Chapter 12

The digital creative economy and trade: strategic options for developing countries

Keith Nurse*

** The contents of this chapter are the sole responsibility of the author and are not meant to represent the position or opinions of the WTO or its members.*

Abstract

The creative sector is an important source of growth in the global economy, and digital creative trade has increased sharply in recent years and particularly in the context of COVID-19. Digital content is replacing physical goods in the sector, for example, in music, books and gaming. Digital aggregators like Amazon, Apple, Netflix, Spotify, TikTok and YouTube have fuelled rapid growth and diversified earnings towards streaming, ad-supported income and data monetization. Copyright revenues are also rising, and the share of digital collections is the fastest growth segment. Participation in the sector by developing countries appears to be increasing, although data availability is poor. To reap the potential benefits of the digital creative economy, developing countries should support a shift from the typical low value-added, stand-alone practitioner industry model to a strategic collaborative approach that facilitates higher levels of creative and digital entrepreneurship. This will require a stronger legal and institutional framework to improve leverage and monetize copyright, financial support for the commercialization of creative activities, government involvement in business support services (e.g. training, incubators, innovation labs, market incubators, cluster development and market development programmes), the creation of enabling institutions to represent the interests of creative workers and firms, and the harmonization of government policies towards the sector.

Introduction

This chapter is being (re)written during the outbreak of the COVID-19 global health pandemic, which has resulted in a significant loss of lives and livelihoods in addition to an unprecedented impact on the global economy with significant implications for developed and developing countries from a trade and finance perspective (Georgieva, 2020). To be clear, the global economy has been in the throes of a major transformation for the last two decades or more, which can be explained as a Schumpeterian process of creative destruction where declining sectors are disrupted by new and emerging business models and trade patterns (Nurse, 2012; Perez, 2004). The impact of COVID-19 has been to accelerate the processes of digital globalization and the growth of online trade in services. A World Trade Organization (WTO) report on the impact of COVID-19 points out that:

> The crisis is focusing greater attention on online supply in sectors such as retail, health, education, telecommunications and audio-visual services, accelerating companies' efforts to expand online operations, and creating new consumer behaviours that are likely to contribute to a profound and long term shift towards online services. In the future, the increased supply of services through digital networks can be expected to strongly impact trade, leading to increased supply through mode 1 (services supplied from one country to another). (WTO, 2020)

COVID-19 and the associated health protocols and lockdowns have had a tremendous impact on the creative economy with significant losses of income in sectors reliant on the movement or congregation of people or artists (e.g. live events, festivals, cinemas, music tours). In this context, online cross-border activities (e.g. music and film streaming) have grown rapidly with spectacular financial results for firms like Instagram, Netflix, Spotify, TikTok and YouTube. The growth of digital platforms distributing creative content has been on the rise for a decade at least (UNCTAD, 2018a). COVID-19 has accelerated this process to dramatic effect, thereby highlighting the economic value of the creative digital economy.

The developmental effects of these trends for content producers relative to digital platforms, as well as between developed and developing countries, are critical issues from a trade standpoint. In many respects, the question is whether developing countries and their creative entrepreneurs have the capacity and the institutional support to tap into this growth and monetize trade in creative goods, services and intellectual property (IP) in the burgeoning digital arena.

This chapter aims to examine the rise of the digital creative economy in the contemporary context and provide an assessment of the performance and prospects for developing countries.[1] The chapter starts with a look of the key digitalization trends and their implications for the various subsectors. The chapter then utilizes data from the copyright arena as a basis to give some insights into the unfolding regional patterns of production, consumption and trade arising from the growth of the creative digital economy. The chapter concludes with a discussion of the requirements for industrial upgrading and improving the participation of developing countries in creative digital entrepreneurship and trade.

The rise of the digital creative economy

The creative sector encompasses creative expressions, the arts and the cultural or creative industries such as design, fashion, music, publishing, audio-visual, animation, performing, visual and literary arts as well as architecture, advertising, broadcasting and gaming (UNDP and UNESCO, 2013). From a trade perspective, the impact of the sector has widened over time to generate what can be best described as a transversal creative economy (Howkins, 2001) or an experience economy (Pine and Gilmore, 1999), where the role of the creative class (Florida, 2002) and the contribution of creative cities (Landry, 2000) have become critical for the global competitiveness of countries and global cities as well as generating new sources of employment and entrepreneurship (Nurse and Ye, 2012).

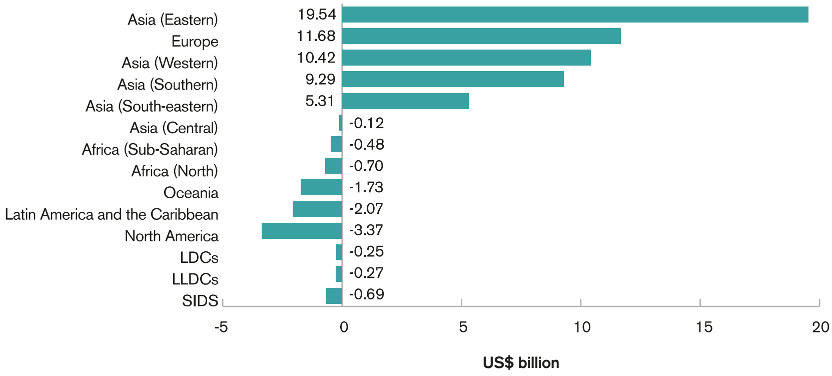
"Digital content is replacing physical goods in the sector, for example, in music, books and gaming."

Developing countries have contributed to this process of growth through increased capabilities in the production and export of creative content. This is in a context where global trade in creative goods has been expanding with an average export growth rate of more than 7 per cent. Estimates are that the value of the global market for creative goods doubled from US$ 208 billion in 2002 to US$ 509 billion in 2015. Developing economies, excluding China whose creative goods exports grew five-fold, experienced an annual growth rate of 5 per cent over the period with exports jumping from US$ 52.3 billion in 2002 to US$ 96.5 billion in 2015. Data on creative services are only available for the developed economies, and the trends indicate an average annual growth rate of 4 per cent between 2011 and 2015 (UNCTAD, 2018b).

It is estimated that outside of the top-producing economies, such as China; Hong Kong, China; India; Malaysia; Mexico; the Philippines; Singapore; Chinese Taipei; Thailand and Turkey, most developing countries are net importers of cultural content (UNCTAD, 2018b). For instance, data on trade balances in cultural or creative goods (the mode of trade for which the most data are available) show that outside of the Asia region most other developing-country regions have a negative trade balance (see Figure 1). This pattern is also evident in least-developed countries (LDCs), landlocked developing countries (LLDCs) and small island developing states (SIDS). This is a long-term trend, and so the issue is whether digitalization is a potential solution to break through the traditional problems of distribution, marketing and retail that have stymied growth in this sector.

The digital creative economy and the trade associated with it is one of the fastest rising components of global trade and a key feature of competitiveness in the era of digital globalization (McKinsey, 2016). Firms operating in the creative sector have been among the fastest

Figure 1: Trade balance in cultural goods by region, 2017



Source: UNCTAD, 2020.

adopters of online and digital technologies, which have impacted their business models as well as the earnings from sales and exports (UIS, 2016). In addition, digital creative content accounts for a significant share of e-commerce as well as content on mobile networks, the internet and blockchains.

It is argued that "the economics behind digitally-delivered content products, namely the high fixed costs of initial production but negligible marginal costs of duplicating and distributing digital copies on a global basis, make them ideal 'tradeables'" (Wunsch-Vincent, 2006). Keith Maskus also argues that "digital trade has the potential to be one of the most dynamic and innovative platforms for creative entrepreneurs and small enterprises to develop international marketing networks and increase sales". Maskus further argues that "countries and firms that are poised to build the electronic infrastructure for such activities and facilitate the development of e-commerce markets and digital trade routes will be their major beneficiaries" (Maskus, 2018).

In the aftermath of the global economic depression of 2008, the creative sector outperformed most other sectors in part because of the growth of the digital economy, where IP and trade in services expanded as a share of global value-added (Masnick and Ho, 2012). This process is evident in the rise of the digital creative economy, which has generated significant earnings for the top media, entertainment and internet companies, as evidenced by the fast-rising valuation of Facebook, Amazon, Apple, Netflix, Google and Spotify (FAANGS) stocks. These firms have helped to change the business models in the creative economy towards an on-demand and online consumption framework.

Digital transformations

One of the highest-earning and fastest-growing sectors in the digital creative economy is the videogame industry, which surpasses the combined revenue of the film and music sectors. The gaming sector had a market value of US$ 134.9 billion in 2018, a 10.9 per cent increase over 2017. Approximately 47 per cent of revenue, or US$ 63.2 billion, came from mobile, an increase of 12.8 per cent in 2018. Smartphones accounted for US$ 50 billion of mobile videogaming (up 14.2 per cent in 2018), while tablets accounted for US$ 11.4 billion (up 7.8 per cent). The other key elements of the gaming market were consoles (not including the hardware by companies like Xbox, Nintendo, PS4, etc.), with 28 per cent of the market share, and PCs with 25 per cent. The data for the gaming sector illustrate that the creative sector is not just going digital, it is increasingly dominated by consumption on apps embedded in mobile devices (Batchelor, 2019).

Another key example of the shifts taking place in the digital creative economy is the growth of consumption of over-the-top (OTT) technologies, where consumers are able to access content via the internet without subscribing to traditional cable or satellite pay-TV services. The prime example of this growth is Netflix, which in 2018 was estimated to have 118 million subscribers in 190 countries and produced content in 21 languages. An associated trend with the rise of OTT content suppliers is the ways in which these firms are able to supplant traditional content producers and flog their own branded original content and in turn link directly with independent producers. For instance, Netflix is estimated to have spent US$ 8 billion in 2018 for the acquisition of original content (700 projects including 80 new original films) and thus would have outspent all the major movie studios (e.g. Comcast, Disney and Time Warner), TV networks (e.g. ABC and CBS), cable companies (e.g. HBO and Viacom) and internet competitors (e.g. Amazon and Hulu).

The publishing industry has not been spared either. Indeed, the growth of Amazon as a titan in the contemporary global economy was ushered in by the online sale and distribution of books. Amazon also pioneered with the introduction of Kindle, an e-book reader device, which helped to catapult the sale of digitalized or e-books. The digitalization process also has seen the growth of audiobooks as a major segment of the new digital publishing market. Data from the United States indicate that 2017 was the first year that digital book income and physical book sales were approximately equal at US$ 7.6 billion and US$ 7.5 billion, respectively (Anderson, 2018b). In contrast, the publishing industry in the United Kingdom had revenues equal to US$ 7.4 billion in 2017 (of which exports accounted for 60 per cent) and has experienced a slower rate of digitalization as it is still dominated by physical sales, with digital accounting on average for 15 per cent of total exports in the last five years (Anderson, 2018a).

What has happened to the audio-visual and publishing sectors is even more rampant and advanced in the music industry, which was one of the first sectors to experience digital disruption. Spotify, for instance, along with key players like Apple Music, Deezer, Pandora, Tencent, Vevo and YouTube, has dramatically shifted the moorings of the industry from the analogue world of bricks and mortar into the dematerialized context of platformization with downloads, and increasingly streaming.

Enter COVID-19!

The creative economy has been heavily impacted by the health protocols of social distancing and travel restrictions but it has been a double-edge sword. Live and events-oriented activities such as theatre, concerts, music tours and festivals that involve mode II consumption abroad and mode IV movement of natural persons have been brought to a screeching halt. On the other hand, digital and online trade in services (i.e. mode I – cross-border) has grown dramatically as more and more consumers and content creators shift to digital platforms. A good example is the Verzuz face-off battles among top US hip-hop and Jamaican dancehall musical artists on Instagram Live that have attracted large online audiences. It has helped artists to boost their digital footprint, expand online sales of merchandise and generate increased music streams (Billboard, 2020; Anderson, 2020).

The impact of COVID-19 has also been felt in the film sector. Indian filmmakers from Bollywood have moved more of their content online as earnings from theatrical releases and live audiences at the cinema have collapsed due to the lockdown (Rashid, 2020). Estimates are that the industry has lost over US$ 330 million in the first quarter of 2020 from the reduction in domestic box office sales, overseas releases in markets like the United Kingdom, the United States and the Gulf region (which normally account for 30–40 per cent of earnings) and from collections from television and music rights. The industry has also been impacted by the delays in filming due to social distancing requirements (Jha, 2020; Rawal Kukreja, 2020).

Another example is that of TikTok, the karaoke video app launched by the Chinese company ByteDance, which earned US$ 17 billion in 2019 and surpassed YouTube earnings. In the first quarter of 2020, TikTok had 315 million downloads to achieve the accolade of the highest number of installs of any app in a quarter (Chapple, 2020). In the COVID lockdown context, app downloads have ballooned even further to dominate the download charts for both iOS and Android devices. TikTok has recently been valued at somewhere between US$ 100 billion and US$ 140 billion, making it the most valuable company in the creative sector and the highest-valued start-up ever (Chen et al., 2020).

A counter example is LiveNation, the parent of Ticketmaster, which has lost an estimated 40 per cent of its value in the COVID context. The company has been forced to reschedule, cancel and refund patrons for close to 20,000 upcoming events for the period stretching from 1 March 2020 to the end of the year (Bylund, 2020).

With live events being put on the backburner, artists have been forced to conjure up alternatives. One such example is how the gaming industry and the music industry are converging in the context of COVID-19. Take the example of Travis Scott, the UK rapper, who teamed up with Fortnite, the videogame released by Epic Games in 2017, to put on a concert inside of the videogame. Twelve million subscribers tuned in to the live event. Analysts argue that embedding live events inside of a videogame has huge growth prospects.

> It has become a digitised plane where the planet's biggest brands,

bands and filmmakers can hold a captive audience of millions – and right now that's more attractive than ever. (White, 2020)

> **"Estimates are that the value of the global market for creative goods doubled from US$ 208 billion in 2002 to US$ 509 billion in 2015."**

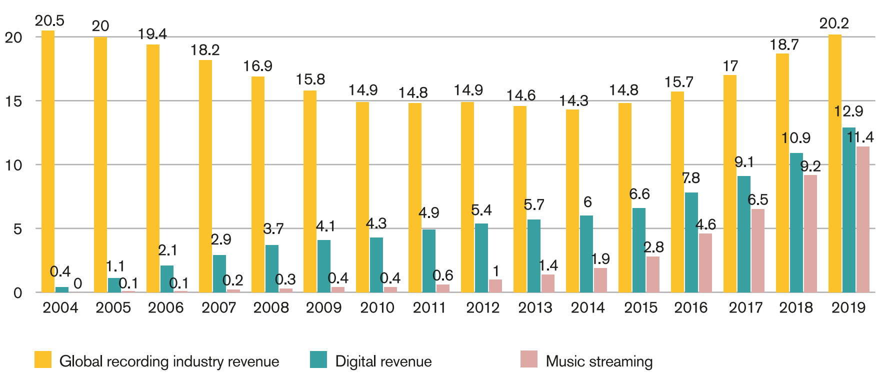
It is still early days to assess how online services or cross-border trade would impact the prospects for the industry going forward especially in an environment where live events are affected by COVID-19 health protocols. What is clear is that there is going to be increased innovation and disruption of the sector in the coming years linked in part to the pandemic.

The digital music industry

The music industry offers a good case study of the impact of the digital economy on the creative sector given the experience of the global recorded music sector. As Figure 2 shows, the sector has lost significant revenue due to digitalization. Global recording industry revenues plummeted in the early 2000s and continued a steady decline until 2014. Even with a significant rebound, the revenues in 2019, which are estimated at US$ 20.2 billion, still have not surpassed the earnings in 2004 of US$ 20.5 billion. However, what the data show is the rapid rise of digital revenue with music streaming being the key driver of growth. The year 2016 is considered an inflection year because it is the first time that digital revenue accounted for more than half of total revenue. By 2019 digital revenue accounted for 64 per cent of total revenues, and music streaming contributed 56 per cent on its own (IFPI, 2020).

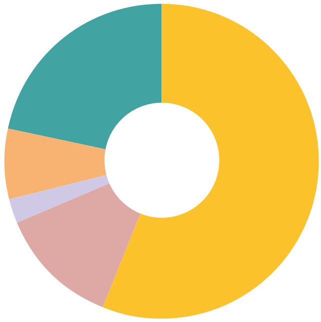
A closer examination of the data reveals that at the end of 2019 streaming revenues accounted for 56.1 per cent of the global recorded music market with subscription audio streaming at 42 per cent of total

Figure 2: Global recorded music revenues, 2004-2019



Source: IFPI, 2020.

Figure 3: Global music revenues segments, 2019



Source: IFPI, 2020.

revenues and ad-supported streams contributing 14.1 per cent (see Figure 3). Downloads and other digital revenues were 7.2 per cent, thus making overall digital revenue 63.3 per cent of total revenues in the sector. Physical format sales continue to decline and contributes 21.6 per cent followed by performing rights income (12.6 per cent) and synchronization revenue at 2.4 per cent (IFPI, 2020).

One of the key concerns that has emerged from the growth of the digital music context is the relative disparity in remuneration for rights holders such as authors, composers, publishers and artists generally. This is an issue that goes beyond the digitalization issue in that the conventional music industry structure has a high level of value leakage to intermediaries resulting in low shares of the value-added for creators. In a report on the US music industry published by the CITI investment bankers in 2018, it was noted that spending by consumers was on the increase and diversifying with the growth of multiple avenues and platforms for consumption and that the earnings of creators had crept up from a low base. The report argues that the live events business is the main growth area for artists and not streaming or subscription-based income.

> Artists' share of music revenues is small. In 2017, artists captured just 12% of music revenue with most of the value leakage driven by the costs of running a myriad of distribution platforms – AM/FM radio, satellite radio, Internet distributors – augmented by the costs (and profits) of the record labels. The proportion captured by artists is, however, on the rise (it was just 7% of industry revenues in 2000). The bulk of the improvement is not driven by the growth in music subscription services. Rather, it's driven by the strength in the concert business. (CITI GPS, 2018)

This assessment of where the value-added is for creators is a critical one in the context of COVID where the concert business may take a long time to recover if at all. This means that creators will have to rely more on earnings related to digitalization. Given that the dominant position of online platforms in the distribution of digital music has a major influence on the commercial use of creative content, it is important to understand the structural limitations affecting the distribution of income in the digital music sector.

The operations of the digital music industry and the role of online platforms are such that they are able to employ "safe harbours" exceptions, for example, in the US Digital Millennium Copyright Act of 1998 (that implements two 1996 treaties of the World Intellectual Property Organization), which limit the copyright-infringement liability of online service providers. This problem is particularly evident on online content-sharing service providers that distribute mostly user-generated and user-uploaded content and videos. For instance, the YouTube business model is based upon user uploads, which are distributed via curated playlists and recommended tracks to its users who access the content for free. It then monetizes the content through advertising placements and the sale of users' data.

Table 1 provides data on the payout rates of the top streaming services, and it estimates how many streams would be required to achieve the monthly minimum wage in the United States. What it shows is that the streaming services with the lowest number of subscribers (e.g. Napster and Tidal) have significantly higher payout rates, whereas middle-tier services like Amazon, Apple Music, Deezer, Google Play and Spotify require between 200,000 to 360,000 streams to meet the monthly minimum wage threshold of US$ 1,472. YouTube is at the other end of the spectrum with over 2 million streams to earn the monthly minimum wage, which is out of the reach of most artists or creators. The payout rates in emerging markets are also at the lower end (e.g. Jiosaavn in India), and in some instances even lower than YouTube (e.g. Tencent QQ in China).[2]

The streaming service business is very complex in that it is diversified by service provider and market with several factors, such as where the content originates and what payout pool it is monetized under. For instance, Spotify has a premium subscriber rate and a freemium ad-supported rate. These rates are differentiated by market. The premium subscription rate for customers in the United States was US$ 9.99 per

Table 1: Top streaming services and payout rates

Streaming service	Average payout per stream	# of streams to earn $US 1	# of streams to earn minimum wage*
Napster	$0.019	53	77,474
Tidal	$0.0125	80	117,760
Apple Music	$0.00735	136	200,272
Google Play Music	$0.00676	147	217,751
Deezer	$0.0064	156	230,000
Spotify	$0.00437	229	336,842
Amazon	$0.00402	249	366,169
Pandora**	$0.00133	752	1,106,767
YouTube	$0.00069	1,449	2,133,333

Source: Routley (2019).

* Monthly minimum wage of US $1,472

**Premium tier

month, whereas in India it was US$ 1.70 to compete with local rivals. The payout is also shared among labels, the copyright owners or publishers, and the authors or songwriters.[3]

As such, simplistic conclusions are difficult to make about the earnings and profits structure in the industry. For example, Spotify's 2019 earnings were EUR 6.8 billion, a robust growth rate of 28.6 per cent, matching the 2018 rate, which had been the company's slowest over the past four years. Spotify made a relatively small net loss of EUR 186 million (Johnston, 2020).

The key observation is that the share of income going to content creators is relatively small when compared with the revenue earnings of music platforms like Apple Music and Spotify. The issue is defined as the "value gap", and it is viewed as "a mismatch between the value that online user upload services, such as YouTube, extract from music and the revenue returned to the music community" (IFPI, 2017, p. 25). More broadly, it is defined by Music Canada as "the gulf between the revenues derived by online platforms, broadcasters and other third parties from the commercial use of creative content (such as music, books, news, TV shows and movies), and the revenues returned to the artists, journalists and businesses who create it" (Music Canada, 2019). IFPI, the recording industry organization, argues that the source of the problem is structural and based in copyright regulations:

> Inconsistent applications of online liability laws have emboldened certain services to claim that they are not liable for the music they make available to the public. Today, services such as YouTube, which have developed sophisticated on-demand music platforms, use this as a shield to avoid licensing music on fair terms like other digital services, claiming they are not legally responsible for the music they distribute on their site. (IFPI, 2017, p. 25)

The EU Copyright Directive is aimed at addressing these concerns and has the objective of creating an orderly marketplace for copyright in the digital arena. In particular, Article 17 focusses on the "use of protected content by online content-sharing service providers" and seeks to redress the imbalance between rightsholders and the digital platforms. Article 18 goes further to call for authors and performers to receive appropriate and proportionate remuneration.[4] The EU press release argues that the goals of the directive are to "strike the right balance between the remuneration received by authors and performers and the profits made by internet platforms when they make their works accessible". It also "encourages collaboration between online content sharing service providers and rightsholders" by requiring internet service providers to obtain authorization from rightsholders, particularly "upon notification by rightsholders of an unauthorised protected work" thereby requiring online service providers to take "urgent steps to remove the work and prevent it from becoming available in future" (Council of the European Union, 2018).

It is still early days to assess the impact of the EU Copyright Directive and whether the core principles will proliferate in other jurisdictions. What is evident though is that the digital music industry and the wider digital creative economy are evolving and contested. How do we determine the prospects for developing economies?

Digital music and copyright

> Copyrights sustain incentives to invest in creativity and build markets, particularly important in digital content. They facilitate contracts in which various contributors to creative digital products and services can share income and ownership. They also facilitate licensing and distribution across international markets. (Maskus, 2018)

"One of the highest-earning and fastest-growing sectors in the digital creative economy is the videogame industry, which surpasses the combined revenue of the film and music sectors."

Copyright is a critical feature of the underlying conditions for the digital creative economy and the trade-related aspects of copyright are now generally recognized as a key component of the burgeoning service and knowledge-intensive world economy (OECD, 2015). The key observation is that the rapidly growing digital economy relies heavily on creative content, which generates copyrights.

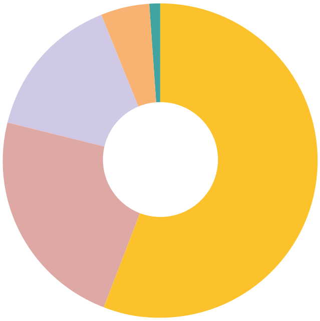
Copyright is on a growth trajectory as global collections of royalties rose by 25.4 per cent from 2014 (EUR 7.69 billion) to 2018 to reach 9.65 billion. The music industry accounts for 88 per cent of the collections and so provides that most appropriate case study. A significant and rising share of this growth comes from the pivot towards the digital economy with collections from digital sources rising over 50 per cent in 2016, which is an inflection year for the music industry as digital revenue surpassed all other sources combined. Digital income, which was estimated at EUR 1.6 billion in 2018, is one of the key drivers of global music collection, accounting for 17 per cent of total collections up from 15 per cent the year before (CISAC 2019). It is also noteworthy that digital music revenues have increased by 185 per cent in the last five years with the growth coming largely from subscription streaming and video services.

One of the specific benefits of looking at music and copyrights is that it is the area in the creative industries for which there is some consistent and comparative global data and thus provides a basis for researching the digital and creative economy. Data capture for developing countries and regions is relatively robust when compared with data from trade in services, which is weak or non-existent for most developing countries.

Developing countries' share of copyright or royalty income or collections is relatively small. Europe (56.4 per cent) and North America (22.6 per cent) together account for 79 per cent of total global royalties collections (Figure 4). The Asia/Pacific region is next with 14.8 per cent, however, the performance is dominated by Japan, China, South Korea and Australiasia. Latin America and Africa trail far behind with 5.4 per cent and 0.8 per cent, respectively (CISAC, 2019). This suggests that the combined copyright collections from the developing world is less than 10 per cent of total global collections.

The dominance of North America and Europe in royalties collection is underscored when the regions are compared in terms of collections per capita. For instance, collections in Europe are six times that of the Latin America and Caribbean region, 15 times that of Asia/Pacific and over 60 times that of Africa. In effect, what these data show is that the creative sector and copyright collections are

Figure 4: Global collections of royalties, share by regions, 2018



Source: CISAC, 2019.

Table 2: Breakdown of regional collections, 2018

Regions	Type of use	Collections (EUR, millions)	Growth (%)	5-year growth (%)
Asia Pacific	Live & background	306	+3.1	+22.4
	TV & radio	393	-3.7	+5.6
	Digital	376	+22.4	+120
Latin America and the Caribbean	Live & background	194	-9.5	+14.2
	TV & radio	180	-29.2	-32.3
	Digital	75	+49.3	+978
Africa	Live & background	17	-0.9	+13.3
	TV & radio	31	+5,5	+23.8
	Digital	11	-9.7	+32.5
	Private copying	12	+10.6	+69.0

Source: CISAC (2019).

relatively underdeveloped in the developing world (CISAC 2019).

The question that emerges is whether digitalization can redress these imbalances. The data on the growth of digital collections are somewhat promising. The data in Table 2 show that in several developing regions collections are shifting rapidly to the digital arena. This is clearly evident in Latin America and the Caribbean, where digital collections rose almost ten-fold in the last five years. In the Asia Pacific region, it grew by 120 per cent. In Africa, where digital technology access is less developed, the fastest growth is taking place in private copying (69 per cent) followed by digital (32.5 per cent).

Creative and digital entrepreneurship

The above analysis illustrates how digital, mobile and internet technologies are transforming structures in the global economy and generating new business models and markets that make the creative industries a critical resource for economic development in multiple spheres. From the perspective of the creative industries, digitalization is one of the key means by which creative content can be made more visible and accessible to regional and global audiences. In effect, digitalization offers great potential for tapping into traditional and non-traditional markets for creative goods, services and IP.

The literature suggests that tapping into these emerging opportunities requires developing countries to not only improve the quality and marketability of their content, but they have to also find ways to aggregate content, proactively participate in digital distribution platforms and build the required copyright collections infrastructure (Nurse, 2000). For example, it is argued that "if a platform holder manages to launch at the right time, adopt an optimal pricing structure, and provide an accessible infrastructure, strong winner-take-all effects can come into play, ultimately allowing a platform to aggregate a disproportionate amount of users, revenue, and/or profit" (Poell and Nieborg, 2018).

Additionally, it is becoming ever more evident that wider issues related to e-commerce and data localization are becoming critical trade and industrial policy considerations for the new business models associated with the digital creative economy. Given that data monetization is an expanding revenue stream, it means that who owns and controls the data generated by users or consumers has a strategic and increasingly profitable asset. Several Asian countries have pursued data localization to ensure that domestic firms can participate in the data economy in more proactive ways.

The overarching argument is that the enhanced integration of developing countries' creative industries in global value chains requires a shift in the industrial paradigm and business practice from the low value-added, stand-alone creative firm, cultural practitioner or artist operating in isolation to a strategic collaborative approach that facilitates higher levels of creative and digital entrepreneurship through higher levels of collaboration, coordination and organization. For example, there is a clear opportunity for greater aggregation of content through platformization and the adoption of blockchain technologies in order to take advantage of the expanding digital trade in online, streaming and subscription services (Nurse et al., 2020).

The challenge being highlighted here relates to the absence of a clear strategy to build capacity within the creative sector in the developing world. This problem is illustrated by the case of Brazil, which benefits from a creative sector that accounts for 2.64 per cent of gross domestic product (GDP) and one million jobs in 200,000 enterprises. A recently published report highlights that:

> In Brazil, there has been little strategic focus on creative entrepreneurship as a strand for culture-led development. Most federal public programmes focus on the protection and promotion of culture without real connections to the role of culture in the economy. Thus, cultural policy, despite a growing focus on the Creative Economy, has not yet adequately explored how to build the capacity of cultural producers so they can operate as creative entrepreneurs. This includes few activities that seek to build the digital capacity of the cultural sector and to generate scalable business and distribution models. (Fleming, 2018, p. 16)

Improving the export capabilities of the creative industries sector and tapping into the rise of the digital economy require the development of a complex of trade, financing and business support services along with tax incentives, access to training, knowledge and IP protection and exploitation (HKU, 2010). In short, what is being recommended is the integration of policy arenas, a practice that is becoming increasingly accepted in the creative industries.

Similar recommendations have emerged from a study of the cultural flows between the Caribbean countries and the European Union (Burri and Nurse 2019). The CARIFORUM-EU Economic Partnership Agreement (EPA) is the first international trade agreement that incorporates trade in culture and aims to implement Article 16 (preferential treatment) of the UNESCO Convention. These objectives are embedded in provisions under the List of Commitments on “Investment and Trade in Services” as well as “Protocol III on Cultural Cooperation” (Cultural Protocol). Despite the far-reaching commitments undertaken by the EU in granting facilitated market access and preferential conditions to Caribbean cultural goods, services and practitioners, the agreement has not improved market entry and export earnings or redressed the imbalance in trade in goods and services between the two parties after being in force for more than a decade.

The experience of the CARIFORUM-EU EPA suggests that rebalancing trade flows requires an agenda that goes beyond “market access” towards “market penetration”. This involves interventions outside of passive trade policy tools (e.g. implementation of trade agreements) to involve the establishment of proactive trade and industrial upgrading mechanisms such as funding for start-ups, innovation labs, market incubators, cluster development and market development programmes. These mechanisms can play an important role in the development of entrepreneurial skills among industry participants; encourage experimentation with new ideas, techniques and media; and facilitate capacity development particularly among young entrepreneurs who can overcome their creative or intellectual isolation through networking, mentorship and peer-to-peer coaching.[5]

A key element of the intervention framework relates to the creation of enabling institutions to facilitate the growth and industrial upgrading of the sector. This could include the creation of umbrella organizations, business support organizations, export consortia or industry coalitions. On the government side, this could involve the harmonization of governmental policies, agencies and ministries that interface with the sector, for example, in the fields of cultural policy, trade facilitation, IP rights, enterprise development, and education and skills training.

It is also important to promote cross-sectoral linkages, as the creative industries have multiple markets and sources of income, many of which intersect with ICTs, manufacturing and tourism. In short, the objective is to make creative entrepreneurs and their works more visible and accessible to the wider markets; potential clients, sponsors and investors; and policymakers.[6]

Another key area is trade financing, such as market development grants and financing for participation in trade fairs, outbound and inbound trade missions, business-to-business meetings and other forms of market entry programmes. Additionally, new mechanisms for financing intangible assets, such as IP, would enable creative businesses to grow sustainably and benefit from increased access to different sources of finance (seed financing, cluster financing, export financing, debt, private equity or venture capital) (Nurse, 2016; Cunningham et al., 2008).

In conclusion, the key strategic opportunity for developing countries is to adopt a sector-wide approach to the creative sector and facilitate the creation of end-to-end business solutions and trade support mechanisms. This suggests that the solution is more than simply gaining access to markets. From this perspective, stakeholders can play a critical role in coordination and upscaling the creative industries once integrated support mechanisms are employed. What is needed is a trade and financing governance framework that is demand-driven and entrepreneurial in focus. It allows for start-ups, clusters, incubators and accelerators linked to market entry programmes that are supported by innovative financing mechanisms (e.g. crowdfunding, angel investing, debt and equity financing, trade financing and IP value capture). There is also a critical need for a wide array of policy support measures such as diaspora engagement, destination branding, trade and export facilitation, investment policy and human resource development. The objective is to reduce the risk of upscaling and to make creative entrepreneurs and their works more visible and accessible to wider markets; potential clients, sponsors and investors; and policymakers (Nurse and Ye, 2012).

Endnotes

1 For an introduction to the concept of the digital creative economy, see Towse and Handke (2013).

[2] See https://soundcharts.com/blog/music-streaming-rates-payouts#local-services-of-jiosaavn-yandex-and-tencent-take-the-lower-end.

[3] What Music Streaming Services Pay Per Stream (And Why It Actually Doesn't Matter), available at: https://soundcharts.com/blog/music-streaming-rates-payouts.

[4] See the Directive (EU) 2019/790 of the European Parliament and of The Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/

[5] Austria developed and runs a highly successful peer-to-peer coaching in its Creative Industries (CI): A group of 20 young entrepreneurs, guided by two experienced supervisors, works for six months on crucial areas of their own development, e.g. how to find clients, how to differentiate oneself from others, how to manage finances etc. See http://www.facebook.com/choch3.creative.community.coaching.

[6] "Kreativwirtschaft Austria" is an example for such an CI umbrella organization. Founded in 2003, it is closely associated with the federal chamber of commerce, but co-founded by the Federal Ministry for Economics.

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Comments

WOLF R. MEIER-EWERT*

The success of digital technologies has dramatically transformed the interaction between the intellectual property (IP) system and international trade. While traditionally, the – already significant – role of IP to channel and frame commercial information and proprietorship in offline trade in goods and services was seen as an embedded component of added value, in the digital context – particularly in the digital creative industries – traded products rarely exist in physical form. Transactions regarding eBooks, apps or music files, the streaming of movies or the upload of user-generated content – today the dominant form of consumption of digital content – are no longer accurately captured by a transfer of ownership in the traditional sense. Online purchasing of any digital product is typically conducted by contractual terms including a limited IP licence that defines the "use-rights" a customer obtains with respect to the digital content in question. Exchanging digital products of this type is thus essentially "trade in IP".[1]

Keith Nurse's chapter on the digital creative economy and developing countries aptly identifies "trade-related aspects of copyright" as a key component of the burgeoning service and knowledge-intensive world economy. Indeed, IP systems, by determining the scope and extent of use-rights (i.e. licences) to intangible content produced by creative industries, provide much of the legal framework in which their digital products are traded domestically and internationally today. It is difficult to underestimate the significance of this realization – particularly in the context of developing countries' creative sectors, which are eager to access and integrate into global value chains, exploiting digital content.

Developing and strengthening the legal and institutional infrastructure of IP systems – particularly in areas relevant to creative industries such as copyright and geographical indications – have long been recognized as tools to help realize untapped potential in developing countries. Nurse's reliance on collection data – although cited to show lack in volume – also highlights the gaps that still persist since the days when Bob Marley relied on collecting societies in the United States for lack of faith in equivalent institutions at home. The development of effective collective copyright management organizations (CMOs) is an important contribution to a functioning IP system – although lessons from developing countries caution against disregarding competition considerations in this area – and are needed particularly in developing countries to ensure viability and financing of a creative sector.

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However, at least as significant as the effective application of the current IP system to the realities of an individual country is the development of the copyright system and its adaptation to the challenges of the modern digital world. Digital communication technologies have enabled the development of truly global, potentially seamless markets for digital products, with enormous potential for benefits of consumers and content providers. Licences to use IP-protected content, in contrast, are granted on a territorial basis, the licensed IP rights existing only at the level of domestic law. Ensuring interoperability of national IP systems through the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and other multilateral instruments would thus seem essential to enable content industries to access open markets for digital products.

"The success of digital technologies has dramatically transformed the interaction between the IP system and international trade."

In a global market for digital products that are essentially defined by IP, national IP policies can have a direct impact on the flow of revenue and business in this field. Solutions to questions of IP protection in the context of digital trade that an individual jurisdiction might adopt – or leave unclear – have a defining influence on the viability of online business models that Nurse cites rightly as the predominant modes of exploitation of the modern content industry, and which are in turn critical for realizing the growth potential of creative industries.

To craft a copyright system fit for the aspirations of nascent digital creative industries, developing and developed countries alike should actively pursue policy formulation in such areas and engage with partners and participate in international forums that favour developing appropriate common approaches.

Examples of these areas include the degree of liability of internet service providers (ISPs) for IP infringements by their users, which directly impacts the viability of operating digital platforms in a global market. The pervasive view that their important role in facilitating access justifies a certain privilege for ISPs, requiring their action and collaboration only when they are notified of infringing content by rights holders, was developed through years of jurisprudence. Successive legislative developments have enshrined this approach of providing such "safe harbour" under certain – albeit still varying – conditions in the laws of a wide range of jurisdictions, some of which even considered adopting this standard in a regional trade agreement.[2] Yet, despite the seeming unanimity in this area, recent legislative developments in the European Union adopt a more critical view of large digital platforms and propose to establish a general obligation of ISPs to screen for infringing content, thus rolling back the safe harbour principle. This shows that policy solutions in the fast-moving digital sphere continue to evolve – with direct impact on digital content business models – and national IP policymakers are well advised to consider their domestic systems in light of these developments.

While a particular national regime of ISP liability may mostly affect the availability of platform services in that jurisdiction and thus the “supply of IP content” to a national economy through ISPs, other salient aspects of an IP regime directly impact the availability of content for subsequent sale or use by creators in producing new creative works. The question whether exhaustion – the principle that once an IP-protected good has legitimately entered distribution channels, its further sale (e.g. of a second-hand book) no longer requires the agreement from the original right-owner – could also apply to downloaded digital products (e.g. eBooks or software) is determinative for whether a potentially significant market for “second-hand” digital products could exist. Similarly, the conditions under which creators can license and use so-called “orphan works” whose legitimate owners are too difficult to determine – a growing problem particularly in the software and videogame area – determine whether publishers or creators will take the commercial risk to use these, or whether they will disappear from the market.

The above shows that the paradigm shift in the significance of IP systems for the global digital marketplace creates a particular urgency in the area of copyright. However, a concentration of efforts in the development of an internationally compatible, modern and responsive system of law and institutions in the area of IP is likely to be an excellent investment in the future opportunities of creative industries in developed and developing countries alike.

Endnotes

[1] See WTO, *World Trade Report 2018: The Future of World Trade: How Digital Technologies Are Transforming Global Commerce*.

[2] See the US – Korea Agreement, the EU – Korea Agreement and the text of the original Trans-Pacific Partnership (12) Agreement.