

**YOUTUBE AND SHARING:
COMPETING BUSINESS AND CULTURAL MODELS IN THE DIGITAL ERA**

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ABSTRACT

The transition to the digital era has been a difficult one for many copyright owners. The business fortunes of many copyright owners during the digital era have been shaped by several forces, including changes in the competitive business environment in which they operate and cultural changes that may reflect changing consumer preferences. Widely available digital era technologies have made the reproduction and dissemination of verbatim copies far easier. Use of such technologies has led to the widespread distribution of unauthorized copies of copyright protected works as well as the creation and dissemination of modified versions of one or more existing works, including through the creation of clips, mashups, vidding, other types of fan fiction works and other practices. In the digital video arena, YouTube has emerged as a dominant site that contains user generated content (UGC), which may include copyright protected works. The widespread nature of unauthorized uses in the digital era has significantly challenged copyright laws. Digital era disarray has been particularly evident in the case of the music industry, which has experienced a particularly messy encounter with the digital era. In the past, copyright owners typically ignored noncommercial uses. Content owners have tried a number of strategies to respond to the deluge of unauthorized uses, including educational efforts, digital rights management (DRM), and lawsuits against direct and indirect infringers. All such strategies have been to date largely unsuccessful in halting the unauthorized distribution of digital content; further, even those strategies that may have yielded some short term positive benefits, such as the RIAA litigation strategy against the consuming public with regard to digital music file sharing, have also led to significant negative publicity and potentially negative reputational effects. More recently, content owners in the music industry have proposed implementing an Internet Service Provider (ISP) levy to compensate musical content owners for losses from digital era piracy. This levy proposal mirrors existing levy schemes such as those in countries in the EU, which impose extra costs on all those who purchase media that might enable unauthorized uses. This article evaluates such levy schemes and in light of the nature of the losses asserted by content owners in the digital era. Although content owners have clearly experienced losses, any proposed compensation schemes should take account of potentially three sources of losses for content owners in the digital era. Although piracy is one possible reason for content owner losses, changes in business models and changing cultural practices are two significant factors in the adverse business outcomes in recent years for many content owners, particularly in the music industry. This article discusses potential policy solutions to current copyright conflicts in light of the shifting landscape of creation and distribution in the digital era.