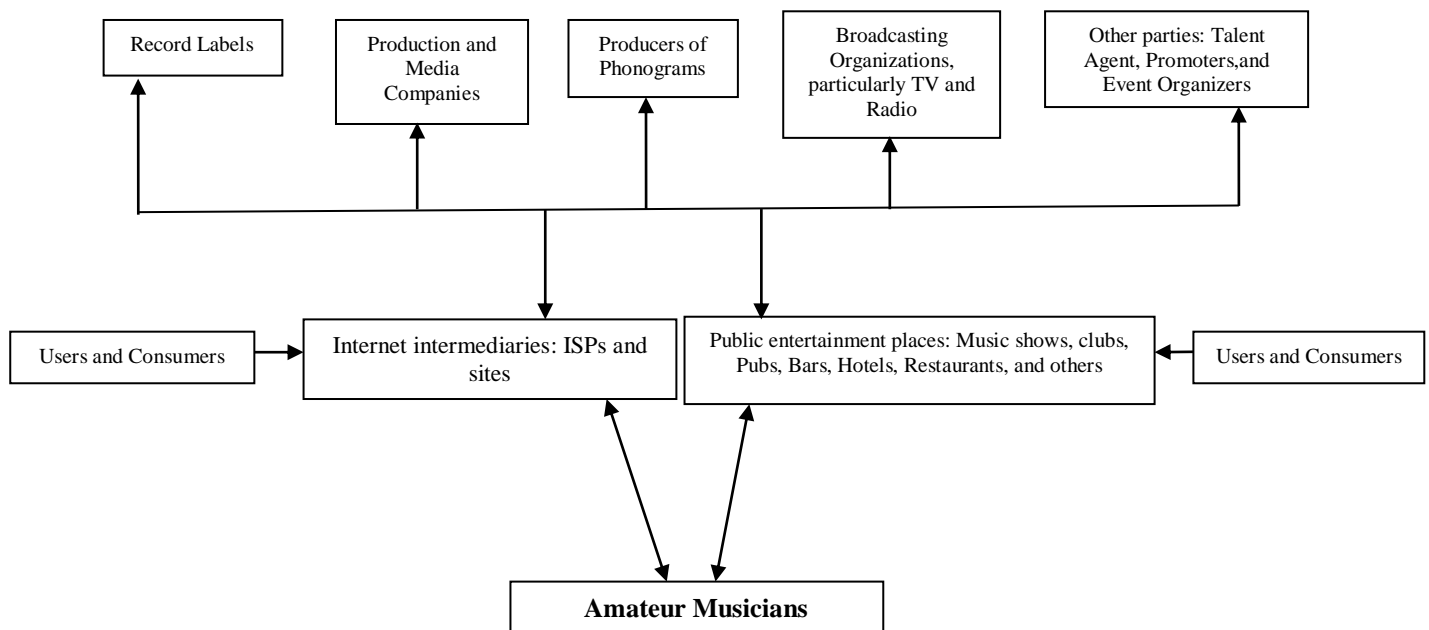
To sum up, it could be stated that the Internet has stimulated new and innovative platforms and music service business for the distribution and dissemination of music to the users and consumers. Musicians could develop new methods of delivering and providing their music, and see the Internet and cloud as giving more opportunities to spread the music. Many musicians have decided to give away their music for free through the Internet to build fan base, and seek for other sources of revenues from live performances, as well as special offers

⁶⁵ Patrik Wikstrom, 85-87.

⁶⁶ Helienne Lindvall, *Behind the music: Why artists mustn't be drawn into an MP3 site's legal fight*, posted on Friday March 2nd, 2012, accessed on March 3rd, 2012, guardian.co.uk.

of more personal service and connections with the fans, such as meet and greet sessions, including limited offer of special edition albums with musicians' personally-added features on it. Even so, there is still some arguments from record labels that consider, even though the Internet could help musicians market themselves and their songs and thus making fans come to their live shows, still such live shows have different scheme of budgeting than other business activities in music industry⁶⁷, and revenue from that source cannot always be a substitute for the revenue from other resources, such as sales of music's physical copies.

2.7 The Paths Supporting the Development of Amateur Musicians and Potential Musical Works



*In the graph the users and consumers can access and enjoy amateur musicians' works through public entertainment places as well as Internet intermediaries' sites. On the other side, amateur musicians could also distribute and disseminate their music directly to the users and consumers via the Internet or public entertainment places.

The existing or professional musicians are not only the ones who can benefit from the alternative paths through the Internet. Besides public entertainment places, such as music shows and events, clubs, pubs, bars, hotels, or restaurants, where potential or amateur musicians could perform live their music, the Internet and cloud have also become an effective media for those amateur musicians to get inspirations during creative process and

⁶⁷ Jeff Pollack, *Sympathy for the Devil: Why the Major Labels Might Be Right This Time*, posted on May 30th, 2011, accessed on May 31st, 2011, huffingtonpost.com.

promote themselves as well as disseminate their own music to the potential users and consumers.

Through online music service sites, such as Youtube, Myspace, or social network sites like Facebook, the amateur musicians could also introduce and publicize their music, and connect directly to the users and consumers. Through such Internet sites, they can also start to build their fan bases, and even making those fans and consumers willing to pay and buy their music, even without engaging with any music deals with record labels, publishers, or physical distributors or retailers. Furthermore, those amateur musicians could also seek support from the consumers and fans in developing their music career. Below are several examples of how the amateur musicians utilize the social networks and the Internet to promote and disseminate their music.

Corey Smith was previously a high school teacher, who used to play open mic nights on weekend. Then, he started to build his music career by playing in numerous live shows, and try hard to connect with fans. As part to such effort, he gave away all of his music for free through his website, and that could drive more fans to come to his shows. Another one is *Jonathon Coulton*, a computer programmer who decided to write, record, and release new song every week for a year on September 2006. He released all the songs under creative common license and anyone could share them freely, including through the Internet. Coulton's songs then became highly appreciated, and his fans supported him along the way, even creating music videos for the songs he released.

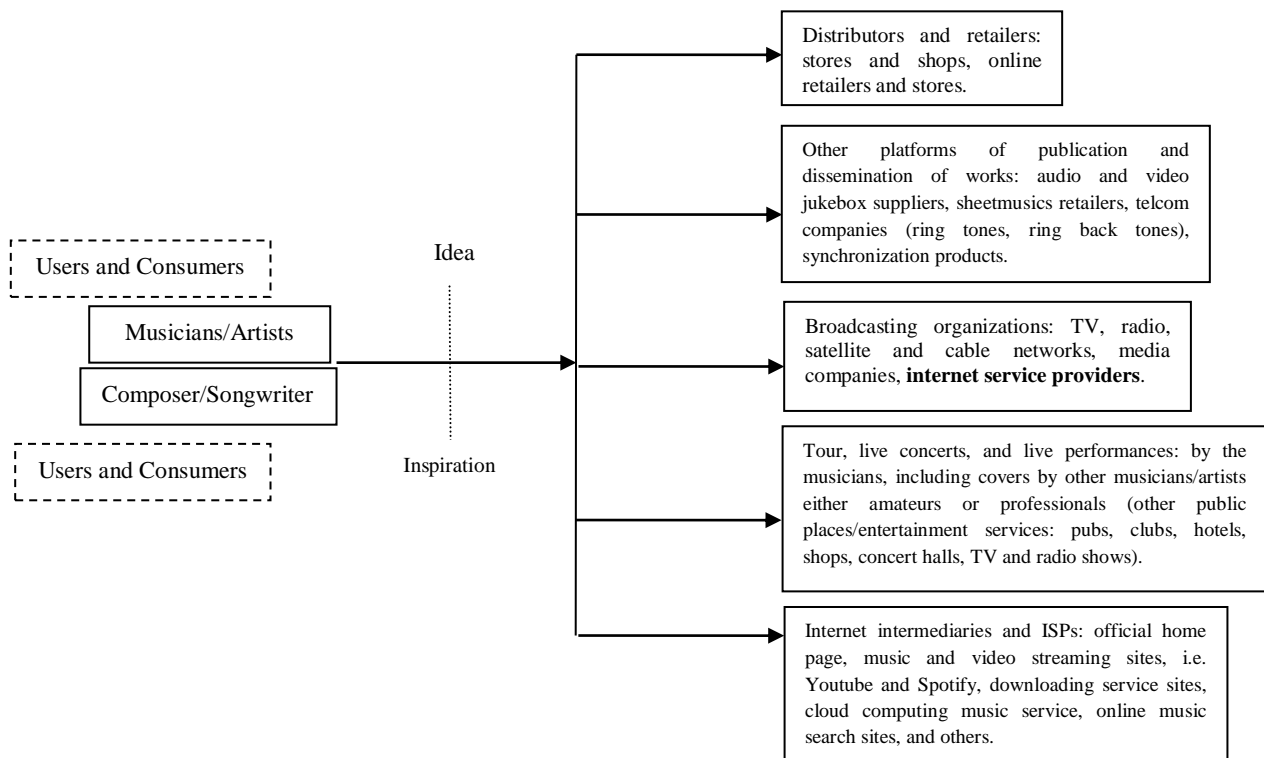
Apart from those individual cases, more and more innovative Internet sites which provide music service for the musicians to build the connections with the fans (even seek funding support from those fans) have also emerged, such as TopSpin, Nimbit, and Kickstarter⁶⁸. In addition, through such public performances and promotion via the Internet, amateur musicians could also promote themselves to the record labels, production and media companies, producers of phonograms, broadcasting organizations for commercial use in television or radio, as well as other relevant parties, such as talent agents, music shows promoters, and event organizers. One example to this phenomena, where the actors in music

⁶⁸ Mike Masnick, *The Future of Music Business Models (And Those Who Are Already There)*, posted on Monday, January 25th, 2010, accessed on February 22nd, 2012, techdirt.com.

industry found out potential Musicians, is in the case of *Himeka*, a Japanese Anime songs' singer from Canada. This has proven that the Internet has also provided other path for such record labels, production and media companies, or producers of phonograms in discovering new talents and potential music.

2.8 The Dependency Paths for the Users and Consumers to Access and Enjoy Music

As described earlier, undoubtedly nowadays users and consumers or fans could access and enjoy music through various platforms and paths of media. In this sense, music industry's business becomes more and more competitive and dynamic to meet what market demands. Given such alternative platforms, the users and consumers can prefer the most convenient paths for them in accessing and enjoying music. Supported by the Internet and technology, the music market has developed into providing innovative and enjoyable music services, through which various revenues, no longer basing on physical sales, could be developed. Not only for the users and consumers, the existing musicians, and those of amateur ones, now also have various access upon the disseminated music to help them in developing idea, inspiration, and creativity in creating the next works.



After identifying such reality-based of paths and music flow taken place between the actors as well as from musicians to the users and consumers, further analysis will be on the essential functions of such actors in each path, how they position as developer, intermediary, or connector between the musicians and users and consumers, and how the development of technology has influenced such existing structures and paths. The social network analysis key concepts as defined in chapter 1 will be further used as the tools to help in identifying the functions of the respective actors.

3 The Impact of the Internet and Technology to the Paths of Music Flow

Earlier mentioned in this research, that for the purpose of economic analysis to the transaction costs, the categorization of music industry stages are divided into three, which are the stage of creation, distribution, and consumption⁶⁹. In the previous chapter, dependency paths and music flow in such three different stages have been identified using the tool of social network analysis. As could be seen, new paths and technological platforms supported by the Internet and cloud have been emerging and influencing the music market, shifting the conditions of users and consumers' demands to the music. This surely has certain effects to the old paths which are based on conventional music business' model. In this chapter, how the occurrence of such Internet's and cloud's paths have affected the music industry's activities in the three-mentioned stages, will be analyzed using the reference of key concepts in the social network analysis.

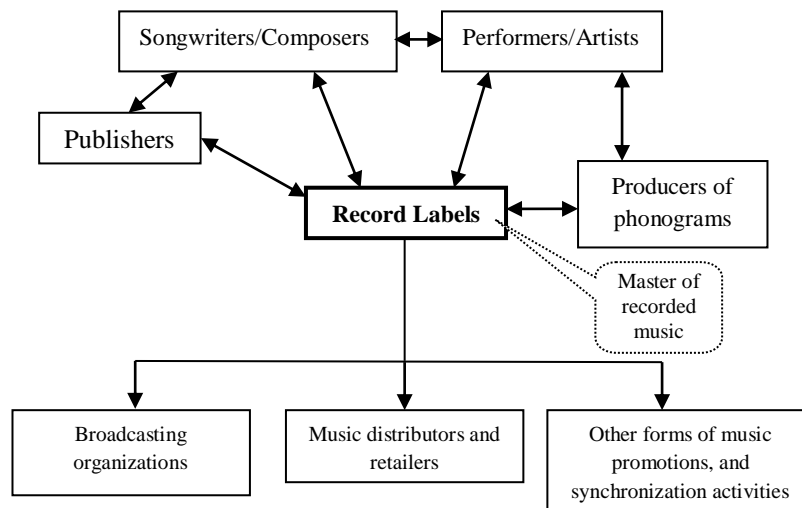
3.1 Identification of Essential Actors in the Paths Between Musicians and the Users and Consumers

In this section, the analysis will focus on the essential actors in the paths of music flow under the conventional business model. The analysis of the essential actors will be subject to the categorization of three stages as mentioned in this research.

3.1.1 Conventional Paths and the Essential Actor in the Stage of Music Creation

In the process of music creation based on the conventional model, the actors involving include the musicians (songwriters, composers and performers or artists), record labels, and producers of phonograms, as well as other technical staffs assisting in the process of sound recording. In that stage, the record labels then will also involve in the process of making reproduction of the Master to be distributed and disseminated to the public. Using the social network analysis, the paths of music flow between such actors during music creation could be described as followed.

⁶⁹ *Leyshon* describes four models of 'musical networks', which are (1) the network of creativity, where music is created, performed, and recorded; (2) the network of reproduction, (3) the network of distribution, and (4) the network of consumption. The network of creativity relates to the contractual relationship between the musicians and the record labels. In this network, it could also be found music creation functions such as producers, studio musicians, sound engineers, music instruments and supplies, songwriting, artist management, legal services, performance venues, recording studios, as well as recording companies. To avoid ambiguity, in this research the music related activities will be based on the three divided stages, therefore, for the purpose of analysis, *Leyshon's* network of reproduction will be included in the stage of music creation (Patrik Wikstrom, 49-50).



In accordance with social network analysis key concepts, in the paths between musicians and record labels, there could be few different ‘walks’ (or routes). The first scenario could be starting from the record labels, who already found the targeted performers or artists they want to develop, but need to look for the desired composer or songwriter to create the songs. In this case, record labels could look for composers or songwriters through the publishers. This could also happen otherwise, where record labels already have the composer or songwriter but need to look for the performers or artists. In such case, the producers could be one of the intermediaries in finding the performers or artists if the producers have already made contact, or have heard (about) the performers or artists and their music. The ‘walk’ could also start from the performers or artists, which in this case write and compose their own music, but need to engage with record labels in order to make their music reach the market. Those musicians could have connection with producer who could recommend them to the record labels, or they could also try to make demos and send it to the record labels to get the labels’ attention. Either scenario could happen during the stage, and what should be noted is that record labels have the essential position as engaging in the recording process with such musicians.

Referring to *Leyshon*, in the process of recording, several functions such as studio musicians, sound engineers, music instruments and supplies, including recording studio facilitations are needed. The need for such things may become one reason why the musicians engage in deals with record labels. The record labels invest in the recorded music creation process and

provide the essential facilities⁷⁰. After producing the sound recording, record labels also play their roles in distributing and promoting the music. The record labels make deals with distributors, broadcasting organizations, including other telecommunication and media companies for the dissemination of the music and musicians. They also engage in licensing schemes for the use and promotion of music, including through the Internet and cloud. They are entitled for this licensing deals since copyright law has given them the right of sound recording for their engagements in the creation of recorded music, thereby making them as also the right holders.

Furthermore, in exercising those functions, record labels have all the necessary expertise persons in dealing with music development, production, finance, legal affairs, as well as the promotion and distribution of music. Inside a major record labels, some expertise divisions could be identified, such as the *A&R*, who seek and develop the potential talented musicians and engage with them in the creative process, and the *sales, marketing, and promotion* divisions, who make sure that the records are available at stores, either physical or online, conduct advertising, publicity, album artworks, promotional videos and merchandise, as well as get the records played at broadcasting medias. Further, the record labels also have their own finance and legal affairs divisions to deal with the incomes and expenses, including royalties, as well as licensing and other relevant deals or contracts with respect to the use of music.

In regards to distribution, major record labels usually already had wide distribution networks facilitating the manufacturing of music products and deliver it to the stores. In most cases, it is considered expensive to set up and maintain the warehousing, shipping, inventory controls, or sales force necessary to deliver music products into the market place⁷¹. Therefore, having deals with the majors that already developed such necessary channels and activities indeed could be more beneficial for the musicians⁷². However, these conventional model may be changing as influenced by the emergence of Internet and technology.

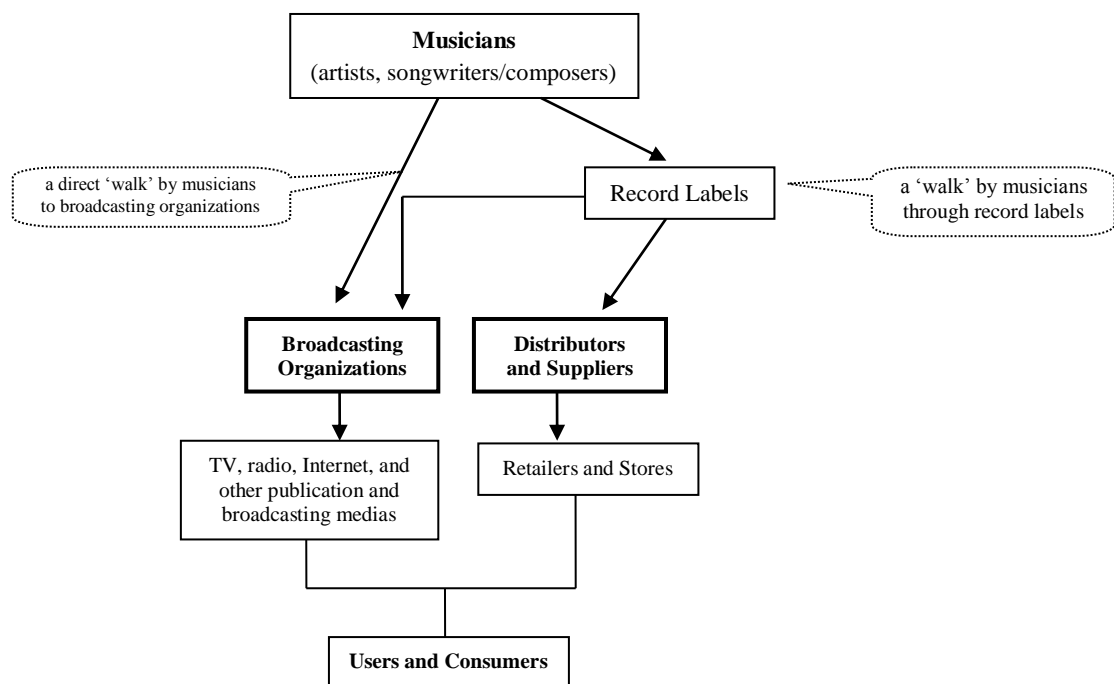
⁷⁰ One of the essential investments is providing 'recording funds' which consist of musicians' and producers' *advance*, as well as funding for the making of the songs or album. These advances and funds are subject to recoupment from the royalties of musicians' album's sales. Therefore, the musicians will not get any royalties before all the funds and advances are recouped (Donald S. Passman, 79-80).

⁷¹ *Ibid.*, 61-64.

⁷² As for the independent record labels/companies (or the indies), they have quite different business characters compared with the majors. Generally, the indies are not owned by the majors, and they usually have the ability to find talented musicians. As a 'true independent,' the indies are financed by its owners or investors. These true indies distribute their records through independent distributors, which are set up to deal with the specialized needs of the indies (*Ibid.*, 64-65).

3.1.2 Conventional Paths and the Essential Actor in the Stage of Music Distribution and Dissemination

In the stage of music distribution and dissemination to reach the users and consumers, starting from the reproduction and manufacturing of copies, either physically or digitally, the record labels engage in deals with distributors, as well as broadcasting organizations for further promotions and dissemination of music and musicians. In this case, the distributor and broadcasting organizations play essential role as the intermediaries (or ‘bridge’) to deliver and disseminate music to the market. Not only from the record labels, where broadcasting organizations could obtain copies of recorded music to be publicized and disseminated, they could also engage directly with musicians to have them being interviewed in TV or radio shows, including to have them perform their music live and broadcast it publicly. Therefore, several different paths could be indicated in regards to the distribution and dissemination of music to the users and consumers. Below is the basic graph.



As previously mentioned, distributors of music will receive copies or reproduction of recorded music, either physically or digitally, from the record labels. Distributors then will place the physical albums on shops or stores, or sell and provide them through the Internet to be purchased and downloaded online by the users and consumers. Distributors for physical

forms of albums could also engage in the process of manufacturing the physical vinyls, CDs, or DVDs of the recorded music. Included in this group of music distribution functions are also the suppliers and providers of other forms of music reproductions, such as in jukeboxes or karaoke entertainment providers.

As the other 'bridge,' broadcasting organizations assist in promoting and communicating the music to the users and consumers. For instance, through radio broadcasts or video music played in TV programs or TV shows, the users and consumers could access and enjoy the music. As for the live concerts or performances, the promoters or live agents and organizers play essential roles in facilitating and organizing such live shows. It is important to note that the Internet and cloud functioned as communication media to the public, are also part of broadcasting activities. However, the emergence of Internet and cloud as the media intermediating the musicians and the users and consumers have considerably affected the essentiality of the conventional music distribution and dissemination paths.

3.1.3 Conventional Paths and the Essential Actors in the Stage of Music Consumption

There are different paths that the users and consumers could choose to access and enjoy the music. Under the conventional model, which are based mostly on physical products, the music stores and shops play essential roles in providing music products, such as CDs or DVDs. Furthermore, besides purchasing the physical products, users and consumers could also access and enjoy the music through broadcasts by TV and radio, as well as attending musicians' live concerts or performances organized by promoters. Other paths include consumption through karaoke entertainment places or jukeboxes' providers, or via gadgets, such as mobile phones, in which the music could be transformed into ring tones or ring back tones provided by telecommunication companies.

The new digitally paths supported by the Internet and cloud have facilitated users and consumers to obtain digital music through downloads in digital files format, and play them using computers, laptops, mobile phones, ipods, as well as other music player devices. The important thing to note in this consumption stage is that, not only for the physical products, but music distributors also distribute such digital formats of music via the Internet to the users and consumers. They expand their music distributions not only through physical copies,

but also digitally through the Internet and technological devices, and having cooperations for example with mobile telephone companies or gadgets' companies, such as Apple. The thing is, such digital distributions stimulate the occurrence of Internet intermediary sites or Internet service providers, which facilitate dissemination and distribution of music via the Internet for the users and consumers to access, enjoy and obtain the music. Music distributors, broadcasting organizations, and even record labels now can also have cooperations and deals with such Internet intermediary sites and Internet service providers to support the access for consumption of music.

Observing from such industry's business practice, the existing paths of music consumption that the users and consumers could choose have already been diversified. Further questions will be on how digital environment and innovations on the Internet and other technology have stimulated the actors to provide more innovative and competing paths, through which the users and consumers could access and enjoy music in the most convenient and desirable ways. Another one would be whether the conventional-based music distributors, gadgets, media and telecommunication companies, as well as broadcasting organizations can still play essential roles in disseminating music within such innovative environment facilitated by the Internet and cloud.

3.2 Analysis on the Internet and Technology as 'Shortcuts' to the Paths of Music Flow

The development of technology, including the Internet and cloud, by-passing certain paths in music industry could be described in some different stages. The first one is the stage of music creation, where record labels play essential role; the stage of distribution, where music distributors and retailers, broadcasting organizations, as well as live concert promoters or agents play essential roles in providing, communicating, disseminating, and facilitating music access to the users and consumers; then thirdly, the stage of music consumption, where Internet intermediary sites and service providers have provided alternative paths for the users and consumers in accessing and enjoying music. In this case, the by-passing technology creating the 'shortcuts' on the paths of music flow may vary in each case, as to what extent it can provide shorter distance and lower transaction costs between the respective actors, users, and consumers in music industry. To narrow down the analysis, the by-passing 'shortcuts' in

this context will be focusing more on to the connection between the musicians, and the users and consumers in particular⁷³.

3.2.1 Shortcuts in the Stage of Creation

In the creation stage, prior to recording process and constructing record deals, as part of the process of finding the talents and potential success the *A&R* (Artist and Repertoire) agent in record labels will first seek for the prospective musicians and potential music. In this case, as record labels will make investments in the production and promotion of the sound recordings, the *A&R* agent plays essential role in critically and strategically discover potential music that could be a ‘hit’ and could give considerable economic gain for the business. Thus, it could be stated that the *A&R* agent acts as the intermediary that connects the prospective musicians and record labels.

Once deals have been made for record labels to invest in the production of musicians’ music, further stage of creation then involves producers of phonograms and other technical staffs in creating the Master of sound recording. If musicians do not write or compose their own songs, then the songwriters and composers will share their parts in the creation of the songs and its recordings. As mentioned earlier, publishers could assist those songwriters and composers get into the music recording to contribute in the creation of the songs. After sound recording has finished, practically the record labels’ decision makers then will decide which record should be released first, so that it could be reproduced to be distributed and promoted to the users and consumers. This creation process within record labels will require certain transaction costs as relates to the record deals that musicians should comply with, as well as other technical transaction costs in regards to the recording process, for example supply of musical instruments and recording studio and equipments, or interactions with other stakeholders with respect to the creation of the songs or albums.

⁷³ A sociologist namely *Paul Hirsch*, one of the scholars analyzing music industry, mentioned about four subsystems that musicians have to pass through in order to reach the final subsystem, which is the audience, or in this case, the users and consumers. The first subsystem is the creative sector (refers to ‘creative division’ inside record labels), the second one is decision-makers at the record labels, the third one is promoters and distributors, and the fourth one is the broadcasting organizations (or medias) as the gatekeepers. This subsystems scheme could also be referred as the stages of preselection system, in which musical works are being filterized before it can be delivered and communicated to reach the users and consumers. (Patrik Wikstrom, 55).

Development of digital audio-recording technology has affected the dependency relations between the musicians, producers, and record labels. Such audio recording-technology has made it possible to sample, loop, and process sounds into completely new songs, arrangements and musical genres, and it has been said there has been gradual shift of the setting of creative works from the studio to the control room – a metaphor to describe the significant use of digital audio-recording technology. Digital audio-recording technology has made it possible to create the ‘perfect’ sound, with perfect pitch, perfect tempo, as well as perfect timbre, even though the artistic raw material might not be very musically gifted⁷⁴. The important notes in regards to such development of technology are the fact that musicians or other actors, other than record labels, who can effectively make use of such technology in creating music, may be able to create the sound recordings of the music by themselves, without even have to engage with record labels or production companies.

Moreover, producers who have the required abilities in identifying potential ‘hit’ composition or songs or potential commercial musicians, supported by the skills in utilizing the technologies in recordings, could engage directly with musicians in creating the music, rather than have to build connection or contracts through production companies or record labels. In addition to that, digital audio-recording technology has also lowered the costs needed for the tools and equipments needed for sound recording process. This could even more diminishing the role and function of record studios and record labels with respect to the recording process. Recording tools and equipments such as mixing consoles, tape recorders, and other tools for the conventional analogue recordings have been replaced by digital technology, including those of software-based that can fit into ordinary laptop computers, and this surely affected the costs of sound recording production as compared to the costs of using the analogue ones, which are believed to be more expensive.

Patrik Wikstrom mentioned this as conditions where most musicians now can afford to have their own complete and professional recording studio even in their own living rooms, and even to have recording process with other musicians or creators located in different geographical areas⁷⁵. This phenomena could also show that more experienced musicians with existing careers have the options to build their own record studios and work on their music

⁷⁴ Ibid., 120.

⁷⁵ Ibid., 123-124.

project independently without interference from record labels. As for the amateur ones, they could develop their own music using the available digital technology without having to enter into record labels first. Moreover, in this context, professional musicians who fully in charge of the creative process of their songs, either collaborate with producers or not, even more diminishing the function of record labels into only as a ‘humdrum⁷⁶’ partner, which probably essential only in assisting to promote the music, and administering more ‘business’ activities, such as sales of merchandising, album artwork’s manufacturing, and marketing of music, in which (for those record labels) such activities are considered as a business to invest and make profits, without intervening the musicians’ creative decisions.

However, since the record labels are targeting the economic revenues and profits, sometimes (or most of the time) they also try to control the music creation, including engage in the creative process, on the grounds that they (record labels) could understand what music market demands, so that the music created should fit into such demands. These record labels (supported by other financial stakeholders or fund providers) have invested their monies for the creation and production of music and its sound recordings, thereby making them want to control the whole process of music recording, reproduction, and dissemination to ensure that the music will raise profits. In this respect, intervention from record labels could have undesirable impact to the music and musicians, for example they cannot create and develop music as they wish according to their idea and creativities, and this could somehow, hinder the creative process itself.

The development of audio-recording technology could possibly become one of the alternatives for the musicians in getting more freedom during the creation of music. As mentioned earlier, such technology could provide and facilitate the process of music creation by musicians even in their own living rooms, in which they do not need to engage into deals with record labels to have recording facilities⁷⁷.

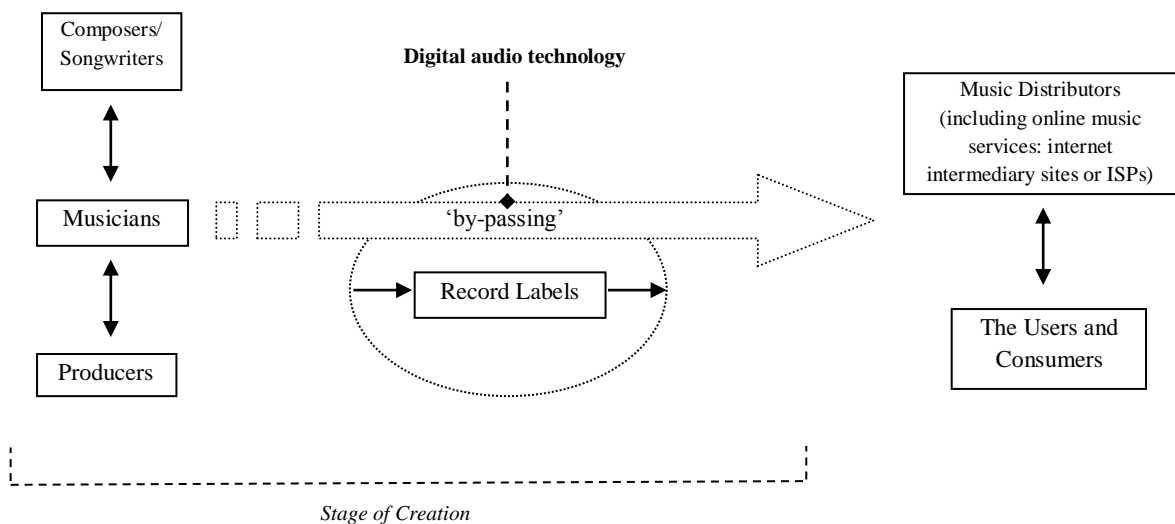
⁷⁶ In creative industries, which include music, sometimes artists of all types engaging in creative process and tasks, could only come to completion, in the sense that bringing the creative outcomes to the market, under collaboration with the ‘humdrum’ partners. For instance, the painter needs an art dealer, or the novelist needs a publisher. In this case, musicians may need record labels to industrially promote and distribute music to the market. (Richard E. Caves, 1).

⁷⁷ Since technologies have made it possible for the musicians and producers to build their own recording studios and facilities, the function of existing ‘conventional’ recording studios have started to shift into a place specially designed, not only with up-to-date technologies, but also with inspiring atmosphere that is essential in the music creative process. One example to such kind of studio is the Abbey Road Studios in London. (Patrik Wikstrom, 123).

Impacts of the Shortcuts: Transaction Costs of Creation

In essence, the audio-recording technology, including those of software-based, provide ‘shortcuts’ in the sense that musicians do not need to enter deals with record labels to create and produce sound recording of their music. Once the sound recordings have been produced, they could directly engage in deals with music distributors, including those of online distributors, or even directly to the users and consumers via Internet intermediary sites or Internet service providers (this stage of distribution will be further elaborated in the next section).

The important thing is, such ‘shortcuts’ have brought certain impacts to the stage of music creation. **First**, as relates to the creative process, musicians could independently create and produce their music and recordings, free from the intervention or patronization of record labels. **Second**, since musicians could create and record independently, there is no need for any record deals or contracts with record labels, and this could save transaction costs of negotiating the deals. This could lead to another outcome, which is the absence of ‘pressure’ for the musicians in recouping back the monies record labels have spent in the production and promotion of their music, as if they engage in such record deals.



In regards to the funding for musicians to create their albums, even innovative sites such as Kickstarter and Sellaband.com have emerged to ‘bridge’ musicians with potential donors, including the users and consumers or fans, that could support the musicians along the stage of creation, distribution, and dissemination of music. It could be seen that now musicians have

diversed paths in developing their music career, including such option of doing it independently.

3.2.2 Shortcuts in the Stage of Distribution

In a physical based music business with outcoming products in the form of vinyls, CD, or cassettes, music distributors play important function in delivering the music products to the users and consumers via physical music stores. However, since approximately a decade ago, music not only can be delivered via physical forms, but also in form of digital files played in computers, laptops, or ipods. As previously discussed, development of Internet and cloud computing technology have improved the networking paths between users and consumers, through which they can access and acquire music easily. Easy connection to the Internet, as well as support from sophisticated gadgets and mobile telephones have made it possible for the users and consumers to enjoy music anytime and anywhere.

Through the Internet, the live performances that usually could only reach fractions of users and consumers within certain period of time at certain places, could be disseminated worldwide using the video streaming site service, such as Youtube. The Internet and cloud, as well as innovative Internet intermediary sites established for music business and services nowadays could be considered as having essential roles in connecting the musicians and the users and consumers. Those sites could give ‘shortcuts’ for the users and consumers in accessing and acquiring musical works, as well as providing more opportunities for the musicians to actually interact and build relations with the users and consumers including potential fans. This is also essential in identifying the desirable music that the market and fans really want. These ‘shortcuts’ having shorter ‘distance,’ and providing varied **channel capacity** between the musicians and the users and consumers, could improve the quality of information (in this case, music) received by those users and consumers, as well as reducing the relevant transaction costs in the stage of distributing and consumption of music. In regards to less transaction costs and expansion of channel capacity to enjoy and obtain music, several notes worth-noticed are as followed.

First, it is possible for musicians or other relevant actors in music industry to distribute and disseminate music directly to the users and consumers via the Internet. Physical music

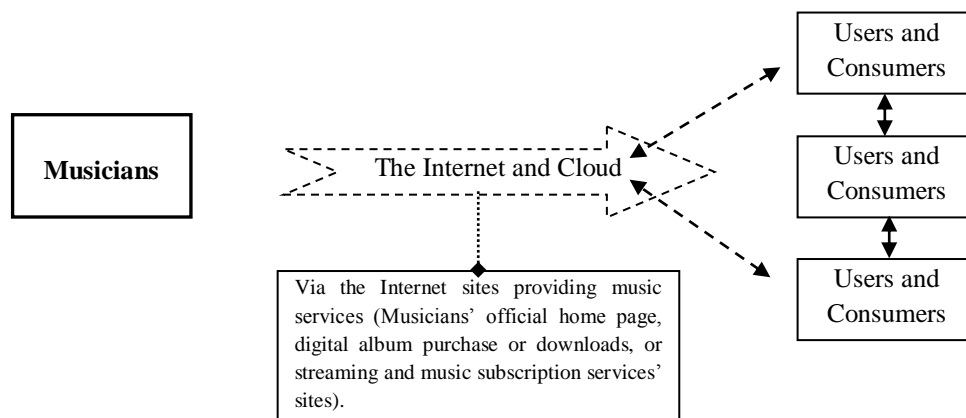
distribution and live performances for promotion are not the only options. The networking paths of Internet create opportunities for musicians to directly connect with potential users and consumers, through emerging innovative intermediaries sites, such as ReverbNation and Bandcamp, that become the ‘bridge’ between musicians and users and consumers. **Secondly**, the existing intermediaries sites of music services have also evolved, not only in the form of video streaming or download services, but also designed with additional features on subscription or software basis, that could help users and consumers search and enjoy music as their tastes, and even got hints on what songs inside their favourite musicians’ playlists. Such music service sites include Spotify, Rdio, and Last.fm. It could be stated that providing access and facilities for users and consumers to experience the music is important in building connection with them, so that they will be willing to pay for more experience and enjoyment of music from their favourite musicians. In this case, the roles and functions of music distributors, as well as conventional broadcasting organization, such as TV and radio, have been diminishing, in which the trend of music market has shifted into a more online music service providing.

Referring to what *Richard E. Caves* mentioned in his book, *Creative Industries – Contract Between Art and Commerce*, a creative product is subject to consumers, customers, or buyers’ subjective reactions. *Nobody will know* whether such creative product will be able to reach consumers’ reactions to buy and pay for it, or not⁷⁸. Therefore, it is essential for such consumers to *at the least* experience the creative product first. This leads to another perspective of *experience economy* by *B. Joseph Pine II* and *James H. Gilmore*, in which they argue that ‘experience’ as a product relates to business that could orchestrate memorable events for the customers⁷⁹. The memorable events are the ‘experience,’ and business that could provide such an ‘experience’ product meaning as doing an *experience economy*. In regards to this, the Internet and cloud have assisted in providing the shortcuts as part of the channel capacity for the users and consumers in experiencing music, and could stimulate more innovative music experiencing services which could support the promotion and dissemination of music worldwide.

⁷⁸ Richard E. Caves, 3.

⁷⁹ B. Joseph Pine and James H. Gilmore, *The Experience Economy* (Boston: Harvard Business School Press, 1999), accessed from en.wikipedia.org.

As networking and channel capacity between users and consumers are more and more expanding, such users and consumers also contribute in promoting and disseminating the music among themselves. The social networking sites allow the users and consumers to share links of music videos or song files of musicians they like. The user-generated content uploaded to the music service sites also contributes in promoting other potential users and consumers' awareness of certain musicians' music and/or personalities. For instance, fans of UK rock band, *Muse*, have been creating parodical videos about the personal characters of the band members, and this even could bring more 'audience approvals' and 'audience reactions' (*Wikstrom's* concept of 'media engine') to keep enjoying, and willingly pay for music and concerts of *Muse*⁸⁰. Another example is a newcomer band called *Water Knot* who approaches its potential users and consumers via social network sites, such as Twitter and Facebook. For such efforts, the fans and those who like *Water Knot's* music have voted them to appear in a music gig of *Bonaroo 2012*, in which they are placed as number 1 voted band⁸¹.



It could be seen that the Internet and cloud have facilitated music distribution and dissemination from musicians to the users and consumers in *shorter* distance. Besides providing various paths and improving channel capacity, in which users and consumers could subscribe for music service, buy digital albums and songs or downloading music files, the users and consumers could also share their thoughts or supportive 'audience reactions' about

⁸⁰ For these examples, as one of the music users, the writer indeed did a spontaneous observation to YouTube which provide user-generated content service. The writer have seen fan-made parodical videos of *Muse* and observed that such videos have bring positive impact to the promotion of the band (positive reaction could be observed from the fans' comments on the video). Example of *Muse* parodical video favored by fans could be seen at <http://www.youtube.com/watch?v=LRfgVQ1c0As&feature=relmfu> or <http://www.youtube.com/watch?v=8rfmSFU48t0>, which is the collection of *Muse* funnt video edited by fans.

⁸¹ The news about fans voted of *Water Knot's* appearance in *Bonaroo 2012* could be seen at <https://twitter.com/#!/Waterknot>.

the musicians and music through user-generated content site services or forum, and file-sharing sites via their networking activities. Thereby, Internet and cloud indeed providing shorter distance and diverse paths in communicating and disseminating music to the users and consumers worldwide.

Impacts of the Shortcuts: Transaction Costs of Distribution

In terms of music distribution, since musicians could have shorter path to connect with users and consumers, for example via direct-to-fan sites, physical distribution of music or broadcasts through TV or radio only become few of the options. Musicians and/or record labels or publishers could reduce transaction costs in negotiating deals with physical music distributors or broadcasting organizations, and develop the distribution and publication connections via innovative intermediary sites, which not only could widely disseminate music and invite users and consumers to hear the music, but also providing further services such as downloading, streaming, and music subscription services. This indicates a shift where intermediaries could have several functions altogether, and not limited only to distribution activities, but also encompassing music selling and service providing. By utilizing the social networking paths and channel capacity through the Internet, musicians, record labels, and publishers could choose variative features and platforms in music promotion and providing of music services. Once publicized via the Internet, musicians could also let the users and consumers further promote and disseminate their music, for example through file sharing activities or on user-generated content basis.

Even though the Internet and cloud could support the promotion and dissemination of music (with more effective and shortcut deals with Internet intermediary sites or ISPs) to the users and consumers, still there is concern about this as relate to the costs of enhancing the ‘media presence’ of the musicians and their songs. As *Patrik Wikstrom* mentioned in his book, *The Music Industry – Digital Media and Society Series*, in the abundant era of flows of music, the actors in music industry could possibly spend more money in promoting the music through the Internet and cloud to improve its ‘media presence⁸².’ Therefore strategic use of recent innovative intermediary sites to build fan base, as well as user-generated content sites

⁸² Patrik Wikstrom, 126.

supporting the exposure of musicians, may be helpful in improving the ‘media presence’ of musicians and their songs.

3.2.3 Shortcuts in the Stage of Consumption

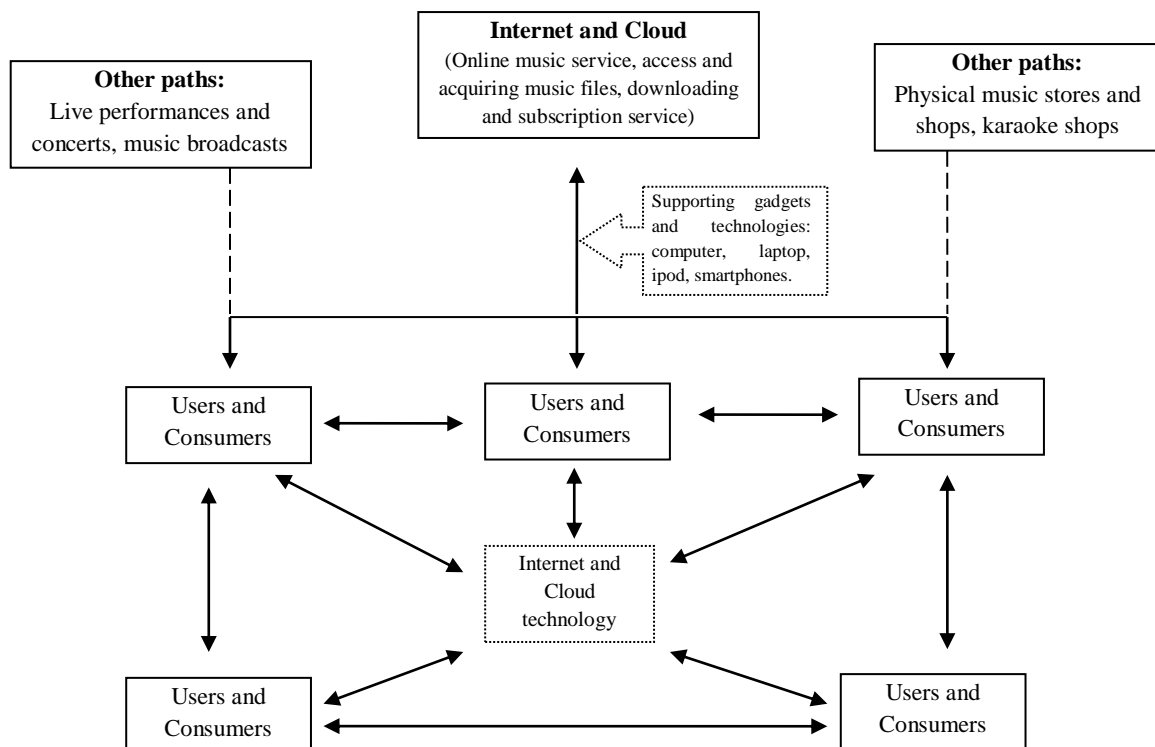
As previously mentioned, the Internet and cloud have provided another path for users and consumers in reaching the music and musicians, and this also improve the channel capacity of music dissemination. The presence of innovative intermediary sites have added diversity of paths that users and consumers can choose, based on their best judgment, of which path could bring the most desirable quality of music (or information) with shorter distance. This path of music from musicians reaching the users and consumers has by-passed the conventional distribution of music via stores and shops. In this sense, the Internet and cloud technology have become the ‘bridge’ for users and consumers to access, listen, enjoy, acquire, and buy music, without having to visit music stores and shops first, or attending live performances. They simply can experience music from anywhere at anytime using the Internet and cloud networking technology.

For instance, musicians could deliver their music through signing up in an Internet intermediary site called *Bandcamp*, from which users and consumers can stream the music and purchase directly the digital format both in album or single forms, either in certain price or on basis of pay-as-you-wish method. Besides that, recorded live performances or concerts, either officially uploaded by the musicians or other relevant actors, or by the fans on user-generated content basis, even could be accessed and enjoyed via video streaming sites or from the official home page of the musicians. Through the Internet’s social networking sites, users and consumers could also connect to the musicians directly, and keep being updated by the latest music and information of the musicians, not only from the musicians themselves, but also from other users and consumers via their networking connections with each other.

Furthermore, through the Internet, the relevant actors, such as record labels or media companies could also observe the potential musicians or music that could be further exploited for production of albums or other uses of motion pictures, TV shows or series, games, as well as advertisements. Therefore, not only for consumption purpose by the consumers, but the music users could also benefit in finding of potential music for further use

and economic exploitation. Those music users could reduce the costs they spend in finding out new musicians through the conventional way of visiting bar or amateur music shows, though those ways are sometimes still considerably chosen.

The important thing is, the improving channel capacity of music flows through the Internet and cloud have provided various paths of music consumption in different considerate transaction costs for the users and consumers. Then, they can choose to access, acquire, and experience music from the path that has less transaction costs, but with good quality of information and shorter distance. This could stimulate actors in music industry to find innovative business model and music service that could fit with what users and consumers want. Another thing is, that through the Internet and cloud, more connections and networking take place between the users and consumers, and this more likely could stimulate creations of new creative products as relate to the music, including the musical work itself. To sum up, it could be stated that the Internet and cloud have facilitated dynamic music market, in which it serves as shortcuts stimulating innovative music business activities to meet what users and consumers demand.



*The graph shows that users and consumers have other platforms to access and enjoy music, which is through the Internet and cloud, besides other existing paths of physical distribution or live performances. Furthermore, the users and consumers could also connect with

each other to share music and information about the musicians through the networking in the Internet and cloud. These various paths could bring maximum exposure of the musicians and their music.

Impacts of the Shortcuts: Transaction Costs of Consumption

The presence of the paths through Internet and cloud do not mean that the users and consumers no longer access the other existing paths. These existing paths have their own different quality of information and distance, as well as transaction costs. For instance, physical music vinyls or CDs probably should pass several actors first to reach the users and consumers, and users and consumers could only purchase them via physical stores or shops, but those vinyls and CDs bring different quality of satisfaction for the users and consumers. Many of them still buy those vinyls and CDs, even though they already have digital version of the songs, or have subscribed to online music service, simply because they want to collect and possess physical things that symbolize their likeness to their favourite musicians. Similar thing applies to merchandise of musicians. Possessing the albums may not be enough for the fans, and they will try to pay more to get further attachment to their favourite musicians, such as purchasing the musicians' posters, t-shirts, or others. They also will be willing to pay for experience in live performance or concerts of the musicians, because it could be the most enjoyable path for them to enjoy the music, despite higher consumption costs to get into it.

As relates to the technology, the users and consumers face the risk of *switching costs*, a condition where the users and consumers have acquired music from certain supplier using specific media technology, and it will be costly for them to switch to another supplier of music which is using different (and/or competing) technology⁸³. There could be transaction costs for that switching of path. Another risk is the risk of copyright infringement, when the users and consumers incidently access and acquire music from the unauthorized sources (this legal issue will be addressed in the following chapters, with analysis on the need of copyright adjustment in dealing with music's 'channel capacity' through the Internet and cloud).

In this diversified paths of music consumption, music distributors and broadcasting organizations could still have considerable roles in distributing and disseminating music, although perhaps such roles have been diminishing (just like the roles of record labels). The thing is, if they still count mainly on the conventional paths in which they could play as

⁸³ Patrik Wikstrom, 32, and Richard E. Caves, 14.

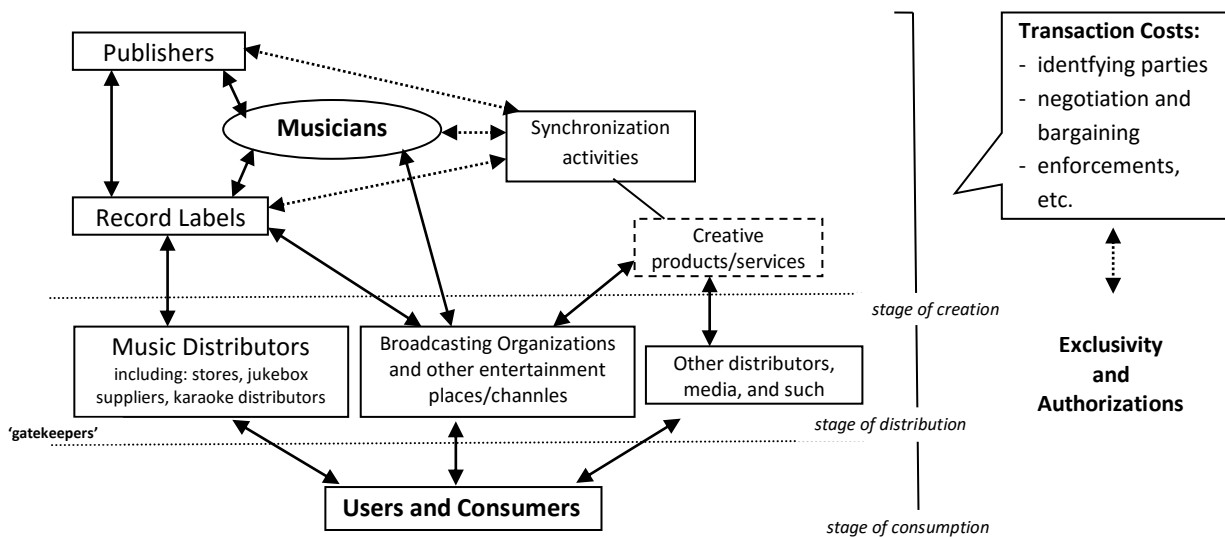
controlling *gatekeepers*, they will not survive in this digital music market era. The reason is certainly because the Internet technology cannot facilitate the exclusivity of paths that distributors and broadcasting organizations used to have under the conventional model. In order to survive, they should take into consideration the ways they could engage in music distribution and dissemination using the Internet and cloud technology. For instance, by distributing music digital files online to be downloaded or streamed via Internet, aside from providing physical copies. As for the broadcasting organizations, they could modify their broadcasts not only from TV or radio, but also through the Internet using the webcasting or simulcasting methods. These indicate that those actors would have to create their own Internet sites, or make deals with the Internet service providers, and the choice of which path could bring more benefit will vary on each case.

4 The Competing Paths: Social Network Analysis and Economic Approach

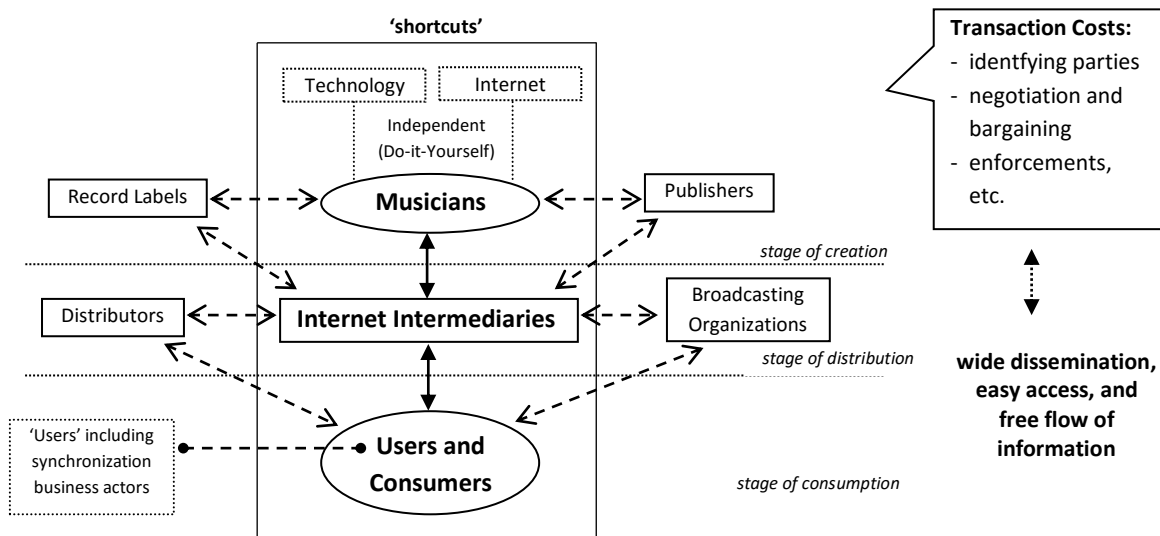
As described in earlier chapters, development of technology, including the Internet and cloud, have contributed to more diverse paths of music flow and channels between the actors, users, and consumers, either in the stage of creation, distribution, or consumption of music. This chapter will touch upon the issue of necessary adjustment to the copyright as relates to the emergence and development of such diverse paths. In analyzing the proposed adjustment, economic approach based on transaction costs will be the ground tool, through which the impacts of such paths on the actors, users, and consumers, including the music business as a whole, will also be elaborated.

Applying to the models assumed, there could be two distinguished basic models based on the conventional paths and the paths affected by the Internet and technology.

Conventional Model: Basic Graph



New Model: Influence by Technology and Internet



4.1 Transaction Costs and Competing Paths in the Stage of Creation, Distribution, and Consumption of Music

Referring to the graphs of the two models, competitions among the existing diverse paths of music flow in fact could be identified, since on each path, different transaction cost could occur. One path could have less transaction costs, while the other could have much higher transaction costs. Under the economic thinking, of course the most ideal objective is to achieve efficiency, as relates to the relationships between the aggregate benefits and the aggregate costs of the relevant case⁸⁴. This also relates to the economic rationals of the actors involved. In any case, the actors, users, and consumers face tradeoffs in spending their resources and time, including in music-related activities. They tend to make decisions only if they understand the options available under such circumstances, and oftenly these options are not the 'black' and 'white' ones, but shades of gray (or, the margin). Economists refer this as *marginal changes* – a small incremental adjustments to an existing plan of action. For instance, the choice is not between creating music or not creating music, rather, how much resources and time that the musicians or creators need to spend in creating the music. The margin also means as 'edge,' so that *marginal changes* are adjustment around the edges of

⁸⁴ In this respect, the desired objective would be to have a 'Pareto Optimality' conditions, where there is no change of the situations that can make someone better off without making someone else worse off (A. Mitchell Polinsky, 7).

what the actors are doing. This adjustment relates to another principle; that people respond to incentives. They make decisions by comparing costs and benefits, and their behavior may change if there are any change on the costs or benefits of the options (at the ‘edge’) that they have⁸⁵.

In this respect, based on such efficiency and economic rational considerations (both herein referred as ‘efficiency’), the actors, users, and consumers in music industry will try to achieve the most beneficial conditions desired (for the actors, and users or consumers involved) during creation, distribution, and consumption of music, with less transaction costs as possible. This means that the paths with lower transaction costs that could support them achieving the efficiency, will be much more preferred than the higher ones. Looking back to the two models, either the conventional model or the new model could bring more efficiency, and this is subject to further assessments and analysis. As a reminder, the transaction costs, as elaborated in chapter 1, are the costs required to identify relevant actors that ones must have to engage and bargain with, including the costs of the bargaining process, the costs of getting together with the desired actors, as well as the enforcement costs of any deals or bargains reached. Such transaction costs are *private costs*, which are distinct from *social costs*. Social costs diminish the wealth of society in general, however private costs consider what constitute such wealth to each particular actor. A transfer of wealth from one actor to another does not always mean that there is social cost occurred from it, thereby it is *private*⁸⁶. To give more illustration, below is the discussion regarding the competition, which essentially occurred in respect of paths (not necessarily between the actors) of music flow in each stage, along with the analysis of (private) transaction costs occurred in those stages both in the conventional model and the new model.

4.2 Competing Paths in the Stage of Creation

During creation stage, different paths could be recognized under the conventional business model of music industry, and those which have already been influenced by the technology,

⁸⁵ N. Gregory Mankiw, *Principles of Microeconomics, Second Edition* (Fort Worth: Harcourt College Publishers, 2001), 4-6.

⁸⁶ An analogy to such difference between private cost and social cost, is in the case of competing A and B gas stations. A and B competing to each other while offering the same service as gas station. B’s loss is A’s gain. B may be harmed because of the competition but no diminution in overall wealth of the society and hence no social cost. (Richard A. Posner, *Economic Analysis of Law, Fifth Edition* (New York: Aspen Law & Business, 1998), 3-11).

including the Internet and cloud. As relates to the transaction costs, under the conventional model, the actors will need to seek and identify the appropriate partners in creating the music. As identified before, the actors involved in the stage of creation include the musicians, which may be categorized as songwriters, composers, performers or artists; then publishers, record labels or record companies, as well as producers of phonogram. These parties are those who indeed technically involve in making and recording the music. Several other functional actors surrounding the business and legal affairs also exist, such as the personal managers, accountants, and attorneys.

From the side of the musicians, relying on the conventional model where record labels' roles are essential, meaning that they have to be able to identify which record labels that may *give* attention or opportunities for them to record their music. This is not only about finding, *to be found* and getting the record deals, but also on how the deals would be constructed in regards to the creative and production process. Among what the deals may contain are: (1) the making of the recordings, in which it will lead to other transaction costs in making deals with producers and composers or songwriters (which could be) represented by the publishers, (2) the copyright occurred for the recorded music and its administration, (3) financing issues, which relate to the funding of recording process, as well as distribution of revenues and royalties resulted from the exploitation of the music, and (4) promotion and distribution of the recorded music and its related products to the society, taking into account the business and profit considerations .

Once the deals have been created and signed, further exercisement and enforcement of the deals may also require certain transaction costs. Considering that such transaction costs are indeed necessary for music production and publishing, such as administering of copyright and entering of distribution and promotion agreements with broadcasting organizations, it could be stated that transaction costs for those matters are inevitable either under conventional business model, or those influenced by the Internet and cloud. The further question will be which path that would require lesser transaction costs. As previously mentioned, the record labels as 'humdrum' actor give the necessary funds and facilities in the creation of recorded music or album. They have made an *ex ante* investment, with risk of uncertainty of demand from the market upon the music published. This is a phenomena in creative industries that *Richard E. Caves* referred as *nobody knows*, whether the users and

customers will like the music produced or not⁸⁷. At this stage, the *nobody knows* factor could be one of the logic why record labels do some kind of ‘gatekeeping’ activities, in which they select carefully which musicians and which music they want to develop, so that the risk of unrecovered investment could be minimized.

At some points, copyright law incentivizes those gatekeeping actions in reducing the risk of market uncertainty by providing exclusive rights as the tool to set up secured paths in producing and publishing the music, with the objective of ensuring the economic revenues that could be obtained from the exploitation of the music. In setting up those exclusive paths, there are transaction costs of dealing with the chosen actors, including its bargaining process, as well as the costs to enforce the desired paths to secure the economic incomes. Under the copyright, these costs relate to such costs required in negotiating the deals, when the right holders want to transfer the exclusive rights to other certain actors. However, whether this conventional model has been the best model so far to economically incentivized the actors in the stage of creation, including musicians, are subject to further analysis on several issues as followed.

1. There are transaction costs concerned in finding the appropriate actors

Since the record labels make important funding for the recording process, it is essential to have deals with the appropriate musicians, publishers, and producers, so that the investment could be recoupable. In a condition where access and facility to obtain the information and to identify those potential actors are limited, each actor may have to spend higher transaction costs to seek and gather information, introduce, as well as expose themselves - especially for the musicians or composers and songwriters. The goal is to construct the appropriate paths of creating and bringing the music to the market⁸⁸. Even after they (each other) have seemingly found the desired actors with whom they

⁸⁷ Richard E. Caves, 3.

⁸⁸ However, a dissenting argument based on preliminary research conducted by *Heritiana Ranaivoson* from Vrije Universiteit Brussel regarding transaction costs in setting up deals between actors in music industry, indicates that transaction costs could be lower if there already have been pre-existing relations between the actors. These pre-existing relations refer to existing deals or contracts within the actors, meaning that higher transaction costs are required if the deals are newly created (*Heritiana Ranaivoson, Online Content Services and Transactions, an Exploratory Assessment for Online Music Services in Europe*, a paper presented at the ACEI 17th International Conference on Cultural Economics, June 24th, 2012, Doshisha University, Kyoto). Responding to this argument, the Internet more or less has facilitated the actors to get information about each other through information spillovers via the Internet intermediaries, meaning as reducing their transaction costs in identifying and finding the appropriate actors to deal with.

want to bargain with, along the way there could be any disagreements or conflicts between the creative and humdrum inputs to what is considered as creatively and economically sufficient to enter and gain the expected revenues in the market.

2. There are transaction costs concerned in financing and distribution of incomes

In the music business, monies are needed not only during recording session, but afterwards in making the reproduction of the albums, including artworks and manufacturing, distribution partnerships, and promotion of the music and musicians to the media (that are usually be given away for free), making of the music videos, as well as the monies spent during negotiation of such respective deals. They require many transaction costs with respect to the bargaining and enforcement process. Although it looks like musicians get the monies from music copies selling or live performances, those monies are subject to distribution between the other actors involved in the process, leaving only not *that* much money for the musicians in the shared pie. The case may be much worse if the actors only rely on certain revenues resources, such as from physical copies selling or digital copies selling only, considering many actors wishing for income shared within the paths, including any prior-made-investment recoupabing conditions from the record labels.

3. There are transaction costs in enforcing the exclusive paths⁸⁹

Having secured paths meaning to transfer the rights of exploiting the music only to few functional actors. Not only this requires finding of the appropriate actors, but also on how the compensation and licensing schemes should be exercised with respect to the incomes or profits, and that the exclusivity itself is required to be maintained. This means that if there are other parties outside the determined (revenue) pie that conduct any

⁸⁹ Economically, these transaction costs of copyright are the costs in exercising the right to exclude other parties from accessing, using, or reproducing the works (as in copyright's ground of 'exclusivity'), and the costs required when the right holders want to transfer the exclusive rights to other parties. In general, transaction costs of such conditions may rise with the number of contracting parties. This means, the more parties that right holders need to bargain with in regards to exclusion or transfer of rights, the higher the transaction costs could be. If the transaction costs could be lower, and the relevant contractual or bargaining relationships could be more enforceable beyond the underlying set of the existed entitlements or rights, then such contractual approach may be preferable for the parties to attain the optimal use and investment. The question is, whether the existing copyright laws could facilitate such lower transaction costs, and if it is not, how it should be adjusted to achieve the desirable efficiency (William M. Landes, and Richard A. Posner, *The Economic Structure of Intellectual Property Law* (Cambridge: The Belknap Press of Harvard University Press, 2003), 14).

activity which require authorizations or giving of licenses under copyright law, and such parties have not received those transferred rights, the actors inside the pie can and most likely will exercise any enforcement mechanism, such as copyright infringement lawsuit, in order to maintain the secured (income) paths and its exclusivity.

4. There are transaction costs concerned in fulfilling the market demand

Despite all those issues mentioned, there is also another risk that the actors have to deal with, and that is in regards to the market demand. Even if the actors in the creation stage have met and created deals with the appropriate parties, including securing the desire paths to deliver the music to the market, if it is not provided or presented in the paths that are suitable with what users' and customers' or market trend's desire, then the music and musicians will not be profitable. In this sense, whether the music or musicians is not good or likeable is not the only issue, but on how they are presented and available to the users and consumers (in the way that they demand) could also affect the success of the music.

Diverse Paths and Transaction Costs: Choice of 'Shortcuts' in the Stage of Music Creation (the New Model)

As described earlier in the previous chapters, development in technology of creating music, such as the digital-audio recording tools, including those of software based, could facilitate the music recording process by musicians and have made it possible for musicians with proper skills and creativity to create and record their own music, without having to engage in professional deals with record labels or producers. Even in the process of creating the Master's copies to be distributed and disseminated, musicians could create them in the form of digital copies, reducing the costs for manufacturing and inventories. When musicians could exercise this creation process independently, and that the needs to engage with record labels is not necessary, musicians could reduce their transaction costs of negotiating, bargaining, and enforcing of contractual relationships, as if they engage in record deals with the record labels.

The thing is, once those musicians have created such sufficient Master's copies, demos or sample of music or compositions, the innovative intermediation through the Internet could support the dissemination of those works, providing another alternative for exposure of the music and musicians both to the other other actors in music industry, and the users as well as consumers. In this respect, musicians have the shortcuts to widen the opportunities of finding and *being founded* (to create the next works) by the record labels or producers who have interests in their music through publication via Internet intermediary sites, such as social networking sites, i.e. Facebook or Myspace, etc., user generated content sites, i.e. Soundcloud or Youtube, etc., as well as online music subscription sites. Those sites are considerably more open to the newcomers or amateur musicians without professional deals with labels or publishers.

In finding the appropriate musicians, record labels or producers could also browse through such sites and access the music even for free. This of course also provides them a shortcut in finding new talents or potential profitable stars, especially when those amateur musicians already have the potential market, or fans who like and enjoy their music. This may support the record labels in dealing with the risk of uncertainty of demand, therefore could encourage them in making investment to further support and develop the amateur musicians. In this sense, the shortcuts provided through the Internet could create less transaction costs as relates to finding of appropriate actors and getting together with them. Surely since it is easy now for the musicians and creators to disseminate and make available to the public their works through the Internet, a lot of music would be shared, including those by the users and consumers, and it could be quite troublesome to listen to all of them and identify directly which would have talents and potential marketability. However, in that sense this path even could be the most effective one to overcome the risk of uncertainty of demand and actually identify the targeted market.

For instance, the music that is shared or disseminated by the amateurs through social networking sites or user generated content sites, will definitely have two kinds of audience-reactions. The first one is good, and the second one is bad. In this case, the users and consumers themselves who will evaluate and give opinion about the music and musicians. If they like the music, most likely those amateurs will have certain spotlights within the Internet's information traffic, and if more and more people like and enjoy their music, that

will be the indication that the music would be marketable and could fulfill, at least, certain fragments or consumers' music market⁹⁰. Once they have already gained substantial audiences, it will not be too hard for the record labels, production companies, media companies, or other broadcasting organizations to identify and find those amateurs' potentials. Again, transaction costs as relates to finding the appropriate actors and getting together with them could be lessen in this way.

For the musicians, having the opportunities to publish and introduce their works to the users and consumers independently could be one of the (shortcutted) alternative paths aside from having professional deals with the record labels or publishers. Of course they still have the choice to engage with the other actors when there are offers, and the connecting fans and market that they could already have can give them different bargaining position compared to if their potentials are not that recognized (in the sense that their music is proven to be marketable). Furthermore as relates to the market demands, the potential amateur musicians making use of the shortcuts in creating and disseminating their music, may have certain connections build with their audiences via specific paths, such as through social networking sites. This could give information for the other actors, such as record labels, if they want to engage in professional record deals with the musicians. Since, connecting through social networking sites (in this case) may be the most convenient way of reaching the audience and the market, record labels could have reference to build the paths in promoting and delivering the music to the users and consumers based on observation from such demand and trend of the audience in accessing the musicians' work. This could help record labels in further constructing deals with the right intermediary, such as the social networking sites, which could reduce the unnecessary transaction costs, as if the information on what market demands is not available.

Building the career independently may have impact in the way how the musicians want to develop their music and with whom they think it will be better to have deals with, without having too much concern on certain stakeholders' interests as if they are under record labels or publishers. In this way, musicians may have more freedom in decision-making process,

⁹⁰ An insight mentioned by *Marcus Taylor* from themUSICIANSGUIDE.co.uk about the reasons behind people share music. Among those reasons is that the music has good sound wave (which most people could enjoy), and that there are already fans who like the music and share them to others so that the music could get more attention and recognition. Easiness in sharing such music, supported by the recent technology, also encourages people to share music. (Marcus Taylor, *The Science Behind Why People Share Music*, from themUSICIANSGUIDE.co.uk).

which could lead to less transaction costs in seeking and gathering with the parties that musicians think could support strategically their career, as well as less costs on the enforcement of the deals, since the relationships and the paths built could be more flexible and aimed at function-basis under what musicians consider would be best for their music and their career⁹¹.

Observing through such alternatives that the actors have as supported by the technology and the Internet, there is indeed competition of choices of paths in the two models. Even within each of the model, there could also a competition between which paths having less transaction costs that the actors can choose and construct. For instance, it is possible for the musicians to independently share their music through the Internet first, then when they already have audience and marketability, they enter into record deals or publishing deals with record labels and publishers. But, it is also possible that the musicians enter into deals directly with production or media companies that have interest in using their music for special purposes, such as games or advertisements.

Another path will be to have career independently, where musicians create their own recorded music then share and sell it to the fans, having live performances and other interactions or activities with the fans, without being under record labels or publishers. Being independent means as also doing entrepreneurship activities by themselves or the so called ‘do it yourself’ approach⁹². The recent innovative music firms or intermediaries, including those of online, as well as growing flexible music market, make that independent path possible. Therefore, in the stage of creation, musicians and other actors can now have diverse paths with different transaction costs, and which in certain conditions one path could be more effective and/or efficient than the others, with respect to the needs and nature of how the

⁹¹ One example is an independent musician *Amanda Palmer*, who build her music project outside the mainstream of record labels’ stuff, seeking funds from the public via intermediary site Kickstarter.com. In this way, Amanda have contracts and build paths that in her condition, will be much more strategic and effective, rather than following the conventional paths of music publishing. Soon after her success in raising funds for her music project, Amanda reveals her plan on using such funds to the public. The article could be seen from techdirt.com.

⁹² Studies have been conducted in examining whether the emerging technology and innovation in music business have made it possible for the musicians to build their career independently, or the so called ‘do it yourself’ activities, in which recent innovative intermediary sites could bring impacts to those independent musicians’ career and music flow’s paths. Of all the suggestions to effectively manage the career independently is to choose the persons and expertises carefully to support the musicians’ career. In the paths, the musicians do not have to engage with institutional actors such as record labels, but they can cooperate with personals as team members, considering the team could strategically and effectively support the musicians’ business and music projects. One of the studies could be seen from this link: <http://money.futureofmusic.org/teams/>.

users and consumers in the market react or demand to that certain music⁹³. In that sense, the competition occurs, not between the actors, but in the choice of paths or channel capacity in creating music.

4.3 Competing Paths in the Stage of Distribution

The transaction costs of excluding others from the access or use of the music and transferring such rights to other desirable actors, also incur in the stage of distribution of the music. As relates to the music business, the conventional model facilitated by the copyright's exclusivity rights requires the necessary transaction costs of excluding others and transferring the rights, and at some points, those conditions may or may not be beneficial for the actors. Mostly the actors could benefit from the acts of excluding and transferring rights (despite the necessary transaction costs) because the condition of 'artificial scarcity' that is facilitated by copyright law⁹⁴. According to the economical approach, if the goods is 'scarce,' then it will have the 'exchange' (market) value. However, if it is in 'infinite supply,' the price of the goods could decrease to *zero*, and therefore will no longer have the 'exchange' (market) value⁹⁵.

Recently, this 'infinite supply' most likely to happen due to abundance of music flow through the Internet and cloud. The condition of 'artificial scarcity' where record labels, publishers, or music distributors as *gatekeepers* could control the availability of music to the users and consumers (thereby making it possible for the music-related products or services to have high market value) hardly be maintained considering diverse technological platforms and networkings accessible now by the users and consumers. In such case, the costs of maintaining and enforcing the exclusivity and scarcity could be prohibitive aside from any legal sanctions of unauthorized distributions or dissemination. Therefore, the desirable outcome could be to adjust the underlying framework of exclusivity and transferring of

⁹³ In regards of applying the most considerably effective and efficient paths, with lower transaction costs, the actors could rely more on the contractual approach rather than the existing scheme of entitlements and exclusive rights provided by copyright laws, if the enforcement of such exclusivity will otherwise incurring higher transaction costs. This could be more preferable for the parties in achieving the efficiency of the investment and exploitation of the music and musicians.

⁹⁴ In this context, the gatekeepers, such as record labels, music distributors, or broadcasting organizations could *select and control* which music or musicians they want to promote, distribute, and disseminate to the public. Because copyright gives legal tools in forms of exclusive rights for them in exercising the distribution and dissemination activities, they could structure exclusive paths that may cause the music provided become 'scarce' so that its value and price will go up.

⁹⁵ William M. Landes and Richard A. Posner, *The Economic Structure of Intellectual Property Law...*, 16.

copyright (or authorizations), considering the market value of the works, as well as transaction costs required to generate the desired revenues or compensations⁹⁶. It is also important to take into account the private cost of each actor in enforcing the rights, as well as its influence to the general wealth of the music market, whether certain social costs may occur as resulted from such enforcements.

The original right holders are not the only one who should spend certain transaction costs in exclusion and transferring of rights or authorization activities. The music distributors and platform providers, as well as other intermediaries are also spending certain transaction costs aimed to obtain the rights or authorizations to distribute or disseminate the music. Including as one of the costs is the ‘rent seeking,’ which is the costs that those actors have to spend to generate returns⁹⁷. For those music distributors to engage in the distribution and dissemination of music to the users and consumers, they should be able to seek and identify the strategic right holders, as well as other negotiating parties, so that they could earn profits or revenues from such distributing actions. The transaction costs in this condition may be reduced by shifting the ‘rent seeking’ activity to an earlier stage and eliminating duplicative expenditures on searching the authorizations at later stages⁹⁸. In this sense, since recent digital trend could make it possible to distribute music in diverse paths, not only basing on physical conventional model, transaction costs of creating different paths for different music platforms could occur at anytime possible, because the business will need to adjust how users and consumers in the music market demand the availability of such music. This will need further assesment on the music platforms desired and their rent seeking costs.

In this sense, it could incur higher transaction costs, when the original right holders still want to maintain the exclusive paths and ‘artificial scarcity,’ while how easiness of music flow via the Internet and cloud, and how market wants music because of such ease, makes it no longer efficient for music distributors to disseminate the music basing on such exclusive ‘artificial scarcity.’ In this case, enforcement of exclusive rights (versus the easiness of music access

⁹⁶ Ibid.

⁹⁷ The rent seeking is the cost to obtain economic ‘rent,’ which is a positive difference between total revenues and total opportunity cost – the cost given up to get some *item* (N. Gregory Mankiw). Under competitions, ‘rents’ are earned only by the owners of resources that cannot be augmented rapidly and at low cost to meet an increased demand for the goods produced (Richard A. Posner, 6-10). In this respect, the owners of the resources, such as musical works, could enjoy more ‘rents’ if they have the ability to meet the increased demands of the music, in which they also possess benefits in providing such music that cannot be produced easily and rapidly.

⁹⁸ William M. Landes and Richard A. Posner, *The Economic Structure of Intellectual Property Law...*, 18.

and enjoyment supported by the Internet), will require online music distributors to obtain authorizations from original right holders in order to make the music available through the Internet, otherwise the music content they disseminate will be considered as ‘illegal’ or unauthorized. For the original right holders, such as musicians, record labels, or publishers, this will mean more transaction costs in enforcing authorizations and exclusivity, and for the online music distributors and intermediaries, this will mean more transaction costs in seeking for authorizations and entering licensing deals for each distributing or disseminating action.

The increasing ability of the users and consumers in the market to share the music they access and obtain via the Internet incurring even higher transaction costs to enforce the ‘authorized’ and exclusive distribution paths. Since any user or customer anywhere at anytime could disseminate the music within themselves easily through social networkings, it will not be efficient if the right holders enforce the exclusivity and authorized paths to each one of such users and consumers, for example by way of filing lawsuit or blocking access. The first reason is because there are a lot of users and consumers situated world-wide. Detecting among them of who have disseminated music outside the authorized paths will be troublesome, and that to file lawsuits to each of them will require much litigation costs. Whether such enforcements will deter them in sharing the music is also questionable, considering the motive of their sharing of music, which sometimes could also be beneficial as an effort in encouraging others to listen the music. Moreover, strict enforcement on the exclusivity of music access paths could also make the music lose its marketability, because users and consumers may shift their consumption choice to the music provided under more ‘friendly’ access and easy experiencing channels.

Enforcing strict exclusivity and authorization to the online music distributors or platform providers, who have been ‘friendly’ facilitating the sharing, access and dissemination of music by the users and customers, may also not be preferable. This is because those music distributors and platform providers will have to seek and clear all the sufficient authorizations and licensing from each respective stakeholders. Putting them as one of the actor ensuring exclusivity⁹⁹ may disincentivize them in making the music available, because of the risk of

⁹⁹ Also, making the Internet Service Providers liable under the third-party-liability concept (in preventing infringement and maintaining exclusivity and authority) could disincentivize the intermediation and innovation in music distribution and dissemination activities. *Mike Masnick* (via techdirt.com) suggests to use public pressure, instead of third-party-liability, to encourage the ISPs in supporting the law enforcement or applying reasonable terms and conditions, that

unauthorized music sharing and dissemination activities that could ‘accidentally’ happen anytime and anywhere. Then, if because of such transaction costs the music available via the said platforms can not be supplied freely or on cost-friendly basis – that there are considerable costs that users and consumers should pay, such users and consumers will be induced to search for other music platforms that can provide the music in beneficially cheaper costs but with similar quality¹⁰⁰, including from those of unauthorized ones.

As *Patrik Wikstrom* mentioned, in the digital environment where there is abundance of information and music could flow easily, users and consumers will hardly pay for basic access of the music. This could be one of the cause of further infringement to the copyright, or inducement of piracy. As economic approach to the copyright also mentioned, even without the existence of copyright, piracy and making of unauthorized copies could be avoided, provided that the quality of such copies are inferior to the original and cannot be the perfect substitution to the original ones¹⁰¹. This means that exclusivity and authorization will not be effective in preventing infringement or piracy so long as the music available via the authorized platforms cannot provide the desirable quality of music access and enjoyment that *deserve* any of users’ and consumers’ transaction costs. Otherwise, the users and consumers will still be incentivized to search and access music from other platforms offering desirable quality but with less costs, even though those platforms are not the authorized ones¹⁰². The competition is not about excluding actors, but offering desirable contents and services with reasonable transaction costs, thereby encouraging innovation of such, through which the

could help preventing infringement of copyrights (Mike Masnick, *Really Bad Idea: Make ISPs Liable for Cybercrime Efforts*, posted on Monday, August 1st, 2011, techdirt.com).

¹⁰⁰ In this stage, the transaction costs concerned are as relate to the costs of clearing all the rights that intermediaries or music platforms should spend if copyright is strictly enforced. Such costs and licensing conditions that they have to apply may influence the music service fees they provide to users and consumers.

¹⁰¹ William M. Landes and Richard A. Posner (the *Journal of Legal Studies*), 329.

¹⁰² *It is believed that the rate of piracy, the price of the legal contents, and how much the pirates would like to pay for the contents in a scenario of perfect copyrights enforcement, have interdependency between each other. Pricing decisions are influenced by the knowledge that we do not live in a world of perfect enforcement, and there are plausible circumstances that may keep prices higher or lower than they would be under perfect enforcement of copyrights. This is also depending on the assumptions about the conditions under which a particular audience will substitute the pirated contents for the legal ones.* This means that piracy may keep occurring so long as the price or the costs spent for the legal contents are not economically rational for the users and consumers, and the issue is different with the requirement of licensing or authorizations of music paths, upon which several stakeholders think that the ‘unauthorization’ have threaten their incomes. Still, even though the paths are authorized, but do not take into account the interdependency of price and costs of the contents, piracy may continue to grow (Mike Masnick, *If You Think the Cost of Piracy is High, What About the Cost of Enforcement*, posted on Tuesday, May 8th, 2012, techdirt.com).

actors, users, and consumers could seek and choose the appropriate paths or channels that can bring efficiency for them within the system of music distribution and dissemination¹⁰³.

Diverse Paths and Transaction Costs: Choice of ‘Shortcuts’ in the Stage of Music Distribution (the New Model)

In the conventional business model, music distributors and broadcasting organizations could have exclusive paths in making the music available to the users and consumers, creating ‘artificial scarcity,’ where they, as gatekeepers, *control* the availability of music to the public and exclude other competitors, thereby securing the economic income. Through this exclusive paths, only certain ‘selected’ music will be distributed and disseminated to the users and consumers. Hence, in the music market, there is not much music could be accessed and enjoyed by the users and consumers, and their paths or channels of access to such music had also been monopolized by numbers of gatekeepers. It is mostly the case that the music which could reach the market and be accessed easily comes from major labels with chained distribution system and financially-supported initial release. The conventional-based model has structured the industry where music without sufficient initial investment and well-financed promotion cannot reach the audience and obtain significant market share. A case example is the *payola*, which is a ‘bribe’ paid in order to influence a gatekeeper’s choice among competing music products¹⁰⁴. This ‘bribe’ paid can influence, for example, a Radio to airplay specific songs repeatedly, and ignore the others on ground of the *choice* as a gatekeeper.

However, the Internet and cloud have facilitated new paths of distribution and this change how market demands the availability of music. Accessing or enjoying music via streaming sites or downloadable service through the Internet requires less costs as compared with the

¹⁰³ Among others, a study on legal online music outlets was conducted by *Davi Nakano* and *Guilherme Kok* from Universidade de Sao Paulo (Production Engineering Department), which mentions that those innovative online outlets could bring several benefits as compared with the unauthorized or illegal platforms, such as P2P networks. Such outlets can offer features to reduce searching costs, such as: intelligent searching engines and suggestion mechanisms, publication of users’ ratings and reviews, charts and suggested playlists. Furthermore, they can also offer information and enhance listening experience, and give credibility to artists by making customers knowledgeable of their biographies, career paths, opinions and activities. The feature that outlets have, which is to offer new pages, external links to information sources, discussions forums as well as industry facts, artists, tunes, and so on, may also attract and keep customers in using the outlets. By offering several services, they can be a “one stop shop” for customers, offering convenience of music experience. (Davi Nakano and Guilherme Kok, *Online Music Market: An Analysis of Online Music Outlets*, a paper presented at the ACEI 17th International Conference on Cultural Economics, June 22nd, 2012, Doshisha University, Kyoto, 8).

¹⁰⁴ Richard E. Caves, 286.

conventional paths, when users and consumers need to spend considerable costs and choose more limited paths to enjoy music, such as through radio or TV broadcasts or purchasing of physical copies. Now, the users and consumers could find the music flow easily in the Internet. In this condition, the music flow becomes less controllable and less scarce, however provided in innovative settings. The essential actor functioned as the media facilitating such innovative music services and distributions is the Internet intermediary sites.

The innovative intermediary sites have facilitated new platforms for the musicians to disseminate their music to the users and consumers. Such innovative platforms can provide shortcuts - a remarkable reduction of distance, for musicians to connect with the fans, enter the market, and deliver their music widely to the users and consumers, without having to engage in any exclusive conventional deals with the gatekeepers. Not only the musicians could make use of such innovative intermediary sites, but record labels and brands' companies could also use the innovative sites as shortcuts in finding potential and marketable musicians and music. The examples of such sites, among others, is Drip.fm, which expects to intermediate record labels with the users and consumers, and FanAxxcess.com, which connects the musicians with brands' companies in meeting what the fans expect¹⁰⁵.

Using the online music providing services, the actors can reduce transaction costs in dealing with distribution of music as if it is in conventional business. For instance, they could save the costs of manufacturing the copies, inventories, shipping, as well as the required deals in exercising those activities. The musicians, record labels, and publishers could strategically create path and deals with those shortcuts providers in reaching the market easily worldwide at anytime and anywhere. Competition in the choice of paths provided by conventional based music distributors and broadcasters, and the innovative intermediary sites on basis of convenience and less costs service to the users and consumers, by itself stimulating an improvement in music distribution and dissemination service. Moreover, competitions can take place not only between the paths provided by those of conventional-based actors and the internet-based ones, but also between the startups of internet-based music services, encouraging more innovative settings for music distributions. However, the competition does not hinder broadcasting organizations to also utilize the Internet. Such broadcasting

¹⁰⁵ To have a visit on those sites, follow this links: <https://www.fanaxcess.com/> (a tutorial video is available at <http://www.youtube.com/user/FanAxxcess>), and <https://drip.fm/>.

organizations, for example radio or TV, could also make use of the Internet service providers to support them in making the broadcasts available via the Internet through webcasting or simulcasting, in reaching much wider audience. Furthermore, the Internet-based music services can provide not only the sound recording of music, but also the record of musicians' live videos. This could be an effective way to promote the live performance quality and enjoyment of music from such musicians, which may encourage the users and consumers to attend the musicians' live shows.

In this sense, diverse paths with certain shortcuts have emerged to support the music distribution and dissemination. The existence of such innovative Internet-based intermediaries do not mean that the conventional paths no longer important. As have been mentioned earlier, such conventional paths such as physical distribution of music or live shows are still essential and could be more convenient or preferable for the users and consumers to enjoy music in certain occasions. The thrill of watching live shows and attachment to the musicians through ownership of physical copies could be some of the reasons. It is true that exclusivity of music distribution paths and 'artificial scarcity' are considerably reduced under this phenomena. The fear is that in such less controllable music distribution and dissemination, the economic revenues will be diminishing. However, that could only matter if the actors keep strictly maintaining the conventional paths, or only relying on the conventional-based of music distribution, which in some cases may not be efficient and do not meet what market demands.

The proposed suggestion will be to diversify the potential sources of revenues and utilize the diverse paths based on assessment of whether certain paths could facilitate better compensation compared with the other paths. Further adjustment or innovation to seek and build new economic revenue paths using such innovative intermediation and the Internet or cloud may be necessary. On economic basis, the preferable approach or strategy will be to seek and build music distribution and dissemination paths that could have less transaction costs, while facilitating the musicians as well as other actors gaining the sufficient and desirable economic compensation.

As an example of a shift resulted from competing distribution paths is in the case of *the Beatles'* music distribution channel. Not only the newer generation of musicians adjust their

distribution paths into an Internet-basis, but also one of the legendary musicians, *the Beatles*. On around November 2010, *the Beatles* engaged into music distribution agreement with Apple's iTunes store, through which *the Beatles'* song catalogue, including lyrics and album artworks, could be purchased from such store. In this case, a competition could be identified between the conventional path of *the Beatles'* music dissemination and distribution in form of physical copies, such as vinyls, and the digital distribution path through online store¹⁰⁶, which was developed as affected by the Internet and technology. However, it is important to note that the competition of paths in this context is for a *good* sake, where diverse paths are seen as providing different benefits and costs – which the actors can choose, for each particular case of distribution and dissemination of music.

4.4 Competing Paths in the Stage of Consumption

Referring to the concept of *infinite variety*¹⁰⁷ in creative industries, which means that users and consumers are being provided by many diverse creative goods, including in this context, music, it will require certain transaction costs for those users and consumers in finding the music that meet their taste and demand. The transaction costs mentioned could be in the form of time and money spent in identifying which platform would be the best to access the music they fond of, including building connections with such platforms to be able to access and enjoy the music easily and conveniently at anytime and anywhere¹⁰⁸. An example to this transaction cost is when the users and consumers sign up for an online music subscription service to access and enjoy music, in which they need to fill out certain registration requirement online or pay some monthly subscription fees. That path of consumption is just one easy example. The other transaction costs required to support such activities may also occur, such as purchase of gadgets like smartphones, laptops, or ipods that are used as devices to support access to such online music services in anywhere and at anytime. These

¹⁰⁶ Source: news.cnet.com.

¹⁰⁷ Infinite variety is a phenomenon in which creative products differ from one another in many ways. Even though they have similarities, but still can be differentiated. For instance, *Queen* and *Led Zeppelin* could have similar genre or mood of music, but they are different and can be differentiated to each other, in which each has its own character and quality of music. Users and consumers could choose *Queen* more than *Led Zeppelin*, or some could choose otherwise. Even they could like and enjoy music from both bands, and in such case the bands may have different contributed valued for such users and consumers.

¹⁰⁸ Based on economic approach (Stavins, R.N. – 1995, p. 134), from the perspective of market economies, transaction costs can take one of two forms, which are inputs or resources – including time - by a buyer and/or a seller or a margin between the buying and selling price of a commodity in a given market. In this context, the analysis focuses on the side of consumptions by users and customers as buyers in the music market (Douglas W. Allen, *Transaction Costs*, Department of Economics - Simon Fraser University, available at: encyclo.findlaw.com/0740book.pdf).

paths of music consumption are those which are available resulting from innovation in technology and the Internet (the new model). As for the conventional path (model) of consumption, different types of transaction costs occur according to which channel they choose. For instance, when users and consumers visit the music stores to purchase physical copies of musicians' albums, or when they attend live shows, those activities also require the time and money of the users and consumers, however took different forms and resulted in different conditions of music enjoyment.

Economically, in finding the desire music and musicians that meet their taste, as well as consent in spending the time and money to access and enjoy them, the users and consumers are making a 'consumption investment capital.' In this respect, once they have experienced benefits from finding and consuming the music, there will be a 'rational addiction' to consume the music more, and this also in line with the indulgence they do in music consumption, in which there is expectation that they could raise their capacity to enjoy and consume the music more in the future. It is believed that the more the users and consumers spend hours to enjoy and devote into music, the higher their appreciations will be. Therefore, the future consumption and appreciation of music are basing on the initial and past access, enjoyment, or devotion to the music¹⁰⁹.

In regards to such 'consumption investment capital' and the transaction costs that the users and consumers spend to access, enjoy and devote to music, it is also important to note that what the users and consumers spend on consumption is also subject to the limited availability of time as well as pecuniary income (or money) that they have¹¹⁰. This means that even though the music appreciation will go higher the more they spend hours to access and enjoy music, at the beginning it is important to provide effective paths with reasonable investment capital and transaction costs for those users and consumers in accordance with the limited availability of time and money that they have. This could lead to the efforts of providing paths for music consumption, which only require less transaction costs as proportionate to what users and consumers would likely spend at initially in finding and enjoying the music that suit their tastes¹¹¹. Therefore, providing paths that can give opportunities for the users

¹⁰⁹ Richard E. Caves, 175-176.

¹¹⁰ Ibid., 176.

¹¹¹ According to an economic perspective, the demand process in music market can be regarded as a process involving two distinct decisions. At first, the consumers face a vast number of unknown goods (songs), in which they have to decide which songs and bands they want to find out more. In the second stage, consumers exercise their tastes in the pre-

and consumers to, at the least, access and listen to the music easily, may be favourable for further appreciation and consumption of the music. In the Internet's traffic where a lot of works could easily flow, the users and consumers may be willing to pay for services that can help them navigate through such abundance¹¹². This also closely relates to a consideration that music is an 'experienced good'¹¹³. The paths desirable may be those which can effectively navigate and provide users and consumers with platforms that make it easy for them to meet the music of their tastes.

Diverse Paths and Transaction Costs: Choice of 'Shortcuts' in the Stage of Music Consumption

Diverse paths in music consumption both under the conventional model and those influenced by technology and the Internet have offered different 'option value.' For instance, listening music through radio will have different enjoyment atmosphere and satisfaction compared to if the users and consumers purchase the physical copies of the music. These 'option value' requires different transaction costs that should be spent by the users and consumers according to what and how they want to access, enjoy, or obtain such music in its varied forms through diverse platforms. Referring to the characteristics of investment capital and limited availability of time and pecuniary income possessed by the users and consumers, it would be more beneficial (and preferable) for them, if in seeking and finding the music as their tastes, they only have to spend less transaction costs. Afterwards, the initial investment can lead them to more appreciation and devotion of music, making them more convenient and willing to spend more transaction costs in enjoying and obtaining music products or services with higher 'option value.'

defined songs and make consumption decisions, i.e. they purchase songs or CDs. In such music market, the demand process thus consists of two stages: the search stage and the consumption stage. (Anita Zednik, *Demand for Music: Preliminary Results of Latent Class Analysis of Listen and Download Choice*, a paper presented at the ACEI 17th International Conference on Cultural Economics, June 22th, 2012, at Doshisha University, Kyoto).

¹¹² Patrik Wikstrom, 7.

¹¹³ According to *Pine and Gilmore*, within the concept of 'experience economy,' the focus is on how an activity is executed rather than what the activity is all about (Patrik Wikstrom, 15). In this respect, the alternative argument would be on how music access, enjoyment, and dissemination are executed, rather than what those activities are about, since through the Internet, the users and consumers could access, listen, and enjoy, even share, the music easily, making it difficult to control and strictly separate those actions based on the exclusivity of rights to reproduce or distribute music conceptualized under copyright. This does not mean that the separation of activities, for the purpose of conceptualization, is not necessary. It is proposed, however, that in the reality conditions, approach to how the activities are executed could bring more efficient solutions.

An easy example to such case is when users and consumers first heard the music from TV or radio, or the Internet, then they decide to hear it more through online music streaming or subscription services. With more hours and enjoyment they get from accessing the music, their appreciations simply become higher so that they want to purchase the musicians' special music albums (physically), or attend their live concerts. This appreciation and enjoyment may continue growing and these users and consumers, which have become the fans, will be willing to spend more transaction costs to get much and much higher 'option value' of music products and services, such as merchandises, and including not only for the recent album or songs of the musicians, but also the future, or even previous works of the musicians.

The Internet and cloud, as well as emerging innovative online music service sites could become the shortcuts in lessening the transaction costs that the users and consumers have to spend for their initial consumption investment capital, which also relatively depends on their limited availability of time and money. This shortcut includes facilitating the 'word of mouth' between users and consumers through sharing of music and information about certain musicians, since in most cases they also take into account the others' opinion about the music and musicians before deciding to purchase or pay for the music¹¹⁴.

Moreover, these new innovative paths could also support the users and consumers in 'experiencing' the music initially through Internet intermediary sites, so that they can further evaluate whether the music fully meet their taste, and it is well worth to spend further transaction costs to enjoy the music with more 'option value' continuously in the future. For instance, the online music intermediary sites with streaming or subscription basis easily accessed by the users and consumers could serve as a lesser cost (or lesser investment capital) music channel, compared as if users and consumers purchase the physical copies at first. In this case, the access and enjoyment via the online intermediary sites could reduce risk of unfavourable choices of music to be consumed. The users and consumers also can have much diverse choice of music, since such sites have also provided shortcuts for musicians (not having any 'selection' mechanism or gatekeeping barriers) to deliver their music in much ease channels. Further, since the platforms are designed to make it possible for users and consumers to repeatedly access and enjoy the music, this could essentially (as shortcut)

¹¹⁴ This departs from a study that in creative consumption, the users and consumers are influenced by the *herd behavior*, in which to decide on consuming certain creative goods or services, the users and consumers also tend to see how others say or think about such goods or services (Richard E. Caves, 178).

build up their appreciations to the music and musicians, appropriate with lower cost and flexibility in time they could spend on music enjoyment. In that kind of way, finally it could encourage them to voluntarily and rationally spend more money on the music and musicians.

In accessing these innovative Internet platforms, initially the users and consumers may need to have investment capital in purchasing the devices or gadgets supporting the access to such online sites, some of which are smartphones, laptops, or computers. In this sense, there is risk of digital lock-up and its costs, in which users and consumers will have to spend certain money with respect to technology shifting. In such case, they might want to shift the devices or gadgets they previously used to have access into certain platforms of music, with different devices or gadgets that could be more suitable in connecting with different platforms¹¹⁵. This risk of digital lock-up may become one factor that could make the users and consumers hesitate to change their paths of music consumption.

As an example, the users and consumers that already used to access music via laptop with pairing application or software supporting the access of music, may not be directly able to shift the access and consumption paths using different gadget, such as smartphone, since it may need different transaction costs to purchase the smartphones, arrange its Internet connections, as well as adjusting its application or software to meet the new music platform's conditions. In that case, transaction costs that should be spent may vary between the users and consumers, depending on their decisions of which consumption path they will consider convenient, visible to be chosen, as well as enjoyable.

Still relates to the users and consumers' consumption investment capital and availability of the time and money, recent trend in digital environment of music business has also allowed the distribution, dissemination, and selling of music in 'single' basis, and not as an 'album.' This is to meet the users' and consumers' demand who may only be interested in certain singles of the musicians, and not on the other songs in the album. If in order to acquire such

¹¹⁵ As mentioned earlier, the choice of people are based on incentive and considerations of benefits and costs at the 'margin.' This also relates to the principle of 'rational maximizer,' which (in this case) consumers may behave rationally (or changing their behaviors) when it comes to their own interests or satisfactions. This means that even though in most cases consumers may have a well-supported financial condition to change the way they consume music, including changing of media or gadgets (facing the risk of digital lock-up), sometimes they choose to keep using the existing media or gadgets to consume music for several reasons, such as convenience, or reluctance to use the new media or gadgets since they may be presumed of not having similar benefits with the existing ones. (Richard A. Posner, 3-11; Shinto Teramoto, Professor, Kyushu University Faculty of Law).

music the users and consumers need to buy the album as a whole, that could incur higher transaction costs for them, compared as if it is distributed in ‘single’ format. In this sense, ‘single’ basis selling via online sites, again provides the users and consumers with alternative path to enjoy music. As for the musicians, since the ‘single’ is sold in digital format, indicating almost no cost for its reproduction (probably *zero* variable cost of reproduction), economically it could be beneficial in compensating the musicians.

Aside from gaining the music, innovative paths (in the new model) through Internet intermediary sites nowadays have also made it possible for the users and consumers to connect personally in shorter distance with the musicians. Through such shortcuts, users and consumers could get more personal contact with the musicians, getting to know their actual personality and interests, as well as their daily lives in creating and engaging in music. From the musicians’ positions, they could make use the sites to build fan base, observing fans’ reactions and interests on their music, as well as seeking support, suggestions or inspirations in the process of creating the future works¹¹⁶. Close connection to the fans could encourage more appreciation from the fans to the musicians’ music, and this could encourage those fans to keep accessing, enjoying, and paying monies for the music related products and services, regardless high transaction costs of shifting of paths that fans must spend in getting the music products or services with higher ‘option value.’

¹¹⁶ Users and consumers could have more infinite variety of music offered to them, which they can access at much ease anytime or anywhere possible using the Internet. This is different with music access via the conventional paths, such as Radio and TV, because the music might be played or broadcasted only on specific air-time, and the variety of music being played would also be limited as subject to certain choice or ‘policy’ by the gatekeepers.

5 The Adjustment of Copyright

Referring to the *World Intellectual Property Organization* (WIPO), there are two main objectives of copyright legal framework, which are to encourage a dynamic creative culture, while giving an economic returning value to the creators for the works they created; and to provide widespread, affordable, and access to public information or content. For the purpose of exercising these objectives, copyright provides legal tools in the form of exclusive rights for the creators of the works to control and transfer the reproduction, adaptation or modification, distribution, as well as communication and dissemination of the works to the public. Through gatekeeping of works providing to the users and consumers, the respective right holders manage to control and construct desirable price and value of the works, so that they can get the economic returns they expect. However, as discussed earlier, the technology and Internet have caused the right holders difficulties in maintaining such control and exclusivity. While from the position of the users and consumers, or society as a whole, this abundance flow of music could support them in accessing and enjoying music widespread and in affordable way; things that are aimed by copyright according to WIPO.

As relates to music industry, the problem arises because the actors feel insecure and threaten by their inability to fully control the dissemination of the music, and this, they argued, could diminish the economic income they expect to get, compared as if they have full exclusivity and control in the consumption of music. Departing from that, in the mission to fulfill copyright's objectives, many theoretical and pragmatic approaches have been developed to deal with the changing in music industry's business. One of the proposals is to adjust the copyright law in accordance with recent changes and trends as affected by the technology, as well as its influence to the music market and trend of consuming demand, so that the respective actors in music industry can still earn the expected economic returns.

5.1 Transaction Costs in the Paths and Models of Music Flows

As have been discussed throughout this research, the technology and Internet have provided new model with diverse paths, even 'shortcuts,' for the actors, users, and consumers in music industry, to create, distribute, and consume music. Observing from the platforms provided and transaction costs that may occur in those diverse paths, economically the actors, users, and consumers could choose which path to be used in creating, distributing, and consuming

music, whichever could be most effective, efficient, and visible for them. In some cases, at certain stages, conventional paths could be preferable. Engaging in deals with record labels to help on more exploitation of music once musicians got bigger, may be one of the examples. However, for new or amateur musicians, the innovative paths through Internet intermediaries could be more beneficial for them in disseminating their music widely while building fan base. In relation with the economic income, since those paths have different transaction costs and could bring different source of revenues, again, the choice of which path could bring the positive impacts for the music career, business, as well as satisfaction on consumption are left to the respective actors, users, and consumers in each particular case to decide.

In this respect, musicians have a choice to develop their music career through the available diverse paths that can meet what market demands, and in every stage, they could observe, assess, adjust, and develop which paths that will be more beneficial for the particular music-related activities they want to do. This could support how musicians and other actors obtain the desired economic compensations, since they can strategically make use and develop the available diverse paths. In regards to this, the strength of copyright protection should be adjusted to give room and make it possible for such diverse paths to emerge and continue growing, as well as facilitating more discretion and freedom for the musicians, other actors, as well as users and consumers in creating, distributing, and consuming music using the paths that could bring the most efficient outcome for them.

5.2 Revisiting the Exclusivity of Copyright

Copyright legal framework gives exclusive rights for the creators of music in authorizing the reproduction, adaptation, modification, distribution, as well as its publication to the public. In the exercise of these exclusive rights, the original copyright's holders, which include musicians, producers, and record labels, could give authorization to other actors, such as: (a) publishers: to administer copyright and manage the copyrighted music; (b) music distributors: to distribute the music; (c) broadcasting organizations: to communicate and broadcast music to the public; or (d) other relevant actors attempting to use the music for adaptation, cover, and synchronization activities. The key issue regarding this exclusivity and authorization is to secure the paths in getting economic returns as incentivizing the actors to engage in the business, as well as obtaining recoupment for the costs that each actor involved has

contributed in producing, publishing, and bringing the music to the market, including raising of profits.

As *Ruth Towse* mentioned in her paper titled “copyright and the Cultural Industries: Incentives and Earnings,” copyright law merely provides the framework for transactions surrounding the business and exercisement of those exclusivity and authorizations, and how much is actually earned depends on the market outcomes¹¹⁷. This simply explains the phenomena why even though creation, distribution, and consumption of music have been secured exclusively with authorizations and ‘artificial scarcity’ efforts, in any case it may be still difficult for musicians to actually earn proper economic incomes from music to support for living. It is because the factor of *nobody knows*, whether the music will be successful in the market or not. And even if it is, musicians still need to share its income pie with other right holders and licensees, making it harder for those musicians to secure a proper steady income. Copyright attempts to give such desirable economic incentive, however even with the exclusivity and authorizations to secure the income paths, there are still *considerable* transaction costs and inevitable distribution of income between the actors that make the musicians not *that* economically compensated.

William Patry argued in his book “How to Fix Copyright,” that even copyright in fact cannot provide the necessary *initial* economic conditions that most musicians need¹¹⁸. In this respect, such initial economic condition is considered important as providing steady capacity for musicians to keep creating music. This comes back to the earlier opinion that the exclusivity and authorization of paths aimed to seek economic returns simply cannot work if the music does not meet the demand in the market. Also adding the fact that *some income* that such unsuccessful music obtained in the market, still needs to be distributed for all the actors involve, and not just for the musicians. This does not mean that the exclusivity and authorization that copyright provides are completely ineffective. Copyright could be effectively functioned to protect the works and compensate the right holders once the works turn out to be successfull in the market, in which the exclusivity and authorization enforced could protect the right holders from free riding, and support a steady income for the musicians.

¹¹⁷ Ruth Towse, *Copyright and the Cultural Industries: Incentives and Earnings*, Paper for Presentation to the Korea Infomedia Lawyers Association, Seoul, 30th October 2000, scholar.googleusercontent.com.

¹¹⁸ William Patry, 17.

However, since initially *nobody knows* whether the music will be successful in the market or not, and that ‘artificial scarcity’ that right holders, acting as gatekeepers, exercise to the market cannot bring proper economic returns to the musicians (considering transaction costs and sharing of income pie), exclusivity and authorization paths that copyright try to support factually cannot work in every case, and even could deprive the potential dissemination of the music outside the authorized paths. The available paths also may not meet what users and consumers afford to desirably access and pay for, resulting from unefficient achievement of copyright’s objectives, which are supposed to economically compensate musicians and providing widely affordable access of music for the users and consumers.

Observing this phenomena, it will likely be further ineffective if copyright law is adjusted in the way that could deprive and hinder more the alternative and diverse paths supported by the technology and Internet, since those emerging paths may somehow overcome the problems caused by the inefficiency of exclusive and authorized paths in the music business. An empirical-based research was conducted in France to seek the impact of digitalization and long-tail marketing beyond the conventional exclusive paths. The long-tail decentralized marketing and promotion through ‘neutral’ Internet intermediaries could bring positive impacts in disseminating the music from little know musicians. The worldwide accessible condition of Internet has supported even for music of such little known musicians to seek presense recognition and further potential economic gains. This research, which was conducted by *Telecom ParisTech*, indicates that the functions of ‘neutral’ Internet intermediaries, such as social networking sites, have become a complementary – and not substitute, to the existing conventional paths of music consumptions by the users and consumers¹¹⁹. As discussed previously, the technology and Internet could provide shortcuts that may lessen the transaction costs incurred by number of actors involved, and these actors, including musicians in particular, could choose which paths that could be more beneficial in each stage of creating, distributing, and consumption of music without have to initially considered the exclusivity or authorizations. If such exclusivity and authorizations are enforced, somehow they may make such diverse paths and innovative platforms become

¹¹⁹ The result of this research regarding long-tail promotion through Internet sites, was presented in the ACEI (Japan Association for Cultural Economics) 17th International Conference on Cultural Economics at Doshisha University, Kyoto, at June 22nd, 2012. The title of the paper is ‘*Who Benefits from Online Promotion? Album Sales and Online Presence in the Recorded Music Industry*,’ prepared by Irene Bastard with Francois Moreau, Marc Bourreau and Sisley Maillard.

economically unpreferable in the market, because the access and enjoyment of music through such platforms may require different costs¹²⁰.

Furthermore, these diverse paths supported by the technology and Internet could also help solving the aforementioned issue of musicians' *initial* economic conditions. This is based on the assumptions that through such diverse paths and platforms in the Internet, musicians could directly connect to the potential users and consumers, such as through online music sites' services, from which they could build fan base as sources of revenues, and that they can distribute and disseminate their music worldwide with remarkably reduced costs and less intermediating actors involved, meaning as less slices to be shared in the pie. Once those musicians got bigger and popular, and their music are recognized by many fans, they could have more bargaining power to engage in exclusive and authorization deals (if they desire to) with other actors in the music business. It is also assumed that at that stage, those musicians may already have the awareness on strategic behavior and could identify which actors they want to engage with, thereby minimizing the transaction costs of identifying and gathering with the expected parties (see chapter 4, section 4.1.1).

5.3 Revisiting the Scope of Exceptions to Copyright

The exclusive rights that copyright provide to the right holders are not absolute. In the effort to balance the different interests of right holders and the access of works by the society, there could be some copyright exceptions justified under certain circumstances. According to WIPO, exceptions to copyright protections allow for specific acts to occur in relation to otherwise protected works, without incurring any liability for copyright infringement in respect of that act¹²¹. This means that under the justification of copyright exceptions, the certain acts which could be alleged as infringing copyright will be legally justified.

¹²⁰ Recently there is new opinion from *Marcus Taylor*, founder of TheMusiciansGuide.co.uk mentioning the idea that potential new way of raising income for musicians is through the 'exclusivity' given to the fans. Referring to the case of Amanda Palmer, who gave exclusive music services to the fans, such as exclusive performance at their own house or exclusive signed album and artworks, those ways in fact could bring considerable incomes to her. In this context, the exclusivity is seen as offered by musicians directly to the fans, and not as excluding competitors through creating exclusive paths in which users and consumers only have limited choice of paths to access, enjoy, and connect with musicians, but more on providing innovative and varied paths to give exclusive connections, performance, and relationships with the fans, directly and personally by musicians. The article is available from hypebot.com.

¹²¹ Nic Garnett, for the Standing Committee on Copyright and Related Rights, Fourteenth Session, Geneva, May 1 to 5, 2006 of World Intellectual Property Organization (WIPO), *Automated Rights Management Systems and Copyright Limitations and Exceptions*, accessed from wipo.int (22 November 2011), 10.

5.3.1 The Three-Step Test

Under the *three-step-test*, the exceptions of the rights holders' exclusive rights are considered applied under 'certain special cases,' that they do not conflict with the 'normal exploitation of the works', and they do not unreasonably prejudice the legitimate interests of the author¹²². The Panel of World Trade Organization ("WTO") acknowledged that new development of technologies, including the Internet and cloud, may affect on determining what conditions could be considered as 'certain special case.' As relates to second condition, it is considered that the use subject to exception should not compete with actual or potential economic gain that the right holders could get from normal exercise of the rights in question. Then, the third requirement considers that the use subject to exception is not unreasonably cause any damage to the interests of the right holders, based on what copyright aims¹²³.

Providing even stricter standard to justify the exceptions of copyright, the Panel considered that: possible conflict with a normal exploitation of a particular exclusive right cannot be counterbalanced or justified by a mere fact of the absence of conflict with a normal exploitation of another exclusive right, even if the exploitation of the later right would generate more income. This indicates that in determining whether the exception actually conflicts with 'normal exploitation' of the work or not, it should be seen separately on each respective right. The ground to this argument is that each right is considered essential and ignorance of conflict upon certain right cannot be justified even though other rights could give considerable economic value. The element of 'normal exploitation'¹²⁴ itself is determined in conditions where, with a certain degree of likelihood and plausibility, the rights holders could acquire considerable economic or practical importance, as an addition to the

¹²² The conditions required are derived from the Article 9 paragraph (2) of Berne Convention for the Protection of Literary and Artistic Works ("**Berne Convention**") and Article 13 of the Trade Related Aspects of Intellectual Property Rights ("**TRIPS**"), which provide the limitations or exceptions of copyrights under certain circumstances. It should be noted that 'limitations' are considered not well-relevant in this case, since 'limitations' are provided as justification to exclude some of works from the field of protections, while music certainly needs to be kept protected as a creative product.

¹²³ Nic Garnett., 16.

¹²⁴ Professor Ginsburg on his book called *Toward Supranational Copyright Law? The WTO Panel Decision and the Three-Step Test for Copyright Exceptions*, mentions that a condition of "normal exploitation" will be an ideal one, in which there is an effective or affordable means of enforcement of copyrights, thereby right holders do find it worthwhile or practical to exercise their rights. In this case, the exploitation falls within the scope of copyright, and no copyright or related cultural policies undergrid the right holder's disability from exercising the right, in which that constitutes (as a normative matter), a "normal" exploitation. Jane C. Ginsburg, *Toward Supranational Copyright Law? The WTO Panel Decision and the "Three-step Test" for Copyright Exceptions*, *Revue Internationale du Droit d'Auteur (RIDA)*, issue 187, January 2001 in Nic Garnett., 18.

forms of exploitation that currently has generate significant tangible revenue¹²⁵. Departing from those standards, as discussed in this research, there are three different stages of music flow from the actors to the users and consumers, and in such three stages specific exclusive rights could be identified. For instance, in the stage of creation, musicians have the *mechanical right* for the song recorded in deals with record label, in which they are entitled for certain amount of royalties from the sales of copies of recorded song or album, in which their works are used. The economic compensation for this right could be placed differently if different path is used. For instance, if musicians do not engage into record deals and create their own independent recorded songs, or even if they have record deals, but then distribute the songs or album digitally through Internet intermediaries, the amount of digital royalties they will get may have different calculation from the physical sales-based royalty payment.

In some cases, even if the distribution through the Internet cannot bring significant economic compensation for the musicians, that does not mean they cannot obtain considerable economic income through other paths, such as through live performances. The Internet has provided widespread and affordable access path through which users and consumers could listen and enjoy the music, and this could support musicians in promoting their music, as well as encouraging users and consumers to attend their live shows or concerts. This means that in the new model, it is possible that one certain path at certain stage could be the most efficient and beneficial for the actors, and this condition may later change depending on the respective activity or stage, or the success of musicians. However, such kind of choices of most beneficial paths will not be well-facilitated if copyright enforcement is basing on the previous standard of seeing and strictly protecting each right separately, and the fact that one right has generated more income than the others, could not bring any justification to its exception.

Moreover, the assessment of ‘normal exploitation’ also needs to be revisited. Until today, the circumstances considered as ‘normal exploitation’ are mainly based on conventional business model, which simply cannot be the only choices of paths in this digital era. As mentioned earlier, the previous ‘normal exploitation’ of music through such exclusive and authorization paths cannot always bring significant *initial* and steady economic capacity for the musicians to support living and further creation of music. Therefore, hindering the possibilities of constructing other paths outside the conventional ones, which could support the chances of

¹²⁵ Ibid.

raising *initial* and steady economic conditions; something that previous (the so considered) ‘normally exploitative’ paths cannot provide, will violate the legitimate interests of musicians to seek better economic incentives. The choice of paths or outcomes will relatively vary in each case of musicians based on certain considerations, such as the transaction costs and potential benefiting paths. It will not be legitimate to hinder the development of such alternative paths, if by using them, the musicians can actually raise appropriate economic compensation and build their music career¹²⁶.

5.3.2 Fair Use Doctrine

The doctrine of fair use was rooted in beliefs and principles to which the courts, in developing the law, provided a balance between copyright protection of original works embodying the creative efforts of creators on the one hand, and the rights of others to use portions of the copyrighted works without permission from, or compensation to, the right holders¹²⁷. In this sense, appropriate dissemination of the works supported by fair use may facilitate the use of (portions of) the works by the society in general, and/or future creators in particular. Referring to the restatements of *Joseph Story*, an American lawyer and jurist being a progenitor of fair use doctrine, the fair use doctrine could be considered based on several important factors of: “*the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects, of the original work.*” In other words, in determining a fair use, it is important to consider:

1. The purpose and character of the use, including whether the use is of a commercial nature or not;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole, and
4. The effect of the use upon the potential market for or value of the copyrighted work¹²⁸.

¹²⁶ If copyright (with its framework of exclusivity and authorization paths by right holders) are not providing such a steady income, as it is not for most authors and artists, then we have to facilitate other alternative sources of income for them (or at the least, giving discretion and flexibility for them in developing such other sources of income). (William Patry, *How to Fix Copyright...*, 27).

¹²⁷ Ronald S. Rosen, 253.

¹²⁸ This concise statements made by *Joseph Story* in an argument made before the Court of Chancery by two English barristers in 1835, and forward to the 1976 Copyright Act. (Ibid., 256).

Despite the general explanation and criteria of fair use, it is still, however, depending on each case by case situation to measure whether the respective matter falls under the scope of fair use¹²⁹. It is somehow vary the way courts have combination of logic and invention in formulating the exceptions of copyright, as well as analyzing and determining boundaries between which works are subject to fair use, and which are not¹³⁰.

The case of *Sony Corporation of America v. Universal City Studios, Inc.: The Commercial Purpose Detour* illustrates how the technology influences the use of works under the copyright protection in general, and the fair use doctrine in particular. The technology used in this case is a videotape recorder ("VTR"), called as Betamax, manufactured by Sony, which enables consumers to videotape copyrighted television product off the air for later private viewing (also known as "time-shifting"), and also potentially for library purpose, in which the viewer/recorder can keep the copy of the tape so long as he/she desires repeat viewings. The Supreme Court in this case concluded that: "*non-commercial recording for home viewing was a fair use, and therefore did not constitute copyright infringement... and even when an entire copyrighted work was recorded, .. it was still a fair use 'because there is no accompanying reduction in the market for plaintiff's original work*¹³¹." This explains that copying works for non-commercial private use (i.e. home viewing) falls under the scope of fair use, and therefore should not be constituted as infringement to the copyright.

An important issue to be noted is also in regards to the market of the works. The assessment would be in respect to whether such private use results in reducing the market of the works, or not. There could be several arguments departing from this case as relates to the availability in the choices of consuming paths. The case illustrates important alternative path in enjoying the work through "time-shifting." In the case of music, the current technology including those of gadgets for music players and easy access through the Internet and cloud have facilitated the "time-shifting" in enjoying music into anytime and anywhere, and not necessarily through certain scheduled broadcasts or live shows which services are limited only within such time. In regards to the context of music appreciation by the users and consumers, and its impact to

¹²⁹ It is argued that the situations in which exceptions could apply should not be define precisely, since it may hinder the courts in responding flexibly to technological advances or changes in practices (Robert Burrell and Alison Coleman, *Copyright Exceptions: The Digital Impact* (Cambridge: Cambridge University Press, 2005), 275).

¹³⁰ Continuing explanation on the criteria of such doctrine are left to the federal courts through the judicial process. As mentioned on the reports on Section 107 of the House and the Senate that: "*Section 107 is intended to restate the present judicial doctrine of fair use, not to change, narrow, or enlarge it in any way.*" (Ibid., 257).

¹³¹ Ibid., 258-259.

the market, the online “time-shifting” consuming paths of music do not necessarily bring negative outcomes to the consumption of music in the market. It could serve as alternative path for users and consumers in accessing and enjoying music anytime they feel convenient according to their rationals of satisfaction, for example in the form of recorded music broadcasts or live performances.

5.4 Evidence-based Policy Making¹³²

In order to further justify the adjustment of copyright in giving room and flexibility of the choices of diverse paths facilitated by the Internet and cloud, the one preferable approach will be on ground of *evidence-based policymaking*. This means that the granting of exceptions based on *the three-step test* or *fair use doctrine*, should be assessed in accordance with the reality and evidence, of whether the paths chosen by the actors, users, and consumers in creating, distributing, and consuming music, could be beneficial and bring the efficiency for them. The outcomes may vary on each case, and therefore ‘one fits all’ policy making may not be effective, because at first place, the law by itself cannot guarantee successful markets, and as previously discusses, it only create framework that could protect investments (or transactions) in the markets, and that successful market is basically based on demand by the users and consumers. Otherwise, it cannot bring economic returns to the musicians or other actors¹³³.

In regards to this, technology has facilitated new consumer expectations in the music market, and upon this the actors could have two choices, whether to meet such expectations of music market, or to refuse meeting such new expectations, in which consumers could go by other consumption paths to have their needs satisfied¹³⁴. In order to make copyright law becomes effective as affected by the Internet and technology, policy making should depart from evidence-based analysis and assessment of which paths could optimally reach the goals of economically compensate the right holders, while in the same time meet what music market demands and expects.

¹³² The idea was proposed by William Patry, through his book *How to Fix Copyright*.

¹³³ *Ibid.*, 37.

¹³⁴ *Ibid.*, 39.

Since it grounds on evidence and reality, then how certain musicians exercise their economic rights could be different from others on each particular case. The rational is for them to seek and develop the most beneficial path that could support their music career and bring steady economic income. On the other hand, the users and consumers also have their own rational in accessing and consuming music according to what they expect and how such consumption is facilitated. copyright law should not hinder this diverse and innovative choices. The music business, just like other creative business, has that characteristic of *nobody knows* and *infinite variety*, meaning that users and consumers' taste and expectations could not be absolutely generalized. Thus, giving them choices and chances to meet and discuss each other interests through innovative and diverse online paths may serve as a desirable option to enjoy music.

Relevant with the evidence-based analysis, providing another justification to the copyright exceptions is the condition of 'market failure.' In a market failure condition, the actors involved are unlikely to agree upon licenses, and oftenly the reason is because the transaction costs of negotiating licenses may outweigh the value of such licenses¹³⁵. In this case, there is absence of appropriate licensing arrangements, which means that it would be impossible or at least impractical to obtain any license in such circumstances. In the case of Internet and technology intermediation, it is presumed that copyright exceptions will not be necessary if an 'automated licensing system' is prevailed, through which negotiation of agreements between the actor is no longer necessary. This automated licensing schemes or similar systems applied to the Internet and cloud could probably reduce the transaction costs as if it were negotiated separately for each activity or case. However, if in any case, there is no such system of automatic licensing and it is impossible for the relevant parties or actors to negotiate for licensing, in which it induce high transaction costs, the exceptions could apply¹³⁶.

Earlier mentioned in this research that the technology, including the Internet and cloud, may reduce the cost for creation and distribution. This means that, there could be less investment, and it could induce less restrain to gain the 'expected revenues' (or *sufficient* recoupment)

¹³⁵ Of all the varied arguments, some provided that the exceptions should only be available: (1) in cases where the right holders most likely will not licence the use of works, (2) that the exceptions should be interpreted narrowly, and (3) copyrights are regarded as balancing the competing interests (Robert Burrell and Alison Coleman, 168-169).

¹³⁶ An example to this condition, where giving license to each party making use of the works will not be considered as efficient, could be seen from high-frequent activities of user generated contents uploaded via sites, such as YouTube.

that will exist if the actors have invested big amount of money for the development of works. This leads back to the question of copyright necessity. If the technology could actually be utilized effectively to reduce the costs, while at the same time inducing innovative revenues, a strict licensing scheme of copyright might hinder such flexible business strategies. If the argument is acceptable, then in order to keep effective, copyright will need adjustment to its rights and licensing frameworks, because as *Robert Burrell* and *Allison Coleman* said, it is about what copyright ought to or ought to do in dealing with the technological debates, and since the old model may induce higher transaction costs, perhaps the more flexible schemes could work¹³⁷.

As mentioned earlier, the long-tail promotion through the Internet can bring positive impact for musicians' media presence, and this path of promotion even may not require much cost - considering also the effect of information spillovers¹³⁸, because the music can easily be accessed and disseminated among users and consumers through the Internet. Hence, there could be a remarkable cost reduction of music dissemination supported by the Internet and cloud. Considering the cost to disseminate music and its effect, which is world wide spread of music, the Internet and cloud provides a way to overcome the risk of market failure. The market failure may occur because of high transaction costs in entering the market, high costs in reproducing the music, as well as high transaction costs in setting up deals for distributing and disseminating music.

In such case, high transaction costs may hinder the actors to set up deals and enter the market, because the cost of negotiating may outweigh the value of the deal itself. Innovative online music distribution system with remarkable reduced costs in spreading the music could overcome such conditions of market failure. The actors just need to find the appropriate intermediary and negotiate with it. In this case, the value of deal will be higher than the cost spent to negotiate as if it is with several different gatekeepers, and reduced costs of distributing music may overcome the problems of fixed cost and variable cost occurred under

¹³⁷ Robert Burrell and Alison Coleman, 167-180.

¹³⁸ An empirical study was conducted in France to assess the effect of information spillovers from online recommendation tools for the sales of musicians' albums. The results showed that musicians' could benefit from the spillover because it may positively affects the sales of musicians' later albums, compared with the previous albums when users and consumers have only little information available for the music. The online recommendation tools give channels for users and consumers to be much well-informed about the music they would like to pay (A paper by Sisyley Maillard, *Consumer Information and Demand in Cultural Markets at the Digital Age: Measuring the Change in Information Spillovers in the Music Industry*, presented at the ACEI 17th International Conference on Cultural Economics in Doshisha University, Kyoto, at June 22nd).

the conventional model. From the side of users and consumers, through the Internet and cloud, they can access easily the disseminated music also with remarkable reduced cost, as compared if they access music only through certain exclusive paths, as resulted from monopolistic activities by gatekeepers. In an effective deal with the appropriate intermediary, there could be less transaction costs, as well as reduced costs in distributing and disseminating music, thereby making the market failure for the disseminated music becomes unlikely to happen.

5.5 The Underlying Theory

As aforementioned, there are economic interests of creators and right holders that copyright needs to address. In theoretical ground, according to the ‘incentive theory,’ the underlying premise is that a work will only be created if the expected revenues exceed the cost of expression (in the creation stage) and the cost of making and distributing copies of the works (in the distribution stage). Moreover, it is also expected that the successful works can compensate the failure of other works. In this respect, copyright is needed as an incentive because creating music could be a time-consuming and expensive business. The consideration is; in the absence of copyright protections, there is risk of free riding activities, in which certain actors would not have to cover the cost of creation, and once they wait and know that such music is proven to be success, they will not have to bear the risk of failure¹³⁹. In this case, copyright enforcement, such as licensing or authorizations, can prevent such free ridings and can secure the paths for the original actors in gaining the expected revenues to recoup the costs. If there are no copyright rules for such enforcement, it is argued that the economic gained could be less.

The other theory, called as ‘neoclassical theory,’ sees copyright not only as providing incentives for the creation of works, but also as a mechanism that facilitates the exchange of rights and ensures that the works will be transferred to actors who value them most highly, and in that sense perfecting the market for copyrighted works. The focus is for the rights’ owners to extend all economically valuable uses of works. In regards to this, not only that the exceptions to copyright are granted in condition of market failure, but also to give opportunities for the right holders to construct paths and develop the licensing or authorization

¹³⁹ Robert Burrell and Alison Coleman , 170.

schemes that would and could reduce the transaction costs¹⁴⁰. In determining this exceptions, again, an evidence-based approach is preferable, since it is unlikely to always predict in advance the precise circumstances that could be the reason why exceptions are desirable¹⁴¹. The investment in music business is an *ex-ante*, meaning that it could succeed and bring a lot of money, but it could also fail. There is risk of uncertainty there, and copyright law is believed could provide security to deal with the risk, and ensuring that the stakeholders get their benefits. However, the existing frameworks of copyright was also created in an *ex-ante* condition, where the legislators have never really been able to predict the possible problems that may occur in the future. The development of technology and its impacts are one of those considerably unpredictable problems. To deal with the issue and preventing any market failure, the legislators are expected to have understanding (or at least intentions to understand) what really happens in the market and the recent reality of the business and industry, otherwise efficient regulations and legal systems could not be developed.

In dealing with such recent debates and problems, where the conventional model could not be applied efficiently anymore, logically, the innovations to the model should be encouraged. Therefore, it is believed that in adjusting the law, legislators should pay attention closely to the reality in the market, so that they could evaluate and assess the innovative models, and judge the impacts, then enact or adjust law based on the assessment of such impacts. In order to keep following the market dynamics, flexibility is necessary, and it is argued to better have the flexible legal norms than rigid regulations and laws, because (again) the legislators could not always able to predict possible future problems, and to deal with them effectively, *ex-post* decisions may be preferable. The flexible copyright's legal norms will most likely be able to facilitate such kind of innovative *ex-post* legal solutions¹⁴².

5.6 The Proposed Model: Enhancing 'Channel Capacity'

As mentioned earlier, the concept of 'channel capacity' in social network analysis refers to the availability of diverse paths through which music can flow from one actor to another, including to the users and consumers. In this model, the copyright's exclusivity exercisement

¹⁴⁰ Ibid., 171.

¹⁴¹ Ibid., 277.

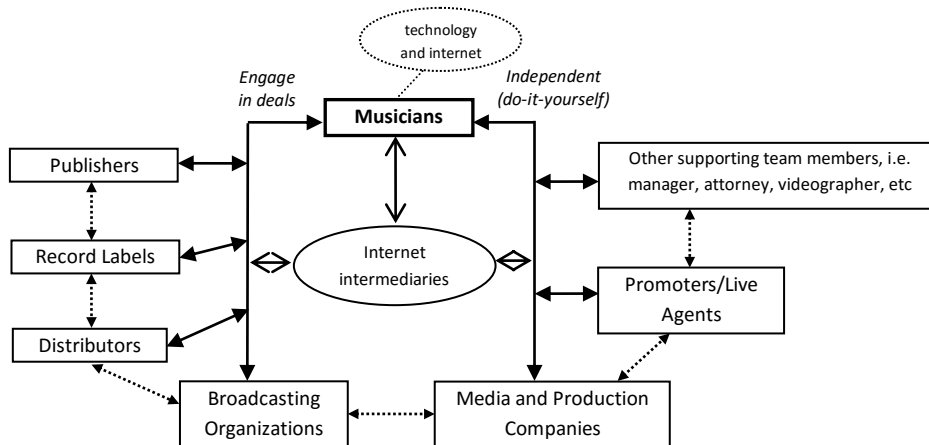
¹⁴² As inspired by Erik Vermeulen, *Lectures 4 and 5 of Business Law, Lawyers, and Innovation*, presented at Graduate School of Law, Kyushu University, International Program, on April 12th, 2012.

may not be considered as automatically restraining. In contrast, such exclusivity, which is enforceable through licensing or authorization schemes, shall be subject to the right holders' choices of most beneficial paths with less transaction costs as possible. In this respect, the copyright law is more considered as providing legal tools as a support in compensating the actors in music business, as well as facilitating transfer of rights to other actors under circumstances that could give high value to the music and desirable economic returns - creating a perfect market, where the music could be most highly valued¹⁴³. This means that the right holders are in the best position to give any exception, as well as enforce, or not to enforce, its exclusivity in every stage of creation, distribution, and consumption of music.

In this respect, instead of depending on exclusivity and 'artificial scarcity' in a winner-take-all market share environment, alternative approach will be to facilitate and support the right holders, particularly musicians and creators, to develop paths and channel capacity that could bring them a steady economic capacity to keep on creating music, as well as make a living from it. In this case, to be steadily economically incentivized, musicians and creators do not have to be the winner in market share, so long as they can get incomes from music-related activities through various paths, not only under the mainstreams and conventional model. Thereby, the goal is not only to find potential stars, develop and promote them, and grab the market share, but also to compensate any musicians and creators who wish to contribute in creating music and make a living from it. Of course the other goal may be becoming popular, to be called as successful, and obtain even higher incomes, but if copyright law allows such rooms for 'channel capacity' and diverse paths, musicians and creators will have varied alternative paths to develop their desired music career while building the economic capacity.

¹⁴³ It is argued by *William Patry*, that: 'we should be able to provide authors and artists with economic ability to be authors and artists, ... it is not copyright for copyright's sake that matters, rather, a steady income' (William Patry, 27).

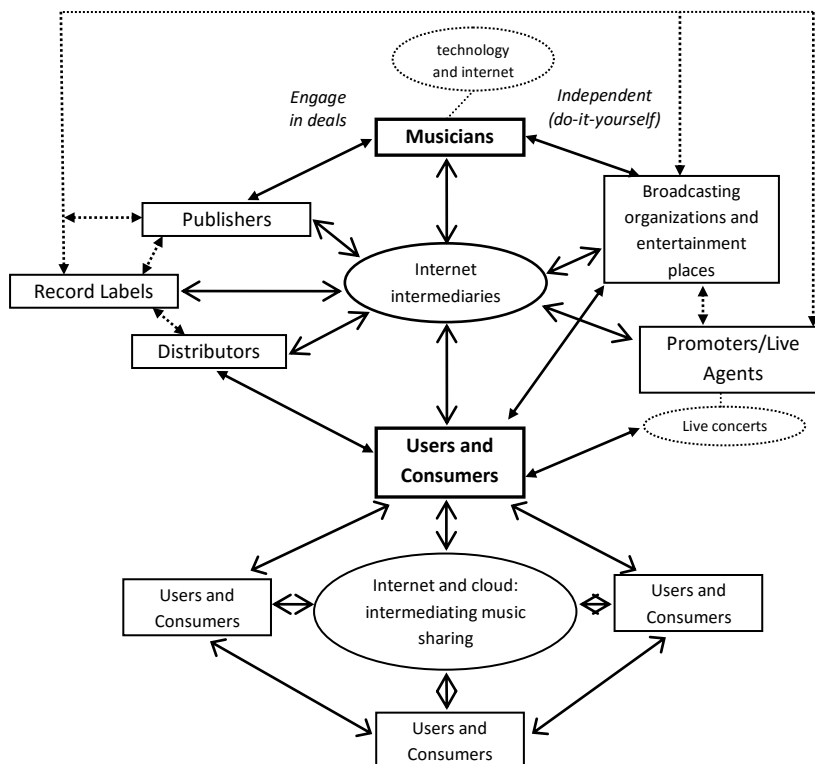
'Channel Capacity' in the Stage of Creation and Distribution



*There are diverse and varied alternative paths that could be the most beneficial and efficient, possible less transaction costs, for each actor in the business.

→ and→ indicate the paths based on conventional model
 → indicates the 'shortcuts' supported by technology and Internet

'Channel Capacity' in the Stage of Distribution and Consumption



*There are diverse and varied alternative paths that could be the most beneficial and efficient, possible less transaction costs, for each actor in the business.

→ and→ indicate the paths based on conventional model
 → indicates the 'shortcuts' supported by technology and Internet

6 Conclusion: Final Remarks

As discussed, the research aimed at describing the reality of music industry's business, both based on conventional model, as well as those affected by the Internet and technology. Using the social network analysis as the metodological tool, this research identifies and analyzes the actors involved in such business, as well as dependancy relationships and their roles or functions in the flow of music in stage of production, distribution, and consumption of music. From such findings, the research is purposed to provide alternative justification for the adjustment of copyright as affected by the emerging technology and the Internet, so that it can serve effectively as tools incentivizing the busines, in which the factor of transaction costs also important to be taken into account.

The Finding 1: Competing and Diverse Paths of Music Flows

In this research, the analysis of contemporary debates in music business based on the social network analysis and economic approach have indicated that the competition in music market as affected by the Internet and cloud is not on the actors involved in the business. Rather, the Internet and cloud have facilitated innovative and diverse paths for the actors, users, and consumers in producing, distributing, and consuming music. This means that the Internet and cloud have increased the 'channel capacity' and are providing diverse paths for musical works to flow from one actor to another, as well as its access, distribution, and dissemination to the users and consumers. The competition of paths occur since each of them has distinguished benefits and costs, which may vary in different cases of music production, distribution, and consumption. The emerging innovative and diverse paths supported by the Internet and cloud have made it possible for the actors, users, and consumers in the business to choose, utilize, and construct which path or channel they want to use in consideration of their views on its benefits in each circumstance, including as relevant with the economic factors of costs (including transaction costs) and gains.

The Finding 2: Exclusivity of Copyright and the Transaction Costs

Since innovative and diverse paths in music production, distribution, and consumption as supported by the technology and the Internet keep emerging, the exclusivity and control over

the dissemination and consumption of music become harder to maintain. It follows that, if right holders still want to enforce a strict exclusivity and control of music flow, many transactions and deals on transferring rights and/or giving authorizations, are required. This could lead to high transaction costs of negotiating the deals, and could lead to the market failure, in which the actors have to deal with high costs of licensing or clearing all the (exclusive) rights. There could be also high enforcement costs for copyright protection when there are parties providing unauthorized (or unlicensed) paths. However, this is of course just one assumption. There could be a case where enforcement of copyright could lead to a more beneficial outcome for the actors, users, and consumers, or otherwise. For instance, when the music has already been transferred to the actors who value it the most, musicians may want to secure the path with such actors, and eliminate the risk of free riding. This means that at some points, enforcement and exercise of copyright could either lead to efficient or inefficient outcomes, and this may vary in each particular case.

The Proposal for Adjustment of Copyright: Strength of Copyright Protection and Its Enforcement

The objective of copyright is to incentivize, among others, the musicians and intermediaries to enter the music market in which they have to face the *ex-post* risk, such as the success or failure of music, or competition with other music to win the users and consumers' attention. However, it is not always the case that musicians will create music only on basis of profit-seeking alone. It is true that they need to earn money in order to support their living, and therefore copyright could be seen differently. Not that without copyright those creators would not create music, rather, copyright should serve as a tool that could be effectively used by those creators to support them in seeking economic compensation for the works they created, as well as striving for a steady income. It is indeed a beneficial framework that copyright protection is obtained without having to file any formalistic registration. The fact that the creators got their moral rights automatically to be appreciated and recognized as the authors or creators of the work, is also essential for their integrity as intellectual or creative creators.

In regard to that, the proposed adjustment to the copyright regime and music business - justified by the findings through social network analysis and economic approach, can be best explained in terms of the strength of copyright's protection and copyright enforcement. Since

in each case there could be differences on which path or channel that musicians and other actors will choose, then the exercise of copyright protection and its enforcement should be left to them to decide, at which stage they want to construct exclusivity and make use of their copyright. This will also be based on their own economic considerations in seeking and constructing the path, as well as exercising and enforcing their copyright in entering the market. The technology and the Internet could provide them assistance in facilitating the search of desirable parties with whom they could construct paths. This means that the appropriate contractual relationships will be essential for the actors in choosing and constructing the path of music flows in the business.

The enforcement of exclusivity, (i.e. clearing of rights to give authorizations for other actors), is necessary in the case they want to exercise the copyright. If there are different right holders for the music, there will be higher transaction costs in authorizing the exploitation of rights. Since bundling of rights (to one right holder only) may not always be possible due to specific roles and functions of the gatekeepers in the business, to reduce the transaction costs of enforcing exclusivity, such notion's strength should be lessened by focusing on utilization of the potential resources, including those supported by the innovative technological paths, in seeking sustainable economic compensation. The diverse paths of conventional ones and those influenced by the Internet and cloud could be seen through a different frame as regards their effects on the whole business activities of a musician. Aside from choosing the most beneficial paths, an assessment could also be suggested in seeing whether those paths are substitutable or complementary towards each other. The choice of which paths could be beneficial, and whether its substituting or complementing, depends on each particular case. At least, the 'competing' path or channel for music flow in the business affected by the Internet and cloud is for a *good* sake, which is to explore and construct deals of music with those who can value the music at the most, compensating the musicians and intermediaries, as well as other respective actors involved.

To conclude, some frameworks of protection in copyright should be maintained, namely the automatic protection of moral rights of the creators of the works as a recognition for their integrity and intellectual or creative creations. However, when it relates to the exclusive protection of economic rights, such as the rights of reproduction or the rights of publication, it should be assumed that those rights are *not exclusive* unless the creators or right holders

declare it to be so. In this sense, the non-exclusivity could open up the chances for those actors, including users and consumers, to seek the appropriate path or channel supported by the Internet and technology at most beneficial circumstances for the flow of music in the market. Then, at later stage, those musicians or other actors could seek to secure some paths or channels visible to be enforced by copyright's exclusivity and control, considering efficient transaction costs. By lowering down the strength and exclusivity, the copyright adjusts to the recent conditions affected by the technology and Internet, in which music business actors and firms have indeed losing some of their controls and exclusivity as in the conventional business. To enforce and strengthening what have already been inevitably loose will not likely bring any efficiency, and most likely will require high costs, including those as relates to transactions and enforcements. Besides, the technology and the Internet may provide alternative and innovative shortcuts for a more dynamic music market, and this may benefit not only the actors in music industry, but also the users and consumers, if they can be utilized strategically.

Bibliography

1. Primary Resources

1.1 Regulations

World Intellectual Property Organization (WIPO). Berne Convention for the Protection of Artistic and Literary Works Year 1886 (as amended on 1979).

World Intellectual Property Organization (WIPO). Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations, 1961.

World Trade Organization (WTO). Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization: Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994.

World Intellectual Property Organization (WIPO). WIPO Performances and Phonogram Treaty, 1996.

World Intellectual Property Organization (WIPO). WIPO Copyright Treaty (WCT), 1996.

1.2 Books

Borg, Bobby. 2003. *The Musician's Handbook, A Practical Guide to understanding the Music Business*. New York: Billboard Books.

Burrell, Robert, and Allison Coleman. 2005. *Copyright Exceptions: the Digital Impact*. Cambridge: Cambridge University Press.

Caves, Richard E. 2000. *Creative Industries-Contracts Between Art and Commerce*. Cambridge: Harvard University Press.

Cohen, Julie E., et al. 2006. *Copyright in a Global Information Economy*. New York: Aspen Publishers.

Efroni, Zohar. 2011. *Access Right, the Future of Digital Copyright Law*. New York: Oxford Univeristy Press, Inc.

Gammons, Helen. 2011. *The Art of Music Publishing-An Enterpreneurial Guide to Publishing and Copyright for the Music, Film, and Media Industries*. London: Elsevier Ltd.

Hugenholtz, P. Bernt (ed.). 1996. *The Future of Copyright in a Digital Environment*. The Hague: Kluwer Law International.

Landes, William M. and Richard A. Posner. 2003. *The Economic Structure of Intellectual Property Law*. Cambridge: The Belknap Press of Harvard University Press.

Lehmann, Volker. 2005. *Copyright in the Music Industry*. Auflage: Grin Verlag.

Mankiw, N. Gregory. 2001. *Principles of Microeconomics, Second Edition*. Fort Worth: Harcourt College Publishers.

Passman, Donald S. 2009. *All You Need to Know About the Music Business – Revised and Updated*. New York: Free Press.

Posner, Richard A. 1998. *Economic Analysis of Law, Fifth Edition*. New York: Aspen Law & Business.

Reed, Chris. 2004. *Internet Law: Text and Materials, Second Edition*. Cambridge: Cambridge University Press.

Rosen, Ronald S. 2008. *Music and Copyright*. Oxford: Oxford University Press, Inc.

Scott, John. 2000. *Social Network Analysis, a Handbook (second edition)*. London: Sage Publications Ltd.

Senftleben, Martin. 2004. *Copyright, Limitations and The Three-Step Test, an Analysis of the Three-Step Test in International and EC Copyright Law*. The Hague: Kluwer Law International.

Wikstrom, Patrik. 2009. *The Music Industry, Digital Media and Society Series*. Cambridge: Polity.

2. Secondary Resources

2.1 Journals

Anders Henten and Alexander Oest, *Copyright: Rights-holders, Users, and Innovators, Telematics and Informatics* 22 (2005) 1-9, available at http://www.sciencedirect.com/science?_ob=ImageURL&_cid=271579&_user=10306797&_pii=S0736585304000395&_check=y&_origin=&_coverDate=31-May-2005&view=c&wchp=dGLbVIV-zSkWb&md5=c14358a4a90581467a9b1d8bc836b1d5/1-s2.0-S0736585304000395-main.pdf (visited December 1, 2011).

William M. Landes and Richard A. Posner. *An Economic Analysis of Copyright Law*, The Journal of Legal Studies, Vol. 1 Jan. 1972. Chicago: University of Chicago Law School, published for the University of Chicago Law School by the University of Chicago Press.

2.2 Articles

Ashcroft, Robert, *The Big Issues*, posted on September 26th, 2011, available at <http://www.m-magazine.co.uk/views/the-big-issues/> (visited on March 8th, 2012).

Beadon, Leigh, *RIAA's Cary Sherman: We Really Just Want To Give Consumers What We, Er, They Want*, posted on Monday Mar 5th, 2012, available at <http://www.techdirt.com/articles/20120304/22195417974/riaas-cary-sherman-we-really->

[just-want-to-give-consumers-what-we-er-they-want.shtml?utm_source=dlvr.it&utm_medium=twitter](#) (visited on March 6th, 2012).

Blanchard, Heather, *Liveblog: Cloud Storage and Streaming Services Continue Digital Debate*, posted on January 31st, 2012, available at <http://blog.midem.com/2012/01/liveblog-cloud-storage-and-streaming-services-continue-digital-debate/> (visited on March 16th, 2012).

CISAC, *Industry and Regulators Urge ISPS – Stamp Out Piracy*, CISAC News on June 2008, available at <http://www.cisac.org/CisacPortal/initConsultDoc.do?idDoc=14019> (visited on February 21st, 2012).

CISAC, *Royalty Collections Climb to New Peak at €7,5 billion*, posted on January 30th, 2012, available at <http://www.cisac.org/CisacPortal/listeArticle.do?numArticle=1446&method=afficherArticleInPortlet> (visited on March 15th, 2012).

CISAC, *Studies on the Value of Copyright Industries-Part I*, posted on February 23th, 2012, available at <http://www.cisac.org/CisacPortal/listeArticle.do?numArticle=1453&method=afficherArticleInPortlet> (visited on March 16th, 2012).

Connelly, Will, *CD+G=\$*, posted on Thursday, October 13th 2011 available at <http://www.emusician.com/news/0766/cdg/145887> (visited on March 25th, 2012).

Couts, Andrew, *Major ISPs to Turn Into Copyright Police by July, Says RIAA*, posted on March 15th, 2012, available at <http://www.digitaltrends.com/webnews/major-isps-turn-into-copyright-police-by-july-says-riaa/> (visited on March 15th, 2012).

Gantchev, Dimiter, *the Studies on the Value of Copyright Industries-Part I*, posted on February 23th, 2012, available at <http://www.cisac.org/CisacPortal/listeArticle.do?numArticle=1453&method=afficherArticleInPortlet> (visited on March 16th, 2012).

Garnett, Nic, for the World Intellectual Property Organization (WIPO), *Automated Rights Management Systems and Copyright Limitations and Exceptions*, Standing Committee on Copyright and Related Rights, Fourteenth Session Geneva May 1 to 5 2006, available at http://www.wipo.int/edocs/mdocs/copyright/en/scrr_14/scrr_14_5.pdf (visited November 20, 2011).

Jefferson, Cord, *The Music Industry's Funny Money*, posted on July 6th, 2010, available at <http://www.theroot.com/views/how-much-do-you-musicians-really-make?page=0,1>1=38002> (visited on March 1st, 2012).

Jones, Steve, *Music Industry's Sales Are Up, Up, Up This Year, the USA Today*, posted on June 7th, 2012, available at http://www.usatoday.com/life/music/news/2011-07-06-music-sales-jump-this-year_n.htm (visited on March 13th, 2012).

Jones, Sam, *UK Music Sales Decline for Seventh Successive Year Despite Downloads*, posted on Monday January 2, 2012, available at <http://www.guardian.co.uk/music/2012/jan/02/uk-music-sales-decline-2011> (visited on March 8th, 2012).

Lindvall, Helienne, *Behind the Music: What Mattered in the Music Industry in 2011 – and Some Predictions for 2012*, posted on Thursday 29 December 2011, available at <http://www.guardian.co.uk/music/musicblog/2011/dec/29/music-industry-adele-emi-simon-cowell> (visited on March 8th 2012).

Lindvall, Helienne, *Behind the Music: Why Artists Mustn't be Drawn into an MP3 Site's Legal Fight*, posted on Friday March 2nd, 2012, available at <http://www.guardian.co.uk/music/musicblog/2012/mar/02/artists-mp3-site-legal-fight> (visited on March 3rd, 2012).

Masnick, Mike, *Brazilian Technobrega Musicians Embracing Free Distribution Even More*, posted on Tuesday August 24th, 2010, available at

<http://www.techdirt.com/articles/20100820/10195010704.shtml> (visited on April 25th, 2011).

Masnick, Mike, *If Major Labels Are All About Helping Artists, Why Do We Keep Seeing Artists Calling Out Their Labels For Screwing Them?*, posted on Wednesday, February 29th, 2012, available at http://www.techdirt.com/articles/20120228/17592017904/if-major-labels-are-all-about-helping-artists-why-do-we-keep-seeing-artists-calling-out-their-labels-screwing-them.shtml?utm_source=dlvr.it&utm_medium=twitter (visited on March 1st, 2012).

Masnick, Mike, *If You Think the Cost of Piracy is High, What About the Cost of Enforcement*, posted on Tuesday, May 8th, 2012, available at [techdirt.com](http://www.techdirt.com) (visited on March 13th, 2012).

Masnick, Mike, *Really Bad Idea: Make ISPs Liable for Cybercrime Efforts*, posted on Monday, August 1st, 2011, available at [techdirt.com](http://www.techdirt.com) (visited on March 13th, 2012).

Masnick, Mike, *Sony Music Exec: The Internet Is Full Of Opportunities & Not A Problem; Intransigent Collection Societies, However...*, posted on Monday, February 27th, 2012, available at <http://www.techdirt.com/articles/20120225/02270617882/sony-music-exec-internet-is-full-opportunities-not-problem-intransigent-collection-societies-however.shtml> (visited on February 28th, 2012).

Masnick, Mike, *The Future of Music Business Models (And Those Who Are Already There)*, posted on Monday, January 25th, 2010 available at <http://www.techdirt.com/articles/20091119/1634117011.shtml> (visited on February 22nd, 2012).

Patel, Nilay, *Spotify on the Future of Streaming Music: "We Want to Cannibalize Piracy,"* posted on March 13th, 2012, available at <http://mobile.theverge.com/2012/3/13/2868876/spotify-streaming-music-ken-parks-sxsw-2012> (visited on March 15th, 2012).

Pollack, Jeff, *Sympathy for the Devil: Why the Major Labels Might Be Right This Time*, posted on May 30th, 2011, available at <http://www.huffingtonpost.com/jeff-pollack/sympathy-for-the-devil-wh b 865887.html> (visited on May 31st, 2011).

Resnikoff, Paul, *Digital Music Created the Resurgence in Vinyl...*, posted on Sunday, March 18th, 2012, available at <http://digitalmusicnews.com/permalink/2012/120317vinyl> (visited on March 26th, 2012).

Resnikoff, Paul, *Uh-Oh: Music Financing is Down 38,41% in 2012*, posted on Friday, March 9th, 2012, available at <http://www.digitalmusicnews.com/permalink/2012/120309down> (visited on March 11th, 2012).

Taylor, Kate, *Artists Coalition Makes Final Push to Change Copyright Bill*, posted on Globe and Mail Update published Tuesday, March 06, 2012, available at <http://www.theglobeandmail.com/news/arts/artists-coalition-makes-final-push-to-change-copyright-bill/article2360778/> (visited on March 8th, 2012).

Marcus Taylor, *The Science Behind Why People Share Music*, available at themusiciansguide.co.uk (visited on June 23rd, 2012).

Towse, Ruth, *Economics and Copyright Reform: Aspects of the EC Directive*, available at http://www.sciencedirect.com/science?_ob=MiamiImageURL&_cid=271579&_user=10306797&_pii=S0736585304000401&_check=y&_origin=search&_coverDate=31-May-2005&_view=c&_wchp=dGLzVlk-zSkWz&_md5=1b4f6c1fd5297fab4b6f85271b0e4684/1-s2.0-S0736585304000401-main.pdf (visited December 11, 2011).

UK Music, *Liberating Creativity (policy)*, available at <http://www.ukmusic.org/policy/liberating-creativity> (visited on February 29th, 2012).

WIPO, *Copyright and Related Rights*, available at <http://www.wipo.int/copyright/en/> (visited on March 14th, 2012).

2.3 Others

Allen, Douglas W., *Transaction Costs*, Department of Economics - Simon Fraser University, available at: encyclo.findlaw.com/0740book.pdf (visited on July 12th, 2012).

Bastard, Irene, et.al., *Who Benefits from Online Promotion? Album Sales and Online Presence in the Recorded Music Industry*, a paper presented at the ACEI 17th International Conference on Cultural Economics, June 22nd, 2012, at Doshisha University, Kyoto.

How to Make a Living from Music, workshop on the Management of Intellectual Property in the Music Industry held by WIPO in cooperation with Ministry of Culture and Tourism of Republic of Indonesia, at Hotel Aryaduta Jakarta, October 20-21, 2009.

Maillard, Sisyley, *Consumer Information and Demand in Cultural Markets at the Digital Age: Measuring the Change in Information Spillovers in the Music Industry*, a paper presented at the ACEI 17th International Conference on Cultural Economics, June 22nd, 2012, at Doshisha University, Kyoto.

Nakano, Davi and Guilherme Kok, *Online Music Market: An Analysis of Online Music Outlets*, a paper presented at the ACEI 17th International Conference on Cultural Economics, June 22nd, 2012, Doshisha University, Kyoto.

Ranaivoson, Heritiana, *Online Content Services and Transactions, an Exploratory Assessment for Online Music Services in Europe*, a paper presented at the ACEI 17th International Conference on Cultural Economics, June 24th, 2012, Doshisha University, Kyoto.

Towse, Ruth, *Copyright and the Cultural Industries: Incentives and Earnings*, a paper for presentation to the Korea Infomedia Lawyers Association, Seoul, 30th October 2000, available at: scholar.googleusercontent.com (visited on June 16th, 2012).

Zednik, Anita, *Demand for Music: Preliminary Results of Latent Class Analysis of Listen and Download Choice*, a paper presented at the ACEI 17th International Conference on Cultural Economics, June 22nd, 2012, at Doshisha University, Kyoto.

3. Tertiary Resources

Boldrin, Michele and David K. Levine. 2008. *Against Intellectual Property*. Cambridge: Cambridge University Press.

Hohfield, Wesley Newcomb, Walter Wheeler Cook (ed.). 2010. *Fundamental Legal Conceptions*. New Jersey: The Lawbook Exchange, Ltd.

Polinsky, A. Mitchell. 2011. *An Introduction to Law and Economics (Fourth Edition)*. New York: Wolters Kluwer Law & Business.

Teramoto, Shinto. Lectures of *Contemporary Issues in Intellectual Property Laws – A Social Networking Perspective*. Given at Graduate School of Law, Kyushu University, International Economic and Business Law (LL.M.) Program 2011-2012.

Vermeulen, Erik. *Lectures of Business Law, Lawyers, and Innovation*. Given at Graduate School of Law, Kyushu University, International Economic and Business Law (LL.M.) Program 2012.