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CONSIDERING THE RISK DIMENSION IN THE ADMINISTRATION OF COPYRIGHT

ANA MARÍA TÉTREL

ABSTRACT. In the law and economics literature of copyright, the economic function of collecting societies has been principally treated as a way to diminish transaction costs. However, another possible function, the transfer of risk as a function of collective administration has been, relatively, ignored. Through risk analysis, an author will be able to determine which method of administration of protected rights is most beneficial to him. Due to information asymmetries, authors and users bear a number of risks. These risks can be transferred to a collecting society which is in a better position to bear them more efficiently and to better administer the protected rights.

1. INTRODUCTION

The author of a protected work, who wants to exploit it, has to figure out how to best administer it. The administration of a protected work implies several difficulties. Two difficulties in particular are the most relevant. On the one hand, the author needs to set all the conditions authorising the user to make a proper use of the work, obtaining in exchange a payment for this. On the other hand, the author has to detect possible infringement of the work, a complicated task taking into account the evolution of technology and therefore the diversification of ways of using the work. These difficulties lead the author to face high transaction costs and risky situations in the administration of her rights. The aim of this paper is to classify and analyse the different circumstances related to the administration of protected rights, in which a potential risk can take place. The utility of this work resides in identifying and classifying the different risks faced by an author when deciding whether to individually administer or collectively administer her rights.

The administration of protected rights can be carried out in two ways. On the one hand, non-collective (or individual) administration can be carried out by the author herself or by the right-holder. This presupposes two possible scenarios. Firstly the author self-administers her rights, implying that she has to produce the work (not only intellectually but physically), distribute it, negotiate all the licensing conditions and monitor probable illegal uses of the work. Secondly, the author transfers her ownership to a third person, an intermediary between her and the final user, who will become the right holder. The intermediary can be a different person depending on the protected work: editors in the case of production of books, editors or music producers in the case of music productions, film or audiovisual producers in the case of movies. Depending on the license contract, the intermediary has the obligation of producing, distributing, negotiating contract conditions and monitoring the protected work. If the intermediary has a license for

the totality of the rights, he in turn, may license to a collecting society those rights that he cannot exercise personally, for instance the right of public performance.

On the other hand, collective administration can be carried out by a copyright collecting society. It is the collecting society who will act also as a mediator between the author and the final user. A collecting society's intervention allows the author to exercise in practice the monopoly that she has over her work (Caron, 2006). The collecting society is not in charge of the production of the work, this is a task for the author or the intermediary. The collecting society deals with the obligations of distribution, negotiation of contract provisions, monitoring of misuse of the work, recollection and distribution of royalties. Furthermore, the collecting society can act on behalf of authors as a community and represent them before state instances.

Collective administration is widely justified. In the words of Katz (2005);

> "A simple reading of the relevant legislation regarding public performance might convey the impression that users reach agreements and obtain licenses from individual copyright holders. In practice, however, agreements between users and individual copyright holders are rare. In most cases, users negotiate, obtain licenses and pay royalties to Performing Rights Organizations, which operate on behalf of numerous copyright holders, typically all (or an overwhelming majority) of the copyright holders within a jurisdiction.".

The traditional economic analysis of collective administration has put forward the advantage of reduction of transaction costs. Additionally, I purport to argue in this paper, that the risks derived from the administration of protected rights can be more efficiently allocated if placed in the hands of a collecting society.

The next section of the paper will describe the different economic elements associated with deciding whether to administer through collective administration or through non-collective administration. In particular, we shall treat the asymmetries of information that can be present in the negotiation, and the degree of uncertainty concerning final income. The third section will describe the different risks derived from copyright administration, taking into account the risks that should be faced by the author or/and the intermediary and by final users. The fourth section presents some economic elements that can be used to reduce the risks derived from copyright administration.

2. Economic Elements Related to Copyright Administration

Before beginning a full classification of the types of stochastic situation that can occur when copyrights are administered, we will firstly provide a short outline of the economic elements that are typically involved. Above all, we must attempt to clearly separate aspects of risk and uncertainty from aspects related to asymmetric information.

2.1. **Uncertainty and risk.**

Uncertainty and risk are two concepts that can be differentiated. Knight (1921), explains that risk refers to "situations where the decision-maker can assign mathematical probabilities to the randomness which he is faced with" and uncertainty "refers to situations when this randomness cannot be expressed in terms of specific mathematical probabilities". In these definitions probability plays a central role, as both risk and uncertainty imply that it is a matter of chance which particular outcome, from a given set of possibile options,

will occur. The difference between risk and uncertainty then is reduced to whether or not the probability of each outcome being selected is governed by objective (risk) or subjective (uncertainty) probabilities.

As far as copyright administration is concerned, right-holders and users face uncertain conditions when they contract. The probability that any given outcome will be attained depends on the combination of the elements related to the administration, e.g. negotiation, licensing, monitoring protected rights and payment of royalties.[1] Thus, right-holders and users contract under uncertainty, implying that the final income they receive is not determinant.

Both risk and uncertainty can be seen to be symmetric demises in the information that is available to the contracting parties. If information were "perfect", then each party would be fully informed of all relevant factors, i.e. the values of all relevant parameters are known by all participants with probability 1. When information is imperfect, but still symmetric, then each party is uninformed of the same relevant factors. When both parties to a contract are uninformed of the same parameter values, then we have a case of uncertainty (Harsani 1967, 1968a, 1968b). If, additionally, each participant associates the same probabilites to the distribution of options, then the case at hand is one of risk. Clearly, uncertainty, rather than risk, is a more natural description of the type of situtation that would occur in real-world copyright administration. Risk describes the types of lotteries that are governed by coin flips, dice rolls, and other such objective mechanisms. But for copyright administration, and for the process of contracting for copyright administration, we should be interested in the eventual market demand curve, the possible future appearance of substitute works, possible future alterations in the relevant legal environment, the possibility that one or the other of the contracting parties could go bankrupt, etc. These are all elements of uncertainty rather than risk.

If, as is natural to assume, the contracting parties are risk averse, then uncertainty is a costly element to the process. Indeed, if the individual opinions as to the relevant probabilities involved are wildly different, we may even find that the space of mutually acceptable contracts dissappears entirely. This, for example, can happen even if both were to agree on, say, the expected value of a relevant variable. Say one party estimates a probability distribution with a very large variance, while the other estimates a distribution with a very low variance, even though both estimate the same expected value. The first party would demand that a high risk premium in his or her favour be included in the contract, while the other party would only be willing to admit a low risk premium. This could lead to a total breakdown in negotiations.

In itself, whenever uncertainty is a central element in the negotiation process, we can see that quite aside from the costs of this uncertainty to the (risk averse) contracting parties, other clear risks are posed. For a start, there is the risk that contractual negotiations will break-down, which may not have occurred if the uncertainty of the contracting environment were reduced. There is also the risk of exactly how each contracting party evaluates the uncertain prospect. If I could know for

[1]There may also, of course, be any number of external factors that contribute to the riskiness of the contracting environment; political risk in the economy in question, and perhaps even environmental risks that could lead to the collapse of a business. Here, of course, we put these exogenous risks aside, and we concentrate only on the risks that are present within the contracting environment.

sure, before negotiations begin, the way in which the person with whom I contract will evaluate the relevant probabilities, then at the outset of the process things have become one degree more certain for me (and thus one degree less costly). The presence of uncertainty also implies that the choice of contracting partner becomes a very relevant issue. Different partners will possess different degrees of risk aversion, and (as we have already noted) will presumably evaluate uncertainty differently, both of which will affect the final contracting solution. Thus not only are there clear risks present when contracting with any given partner, there are also risks when we consider that the choice of partner from the set of all possible partners also implies uncertainties that need to be considered.

The pure risk-bearing benefits (i.e. without introducing any type of informational consideration) that can accrue to an author by using a collective rather than by acting alone can only be due to either a reduction in uncertainty, or to a better ability to bear risk. Let's look at these two options in turn.

2.1.1. *Reductions in risk and uncertainty.* Firstly, it may be the case that the use of a collective can reduce the amount of uncertainty in the final outcome. We need to be careful to understand, and to clearly differentiate between, possible reductions in uncertainty as opposed to possible increases in infomation, which would be an aspect that we need to analyse in the next section. This is often a difficult task, as it is also natural to associate a reduction in uncertainty with an increase in information. Indeed, one of the very earliest (and indeed most famous) papers on the economics of risk was entitled "The Economics of Information" (see Becker, 1961). It is certainly true that, if we are acting in an uncertain environment, then at least one parameter value is unkown, and so must be subjectively (or perhaps objectively, if that is possible) estimated. But if the true value of that parameter were somehow to be learned, then it is true that we are both better informed and we suffer less uncertainty (or risk, as the case may be). However the critical difference is whether or not both parties to the contract are equally informed, and learn the same new values together. Only when this is true can we speak on equal terms of "uncertainty" and "information". On the other hand, if it is true that one party to a contract acquires some relevant information unilaterally, then it is standard economic practise to talk about asymmetric information rather than uncertainty.

If, as we shall argue below, there is already some sort of asymmetrical information problem affecting negotiations in copyright markets, then the substitution of a collective for an individual on the basis that the collective is "better informed" is an alteration in the informational advantage (or disadvantage) on only one side of the contract. Thus such a situation is more naturally discussed under asymmetric information than under risk and uncertainty.

In summary, if there is to be a pure risk benefit from the use of a collective instead of acting alone, it can only derive from the elimination of certain generic risks, not the accumulation of better information. The use of a collective instead of acting alone would have to be akin to, say, tossing a coin to either win $2 or loose $2 (expected outcome of 0, variance of 4) rather than rolling a dice.for prizes of -$3, -$2, -$1, $1, $2 and $3 (expected outcome of 0, variance of 4.6666). Both the coin loss lottery and the dice roll lottery have the same expected prize, but the coin toss is less risky.

Of course, it could also be the case that the use of a collective not only reduces risk, but also provides for increases in expected value. Perhaps the most obvious

case of risk reduction under collective administration is the fact that the litigation process that ensues for when a copyright is infringed is much more likely to be successful when it is brought by a large collective than when it is brought by an individual author. Also, the collective will be better able to detect infringement, thereby bringing more cases to trial, and as such increasing the expected income that the copyright can generate.

Perhaps it is also true that negotiations via a collective are less likely to breakdown (they are, after-all, habitually dealing with the same set of users, in the same way, time after time). Collectives also have a standard practice contract that they will offer to the users of the repertorio, and so the possibility of outcomes that diverge greatly from that standard format is minimal, again a reduction in the riskiness of the final solution.

That said, there do also exist novel mechanisms under which individual authors can reduce risks. Take, for example, the well publicized case of singer David Bowie, who uses an original form of reducing risk derived from copyright administration. He established a system to secure his copyright royalties through the Bowie Bonds created by David Pullman (asset backed securities). Its functioning is simple, "the seller of the bonds receives money upfront that can be put to work immediately. Investors, over a specified number of years, recoup their principal investment, plus interests to compensate for the risk that the underlying payments will not be made".[2]

2.1.2. *Risk bearing advantages.* The second way in which a collective may provide risk benefits is that it is very likely the case that the collective is in a far better position to bear any risk that is present. An individual author will typically own a very reduced repertory, which is likely to include compositions that have a similar probability of success or failure. But a collective owns a very large repertory, and as such is easily able to absorb the underperforming compositions in that repertory, compensating with the over-performing ones. In this sence, a copyright collective is basically an insurance mutual, where the mutualists are the individual copyright holders who have given their rights to the collective for administration.

Collecting societies are composed of all type of members, including well known and less known ones. As far as the collecting society offers a blanket license, the user has access to the repertory constituted by a bundle of protected works belonging to two categories of artist: the known and the less known. In this sense and thanks to the notoriety of certain artists, the collecting society will be able to license the entire repertory including both categories of artists, implying the recovery of royalties for both of them.

It is exactly this aspect of the general business of copyright collectives that was analysed by Snow and Watt (2005), who argue that the use of blanket licensing by copyright collectives allows for (possibly) significant insurance options (that are, apparently, not typically taken advantage of by real-world collectives). By paying each member a sure amount equal to the collective the expected market value of their individual compositions (which is certainly no less than what they could expect to get by acting alone), the collective will suffer a very minimal chance of

[2]The sale of those Bowie Bonds in 1997 gave Bowie $55 million upfront; in exchange, the buyer of the bonds had the right to receive the future revenue generated by Bowie's catalogue until the principal plus 8% interest was repaid. Becker, in www.pullmanco.com/article136.htm, visited 08 September 2007.

bankruptcy (certaintly much less than if each copyright holder were to act alone), and none of the (risk averse) members of the collective will suffer any financial risk at all.

2.2. **Asymmetric information.** In the previous subsection, we have argued that it is possible that the use of a collective can eliminate some risks from the negotiating proceedure for copyright holders. However, we have also noted the need to be careful that we do not get mixed up between elimination of risks, and increases in information. If it were to be true, as we shall argue below is very likely, a copyright collective is better informed than are individual copyright holders, then rather than risk benefits we should talk about the benefits of relaxing the restrictions of asymmetric information.

Given that there is an uncertain contracting environment, and the costs implied by this, it seems logical that the better informed the individual negotiator is, the more favourable can be the final outcome. This can only be true when we supplant a more informed negotiator on one side of the contract only, in the case at hand, on the supply side. Placing the negotiation in the hands of a better informed agent should result in a more favourable final contract as the inefficiencies that arise due to asymmetric information can be reduced. Consider then, the case of copyright collecting societies. They are solely in the business of negotiating and administering copyrights, and they will at any given time be dealing with many different but related works, and so correspondingly they are much more likely to possess more accurate information on a wide variety of the aspects that are relevant to the final contract than is the author herself. A copyright collecting society should be able to extract advantage from the negotiations with copyright users by means of possession of superior information regarding the actual uncertainties of the market. Note that here *there is not the assertion that copyright collectives are fully informed, just that they might be better informed* than is the author herself. So while the collective still suffers from a situation governed by uncertainty, it is an uncertainty that can be better managed. We would expect, then, that by using a better informed party, the efficiency losses from asymmetric information are minimised.

Asymmetric infomation, as opposed to risk and uncertainty, is a situation that ensues when each party to the contract possesses different information sets. As we have already discussed, such a situation can arise even though neither party is fully informed, that is, both parties still suffer from the effects of uncertainty. However, under the general topic of asymmetric information, the economics profession has not dealt seriously with that type of situation. Rather, asymmetric information generally has been studied under the assumption that one party to the contract is fully informed of some relevant aspect, and the other is not. The trick to solving such asymmetric information problems involves that assumption that the uninformed party *knows that the informed party knows*, and of course that the uninformed party is also aware of the set of options from which the informed party's information has come.

Normally, asymmetric information is studied under either adverse selection, or moral hazard. Adverse selection occurs when one party is informed of the true value of some relevant *parameter*. The parameter value cannot be altered by the informed party (indeed, by any party), although the informed party can attempt to make out that the value of the parameter is different to its true value, thereby gaining some financial advantage. For example, say a recording firm knows that it

is currently in deep financial trouble, and that the probability of going bankrupt in the next month is very high. This might well be information that it does not wish to come to light during negotiations with the agent of a well known group of musicians for a recording contract.

Moral hazard, on the other hand, is a situation in which the informed party is able to unilaterally decide the value of some relevant *variable*, and the uninformed party cannot observe this decision. For example, when it negotiates a given recording contract, the record company might know that it holds an option for a similar contract on a similar band. What it finally decides to do with the alternative contract will, presumably, depend upon the outcome of the current negotiations. This would be a case of moral hazard, since if the company does sign with the second band, this could affect the value to the current contract for the first band (perhaps the record company would only end up offering limited recording time in the studio, or perhaps it might decide to promote the first band's record less intensely).

It is important to note that problems of asymmetric information rely upon the existence of risk or uncertainty. If there were no risk present in the contracting environment, then all the uninformed party needs to do is to defer payments to the end of the contracting period, when all parameters and variables will be able to be fully calculated given the final outcome. For example, say a record company can promote a record with either high or low effort, and that the choice of effort is not observable by the artist. This is a case of moral hazard. If the final outcome in terms of final sales were totally non-stochastic, then high sales might be only feasible with high promotions efforts, and low sales might be only feasible with low promotions effort. Then the artist need only wait until the final sales figure is known, and at that point it will be clear whether or not the record company used high or low effort, and thus the company can be paid accordingly. On the other hand, suppose that the final outcome is stochastic with either choice of effort. But suppose a high level of sales is more probable under high effort than under low effort, while a low level of sales is more probable under a low effort than under high effort. Now the final sales outcome is not a perfect signal of the level of effort that has been used – low sales can still occur even if high effort was used, it is just less likely. In this type of instance, even though the final payment to the record company should depend upon the final sales outcome, economists have long realised that the contract needs to be a little more innovative if the idea is that the company is given the incentive to use high rather than low effort.

If a contract for the administration of a copyright is to include the relevant incentive for an issue of asymmetric information to be appropriately dealt with, the uninformed contracting party must at least know the set of possible options from which the informed party's information is drawn. If this information were not known by the uninformed party, then it would be almost impossible that the contract could address the informational asymmetry in an efficient manner. Again, this is where benefits can be obtained by using a better informed agent in the negotiation process. An author who negotiates by herself is likely to suffer a greater informational disadvantage, and thus arrive at a relatively worse final contracted outcome. By using a better informed collective instead, we can easily see that the negotiated contract can likely be more favourable.

3. Risks: Description and Classification

In the administration of protected rights, right-holders and even users are in presence of risks and information asymmetries. In this section we attempt to classify the types of risks and informational asymmetries involved, and to argue that collecting societies may be better placed to efficiently bear and administer these risks.

3.1. **Risks faced by the right-holder.**

3.1.1. *Negotiation risks (the possible acceptance of improper license provisions).* All systems of copyright protection[3] grant the author of a protected work an exclusive right to exploit it. Thus, authors exercise their exclusive right through contracts, which confer a licence of use or imply a cession of the rights.[4] In these contracts, authors can authorise certain, or all uses granted by the convention and can determine the extension of this authorisation.

When authors administer their rights (non-collective administration), they should negotiate all contract provisions with the users, taking into account the legal formalities and questions of law. Different types of contracts may be implemented depending on the parties, but if the author acts alone, it is likely that she will be in a weaker bargaining position than if she acted under a collective.

An individual author would not typically know the preferences and willingness to pay of the final user. Two possibilities can be envisaged: if the license process is between the author and a final user, the most likely outcome is that both parties lack accurate market information and consequentially the task of valuing the work is risky, and as such the entire bargaining process itself is risky. If the license process is between the author and an intermediary (e.g. a radio station), the most probable outcome is that the intermediary user has more information about the market and therefore likely negotiate a price that is below the author's first-best profit maximising level.

These risks can, on the other hand, be transferred to a collecting society, which will be placed in a stronger bargaining position and therefore will be able to manage contractual negotiation risks. Collecting societies have better market information to set the conditions under standard-form contracts. In this case the risk is allocated more efficiently. In the words of Hillman and Rachlinski (2002): "Businesses standardize their risks and reduce bargaining costs by offering one set of terms to all consumers".

3.1.2. *Post-negotiation risks.* Authors can suffer financial losses once the contract has been signed, due to at least three different risks: first, the risk of not obtaining the full payment of the collected royalties; secondly, the risk of not being properly legally represented in the case of breach of contract, and thirdly, the risk of not detecting infringement and misuse of the work due to the impossibility of accurately monitoring it.

[3]Including copyright systems, derecho de autor systems, droit d'auteur systems and the Urheberrecht system.

[4]This is a legal point which varies from country to country. For instance, in the Urheberrecht system (Germany) it is not possible to cede the right for the sole purpose of relicencing it. In the systems of derecho de autor (Spain and Latin-America) and of droit d'auteur (France) it is not possible to cede the moral right, only the patrimonial rights.

In order to collect the due royalties, the author should collect them from the hands of each user (consumer). In some cases it is difficult or even impossible to recover the total amount of royalties owed. This leads to a second risk: the risk implied by legal actions against those users who did not pay, or who only partially paid, the due royalties. This requires investing in identifying the debtor and prosecuting him. In this case, the author has the right to sue the user to recover the due amounts. However the copyright holder will now have to work with a lawyer, and the fees for obtaining a specialised legal representation are always high but are necessary, because [good] lawyers can increase both the probability of a benefical outcome and the payoff from beneficial outcomes (Ehrlich and Becker, 1972). Therefore, the author will be better represented by a specialised lawyer, than by a lawyer who does not deal with all the specificities of copyright. The problem is that authors are not, in the majority of the cases, highly remunerated and may not be in a position to fund the payment of elevated fees that would enable them to be properly represented, so they face the risks implied by not being well represented.

Furthermore, the author has to monitor the proper use of the work. Despite one of the objectives of the license contract being to determine the permitted uses of the work, it has been frequently proven that the user exceeds the use that has been permitted or even worst, that the user can make use of the work without having any license at all. Authors are not in the best condition to monitor because monitoring has to be done under an individual basis (monitor each user), making it a costly task. Thus, the risk of not detecting infringement is very high. These risks can be reduced by transferring the administration of protected rights to a collecting society, because it is better placed to efficiently bear the risks.

In relation to the non-collection of the due royalties, the collecting society possesses better information to set contract conditions, including those of payment, recover the due royalties, and ultimately to prosecute the debtor in the case of non payment, because they have access to a body of specialized lawyers. In any case, even if a suit for non-payment is taking place, the author will always receive the payment of part of her royalties on-time. The reason is that the collecting society had licensed the protected work to a multiplicity of users and therefore there is a high probability of recovering at least a part of the due royalties. On the one hand, the author will always receive at least the percentage of the royalties paid by those punctual debtors to the collecting society. On the other hand, in the cases in which it applies, the author would benefit from performance payments, based on the number of performances of her work and the media that was used.

Due to the fact that the collecting society grants blanket licenses, the royalties that are recovered correspond to the media in which the protected work was performed, such as radio, television stations, cinemas and general users. In this sense, the royalty that the collecting society pays to each single author for the administration of her rights corresponds to a fraction of the royalties that the society recovers for the blanket license. This is the reason why the society is responsible for the legal expenses in case of breach of the contract and some of them even pay the royalties to the author in case of non-payment by the user.

Another aspect that should be considered is that collecting societies also fulfil a social role, acting as a public interest group influencing the law-making process on behalf of authors.

3.2. **Risks faced by the user.** Due to the deficiency of information, users[5] face three risks: firstly, the risk of paying more than what the work is worth; secondly, the risk of liability as described by Katz (2005), and thirdly, the risk of contracting with the wrong right holder.

3.2.1. *The risk of paying more than the value of the work.* For those authors who are bringing for the first time works into the market, it is difficult to determine the elasticity of demand for their work, e.g., to determine the demand for the work as the potential market, the willingness to pay a given price, and the quantity of goods that should be supplied to meet the demand, among others. Pindyck and Rubinfeld (2005, pg. 385) make reference to how to price a best-selling novel in the following terms: "What about price? Setting the price of the hardbound edition is difficult because, except for a few authors whose books always seem to sell, publishers have little data with which to estimate demand for a book that is about to be published. Often, they can judge only from the past sales of similar books. But usually only aggregate data are available for each category of book. Most new novels, therefore, are released at similar prices".

Independently of the type of administration of protected rights both authors and collecting societies have some degree of market power.[6] Therefore, to reach a profit maximizing price, they seek to set it above the marginal cost. Nevertheless, due to their better information set, collecting societies can be better placed than individual authors to determine the true elasticity of demand of the protected work and to analyse how competitors react to price changes. In that case, collecting societies will be able to set an appropriate mark up price for the protected work.[7]

In addition, from a psychological point of view and also due to the lack of information, authors tend to overestimate the value of their work. In this sense, Greffe (2002, pg. 99) explains that "authors as isolated persons (in relation with the market), know really bad the possibilities of the enhanced value in the future of their works". Authors can have an idea of the costs of creation and production but they do not know exactly the demand curve for their goods, and so they cannot know the true value of their good. What usually happens is that authors try to discover the value through a process of trial and error (Hayeck, 1968). The risk is that the price set by the author for the first time will not be a profit maximising one.[8]

Collecting societies would possess more market information, and would be able to fix a profit maximising price for the work, although in some cases they will be forced to apply a reservation price by law. One effect can be that the price set by a collecting society is fixed in the sence that it is known in advance, while the

[5]For the purpose of the paper, user will include final-users (consumers) and intermediary users as radio and television stations, etc.

[6]Authors and right holders have limited monopoly power, due to the fact that they do not act in a monopolistic market but rather in a monopolistic competition market.

[7]In some countries the government establishes ceiling prices for certain type of goods. In this way consumers will know the reservation price for the protected work and therefore will pay the maximum price for the good. In the collective administration of protected rights, state intervention is often necessary to regulate the price and control monopoly abuses.

[8]Also, one can easily imagine that in an effort to insure for undesireable outcome that ensues if the author underestimates the true value, they might well add a large risk-premium to what they estimate as the expected market value. Doing so, they migh well end up severely overestimating true market value.

price set by an individual author in a negotiation process is risky and not known in advance. As a consequence, for the user it will be more interesting to contract directly with the collecting society than with the author.

3.2.2. *The risk of liability: infringement.* This is a risk described by Katz (2005), when he treats blanket licenses as a risk management tool. Katz (2005) studies the right of reproduction and focuses on the problem of on-line music distribution. He argues that "Copyrighted music has traditionally been distributed without any protecting technology. Therefore, once a user gains access to the work by obtaining a copy of it, he can technically perform it without obtaining any license. If he does so, however, and is caught, he may be liable for infringement". Further he argues: "[...] because the purchase of a CD does not entitle the user to perform it publicly, users are exposed to the risk of liability". In-as-much-as infringement can be involuntary (for example, if the user is not appropriately aware of the law), there exists a risk of liability for all genuine users of copyright products.

He further provides one possible solution. According to Katz (2005), "a blanket license that authorizes unrestricted access to the licensor's repertoire reduces the risk of being held liable for infringement, at least with respect to the works in the licensor's repertoire". He concludes then that "it is obvious that only a blanket license offered by a seller with a significant repertoire can effectively reduce the risk of infringement [...]". Nevertheless, Katz observes that this risk diminution can be reached in the Internet environment through digital rights management technology as well (Katz, 2006), arguing that for risk averse users "DRM technology could provide such users the same assurance under competition".

3.2.3. *The risk of contracting with the wrong right-holder: incorrect payment, payment to the wrong right-holder or not to all right-holders.* On the one hand, the consumer can contract with a person who says that he is the right holder when in fact he is not. Here we are dealing with a criminal offence. For the consumer, it is risky to determine who the true right-holders are. Therefore, it will be less risky to deal with a collecting society. In this case, the consumer will be more certain that the collecting society represents the rights of the right right-holder.

On the other hand, sometimes it is hard for the consumer to identify who holds the rights. In some cases, it can be a number of persons depending on the protected work. For instance, in relation with the public performance or broadcast of sound recordings, a multiplicity of persons can hold rights, among them the person who wrote the lyrics, the composer of the music and the performing artist. The consumer faces the risk of not being sure to whom he should pay the royalties. In the case in which the producer of the sound recording holds the rights, it is not that difficult to identify to whom the consumer should pay the royalties. But in the case in which writer, composer and performing artist hold the rights, it can be complicated for the consumer to identify all the right holders. He may identify all of them, but also he may identify only part of them. In this case, he is exposed to the risk of infringement and legal action can be taken.

A similar point was raised by Katz (2005), who argues that "even a properly licensed performer of music can be placed at risk if the song that she performs infringes another copyright holder's rights and the "true" copyright holder is not a party to the license agreement. When a blanket license is used, the chances that it covers the "true" copyright holder as well are great".

4. Conclusion

The administration of copyright protected works can be conducted individually or collectively. Through individual administration, right-holders and users face two kinds of risks. On the one hand, they face information problems. On the other hand, in the majority of cases, right-holders do not have a strong bargaining position.

The information problem carries as a consequence on the one hand, that the right-holder would not efficiently set proper contract provisions, would not set a profit maximising price to the work, would not recover all the due royalties, would not efficiently detect all infringements in case of misuse of the work and will be obliged to prosecute in justice the transgressor in case of breach of the contract. On the other hand, users (consumers) also do not have enough market information. This implies the risk of contracting with the wrong right-holder of the work, or contracting and paying the royalties to just a part of the right-holders and not to all right-holders of a specific protected work.

Not to have a strong market position entails the risk for the author of giving up some of her rights while negotiating with a stronger party which has better bargaining power.

All these risks can be transferred to a collecting society which is placed in a better position to bear more efficiently the risk and to better administer the protected rights. This is due to a multiplicity of factors: collecting societies have a stronger bargaining position to bear the contractual risks; they can gather better market information to set a profit maximising price for the protected work; they have a stronger infrastructure to detect infringement of the protected work and thus to efficiently monitor; they can offer blanket licenses which constitute an incentive for users to obtain licenses. The combination of these elements makes collective administration less risky than individual administration. As collecting societies are better positioned to bear the risk, the probability of getting the expected income is more certain than with individual administration.

Each type of administration implies certain risks. The magnitude of the risks depends on the way the administration is carried out. The author has to compare the risk involved in each administration with the amount of money from her income that he is willing to give up in order to get rid of the risk. Hence, the author will compare the risk premium with the collecting society administration fee. If the administration fee is smaller than the risk premium, a risk-averse author will prefer to let the collecting society administer her rights. If the fee is larger, the author will prefer to administer her rights himself.

Taking into account the fact that the majority of persons tend to be risk-averse, collective administration could be the better option to obtain the expected income of protected rights administration. The author can benefit from the risk spreading possibilities of collective administration. He can simply invest in additional information adhering to a collecting society.

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