

Intellectual property and the music cluster organization new paradigm: Agents' motivations and creativity

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Abstract

Recent institutional and technological developments, such as massification of Internet, digitalization and new copy technologies have imposed a lively debate around copyright in the music industry. Two opposing realities have backed different understandings of copyright protection. Conventionally, copyright has been taken as a necessary device to foster creativity and creation. Only with well defined property rights can efficient incentives be generated to all the agents in the industry. Following this point of view, copyright law must be strengthened and expanded in order to preserve and foster the market for the music business. Nonetheless, the new forms of copyright infringement have not only allowed the illegitimate access to protected music but have also opened the gates for what may be perceived as a new paradigm of culture production and distribution. Such paradigm may entail a redefinition of intellectual property rights.

In order to understand such cultural production paradigms, we theoretically address the effects of such recent institutional developments on the role, motivations and behaviour of different, and conflicting, cultural agents: artists, labels, distributors and cultural gatekeepers (e.g. music critics, media or agents). We argue that the future of copyright and its role in the music cluster rests on how the music industry agents will adapt their behaviour and working directions.

In the first section, a brief overview of the current debate around copyright is presented. In the second section, we identify the implications on agents' motivations and behaviours related to the new institutional arrangements that have been emerging in the music cluster. In the third section, we grasp the systemic repercussions over cultural gatekeepers, evidencing their crucial role on the construction of symbolic and, consequently, economic value in the cluster. A final note expresses our main conclusions.

Keywords:

IPR, Music Industry, Motivations, Gatekeepers, Creativity, Independent Music

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1. Introduction

The last three decades have witnessed an ever expansion of markets to an increasing number of economic and social spheres. The market has not only recovered its lost space to the public sphere during the twentieth century, but it has expanded to new domains, such as in various forms of intellectual production, historically more or less autonomous from market dynamics. This arousal of new property rights, already called the “Second Enclosure Movement² (Boyle, 2003), has reached various kinds of intellectual production: scientific research, business methods, *image rights*. In all the domains where property rights are now being enforced, a live debate has followed and resistance movements have been developing.

One of the sectors more passionately debated is the music cluster, since the recent institutional and technological developments, namely the popularization of the Internet, digitalization and new copy technologies have imposed different ways to circumvent property rights more effectively than in any other case. Two opposing realities have backed different understandings of copyright protection. Conventionally, copyright has been taken as a necessary device to foster creativity and creation. Only with well defined property rights could efficient incentives be generated to all the agents in the industry. Following this point of view, copyright law should be strengthened and expanded in order to preserve and foster the markets for the music business. Nonetheless, the new forms of copyright infringement have not only allowed the illegitimate access to protected music but have also opened the gates for what may be perceived as a new paradigm of culture production and distribution. Such paradigm may entail a redefinition of intellectual property rights.

We argue that in order to address the property rights discussion around the music business, this sector must be disentangled between mainstream and independent music, in order to understand the different implications on music creators’ motivations and attitudes. In the first section, a brief overview of the current debate around copyright is presented. In the second section, we identify the implications on agents’ motivations and behaviours related to the new institutional arrangements that have been emerging in the music cluster. In the third section, we grasp the systemic repercussions over cultural gatekeepers, evidencing their crucial role on the construction of symbolic and, consequently, economic value in the cluster.

² The first enclosure movement – the privatizing of common land in eighteenth century United Kingdom – produced a rise of productivity in agriculture and the emergence of wage-labour markets, opening the way for the rise of Capitalism on the debates of origins of capitalism see Wood, 2004.

2. Intellectual Property Rights and the Music Industry

Enforcing property rights

Currently, a great deal of legislation is being produced in order to enforce intellectual property rights (hereafter, IPRs). Two of them, probably due to their historical role, have a prominent role: copyright and patents. Copyright protects original works, that fall under the categories of literature, dramatic, musical, artistic, and intellectual as well as some kinds of scientific research, from being copied without the authorization of the rights holder (not necessarily the producer of such goods). The second major instrument for the intellectual property rights enforcement are patents – granting a property right to the inventor that will prevent anyone else from making, using, or selling an invention.

These two instruments are hardly new. They can be traced back to the dawn of capitalism: copyright goes back to the Statute of Anne in 1709 in the United Kingdom and patents to the fifteenth century Venice (May, 2007). Nonetheless, the last two decades have witnessed an expansion of these rights. Patents were notably expanded in the U.S with the introduction of the Bayh-Dole Act that allowed universities to patent publicly funded research – giving rise to an explosion of patented scientific research, particularly in biotechnology area. In the U.S. this movement is strengthened moreover by the longer duration of patents (twenty years against the former seventeen) and the sympathy of the judicial system that now upholds patents 80% of the times they are being questioned against 60% in the sixties and by the necessity of clear evidence to challenge a patent against the former preponderance of the evidence standard (Perelman, 2003). Copyright has expanded its scope and intensity with the U.S. Digital Millennium Act of 1998, and the similar EU Directive on Copyright, fostered by Copyright and the Performances Phonograms Treaties, concluded at the World Intellectual Property Organization in December 1996 (Maskus, 2000). Criminalizing production and dissemination of technology that can circumvent measures taken to protect copyright are the mains goals, extending copyright to internet transmissions and also forcing regulations intended to defeat electronic piracy. Copyright has also reached mere compilation of facts and not original, creative work, as can be noticed by the European Database directive which gives proprietary rights over databases of mere facts (Boyle, 2003) and the pending U.S. Collections of Information Antipiracy Act.

Reflecting the growing private use of data for marketing products and services, simple data, with no innovative or creative addition, is transformed into a market commodity. Even though patents and copyright are still the main devices to legally protect intellectual property, new instruments have been developed in the last century, such as trademarks and more oddly “trade secrets” which cover “any form of industrial or commercial know-how that (a) supports efficient production and (b) is maintained within the enterprise and its licensees as proprietary information” (Maskus, 2000, p. 64).

One of the fields where this IPR offensive is more visible is the music sector. The legislative effort has in turn been accompanied by an increasing resort to courts by major corporations in the music industry suing companies which develop peer-shared files software (i.e. Napster, Kazaa, eMule) and users of this software, with large media campaigns against piracy.

Property rights, music and independent production schemes

IPRs represent to *mainstream* music industry a strong source of revenues so it is expectable their constant campaigning against peer-to-peer file sharing piracy, which represents big losses to major labels and big music stars. Still, Internets' free music file share represents to independent artists (who have very low interest in copyright revenues) a real opportunity for the circulation of their songs in the internet even if we're talking here about a non paid copy. It has been the key factor of success for some new emergent artists from the independent production sphere.

Despite independent music phenomenon becoming a central issue in current musical industries and markets, it is far from being a recent phenomenon progressively modifying in a significant way the representations about independent music idea. These two premises are related to the idea that it is possible to assume the existence of an independent music industry since the early 50's (distribution and marketing), but also by the phenomenon of the emergency and growing popularity of independent artists. What is essential to note, considering recent historic developments, is that the growing role of independent record³ industry has brought visibility and a new meaning in the production mode involved in this sector, progressively dissolving the boundaries that so far existed between the majors and independent labels. In such context is possible to assume this changes, considering the fact that the crisis in the music industry has become more injurious to big companies and big structures than for the

³ Cf, e.g., in Canada, <http://www.whiteeaglerecords.ca/documents/MUSICRYPTQ4REVENUES.pdf>

small publishers, presuming that their organizational structure characteristics (small and flexible) were also better prepared to respond to the challenges of new markets, and also having in consideration their innovative⁴ spirit and big capacity to be creative and able to generate and meet new market situations. From this context two possible but complementary explanatory tracks have emerged to understand this phenomena: on the one hand, the strengthening of independent publishers and artists who saw in Internet and the consequent dismissal of IPRs a way to reach an audience and to promote their catalogues and music; on the other hand, the consolidation of a new hype in the mode of music production around the artists and independent labels that helps the marketing of such artists, and the creation of dynamic market segments. This last issue can be delicate, considering the fact that it can be easily (mis)understood in a dual perspective: independent music as a musical genre? Or independent music considering its' organizational and functional philosophy?

However, the search launched to sustain a stable definition of this concept has represented a relatively complex and unsuccessful task, which is why it seems inevitable to establish a starting point regarding some basic concepts.

The starting point will be the definition that is possible to access in the popular and very well-known online encyclopaedia Wikipedia, which features a definition that ultimately reflect the perspectives previously presented:

"(...)is a term used to describe genres, scenes, subcultures, styles and other cultural attributes in music, characterized by their independence from major commercial record labels and their autonomous, do-it yourself approach to recording and publishing."⁵

It is not our purpose to extend this debate about what is or isn't independent (*indie*) music. Still, it is necessary to question, or even refuse, the idea of *indie* music as a simple definition of a specific musical genre, at least considering the context of this article and its main objectives. The idea of the first part of the previous definition directs us to a more symbolic definition of music independent. On the other hand, the second part of this definition is moving much more towards to our intentions, that is, independent music known for being distinct from the majors' operation scheme, and for being characterized by the production of music that is not framed in the mainstream context, differing from the big publishers' commercial objectives. Therefore, we assume this last conception, not treating this concept as a musical genre, but as a kind of

⁴ For a better understanding, see on this, for instance, Benhamou (1996), Caves (2002).

⁵ Link: http://en.wikipedia.org/wiki/Independent_music

organization in artistic production that establishes in the margins of the main mechanisms to promote commercial music oriented to mass audiences.

“The independent production can be understood as an option or one of the resources facing the lack of interest by the record labels. Bottom line, it represents supporting all the production costs and economical risks related to such investments”⁶

Still, it is important to note that despite the apparent fragility of the independent sector, it has reveal some interesting dynamics in the music panorama, revealing their organizational efficiency promoting and engaging some of the most important music bands and carriers⁷. The “hype” phenomena have become more significant with some paradigmatic examples that emerged in the independent “sphere”.

In the next section we will try to explore some reasons for the success of independent music business.

3. Motivations and new institutional arrangements in the music cluster

A new form of intellectual production

Copyright in the music sector is today under attack from the myriad of peer-to-peer file sharing software (e.g. Kazaa, Soulseek) that allow user to share their music and increasingly video files with each other. As the same time this technology boosted the consumption of such goods since its cost is very low (a broadband internet connection and eventually a blank CD) comparing with the average 12 dollars cost of a CD. These programs allow a non-market form of distribution distinct from the profit-motivated piracy through the internet that is deeply embedded in social practices. That may seem a paradox that the impersonal and anonymous internet can work as a place for the building of strong communities, but the file sharing communities, contrary to common sense, develop strong rules and punishments, such as the obligation to share files (and not only downloading them), the reliability of such files, or the banning of “free-rider” users. The construction of such community is clearly helped by the persecution of users by organizations such as the RIAA (Record Industry Association of America)

⁶ Neves (1999), translated by the authors.

⁷ Artists such as Artic Monkeys, Arcade Fire, Clap Your Hands Say Yeah, are classified as “indie” considering the music genre they produce and signed by independent record labels.

since strategies of defence against charges are collectively discussed and achieved. It is difficult to assess if the current offensive against peer-to-peer sharing software and communities will be successful in a near future, but the perspectives are not bright. The brief history of this battle show us that end of specific peer-to-peer software (Napster, Audio Galaxy) and the introduction of anti-copy technology has been easily tackled by this community.

More interestingly, than this new (illegal) form of distribution, is the introduction of copyright reform through Creative Commons whose aim is to allow the share and reuse of cultural goods legally. The authors adhering to creative commons give away some rights from their work but still can guarantee its authorship and the integrity. It is thus the middle of the road solution between the strictness of copyright and the public domain. There are various licenses from which the authors can choose forbidding uses as commercial or derivative use. Increasingly integrated in national legislations, Creative Commons has witnessed an exponentially increase reaching 140 million licenses issued until July, 2006.

With direct pecuniary gains excluded from this model of intellectual rights, the reasoning behind this device is a deeply ideological reform of copyright. Recognizing first the inevitability of the “standing on the shoulders of those who came before”, new authors are motivated by the spectacular possibilities that new technologies enable to the diffusion of their work in the creation of a public democratic space where they have:

“(...) an opportunity for an enormous and unprecedented stimulation of creativity and production of knowledge. As more and more people are interconnected and communicating, it becomes easier to obtain exactly the content one needs or want and to complete tasks and solve problems by the cooperation this interconnection enables. The convergence of technologies and media also create multiple new possibilities for creating derivatives of existing works, e.g. remixes and mash ups”. (creative commons.org)

Considering the observations previously made concerning the new perspectives on authorship and copyright in the new internet era, it seems relevant to question the impacts over the music production. As we had the chance to refer previously, the vast world of possibilities brought by the technological advances and trivialization of such technology allowed a great access to music creation to everyone.

Moreover, the internet access phenomenon and the arousal of a new paradigm of music democratization allied with the computer and electronic technology development allowed the access to multi track recording and low budget equipment for studio with a dual effect on production of music: proliferation of home studios with a quite reasonable recording quality; the declining of the costs for recording sessions on professional

studios. Hence, adding to the growing popularity of Internet access phenomena, independent artists now have two essential tools: production capacity to materialize musical master pieces and the ability to access to a market and free dissemination and promotion of their music. It is possible to relate the present musical industry crisis, despite the growing competition of the new entertainment offers (for instance, DVD's, videogames), with the emergence of the new "free" mode of production very close to "peer-production", where production and distribution can be virtually free.

Which motivations?

It seems us that the problem around the status of intellectual production in general and music production in particular in the economic sphere is not one of the feasibility of enforcing property rights, but also one of desirability. Intellectual production can be commodified and the creation of new markets is now a reality. It is true that markets were created by a legally, artificial process but that is hardly new in the history of capitalism. In fact, what the debate around intellectual property rights shows is a discussion about what are and what should be the assumptions for individual (or collective) motivations for intellectual creation. Pro-property rights defenders tend to have an approach where pecuniary incentives prevail over other type of motivations – property rights are the only guarantee to assure the monetary reward to the effort put in creation.

However, today experimental and behavioural economics have well established the importance of motivations other than self-interest in the economic sphere (Ostrom, 2000). Still, it was only in the mid-nineties that these empirical studies began to have a theoretical basis among economic theory, through the seminal work of Bruno Frey (1997) on the "crowding-out" effect. This theory begins with the distinction between intrinsic and extrinsic motivation. The first being all forms of motivation involved when a certain activity is undertaken for one's immediate need satisfaction. Given that there is no external, indirect, external reward, such satisfaction can be the result of two different psychological mechanisms: enjoyment-based or obligation-based. Enjoyment-based mechanisms refer to the satisfying flows granted by an activity such as playing a game or fulfilling a challenging task with no external reward. Obligation-based mechanisms refer to the pursuit of self-defined goals or the obligations defined by personal and social norms, as, for example, tax morale and environmental ethics (Frey, 1997). In the case of extrinsic motivation, an activity is undertaken in order to

satisfy one's needs indirectly, usually involving monetary rewards, but that can also take other forms, such as the reliance on reputation effects, that would serve as signalling devices in the labour market, or the promotion of external control over one's activity (monitoring). Frey explained that intrinsic motivations could be eroded by the promotion of extrinsic (usually pecuniary) ones. The transformation of the social relationships resulting from such promotion may induce then an overall inefficient effect. Intrinsic motivations are then "crowded out" by extrinsic ones. If this "crowding-out" effect holds, the opposite of one of the most fundamental economic laws may well be observed: raising monetary incentives can reduce, rather than increase, effort (Frey and Jegen, 2001). Hence, economic theory is today forced to acknowledge and integrate such possibility in its microeconomic framework. This is a need stressed by the abundant empirical evidence, put forward in the last decade, showing that the effect is far from being an odd exception to expected behaviour.

The importance of the intrinsic motivational framework is clearly stressed around intellectual production. The existence of other motivations than self-interest is crucial. As Yochai Benkler (2006) puts it:

"Education, arts and sciences, political debate, and theological disputation have always been much more importantly infused with nonmarket motivations and actors than, say, the automobile industry. As the material barrier that ultimately nonetheless drove much of information environment to be funnelled through the proprietary, market-based strategies is removed, these basic nonmarket, non-proprietary, motivations and organizational forms should in principle become even more important to the production system" (p. 4).

Moreover this discussion introduces the issue of the authors' free expression and the conditioning of creative genius. It's not our intention to defend the idea that *mainstream* artists produce their music under market sales expectations. However, it's impossible not to notice that a contractual relation with a big record company represents a strong pressure factor over creative free expression, as well as the expectations over the sales and market. This cultural market element is quite important considering the fact that it represents a very unstable and unpredictable factor (Caves, 2002). These new dynamics end up constraining the new careers. Majors tend to invest in cultural products that represent the minimum risk of loss possible and which ensures sales reaching a big audience, enhancing the sustainability of the whole structure involved in the process from the recordings to the distribution. The ability and capacity that majors have to promote artists is essential to generate demand, curiosity, or even (in the best scenario) create an hype around the bands (artists). It is expectable that the

concentration of investment (in production and promotion) in an increasingly small number of “safe” titles represents an increasing share of the market (Caves, 2002, Benhamou, 1996).

Therefore, it's possible to affirm that the independent production is not aiming to big audiences or mass market, but on contrary it is more focused on exploring minority markets, often based on or associated to subcultures. The motivation for creation is thus, in this case of *indie* music, mostly intrinsic, guided mostly by non-pecuniary motives. This does not imply the inexistence of extrinsic motivations. The dismissal of IPRs can be understood as the path for greater publicity which will translate in more concerts and thus more money.

As far as the role of property rights in music creativity is concerned, it is possible to argue that current copyright laws have different effects on music production and creativity; at least if the opposite sides are mainstream music and independent music. It certainly is a slippery territory to claim that there are different types of creativity in music production - and it becomes even more slippery when we relate the copyright regulations with intrinsic creative motivations.

It is necessary to notice that it has become more and more obvious the relation between copyright management agencies, majors and a very small number of super stars in the music industry. Everyone, from *mainstream* industries has a lot to win with record sales and a lot to loose with internet piracy, for instance. This relation is crucial to understand one possible perspective of how copyright law generates different behaviours on these two types of music production. If in on one hand, *mainstream* music tends to progressively enclosure and develops a quite aggressive campaign against free file sharing on internet, on the other hand, independent production has not much to loose with free share.

Copyright generated profits are much more significant to the big record industries and super artists and tend to compensate big hits. So, if for any chance it is possible to control the success of a musical production on big audiences, music can be produced considering the level of familiarity of a certain song and that allows minimizing both risk of failure but also the level of innovation and surprising factor.

An independent creator is not usually worried about how much he is going to recover with copyright revenues and tends to be more experimental, uncompromised in his musical production and even eventually to support all the investments necessary to create the master piece.

4. Value creation on creative activities and the cultural gatekeepers

Gatekeepers and value creation in music industry

In this section, we aim to discuss the relation of the changes in music industry analysed on the previous sections with the mediation processes in these goods' production and consumption, and the specific challenges that are now set to cultural gatekeepers, evidencing their crucial role on the construction of the symbolic value (and, consequently, on the economic value), in the cultural cluster.

Cultural gatekeepers, which in this industry can be, for instance, critics and media (assessing, promoting, filtering who and what to listen and see), editors, programmers or even shop assistants (choosing what can be seen and heard, when, and how), agents and concert promoters (putting their efforts in some projects rather than in others, pulsing the market), all of them are key agents in this market. This has been traditionally assumed by cultural economics or cultural sociology, as they perform important roles in filtering, selecting, providing and managing information, and in linking and relating cultural supply and demand.

Some of them, namely big labels and some media, have been recently noticed as extremely active in the defence of intellectual property rights, even more than the artists themselves, which seems to indicate that their interest and specific motivations can be relevant and probably are underestimated in the debates on intellectual property and on contemporary structural changes in music industry. As seen in the previous sections, this happens essentially in more structured industry areas and mostly in majors and renowned artists than in independent editions and new authors.

This scenario is in part related to the specificities of creative activities and to the particular mechanisms that embed their production and provision processes, including the important role played by gatekeepers on it. A good way of understanding that is to pick the analysis of Richard Caves on the creative industries (Caves, 2002), and the enunciation of the particularities of these activities that are made by this author. At least three of the seven properties which are identified and systematized by Caves (as particular and distinguishable in these goods regarding all other economic goods) can be referred as crucial, in order to understand the fundamental role of cultural gatekeepers in cultural industries in general and in music industry in particular.

The first of them is the “infinite variety property” of the creative goods. In a context of uncertainty and absence of real information on the forthcoming cultural good or service (before “tasting” it) people - both at the demand and supply side - need to have some selection amongst the wide variety of goods they have to choose. By their own nature, creative products are different from each other, and even if the author is the same, and the consumer has previously liked his work, nothing warrants that he will like again his new creation (particularly if it is effectively innovative and creative...). Consumers cannot accede to all products, and they don't have information on all of it; they need someone, in which they can trust (or in which they are used to rely upon or they have learned to trust) to “tell” them what is good, what they would like, what they can eventually like the most, based on their previous experience, for instance. Cultural gatekeepers fulfil this necessity, in several domains (critics, editors, programmers, radio playlists, etc.), both in the case of most generalized and mass markets, or in specific alternative domains.

The second one is the “A list / B list property”. Industry (particularly the majors and more structured markets, but also independent agents and niche-markets, at a certain extent) finds a way of reducing risks and promoting economic efficiency, concentrating efforts, investments and promotion flows in a small percentage of authors and products, which are relatively hyper-valuationed comparing to all the others. These “A list” products and goods are the ones that are symbolically and/or economically most valued, in a specific market or art world (although the referential of assessment can vary widely from consumer to consumer, and from product to product, and can be centred, for instance, in the distinction it provides, the identification with the group, or the legitimization by market, for instance). Obviously, this leads to a cumulative process which tends to reinforce investments and efforts in most secure assets (authors, performers, music styles), in order to reduce economic risks, particularly in the case of majors and mainstream edition, which tends to promote the asymmetry in prices and remunerations in the cluster. It results in an extra (over?) valuation and promotion of some goods, artists, technicians, performers, skills, comparing to other, enabling to reduce risks and to assure profitability, reducing uncertainty of investments, with increasing massive spending in promotion, image and the symbolic reinforcement of specific “brands”. The investment in most legitimized authors, for instance (and the supporting of a star system), although much more expensive, can warrant immediately a pay-back for the investment that is made, specially, with the increasing weight of marketing, promotion and symbol building in the added value of these products. The gatekeepers' role is also evident here. They are a key node in the process of symbolic

legitimization of all these persons and products, and in the construction and maintenance of the conventions that support their prestige (be it to a wide generalized market or to a very specific, independent or “arty” segment).

Thirdly, the “nobody knows property”. The uncertainty on the success of a cultural good, which has to be assumed, on the demand side, by the promoters who support the economic project of production, and which is faced on the demand side, by consumers that are always confronted to a unique, new, and possibly “innovative” creative product, is huge. But it can be also minimized. This leads to behaviours (particularly from big investors – e.g., majors) which tend to minimize risks and to try to reduce this uncertainty as much as possible. With the exploration of more “safe” (and eventually, less “creative” markets), and big investments in promotion and in the generalist, mass symbolic values, this uncertainty can be reduced, and the risk of investment can be previously minimized. If the product is similar to what people previously know, or if it is closer to schemes, symbols or processes that are already tested by cultural consumers, it will be easier to succeed. Cultural gatekeepers (in the promotion of products, in the launching and consolidation of new trends and hypes, in the way they provide education and training, in giving feedback to authors on their products – e.g., media, programmers, editors, but also teachers or distinguished artists in some field) can have here also a relevant role. For instance, in the different markets (both more mainstream or more elitist), they can adapt production and consumption processes in order to provide information to the market, legitimize options, and to filter and select which goods or artists are likely to be appreciated by some specific markets. They can also form and condition “artistic taste” or cultural “schools of thought” which affect cultural creation and frame the economic processes of production, distribution or consumption.

All this leads us to the fundamental role of mediation processes, construction of conventions, and actuation of gatekeepers in these industries. These agents are fundamental in reducing uncertainty, and in assuring and certifying artistic quality. They have the most important place in a process of value creation (and that is, also, adding economic value) in creative goods – they are the ones that make the reputation of a piece of art or of an artist (be it, the status to the mass markets and common people, be it specific and more elitist reputations, recognized by a few, in specific markets and certain specialized art worlds). The symbols they help to construct (and the conventions that are behind of them) have an increasing part in the value chain of these products, and they help to build or to destroy reputations (and symbolic value) which are, thus, a crucial node in the value of those products. The legitimization of

artists and products allows to create and to amplify the value that is inherent to the Intellectual Property Rights of the creator itself.

This is particularly important in a context of cultural consumptions which is unanimously recognized as based on a “path dependency”, as it is verified a rational addiction in the consumption of cultural goods. In effect, cultural consumption depends on the accumulation of a stock of “cultural capital”, which is improved by cultural consumptions: one learns to consume culture, and the more he improves his cultural consumptions, the most he will demand for more and for better cultural products. The cumulative learning on these consumptions and the notion of cultural capital are well recognized and documented, as it has been constantly noticed in the history of cultural sociology or cultural economics (e.g., Benhamou, 1996; Towse, 2003; Throsby, 2001; Caves 2002).

Furthermore, this happens in a context of socially well-defined “art worlds” (Becker, 1982). Artistic and creative work happens in a specific social set, frequently relatively closed to the outside of it, where legitimization (or multiple crossed legitimizations) occurs. The entrance in that art world, as well as the recognition of value, is intimately dependent on a sort of gatekeepers and gatekeeping processes. The legitimization of the artist in a certain art world, through the market, at the eyes of his peers, or at any other scale of recognition, is dependent on them. His weight and value (and even the self-recognition of artists themselves) is defined by his acceptance by this “art world”, be it, in some cases, the widest mass market, where legitimization is broadly shared, or be it, in other cases, the most exclusive and elitist group, where recognition is only shared by the “happy few” that have the specific cultural capital which is required to the understanding and fruition of that art work.

The role of the cultural gatekeepers will be thus fundamental in all this. On one hand, it is crucial in the structuring of the supply. This is verified at several levels: they condition young artist during their training, directing them to specific aesthetic or technical skills; they are essential in entrance of these artists in the market, making them known, inserting them in the art worlds where their activity will develop, enhancing them with contacts and social capital essential to their affirmation; they edit, show and promote the result of their creation, in a peculiar relation that will change over time, as their negotial power evolves⁸, and their motivations and positions in the different markets modify.

⁸ At first, the artist is clearly dependent from the gatekeeper and its own prestige and power, and then, when known and legitimized by the art world, is the gatekeeper who benefits of keeping the relation with the renowned artist.

If we think on the complex logics that structure most of the cultural creation and production in contemporary cultural industries, centred on project-based activities and flexible specialization production processes, with the consequent importance of territorial agglomeration (Scott, 2000), the relevance of this mediation seems also evident. Gatekeeper's role is fundamental in the diffusion of information, know-how, and even innovation, and, most important, in noticing and branding all the artist, technicians, producers, and so on, that are available to work and that can be mobilized for a specific project. The knowledge on their skills, their backgrounds, their profiles, and the diffusion of it through a specific art world, is a key factor that oils the running of the flexible production systems that are in the base of production of contents in these industries.

Finally, gatekeepers and intermediation processes are also inevitable in the establishment and consolidation of conventions and frameworks of legitimization, which can be perceived and recognized for more wide publics. This allows the institutionalization of conventions about the value of artists and products, which can be shared by experts and non-experts, enhancing the power of those mediation mechanisms. For instance, if we think on academy awards or film festivals, in the field of cinema, or on music awards, or the most diverse top lists (but also the branding of associating it to specific playlists – e.g. radio shows or specific gatekeepers), in the music industry, we see the vast importance of this in the processes of selecting, filtering and providing signals and information to the consumers (again, to the different kinds of markets, where different characteristics are most valued, from the most independent and arty to the mainstream, centered on the market legitimization – e.g. sales results, box offices).

On the other hand, the role of gatekeepers in the structuring of demand is also of most relevance, for all that have been seen before. They are the ones who select, who program, who filter, who certify, who give information to the consumer; the ones who preview and who have the power to choose, to test, to select, and to adapt the product to markets. Of course that other mediation processes can develop here (if we think on fans, buzzes, scenes that mark music industry, for instance, and all the subcultures that usually are linked to music consumptions), especially if we assume that cultural consumptions are clearly social determined consumptions⁹, as several classic authors have defended both in cultural sociology and economics. People sometimes consume because they want to identify with the group/society where they belong, or to some

⁹ As all kinds of “economic” consumptions should be seen, but here in a much more direct, evident and vibrant way.

specific group; but, sometimes they consume because they want to differentiate and to distinguish in relation to a specific social group. Ideas like Veblen's "conspicuous consumption" or Bourdieu's "social distinction" have to be considered when thinking in cultural demand, and gatekeepers have obviously a contribution here, in everyone's quotidian life.

Therefore, this role of gatekeepers seems to be of great importance, articulating and structuring both supply and demand, regardless we centre our analysis on mainstream or independent music. However, the specific gatekeeping processes are different and the motivations of artists and gatekeepers can be diverse, as we've been noticing through this analysis: for instance, the formal and informal conventions that structure the symbolic value of cultural goods and artists, can be defined around the sharing of the knowledge with the widest universe of people, or can be, on the contrary, structured by the opposition to these mass values and the construction of a difference or a distinction which is only shared by few.

Changing forms of mediation?

Assuming all this, and recognizing this fundamental role of cultural gatekeepers and the process of mediation processes in creative products provision and consumption, how can we relate this to the contemporary paradigmatic changes that we've noticed in the previous sections? And how can we link it to the motivation of the several types of agents?

Our key-idea on this is that this mediation processes don't tend to be eliminated and restricted, but rather tend to be more important and fundamental, as those changes are being verified. In fact, independently of potentially having all the songs and all the music available in an internet terminal, the fact is that they are not equally accessible to the consumer and there will never be equal conditions of access for all consumers, by the own nature of this products, and by the growth of the conditions of access to it.

Of course direct conditions of access are not similar (technological conditions are not available in all points of space, people have different budgetary constraints, different skills to work with it, ...), but even if they were, this consumptions would not tend to be similar. People have different stocks of cultural capital, different skills to de-codify the different artistic contents, and the exponential growth of access to cultural products, per se, would not directly redefine their preferences patterns and stimulate all kinds of consumptions of cultural products. People would be increasingly lost, no knowing how

to choose, where to look, facing a growing sea of cultural contents at a distance of a click in their computers, TV sets or audio devices. Thus, gatekeepers are more and more crucial to filter, select, organize, re-interpret information, and to transmit it to the potential consumer, from an even wider and diversified supply of new products and artist.

But of course there is space for the developing of new spaces of intermediation, and new gatekeeping processes, and ways of articulating supply and demand in the music industries. Several examples have been noticed in the last years, as previously happened through History, when changing techno-economic conditions of provision of these goods. We assist to the development of new search engines and on-line provision tools, which adapt to consumer demands and are progressively customized; virtual communities are organized around more general or specific interests, including music, of course; blogs are used to disseminate information and some of them are legitimized, to certain consumers, as a conventional media gatekeeper would be; new promotion mechanisms and marketing strategies are put in practice, seizing the potential of these new media and consumers changing habits. In all this, the intermediation still is the key, and new opportunities arise here, some of them being seized by the market, other developing based on other regulation forms.

For instance, if we pick an artist “official” webpage, a blog from a renowned critic or journalist, a page at MySpace, or even a personal profile in a virtual community (directing to his owner’s personal preferences and cultural references), they all are performing the role that traditional cultural gatekeepers used to. Of course their degree of legitimization for the common user can be very diverse, and their power of influence is substantially differentiated (creating even space for new intermediation markets...), but that’s the same that, at less extent, occurred in other mediation processes. By the same token, if we observe, for instance, Amazon, E-bay or other on-line cultural retailers, we also see the refinement of intermediation processes, and articulation between demand and supply, by adapting the selling process and platform itself to the client, trying to adapt and customize to his (previous...) tastes and searches. Even search engines (including the ones that are specialized in music or other cultural contents downloads), by their own nature, tend to promote and select some (most popular) contents rather than others, assuming a filtering and selection process.

In all these processes, unquestionably, cultural gatekeepers generate value: they add value to cultural products and artists. But what do they gain with that? For some of them it can be evident that they have standard economic motivations on their action, and direct outcomes of it (e.g., when an editor or on-line shop, traces individual profiles

for marketing purposes), but other can have more intrinsic motivations, from a cultural or artistic perspective. For instance, most of the music links on personal or group WebPages (e.g., at MySpace or ...) are added by their users as form of cultural or identity expression or as part of a personal profile. They don't benefit directly from it, in economic terms, but only in their personal satisfaction and intrinsic motivations.

So, it is somehow strange that the debate on the changes of music industry has been polarized only in the issue of intellectual property rights. Of course that creates value, and part of that value has been traditionally potentiated (and multiplied) through the traditional intermediation processes, in which gatekeepers perform an important role. Now, that the de-materialization of provision and distribution processes is questioning the traditional role of some of these intermediaries (particularly editors), it is natural that they are ones of the most interested in the defence of IPR, aiming to maintain control of something that can generate that value, in a context when their traditional function seems to be increasingly dispensable and obsolete.

Their role as producers of a tangible physical good may be coming to an end, but they have the potential and the resources to keep a fundamental role in this industry. They have been the producers and maintainers of symbols, buzzes and trends, all over the years, both at the mainstream markets (with increasingly huge investments in marketing and promotion) and at independent niche markets. If they want to maintain in the business they need to explore this potential and to bet in the other dimensions of gatekeeping processes, in parallel to an increasing amount of small agents and diffuse processes that, everyday and everywhere, is being assumed and legitimized as gatekeepers, and are also, filtering, selecting and promoting, to wide diversity of more and more differentiated consumers, the musical contents.

In fact, the role of these agents in the construction of value, their contribution to add value to a cultural content, is often underestimated and seems to be kept substantially away from the debate on intellectual property rights. Probably we need a much more integrated approach in the analysis of these issues, and a change of focus from IPR to other aspects in the creation of value in cultural contents.

4. Concluding note

In this paper we tried to analyze the implications of the IPR enforcement and related counter-movements in the music cluster, in several domains from the musicians' motivations to the effects amongst cultural gatekeepers.

This dual tension concerning IPR is more and more obvious in all different spheres of music industry, from the diverse agents involved in the production chain to the consumer sphere, with asymmetric results and reactions from two quite different music worlds. While *mainstream* production sphere (and all related agents) tends to be quite aggressive with the new free file sharing philosophy, independent producers and creators keep on exploring the potentialities of digital network world.

It is beyond the scope of this paper to assess what the future in the music cluster will be. Nevertheless, the struggle that is now taking place around IPR already shows some changes in the different agents relations. Today, musicians benefit from clear leverage in their negotiations with majors, given the (cheap) alternatives they have in creating, making and distributing their work. This new relation of power between labels and musicians may well result in a more equal share of revenues and in the growth of creative autonomy.

Although structural change and technological challenges are affecting all industry, it seems that the more structured and conventional agents are being the ones registering more difficulties, as independents give the impression to be much easily adapted. This happens in creation and production processes, in distribution, and even in other gatekeeping processes. Some of the big traditional gatekeepers in the industry (like editors and generalist mass media) are also the most affected by these changes, much more than happens in independent fringes, where new gatekeepers and new forms of cultural mediation are being developed and seized efficiently by independent artists and structures, gaining advantage for their flexibility, smaller scale and, mainly, fewer aversion to risk.

The traditional key agents have to adapt to new forms of acting and to a new paradigm of production, distribution and consumption of cultural goods. Their traditional role in selecting, filtering and providing information, in building symbolic value, is being questioned, at least in the traditional way of doing it, so, if they want to keep that role, they will have to adapt to the new reality and play with the new tools.

Of course, this relates with the question of property rights definition and the debate on IPR. Until now, these agents were ones of the most benefited by IPR attribution, and

that explains their position as big defenders of it. They can have a fundamental share here, with the artists, and they have benefited, in a quite symbiotic relation, of building and maintaining symbols and conventions, enhancing a mutual construction of added value that profited artists and gatekeepers. Now this scheme is being questioned from many sides and the defence of market positions has been essentially put on the IPR issue. But this role of gatekeepers in adding value to cultural contents keeps underestimated and seems to be substantially unconsidered in the debate on intellectual property rights. This leads to the need to in-depth the analysis of these issues, probably focusing on other aspects of value creation, rather than assuming that the key to the problems of structural changes in the sector will be in the question of IPR.

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