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Sustainable creativity - the
challenge to the IPR regime

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History repeats itself

- Pianola manufacturers try to block the Phonogram.
- Music Publishers in USA - no music on the radio
- Film industry tries to outlaw cassette technology. Betamax (USA), Dual cassette recorders (Amstrad UK)
- File sharing. The technology, ISPs, suing randomly chosen individuals (**unique!**).

Consumers are willing to pay for content

KTH research 2007:

University/High School students

- a) claim they are willing to pay 180 - 200 SEK to make P2P legal.
- b) Could consider moving to legal downloading sites
 - if
 - 1) same range of choice (music,films,games)
 - and
 - 2) if convinced that cash paid actually goes to the creators, not just to big companies.

Where can the regime go wrong?

- if the control function takes too much precedence over the economic incentive function.
- if the creator loses too much control over IPRs to agents and/or intermediaries.
- if innovation based on improving existing ideas is hindered by the degree of control by rights holders.
- if the users collective does not accept that the "balance" (control/permitted use) is reasonable.
- if a reasonable share of revenue generated by agents, using IPRs, does not filter back to the original creators.

Power of large rights holders - examples

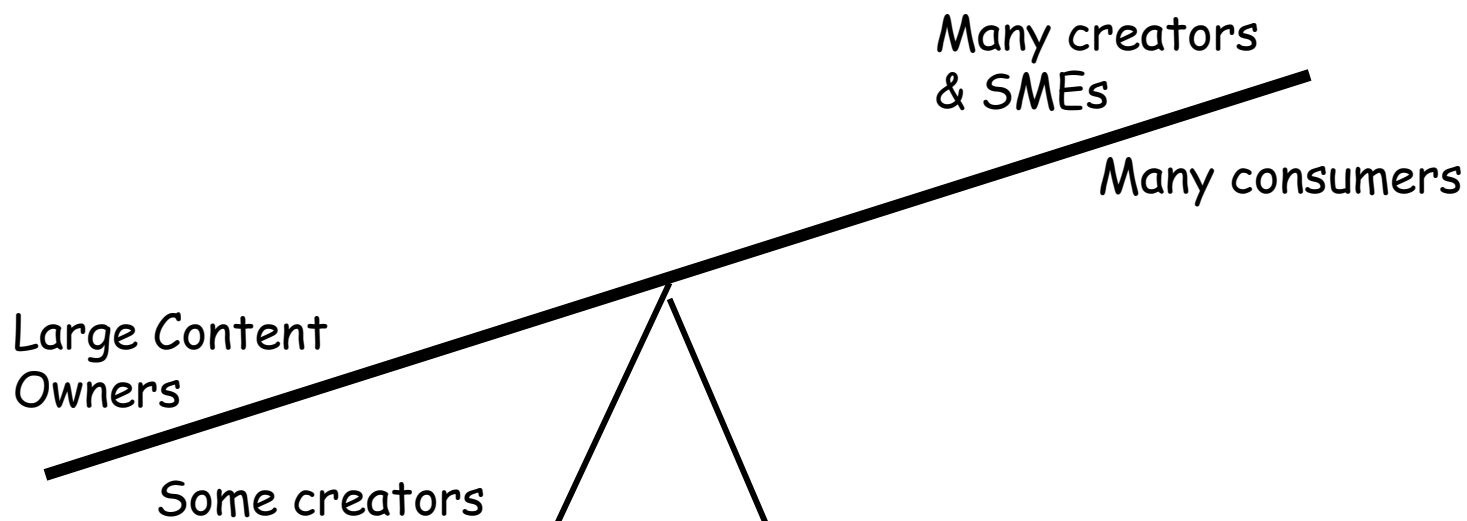
My MP3.com. Settlement with Universal. Owned by Universal and then closed down. No litigation income to creators

Napster 1. Bertelsmann /Universal. Universal receives sum to settle litigation as condition for selection to buy BNG Publishing

YouTube. Universal, WEA and Sony-BMG threaten litigation. Shortly before Google purchase they take stake in YouTube. Gives windfall of 150m Dollars - nothing to artists.

Kazaa (Sharman) settlement with RIAA 130m Dollars - nothing to artists/composers

Where are we now?



The legal regime is supporting large content owners. Technology is allowing many consumers to circumnavigate the regime. New business models reflecting new technology at odds with the legal regime. Innovation could be a victim - improving existing ideas is the basis of creativity!

The problem

- A far more Draconian IPR regime
- Gigantic repositories of rights in a few hands.
- Rights holders use IPRs to earn more cash without using it to stimulate more creativity (e.g. TV4 Sweden)
- Rights holders try to inhibit technologies and creative habits that enhance innovation.
- No demands that rights/patent holders use their rights actively.

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Merger control solutions?

- Rights back to creators if inactive for a reasonable period of time (cf the De Havilland law, California 1940s),
- Protection related to original investment?
- Better competition laws and analytical tools to identify collective dominance in the market, and divestment remedies.

The Dilemma - gigantic police actions to curb P2P, or make it legal, with a payment system.

A society with 800K who break the law, fines or even prison sentences being handed down by Judges whose own children download illegally...

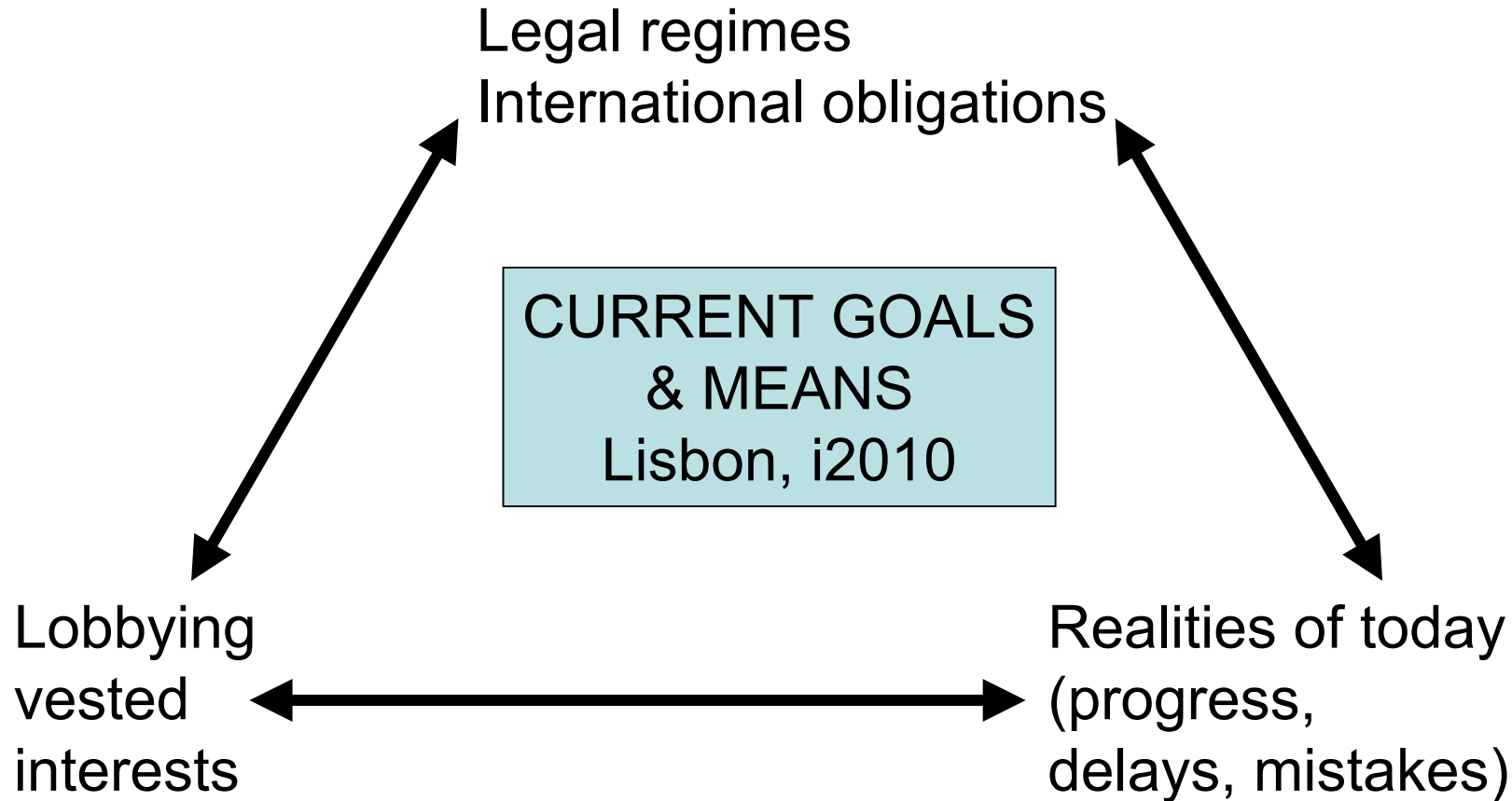
OR

A society, where file sharing thrives, with reasonable payments to creators, a have for innovation, curiosity etc. etc?

OK, how will we pay for the fun? (IPR solutions, saving copyright)

- Some form of "media licence"?
(Cf paying for libraries via taxes/cf. TV licence)
- Administered by ISPs / Telcos?
- As part of a broadband flat rate?
- As an extra fee, combined with a radio/TV licence?

Opposing forces can lead to policy incompatibilities



A model for sustainable creativity

DYNAMIC

STATIC

