

Written evidence submitted by Dr. Nicola Searle

Submission to the Economics of music streaming Call for Evidence, November 2020

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Submitting as an individual. Views do not reflect those of my employer or funder.

I write to submit as an expert on business models in the digital media sector, with a focus on copyright.

My submission is structured as follows: responses to the review's questions, summary of a research paper on business models, copyright and digital media, and appendix of full paper.

1. What are the dominant business models of platforms that offer music streaming as a service?

According to my research, the most common business models, as described by the digital media industry itself, are **'streaming' or 'subscription.'** These two models overlap and typically involve a subscription-based service where content is streamed over the internet. These are nebulous definitions: streaming describes the delivery mechanism and subscription the pricing mechanism. Further analysis of the definitions of digital media business models can be found in the appendix (p. 15). As described in the response to question four below, business models are a poorly defined concept.

2. Have new features associated with streaming platforms, such as algorithmic curation of music or company playlists, influenced consumer habits, tastes, etc?

There is evidence that business model innovation, particularly by way of all-you-can-eat subscriptions services delivered via streaming, is very valuable to consumers. Retailers and platforms are increasingly curated gateways for consumers, who value their business models (Benghozi in (Towse and Hernández, 2020)¹). The consensus is that the increase in scope and availability of content via **streaming has exacerbated the hits-driven preferences of consumers**; i.e. superstars have grown their market share at a loss to smaller artists.²

3. What has been the economic impact and long-term implications of streaming on the music industry, including for artists, record labels, record shops, etc?

¹ Towse, R., Hernández, T.N., 2020. Handbook of cultural economics. Edward Elgar Publishing

² New Yorker, September 14, 2020; "Starving Artists: How we can pay for creativity in the digital era," by Hua Hsu

It is difficult to define or measure the direct economic impact of the combined evolution of technology, delivery mechanisms and pricing models on the digital media industry. An overriding impact is **the dramatic drop in the marginal cost of making copies** of sound recordings, and the consequential downward pressure on prices. This downward pressure on marginal costs is further amplified by a decrease in transaction costs (i.e. digital payments require significantly less resources than in-person payments at a till) and distribution and delivery costs (e.g. logistics, retail space and shipping.) The **benefits of the reduction in costs have largely gone to new intermediaries** at the end of the value chain, rather than earlier agents at the start of the value chain – namely artists and rightsholders. Traditional intermediaries, such as record shops and record, tape, and compact disc manufacturers have **been replaced by digital platforms**.

It is **unlikely that these trends will change course**, although the distribution of benefits may be shifted via regulation or other market forces. One potential shift in market forces is that streaming services paradoxically become more dependent on content generators (artists and rightsholders) as their share of the music market grows (see page 9 and Richardson, 2014³; Teague, 2012⁴). **There may be a tipping point in which the balance shifts in favour to rightsholders**. It is likely that streaming services have foreseen this, as they become content generators themselves (e.g. Prime Music's Amazon Originals, including Katy Perry's Cozy Little Christmas.)

Caution should be taken with estimates that attempt to capture the financial impact of these changes on artists, record labels and record shops, as it requires measuring the counterfactual with the likely inevitable.

4. How can the Government protect the industry from knock-on effects, such as increased piracy of music? Does the UK need an equivalent of the Copyright Directive?

This questions pre-supposes that increased copyright infringement (piracy) is a knock-on effect from streaming services. I have seen **limited academic evidence that this is the case**. A 2015 paper (Borja et al⁵) finds that university students who use music streaming services are more likely to engage in copyright infringement. This has been a common finding in research– that those who pay for content consume more content (both licensed and infringing) than those who do not.⁶⁷⁸⁹ There appears

³ Richardson, J.H., 2014. The Spotify paradox: How the creation of a compulsory license scheme for streaming on-demand music platforms can save the music industry. UCLA Ent. L. Rev. 22, 45

⁴ Teague, E.J., 2012. Saving the Spotify revolution: Recalibrating the power imbalance in digital copyright. Case W. Res. J.L. Tech. Internet 4, 207.

⁵ Borja, Karla, Suzanne Dieringer, and Jesse Daw. "The effect of music streaming services on music piracy among college students." Computers in Human Behavior 45 (2015): 69-76.

⁶ Michaels, Sean (21/04/2009) "Study finds pirates 10 times more likely to buy music" The Guardian, <https://www.theguardian.com/music/2009/apr/21/study-finds-pirates-buy-more-music#:~:text=PIRACY%20MAY%20BE%20THE%20BANE,than%20those%20who%20don't>.

⁷ Fisher, Ken (20/3/2006) "Study: P2P users buy more music; apathy, not piracy, the problem) Ars Technica, <https://arstechnica.com/uncategorized/2006/03/6418-2/>

⁸ Bode, Karl "Study Again Shows 'Pirates' Tend to Be The Biggest Buyers of Legal Content" Vice, <https://www.vice.com/en/article/evkmz7/study-again-shows-pirates-tend-to-be-the-biggest-buyers-of-legal-content>

⁹ Ionescu, Daniel (16/10/2012) "Pirates buy more music than legal downloaders, study shows" PC World <https://www.peworld.com/article/2012121/pirates-buy-more-music-than-legal-downloaders-study-shows.html>

to be a correlation between streaming and copyright infringement, but a causal relationship is ambiguous.

Copyright, as a key innovation policy, presents **a delicate balance in incentivising innovation**. Copyright provides content creators with the ability to appropriate the returns from their creative/innovative efforts. Creative content is an intangible asset that functions as a public good, copyright converts this asset into a private good. Copyright grants a temporary, legal monopoly over creative content, and this can convey financial benefits to incentivise creativity. Two consequences of this monopoly are restricted knowledge flows and a combination of higher prices and lower quantities for the duration of copyright protection.

The static, short-term costs of copyright are acceptable to the economy as they come with long-term, dynamic benefits. Copyright necessarily expires (becomes part of the public domain), meaning that it can be freely used and monopoly conditions are lifted. The free use of content leads to further creativity (e.g. the plethora of Sherlock Holmes movies.) Thus copyright must balance incentives to innovate to the individual creator with the economy-level goal of a healthy innovation ecosystem. **A copyright regime that is too weak fails to incentivise the individual, and one that is too strong stifles future innovation.**

Three additional twists to this framing of copyright is that **artists are intrinsically motivated, rarely maintain control over their copyright and the market is dominated by the few**, successful artists (Caves, 2003¹⁰). Artists can be moved to create for the sake of creating, and this drive can override financial motivations. Furthermore, artists almost always sign over their copyrights to intermediaries such as record labels. Music is a hits-driven business, and a handful of successful artists earn the lion's share. As such, discussions about **changes to copyright mostly impact rightsholders and successful artists**, rather than consumers and the broader population of artists.

Caution should be taken in assuming a positive relationship between streaming and piracy, and consequently strengthening or expanding copyright, as harms to consumers and the innovation ecosystem may outweigh the benefits to artists.

5. Do alternative business models exist? How can policy favour more equitable business models?

Addressing digital media business models in regulatory contexts is not straightforward. There are two key challenges to business models: a lack of a definition and a distraction from key issues. The first is that **the term 'business model' is very poorly defined** both in research and in practice. Business models are often in the eye of the beholder. Colloquial definitions of business models typically focus on delivery mechanisms and pricing models. Academic definitions instead

¹⁰ Caves, R.E., 2003. Contracts between art and commerce. *J. Econ. Perspect.* 17, 73–83.

examine relationships with consumers and value creation structures. There simply is no consensus on what a business model actually is.

The second is that **'business model' can be a red herring**, as it is not the business model itself that is the focus of research or policy debates, but sub-elements of business models or forces entirely outwith the business model. Business models focus on the internal value creation mechanisms and strategies of a firm, and not external influences such as bargaining power and regulations. The relatively poor remuneration for music rightsholders from music streaming services is less about the business model, and more about the **bargaining power that determines the underlying contracts**. Music streaming services are powerful gateways to audiences, whereas individual rightsholders have limited power to reach audiences directly and must rely on these intermediaries.

Similarly, regulations, which sit outside business models, can influence contracts and bargaining power between firms. Copyright has a dual role in functioning both as an internal value creation by way of protection intangible assets, but also as regulating how that intangible asset can be used external to the firm's business model.

Business models do not capture external regulatory influences. As my research shows, discussions of business models and copyright largely focus on a 'legal business model,' one which is sustained by regulation, rather than the classic business model, one which focuses on value creation.

The combined ambiguity of business models and the role of 'business model' as obfuscating more pressing concerns suggests that regulating with the goal of influencing business models is unlikely to be fruitful. **Focus instead should be on forces such as bargaining power and fair remuneration.**

Summary of academic paper (full paper in appendix) on business models in the digital media industry and copyright

Examining the role of business models and copyright in the digital media industry against the backdrop of technological change, this paper identifies a shadow concept of business models in innovation policy debates: the legal business model. A critical analysis of over 300 publications by the UK digital media industry trade and related organizations identifies that business model innovation and regulatory reform is resisted by the industry. The existing copyright system, or a strengthened version of it, is framed as crucial to supporting existing business models and value creation/capture. Paradoxically, the industry's definitions of business models minimize the role of copyright. The paper develops the concept of the legal view of business models and the role of regulation in business models; business models viewed through the lens of copyright do not match copyright viewed through the lens of business models

Citation: Searle, Nicola, Business Models and Copyright Reform: The Legal Business Model (May 13, 2020). Available at SSRN: <https://ssrn.com/abstract=3599891> or <http://dx.doi.org/10.2139/ssrn.3599891>

Business Models and Copyright Reform: The Legal Business Model

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Abstract

Examining the role of business models and copyright in the digital media industry against the backdrop of technological change, this paper identifies a shadow concept of business models in innovation policy debates: the legal business model. A critical analysis of over 300 publications by the UK digital media industry trade and related organizations identifies that business model innovation and regulatory reform is resisted by the industry. The existing copyright system, or a strengthened version of it, is framed as crucial to supporting existing business models and value creation/capture. Paradoxically, the industry's definitions of business models minimize the role of copyright. The paper develops the concept of the legal view of business models and the role of regulation in business models; business models viewed through the lens of copyright do not match copyright viewed through the lens of business models.

Keywords: Business models, innovation, regulation, copyright policy, creative industries, digital media, digital economy

1. Introduction

“Our business is based on a robust copyright framework which allows us to reinvest in the works we produce and licence, anything that could jeopardise it, such as a reduced copyright term or a fair-use system would result in our business model becoming redundant and therefore obsolete” (Alliance for IP, 2017 p. 60)

The arrival of digital technologies in the late 20th century untethered creative content and media from physical formats and the confines of a copyright-protected business model. Historically, media industries operated business models structured on the sale of a tangible product; copyright provided legal structure to prevent unauthorized reproductions. The 21st century transition to digital media has significantly disrupted the industry and highlighted the important role of content. Released from physical products, copyrighted content now operates in a world where it is cheaply and easily distributed and copied, both illegally and legally. Calls for changes to copyright policy and business models have quickly emerged. Despite the uncertainty in copyright regulation and enforcement, the digital media market enjoyed USD \$152.3 billion in global revenuesⁱⁱ in 2019. In 2018, 70% of UK entertainment revenue came from retailers that were less than 15 years old.ⁱⁱⁱ The new ‘reality’ of copyright and business models is a key UK government policy concern^{iv}. Current copyright policy may simultaneously undermine traditional, physical format business models and unduly restrict the development of new, innovative digital models.

Business models provide structure for value creation and value capture (Massa et al., 2017; Zott et al., 2011). Value is fundamental to business models (Li, 2020); business models demonstrate how value is created, captured, and situated within the wider socioeconomic framework (Wells, 2016). This paper focuses on the latter by critiquing the role of copyright both as a wider socioeconomic policy, and how it interacts with the creation and capture of value in business models. Copyright^v is an essential Intellectual Property (IP) right for digital media; as a legal tool and innovation policy, it provides legal protection for original literary, dramatic, musical, written or artistic works. Copyright, as delineator and regulator of the value of these intangible assets, should therefore be core to business models in the digital media industry. Business models have long been touted as a means for digital media to harness value and address challenges to copyright enforcement (Samuelson, 1999). However, as this paper explores, the connection between the two is complex and is steeped in the concept of a legal business model.

Focusing on the perspective of the digital media industry, this paper critiques the narrative of the relationship between business models and copyright via a systematic, empirical analysis of the digital media industry's views of the construction of business models and its relationship to copyright reform. Digital media^{vi} is a subset of the creative industries (CI), which are industries heavy in creativity that create jobs and wealth via the generation and exploitation of IP (DCMS, 2001). While this definition is pervasive in the CI literature, little analysis has been devoted to IP, which serves as both a means to create (generate) and capture (exploit) value. The emphasis on value creation, through job and wealth creation, suggests a strong relationship should be found between copyright and business models in the digital media industries. Business models contain the value architecture to sense, create, distribute and capture value (Li, 2020); copyright provides the legal tools and intangible assets to do so. However, the intangible nature of copyright and the still-emerging concept of business models have thwarted research in this area.

This paper adopts an empirical approach through a comprehensive analysis of the grey literature in the UK digital media industry (395 industry documents from 2002 - 2018). Digital media is emblematic as an industry affected early in the development of digital economy. Copyright is an essential component of appropriability in the digital media, and provides legal protection against the copying of creative content. However, copyright also functions as a 'hard edge' in demarcating the space for business model innovation (Wesseling et al., 2020) and is the subject of intense lobbying. By focusing on a legal interpretation of business models in the business model-copyright narrative, the paper critiques both the role of copyright in business models, and the regulatory narrative of copyright reform.

The analysis finds that, much like the academic literature, the industry offers no coherent nomenclature for business models. The paper maps business model and copyright positions, and finds most organizations argue in favour of the status quo: existing copyright structures support business models and value. While there is a general consensus that 'something must be done,' the nuance of how and what must be done differs, with little evidence of substantial change. The findings identify a disconnect between business models viewed through a legal, copyright perspective and copyright viewed through a business model perspective.

This paper presents theoretical perspectives on the topic, describes the data and content analysis, and then probes the data for insights into the copyright-business model narrative.

1.1. Theoretical perspectives: Business Models, Creative Industries and Copyright

The rise of digital media and business model innovation are entwined. By definition, digital media have only existed since the advent of the digital economy; digital media business models enjoy entirely novel technical possibilities of delivery mechanisms and value propositions. Business models are a means for firms to navigate the digital economy (Teece, 2018) as business model innovation conveys many benefits to firms (Casadesus-Masanell and Heilbron, 2015), (Massa et al., 2017). However, the commercial success of digital media remains in flux. Adapting business models to the digital reality has proven difficult for some media incumbents (Waldner et al., 2013), (Searle 2017), with some suffering from cognitive lock-in (Moyon and Lecocq, 2014), and has allowed new entrants to gain market share. Conceptualizing and designing new business models in the digital economy requires tools that are still being developed (Blaschke et al., 2016). There is limited understanding in the business model literature of the interaction between regulations and business models, however copyright regulatory uncertainty can spur business model innovation (Dobusch and Schüßler, 2014).

Digital media business models in practice are poorly understood. At a general level, business models definitions and theoretical approaches vary tremendously. Business models can be defined by the relationship to the consumer (Baden-Fuller et al., 2017), used as models ('cognitive configurations') (Li, 2020), be broken down into components, which tend to look internally to the firm (Dubosson-Torbay et al., 2002), (Brousseau and Pénard, 2007), or a variety of other approaches and definitions (see (Wirtz et al., 2016) and (Li, 2020) for reviews). However, the labelling of business models in the digital media industries is in the eye of the beholder and often originates in one specific component such as the pricing mechanism (e.g. free-to-play), delivery channel (e.g. streaming) or genre (e.g. role playing games) (Davidovici-Nora, 2013), (Blanc and Huault, 2014), (Dellyana et al., 2017). Content can help delineate between business models in the creative industries, with models built on user-generated or self-produced, in-house or licensed-in creative content (Lyubareva et al., 2014). 'Digital' may have had less impact on business models than it would seem, digital technologies in the creative industries are used by incumbents to extend or automate elements of business models, rather enable 'new' models (Li, 2020).

Copyright, Copyright Policy and Value in Business Models

With few exceptions, the scholarly literature addressing business models and copyright has developed as separate strands, despite a common focus on value. The copyright literature largely focuses on the law and value of copyright, and business models are generally included as an afterthought. Business models in this literature is shorthand for business strategies, delivery methods or pricing models. A similar criticism can be levelled at the business model literature, which also focuses on value but in which copyright is rarely addressed. Where considered, the business model literature frames copyright either as an internal intangible asset or copyright infringement as being an existential threat to business models. However, as this section describes, copyright and business models are intrinsically linked.

Copyright law is a key value-creation and innovation policy for the creative industries (Towse, 2017). It allows a creator to define and legally protect the intangible fruits of their intellectual labour. It is a crucial mechanism for creators to appropriate the returns of their innovations, and has become a disputed policy area since the digital era. The global trend is for monotonic copyright expansion, known as the 'upward ratchet,' in which policy reform restricting copyright is very difficult (Hofmann, 2012; Weatherall, 2010). Struggles over copyright and its reform mediate between disruptive technologies and business model innovation (Dobusch and Schüßler, 2014). For example, increased enforcement of copyright in China led to fast and extensive restructuring and consolidation in the music industry as copyright became a tool for competition (Shen et al., 2019).

Regulations influence business models, in particular the relationship with key partners (Gauthier et al., 2018), although some industries are more sensitive than others (Anaya and Pollitt, 2019). For the digital media firm, copyright is both an exogenous regulatory influence and an endogenous intellectual asset; these two are inextricably linked, as the appropriability of copyright for a particular creative work is determined by the meeting of the market and copyright policy. Business models offer structure for this intersection.

Copyright and digital media business models should be intrinsically connected. An important quirk of the creative industries is the predominance of contracts, in which copyright features heavily. Contracts define the structure of the creative industries and connect creators with 'humdrum' agents, such as distributors and retailers (Caves, 2003). This distinguishes the creative industries from other industries, and makes copyright ownership and licensing fundamental to value creation and capture, and the relationship between artists and their works (Townley et al., 2019). It also blurs the lines between the value creation, capture and situation in Well's 2016 definition of business models, and the separation between value proposition (product offering and revenue model), value architecture and functional architecture (product innovation & commercialization) in a holistic business model framework (Li, 2020). It is humdrum agents, working across the value chain, that create the monetary value of creative works, using contracts and copyrights (Hviid et al., 2017). Business model innovation in the form of spin-off products, such as merchandising and movies based on computer games (Landoni et al., 2020) and brand extension (Li, 2020), requires licensing content and branding via copyright and trademarks. Copyright dictates how creative content is priced and sold (value capture) to distributors and retailers; these actors license-in copyrighted content. Yet copyright also serves as a regulatory influence as to where value in digital media is situated; it is an important arbiter of the relationship between actors in the value chain and the wider socioeconomic setting.

Copyright regulates the imitability of digital economy; the digital economy creates new challenges for the business models of innovators, as they struggle to reduce imitability (Teece, 2018). Imitability is a special challenge to the creative content of the digital media industries as creative industries have 'infinite variety' (Caves, 2003) in content, where uniqueness is valued (Benghozi in (Towse and Hernández, 2020)), but illegal copying is relatively costless. Creative content is unique and cannot be 'invented around' in the same manner of other IP such as patents^{vii}, and consumers may not value imitators. For example, an aspiring singer-songwriter may imitate the style and content of Beyoncé, but the copyrighted music, by definition, must be unique. The aspiring musician also lacks Beyoncé's complementary assets of social and cultural capital; such extrinsic features of music impact success (Steininger and Gatzemeier, 2019) and the creative industries (Landoni et al., 2020). However, the unlicensed distribution or consumption of copyrighted content (piracy or copyright infringement) poses a problem; it is illegal and typically does not involve financial transactions. Business models offer a means to compete against unlicensed competitors and dissuade unlicensed consumption by consumers. Digital media operates in a dual space where legal competition has low imitability but illegal competition has high imitability. Copyright law regulates this duality.

The business model literature assumes that challenges to the enforcement of copyright, 'piracy' or 'infringement,' directly undermine the financial success of existing business models (e.g. Mangematin, Sapsed, & Schüßler, 2014; Mehrizi & Lashkarbolouki, 2016). IP in general can be a key asset in business models (Gambardella & McGahan, 2010, Desyllas & Sako, 2013; Weill, Malone, & Apel, 2011). In this framing, copyright is fundamental to sustainable business models and the survival of the industry. This assumes a causal relationship that is difficult to prove empirically (Handke, 2010), (Kariithi, 2011). The overall impact of copyright infringement on the financial

performance of the industry remains ambiguous (Smith and Telang, 2012). Yet copyright infringement may both undermine the core business model of digital media, while simultaneously drive innovation (Mangematin et al., 2014).

The discussion thus far has framed copyright as essential to protecting new and existing business models; however, there is an alternative viewpoint: copyright as restricting business model innovation. Copyright is a key innovation policy for the digital industry (Hargreaves, 2011; Searle & Brassell, 2016; Bazalgette, 2017; DCMS, 2018; Parliament, 2018); business models are a source of innovation (Desyllas and Sako, 2013; Gambardella and McGahan, 2010; Hossain, 2017). Policymakers have questioned the fit-for-purposeness of copyright and licensing regimes, and their role restricting competition, growth and business model innovation (Hargreaves, 2011). During a time of exponential market share growth, Google's new business model involved liberal and legally questionable use of the US 'fair use' copyright doctrine^{viii} (Band, 2008); EU copyright laws likely would have prevented this development of this business model (Xalabarder, 2014). Spotify's innovative music streaming model, which relies on licensed-in, copyrighted content, is at the mercy of its copyright licensors, whose leverage over the company paradoxically increases as Spotify's market share grows (Richardson, 2014; Teague, 2012). In this setting, copyright functions as a 'hard edge' in limiting the space in which business model innovation takes place (Wesseling et al., 2020). Copyright scholars argue reform enabling the licensing of content could encourage the growth of new businesses and business models (Richardson, 2014; Teague, 2012; Whorton, 2017). In its long history, copyright policy has mediated between competing business models (Alexander, 2010) and privileged models dependent on IP protection (Yu, 2012); current challenges are no exception.

Herein lies a core tension in copyright policy and business model innovation: the copyright status quo may both damage existing business models and restrict business model innovation. This tension is difficult to unpack as market forces can obfuscate the copyright impact (Searle, 2011, 2017, Towse, 2016). To address this, this paper explores the business model-copyright relationship and applies inductive reasoning based on empirical analysis to further develop theory.

2. Research Setting and Methodology

"Tackling film theft and copyright infringement remains a key priority ... But we also recognise that the issue cannot be addressed by legislation alone. It requires new business models to meet changing consumer behaviour in a digital world." (UK Film Council, 2010. p. 6)

The choice of the UK as a research setting ties in well with the country's policy and market focus on the creative industries. In the UK, the creative industries are worth more than £130 billion to the economy (DCMS, 2018). Like the US, the UK holds a privileged position in global creative exports due to its English-language production and cultural capital. Unlike the US, the UK has a relatively strict copyright regime on several key points. To support the industry and enable new business models (Hargreaves, 2011), UK copyright was reformed to include exceptions for orphan works, caricature, parody & pastiche, and text & data mining. However, a policy creating the right of private copying was introduced and then quashed in 2015 as the digital media industry took legal action to dispute copyright and business model premises set out by the government. Debates on the matter continue as commissioned reports (Bazalgette, 2017; DCMS, 2018)^{ix} and government research funding sustain the discussion.

The time frame of study, 2002-2018, accompanies a period of significant uncertainty in the media industries, as the traditional value chain is challenged by technology, competition and copyright policy discussions. The digital media value chain, by agent, is as follows: creators, producers,

marketers (e.g. record labels), distributors and finally retailers. Contract law and terms, the agreements dictating the use of copyrights, are crucial to maintaining controls and income streams across this value chain (Hviid et al., 2017). However, over the period of study, major bricks-and-mortar retail outlets reduced their physical presence, and consumers were introduced to new means of consumption, platforms and ways of interacting with content. Retailers and platforms are increasingly curated gateways for consumers, who value their business models (Benghozi in (Towse and Hernández, 2020)). These gatekeepers dictate the way and channels that a market delivers and sells creative content to consumers, and consequently wield significant power over a digital media firm's resources (Landoni et al., 2020). Recent developments suggest a new era of change as content creators cease to license out their copyrighted content. Digital media platforms (e.g. Netflix) are now also content creators, and traditional content creators (such as Disney) are now launching their own platforms (Disney+). With this background of turmoil, the digital media narrative turned to business models as a strategy to provide structure to businesses in the new digital world (Lyubareva et al., 2014).

The analysis seeks to answer four core questions:

1. How does the digital media industry define and identify its business models?
2. How does the industry view the role of copyright in business models?
3. How do these views match to coalitions in copyright policy lobbying?
4. How does this empirical analysis inform business model theory?

This paper uses Critical Discourse Analysis (CDA) to critique the business model – copyright narrative (Dobusch & Schüßler, 2014). The focus is on the analysis of text in industry publications at the micro-level to ascertain the self-identified business models in use and to interpret these in the context of copyright debates. The media industry uses publications as lobbying tools in policy debates (Kretschmer, 2000), which provide insight into policy processes and actor coalitions (Minkinen, 2019).

2.1. Data Collection

Using responses to government consultations on copyright to identify industry organizations, 395 publications from 41 UK institutions were collected. Organizations fall into three categories: Collective Management Organizations (CMOs, responsible for the management and collection of copyright royalties), unions and trade organizations. This initial total of 41 institutions^x is narrowed to 28 when 13 are excluded due to lack of relevant publications. Descriptive data on the organizations is collected from organizations' websites. Discussions with policymakers and the author's participant observation confirm the sample selection, and the sample can confidently be considered as close an approximation as possible of the population of organizations engaging in formal copyright lobbying with the UK Intellectual Property Office^{xi} (IPO).

A Google site-specific search was performed for each organization with "business model"^{xii}. "Copyright" was rejected as being too broad for substantive analysis and "copyright & business model" as being too narrow to identify the relevant business model discourse. After removal of some duplicates, this resulted in a total of 361 publications in the form of press releases, blog posts, research reports, annual reports, position papers, consultation responses and related documents. Publications with the term 'business model' were categorized and coded (see the Appendix for details on coding^{xiii}) using the analytical software NVivo, as per (Attar & Genus, 2014) to deploy a Fairclough approach, to identify themes and discourse related to business models and copyright. The sample covers music, publishing and other digital media; two-thirds of the sample are CMOs or

trade organizations. Table 2.1.1 has further details. Data selection and analysis is further informed by participant observation, as the author has extensive experience interacting with industry and policymakers in the business models and copyright debate in the UK since 2006.

One challenge of using this population is that it represents those organizations who engage in copyright debates, potentially at the cost of a wider industry perspective. Two factors mitigate this. First, the organizations here arguably cover the scope of all agents in the value chain, or present themselves as such. For example, the whole music value chain is represented: PRS for Music, “protect[s] the value of music by licensing music usage and collecting royalties globally for our members.” (PRS, 2018) The Musician’s Union represents 30,000 musicians across the industry. The Entertainment Retailers Association (ERA) is, “a forum for the physical and digital retail and wholesale industries of the music, video and videogames industries.” (ERA, 2020) Other organizations represent managers (MMF), producers (MPG), manufacturers (MH) and performers (PPL). CMOs work across the value chain, underpinning the flow of value (Hviid et al., 2017). All of these organizations have in their remit to lobby on behalf of the industry.

Second, the organizations captured in the analysis operate in the industry areas where copyrighted content is created, assigned to intermediaries and licensed to distributors. Copyright creation and ownership is concentrated in these earlier sections of the value chain, whereas the value created by non-copyright factors (e.g. marketing, sales and customer service) sits at the end of the value chain. That this end of the value chain is included by only one organization (ERA) suggests that the business model-copyright narrative is less relevant or a lower priority for retailers and distributors. Alternatively, these organizations may engage outside the observed space; however direct lobbying of decision-makers (elected officials) would be bolstered by the lobbying efforts and discussions examined. Large innovative platforms including Google and Amazon^{xiv} directly lobby the US equivalent of the UK IPO. These organizations can be described as being both technologically and politically entrepreneurial, the ‘corporate political entrepreneur’ (Ernkvist, 2015), as they push US copyright debates. Their relative lack of engagement with UK copyright-business model debate would seem deliberate.

Research suggests that the choice of population influences results, and works in favour of this study. (Li, 2020) reaches different conclusions in a targeted group of innovative firms in the CI, than in a broader group. A targeted group, identified by the researcher seeking firms with novel business models, is found to have a high level of using digital technologies to *transform* business models (43-90% of ten elements of the business model framework.) Whereas, a broader sample, identified using CI trade organizations – more in line with the present study – instead finds lower levels of transformation (0-12%); firms in this sample instead use digital technologies to automate or extend existing business models. As discussed later, this paper uses a broad sample to capture industry-wide regulatory aspects, and also finds a relatively conservative approach to business model innovation.

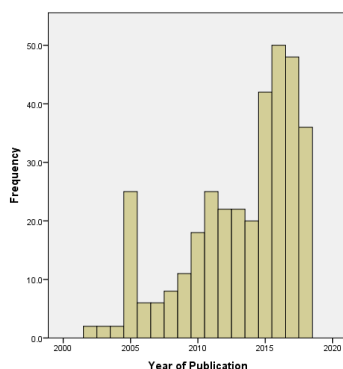
The sample, as presented in Table 1, covers the key parts of the digital media industries both in medium and type of organization. While a number of organizations would classify as SMEs, there are very large organizations, such as PRS for Music which has an annual turnover of £650M (2018). Some organizations have more publications than others and the analysis notes where publications or organization is the unit of measurement.

Table 1: Summary Statistics of the Sample

Category	Summary Statistics ^{xv}	
Type of organization	Trade organization (12)	Union or Guild (6)
Type of media	CMO (8)	Charity or Non-profit (2)
	Music (8)	Computer Games (2)
	Publishing (6)	Design (2)
	Multiple (6)	Miscellaneous (4)
Estimated Membership ^{xvi}	Range = (9, 130,000) ^{xvii}	Median = 4,380
Estimated Annual Revenues	Range = (£390k, £650M)	Median = £7.4M
Publications per organization	Range = (1, 59)	Median = 6

Coding results in 1,100 explicit mentions of “business model,” with 20% of those mentions linking business models to IP. As per the histogram in Figure 2.1.1 below, industry interest in business models has not abated as the number of publications discussing business models continues to increase.

2.1.1. Frequency distribution of business model publications by year^{xviii}



3. Analysis

Analysis looks at the framing of business models as a whole, and the relationship of copyright and business models. This allows for critique of the industry’s definitions of business models and the copyright-business model narrative.

3.1. Themes and Labels

3.1.1. Business Model Innovation Themes

Business models innovation is seen as desirable, with the sustainability of new and existing business models under threat. Coding of the mentions of business models in the sample reveals business model innovation as a core theme, with two related themes: 1) Innovation – business models as new, emerging, and adapting, 2) Sustainability – the search for the sustainable business models, and 3) Negative changes – where business models are under threat – disruptive technologies, market changes and the threat from copyright infringement.

Business model innovation is sought after, but not universally feasible or necessary. New business models are seen as ways to achieve sustainability or an entrepreneurial approach to achieve growth. However, business model innovation is not yet solving the problems of the struggling traditional model. Business model innovation by independent record labels has replaced recordings with live performance as the primary revenue source; however, this is not purported to be scalable for major labels (UK Music, 2016). Technical advances, such as superfast broadband speeds, are framed as creating opportunities for new and existing business models. Developing new business models is

viewed as key to growth and sustainability, but there is a lack of skills to do so (Creative Skillset, 2012). For example, a UK Music report identifies a need for a network of sponsors and supports to 'help develop viable new business models' (UK Music, 2013, p. 9). Business model innovation is attractive but the means to effect it and its potential as a panacea are limited.

There is also support for traditional models and a minimization of the role of business models as a source of innovation. For example, a music CMO report states, "We have a strong and steadfast business model that forms the foundation for our future progress, and positions PPL well to deal with today's ever-changing, competitive and complex market." (PPL, 2017, p. 5). Similarly, a newspaper publishing executive notes that for regionals (newspapers covering sub-national areas), the ad-driven business model is the same online and in print (NUJ, 2010). This lack of business model-innovation association may be a consequence of the ambiguity of the term 'business model'; 'innovation' is arguably a similarly amorphous term. The perceived bar for a 'new' business model is high. Business model innovation may be interpreted as transformation, rather than more common but less dramatic changes including automation or extension of traditional models (Li, 2020). Similarly, it may suggest that business model innovation has a smaller role to play in the digital economy for these organizations. However, copyright policy change is often evoked in the name of maintaining such traditional models and raises questions as to what level of business model innovation is actually taking place.

The 'sustainable business model' is generally framed as something that is currently lacking and in development. Described as The Holy Grail (NUJ, 2018), the sustainable model is elusive but desirable. Journalism is particularly concerned with the lack of sustainable models; the journalists' union (NUJ) repeatedly proposes a cooperative, jointly owned employee-employer business model. Joint ownership is also suggested as the foundations for business model innovation in film (BFI, 2014). Cost, primarily labour costs, are framed as a threat to sustainability, and a 'low-cost' approach as a means to create a sustainable business model. Government support for sustainable business models, through policy, business support, tax cuts, grants or benefits, are proposed throughout the sample. That government support is included in a business models discussion also speaks to the unique challenges of the creative industries and the need for arts funding or patronage to solve market failures (Towse, 2019). This is also reflected in policy documents, for example the policy levers considered to make the film and television "business model of running studios more sustainable." (Bazalgette 2017, p. 51.) Copyright policy and copyright levies^{xix} system are suggested as means to support business model sustainability.

The sample also demonstrates a theme of negative external changes, where existing business models are struggling to adapt to technological change and copyright infringement. Addressing e-retailing in general, one source argues that only high profile businesses, with strong brands and customer trust, along with small but highly specialized firms, are the two profiles of firms benefiting most from the online trading (Skillset, 2008). However, in the digital media industry, online retail has been far less successful for established bricks-and-mortar retailers – now replaced by new entrants to the market (e.g. Apple's iTunes). More specialized retailers, such as niche, community-focused independent bookshops, have largely remained offline. This failure may be the result of the type of inertia, in the face of environmental change, described by (Kaplan and Henderson, 2005). Alternately, the organization representing retailers (ERA) argues that it is largely retailers that have born the burden of negative external changes:

"While film and games and music companies essentially do the same incredibly valuable job they have always done – finding and investing in and marketing new entertainment –

retailers and digital services have invested heavily in an entire new ecosystem for entertainment. Much of that investment has been justified by business models which do not rely simply on selling content but on selling advertising around it or devices to play it. ... These alternative business models tend to disguise the fact that selling entertainment or access to it is often a low- or no-margin business.” (ERA, 2018, p. 14)

This ‘threat’ is also described as a tension between new and older, ‘traditional’ business models. In this new world where technology and intermediaries change, copyright takes on an increased role as it becomes ever more the currency of digital media. For example, changing models have increased the role of copyright in publishing:

“The traditional library model and the traditional publisher/rights holder model do not overlap with one another. However, when it comes to e-lending, this is no longer the case as selling access to copyright works, rather than physical copies, is an essential part of the business model in the digital environment for publishers and rights holders.” (DACS, 2015, p. 10)

Copyright arbitrates between both the traditional and new models, and between actors. In an analogue world, the lending of a book or record is more easily controlled; digital upends that model and it is copyright that dictates who can do what with content.

Copyright infringement is considered a threat to business models, both from consumers and competitors. Copyright infringement and digital technologies are inextricably linked. “...piracy has presented a huge challenge to the music industry and this, combined with the transfer to a digital marketplace, has meant that not only has the industry had to learn new business models but it has had to ensure that, in many cases, those models can compete with free.” (BASCA, 2012, p. 10) This view is particularly present in the music industry; given relatively small file sizes and computer speeds, music was one of the first digital media to be shared, unlicensed. Online infringement is said to ‘seriously imperil’ revenue growth in music (MPA and BASCA, 2011). The music industry argues it operates in a space where online copyright infringement makes it difficult to sustain a legitimate, licensed business model (PRS, 2016, p. 2.). The film industry traditionally follows a ‘windowing’ strategy where content is released over different platforms at different times to enable price discrimination (Doyle, 2016). However, “Piracy continues to pose a serious challenge to the existing and any future business model for film. Any release window strategy is clearly undermined if a significant section of the audience can gain access to films without paying.” (BECTU, 2017, Q1-4).

Copyright infringement can be the basis of illegal or illegitimate business models. This theme is repeated throughout the sample. In the design industry, “globalisation, digital communication, the Internet and gullible (online) bargain-hunters are the major catalysts for the rampant spread of brand and product piracy. For counterfeiters, it is an extremely lucrative business model.” (ACID, 2017, p.1). A collaboration between the music industry and Google identifies six types of business models based on copyright infringement, which are categorized by delivery method and pricing structures. Infringers, choosing to sidestep restrictive regulations, can quickly engage in business model innovation. PRS for Music argues that questionable use of copyright in stream-ripping (recording streamed content for download) and cloud-storage services, “should also be watched closely, to see if they evolve their business models into paid-for services that give users access to higher quality conversions or other benefits.” (PRS, 2016, p. 21). The use of other people’s content can form the basis of a profitable business model.

These themes of business model innovation, sustainability and external threats fit the wider themes in the digital economy as businesses shift from bricks-and-mortar to digital goods and services. However, copyright and copyright infringement presents a unique challenge for the digital media industries and creative industries as a whole.

3.1.2. Industry labels for business models

In line with academic theory (Massa et al., 2017), the research demonstrates the industry lacks a consistent or structured nomenclature for business models. Analysis reveals, as per table 3.1.2, seven key labels identifying business model labels: traditional, digital, licensing, ad-funded, subscription, streaming and freemium.^{xx}

Name of business model	Frequency and notes
Traditional model	31
Digital model	26
Licensing model	24
Ad-funded model	20
Subscription model	14
Streaming model	13 (overlaps with subscription)
Freemium model	10 (includes free-to-play)
Miscellaneous	11 (includes crowd-funding)

There is no underlying consistency in determining which component or element of a business model defines it. Conspicuously, with the exception of the licensing model, copyright does not determine the business model. The ‘licensing model’ is defined by the licensing out of IP, rather than self-distribution or other of said IP rights. Distribution methods are a common means to describe a business model, e.g. ‘the digital distribution model’ (Skills Council, 2011).

That the ‘traditional model’ is the most mentioned business model also speaks to the wider technological change and copyright discussions in digital media. The traditional model is often defined in contrast to newer, digital models. For example, “The traditional business model for independent film is no longer fit for purpose, and new models are still emerging” (BFI, 2017, p. 9). Little detail on what the traditional model consists of is given, although it is usually implied as being a model developed before the advent of the digital economy. The computer games industry, the sole ‘born digital’ medium in the sample, has only ever had models in the digital economy. Even then, the traditional model is framed as physical sales of digital content; “the myriad business models that now exist in our industry: traditional console, mobile and online to name a few” (TIGA, 2011, p. 1).

Pricing mechanisms can also be the defining feature, “a wide variety of consumer pay models from membership to metered access” (NMA, 2015), and frequent mention of ‘subscription-based models’ also framed as the ‘access model’ (ERA, 2018). However, in games, the ‘free-to-play’ model is noted as presenting, ‘a difficult business model on which to sustain and grow a company’ (UKIE, 2017); purely premium business models may be more successful (TIGA, 2014). Yet there is no clear ‘winner’ amongst pricing mechanisms, and no best-practice for business models is proposed in the sample.

The change in goods from physical to digital can define business models, e.g. “the digital publishing” model (CLA, 2011); however, this very broad approach could be construed as describing the entire industry rather than simply a new format. Newer business models, sold through digital platforms, are contrasted with digital goods sold and delivered in physical formats, such as, “the traditional ‘boxed product’ business model,” (UKIE, 2011) in computer games. There is also early discussion of, “the ambiguity surrounding Internet business models,” (UK Film Council, 2006). The heterogeneity of business model labels, and the small role copyright has in defining them, speaks to the similar lack of consensus in academic literature.

3.2. Narratives and coalitions^{xxi}

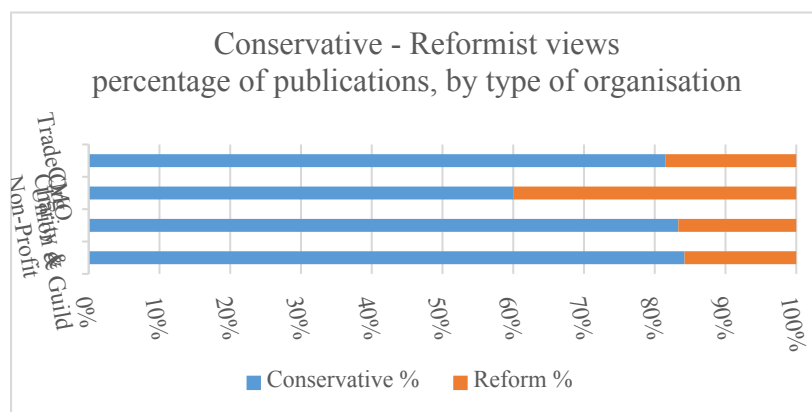
The organizations in the sample include lobbying as part of their remit. Their justification for action on copyright topics is based on the importance of the protection provided by copyright and its relationship to value and business models. For example, PRS for Music argues, “Where opportunistic and illegal use is made of our members’ repertoire online, without the necessary business model to sustain a legitimate licensed marketplace, it is important that we take action to protect the rights of our members and to preserve the value of their repertoire.” (PRS, 2016, p. 2) For CMOs, copyright, its licensing and enforcement, is their *raison d’être*. All organizations in the sample are affected by copyright policy, as they represent agents who are licensors or licensees.

The data demonstrates the enduring narratives of “‘copyright to be adapted’ or ‘new business models to be proposed,’” (ALCS, 2012). Copyright policy carves out rights from what would otherwise be freely used material, known as the public domain. The public domain can be also seen as content which is not protected by copyright or other IP rights. While the proposals for changes to copyright policy are ultimately well-defined in the legal language delineating public domain and copyright, ‘new business models’ are ambiguous and couched in the imprecise language of business writing and lobbying. ‘Business model’ functions as a flexible rhetorical tool.

3.2.1. Copyright-Business Model Coalitions

There are two key spectra associated with copyright – business model coalitions. The first is *conservative (status quo) – reformist*. This is the position on whether hard policies, defined as copyright *law*, need to be reformed or not to support business models. This position is restricted to copyright law specifically, as it requires both political will and legislative changes (or not) to be effected, and is therefore a very high-level take on copyright policy. An organization calling for changes to copyright law would be classed as *reformist*; however, an organization calling for increased government enforcement of existing law, or softer changes such as public awareness campaigns, would be classed as *conservative*. An organization calling for no changes would also be classed as *conservative*. Figure 1 presents these positions as per type of organization, as a percentage by publication. Note that the majority of views are conservative.

Figure 1 Conservative - Reformist views on copyright law



The second spectrum is *smaller - larger*. This addresses the footprint of copyright policy as a whole, to include both copyright *law* and *soft* policies in relation to business model support. The footprint is framed in terms of the public domain and government action. A *smaller* copyright footprint would mean that less is carved out of the public domain, i.e. that more exceptions are introduced to copyright. This would include the introduction of the right of private copying. For government action, this could mean less active copyright enforcement. A *larger*, or expanded copyright footprint

would be increasing the scope of copyright and carving more out of the public domain. This could be an increase in copyright terms or a reduction in copyright exceptions. Government action could be increased via more monitoring of infringements and public awareness campaigns. Of interest, is that nearly one quarter of CMO views call for *smaller*. However, this is found in independently commissioned reports or conference proceedings.

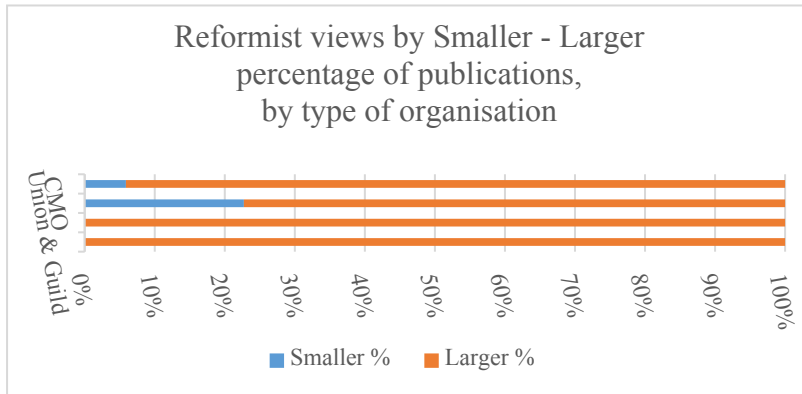
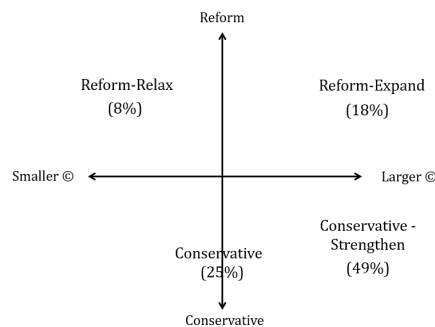


Figure 2 Views on copyright: Smaller - Larger

Mapping these spectra as axes reveals four quadrants, as per Figure 3 below. These four copyright-business model coalitions are: *Reform-Relax* (reform-smaller), *Reform-Expand* (reform-larger), *Conservative-Strengthen* (conservative-larger) and *Conservative* (conservative with no law or soft changes.) It is apparent that virtually all reformist positions are in favour of expanding copyright law; no conservative positions argue for reduced soft policies.

Figure 3: Spectrum of copyright reform coalitions to support business models, by publication count



(Percentage of identified views, by count of organization; some organizations may present more than one viewpoint)

While UK copyright-business model debates have a reformist tinge, only 8% of the documents in the sample posit a Reform-Relax position (ERA and some conference proceedings/independently commissioned reports). The vast majority call for strengthening of soft policies in the existing copyright system, rather than legislative change. The union and guilds had the least to say, with only one document taking a stance at all (*conservative-strengthen*). Table 2 provides more details on the definitions of these coalitions.

Table 2: Descriptions of Copyright-Business Model Coalitions

Coalition	Definition	Example quote from sample
Reform-Relax	Copyright needs to be relaxed, e.g. introduce exceptions, as it is currently an impediment to innovation and new business models	“Fair use [a copyright exception] may offer benefits for businesses, which rely on the reproduction of creative content. To the extent that it offers a broader range of exceptions, it may encourage investment in new business models if firms believe they will neither infringe copyright nor incur licensing costs.” (CLA, 2011)
Reform-Expand	Copyright law should be expanded, e.g. the extension of copyright terms, more stringent penalties, and other measures, to support business models	“Government should continue to press our case in Europe on copyright term extension for sound recordings; and complete implementation of the recommendations from its review of the Copyright Tribunal. The music industry will open up ever more ways for music to be enjoyed through new business models...” (MPA, 2017)
Conservative-Strengthen	Copyright law should not be reformed, but strengthen use of existing copyright laws and non-legislative approaches, e.g. increased enforcement, to support business models	“Reducing the level of unlicensed file-sharing is not a matter of protecting the existing business models of an outdated music industry. Rather, it is a necessary condition for the development of a sustainable digital marketplace for the benefit of entrepreneurs working in both the music industry and the digital industry.” (MPA and BASCA, 2011)
Conservative	Copyright law should not be reformed, existing copyright policy supports business models.	“Licensing is the business model for the UK music industry’s success in the digital age. However, where the right to licence is removed rights holders should be compensated. Copyright enables people to earn a living out of their creativity and sustains jobs.” (UK Music, 2013)

Two key themes underlying these beliefs are copyright in relation to the business model as a) an external infrastructure and b) constituting a key asset. For *Conservative*, *Reform-Expand* and *Conservative-Strengthen*, the external role of copyright prevents unfair competition and changes that reduce copyright’s coverage – e.g. the private right of copying – undermine business models. The enforcement of copyright in the form of ‘stronger’ copyright laws, reduces the consumption of unlicensed content and supports business models. For *Reform-Relax*, current copyright restricts business model innovation; loosening copyright to allow more exceptions (increasing the size of the public domain) to copyright law would promote innovation. *Reform-Relax* is the only coalition that focuses mostly on self-identified new business models, the other coalitions address both new and existing business models. Across all coalitions, copyright serves as a key intangible asset internal to the business model, in addition to its external regulatory influence. The licensing of copyrighted content can constitute the business model in these arguments, despite the lack of copyright in descriptions of specific business models discussed in 3.1.2.

Mapping the coalitions to the organizations as per Figure 4, by weighting the coding across their publications, demonstrates how organizations have clustered in the *Conservative-Strengthen* quadrant. In the face of the technological disruption brought about by the rise of the digital economy, most organizations are in favour of strengthening or expanding copyright to support business models. These findings are consistent with (Dobusch and Schüßler, 2014).

Figure 4: Copyright Coalitions by Organization

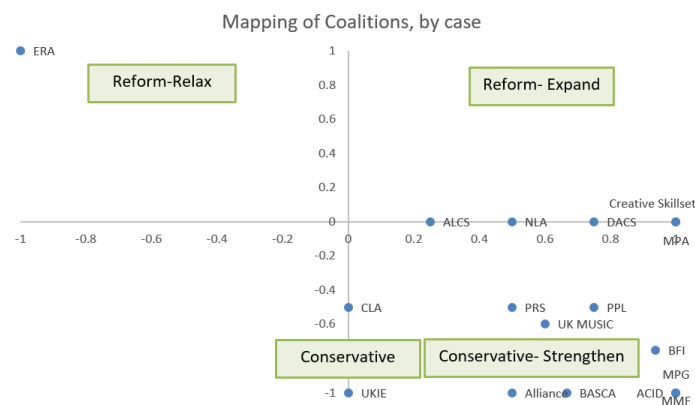


Figure 4 also demonstrates how positions in the value chain can impact viewpoints. The only retailer in the sample, ERA, is the sole supporter of *Reform-Relax*^{xxii}. There are no organizations that sit fully in *Reform-Expand*, although a number sit at the border between *Reform-Expand* and *Conservative-Strengthen*. These views are compatible as they involve either re-enforcing or expanding existing systems. UKIE is the only organization presenting a fully conservative view; this is in line with the games industry, which is a thoroughly born-digital sector and is less copyright-sensitive than other media (Searle, 2011).

The analysis demonstrates why copyright reformist approaches seek to support business model innovation, such as the 2011 Hargreaves recommendations, have met with such resistance from industry. No substantial changes to UK copyright have been implemented since the Hargreaves era; these views are entrenched. Analysis of the viewpoints posited fail to show any trends associated with time. That the sample is largely anti-reformist on copyright is not surprising as it protects the digital media industry's current position. However, this approach may come at a wider cost to the industry as the needs of its customer base (distributors, retailers and the end consumer) change. That the sole retailer organization is the outlier in these arguments indicates that these coalitions may be forced to change.

3.3. The Legal Business Model

A paradox emerges from this business model-copyright narrative. The industry definitions of business models downplay the *internal* role of copyright and themes frame copyright infringement by other parties as a key *external* threat, but the discourse analysis of coalitions instead suggests that copyright itself is *essential* to business models. Existing business models, largely based on copyright licensing, are viewed as standing the test of time and not needing innovation, while simultaneously being under dire threat from copyright infringement. The tone is defensive; business models need protecting. Business models in this context are not viewed in the value-based framing in the academic literature, but as a copyright-based, legal interpretation of what a business model should be. Both business model innovation and copyright reform are resisted in this legal framing, despite the vast technological and market changes. This gives rise to the paradoxical legal business model^{xxiii}: an esoteric interpretation of a business model that is not associated with the business model as a strategic structure, but one that is fundamental to copyright (legal) policy. The legal business model in copyright is a business model where value is created predominately by copyright protection, and aspects such as marketing and delivery mechanisms are downplayed. Innovation in the legal business model is confined to policy reform (or not) rather than business models. This is in contrast to digital economy business models, where business models are a source of innovation that can be supported by copyright. The legal business model in digital media is the business model 'based on a robust copyright framework.'

A key theme in the digital media industry for the last two decades has been change and innovation. The analysis demonstrates that the digital media industry is largely opposed to copyright reform for business model innovation. While copyright reform is not within the direct control of the industry, business model innovation is. How, then, is the industry using business models to adapt to changes in the industry? Even in the context of existing business model definitions, business models themselves in the digital media industry have remained remarkably stable (Blanc & Huault, 2014, Doyle, 2016, Searle, 2017). While aspects of relations with customers and architectures have changed, most CI firms use digital technologies to automate or extend existing models, rather than transform them; the trend is to increase a firm's portfolio of business models rather than to develop 'new' models (Li, 2020). The legal business model offers an explanation: as a construct touted by

industry, it has pushed for copyright expansion while minimizing the transformation of business models.

However, the consumer-facing end of the digital media value chain has engaged in significant business model innovation, with a shift from sales to service, and new distribution methods and pricing mechanisms. While traditional revenue models are largely maintained, the CI as a whole consistently use digital technologies as new channels for interaction with consumers (Li, 2020). Technology platforms including Google, YouTube and Amazon demonstrate business model innovation. The wider digital media industry can be hostile to these platforms. There are growing concerns that streaming or subscription models result in unacceptably low royalty payments to artists and may be unsustainable (Marshall, 2015; Towse, 2020). UK Music CEO Michael Dugher, expressing disappointment an EU vote favouring platforms, stated, “Google’s YouTube is the world’s most popular music platform, yet it deliberately chooses to return a pittance to those whose creativity it has built its multi-billion-pound business model on. Google remain the vultures that feed off music creators.” (BASCA, 2018, p. 2) Despite this frustration, it appears business model innovation in the digital media industry is largely absent in earlier processes represented by the sample including content production (unions and trade organizations), licensing (CMOs) and trade organizations. These organizations and/or their members rely on copyright and the legal business model. The relative absence of platforms and retailers in the business model-copyright narrative suggest that copyright discussions are not a priority to their business models. Yet technology moves forward and businesses evolve. Changes to copyright may become unavoidable. The lone retailer and distributor trade organization in the sample (ERA), makes the following point on copyright licenses,

“Licences from entertainment companies define the business models digital services are allowed to operate - from content to territory to availability to pricing itself. There has been significant progress in easing digital services’ concerns about the difficulties of licensing new and innovative business models. In music the clustering of virtually the entire digital streaming industry around a single business model – the all-you-can-eat £9.99 monthly subscription plan – raises concerns that there is still work to be done.” (ERA, 2018, p. 15)

3.3.1. The role of regulation

Regulation has a strong role in shaping business models and business model innovation. Regulation is a limitation that can be expanded through lobbying, but not business model innovation (Wesseling et al., 2020). The analysis here takes this further and suggests regulations can be actively used by incumbents to resist business model innovation and reduce competition. That is, rather than engage in business model change, firms engage in lobbying or promote policy innovation to use regulatory tools to shield existing business models. Under the guise of reducing competition via copyright infringement, my analysis demonstrates that incumbents are promoting stronger or expanded copyright protection. This protection can reduce copyright infringement, however, it also increases rightsholder bargaining power over licensees and can restrict business model innovation by non-rightsholders, such as retailers.

Combining the relative lack of business model innovation and the industry’s dominant viewpoints in the copyright-business model narrative, it appears that lobbying to maintain or expand copyright policy takes precedence over business models. This complements work confirming the music industry has directed their energy towards lobbying instead of business model innovation (Dobusch and Schüßler, 2014). The consequences of the media industries’ high levels of cultural and political capital have led to innovation complacency and organizational inertia (Krammer and Jiménez, 2020).

The analysis also addresses concerns raised by (Teece, 2018) on the challenges IP enforcement poses business models. Copyright enforcement is costly, and digital media have looked to government policy to support enforcement. Rather than an opportunity to hold a reformist discussion on innovation and IP, the copyright-business models debate further opens the door for the copyright policy ratchet.

Copyright presents a unique theoretical challenge to the business model literature. As both an external regulatory force and an internal asset, it brings regulation to the fore of business models. IP behaves differently from other types of regulations. Copyright policy directly affects the definition of property rights, as opposed to safety regulations that affect ways of doing business. Without external regulations, the internal intangible asset of copyright does not exist; without copyright, these intangible assets become closer to public goods. For centuries, the sale of physical goods such as books and records, with copyright content practically inseparable from its physical confines, allowed the media industries to operate with little business model change. However, digital removed this support and, as a consequence, the industry has turned to copyright policy to shore up business models. Yet this narrative is not a true engagement with business models as core aspects of business strategies or structures, but with business models as created by copyright – the legal business model. Without copyright protection, it is apparent that the industry's business models, reliant on contracts and licensing, would have to dramatically change. Instead, copyright maintains the digital media industry's legal business model.

4. Conclusion

Business models have a prominent, but surprisingly hollow, role in the copyright narrative in the UK digital media industry. A key undercurrent to the narrative has been the reform of copyright, and its ability to support new and existing business models. No clear business model solution emerges, nor does a single copyright solution present itself. Despite the dynamism of the digital era, the copyright-business model narrative is surprisingly stagnant.

This article contributes to wider business model and copyright policy discussions in four ways. First, it categorizes and demonstrates empirically the viewpoints of actors in the business model-copyright narrative and the role of business model innovation. Second, it provides insight into the business model and copyright academic theory. Business models remain poorly defined in policy and academic discussions, with self-identified business models demonstrating a heterogeneity that maps poorly to academic scholarship. Thirdly, it introduces the concept of a legal business model as an interpretation of business models which has misrepresented business models in the digital media industries. Finally, it expands our understanding of the relationship between regulation and business model innovation. These contributions open up areas for future research and policy development.

For managers, the analysis here serves both as a warning and a confirmation. The digital media industry narrative analysed here is at odds with the dynamism of technology and the digital economy. The legal business model is a distraction from a broader story of change, and the political will to use copyright as a means to shore up traditional business models may wane. Business model innovation remains a promising tool for industry. However, the ratchet effect of copyright policy has thus far continued support for traditional models. Lobbying for copyright expansion or strengthening may continue to be a successful strategy.

For policy makers, these findings suggest that the legal business model may be influencing copyright under the cloak of a more common concept of business models. This raises the question as to what

degree copyright policy is defined by the legal business model. A ‘business models’ based narrative may be unproductive in copyright. Shifting to a more explicit ‘innovation’ focus may be more fruitful. Copyright’s role as a mediator between new and traditional business models merits continued scrutiny, as its duality in supporting or suppressing business models remains both a market and policy question. As is common to policy making, the organizations engaging in lobbying are those that are more directly affected by policy, whereas the indirectly impacted actors and consumers may be less engaged. The analysis points to potential areas of business model innovation and copyright reform at other parts of the value chain, namely on the retail end. Copyright policy should be considered in its context across the value chain.

For academics, this research furthers our understanding of industry definitions of business models, the role of copyright and regulations in business model innovation, and the positioning of incumbents. IP both blurs the lines between regulations and business models, and demonstrates that lobbying can be a successful alternative to business model change. I also develop the new concept of the legal business model. Four clear areas of further research arise. First, the legal business model is couched in a copyright context, but equally could be true for other types of IP (e.g. the business models of patent assertion entities, a.k.a. ‘patent trolls’, or trademarks in franchises.) Second, the research demonstrates an industry’s reaction to digitization, changing consumer needs and regulatory uncertainty – all of which are factors that could be explored in other industries. Third, I find relatively limited or conservative business model innovation in what is often considered a dynamic industry; further empirical research on digital media and CI is required. Fourth, by exploring the regulation-business model innovation relationship, the analysis puts in sharp relief the strong role of non-market activity, i.e. lobbying, in the business model space. Further work in incorporating regulatory environments into business model theory is needed.

5. Funding and Acknowledgments

Funded by the Center for the Protection of Intellectual Property (CPIP), Antonin Scalia Law School, George Mason University. CPIP was not involved in the study.

The author thanks Charles Baden-Fuller, Martin Krestchmer, Dave O’Brien, Alan Searle, Ruth Towse, Chander Velu and anonymous parties for their contributions leading to the development of this paper. Any errors author’s own.

6. Disclosure

The author is a member of the Author’s Licensing and Collecting Society (ALCS). The author was an employee of the UK IPO from 2013 – 2015; all data used in this paper is publicly available.

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8. Appendix:

8.1. List of included organizations

Organization	Website	Description	# of Publications	Category
ACID	acid.uk.com	ACID is the UK's leading design and intellectual property campaigning organisation.	9	trade org
Alliance for IP	allianceforip.co.uk	A UK-based coalition of 20 trade associations and enforcement organizations with an interest in ensuring intellectual property rights receive the protection they need and deserve.	2	trade org
Author's Licensing and Collecting Society (ALCS)	alcs.co.uk	We make sure you receive the money you're entitled to as a writer when someone copies or uses your work.	2	CMO
British Academy of Songwriters, Composers and Authors (BASCA, now The Ivors Academy)	ivorsacademy.com	The British Academy of Songwriters, Composers and Authors (BASCA) is the voice for music writers.	23	trade org
Broadcasting, Entertainment, Communications and Theatre Union (BECTU)	bectu.org.uk	BECTU is the UK's media and entertainment trade union; sectors covered include broadcasting, film, independent production, theatre and the arts, IT and telecoms, live events, leisure and digital media.	15	Union
British Film Institute (BFI)	bfi.org.uk	We combine cultural, creative and industrial roles, bringing together the BFI National Archive and BFI Reuben Library, film distribution, exhibition and education at BFI Southbank and BFI IMAX, publishing and festivals.	61	Charity
Copyright Licensing Agency (CLA)	cla.co.uk	We are the Copyright Licensing Agency and we exist to simplify copyright for content users and copyright owners.	2	CMO
Creative Industries Federation	creativeindustriesfederation.com	The Creative Industries Federation is the membership body which represents, champions and supports the UK's creative industries.	9	trade org
Creative Skillset	creativeskillset.org	Creative Skillset works with the UK's screen-based creative industries to develop skills and talent, from classroom to boardroom.	26	Charity

Design and Artists Collecting Society (DACS)	dacs.org.uk	Established by artists for artists, DACS is a not-for-profit visual artists' rights management organisation.	4	CMO
Equity	equity.org.uk	We are a union of more than 43,000 performers and creative practitioners, united in the fight for fair terms and conditions in the workplace.	4	Union
Entertainment Retailers Association (ERA)	eraltd.org	The Entertainment Retailers Association is a UK trade organisation formed specifically to act as a forum for the physical and digital retail and wholesale sectors of the music, video and videogames industries.	1	trade org
MU	musiciansunion.org.uk	The Musicians' Union is a trade union run for its 30,000 members.	6	Union
Music Publishers Association (MPA)	mpaonline.org.uk	The MPA represents the full range of the UK's music publishing sector. It acts on behalf of 240 members ranging from the UK's largest and most established music publishers to independents and start-ups.	5	trade org
Music Managers Forum (MMF)	themmf.net	The Music Managers Forum engages, advises and lobbies industry associates and wider industry on issues that are relevant to managers.	12	trade org
Music Producers Guild (MPG)	mpg.org.uk	The Music Producers Guild was conceived and is supported by producers, mixers, recording engineers, re-mixers and programmers who are passionate about all aspects of making and recording music.	3	guild
National Union of Journalists (NUT)	nuj.org.uk	The National Union of Journalists is the voice for journalists and journalism.	58	Union
News Media Association	newsmediauk.org	The News Media Association is the voice of national, regional and local news media organizations in the UK.	34	trade org
NLA	nlamediaaccess.com	NLA licences contribute to a vibrant UK media and support jobs in journalism.	6	CMO
Phonographic Performance Limited (PPL)	ppluk.com	PPL licenses recorded music played in public or broadcast and then distributes the licence fees to its performer and recording rightsholder members.	6	CMO
PRS For music	prsformusic.com	We pay royalties to our members ... We support them by influencing policy, supporting and hosting awards and events, and investing in new technology to ensure we're fit for the digital music age.	17	CMO
Published Licensing Services (PLS)	pls.org.uk	Publishers' Licensing Services (PLS) provides rights management services to the publishing industry.	4	CMO
Publishers Association (PA)	publishers.org.uk	The Publishers Association (the PA) represents the interests of UK publishers across consumer, education and academic publishing.	4	trade org
Soundreef	soundreef.com	A viable alternative to the traditional Collective Management Organisation by combining innovative technology with personal customer service.	1	CMO
The Independent Games Association (TIGA)	tiga.org	TIGA is the network for games developers and digital publishers and the trade association representing the video games industry.	29	trade org
UK MUSIC	ukmusic.org	UK Music is an industry-funded body established in October 2008 to represent the collective interests of the recorded, published and live arms of the British music industry.	19	trade org
UK Interactive Entertainment (UKIE)	ukie.org.uk	UKIE is the only trade body for the UK's games and interactive entertainment industry.	29	trade org
Writers Guild of Great Britain	writersguild.org.uk	The Writers' Guild of Great Britain (WGGB) is a trade union representing professional writers in TV, film, theatre, radio, books, comedy, poetry, animation and videogames.	1	guild

8.2. Coding details – parent and first child nodes

Code	Definition	Number of publications	Number of mentions
Business Model	Mentions of the term ‘business model’ and derivatives	335	1,085
Business Model Themes			
Sustainability	Mentions of sustainable business models	56	63
Copyright supported	Copyright as sustaining business models	12	12
Government supported	Government support as sustaining business models	12	12
Low cost	The ‘low cost’ model as a sustainable business model	8	8
Business model innovation	Discussions of new business models or business model innovation	38	51
Piracy and infringement	Piracy, theft and infringement as negatively affecting business models	45	130
Copyright coalitions	Aggregate node of coalitions on copyright in relation to business models	36	82
Reform-expand	Copyright should be expanded to enable business models	11	18
Reform-relax	Copyright should be relaxed to enable business models	3	8
Conservative	Copyright in its existing form should be maintained to enable business models	14	19
Conservative- strengthen	Copyright in its existing form should be strengthened to enable business models	21	37
Copyright-BM Innovation	Aggregate node copyright and its relationship to business model innovation	29	72
Reform-Existing	Copyright reform to support existing business models	5	6
Reform-Innovation	Copyright reform to support business model innovation	11	19
Conservative-Existing	Status quo to support existing models	22	37
Conservative-Innovation	Status quo to support business model innovation	7	10
Business model definitions	Aggregate node for all mentions of business model definitions	107	306
Ad-funded	Business models supported by advertising (e.g. the classic newspaper model)	20	36
Digital	Ambiguous, coding for miscellaneous models referred to as digital	26	42
Freemium	Business models which are free-to-play but also offer paid-for premium content	10	21
Licensing	‘Licensing’ mentioned as a way to describe business models	24	34
Miscellaneous	Misc business models: Live TV Gateway, sponsorship, piracy, file sharing	11	14
Streaming	Mentions of streaming (consumption through active internet connection) as a business model	13	19
Subscription model	Mentions of the ‘subscription model’ (consumer pays regular subscription payments)	14	33
Traditional model	Mentioned of the traditional model, i.e. the business model historically most popular	31	73

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ⁱⁱ Statista.com (2019) Digital Media Report 2019, website, Accessed May 12, 2020 from <https://www.statista.com/study/44526/digital-media-report/>

ⁱⁱⁱ Entertainment Retailers Association, September 2018, “Entertainment 5.0: Delivering The Future Of Entertainment,” accessed 21/10/2019 at <https://eraltd.org/media/7382/manifesto-2018.pdf>

^{iv} E.g. Gowers, 2006, Hargreaves, 2011, Bazalgette, 2017, House of Commons, 2018, HM Government, 2018

^v Under the UK Copyright, Designs and Patents Act, 1988 the full definition is as follows, “Copyright is a property right which subsists in accordance with this Part in the following descriptions of work— (a) original literary, dramatic, musical or artistic works, (b) sound recordings, films [or broadcasts], and (c) the typographical arrangement of published editions.”

^{vi} Digital media in this paper is taken to include creative industries such as film, publishing, music, games and photography, but to exclude industries such as software and social media.

^{vii} Intellectual Property (IP) plays various roles in business models, including forming a key resource or intangible asset. However, as noted in (Teece 2018), IP is not self-enforcing; rightsholder must monitor for infringement or unlicensed consumption of protected goods and services. In the context of patents and trade secrets Teece cautions against business models that rely on IP to capture value precisely because of the expense of enforcement. Yet patents and trade secrets are less important to the creative industries and behave differently than copyright, the IPR essential to the creative industries.

^{viii} ‘Fair use’ is a copyright exception which allows for use of copyrighted materials without a license under certain circumstances. These uses include commentary, criticism, parody, news reporting, teaching, scholarship, and research. In these cases, use of the copyrighted work is not a copyright infringement.

^{ix} Policy research in the area has been scarce since 2017 as Brexit policymaking diverts resources away from the standard policy environment; it is likely the Covid-19 pandemic will cause a similar lapse in UK policymaking.

^x Full list of organisations and documents on file with author.

^{xi} The UK Intellectual Property Office (IPO) is the UK government’s office responsible for copyright policy. When policy changes are being considered, the IPO runs public consultations soliciting information from stakeholders. All written submissions to these consultations are made public.

^{xii} E.g. “business model” site: <https://www.musiciansunion.org.uk/>

^{xiii} Coding was independently checked by a subject expert.

^{xiv} In the US, large organizations including Google, Amazon, Facebook, and Yahoo are all recorded as directly lobbying the US Copyright Office, the agency responsible for US government copyright policy, during the researched time period, alongside organizations similar to those captured in sample.

^{xv} Values in parentheses are counts in the sample when single numbers.

^{xvi} Where available, membership numbers come from the organization's website and revenue numbers from financial or annual reports.

^{xvii} This estimate can be misleading as some organizations are trade organizations for other trade organizations and thus membership can underestimate coverage.

^{xviii} 2018 data through 09/2018. 2005 has an unusually high number of publications due to 16 publications attributed to two organizations: BFI and Creative Skillset, both of which had business models themes that year.

^{xix} Copyright levies are generally associated with broadband services or copyright technologies (e.g. printers) and are a form of tax that is distributed amongst copyright rightsholders.

^{xx} The term 'business model' is used extensively throughout the sample; this section identifies only narrow cases where the label was used to describe the business model, e.g. 'the streaming business model.'

^{xxi} Chronological analysis does not reveal any particular pattern except that all claims increase with time, as the number of publications increases. Given copyright debates and business model change continues, this is not surprising. It contrasts with (Dobusch and Schüßler, 2014), who find three phases in the German landscape, however the UK and Germany have different policy cycles and their analysis is structured around events rather than publications.

^{xxii} This is also a consequence of ERA having only one publication in the sample and therefore a limited number of observations

^{xxiii} The author thanks Charles Baden-Fuller for the suggestion of this term.