

A levy for the age of the cloud?

Can a broadband levy be the answer to dealing with the increasing amount of unlicensed cultural content online?

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This master's thesis is carried out as a part of the education at the University of Agder and is therefore approved as a part of this education. However, this does not imply that the University answers for the methods that are used or the conclusions that are drawn.

**"Music itself is going to become
like running water or electricity"**

David Bowie, 2002

I. Abstract

The background for the thesis is to look into if a broadband levy may be the answer to the increasing challenges of monetizing unlicensed cultural content on the internet, and if such a levy can work in an age where traditional elements, covered by previous levies, moves over to media that is not covered, such as streaming and cloud storage.

To do so, I have used the methodological approach of exploratory research, combined with qualitative interviews of four respondents who has great insight of the music industry from different view points. The first two chapters involves an insight into existing challenges and previously introduced levies on broadband, in order to form a foundation for comparison and analysis. Chapter three presents methodology. The fourth chapter is dedicated to responses from informants on key questions, in order to form a solid basis for discussion in chapter five, and a conclusion in chapter six.

The findings are that it is possible to, in a simple way, introduce a levy on broadband in a widely digitalized market like Norway. This can be done somewhat in accordance with existing copyright structures. The question is whether or not it is necessary. In terms of this, the thesis leans towards a negative response in terms of necessity. One of the major issues of monetising cultural content on the internet today is related to platform services such as Facebook, Youtube and Google, and their lack of remuneration of this content with basis in the recently dismissed Safe Harbour agreement. Despite the fact that it may be possible to introduce a levy on broadband fairly simply, this could lead to so many changes in the structure, that it may be of more value to focus the energy on a topic that may lead to a similar result in terms of monetizing cultural content; regulating the internet and focusing on monetizing platform services.

The conclusion presents a number of ways of introducing a broadband levy, but asks whether or not it is necessary to focus on it, based on the fact that there may be more prominent challenges in terms of monetizing cultural content,

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III. Introduction

In the fall of 2014 the Association of Norwegian Film Producers called out for a broadband levy of 1 NOK/month per subscriber paid by the Internet service providers (ISPs) to the industry (Nilsen, 2014). This yet again made the issue of a broadband levy a fairly hot topic.

A levy on broadband has been discussed since the mid-noughties in different shapes and sizes, but mainly based on the fact that illegal downloading has been a major challenge. This is, at least in some countries and with some cultural content, not the case anymore. Streaming is growing, and legal ways of acquiring cultural content is increasing, but unlicensed content still stands for a major part of the cultural content consumed online, regardless if it is bootlegs on Soundcloud, home-made concert videos on YouTube, or professionally copied films on services such as Popcorn Time. The amount of cultural content available that rights holders are not gaining remuneration for is vast.

Where private copying levies were a good way of gaining remuneration for the rights holders, through levies on physical storage media, more and more files move from physical personal storage media to cloud-based services, which are not under the same obligation to include such levies in their pricing. The incomes of private copying levies are decreasing, but the amount of unlicensed content available is still massive.

Based on these issues, and inspired by the proposed levy by the film producers:

How and why is one to introduce a levy on broadband to address the challenges of unlicensed cultural content being spread widely online?

There are five main issues that need to be discussed in this context, and that has come up as a consequence of gathering theoretical material:

- What justifies a broadband levy for cultural content?
- Which factors determine the size of the levy for internet users? Is it fair to put a levy on the internet, when it may be regarded as a utility?
- How does one introduce a levy on broadband that does not breach the foundations of copyright, and does in a technical way permit illegal downloading?
- How does one distribute the money from a broadband levy, and how does one avoid manipulation of the numbers that the money is distributed upon?

- Can a broadband levy work as a supplement to the existing structure of the music industry?

This topic raises issues, which this paper seeks to answer, mainly from a music industry perspective, and mainly based on developments in Norway. The paper seeks to provide some insight and suggestions for possible solutions in an ongoing and ever-returning debate.

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1. Issues of the internet

Even though a levy on broadband might be feasible, one needs to gain some insight of the vast array of topics that covers the world of the internet, and how user trends are shifting as more and more move over to what is commonly referred to as «the cloud» and streaming. In essence, more and more is moving over to the internet and away from the physical, which gives new challenges to the technology industry as a whole, and in this instance the producers of cultural content. One can argue that some of the structures in place today, are in fact not structures for tomorrow. This development is mainly down to the main topic that has occurred over the last two decades: Digitalization of content.

This chapter seeks to provide some insight to what is going on on the internet and in technology in terms of digitalization, technological advances, and problem areas for the cultural content industry. In part one it looks into how digitalization has affected the music industry, in order to lay some groundwork for an understanding of the issues. Part two looks into how we use technologies differently than in the age of illegal downloading, and what streaming has done to the music market. Part three seeks to provide a basis for a discussion of unlicensed cultural content, looking at issues that could need to be resolved if one were to solve such an issue. Part four seeks to gain some insight into the potential earnings that could be created by a broadband levy, with only a very conservative estimate.

1.1. Digitalization of music

To put a broadband levy into a context, one needs to understand the reality of which the cultural content providers roam. There is no doubt that many of the challenges that a broadband levy may be able to address exist due to digitalization. The story of digitalization is long, and fairly complicated, surrounded by major labels and declining revenues battling technological advances and new industry acts. This part of the chapter seeks to give a brief overview of the consequences digitalization have had on the music industry.

The main driver for digitalization has, in its simplest form, been the internet. The internet can be described as many things, and has a different shape and use today, than what it did in the sixties as a tool for the military and computer scientists at universities. The perhaps most precise description of the internet is in fact a series of tubes, as a governor from Alaska described it in 2006 (Blum, 2012, p. 4). Although we like to think of the internet as a cosmic cloud, it is a very physical infrastructure, where wires and data centers connects your

computer or mobile phone to the rest of the world. The cloud is in fact not a cloud, but most likely a data center somewhere in Oregon or northern Sweden (Blum, 2012, p. 227). Yet, this physical structure has changed the game for so many, has changed the way we see the world, and has changed everything it has come in contact with (Hardy, 2012; E-book, *Beginnings*, paragraph 6)

The internet and digitalization has been the major driver of change in the music industry in the last two decades (Wikström, 2013, p. 8). Music has perhaps been the cultural content that has been hit the most severely by digitalization (Hardy 2012; E-book, *Beginnings*, paragraph 7), due to the challenges connected to the accuracy and ease of which digital recordings may be copied. Digitalization has made copying of music easier, hence threatening the artificial scarcity of which is a corner stone of the music and recording industry, and other cultural content industries, as well (Hesmondhalgh, 2013, p. 341). This development had the consequence that in the noughties, revenues from sales of recorded music saw a substantial drop. Where the CD had caused a major impact on physical sales, it became less and less relevant, leading to decreased revenues in the recorded music industry as a whole (Hardy 2012; E-book, *Beginnings*, paragraph 20). David Hesmondhalgh addresses four reasons for why digitalization became a pressing issue for the music industry, before any other creators of cultural content:

- *The development of the MP3 compression standard, allowing massive amounts of audio information to be compressed into small files of relatively high quality.*
- *The spread of high bandwidth connections, making it easier to acquire copies*
- *The introduction of computers with improved storage capacity, soundcards, CD players and speakers.*
- *The development of accessible software that could copy («rip») CDs into MP3 files, and also discover and download these types of files from others.*

(Hesmondhalgh, 2013, p. 342)

This development did not only lead to structural changes in the music industry itself, such as mergers and bankruptcy of record companies (Hardy 2012; E-book, *Beginnings*, paragraph 8), but also meant that the recording industry was faced with two major issues as a consequence of technological development: File sharing and P2P-networks, and how to distribute recordings digitally rather than physically and make money out of doing so. The answer to these issues were: 1) prosecute and sue those who granted access to illegal file-sharing, such as Napster, and 2) implementing copy protection standards such as digital rights management (DRM), in addition to making digital files accessible for purchase. The issue

here is, of course, that these actions caused parts of the digital community to try to break DRM-coding and to find alternatives to the file-sharing services being closed down due to legal battles.

Even though digitalization in the noughties has been an ongoing battle of wits between those trying to gain compensation and those creating free and illegal access to this material, it has caused a major shift in the recording industry. On the downside, it has caused record label portfolios to be reduced, and decreasing their willingness - or ability - to take financial risk. On the upside, it has also caused positive developments; Consumers today are able to, more than ever before, gain access to massive repertoires via streaming services; to purchase music quickly and conveniently through digital download services and; purchase physical material easier than before via online retailers.

The ongoing battle of wits in terms of DRM and prosecution of illegal file-sharing services may have been, by some, seen as a losing battle, but it is quite clear that it may have helped the music industry to discover and develop alternative solutions, for instance when it comes to streaming. Streaming services have helped to make legal music more accessible, whilst protecting the rights of the ones who own the content. Services, such as iTunes, offering digital downloads have also helped, but have seen a decline in sales after streaming became the preferred way of acquiring music for many (Thompson, 2015).

Digitalization has caused the old recording industry to become what Patrick Wikström describes as the new music industry, tackling one major challenge that is characterized as:

«(...) high connectivity and little control; music provided as a service; and increased amateur creativity»

(Wikström, 2013, p. 8)

This aspect causes major challenges for the new music industry. In relation to a broadband levy, the question that arises is whether or not such a levy can help tackle some of these challenges. Can a broadband levy help to gain remuneration for the works, despite the limited control the music industry has in the realm of digitalization? And can it perhaps take advantage of the high level of connectivity? These aspects are something that will be taken into consideration when moving forward on this topic.

1.2. Technologies develop and progress

There is no doubt that technologies have always developed and progressed, and that they are likely to continue to do so. Technology has always had a potential to change the way we go about things, sometimes for the worse, sometimes for the better. When one looks into how

technologies have changed the way we consume music and other cultural content, there are many elements that has made an impact in terms of both income and the creation of potential income through different systems and models. This part of the chapter seeks to give some insight into - arguably - two of the most prominent ones. One is hailed as a potential solution to the troubles that the cultural content industry has seen in the aftermath of illegal downloading; the other may create a problem for existing structures.

1.2.1. Streaming services

Some deem streaming of music, and also film, as the saviour of the online cultural content industry. Streaming has caused illegal file sharing, especially of music, to be reduced. Norway - a country where new technology gains foothold fairly quickly - has seen a reduction in illegal file sharing of music, which today is close to nothing (Ingham, 2015a). In 2014 Norwaco estimated that around 2 million Norwegians used music streaming services¹ (Ipsos MMI, 2015, p. 29). This is more than half of what is described as the «digital» Norwegian population; those who have access to and uses the internet frequently². Out of the total number of music streaming service users, a little over 70 per cent pays for a subscription (Ipsos MMI, 2015, p. 30), or around 1,4 million people.

The Norwegian numbers are quite large from a more international point of view. Estimates show that only around 25 per cent of the total Spotify users have a subscription. The rest chooses to go for a freemium option. (Atkinson, 2015) New numbers concerning 2015 confirms that streaming is on the rise, and Spotify at the beginning of 2016 had 100 million users, with around 25 per cent using the premium option (Resnikoff, 2016). Although the amount of users of music streaming services are increasing, there is still a major gap in income coming from different types of users. Estimations show that the 25 per cent that have the premium option stands for close to 90 per cent of the income of Spotify. The 75 per cent that have chosen to go for a freemium ad-based option only caters for roughly 10 per cent of the income (Ingham, 2015b). The fact that the gap is so huge, represents a major issue when it comes to streaming services: the income. Many artists and rights holders have complained that they get very little in return from Spotify. British artist Zöe Keating estimated in 2013 that she got around USD 0.0044 per stream on Spotify (Dredge, 2013). This means that Keating would require around 225 streams in order to earn USD 1 from streaming. Although Keating may not - arguably - be what one regards as a popular music artist, similar data confirms the fact

¹ 55 per cent

² Around 90 per cent of Norwegians fall under this category.

that rights holders gains very little income per stream. Of course, there is the question of how a lot of plays adds up to major sums, but estimates show that 1 per cent of artists stands for 77 per cent of the income of Spotify (Nordgård, 2016, p. 186). Based on this 99 per cent of artists - if they are even streamed and listened to - are left with sharing 23 per cent of the money between them. This of course may be fair from a basic market economics point of view, but it shows that streaming income for most artists is minimal, and perhaps not sustainable in the long run. The fact that the income potential from the largest music streaming service is not fully utilized, and that the distribution of this income is very uneven can be regarded as a major issue when it comes to streaming. Even though it might be the best answer, music streaming services are in no way perfect. This may provide basis for something like a broadband levy to even things out.

Another issue with streaming is the fact that so many things are regarded as a streaming service; in many cases this content is unlicensed. The topic of unlicensed content will return later in this chapter. What is interesting at this stage, however, is to look at what one regards as a streaming service, and what one counts in when reporting increasing usage of streaming services. There are of course plenty of streaming services that are used for the purpose of streaming specific content, such as Spotify, Apple Music, Netflix and other similar services. The issue here is that online content intermediaries are also sometimes counted in as a streaming service, most notably platform service YouTube. There is of course nothing wrong with counting in the world's largest content intermediary as a streaming service, but up until very recently³, YouTube has not been a service where you pay to gain access, and where very little advertising income comes back to rights holders. Therefore, one may question whether or not it is a streaming service in the strict interpretation of the word. For instance, when Polaris Nordic - a cooperation between three nordic collective management organisations (CMOs)⁴ - states that 78 per cent of internet users in the nordic countries have used a digital music service in 2014, and then counts in YouTube in these statistics (Polaris Nordic, 2015), it may not be as impressive as it sounds. If one is led to believe that this means that 78 per cent pays, which may be likely, then that is a misunderstanding that needs to be clarified. This example is not used to criticise Polaris Nordic, but to show that streaming is a very wide term, and although streaming is increasing and replacing illegal filesharing in many instances, it does not have to mean that as many as 78 per cent pays for streaming content through subscriptions or advertising income. In fact, the same report shows that only 20 per cent paid

³ YouTube Red

⁴ Danish Koda, Norwegian TONO, Finnish Teosto

for digital music in 2014, meaning that most users either go for a freemium option, or streams from YouTube⁵. This is in no way only negative, but it raises a major question: what is streaming? Is it what creates income through services, or is it the use of the technology? Streaming has a bigger potential for bringing in money than what it is doing at the moment, and if solved correctly it may be able to maximize this potential. In short: although streaming is the answer to many issues, there are still issues that need to be covered if streaming is to actually become the saviour of the music and cultural content industry. Today it is a great solution, but it may not be a complete one. The question is whether a broadband levy may be a decent supplement to limited streaming income, although with a bigger potential than it manages to extrude.

1.2.2. Cloud storage

Where companies would compete selling personal hard drives with the most storage capacity possible a few years ago, external hard drives have seen a drop in sales over the last few years (Arthur, 2013). Today it almost seems as if computer companies are competing to sell SSD-drives that have less capacity but better processing speed, at a higher price. One reason why hard drive sales are dropping - there are many other factors, such as floods and natural disasters in production areas increasing prices of production - is the fact that consumers have started to move from personal computers to personal tablets and bigger and better mobile phones, increasing the need for storage in the cloud (Arthur, 2013). Of course, storage in the cloud requires physical storage media too, but these are mainly put in data centers in different parts of the world, and the consumer has no need to purchase an external hard drive to be able to store in the cloud. This development creates a challenge for the cultural content industries.

Many countries have levys on physical storage media, for instance Sweden and Privatkopieringsårsettningen. As we will see, the income from this system has decreased. There may be several reasons why the income has decreased. One may assume that less people download, which in some countries is the case, for instance in Norway, but one may also consider the fact that more and more gigabytes are moved over to the cloud and other alternative storage media, not under the levy regulations. This is not highly unlikely, as cloud storage seems to gain foothold.

Regardless if this is the case or not, if one is to develop a new levy, one probably needs to

⁵ It should be noted that in the 2015 report, Polaris Nordic excluded YouTube from the statistics. In this report, the number of Nordic internet users who had used a music streaming service was reduced with 20 per cent, coming out at a still impressive 58 per cent. People who paid for music in digital format had gone up to 23 per cent.

take into consideration that more and more files are stored in other ways than on physical storage media.

1.3. Unlicensed cultural content

The rise of new ways to consume cultural content over the internet has led to new challenges for the cultural content industries. One of the major challenges connects to unlicensed content being spread widely online. In the age of illegal downloading, this content was illegal due to the fact that it was not licensed or uploaded by the creators and distributors, hence creating no money. The fact that one could acquire it without paying, and the content not being licensed to be used for such a purpose, made it illegal. As we have seen, illegal downloading of music is not the problem it used to be - in Norway being close to zero – and in addition more and more legal services, such as Spotify, have made it possible to acquire music legally, through licensing deals with major labels and their counterparts. The problem of unlicensed content has shifted from P2P to streaming sites such as Youtube, Soundcloud and so on. As users can upload most content, often at a higher speed than what one has the resources to take down, there is a lot of content out there where one uses parts of, or all of, works that have been copyrighted by others than the uploader. The problem also becomes evident when one considers that some copyright-algorithms used by the biggest player Youtube, favours the ones who have signed what some call unfavourable license agreements (Coplan, 2014). This means that the ones who have not signed such agreements, whatever the reason, are not protected by the algorithms Youtube use to take down unlicensed content, hence having to do this themselves. This is done by the owner of the works noticing the content provider to take it down, creating a tiresome and complex process where the owner has to roam the internet for unlicensed content in order to have a better chance of gaining compensation for their works, improving the chances for legal and licensed acquisition by the consumer. The process of noticing the content provider - in this case Youtube being the most relevant - to take it down, is - perhaps naturally - referred to as «notice and take down» (Wikipedia, n.d.).

One can always argue whether or not notice and take down is the way forward, or if Youtube should treat all works equally, regardless of if some choose to stand on the outside. One can also argue whether or not today's copyright system is outdated, and should not cater for people using unlicensed content to enhance and showcase their own creativity, as often is the case. One of the most prominent critics of the existing copyright structure is Lawrence Lessig, who considers the existing copyright structure to limit and prohibit the rise of new creativity, and to only cater for an old-fashioned way of expressing creativity; not taking

technological advances into account. This is some of the essence in Lessig's book "Remix" (Lessig, 2008). Lessig advocates the need for a reform of copyright law, in order to enhance new ways of expressing creativity.

Regardless if one agrees with this view or not, the amount of unlicensed content on the internet creates a major challenge for the cultural content industry, as creators and their supporters are not substantially remunerated from the use of this content on the internet. Higher amounts of unlicensed content means less likelihood for creators gaining compensation for the use of their works. The fact that some internet intermediaries can be seen as undermining the validity of legal services, gaining a substantial income through users sharing unlicensed content, is also an issue. This is evident when it comes to the use of platform services and social media.

1.3.1. Cultural content on platform services

A platform service can be defined as a service that is based on user uploaded content, or the aggregation of existing content (GESAC, 2016). Youtube is perhaps the most prominent example in this regard, but Facebook may also be counted in as it is also based on user-generated content. A counter argument for counting in Facebook is the fact that a lot of the content shared on this platform is acquired and generated from other sources, such as Youtube.

Despite the fact that more and more cultural content is available through licensed paid-for services, creating a solid income for many copyright holders, there are still issues. The main issue is - arguably - the fact that YouTube still is the biggest streaming service in any genre on the internet. YouTube itself creates very limited income for the amount of content that is licensed. Danish CMO Koda signed a license agreement with YouTube in 2013, and their calculations show that half a million streams creates less than DKK 1000 for the rights holders. In six months, only seventeen Koda members generated a higher payout than DKK 1000 from YouTube. (Hjortshøj, 2016) According to the International Federation of the Phonographic Industry (IFPI), a paid for service such as Spotify last year created around € 1.2 billion, while as services that are based on user-uploads such as YouTube and SoundCloud generated around € 400 million⁶, despite the fact that they have six times as many users as the paid for services (Hjortshøj, 2016). The question here is: why isn't the income from these platform services based on user-uploads six times as high as the income from the paid for streaming services? There are of course many different reasons for this. One is - as we have

⁶ Based on exchange rate from DKK to EUR, 31.03.2016

seen in the earlier segment on streaming - that ad-based income is substantially lower than income from user payment. Most of YouTube's income still comes from this source, even though measures have been made to shift the balance, such as YouTube Red. This is still only a minor part of the solution.

What is perhaps the biggest issue when it comes to income from platform services, is what is referred to as safe harbor. Safe harbor, explained simply, was a law introduced in 2001 with the purpose of simplifying the creation of new web-based companies, not holding these companies responsible for the actions of users at both ends of the service. In essence: regardless of what the users of a service did, the service could only be counted as a non-responsible intermediary. The reason why this is an issue today, according to many acts in the music industry, is that services such as YouTube today may be considered to be anything but a neutral, technological intermediary, as long as they rank and prioritize content, and guide their users to similar and related content. Due to this, they should be obliged to pay for the content they make available (Hjortshøj, 2016).

In the fall of 2015, the opponents of the safe harbor agreement gained more ammunition in the battle to change the law. Austrian law student Max Schrems challenged the safe harbor treaty, based on the fact that it could compromise privacy as it allowed authorities, such as US NSA, to access content of electronic communications - for instance on Facebook - hence surveilling European users. Schrems ran the case in the European Court of Justice (ECJ), based on the revelations made by Edward Snowden, that the US National Security Agency collected and accessed huge amounts of data from global tech companies, under the provisions of the safe harbor agreement. As a consequence of this, the ECJ ruled safe harbor to be invalid (Griffin, Merrill, 2015).

As the safe harbor agreement needs to be re-negotiated due to the ECJ verdict, many cultural content producers hope that this may also change the flow and distribution of the money generated, and that more money comes back to the industry. 23 per cent of the value of different platform services is estimated to be directly related to the use of cultural content. One estimates that the total market value of platform services in Europe is € 22 billion, hence 23 per cent of this would be around € 5 billion (GESAC, 2016). One estimates that as much as around 62 per cent of the value generated by the platform services is indirectly linked to cultural content, so the potential pay out could in fact be argued to be higher. (Hofseth 2016) YouTube does pay out money, while as other acts such as Facebook and Google - although they own YouTube - pay nothing.

One estimates that around 62 per cent of what is on a Facebook news feed is related to

copyrighted material, and that 52 per cent of Facebook's advertising income directly relates to cultural content. (Hofseth, 2016) Facebook had a profit of around € 3.25 billion in 2015. (Newton, 2016) 65 per cent of Google searches is also directly or indirectly related to cultural content (Roland Berger, 2015). Much - if not most - of Google's income comes from advertising in their search engine. Their activities lead them to a surplus of around € 20 billion⁷ in 2015. (Hofseth, 2016) When one knows that a lot of the income of the platform services is related to cultural content and copyrighted material, one can question why the cultural content industry does not see more of the money.

Regardless of whether or not one believes that platform services should pay out to rights holders, this issue proves problematic. The issue shifts the competitive balance and those services that may be preferred by the rights holders stands at a competitive disadvantage when competing with free services, who in turn pay out very limited amounts of money. Safe harbour has so far given the platform services the opportunity to do so, and one can argue whether or not it is right that services who stand in the same market as their competitors should play by such different rules. One can hope that future negotiations related to the safe harbor verdict may change the payouts to the cultural content industry. The question that arises in relation to the main topic of this paper, is whether or not a broadband levy can help to compensate for some of the problem areas related to safe harbour and platform services.

1.4. Economics

A question that arises when discussing a broadband levy is whether or not it has potential to create a significant income to be distributed to the cultural content industries. It is not necessarily easy to conclude upon whether or not it may have such a potential, but there are some pointers if one pulls in data on amount of subscriptions and puts this into a monetary context. The monetary effect of a broadband levy can be very simply introduced, and such a system can show to be fairly profitable in terms of the income gained for further distribution. If one is to follow the Association of Norwegian Film Producers suggestion, NOK 1/mth can give a significant amount to distribute. A brief look at the numbers show that there are around 6,8 million subscriptions on wired and mobile broadband⁸ in Norway in the first half of 2015⁹ (Nasjonal Kommunikasjonsmyndighet, 2015). If such a levy were to be introduced it could

⁷ Based on exchange rate from USD to EUR, 31.03.2016

⁸ Mobile phone subscriptions with active use of mobile broadband: 4,26 million, mobile broadband subscriptions: 511 000, Wired broadband subscriptions: 1,87 million (private), 129 000 (business)

⁹ Including mobile phone subscriptions with access to mobile broadband, mobile broadband and wired broadband used privately and by businesses.

create a potential income of a little under NOK 82 million a year¹⁰. If one were to put a levy on NOK 5/mth, the number would - naturally - be 5 times as high, close to half a billion Norwegian kroner. Compared to the income of both the Swedish and Norwegian model of today – as we will see in chapter 2 - this is a significant sum. On the surface a broadband levy can have a high potential for good income and good money to distribute. If one deducts ten per cent in administration costs, which is quite a decent standard, one turns out to have around NOK 73,5 million to distribute. Still a high number, and comparable to the total of money transferred by the Norwegian Ministry of Culture and distributed by Fond for Lyd og Bilde and Norwaco. It is worth noting that this calculation only includes mobile phone subscriptions that actively uses mobile broadband. If one includes all mobile phone subscriptions, under the presumption that all have access but not all chooses to use it, the number rises to 8,35 million subscriptions in total that uses or could potentially use broadband in different forms, raising the potential income to a little over NOK 100 million, before deducting potential administrative costs.

It is difficult to conclude upon the amount of money a different model may have the potential to generate. If one were to, for instance, add a levy of one per cent per subscription - meaning that a subscription costing NOK 299/month would bring in NOK 2,99 - this could of course generate a significant amount as well. The advantage with this model is that it takes into account the speed, access and download amount of the holder of the subscription, as better terms tend to cost more. I may be conceived as more fair, as it differentiates use. There is no guarantee, however, that someone with a 100-megabit line uses more cultural content than someone with a 5-megabit line. Unfortunately, it is difficult to find the potential income from such a model, as the average amount one pays for a broadband or mobile broadband subscription is difficult to retrieve. There are some pointers, however. A quick glance at the NKOM-report referred to earlier (Nasjonal Kommunikasjonsmyndighet, 2015), implies that the revenue created in the first half of 2015 by mobile broadband, broadband over mobile phone subscriptions and wired broadband used both privately and by businesses is around NOK 10,5 billion. If one assumes that the number for the last half of 2015 is fairly similar, the revenue from different types of broadband comes up to NOK 21 billion. If one were to introduce a levy of 1 per cent per subscription, the total revenue from subscriptions implies that the income generated could be around NOK 200 million. A significant amount, but very uncertain as the numbers are not broken down, and does not say anything about the distribution

¹⁰ NOK 1 x 6,8m subscriptions x 12 months

of costs, taxes, and so on. In this instance it may be worth to look at the amount that households spend on telecommunication services. In 2011 there were around 2.2 million households in Norway (Statistisk Sentralbyrå, 2012). The numbers closest in year¹¹ of how much each household spends on telecommunication services per year is from 2012, where the average household spent around NOK 8200 (Statistisk Sentralbyrå, 2013). Based on these numbers, the total spending on telecommunication services in 2012 would be around NOK 18 billion. This would lead to a levy of 1 per cent bringing in around NOK 180 million. As with previous numbers, there are many uncertain factors, but it is perhaps safe to assume that a broadband levy based on percentage could have the potential to bring in money in the area of NOK 150-200 million.

It is also possible to include such a levy into the line rental, a sum baked into most wired broadband subscriptions in order to use and maintain the infrastructure. The Norwegian line rental is set to NOK 89. If one raises it to 90, bringing in NOK 1 per subscription, it would still only bring in around 24 million a year, as it would only include the wired subscriptions - some of these are even exempt from line rental, due to the technology it uses to transmit signals - and not mobile subscriptions. This has some flaws, as many use mobile broadband to access cultural content, for instance on YouTube from a mobile phone.

This economic breakdown shows us one thing: determining the best way to collect a broadband levy is difficult. On the bright side, however, it turns out that the simplest way may also be quite profitable, especially if one is to include everyone who could have access, and not only those who chooses to use it. The question is not necessarily if the system has a potential for income, but turns more onto how one is to distribute that income.

¹¹ There are no statistics on numbers of households from 2012; the most recent year of household spending numbers are from 2012.

2. Levies on the internet

To better understand the basis for why a broadband levy is discussed, and indeed has been for some years, one needs to look at earlier levies both before and after the age of the internet. Levies have primarily been put on equipment that makes it possible to copy works easily, such as cassette recorders, blank disks and, as mentioned earlier, hard disk drives. There has also been put forward numerous suggestions as to how to compensate authors for illegal downloading. These suggestions are yet to gain a foothold, even though they have been around for years.

This chapter presents the history of levies, in order to better understand the foundations for the levies of today and the future. It covers existing types of private copying levies from Norway and Sweden, two countries close in proximity who have chosen very different solutions. It also presents in detail the suggested levy on broadband that has gained the most momentum, mainly referred to as the cultural flat-rate. This is done in order to gain some insight and inspiration as to why and how one is to introduce a broadband levy today, if it ever comes to it. Some other models have been suggested, but they all have similarities to the cultural flat-rate, thus spending time on the vast amounts of research and official reports related to the cultural flat-rate model is highly relevant. The final part of the chapter gives a brief overview of criticisms and problem areas, and what topics need to be discussed further. These topics form the foundation for some of the questions asked to the interviewees in chapter 3.

2.1. A brief history of levies

As the first chapter briefly mentions, the idea of levies has been tried and tested for many, many years. The system of copyright levies were first introduced in Germany in the 1960s, and became a model for other levies in Europe, and a levy on the sale of sound and video recording equipment was introduced in 1965, as a result of two court decisions (Hugenholtz, et al., 2003, p. 11). The basis of the court decisions were lawsuits brought by German CMO GEMA to producers of such equipment, most notably Grundig, where they wanted the producers to inform consumers of their obligations under copyright law. The reason for introducing the levy was the that the courts «(...) considered individual claims against private home taping not to be enforceable» and an understanding that «(...) producers of recording

equipment would pass the charge on to the consumers by means of the price of the tape recorders» (Hugenholtz, et al., 2003, p. 11). In essence, a levy was introduced to claim compensation for illegal copying via this type of equipment, while acknowledging the difficulty of controlling and gathering information on an individual basis. A levy that would affect everyone was easier to administer, rather than a method where GEMA - or some other organisation for that matter - had to collect money based on an individual basis. The courts decided to put a levy on the recording equipment itself, rather than on blank tapes or other consumables related to this type of equipment, which were not subject to a levy until 20 years later, when the German Copyright act was modified to include blank tapes. The main argument for a levy on blank tapes was *«(...) that the remuneration collected on the sale of recording equipment no longer equalled the dimensions assumed»* when the first levy was introduced (Hugenholtz, et al., 2003, p. 12). Many countries in the EU have followed this type of levy in their own local legislation. Countries in Africa and the Americas has also introduced similar models, in addition to more limited models in Canada, USA and Japan, where some have focused more on digital recording equipment rather than analogue¹². Countries in the EU have followed this trend bit by bit (Hugenholtz, et al., 2003, p. 13). In the late 90s, the EU Copyright Directive was amended to include new equipment used for copying, including blank CDs, minidisks, and other similar products. Later this legislation has been amended to include storage media such as hard disk drives, and equipment built upon this technology such as memory sticks. These technologies are subject to levies in some countries, while as other countries are yet to introduce this levies in this material - most notably, perhaps, the UK.

In the Scandinavian countries, Sweden has a levy on hard disk drives and USB storage media, while Denmark only has levies on USB storage media in addition to CDs and other blank media¹³ (Copydan, 2016). Norway did not introduce levies on similar material after the abolishment of the cassette levy in 1999, but has a compensation system funded by the government. This example shows how differently levies have been introduced in very similar countries. The next part presents two of these models.

2.2. Two existing types of compensation

There are plenty of different levies around the world. Most existing levies chooses to focus on gaining money from sales of blank storage media, such as hard drives and memory sticks

¹² Japan introduced a remuneration scheme for digital copying in 1992.

¹³ Lockable USB storage media where the content can not be removed does not come under this legislation.

(WIPO, 2013). Some countries have chosen to abandon such a system, and instead transfer money directly from the government. This part looks at Norway and Sweden, two countries close in proximity, which have chosen two different routes.

2.2.1. Norway: Fond for Lyd og Bilde and Privatkopieringsvederlaget

Unlike many other countries, Norway has chosen not to have a private copying levy. Instead, money is transferred from the government to Fond for Lyd og Bilde and to rights holder organisation Norwaco. Fond for Lyd og Bilde works as a fund where artists can apply to create new material, based on collective management of a private copying levy. Norwaco distributes money from the government individually to those affected by private copying, through CMOs and other organizations (Norwaco, 2016a).

In the 1980s and 90s, Norway used to have a levy on blank cassettes and videotapes, and distributed this money to rights holders who had a right or need for such a compensation. This saw the light of day through Norsk Kassettagiftsfond - the forerunner of Fond for Lyd og Bilde - in 1983. The levy ceased to be collected in 1999 (Møller, 2002, p. 7). Today the funds for Fond for Lyd og Bilde's activities are directly granted through the national budget each year. The sum transferred to the fund today is considerably lower than the sum that was transferred when there was a levy in place. In the beginning of the 1990s the amount was around NOK 80m (Møller, 2002, p. 16), while as today the amount is around NOK 37m, based on the proposition for the national budget in 2016 (Kulturdepartementet, 2015). Around one third of this¹⁴ is distributed to applications for music (Kulturrådet, 2015).

In addition to the transfers to Fond for Lyd og Bilde, Norway also has a private copying levy that is funded by the government, established in 2005 (Norwaco, 2016b). Norwaco is the distributor of this sum, and has around NOK 46m to distribute (Kulturdepartementet 2015). Around 23% goes to music rights holders in different forms. Earlier Norwaco transferred more to music rights holders, but as copying of music goes down audiovisual material have gained a larger amount of the total money (Based on e-mail communication with Elin Urkedal in Norwaco, 11.03.16)¹⁵. Even though the income for Fond for Lyd og Bilde is lower than it was during the levy on cassettes, these two sums added together shows that a private copying levy today gives roughly the same amount to distribute.

The Norwegian private copying levy is based on government funding, while most other countries with a private copying levy gains the income through different types of consumer

¹⁴ NOK 13,5 million

¹⁵ See appendix for copy of e-mail communication

payment and payment from manufacturers. One of these countries is Norway's closest neighbour.

2.2.2. Sweden: Privatkopieringsårsetningen

Although many other countries operate with a private copying levy, the Swedish example is perhaps one of the most developed and transparent, and covers most storage media. Many of these systems are very complex, and are hard to understand. They are also somehow inconsistent in what areas they cover (WIPO, 2013).

Sweden has chosen to continue with a levy on private copying, focusing mainly on rewritable and write-once media such as hard drives in all shapes and sizes - inside for instance phones, set top boxes and of course external hard drives - in addition to CDs and DVDs, known as Privatkopieringsårsetningen (Copyswede, 2011). The levy varies somewhat based on the medium it is put on, but the average number is 1 SEK per gigabyte up to 80 GB, and then 80 SEK for anything over that, and is paid by the producers, importers or retailers of such products (Copyswede, 2015a) - although it is probably paid by the customers at the end. More concretely, you pay a levy of 16 SEK for a 16 GB flash drive.

Around SEK 100m is brought in by the Swedish levy, divided onto several products where external harddrives and USB storage stands for around half of the amount, and set top boxes with harddrives stands for around one third of the total amount (Copyswede, 2015b). Copyswede gives around SEK 4 million each to Stim, IFPI and Sami, before compensating some rights owners on an individual basis. The above-mentioned organizations have their own distribution of this money. In total, the field of music receives around one third of the total distributed sum. The rest is received by the film and television industry, both domestic and abroad. It is worth noting that the amount of money that has come in through a levy in Sweden have gone down by more than one third in the last 7 years. In 2007, the amount was around SEK 160m (Copyswede, 2008) compared to today's SEK 100m. Some of this may be down to less copying, as streaming gains foothold, but it may also be down to other technological advances and changed consumer behavior.

2.3. The cultural flat-rate

Even though many a move has been made to address the challenges of private copying facilitated by technological advances, the internet has been a fairly untouched realm in terms of levies. Many suggestions have been made in order to tackle the challenges of illegal copying and unlicensed distribution of copyrighted material on the internet, but this far they

have failed to gain a wide foothold. This part of the chapter looks into one of the previous suggestion for a levy on the internet; the cultural flat-rate, as it is known in Germany, the country in which the idea has gained the most momentum in terms of politicization and research. It is worth keeping in mind that the cultural flat-rate comes from a time when illegal downloading was a major issue for the creative industries, and the returns from the private copying levies on hardware was - arguably - insufficient to cope with this challenge, perhaps even too one-dimensional.

The principle of the cultural flat-rate requires a brief and simple explanation. Whether proposers have chosen to call it a broadband levy, a P2P-license, a content flat-rate or a cultural flat-rate, the idea, in its simplest form is the same. By paying an extra monthly fee collected by the ISPs¹⁶ the user gains access to non-commercial file-sharing, and can download as much cultural content as they would like. Some suggestions believes this levy should be mandatory, others believe in it being on a voluntary basis. Some of the main arguments put forth for such a levy has been that it would decriminalize an entire generation, and gain compensation to the rights holders affected by file-sharing (Øvrebø, 2009, p.65).

2.3.1. The cultural flat-rate turns into politics

The German idea of a cultural flat-rate has been the idea that has gained the most momentum, both on a political and governmental basis. Germany was one of the first countries in the world to formalise the discussion of a broadband levy in political terms. In April 2009, the German Green Party introduced a broadband levy in their manifesto for the European Parliament Elections (Øvrebø, 2009, p.65). The Green Party had been studying the opportunity of introducing such a flat-rate in order to allow non-commercial use of digital cultural content. Back in 2009 this was a relatively unexplored territory, and even though the idea never reached much further than a theoretical idea in a political manifesto, there have been some attempts on introduction in smaller territories, such as the Isle of Man (Kiss, 2009), where specific suggestions on introduction were made, but never reached as far as becoming legislatively feasible.

The idea of a broadband levy has also been explored to some extent in the Scandinavian countries, where Swedish STIM have been the most prominent taker of interest on this matter. STIM has done surveys regarding voluntary fees, and has found that 87 per cent of the respondents had an interest for a voluntary subscription which would give the right to conduct

¹⁶ Some suggestions have delegated this job to CMOs or government agencies

file-sharing of music¹⁷ (STIM, 2009, p. 16). STIM also found that just over 42 per cent could have an interest in paying as much as SEK 100/month for such a service (Øvrebø, 2009, p. 65). Norwegian political parties Venstre and Sosialistisk Venstreparti have looked into making a model similar to the cultural flat-rate part of their political manifestos, mainly by deciding to study the subject further (Øvrebø, 2009, p. 65).

At the press conference for the Green Party's cultural flat-rate suggestion, the scientific director of The Institute of European Media Law (EML), Prof. Dr. Alexander Rossnagel, introduced the feasibility of changes in legal structures in order to implement such a system. Rossnagel introduced the minimum requirements for such a system:

- 1. a legal licence permitting private individuals to exchange copyright works for non-commercial purposes.*
- 2. a levy, possibly collected by the ISPs, flat, possibly differentiated by access speed;*
- 3. a collective management, i.e. a mechanism for collecting the money and distributing it fairly.*

(Grassmuck, 2009, p. 3)

Rossnagel also introduced some issues, amongst many, specifically relating to copyright. These issues will be brought up later in the chapter

2.3.2. The cultural flat-rate and the European Union

The idea of a cultural flat-rate at some point gained so much momentum, that the European Union in released a study on it in 2011¹⁸. The study set a minimum requirement for two types of questions any cultural flat-rate needed to answer:

- 1. It should guarantee fair remuneration for the rights holders, with a fair procedure for distribution*
- 2. It should provide a safe haven for the individual user.*

(Directorate General For Internal Policies, 2011, p. 8)

In addition to this, the study also had some interesting considerations and recommendations:

- any cultural flat-rate needed to take into account the diverse interests on the matter, from originators to aggregators, and all the intermediaries - both in the traditional value chain of the cultural content industries, but also in the value chain emerging as a consequence of the possibilities and challenges of digitalization.
- a cultural flat-rate's economic objective needed to bring a spill-over effect on the market, this to convince rights holders of the usefulness of such a system. The income flow should be somewhat similar to what private copying levies brought

¹⁷ 52% had a high interest, 35% had some interest

¹⁸ In the study referred to as a «content flat-rate»

into the market, in order to enhance the credibility of new system, complementing premium offers.

- the setting of a price needed to meet different challenges, such as supporting P2P file-sharing whilst reducing piracy; represent an extension of legal offerings, and; enjoy the cooperation of the ISPs.
- the pricing structure needed to satisfy a number of criteria, such as: setting the right price; not losing sight of expected price, and; not cutting itself off from normal collection of revenues.

Even though the study had some interesting findings and recommendations, one could argue that it may have been too inconclusive and too bureaucratic, in some sense. The study, in addition to some interesting aspects as the ones mentioned above, introduced 42 key factors of success, in order for a cultural flat-rate to work. This number seems awfully high, but is understandable in an area that could have the potential to be controversial, and relatively unexplored in more official aspects. The study also concluded in it's summary that:

«This system as proposed will only cover cinema and audiovisual works. Given the specificities of the music sector, its different value chain, its different consumption habits and the volumes involved it falls out of the scope of what is proposed here. A similar system could work for music but an in depth and case study of the existing offers should be conducted in order to build up and refine a workable model that could be validated by both consumers and rights holders. However, this work would represent a much greater challenge than that involved in dealing with audiovisual works.»

(Directorate General For Internal Policies, 2011, p. 14)

The study, in essence, concluded that the music sector needed an own study on the matter, due to a different value chain than other cultural content. Although a good point, one can begin to see why a cultural flat-rate has not become reality, but remained on paper.

The reasons for bringing up the intricacy of the EU studies, including both some interesting findings, but also where it fails to reach a conclusion or simply gives - arguably - too many recommendations, is not to label the study as a failure, nor to criticise the study, but to show the sheer complexity of the matter. A broadband levy is a multifaceted issue, with many aspects to take into consideration. One of the perhaps most complex aspects in the earlier introduction of a cultural flat-rate, is the issue of copyright.

2.4. Broadband levies and copyright

Copyright is the foundation of musical and other creative works. It makes it possible to

control some of the challenges created by the new music industry and digitalization. Copyright makes it possible to commodify a musical work, and to gain remuneration and compensation for its use (Wikström, 2013, p. 17). The foundations of copyrighted works as we know today, were laid at the Berne Convention in 1886 (WIPO, 2016), although one can trace copyright as a principle as far back as the Statute of Anne from 1709. The Berne Convention has later been revised and amended several times, to keep up with changes in the industry and new technology providing new ways of content consumption. Any new scheme that may affect copyright, or has anything to do with copyright should ultimately be put through the Berne three-step test, in order to gain validity. The three-step test derives from the Stockholm Conference in 1967, where the Convention was revised (Rietjens, 2006). The three-step test limits what type of exceptions member states of the Berne Convention can set in their own laws regarding copyright holders' reproduction rights, and member states can only set exceptions in their national laws, if these exceptions fulfill the three-step test. The three-step test was «(...) considered to be a 'catch-all' limitation for those exceptions not specifically mentioned in the Berne Convention» (Rietjens, 2006, p. 325). The cultural flat-rate must be considered such an exception, and it is therefore interesting to run it through such a test.

The three-step test in its essence consists of, perhaps not surprisingly, three steps that are meant to be taken into account when creating copyright exceptions in national laws. It derives from the Berne Convention, later amended in the World Trade Organisation (WTO) TRIPs¹⁹ agreement, and requires that exceptions and limitations:

1. are confined to "certain special cases", and
2. "do not conflict with a normal exploitation of a work" (performance or phonogram), and
3. "do not unreasonably prejudice the legitimate interests of the author" (performer or phonogram producer)

(Knights, 2001, p. 13)

There has been some research of how a cultural flat-rate may stand the scrutiny of the three-step test. Some research has also taken into account moral rights. Moral rights, as stated in article 6bis in the Berne Convention are defined as follows:

«Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.»

¹⁹ Agreement on Trade-Related Aspects of Intellectual Property Rights

In order to better understand how a potential broadband levy - regardless of similarities or non-similarities to the cultural flat-rate - may stand the scrutiny of a three-step test, and perhaps also moral rights as well, it is worth having a look at findings from this research.

2.4.1. Institute of European Media Law

As mentioned earlier, Prof. Dr. Rossnagel introduced a study with findings related to the three-step test at the Green Party press conference. He provided findings on why a cultural flat-rate was feasible when coming under scrutiny by the three-step test. Rossnagel found, in regards to the first step, that the cultural flat-rate

«(...) shall benefit only private individuals and only for non-commercial personal purposes would constitute a 'certain special case' and thus pass the first step».

(Grassmuck, 2009, p. 7)

In regards to the first step, the case of a cultural flat-rate is a special case, and as the three-step test are confined to certain special cases, it would not conflict with the first step.

In terms of the second step, there was some debate over what normal exploitation would imply, and co-author of the study, Silke Jandt, pointed out that this was not purely a legal question, but that market research was needed, in order to complement the study and to draw a more concrete conclusion. On this matter, the study concluded that

«From the fact that despite the existing prohibition of file-sharing industry laments a decline in revenues the study infers that legalizing P2P would not have an additional dramatic impact. Thus the normal exploitation would not be diminished.»

(Grassmuck, 2009, p. 7-8)

In essence, as file-sharing already leads to reduced revenues from copyrighted works, legalizing it would not compromise the normal exploitation that already exists of the works, and in that sense, normal exploitation would not be conflicted. As one may see, this topic is controversial, but perhaps also feasible as it is based more upon the reality of the industry in that day and age, more than on what one may see as an ideal reality.

On the topic of the third step, the study found that

«The interests of authors and exploiters (...) have to be weighed against the interests of the general public and against possible alternatives. Assuming an appropriate remuneration the study concludes that the prejudice would not be unreasonable»

(Grassmuck, 2009, p.8)

Regarding the third step, the conclusion was, in essence, that if one were to create an appropriate remuneration to the author, it would unreasonably prejudice the legitimate

interests of the author, hence passing the third step.

The EML study also introduced some findings in terms of moral rights. The study concluded that a cultural flat-rate would not violate the moral rights of the author, based on the fact that at this point in time most authors chose physical media as first publication. In this regard internet distribution would become a secondary use, and as the most important part of the moral rights is to determine the first publication of their work, such secondary would thus not violate moral rights due to the fact that the author

«(...) has regularly already exercised her right by deciding in which way to publish her work»

(Grassmuck, 2009, p. 8)

The study concluded that the secondary use would then primarily affect the

«(...) ancillary copyrights of producers of sound carriers, film and TV production companies and publishers»

(Grassmuck, 2009, p. 8)

The report added that any harm done by legalized file-sharing would be cured by a lump-sum compensation.

In short, the cultural flat-rate - arguably - seems to come out on top in the EML study, when put under the scrutiny by the three-step test and moral rights.

2.4.2. Bernault and Lebois

French Carine Bernault and Audrey Lebois are two other researchers who have looked into the feasibility of a system of compensation for illegal file-sharing. This was done in 2006, and was at that point yet to be called a cultural flat-rate, hence the study mostly referred to it as private copy exception. The idea that acts as the basis for the study, however, is the same. Bernault and Lebois have studied such a system, with a strong basis in French legislation (Bernault, Lebois, 2006, p. 29).

The study underlines the fact that many believe that the three-step test is not relevant in terms of a private copy exception, but as for instance French courts already have the opportunity to refer to the three-step test when making a ruling on copyright matters, it is still a highly relevant test. The study also concludes that several French court verdicts have been very unclear on the matter of copyright relating to new technology, hence there is a need to have something to apply when considering compromises in copyright, thus the three-step test is relevant, also for a private copy exception.

When putting the private copy exception under the scrutiny of the three-step test, the study mainly uses the WTO application of the TRIPs article 13 in regards to exceptions in American law (WTO, 2000), due to the fact that it

«(...) provides guidance to confirm that the private copy exception applied to peer-to-peer downloading fulfills the three step test».

(Bernault, Lebois, 2006, p. 32)

The study concludes that a private copy exception passes the first step, based on

«(...) the fact that making private copies has become a 'standard practice' does not cause the exception to no longer constitute a 'special case' (...)

(Bernault, Lebois, 2006, p. 34)

On this topic, the study concludes, however, that:

«(...) with numerous situations such as peer-to-peer downloading, the private copy will disturb the normal exploitation of the work and/or cause unreasonable prejudice to the legitimate interests of rightful owners»

(Bernault, Lebois, 2006, p. 34)

This implies that even though one may not see private copies being a special case, there are still challenges connected to the other two steps.

On the topic of normal exploitation, forming the basis of step two, the study, similarly to the EML study, questions how normal exploitation should be defined. It asks an important question in this regard;

«(...) whether downloaded works affect the sales of works and the legal system of downloading works, such as music and video.»

(Bernault, Lebois, 2006, p. 35)

The study ends up on a somewhat inconclusive conclusion; seeing as rights owners cannot prohibit the exploitation or obtain a remuneration in the world of illegal file-sharing, there is reason to believe that private copying in this instance does not come under what one can define as normal exploitation, hence it could be argued that a private copy exception may fulfil the second step, seeing as this type of exploitation, at least in the time where this study was conducted, is in no way normal.

In terms of the third step, unreasonable prejudice to the legitimate interests of the rights owner, the study concludes that if a proper system for remuneration is in place, a private copy exception may not cause such unreasonable prejudice:

«In the matter of peer-to-peer downloads, it is clear that there is a potential loss which prejudices the legitimate interests of the authors and the holders of neighbouring right holders. However it seems practically impossible for the right holders to assert and control their rights. The application of a system of remuneration for private copies is thus possible on the condition that it adequately compensates the potential loss of income. Otherwise the prejudice will remain unreasonable.»

(Bernault, Lebois, 2006, p. 36)

The french study concludes that a private copy exception may pass the three-step test, but only if a number of different conditions and issues are catered for. The study may not be as assertive as the EML-study, but it proves a likelihood of such a system being compatible with the laws of copyright. The fact that the study may be somewhat inconclusive, provides good insight into the fact that the issue of a system - regardless if one is to call it a broadband levy, a cultural flat-rate, or a private copy exception - is widely complex.

2.4.3. Bob Rietjens

Another researcher who has used the three-step test when assessing the feasibility of a broadband levy related to file-sharing, is Dutch copyright lawyer Bob Rietjens (Rietjens, 2006). Rietjens uses the same WTO-source as Bernault and Lebois to conclude whether or not P2P licensing is possible using the three-step test, but comes to a very different conclusion. This study is also conducted in 2006.

When it comes to the first step, Rietjens uses two approaches; a qualitative test and a quantitative test. In terms of a qualitative test, it implies that an exception should be an exceptional or distinctive objective. Rietjens believes the test to be hollow, as the WTO-panel in question refused to examine the policy or purpose of what is an exceptional or distinctive objective. In terms of a quantitative test one has to determine whether or not only those who download are taken into consideration, or if everyone who has the possibility should apply. In essence, do you take into account all of those with access to the internet and has the potential to download, or only those who uses this access to download? With the growing access to broadband at this point in time, Rietjens concludes that a case of a broadband levy to be paid by those who download is not «special» enough, as most people have, or will have, the ability to download unlicensed material off the internet:

«(...) P2P licenses are not compliant with the first step of the three-step test. A P2P license does not qualify as narrow in scope, both in regard to the number of potential and in regard to the types of work covered.»

(Rietjens, 2006, p. 329)

In terms of step two, Rietjens believes that illegal filesharing does compete with other channels of sale, thus competing with normal exploitation. Put simply: file-sharing reduces the income of rights holders, as they potentially lose sales that are conducted in legal ways. Therefore, a license on illegal file-sharing does not survive the scrutiny of the second step:

«The acts exempted by a P2P license (ie file sharing) compete with the normal exploitation of

works by the copyright industry.»

(Rietjens, 2006, p. 332)

When it comes to the third step, Rietjens concludes that:

«The third step of the three-step test does not need to be reflected on. If the P2P license can pass the first two steps, then, provided that the right holders are properly funded, the P2P license would not unreasonably prejudice the legitimate interests of the right holders.»

(Rietjens, 2006, p. 332)

Put simply: as a P2P license does not pass the first two steps, one does not need to reflect on the third step. If a P2P license did pass the two first steps, it would thus pass the third step, as a P2P license would in that case not unreasonably prejudice the rights holders' legitimate interests if they were to be compensated. On this matter, Rietjens is in agreement with the EML, Bernault and Lebois, but as Rietjens concludes, unlike the two others, that a P2P license would not pass the first two steps, the third step, according to Rietjens, is irrelevant.

In addition, based on the findings of putting a P2P license under the scrutiny of the three-step test, Rietjens concludes that:

«P2P licensing is a clear breach of countries' obligations under the TRIPS three-step test.»

(Rietjens, 2006, p. 332)

2.5. Criticisms and problem areas of suggested broadband levies

The topic of broadband levies have come under criticism, both by music industry officials, public officials and representatives of the technology industry. One of the first to criticise the 2014-suggestion from the Norwegian film producers was Torgeir Waterhouse, Director of internet and new media in IKT-Norge²⁰ (Nilsen, 2014). Waterhouse stated that such a levy in reality would be deemed as a special tax, and called it an unsustainable approach. Waterhouse was also concerned on the topic of distribution, and who would have the rights to the money. He stated²¹:

«If we take this further; whom on the Internet cannot then claim payment from the internet service providers? It's like the taxi industry should pay clubs and bars who are struggling.»

(Nilsen, 2014)

IKT-Norge later released a post with five more reasons not to introduce a broadband levy as suggested by the Norwegian film producers. These were, in short²²:

1. *Film should be funded and supported by open and democratic means*

²⁰ Note that IKT-Norge is an interest group for the norwegian ICT industry, hence not a neutral organisation in terms of technological development.

²¹ Translated from Norwegian to English

²² Translated from Norwegian to English

2. *Broadband providers should build broadband, not be responsible to claim taxes*
3. *Funding for film should be given by ability, not by if you have broadband*
4. *Infrastructure should be strong, wide and cheap for the consumer*
5. *An own levy earmarked for the purpose is cutting in line*

(Schjerva, 2014)

Based on these arguments, it becomes clear that the opinion of some parts of the technology industry is that broadband providers should focus on creating the best infrastructure possible, and that laying the bill on the consumer is contradictory to the way one tends to fund creation of new content in Norway. These arguments can most likely be transferred to a discussion where music forms the basis from a similar levy, and they are worth taking into the account when discussing the topic of a broadband levy further. The opinions of IKT-Norge as a whole also forms a fundamental question: why should the film industry - or the music industry, for that matter - have an exclusive right to introduce such a levy? What justifies a broadband levy on cultural content?

Director of the Norwegian Consumer Council's digital group, Finn Myrstad, also criticised the proposal from the Norwegian film producers. He was of the opinion that as so many services in Norway today are done over the internet, it may be regarded as a utility along the same lines as electricity. As the proposed levy would increase the cost of internet access, and as the United Nations had defined internet access as a basic human right²³, the proposed levy missed the mark completely (Nordseth, 2015). This criticism is also something to take into account when discussing the topic further.

As well as the points surrounding the utility discussion, it is also worth looking into how the money should be collected, and which factors determine how the money from a broadband levy is to be collected.

In 2007 Norwegian NTNU-researcher Hendrik Storstein Spilker suggested a levy similar to the cultural flat-rate (Kristensen, 2007). This suggestion came under criticism by parts of the industry itself, more specifically from head of IFPI Norway, Marthe Thorsby. Thorsby concluded that such a levy could give the impressions that illegal downloading was legal, and, from a music industry standpoint, this was obviously not something they wanted to achieve. Thorsby brings up a valid argument, that is definitely a major dilemma when discussing a levy on broadband. Even though illegal downloading of music is no longer a major issue, the use of unlicensed content from other sources still is. Introducing a levy on broadband could give the impression that this type of activity is no longer considered to be illegal. This should

²³ In 2011

obviously not be the case. A levy on broadband should not be considered as a system that could compromise the basic foundations of copyright, thus not a system that - whether allowing or being interpreted as such - should legalize the use of unlicensed content in any shape or form. This is definitely a major issue to consider further.

Criticism of broadband levies, like the cultural flat rate, has also come from the ones who are - perhaps more than most - interested in internet freedom and internet privacy. Rickard Falkvinge, founder of the Swedish Pirate Party has been one of the most prominent critics in this regard²⁴. Falkvinge, in his article, discusses mainly distribution of fixed sums based on amount of downloads. He believes it to be a terrible idea and uses the exploitation of the forerunner of many of the services we see today, MP3.com who distributed money from a fixed pool in terms of popularity, as an example:

«(...) several factors came about to stall the momentum of mp3.com. The pay-for-play experiment that rewarded artists monetarily for their downloads was sabotaged by the artists themselves. Honest acts were robbed of their intended share by enterprising gamers who exploited the system with programmed play bots and download gangs (posses) who would play long songlists often with the volume turned down to run up artificial numbers that equated into big bucks. Mp3.com tried and threw numerous cheaters off the site but they could not control the gaming...

This is the most predictable development ever. The second somebody gets paid from a common pool if a file is shared or downloaded, that file will get shared over and over again way beyond what would have happened otherwise, just to rack up artificial numbers that will translate into financial reward.

This is a school textbook example of how you can't measure something for money without changing the thing measured completely in the process.

This is why cultural flatrate will never work.»

(Falkvinge, 2012)

One can of course argue whether or not this is the case, after streaming and digital downloads have become the solutions of the music industry, but it does raise a valid point; that of distribution.

There is also major problem area concerning broadband levies; the sheer complexity of it. As shown earlier, a government study from the European Union was in no way definite on the topic, and introduced many different aspects and possibilities to take into account. The fact that such a study proposes 42 key factors implies that the topic is a very complex one. Can one find a solution that will either ignore or cater for these complexities? Another dimension is the fact that three different studies have come up with three different conclusions regarding

²⁴ One should note that Falkvinge and the Swedish Pirate Party is opposed to the way copyright is built up today, and wants a radical change in copyright law.

the three-step test and copyright. One can always argue that these types of reports will differ depending on the researcher, but the fact that one concludes in favour, one concludes somewhere in the middle, and one finds that a broadband levy - even though it is based on illegal downloading - does not meet the demands of the three-step test only confirms the complexity. This tells us that a broadband levy can not challenge the existing structure – if it is to still exist – it has to supplement the structure, or even complement it.

In summary, some of the criticisms and problem areas that have been raised towards a broadband levy, regardless of type, raises five major issues to take into consideration when discussing possible solutions for broadband levies further:

- What justifies a broadband levy for cultural content?
- Which factors determine the size of the levy for internet users? Is it fair to put a levy on the internet, when it may be regarded as a utility?
- How does one introduce a levy on broadband that does not breach the foundations of copyright, and does in a technical way permit illegal downloading?
- How does one distribute the money from a broadband levy, and how does one avoid manipulation of the numbers that the money is distributed upon?
- Can a broadband levy work as a supplement to the existing structure of the music industry?

3. Methodology and interviews

To gain better insight as to if a levy on broadband could have the potential to be implemented, interviews have been done with four people in the music industry. This chapter seeks to provide some insight into the methodology and process leading up to these interviews, and how the interviews have been analyzed, as well as presenting the interviewees. This work will lay the foundations for the interview analysis, and later the discussion that needs to take place in order to conclude upon the research question.

3.1. Methodological approach and gathering of information

This part of the chapter seeks to explain the methodological approach when working on the thesis, as well as give some insight into the process of gathering data and relevant informants for the interviews.

A qualitative method has been chosen. The qualitative method gives the opportunity to gather material that is perhaps smaller in terms of amount of data, but ranges more widely in terms of the aspects they cover (Østbye et al., 2013, p. 22). Further, the research question should be answered through a systematic collection of different types of data. The findings, especially in an interview situation, also need to be interpreted through analysis. This is another factor that defines qualitative research (Ryen, 2002, p.18). Previous parts of the paper have laid out findings from secondary data, in order to lay the groundwork when presenting responses to the interviews conducted. This secondary data provides some insight into questions that need to be explored further, and functions as a basis when analysing responses from the informants. Extensive use of secondary data is also in accordance with the explorative approach, as the goal is to become acquainted with the field of study, and the issues it brings forward (Østbye et al., 2013, p. 267)

As I had limited knowledge of the topic when starting the process, it was clear at an early stage that a qualitative research method laid the foundation for a decent starting point. It was also clear that there was a need for gathering the information and data I needed through interviews, as well as using information from literature and previous research. When it came to using this secondary data, it also became that there was a relatively small amount of conclusive research that had been made on the matter, as we have seen in chapter two. This led me to go for an exploratory approach, where I could explore the subject further, not drawing a definitive conclusion.

Qualitative data collection has been preferred to quantitative data collection due to one very simple reason: the complexity of the issue. This complexity presents a need to gather in-depth data in the respondents' own words, and the need to explore and discuss (Blackstone, 2012, p. 230). In this thesis a quantitative collection of data would be too numeric, and would not provide the in-depth responses needed with exploratory approach. The dismissal of quantitative data collection does not mean that a qualitative data collection does not have its flaws, and one needs to take outmost care to create questions that are not leading or that cause short answers due to the way they are asked (Blackstone, 2012, p. 236). The method also depends on the respondents ability to accurately answer questions and present their opinions, as well as creating a more tedious analytical process, where one may have to listen more closely in order to grasp what is actually being said (Blackstone, 2012, p. 243-244).

The interviews have been conducted as a guided interview, meaning that all the interviews followed the same pattern. Most researchers agree that an interview guide should be used (Ryen, 2002, p. 96). In all interviews a framework of ten questions have been used. These questions have had some follow-up questions in order to gain more insight on the matter. In addition some informant-specific follow-up questions have been made in order to clarify certain responses. The same interview guide has been used in all of the interviews. All informants have been offered the interview guide in advance to prepare; only one informant has chosen to do so. To ensure validity and correct citation of responses, all interviews have been recorded with the consent of the informant, and later transcribed. The transcriptions have been made a little easier to read, reducing the amount of actual pauses and fill words, but only where this does not alter the actual opinions and meanings of the informants. The transcriptions of each interview and the full interview guide with follow up questions can be found in the appendix.

In some parts of the interview process, the need to clarify questions or issues to the respondents has been necessary. This need has also ruled out more impersonal quantitative interview, and favored a more personal qualitative interview. It may well be that a quantitative data collection could be relevant if one is to gather attitudes and opinions of more respondents, but as a broadband levy at this point in time is very unexplored territory - something that the amount of secondary data also shows - it is not deemed relevant at this point in time. This type of data, however, may be very relevant at a later point in time, when initial issues are sorted out better, and a more practical approach, rather than theoretical, is needed.

Gathering information in terms of literature and secondary data has been done since the fall of 2015, with some being gathered as far back as January 2015. In terms of literature, as there is little research on the matter, a method of finding research on similar concepts have been used. This is reflected in, for instance, the cultural flat-rate, that shares many similarities with a broadband levy for today. It has been important to gather as much information on the cultural flat-rate and similar models as possible, to better understand the challenges and benefits of a similar model almost, in some cases, ten years later. This literature has been complemented by literature on digitalization, streaming, current cases, and so on.

Despite being little research on the matter, gathering literature has been relatively manageable. The main challenge has been to gather informants for interviews. The four informants that have been interviewed are all of great value in the thesis, and represent four different areas that are all important if it ever were to come to a broadband levy. Despite communication previous to the interview perhaps have moved a little slow at times, the process from acquiring interviews to performing them have been fairly simple.

The biggest challenge that has occurred when gathering information has been the ones who are not willing or able to talk. For this thesis, these all represent the record companies in some way or another. Some have answered no, some have not answered at all, and some have said they would bring it up in the system, without coming back with a response. Even though it is understandable that time, and perhaps interest or knowledge on the matter, may limit the willingness to be interviewed, this thesis could have benefitted from more input from the record labels. It has to be mentioned that some of the questions for the interview guide benefitted from a phone conversation with a representative for the major labels. Whilst trying to request an interview, this representative presented many counter-arguments that, after revision, became part of the interview guide in order to gather a better understanding, and perhaps solutions to as many things as possible. Even though the label representative was not willing to go on record, and presented personal, rather than official opinions on the matter, this opinions have been valuable in the process, as they help to confirm what many others also consider counter-arguments to a broadband levy.

The most valuable information has been that gathered from the four informants. These have all brought in highly valuable opinions and possible answers to questions, originating from their different positions in and views of the music industry.

3.2. Informants

The informants for this thesis have widely different backgrounds in the music industry, with different approaches to the topic. They are chosen because of their vast, but different, knowledge of relevant topics to introduce in a discussion on broadband levies.

The informants are:

- Knut Bøhn: Head of finance at Phonofile, a digital distribution partner for record labels. Phonofile is perhaps one of the companies that have had the most influence in the digitalization of the music industry in the Nordic countries.
- Bendik Hofseth: Musician, composer, chairman of the board of TONO, professor at the University of Agder. Has worked in and with organizations such as World Intellectual Property Organization and CISAC.
- Peter Jenner: Has managed acts such as Pink Floyd and Billy Bragg. Has been heavily involved in artist management organizations and questions of copyright. Lecturer at the University of Agder.
- Cathrine Ruud: Secretary General of the Norwegian Music Publisher's association, Musikkforleggerne. Musikkforleggerne represents publishers, and holds vast knowledge of different copyright issues that affect many of the acts in the industry.

3.3. Interview guide

As mentioned, an interview guide has been used for the interviews of the informants. The interview guide has been semi-structured. Most main questions have been asked in the order presented, but sometimes the structure has changed in order for the informant to quickly elaborate on points previously brought by them. Some follow up questions have been asked to each main question. Each main question is listed underneath with some of the most frequent follow up questions. The entire interview guide is attached in the appendix. The interview language for three of the informants has been Norwegian. For one informant, English has been used. The interviews are transcribed in the language that the interviews have been conducted. All questions have aimed to be as open as possible, in keeping with the exploratory approach, and have undergone reviewing several times by the interviewer and the supervisor, in addition to having been tested on fellow master's students, to ensure that the questions are as open as non-leading as possible. Follow up questions have been used to gain more specific answers, or to lead the interview subject onto similar topics if they have not already touched upon this under the main question. These questions have aimed to lead onto topics and not specific, wanted, answers.

The questions asked were as follows:

1. What do you think of when hearing the term broadband levy?
2. Why do you think a levy on broadband has not become a reality, although it has been discussed for the last decade?
3. How could a broadband levy work as a supplement to the already existing structure of the music industry?
 - Could/should a broadband levy replace the private copying levy on physical storage?
4. What are the benefits of introducing a broadband levy today?
5. What disadvantages are connected to introducing a levy on broadband?
 - How can you implement such a levy without compromising the foundations of copyright?
 - Is there a way to avoid the issue of technically legalizing illegal activities surrounding copyrighted material when introducing a levy?
6. How do you see a broadband levy working if it were to be introduced today?
 - How would you determine what to pay=
7. How could one justify a broadband levy to the parties involved?
 - (Consumers, Rights holders, Politicians, ISPs?)
8. How can a levy be financially beneficial to the different acts in the industry?
9. If a levy could have the potential to bring in money to the music industry, how should the money be distributed?
 - Who should distribute the money?
 - If part of the money were to be put into a fund, how could you see this fund work?
10. Is there a need and a base for a levy on broadband?
 - Is there a need for a broadband levy after streaming?

3.4. The interview process

There are several objections towards the qualitative interview method. These can for instance be that it just reflects common sense; that it is subjective, not objective; that it may be considered biased; that it may be based upon leading questions; that different readers may find different opinions; that it is dependent on person; and that it is merely exploratory (Ryen, 2002, p. 131). This is more general criticism. From an academic point of view, criticism towards the qualitative interview can be that it is individualistic; idealistic; immobile; cognitive, and even meaningless. (Ryen, 2002, p.135)

The reason for bringing this up is not to fault the method of which I have gathered data, but more to show that there are plenty of issues to consider when conducting an interview of this type. The goal of the interviews have always been to gather several different opinions on the same matter, and to maintain different points of view in order to gather the complexity of the issue. The issue of a broadband levy is a very complex one, and reaches beyond the music industry, although this specific industry is the main focus of this thesis. Because of this, the goal when gathering informants has been to acquire informants that knows the music industry very well, but also has some insight into other realms in the cultural content industries, although not being a main criteria for selection.

As the study is explorative, the most important thing has been to gather informants who have a degree of knowledge of the music industry from different angles, and where some also must be said to have a high degree of competence of the technologies used in the distribution of the product. In this sense, the gathering of informants has been good, and I do believe that the four informants cater for a broad field of knowledge, competence and opinions. As mentioned earlier, I would have liked for someone from the major labels to also take part in this study, as I know that representatives from here would also have valid points and opinions into the exploration of a broadband levy.

During the interview process, I have tried to not dive too deeply into the areas where a qualitative study may be faulted. I have tried to remain open, unbiased and listening. I do see, however, when reading through the transcriptions, that I in some interviews may have been a little too participatory, in the sense that I sometimes give additional information when asking a question. These can be related to statistics or calculations. It is difficult to say if this changes the informant's responses, and as I have never asked of the informants opinion of a broadband levy, in the sense «are you for or against», it is difficult to say if it changes opinion. Whatever the outcome, this has been, perhaps, my own biggest flaw when taking on the role as an interviewer.

A second thing that may have hindered the interviews slightly has been that three out of four have been conducted via Skype, either as a normal phone conversation or with a video link. Although I do not believe that the conditions for the interviews have been changed severely due to this fact, it may have caused complications, as internet connections sometimes differs in stability. Some minor parts of the interview may have come off a bit unclear in the recording process, but I do not believe that it has changed their validity, nor the meaning of the informant. The main issue may be that time has been a factor when doing the interview over Skype. Surprisingly, the interview with Peter

Jenner, conducted face to face, lasted around 30 minutes longer than the interviews over Skype, around 90 minutes, whilst the others lasted around an hour. It is difficult to say if this was due to the interview conditions, but all informants were asked at the end of each interview if they wanted to add something we did not touch upon, and in all cases they responded either no, or elaborated on previously mentioned topics. This tells me that the informants had managed to say what they wanted to say, and when looking over the transcripts or listening to the recordings, I cannot say that there are any topics that I missed overall, although all respondents may not have touched upon the exact same issues. I have asked and gained permission from all informants to write follow-up e-mails if I have had any more questions, so if more response is needed on a subject, there has been an opportunity to acquire it.

A third issue is the fact that three out of four interviews have been conducted in Norwegian, and then translated into English. Although I strive to keep the original meaning of the informant, there is a risk that some things may be «lost in translation». I have tried to avoid this by using the Norwegian term in parentheses next to the translated word when uncertain, and to clarify.

All in all, I believe that the interviews conducted have validity, and that they do provide good information in this exploratory setting, despite the fact that some flaws may have been uncovered.

3.5. Analyzing the interviews

Analyzing data, in this case the interviews, is important in order to create a full understanding of the meaning and validity of the data. The goal of a qualitative analysis is to bring forward a full understanding of specific issues, or to develop theories of specific contexts. This is done by analyzing the data (Østbye et al., 2013, p. 129).

When working with interviews it is important to do the informants justice by presenting their answers and opinions as precisely as possible, and not in such a way that one can interpret their opinions differently. In chapter 4, the informants' response to each question has been summarized in relation to key questions, presented at the end of chapter 2, and also in the introduction. To ensure validity, the transcripts of the interviews are included in the appendix, so that one is able to cross-reference.

There are especially three aspects that are important when analyzing qualitative data²⁵:

1. *The data and the analysis of these data must be anchored in overarching issue and theoretical*

²⁵ Translated from Norwegian to English

perspectives.

2. *The gathering and treatment of data needs to be systematic, this way the data is able to «speak»*
3. *One must figure out what relevance different types of data have for the issue that is raised.*

(Østbye et al., 2013, p. 129)

These are all aspects that have been taken into account when analyzing the data. This is so that the data can keep their validity and reliability (Østbye et al., 2013, p. 130).

In the case of this analysis, responses from each informant have a question as an overarching issue. This also leads to a more systematic presentation and treatment of the data, and the data is able to speak in the context of the question. The relevance that the different types of data have, are rooted in the question asked. In essence: presenting the responses in such a way maintains their validity and reliability. Attaching the transcriptions ensures this even more.

The data gathered is mainly used to help gather more data on some of the issues that arise from chapter 1 and 2. This is summarized and discussed in chapter 5, and the data forms a solid base for this happening. Some informants have also had some other points that are not directly related to the issues from the end of chapter 2, but that have come up over the course of the interviews. These are brought up at the end, and used to determine if there are other issues that need to be taken into consideration. For instance, it is interesting to summarize the respondents' views of the basis and need of a broadband levy. Issues that arise from this are also brought into chapter 5, as this also addresses other possible challenges connected to a broadband levy. The data is used this way so that they can help create a wider scope of issues to address, forming an even better foundation for developing theories, as well as pointers towards what may require even more research. After all, this study seeks to explore, rather than reaching a definite conclusion.

The responses are split up into parts that confine with the questions raised at the end of chapter 2. The responses are somewhat shortened, but are as close to the meaning of what each informant has responded as possible. As the questions of the interview guide have not necessarily addressed the specific issues brought forward in this paper, but has aimed to cover a broadened scope, some responses have been taken out of their original context at times. This is for instance when a respondent touches upon a relevant subject when responding to a question that is not as specific as the issues presented. As an example: if one touches upon a subject that relates to for instance copyright when being asked question number two from the interview guide, this is put into the context of part 4.3. This is of course done with the outmost care, and with focus on ensuring not to ascribe

opinions onto the informant that the informant has not originally had. Projecting the true opinions and expertise of the informants has at all times been the main concern.

Where needed to enforce meaning or clarify, direct quotations have been used; for example, Norwegian schemes do have a way of altering their names when translated into English, so the name of the scheme mentioned is included in a parentheses next to it as a direct quotation. The transcripts that are written in Norwegian have been translated to English in such a way that they strive to keep the meaning of the original answer.

The informants' answers are presented in such a way that they relate to the issues addressed.

4. Responses and analysis

This chapter presents the responses from the respondents, grouped under the different questions asked, in addition to other topics that have come up during the interviews.

4.1. What justifies a broadband levy for cultural content?

The first matter that needs to be addressed is what factors may justify a broadband levy for cultural content.

Cathrine Ruud discussed how a broadband levy on cultural content may lead to a decriminalization of consumers, and lead to better terms for the creators:

“The consumers, if one is talking about illegal downloading, they would be able to download in a justified way, without feeling guilty, without prosecution or punishment. And if it is distributed individually, or would provide a very good compensation for the direct illegal downloading that is there. (...) A broadband levy is a very simple solution to the problem (...). It could secure that those who create music gain more money, the opportunity to create more music, be able to live from what they do; secure Norwegian culture, productions in Norwegian, and that they gain decent remuneration for what they do. There is a sense of justice to it. In principal it is a good idea for the rights holders.”

Ruud also pointed out that such a model could be a good compromise between rights holder and consumers, and that it may create more simplicity:

“For the consumers (...) Even though that may seem like punishment, it is a more accommodating suggestion than punishment and fining. It is a suggestion to a solution, a compromise. A suggestion that can benefit both parties. It is very simple and understandable, and that is perhaps what the consumers need, something that is easy to deal with, but then it needs to be well argued and well reasoned when it comes to why.”

Knut Bøhn followed up on the terms for creators, and the potential increased cultural production.:

“The purpose must be that more people contribute to the production of Norwegian artistic and cultural expressions. This way, in my world, it is completely reasonable that something similar to a broadband levy is expedient, and because it is expedient, it is also reasonable to introduce it, under the condition that it benefits the producers.”

Cathrine Ruud followed up on this:

“(...) just look at the streaming services and all of that today, which is a good solution. But most are not completely happy with it, as it does not give a good enough compensation to all Norwegian musicians. One sees that the share of music produced in Norway is at twelve per cent, or something like that. That is a very small amount, and one sees that when it comes to films and others things as well, so to maintain the production level as high as possible, that more people can make a living out of it, one needs new schemes to protect it.”

Peter Jenner is of the view that a broadband levy could contribute to increased cultural diversity:

“The broadband levy could, (...) help to reduce the growing linguistic hegemony of English. The language and cultural hegemony of Anglophonia. I think that is really bad. I would love to hear really good Chinese music come through, and in the end it will come through, that I can bare to listen to. Chinese movies, Brazilian music. African music. There is so much richness that we don't hear, and it is all being drowned out by imitation Anglo-American, more Anglo-American, sort of culture.”

He also pointed at a potential a broadband levy has to help gaining more licensed content, which could in turn lead to more cultural diversity:

“(...) it would open up the internet to all sorts of new services, new content services, which are not relying on getting licenses. (...) I've been struck by the fact that you can not get a very deep catalogue from France in the UK, as no one can be bothered to license it. It seems to me that the problem is the individual licensing of content. I think all content should be available from anywhere in the world”

Bendik Hofseth also pointed at the issue of licensing. When asked about justification, he answered:

” It has to be that you get rid of the problem, because it is not so stupid, not hopeless. Look at online licensing today. It becomes more and more fragmented, it is harder and harder to find the content, and some services are unlicensed.”

Hofseth hoped that a broadband levy could help simplify licensing, and pointed out that this is a challenge for the music industry:

“(...) I think that the more fragmented licensing is, the closer Spotify is to go to Brussels and say that ‘this does not work anymore, that publisher negotiates here, and that

publisher negotiates there, and no one wants standard tariffs, everyone wants to be paid differently for their repertoire. It doesn't work.'"

When it came to justifying a broadband levy, Knut Bøhn addressed the issue of perception and willingness to pay:

"(...) one has to try to make people understand that, especially in a small country like ours, there are the collective solutions that create the solutions we have. You cannot start to pay the National Insurance («Folketrygden») fourteen days after you have ended up in hospital. That is too late. One just needs to understand that, and if people do not understand that intuitively, the politicians must make sure that it is communicated. It is very hard, what has to do with having people to pay for something, when they can travel to Sweden or go on Pirate Bay to get cheaper. People with the best and most noble intentions, are still prone to look at price. That is very hard."

In summary, what justifies a broadband levy for cultural content could be four things:

- It could decriminalize consumers, and it could, in theory, help legalize or monetize all cultural content on the internet.
- It could lead to increased cultural production as more money could come back to creators
- It could help license all material in all territories, as it could be monetized everywhere, hence create more cultural diversity
- It could simplify the process of gaining licenses, leading to an even more competitive catalogue on legal content services.

4.2. Which factors determine the size of the levy for internet users? Is it fair to put a levy on the internet, when it may be regarded as a utility?

The next issue that needs to be addressed is how you determine the size of a broadband levy. The respondents gave some pointers towards how this could be done.

Knut Bøhn pointed at determining it by amount of downloads, when being presented with three alternatives on how to pay a levy: Flat-rate, connection speed or by amount of downloads (the question also asked if there were other alternatives):

“The simple answer to a structure is the last alternative. One should try to maintain the perspective of the tree-step test, that the ones who acquire copyrighted material remunerates this directly. It is completely reasonable that one puts a tax on the fact that I acquire what someone has produced in a way that suits me. I need to be prepared to have a cost connected to that, as for instance the TV-license («NRK-lisensen»).”

Cathrine Ruud had a similar view, being presented with the three alternatives:
“I don’t think determining it by connection speed is a very good idea. A flat rate is perhaps the simplest, but perhaps also the one that is the most unfair, as it does not take into consideration who does most, and who does nothing. (...) The third option seems to be the most reasonable, if it is easy to implement, and if privacy and anonymity and all that is maintained.”

Peter Jenner was of a similar view, and presented the opinion that broadband could be looked upon as a utility:

“I am not a technician, but I am sure it could be dealt with. The way it should work is a combination of standing charge and volume. There should be a meter measuring the amount of content you consume, or however you measure it. I see broadband as a content delivery utility. If you look at it as a utility, the way we charge for utilities is by standing fees and meters, and in a sense that is what I would do. What I would then look at is making sure that the content that is the most accessed, is the content that get's the most money. Basically, stuff that we like will get more money, and that means that the people who make the stuff that we like, will make more stuff that we like. I think that is what the market should be doing. At the moment that is not what the market is doing, because there are so many people getting in the way, there's so much rent-seeking on the way through, that that's not happening. The money isn't filtering back from user to the creator properly. That is a problem, stuff getting in the way of it getting from the end-user to the creator, that's what I want to see happening, and I think at the moment too much of it is taken up on the way. “

Bendik Hofseth continued down the path of a model that follows that of utilities:
“I think it would have to be the way it is with water and electricity. That could be a good model. The way that works is that there is a set fee, a grid fee in a way, and then usage over that. How that could be done, I trust that one is able to figure out. I don’t think that is a major challenge. We have models for how we can do that when it comes to sending out the bill.”

On the topic regarding if it was fair to put a levy on something that is may be regarded as a utility, Peter Jenner answered:

“I think we insist on water being available for everyone? We insist on electricity being available for everyone, and gas, and telephones. It's the utility argument. Increasingly, in the modern world, you are going to need it, and to be part of society; you're going to have to know how to use and have access to the internet. In ten years time, if you suggested it is not a utility, people would laugh at you.”

When it came to measuring amount of downloads, Cathrine Ruud pointed out that privacy might be an issue:

“How do you measure it? How do you gather information in order to know how to distribute the money? In this instance privacy concerns may play a part. It might feel like surveillance.”

In summary, the consensus seems to be that a broadband levy should be determined by the amount that you download, and that it may be possible to do so. If one is to do so one needs to find a way to measure it that does not compromise privacy concerns. When it comes to charging for a utility, this can be argued for using the fact that there are fees and charges on other utilities as well.

4.3. How does one introduce a levy on broadband that does not breach the foundations of copyright, and does not technically permit illegal downloading?

The third issue is that of copyright and that a levy might create a perception that illegal downloading is technically permitted. As presented in chapter 2, there are differing opinions on whether or not previously presented levies may stand the scrutiny of copyright.

In terms of previous suggestions, Knut Bøhn was critical of the voluntary option that has been advocated in some of these when it came to copyright:

“I do not believe in the model that is introduced in Germany at all, not from a copyright perspective, because it undermines the entire idea of it. It is a cute thing that it should be voluntary, but there are a lot of issues connected to this, at least when it comes to that one is not forced to pay.”

Bendik Hofseth thinks a broadband levy would affect copyright, and in turn the way one looks

at artistic works:

“It would affect the way we perceive art, as it would do something to copyright. I think the consumer would feel that all belongs to them. That they can use it however they like. That we barter moral rights and protection to gain some money from it. That is a weakness. I can't see how we can maintain a control, as the Berne-convention suggests, for example when it comes to use for political purposes, pornographic purposes, commercial purposes, and so on. Everything will be perceived as free. As bought, and paid for, and belonging to everyone. I think that is a tremendous step to take, as you let go of the underlying exclusive rights.”

In terms of copyright, Peter Jenner was of the opinion that a broadband levy would undermine copyright, but he did not see this as an issue:

“I don't think there is any question it would undermine the foundations of copyright. It depends on what you mean. If you say that copyright is about getting peoples permission, I think it would undermine that, and I am quite happy about that. If it means that you're undermining the copyright as an existing institution, I would have no problem with that at all.”

He elaborated:

“What I don't like about copyright are all the things like «take it down» (...) and I think content should flow pretty freely. I would let people have legal objections to some extent. I do think that the content should be freely available to everyone. But then everyone have got to pay quite a lot to get their broadband access.”

He continued:

“Copyright and permissions are a way of extracting rent. You could say The Beatles have been extracting rent because they have been so famous for a long time. The big issue is rent. The current structure is a reflection rent, rent-seeking by the major labels.”

Jenner also believed that moral rights might cater for some issues:

“Is copyright about permission, or about getting paid? If it is about permission then I don't give a damn if it goes. (...) I think we can deal with that. It might undermine copyright as a permission thing. You could say «we'll leave that to moral rights», and if there is something you find to be a really offensive use of your music, you should be able to stop that on moral grounds. You shouldn't be able to stop it on financial grounds.”

Jenner thought the main issue was how creators could create more for the consumers:

“The value chain starts with the creators and ends up with the end user. What one needs to do is to work out how you can maximize the amount of creation getting to the end-users. If the end-users like the content that should be reflected through, into a system where creators can afford to create more. The people who enable that transaction, the people in between, their job is to make it work better and more efficiently.”

On the topic of whether or not a broadband levy technically legalizes illegal downloading, Knut Bøhn was of the opinion it could be avoided, but did see some problems, especially when it came to consumer behavior and those who could monitor:

“It is not difficult to follow activities from one terminal to another, so that can surely be implemented. The same challenge is somewhat connected to the Data Retention Directive. There is no incentive for the ones who is the closest to pay the cost. There is no incentive to argue for why one should take on the cost. The world we live seeks the path of least resistance when it comes to that type of pragmatism. That a commercial provider should offer to take a place in such a chain, that is to the disadvantage and an extra cost for the provider themselves, I do not think that that is a viable model.”

Bendik Hofseth believed it might not be possible due to the fact that a broadband levy would have to be introduced by regulators and the unpredictability of that when it came to the perception of internet freedom:

“I think we should use history as a helper. When it comes to the development of healthy and sustainable business models, they often occur organically. They don't occur as a result of the reactionary actions as this proposes. It is a very drastic action, which is unpredictable in a lot of ways. What I think is the fundamental issue is that the politicians have not wanted to regulate this area, because the argument of internet freedom is so strong, and because internet freedom has been connected to the entire way the medium intertwines us; us humans like to be to be intertwined.”

Cathrine Ruud stressed the fact that the terms surrounding a broadband levy would have to be made clear to everyone, and that existing laws could help address this:

“It has to very clear what such a levy involves, how it is to happen. There has to be certain criteria or guidelines for the levy. What it contains. Ways to circumvent it happens anyway, but we have laws. The copyright law («Åndsverksloven») still prevents that, if one does not change the laws to fit such a levy.”

Putting a broadband levy into the copyright scheme of today may seem a hard fit. First of all, it would probably need to be mandatory. Secondly it needs to find a balance of protecting content, whilst gaining remuneration. Third, some of the existing structures of copyright today may need revising in order for broadband levy to fit, if desirable. Moral rights may, however, help to cater for some of the most important issues, and there would still be protection that copyright laws give that would be applicable.

In terms of if it may create a perception that one can still acquire material illegally, consumer behavior and attitude is always an issue, but there are ways to track activity if needed. The argument of internet freedom also has a wide foothold. Whether or not it is possible to avoid such a perception at all ends is difficult to say, but it is nevertheless important to still certain criteria and guidelines to prevent it from happening.

4.4. How does one distribute the money from a broadband levy, and how does one avoid manipulation of the numbers that the money is distributed upon?

A main topic when it comes to a broadband levy is how it may be distributed. In this section, four three things are discussed: How is the money distributed, and who distributes it; How does one avoid manipulation on data, and; if the money is put into a fund, how should this fund work.

Peter Jenner touched upon what determines collection, and how one could measure how money could be distributed:

“You could have a standing charge and a metered charge, and you allocated the money that was received in order of what people had actually used, because they know what people are using. They know how much of its music, how much of its film, how much of its video, how much of its newspapers, and how much is other things. They could allocate that revenue according to those things, and they could analyze what is getting used within that content, and that could be done relatively simply.”

Jenner added:

“I would allocate it according to who's watching or accessing the content, the music content. It would mainly go to the creators of that content, so therefore you would need people to decide who were the creators and what is a fair and right way of allocating money. But we do find ways of doing that for radio money. There is a base line of statistics. You have things like PPR (price per record), you have a different ratio on who

gets what from a recording, which sort of works. You could have that similar sort of structure for video and for anything else.”

Knut Bøhn discussed the distribution in light of pro-rata versus collective distribution. He pointed out that pro-rata distribution is relatively simple, but also saw good reasons to distribute collectively:

“There are two possible distribution models. When this was discussed the first time, it was considered pretty unacceptable to leave the pro-rata model, and that the money followed the usage. Now, one has many years of experience in doing this. with the enormous amounts of data gathered from Spotify each month, for instance. It is not difficult to distribute based on use. I think there are many good reasons why one should handle this collectively, and distribute from organizations such as TONO, Gramo and others.”

He added:

“(…) If a tax to stimulate Norwegian cultural production holds relevance, it would probably be better to if it were managed collectively, rather than one to one.”

He did see some issues, however:

“What has been tricky, traditionally, has been to get those with a very large share of the users on board. Universal, for instance, has a market share of 40 per cent, or something like that, so it may be very hard to get them to go along with any other share than that.”

Bøhn added:

“It could well be that the rights holders organizations should manage this, because in that way one would maintain an aspect of cultural policy. But one could also say that such a model belongs to the sixties, and that it is not hard to have the money stream follow the ones who acquire material. “

Bendik Hofseth believed there were many benefits to the CMOs distributing the money, when asked who should distribute the money, he answered:

“We have good devices for that. It would have to be those organizations who have registries and routines for this today, and that is the CMOs, or the copyright companies. They have overview and experience. They have membership lists, they know how to exchange the money, and how you gather the money. Those structures are in place.”

He added:

“(…) we have experience and precedence, so I think that is doable.”

When it came to distribution, Hofseth thought this could be done both individually and collectively:

“(…) one could consider a collective bit, that everything is not distributed individually, but a

collective bit that is withheld in the respective bodies for cultural purposes, used for stipends, shares for grassroots initiatives, and incubation.”

Cathrine Ruud shared the view of organizations distributing the money, but named a different organization than the CMOs as a natural distributor, in addition to considering other options:

“Distribution could be done in a lot of ways. It could be type of fund, stipends, or individual distribution through Norwaco. They already distribute the private copying levy, which is an individual distribution, and it is natural that this may have been under them. On the other hand they have 35 member organizations who needs to agree that this is a good, and the way there is not very easy.”

Ruud did not believe CMOs, in this case TONO, to be a natural distributor of broadband levy money:

“I don’t think that is a natural part of them, based on what they do today. They already collect performance money in a very accurate way. They manage performance rights. I think it more natural that it falls under Norwaco.”

Peter Jenner shared the view of CMOs doing the distribution::

“In terms of music I would have all the money coming through things like PRS and PPL, and they would have the information of who to give it to, and they would be under obligations to be efficient and economical, and I would leave that to very tough regulation.”

Jenner also had some views when it came to the fairness of this model:

“I think the idea that you have someone who collects and distributes it amongst other worthy people is a pretty good idea. Collection societies are a very good idea. What does the cameraman get as opposed to the musicians, as opposed to the star, as opposed to the writer? It's not very fair now, that's the advantage. I would hope there would be a better distribution, more even distribution than there is now.”

When it came to data collection, Bendik Hofseth saw the advantages of an international registry:

“(…) there would have to be an international registry in one way or the other, that could be connected to this. That is what we tried to put up in Geneva, in WIPO. That is an essential element, because one can cheat a lot with data if it isn’t, and we are unable to mechanize those settlements.”

Knut Bøhn believed that current data collection methods were viable in this case:

“For music this is sufficient, perhaps excluding smaller radio stations, but apart from that it is sufficient.”

When asked if the some of the money could be put into a fund, Cathrine Ruud had some thoughts of who such a fund could cater for:

“Perhaps a fund for those who are difficult to collect for individually, groups where it is hard to distribute individually. At the same time someone who has their content used online. For the greater good; common solutions.”

Bendik Hofseth pointed at the opportunities a fund has to create more diversity:

“It is about strengthening diversity, if necessary. It is about giving young people an opportunity. That they are able to eligibly finance those who have great ambitions. That there is schemes within the arts sector itself that can highlight what is more essential than others.”

Peter Jenner also believed in a type of fund, and had some opinions in terms of how these funds should be ran:

“I think that one would not want to just be driven by popularity, but it would be one of the criteria. You don't want it all driven by, sort of, art snobs, or the middle classes, upper classes or whatever, or the masses.”

Jenner used art schools in England in the 60s as a reference to this, and how people had been taken in due to their folio and not academic or artistic qualifications:

“From that a lot of great bands started, and I think that if you have that same sort of openness to that sort of approach. You could go in to someone and say "look, this is what I'd like to do" and they'd give you a small grant to do it, and then if you don't do it that's alright, it's just written off, but you will find it hard to get a second grant, you might be able to get a second grant if that is also a write-off, it would be very hard to get a third grant, and then you'd be in the dumper. Equally if you make the first grant work, it is easier to get a second.”

He pointed out that success is something that should be rewarded, but that potential funds should have a sense of diversity to them:

“I would reward success. I would reward good ideas, initially, and then I'd reward success of what their ideas were, in other words, what people respond to best. But not entirely. I think a bit of both. You don't have to have a single system; you could have a variety of systems. You could have the cultural fund, the art fund, the popular fund, you know. “

Knut Bøhn was of the opinion that one did not have to reinvent the wheel, and that

there were good models in place today:

“I don't see any major challenges with the way Fond for Lyd og Bilde functions today. Such a fund should bring back money to the productions environment. “

Previously, commercial acts in the music industry have expressed a desire to be able to apply for funding to promote Norwegian music abroad. When asked if this was something that could be an option for a fund Knut Bøhn was clearly positive:

“Yes. It has to be used to stimulate a professional environment.”

Cathrine Ruud shared this opinion:

“I can see that. I think that is a good idea. Everything that contributes to the creation of new works and new music, which again is used online. I see that being a solution.”

Bendik Hofseth thought this could be good idea, but that this could vary from country to country:

“The online segment is included in a cultural ecology, a biotope. In Norway, who has a small amount of national repertoire, it may be important to strengthen the Norwegian repertoire. In England, there are other things that are important. There, diversity may be under stimulated. In other countries the mono cultural may be under stimulated, that one has a need to contribute to the creation of great spearheads; stars. The needs can be very different, in very different countries, at very different times, so there has to be flexibility, a type of autonomy in each region when it comes to such a fund.”

Peter Jenner also shared the view that this could be a good thing, but emphasized that it should be for developmental purposes:

“I don't mind that, but what I would do is making sure that you sort of ring fence that money, and you have a sort of Norwegian development thing, and it's not just used as a way of getting money from Norwegian government to promote Anglophone music. I think you can envisage things like that, and I see no reason why shouldn't. Sony Norway, who has a staff of like four people, but has a bit of taps into Sony stuff, can apply for development money for arts, and try to promote and market that. I don't see that as a particular problem, but I do think you have to be careful that it is not used to just subsidize overseas stuff. “

There seems to be a consensus that there should be some type of organizations involved in the distribution of the money, and that the money should be distributed according on a certain pro-rata basis after amount of plays and hits. One does, however, need to find a model of distribution that is satisfactory to as many parties as possible. When it comes to

the collection of data one has to ensure that as much content as possible is registered in the same way, for instance in an international registry. One does have good data collection in the music industry as is, but there may be a need for better coordination. Some of the money should be allocated into a fund, where both non-commercial and commercial players can apply for funding. There does, however, have to be some criteria to what and how.

4.5. Can a broadband levy work as a supplement to the existing structure of the music industry?

The music industry as is holds many different structures, structures that have been the same for many years, and structures that have changed over time. As structural change has shown to be quite a demanding job, is it possible for a broadband levy to work as a supplement to this structure without changing it completely?

Knut Bøhn was of the opinion that a broadband levy could work as a supplement as similar structures are already in place. However, he pointed out that the music industry may struggle to gain acceptance for structural change:

“A broadband levy can work as a supplement to the existing structure. (...) I would assume that collective management could be natural. Without having vast knowledge of Norwaco, for instance, I know that there are enough groups of right holders who at all times are represented in such a discussion of distribution, and I think that perhaps music has a weaker position now, than in the previous round of the private copying levy («Privatkopieringsvederlagsrunden»), all that time it is an established fact that the music industry is actually doing very well.”

Cathrine Ruud shared this view:

“I think it could work as a supplement if it is implemented in a good and practical way. I don't see that it necessarily has to replace something else, or that it does not fit into the existing structure. I associate it a bit with the private copying levy («Privatkopieringsvederlaget»), that is has some of the same traits.”

She did, however, not see a broadband levy replacing an existing structure such as the private copying levy. When asked if it should replace such a model, she answered:

“No, I don't think so. It might be a bit intertwined, but I don't see that it could replace it. I think it has to be structured in a different way than what that is. It could be compensated in the same way.”

Peter Jenner did not think the music industry would be affected by broadband levy so that it needed to work as a supplement, but that it may affect some of the services that are in the industry:

“I don't think it affects the music industry. It would just generate more income, which is probably a good thing. I think it would affect the issue of charging and pricing of paid-for services. Would a broadband levy, as it were, legitimize people using other services which don't pay? Would the broadband levy end up with one just getting the same money as you are getting now from Spotify and iTunes; the legal services? Would it enable people to develop these services, which those existing services have developed? The interesting question off of that question is: what sort of services might developers be able to make as a result of having a broadband levy, and if you had the broadband levy would that mean that the labels could be expected to charge a lot less? If you have the levy it means that the paid-for services could be cheaper. Or if those were the same price they would have more curation, they would more value to them than just being locked into you own playlist.”

Bendik Hofseth could see a broadband levy working as a supplement if it was based on previous models:

“When it comes to thinking of it as a supplement, I think we have to look at it as a cassette levy model. That it is for the type of copying that is done outside of sales of copies, our outside of legally licensed services. This is problematic. Legal streaming services are all interested in having a strong as an economy as possible, because this would benefit the whole community. If we are to compete with a private copying scheme, how do you practice and enforce that?”

Hofseth added that he did not think this was a good idea, and pointed at the need for internet regulation:

“(...) I don't think it is a good idea to use a broadband levy as a supplement. It has to be either all encompassing, or we have to regulate the internet in the same way that we regulate other markets.”

It may be possible that a broadband levy could work as a supplement to an existing structure. It may not even affect the main structures of the industry, although it may open up for more diversity in the development of existing services. The main question is whether or not it is a good idea to implement it as a supplement - all that time the internet may require more regulation – or if it should be an all-encompassing structure that needs more work that a supplement model would imply.

4.6. Other issues

During the interviews there were especially two very interesting things that came up, which were not part of the original set of issues at the end of chapter two. The first discussed in this part has to do with platform services and cultural content. The second is more relevant when trying to reach a type of conclusion on the issue: Is there a need for a broadband levy, and is there a need after streaming is said to have solved a lot of the original issues, at least in terms of music?

4.6.1. Regulating the internet

In his interview, Bendik Hofseth was very concerned with unlicensed content on the internet, platform services and the safe harbor agreement. Hofseth gave so much feedback on the matter that it arises as a prominent issue in the big picture, as well as helping to expand on the part connected to the topic in chapter one. In the context of a thesis that looks into some type of internet regulation, this is a topic that needs to be given attention. Therefore a part of this chapter is devoted to the issue.

Hofseth put focus on the imbalance between platforms services who use cultural content, and legal services which has the legal spread of this content as their main objective. He pointed out that this imbalance created problems:

“When it comes to Facebook for example, 60 per cent of what is on there is copyrighted. They have even made their own video format to avoid paying out money. They earn enormous amounts on advertising, but do not share this with the ones who make the service attractive. That is very strange, and also leads to that Spotify, Tidal and Netflix, and others who do this legally, are in a segment that is not regulated when it comes to competition. Google should perhaps pay as much as 50 to 60 per cent of their surplus to rights holders to be in the same segment as the streaming services. 70 per cent of Spotify’s revenue is used to gather and license content. If Facebook and Google had spent the same amount on the areas that depend on and use copyrighted material, we would have a completely different type of economy, and we would have a legal, regulated market, and stopping grey zones and borderline cases would have been much easier.”

Hofseth pointed towards the fact that art functions as a good catalyst for the platform services, and that some of this should come back to cultural content industries. He pointed out the Safe Harbor agreement as one of the main reasons for the imbalance, and called for policy makers to address this:

“Art, in a way, is a very good catalyst, it initiates processes in us, opens doors, in a way we are much more friendly towards close and distant friends and relations because one uses art as a starting point. The issue is that those who offers us this art, has offered access and collected the web or connection are the platform services. These services say that they are the ones who offer us the new world. You don’t need this nagging on copyright, we live in a new world, where we share everything, and all is free. But the ones who say this, are the same as those who don’t pay taxes, who are antisocial, not open, not transparent. That is a paradox. The fact that the politicians don’t wake up to this, and start to regulate so that we can avoid it, I think that is the biggest issue in why we don’t move forward. That is the biggest challenge. This is what we need to address. One made a mistake in the WIPO-agreements in 1996, and one made a mistake in the EU e-commerce directive in 2001. Back then, we thought of Google and Facebook as start-up companies, who needed a bit of help, which were interesting, and could gain easier access to Safe Harbor. It was not so important with privacy, and different bits and pieces. We cut some corners because we wanted this to be done quickly. After two, three years, they were the biggest. The politicians kind of gave it to them. They gave them that space. Because of that, they are the ones who need to take it back.”

Hofseth did not see a broadband levy as a proper solution to this issue, and called for regulating the internet to a bigger extent than what has been done thus far. He did believe that a broadband levy could have a complementary effect, but believed it did not cater for the full problem on its own:

“Personally, I think broadband levies are an evasion from regulating the internet. We have to regulate the internet. We have to do what we do in all other areas. There is nothing mysterious about the internet, it just seems that way, because it is an amazing way of binding people together, but it has to be a political courage to say that we need to have some rules there as well. We can not have a society where the likes of Google and Facebook just grabs all the money there is, and papers and knowledge, and local forces disappear, because someone are not paying attention, don’t dare. I mean the politicians. In that perspective a broadband levy is a desperate thing. We can do something radical; achieve something simple. I think there can be a need for complementary schemes that replaces a compensation scheme, like the cassette levy has been in all its variations. Some countries or areas may go for that, some may not. That would be smaller intervention in people’s wallets and choice. I think we need laws and guidelines and politics, which make it so that we can get money from those who earn them from us. The

platform services, who earn money on the content today, who do not pay. I think we need good international registries that we work on together. That is the web, what the internet is really about. Having the same standards, and devices at hand, with the possibility of transparency. “

Peter Jenner touched upon the same topic, when discussing the meaning of a broadband levy. He believed that broadband was a vessel for accessing content, and that there were issue with the content accessed, as well:

“(…) If you're having broadband, or paying for broadband, it's probably because you want to access content. It's not the only reason, but it's a major reason, for having a broadband service, and it seems to me that the broadband companies, when they're selling broadband they are in fact selling, implicitly selling, access to content; to free content, or cheap content, probably free content. It might be legal free content, but it seems to me that it's as much problem with YouTube paying up enough money, and Facebook, and so on. As it stands at the moment, legal free content is as much of a problem as illegal free content.”

It is quite clear that a discussion surrounding a broadband levy also needs to consider the issues of content on the internet, and how this – for several reasons – is not monetized as it perhaps should. A scheme that seeks to achieve some type of internet regulation, needs to consider the issues surrounding such a regulation. In conclusion, it has to be discussed whether a broadband levy can help to cater for the issues of Safe Harbor, platform services and cultural content, and how a broadband levy may function within these issues.

4.6.2. Is there a need for a broadband levy? Is there a need after streaming?

The last question of the interviews was always if there was a need or base for a broadband levy, and how streaming may have affected this need. This question is important, as it points towards some of the attitudes towards it, and creates arguments that one needs to consider in the context. As shown in the previous part, Bendik Hofseth believed broadband levies to be an evasion from regulating the internet. As his views on this specific matter was presented in the last part, they will not be repeated here, but they do go into the discussion. Hofseth's views on the necessity of a broadband levy after the introduction of streaming services are, however, presented.

Cathrine Ruud pointed out that there were many issues that would need to be sorted out before one could really tell if there was a base and need for a levy:

“There are many nuances, and it is very hard to answer without having more details in place. The need is probably there. For the rights holders we think that it is a good thing. The question is whether it is feasible, how it is legally; does it compromise that? There are so many factors connected to it. I definitely think there is a need, and perhaps a base, to explore it further. It is such a good idea, as long as the details are in place. Everything needs to come together, in a way, all considerations needs to be catered for. If one is able to do that, I think there is a basis and a need. I am a little unsure whether it is the best solution. That has something to do with the innovation, that it might prevent that, that one leans a little too much on it. Perhaps it is better to look at the streaming model that is there already, and try to tidy that up a bit.”

Knut Bøhn was of the opinion that there may be a base, but that the way the landscape has changed over the last years had altered the need:

“There is definitely a base for a broadband levy, all that time the money keeps flooding in to those who offer broadband access. But a need? 10 years ago, I would have said «Yes, are you crazy», but I think the issue is a little outdated when it comes to my current life in the music industry. I think it could be beneficial for Norwegian cultural production if money were supplied through for instance a broadband levy. If there is a need is not certain, but I think it could be beneficial. It wouldn't hurt if the broadband provider shared some of the money with the content producers.”

Peter Jenner believed a levy to be desirable, and that there have been many good reasons for levies in the past. He did point out that such a levy would have to have the ability to change if it did not work as desired.

“I think that there is a lot to be said for it. I think that the reasons why we had levies, tape levies and so on, there were good reasons behind it. I think the need to stimulate and protect cultural goods within national boundaries is important; the need to look after rich and varied new experiences is all worthwhile. The broadband levy as such I think could do something if it was used properly. (...) I think it's a question of how it is set up. (...) if it meant that there's a better chance of people getting their music and their works, their creative work, out to the public and being seen and being made, and there's a way for it to be promoted and new things can happen, then yes, it's great. . Is it necessary? No. Is it desirable? (...) If you could say what is desirable and you can then structure a system, which is likely to generate that, then that's a good thing. I think that one should

also be very careful of, and very mindful of the reality, and the law of unintended consequences. So whatever you do, it should be constantly under review.

(...) you just have to be very mindful of it, and keep it very open and under constant review. (...) the digital world is going to be fundamentally different, and that we have to think about how we make it work.”

On the topic of the need for a levy after streaming, Cathrine Ruud pointed out that the dissatisfaction surrounding distribution of streaming money may not rule out a broadband levy completely:

“It depends on the topic of illegal downloading. Streaming has more or less taken over in that sense, so in that way there may not be a need. At the same time many are dissatisfied with the distribution of streaming money is today, so it is not completely solved. I would not say that there is not a need due to streaming.”

Knut Bøhn believed that streaming may have changed the need for the music industry, but that there still were financial issues:

“The need has definitely changed for the music industry. One still has a challenge that when it comes to liquidity, there previously was a quicker turnover rate of earnings on expenses, in that sense it is a displacement of liquidity, but the need for funding over time has definitely changed in the music industry’s favor through the streaming services”

Bendik Hofseth pointed out that streaming services would have to operate on equal terms, and that streaming had potential if it was dealt with properly:

“That is a good question, because streaming is some kind of scheme. Then we have to take away that strange competition these streaming services are in. They have to compete against companies who have equal terms as them, companies who are also licensing. Then we may gain an exciting flora of streaming services that are curated, which has the music you like.”

Peter Jenner pointed out that there still were issues surrounding music services:

“(...) I think we are coming from a position that isn't great. That's the positive, is that we are not in a position where it's an ideal world. A lot of money is not getting through to the creators. Too much money is going through to the middle men, and it's far too hard to open a new digital service using music because of this. That is something that we should definitely think about.”

The respondents do not completely agree when it comes to a base and need of a broadband levy. One thing that is clear is that if it is to work, it has to gain more substance in what it is actually about, and how it should work. It is quite clear that streaming has unsolved issues; financial issues, issues that a broadband levy may be able to help cater for. Another thing that is clear is that if a broadband levy is something to implement, it has to be built up in such a way that it has the ability to change if it does not push the right buttons, and it has to be so simple that this can be done. One cannot expect a broadband levy to be something that will stand for a thousand years, but it may be able to sort of some issues of today. If this is the case, a broadband levy may only be a quick fix and an evasion of a much larger problem. In summary, a broadband levy must not be a way of losing sight of perhaps more pressing issues.

5. Discussion

In this part of the paper, the different issues that have been raised will be discussed with basis in the first four chapters. The chapter follows the template of discussing these issues in the order they have been presented in the analysis in chapter three. This is with one exemption: the question of determining size and utilities is split into two parts.

5.1. Justifying a broadband levy on cultural content

When discussing a broadband levy, there is a definite need to look at justification. Why should cultural content be compensated through such a model? What justifies the remuneration of cultural content?

Firstly, compensating rights holders for their work is nothing new, and has been done through various schemes, institutions and levies for more than a hundred years, ever since the founding of SACEM and the many collecting societies that followed, as well as by introducing levies from the sixties onwards. In the modern society, there has always been some type of compensation on cultural content in various ways, and rights holders have for long had a right to be compensated for the exploitation of their works. In this sense, a broadband levy is merely a development of existing schemes that have up until today covered cassettes, CDs, hard drives and other blank media in many countries.

In the case of blank media levies, these seem to have reached a certain «best by-date». As more and more consumers turn their storage needs to the cloud, and acquire cultural content through other means than recording off the radio, burning or ripping a CD or downloading from P2P services, it is evident that the schemes that cover these actions may need revising. The computer, smart phone or tablet is ubiquitous in many parts of the world, and a lot - if not most - of the usage is reached, done over or made available via a broadband connection in different shapes and forms. In this instance, moving a levy over to the technology that makes most content accessible today seems logical.

Over the years, especially in the last two decades, but ever since «home taping kills music»-campaigns and their likes, there has been a level of criminalization of consumers who do not acquire cultural content in the way preferred by the industry. As more and more people acquire material this way, especially younger people, there is a certain risk of criminalizing entire generations. This is not a way to argue that what they do is right,

but merely to question the outcome of this criminalization. As the number of consumers who acquire material illegally or unlicensed rises, it may become more and more difficult to follow or prosecute so many, and it may consume resources that could help to enhance and strengthen other areas. In terms of this, it seems logical to implement a system that could help to gain compensation. A broadband levy could help to monetize that content that is still not acquired legally, and perhaps create a wider scope of legal services. On the other hand, one needs to be very careful so that such actions does not imply that one has given up on the issue, and this is where the real dilemma lies: how can you create a system that gains some type of remuneration, but that at the same time has openings to follow and close down illegal services? In the case of the music industry, streaming services has been a way of making this happen. The industry has created a system where one, for a relatively small cost, can acquire most material legally, and that allows for continuing prosecution of the biggest offenders. One can argue, however, that this system still has room for improvement, and a broadband levy could help to gain income to continue to pay the costs of this improvement. As well as covering come development costs, a broadband levy could also help to create more income for the creators of the content, in turn leading to a wider scope of cultural production. This could, in turn, lead to more content being produced, giving streaming and other legal services a wider catalogue.

When it comes to a wider catalogue, a broadband levy could also potentially help to simplify the licensing structure, and make it easier for legal services to acquire licenses for as much content as possible. If a broadband levy has the ability to monetize more content, this could lead to interest in more content being licensed in more and more territories, and lead to a wider catalogue, not just with more music from creators in the territories where the streaming user or service is located, but also from other territories. This could in turn lead to increased cultural diversity.

There is no doubt that a broadband levy could be justified, using arguments such as existing schemes, technological development, de-criminalization of consumers, wider and more diverse catalogues, and more content available on legal services. This leads us onto how one is to determine how it should function.

5.2. Determining size

A major factor for a broadband levy to be implemented, is to find a way of determining what the size of the levy should be in terms of fees, and how one should determine how

such a fee is paid. When setting such a fee, it seems to be most reasonable to have the ones who acquire copyrighted material to remunerate this as directly as possible, hence favoring a structure that follows how much you download. There are technological ways of which this can be done, and one could see a type of meter-measurement, as used on electricity, being possible. However, it does have some drawbacks, mainly when it comes to managing resources and the topic of privacy.

When it comes to managing resources, one would have to implement a system that require as little labor as possible, meaning that it should be as automated as possible. Such a scheme would not have to be incredibly labor intensive. In many cases the ISPs may already have this type of information available in different ways, and this information would probably not have to be altered much to cater for this issue. In many cases the ISPs already know roughly what you use your connection for, and this could be foundation for this type of measurement.

In terms of privacy, there may well be that measuring usage can, by some, be seen as surveillance. On the other hand, the ISPs may already know quite well what one uses their connection for, and there are ways of implementing such a scheme without conflicting the issue of privacy. One could measure use of file formats, rather than domains. One could also implement a system where a type of recording code is implemented in the material, and registers how many times it is played. In many ways, this is how services such as Spotify and YouTube work today. The issue here is that this is difficult to do for unlicensed content, and implementing this structure here would be incredibly labor intensive. In this sense, one would have to use general statistics of what is being used in order to remunerate, and use general usage statistics in order to determine what each customer would have to pay. One could for instance measure how much video an IP-address watches, but not what type of videos, and then determine how much to pay from that - for instance NOK 0.10 per GB. A broadband levy determined by usage would probably not conflict with existing structures in this sense, and existing levels of privacy would probably not be affected severely. It is understandable that one has concerns, however, and this would have to be addressed in an expedient way.

An alternative to a usage-based model is a flat rate, which is the simplest, but perhaps also the most unfair. This model, like the previous, has both drawbacks and advantages. In terms of privacy there may not be an issue, as it does not require insight into usage. In terms of managing resources, it is not intensive, as nothing would need to be measured and reviewed to the same extent as a usage based system. Also, it is simpler to calculate

how much a flat rate would bring in, simplifying economic management and give pointers towards distribution. The perhaps biggest drawback is that it would only follow the user, and not the usage. There would be no difference between heavy and light users, and it would affect everyone. A counter argument towards this is evidently that we already have so many similar models in place, such as line rental, a TV-license, or even road tax. These models do not differentiate between how much you use your internet connection, how much you watch TV, or how much you drive.

Whatever structure is the most feasible, it has to coincide with two criteria: It has to compensate the rights holders who are affected in the fairest way possible, and; it has to bill the consumer a fair and reasonable amount of money.

5.3. The internet: a utility?

Another hot topic is whether or not it is fair to charge fees and taxes for a utility. To determine this, one first has to determine if the internet is a utility.

The short answer here is yes; the internet is a utility, at least in the developed world. As the infrastructure is improved it is likely that it may be regarded as a utility in developing countries in the future. As the UN considers internet a human right – along the same lines as electricity or access to water - this also leads the internet to becoming a utility. The internet is ubiquitous for most people, and more and more of our daily work and routines is done either via the internet or as a result of the information on there. The fact that the internet can be regarded as a utility means that one should not have to pay unreasonable extra amounts for gaining access, other than the cost of acquiring it. It also means that the government could, or should, be able to regulate the pricing to make it accessible for as many people as possible, and not allowing unreasonable entry fees for access. This is where one would have to make a distinction: a distinction between access and usage.

To consider if it is fair to charge fees or taxes for a utility, a good starting point is to compare it to other utilities. As most countries in the world measure the usage of electricity, this seems to be a reasonable starting point. The fact of the matter is that one pays for use of electricity, and not for access to it - although this has a small charge as well, regulated by the government. In addition, this usage is subject to taxation. One can try to decrease usage to make these costs go down, for instance through different electricity saving means, but one does not pay a lot for access to being able to use it. This could perhaps be a way of paying for the internet in the future, reducing access fees and

implementing usage fees. How this could be done, or if this is even a way of doing it, may be arguable, but it does provide one important point: It is fair taxing for a utility, but it would have to be done in terms of usage. The taxation would also have to be set by the government, and be reviewed by government-connected bodies.

5.4. Copyright and technical legalization of illegal material

In terms of copyright, there are several points that would have to be taken into consideration when it comes to a broadband levy.

Regardless of if one agrees with the existing copyright structure or not, a broadband levy would have to have a relation with copyright. The three studies conducted on content flat-rates and the three-step test shows that may be difficult to have the existing legislation encompassing a broadband levy, and there are probably changes in the legislation that would have to be made. In terms of copyright being used as a way of gaining remuneration, it may very well be that this could be left as it stands. The part of copyright that has to do with permission would probably require structural changes. If the consumer, as a consequence of paying a broadband levy, feels that everything «belongs to them», it would be increasingly hard to control those rights that have to do with permission. This may, however, be resolved by using moral rights.

The main question is whether or not a broadband levy could pass the three-step test, and hence be implemented in national legislation without a change in copyright law. At this point in time, this is quite unlikely, hence it can not be seen as an exemption from copyright law, and something that has to be covered by the legislation. Although different studies disagree on some of the topics, there is something to be said now, up to ten years after, when it comes to changes in how we see technology in the copyright landscape. First of all, one can argue that private copying, unlicensed content and illegally acquiring material is no longer a special case, hence, legislation covering this can not be exempt from copyright legislation. When it comes to the second step, acquiring content through unlicensed sources is a more and more widespread practice, but perhaps not standard practice. It does, however, compete with normal exploitation - besides, what is perceived as normal exploitation may have changed over the last ten years - as it may lead to lost income and unreasonable competition with this exploitation. In terms of the last step, a broadband levy would perhaps not unreasonably prejudice rights holders' legitimate interests, as there would be some type of compensation involved. The issue here is that,

as it does not pass the first two steps, it can not pass the third as a consequence. In short: as acquiring cultural content via unlicensed - or even illegal - sources on the internet may no longer be deemed a special case, and as this competes with normal channels of sale - although it may not completely alienate the authors legitimate interests - a broadband levy can not pass the three-step test. As a consequence of this, introducing a broadband levy would have to call for changes in copyright law to be implemented legitimately. This would need to be taken into consideration if one is to implement the levy.

When it comes to whether or not a broadband levy may technically legalize distribution of illegal or unlicensed content, this is also an issue. One can of course make clear what it covers, and what it means, and hope for the best, but the problem here is that people are prone to find ways of circumventing this, anyway. Laws and legislation may help, but one would also have to call more for the good will of the consumer. Besides, if one uses the decriminalization of consumers as an argument to justify a broadband levy, one would have to be very careful with prosecution and legal actions. In many ways, this issue is perhaps one of the most unpredictable ones, and there is limited how much one can foresee the consequences regarding this.

One thing that is quite clear, however, is that such a levy would have to be mandatory. It is a nice idea that it should be voluntary, and some years ago this was an understandable viewpoint, but in this day and age where cultural content stands for so much of the way we use the internet, there is reason to believe that most consumers - consciously or not - have been in contact with material that is not gaining remuneration. This may not be a major challenge, as research shows that people are willing to pay a levy to have access to more material. Experiences with streaming underline this willingness to pay.

5.5. Distribution

As mentioned, a broadband levy - in its' simplest form - has potential to bring in a substantial amount of money to the creators of cultural content. But how should the money be distributed, and who should distribute?

One thing that becomes evident is that the money would have to be distributed through a CMO, meaning collectively. There are many reasons for this: If one is to collect some type of levy to stimulate the production of culture, it makes sense to distribute the money collectively; the CMOs have experience with and knowledge on the matter, hence less resources may be needed in order to conduct the distribution, as it can follow existing procedures; rights

holders' organizations also maintains an aspect of cultural policy. In terms of who should do it, TONO, Gramo and their likes have experience, but Norwaco is the main distributor of similar schemes today. An answer here is to have Norwaco collect the money, and then distribute it onto the CMOs and other organizations, as long as it does not require such an amount of resources that it may undermine the purpose in terms of what is accumulated from the levy.

The sensible thing in terms of how the money should be distributed is to follow the existing scheme of for instance TONO, where the money is distributed proportionally, on a more or less pro-rata basis. Organizations like Gramo also use something close to this model. One does not need to revolutionize the distribution scheme in order for this to function properly, as it in its simplest form would only involve an increase of the monetary funds available for distribution. Put simply; it would give more money to each rights holder, as the income would only be put on top of what is already there.

In terms of manipulation of data, there are ways to avoid this, and data collection for music may already be seen as sufficient. There may, however, be a need for even better data collection, and one could see some income from a broadband levy being used to help implement such a system even better than what it already is. On the other hand, this would not cover unlicensed works that are available, so there may be a need for a balance in this instance between a pro-rata scheme based on data collection, supplemented with a scheme where one conducts estimations from radio plays and general popularity. To a certain degree, this is how it works today, but there is perhaps some need for improvement. A broadband levy could help to create funding and more initiatives to enhance this system.

There is little doubt that it may be preferable to transfer some of the income to a type of fund that could be distributed to those who wants to create new content, and also may not be favored too widely by the already existing structures. This could be new artists, composers and musicians; creation of new content that may break at a later stage. Increasing the amount of money that Fond for Lyd og Bilde have to distribute may be preferable in a more creative context, as it could also help increase diversity. As a consequence of more money to apply for, one should perhaps also change the criteria one has for applying. It seems preferable to incorporate some more commercial acts into this fund, for instance bigger labels, who can apply for money to market Norwegian music abroad. To achieve a fairness in this instance, as one may argue that commercial interests should not be able to earn money as a consequence of public funding, one may create refund schemes that has certain criteria connected to it. For instance: if Universal wants funding to market an exciting Norwegian artist in the German or

Anglophone market, and earns, for example, more than 50 per cent over the existing sum, the granted funding may be paid back to the fund. This way, the label is able to take more risks in promotion, but the fund would also earn back money if their endeavors proved successful. This way the fund could get their money back as a consequence of good commercial work, and at the same time the labels would earn money if they were successful, perhaps to be able to take more risk in the future. This way, both are better off than they were before, and the fund has proved to be helpful in helping to promote Norwegian culture. One would of course have to take into consideration which artists may get funding: A smaller band may need more help than international superstars such as Kygo or A-ha.

Regardless of how this is to be dealt with, one has to cater for the fact that commercial interests also should be able to apply for money from a public fund, for the better for Norwegian cultural production. One also needs to construct guidelines that are so simple and fair that success proves useful for all parties, and so that taking risk and perhaps failing is not punished. Such a scheme could help stimulate a professional environment, create an enhanced national repertoire, and create new music.

In summary: one part of the money could go to the authors, artists and rights holders already under existing schemes to increase the pay-outs from the CMOs, a second part could go to public funds - similar to the funds of today - but which have a clear mandate to also fund commercial interests if it helps to stimulate the production of more national repertoire and content.

5.6. Supplementing an existing structure

A major question when it comes to the broadband levy is if it is able to work as a supplement in the existing structure of the music industry. The different three-step-tests conducted on the cultural flat-rate shows that it may not. This does, however, depend a lot on which type of levy is introduced.

It seems to be some consensus that a broadband levy can work as a supplement if it is built along the same lines as the cassette or private copying levy. The question is whether or not this is preferable. One may argue that one needs to think of this in an entirely new way, and not strive to supplement, but rather substitute and enhance, for a reality that has little physical copying and more unlicensed digital content. If the broadband levy is only able to cover some aspects, and not be all encompassing in terms of digital content that is not related to illegal activities, but rather unlicensed ones, there may be a need to look at

it as a substitute. This could mean that one would have to abandon old models and come up with different, new schemes in order to cater for a new reality. In short: do a more widespread regulation of the internet. As this is discussed in the next part, this part will focus more on discussing a broadband levy as a supplement, rather than a substitute.

There are some reasons why a broadband levy should work as a supplement to the existing structures. First of all, procurement of physical storage media is declining, and as a consequence, so is the money brought in from the levy. There may be several reasons for this, but there is reason to believe that it has a lot to do with cloud storage and streaming; things that are in the cloud, not there as a physical structure - at least not for the average consumer. A broadband levy may help to gain some of the lost income back by thinking differently, and incorporate this aspect. Secondly, one rarely downloads music files illegally anymore - at least not as a file from a network to a folder on your computer or external hard drive. The main issue today is that of illegal streaming services, which excludes the need for terabyte-sized hard drives, hence not covered by the existing schemes. A broadband levy could help cover for this, as well, and gain some of the money lost from physical media levies back to the creators. These two aspects are perhaps, in themselves, a good enough argument to shift the focus of levies. All that time we do know that the procurement of illegal or unlicensed content is not necessarily going down on all levels, but perhaps only shifting to different media and methods, there seems to some argument for a shift in the levies as well. The answer here could be a levy on broadband, with a similar distribution scheme as today, thus supplementing and incorporating itself into the existing structure. There may still be a need to ensure that the levies on physical storage media are there, in order to cater for as many aspects as possible. One could perhaps say, that for this to work ideally broadband would also be part of the private copying levy, as downloading into you cache may also be considered private copying. If this is the answer, the broadband levy could work as a supplement to the existing structure, and help cover as many bases as possible, creating more money for creators.

One could of course also look at it as a substitute, which replaces old schemes. Whether this is the best way or not, remains to be seen. As mentioned, there may not be a need for it, if we can regulate and monetize the issues in a better way. This is discussed further in the next part of this chapter.

5.7. Regulating the internet

As at least two of the respondents touched upon, there may be a need to regulate the flow of content on the internet. This may be especially true when it comes to platform services, where creators gain very limited compensation for their works.

The first issue that needs to be addressed in this instance is the fact that some platform services earn quite a generous sum of money on content or searches that is directly or partially related to cultural content, with some basis in the Safe Harbor agreement. As it stands at this time, the ECJ have ruled the Safe Harbor agreement invalid, meaning a new type of directive or agreement is needed. This is yet to be introduced, but the EU has made some movement on the matter in relation to the Digital Single Market. What the suggestions and outcomes will be from this, more concretely, remains to be seen.

Despite the fact that new laws and regulations relating to platform services and safe harbor are still in the making, there is little doubt that the issue of remuneration is something that would have to be taken into account when moving forward. The potential for gaining income from the platform services to a wider extent than today is evident, and achieving this remuneration may be a game changer in the digital cultural content realm. What is needed to achieve this may be political will, which seems to be coming bit by bit.

Regardless of if one believes that a broadband levy is an evasion from regulating the internet as a whole, or whether it can help to build the foundation for a more prosperous cultural industry economy, there is no doubt that one has to move in a direction where one is able to better monetize the content available. In addition, some platform services, most notably YouTube, have large amounts of data connected to rights. The question here is; could the content industry accept lower remuneration, in return for better data? One may argue that this could be done, as it would be simpler to gain some type of compensation for all types of material out there. In this sense, both parties may benefit from such a solution, and a potential broadband levy - or however one chooses to gain compensation - would be more statistically accurate and be able to incorporate even more content into the equation. This way, more creators could be remunerated, as one has an even better overview of what is out there, both licensed and unlicensed.

The main goal, however, must be to strive to have a minimum of unlicensed and unmonetized content out there, and cater for as much licensed content as possible, so that one is able to monetize this even more. Whether this is possible to achieve remains to be seen, depending on political will and decent outcomes of existing work-in-progress issues. It could well be that a broadband levy could help to kick start this, and also help to gain money for development for better solutions. The extending question from this is if there is a point in implementing a broadband levy when it could have an expiration date, and possibly undermine the fact that the internet needs to be regulated legally, rather than on a more economic basis? One may argue that it could actually help this development, and create even greater income, that could be used to develop systems that may be able to handle this issue in the future, and actually help to kick start the internet regulation that some are calling for. Regardless if one considers a broadband levy to be able to go hand in hand with more internet regulation or not; could the two live side by side, as a supplement to a substitute?

5.8. Is there a need for a broadband levy?

It is not clear whether or not a broadband levy is necessary or not. What is clear is that something needs to be done when it comes to the monetization of online cultural content.

A broadband levy may not be the sole answer to all issues, but it may be an answer to some. The fact of the matter is that something that is still as theoretical as this seems hard to discuss, and that it may be that more details are needed. It could also be that the idea is outdated, and that it caters for issues that were more pressing 10 years ago.

The benefits of a broadband levy could be all the ones listed, such as simpler licensing, more cultural diversity, a new way of gaining income to an industry where some parts are still struggling to keep their head above water after the internet has become an integrated part of our lives. In addition it could also help to create more money for development and innovation, if one chooses to do so.

The disadvantages are also quite a few: It may contribute to a shift of focus, and contribute to leaving more pressing issues; it may contribute to a more complicated copyright scheme, and be seen as a new tax - one can understand the reluctance to back new taxes - in addition to challenging the privacy schemes of today.

Although there may not be a need, all respondents seem to agree that there may be something to be said for it, but only if done in the right way, and not losing sight of other

issues. A broadband levy cannot be something that allows one to take a breather when trying to solve the issue of regulating the internet, for example. These issues give the opportunity to discuss this further, aiming to reach a conclusion and answer to the issues at hand

6. Conclusion

In the introduction to this paper, five questions that needed to be resolved in order to do further work on a broadband levy were presented. The first part of this fifth and final chapter addresses these questions yet again, with the goal of providing a type of suggestion to resolve each of them. This addresses the «how»-part of the research question. When all of this is done, the chapter seeks to give a pointer to whether or not a broadband levy is a good idea, aiming to answer the «why»-question. The provided material must not be seen as a definitive conclusion - this paper is merely exploratory - hence there may be several ways to reach «how», and possibly even more ways to answer «why». This paper, however, seeks to suggest and introduce possible ways forward based on the conducted research.

6.1. “How”

In relation to justifying a broadband levy, this is technically possible. Of course, one never knows how such a suggestions may turn out to be received by the general public, but there are some good arguments for such a levy. Firstly, it is nothing new, and a compensation scheme and levy on different materials have been present for more than 50 years in some countries. Of course, moving away from an existing scheme which is only present in some countries, such as the private copying levy, is a risk. As the private copying levy is funded by the government in Norway, and not on a consumer basis, it may prove to be a hard fit, but a broadband levy - if used as a supplement - is not severely different from a cassette levy, or even a TV-license. It even has some advantages to it, as a decriminalization of consumers in return for a levy that is more relevant and forward leaning than older models, may be preferable. On top of this, it could perhaps also help to complement the TV-license when it comes to internet television platforms, so that for instance NRK is able to monetize this area to some extent without having to introduce a license fee that is harder to regulate, or put up payment walls on their services. This is of course far into the future, but describes one of the potential uses for a broadband levy after implementation. Another consequence could be better and simpler licensing terms, leading to more material being available on more platforms. If a broadband levy could mean more content on for instance audiovisual streaming services, it may be worth it for the consumer, if the price is fair.

One thing that is clear is that a levy would have to be adjusted in such a way that it creates as little challenges for the consumer as possible, and be set at such a rate that it may be perceived as fair and payable. There are a number of reasons that justifies a levy, but as always, introducing a new «tax» may not be the most popular of policies. Therefore, a broadband levy has to intervene as little as possible into existing structures, and be sold on its advantages. There surely are many disadvantages, mainly monetary and tax-wise, but if you can get something in return that is worth it, it may help to shift public opinion. A broadband levy could therefore be justified, but only if one is able to have the advantages in place before introducing the disadvantage that many see a new «tax» to be.

In terms of payment, a broadband levy has to be introduced with a focus on usage. One could set a minimal flat-rate fee, of for example NOK 1 per subscription or subscriber, and then have something like NOK 0,1 per GB, or even NOK 0,01. One needs to ensure that the fee is so small that it does not influence the freedom of usage, but still is able to bring in money. This is possibly best done if the end bill is not severely affected, but still holds a quantity that functions well, based on the mantra «every little helps». Basing a fee mostly on usage, would also help to strengthen the utility aspect, as it is normal to have a utility payment system that focuses on usage, rather than access. A usage fee on NOK 1 per 100 GB may prove sufficient (meaning NOK 0,01 per GB), and there may not be a need for the flat-rate fee. Starting with this may also prove helpful in order to enhance the scheme if needed, as one has more room to act if the initial scheme requires improvement from a low starting point. One could also see such a rate being based on traffic to certain domains, or preferably certain file types. The file type aspect is preferable as it would not harm privacy severely, and as this information could be easily obtained. This need not be the full answer, but could be a good starting point if one is to move forward on the matter. This aspect could also help to justify a mandatory license, as usage is a fairer way of measuring it. This may lead to more acceptance of a mandatory levy.

To the question surrounding the utility issue, this way of doing it also seems to give a sufficient answer, and caters better for this aspect than a scheme based solely on a flat rate.

An obstacle for a broadband levy may be today's copyright legislation, as it would probably have to be amended. One may of course argue that a broadband levy may be built up after the copyright laws of today, but there is a chance that it may not work as

intended if this is done. One should at least be on the safe side, and consider revising the principles of copyright law if one is to implement a broadband levy. If one is to be optimistic, this is doable, as the reward is likely to surpass the work one has to put into it. A broadband levy revision may also help to ignite a revision of the copyright law, that one could argue is sorely needed for the digital marketplace. Whether or not this is doable and desirable remains to be seen, but there are good arguments for why it is possible. However, it may be a complicated matter, that needs to be dealt with in a thorough way.

The matter of technically legalizing illegal activities is perhaps the most unpredictable one as it depends more on consumer aspects, than those of legislative bodies and the industry. It may be naive to think that only decent guidelines could help prevent it, and that stricter rules need to be in place. The issue then, is that one loses the aspect of decriminalization, and one has to spend the same amount of resources on the matter as one does today. However, people who have an interest in circumventing the models of today to acquire material illegally, may be able to do so anyway. It is not desirable to open up for illegal downloading to as big an extent as indicated by the cultural flat-rate and their likes, but the difference is that with such a scheme, the ones affected by this would be compensated, rather than not monetizing this at all, as is the case today. Music streaming, and other streaming services, also show a willingness among the consumers to acquire material legally for money, and if the services are good enough, there should be little reason why this could not continue, making the problem a minimal one. One would still have to prosecute the ones who facilitate illegal services such as Popcorn Time, as the legality of facilitation would not be changed, but the advantage is that one could leave the individual consumer out of it.

When it comes to distribution, it seems sensible for Norwaco to collect the money, and then distribute them onto CMOs. This way one ensures a regulated way of initial collection, and a distribution that follows years of experience and knowledge, hand in hand with good data. Some of the money could go into funding schemes, open to both commercial and non-commercial acts. This could still be done by Fond for Lyd og Bilde or similar, and would not require a major structural change, although it would call for some changes in the terms for application. The major question how the money is distributed onto the different types of cultural content. One could see a starting point, where half of the total amount is distributed evenly on different types of public funds that cater for different cultural content. This would mean that the other half could be

distributed onto the CMOs, perhaps at a level where one third goes to music, and two thirds to audiovisual content. This is loosely based on the distribution Fond for Lyd og Bilde have today, and is only a little different to the distribution of Norwaco. One could help this distribution to be even more precise if one bases it on data. This data is already collected each year, and forms a foundation for the Norwaco distribution. This is, of course, only a suggestion to a solution, and would need to be determined even better if one is to implement a broadband levy.

It is somewhat possible to implement a broadband levy into an existing structure, at least when it comes to justification, distribution, and even how one determines the amount to pay. The major obstacle is copyright law. One could choose to implement it in accordance with the existing law, with the limitations this may give, but one could also choose to revise it to make an even better fit. Whether this is doable or not, remains to be seen, but if one is to be compensated through a broadband levy, one may need to leave some older principles and laws in order to create a perhaps more sustainable structure. This depends somewhat on the purpose of a potential levy, as this may help determine willingness to do so.

In terms of how, a broadband levy is doable. One should however keep some things in mind if one is to introduce it. American law scholar Matthew Gluth in 2010 introduced four criteria for a file-sharing levy, and this does hold relevance today. The four criteria were:

“1. The government must be involved, yet the actual implementing agency must be independent enough to adapt quickly to new technologies and shifting economic realities.

2. The system must bring together a significant majority of both copyright infringers and copyright holders in order to bear the weight of its administrative costs.

3. Inequities in taxation must be tailored narrowly, so as not to destroy the legitimacy of the enterprise, and not to encourage wasteful consumption.

4. Inequities in distribution could be fatal to whole sectors of the music industry, yet any efforts to minimize them must be carefully calculated against the ensuing administrative costs-“

(Gluth, 2010, p. 139)

In terms of these four criteria, having a CMO distributing in cooperation with an agency like Norwaco is in accordance with criteria one. A mandatory system based on usage, and handled by already existing bodies is in accordance with criteria two, the usage aspect also covers criteria three. If the levy distribution is based on well-founded data, this

seems to cater for criteria four. Although these criteria are in no way a perfect measurer, the hows do seem to fit into it, giving validity to a broadband levy based on these suggestions.

A broadband levy is doable, at least when it comes to the practicalities. If it is doable when asking why one should do it, is another matter.

6.2. "Why"

Having asked «how», one needs to move onto «why». Why is a broadband levy something that should be introduced? There are a number of reasons for this, many explained in the «how», section, but in short the answer is fairly simple: To help monetize unlicensed cultural content to a wider extent than what is done today. Other advantages may be more diversity; simpler licensing terms; decriminalization of consumers and last, but not least; better remuneration for rights holders.

The earlier suggestions have had some flaws, as a type of broadband levy today may also have. It does, however, initiate a regulation of the internet, one that is much needed. The question is therefore, in the extension of this: can better regulation go hand in hand with a broadband levy? The danger with a broadband levy is the fact that it may become a breather when it actually comes to regulating the internet in an even wider way. One could perhaps help to monetize the content to a wider extent than today, without a broadband levy, if one were to get new deals with platform services in place. This is something that the industry is working on, and we may see an end-result in some time. But what if this does not happen?

A broadband levy can help cater for eventualities that may arise if failing to monetize platform services to a wider extent fails, in this way it still has a part to play. It may also help to cause more awareness of the issues, and therefore it may also be a good starting point when monetizing cultural content. It could be a good starting point, but also a decent compromise if one is not to reach a solution. The disadvantage is that one should perhaps focus more on monetizing the possibilities out there, with help from recent court rulings, rather than focusing on an unproved model. In this regard the broadband levy may not have a part to play, as it shifts too much focus from what is already being worked on.

It may very well be that better monetization can walk hand in hand with a broadband levy, therefore it may still be an issue for the future. For now, however, one should perhaps focus more on the work that is already being done to increase pay-outs from platform services, and

leave the broadband levy discussion for a while.

The research shows that one may be able to implement a broadband levy, if desired, and that it is a way to monetize and address the challenges of unlicensed cultural content. This is all well and good, and one should definitely look further into it. It may even be that a broadband levy could be an integral part of the internet in the future. For now, however, one should focus on getting deals in place that deal more concretely with platform services, and try to solve the issues that are there. One should not leave the broadband levy completely, but it needs to be worked on more than what it has. Therefore, this exploratory paper ends on a term and conclusion that is somewhat clichéd in academic circles - however, a cliché is a cliché because it works. That is that: more research is needed.

This paper may prove to be a good starting point for this research.

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Appendix

E-mail communication with Elin Urkedal, Norwaco, 11.03.16

The e-mail was sent after a phone conversation the day before

Elin Urkedal <eu@norwaco.no>

til meg ▾

11. mar. (for 4 dager siden) ★



Hei Lars Reiten,

Ref telefonsamtale i går.

Ved fordelingen av privatkopieringskompensasjonen for 2014, totalt ca 46 mill kr (bevilgning fratrukket provisjon, tillagt renter), gikk ca 23 % (10,6 mill kr) til norske og utenlandske musikkrettighetshavere (opphavsmenn, utøvende kunstnere og produsenter). Som nevnt har det vært store endringer i kopieringen og dermed fordelingen siden kompensasjonsordningen ble etablert i 2005. De første årene ble det kopiert mest musikk, nå er det vesentlig mer audiovisuelle produksjoner som blir kopiert.

Lykke til med oppgaven din!

Vennlig hilsen,

Elin Urkedal
assisterende direktør

NORWACO

Norwaco | Møllergata 8, 0179 Oslo | 23 31 68 03/00 (direkte/sentralbord) | 917 39 393 (mobil) | 23 31 68 01 (fax) | www.norwaco.no

Interview guide

A) Introduction

Purpose of interview, choice of theme

Why a broadband levy?

As sales of hard drives go down, and the income of existing private copying levies continue to decline (In Sweden, at least 50% over 7 years) it is worth asking if there is a need for revising the existing structure. More and more activities that were done by file transfers in the past, justifying such levies, are today done over the internet, either by storage in your personal cloud, or simply by streaming. As more and more bandwidth capacity is required, meaning that the ISPs can earn more when one wants to consume cultural content faster and better, it is worth asking if some of the money earned by ISPs can come back to the music industry. The decline of private copying levies on physical formats, and the growth of internet services, speed and data raises the question: should one abandon the private copying levy for a levy on broadband? As Norway does not have a private copying levy, the main question is:

If one were to introduce a broadband levy in Norway: how could it be done, and how would it work?

What will the interview be used for?

A structured interview that will touch upon different issues - Digressions and examples are very much allowed!

Inform of recording and transcription

Ask informant for consent of recording

Ask if informant has any questions related to the interview

Start interview/recording

B) Interview questions

1. What do you think of when hearing the term broadband levy?

2. Why do you think a levy on broadband has not become a reality, although it

has been discussed for the last decade?

3. How could a broadband levy work as a supplement to the already existing structure of the music industry?

- Could/should a broadband levy replace the private copying levy on physical storage?

4. What are the benefits of introducing a broadband levy today?

5. What disadvantages are connected to introducing a levy on broadband?

How can you implement such a levy without compromising the foundations of copyright?

Is there a way to avoid the issue of technically legalising illegal activities surrounding copyrighted material when introducing a levy?

6. How do you see a broadband levy working if it were to be introduced today?

How would you determine what to pay? Flat rate?

Connection speed?

Based on amount of downloads?

Any other types of solutions?

7. How could one justify a broadband levy to the parties involved?

Consumers, Rights holders, Politicians, ISPs?

8. How can a levy be financially beneficial to the different acts in the industry?

9. If a levy could have the potential to bring in money to the music industry, how should the money be distributed?

Is there a minimum requirement you would set for distribution

If yes: How?

Who should distribute the money?

Is there a need for substantial data collection to determine distribution or could it be made simpler than this?

If part of the money were to be put into a fund, how could you see this fund work?

10. Is there a need and a base for a levy on broadband?

Why?

Why not?

Any alternative solutions?

Is there a need after streaming?

C) Summary

Summarize findings

«Have I understood you correctly?»

Is there anything you would like to add?

May I contact you if any other questions should come up? (specific questions via e-mail)

Thank you!

Transcriptions

Knut Bøhn

Intervju med Knut Bøhn, Phonofile. 23. februar 2016, via Skype.

INTERVJUET STARTER MED AT *Lars Reiten* GÅR GJENNOM INTERVJUGUIDEN MED *Knut Bøhn*. OPPTAKET STARTER I DET SAMTYKKE FOR OPPTAK HAR BLITT INNHENTET.

Lars Reiten: Da starter jeg på spørsmål 1. Hva tenker du når du hører uttrykket bredbåndsavgift?

Knut Bøhn: Det er jo en skattlegging av en kommersiell aktør for, ja, retten til å eie infrastruktur på privat nivå

Lars Reiten: Tror du den skattleggingen, går den kun på en kommersiell aktør eller havner den hos forbrukerne på et vis?

Knut Bøhn: Den vil jo havne hos forbrukerne som en økt aksesskostnad. Dette er jo allerede på private hender, ikke sant. Staten avvirket vel egentlig sin egen ambisjon om å eie den type infrastruktur, og det skal veldig mye til at de... Jeg klarer ikke helt å se for meg den norske staten ekspropriere Telenors infrastruktur. Det tror jeg ikke kommer til å skje. Dermed så er det jo ingen... Det finnes jo ikke noe grunnlag i noen som helst slags historie at den kostnaden ikke skal ende hos forbrukeren.

Lars Reiten: Nei, og det viser seg jo i disse harddiskleviene som er i Sverige, også... I form av ordet, terminologien eller praktiske ting rundt det, har du noen andre tanker rundt det uttrykket og konseptet bak?

Knut Bøhn: Begrepet bredbåndsavgift? Nei... Jeg har vel ikke det.

Lars Reiten: Nei, ikke sant... Hvis du skulle bruke det du vet, for jeg tenker at dette har jo blitt diskutert siden 2003/2004 tror jeg. Det er vel de første forskningsrapportene på dette iallefall... Det har blir diskutert de siste 10-15 årene. Tror du det finnes en årsak til at det ikke eksisterer, selv om det har blitt diskutert? Og hva er den årsaken eventuelt?

Knut Bøhn: Årsaken er jo at de kommersielle hensynene er jo fra Venus og Mars, og det har enda ikke vært en politisk vilje til å legge vekt på rettighetseiernes side. Det er jo ingen grunn i verden til at bredbåndsleverandørene på et eget kommersielt nivå eller grunnlag skulle gidde å ofre denne diskusjonen en tanke. Du har sikkert sett, jeg tror ikke det er to dager siden, overskriften på forsiden i Dagsavisen, tror jeg, hvor det står at Telenor må betale norsk tv-produksjon, som selvfølgelig er en smule forenklet fremstilling. Du har jo fått utrolig mye, helt rykende fersk offentlig retorikk knyttet til det du egentlig tar opp. Det er mulig... Musikk er sannsynligvis en... Det er en sak som på en måte... Det har på en måte ordnet seg. Jeg forstår at Bendik Hofseth på vegne av alle opphavsmenn i TONO og CISAC er bekymret for det faktum at internett egentlig ikke demokratiserte inntektsstrømmen i noen særlig... Det viser seg at folk fortsatt velger minste motstands vei i form av hva de velger å høre på, og det er det som honoreres i størst grad fortsatt. Bortsett fra det aspektet, som kommer fra et helt strikt rettighetshaverkontrollperspektiv, så har egentlig musikk gått seg til. Det er på en måte... Ferdig med det. Neste bøygen er jo levende bilder, film og tv-produksjon. Det diskuteres jo i media as we speak, du kunne jo nesten bare overvåket norsk media de neste ukene for grunnlaget ditt...

Lars Reiten: Akkurat den artikkelen har jeg ikke fått med meg, men jeg har fått med meg en del annet...

Knut Bøhn: Det er veldig interessant...

Lars Reiten: Det er jo det som er bakgrunnen for problemstillingen, selv om den kanskje er litt i endring... Jeg snakket forsåvidt litt med Bendik om det du sier at han også sier der... Om det aspektet også, om det på en måte er en del av en større utfordring, og det kan jo være, det er på en måte noe av det jeg vil finne ut av det. Det har jo blitt aktualisert litt igjen, først og fremst via filmbransjen, også er jo da min oppgave da å se på om dette kunne vært noe i dag for musikkbransjen, eller har det, som du sier, på en måte løst seg. Det jeg lurer litt på da, Knut, kan en bredbåndsavgift fungere som et supplement til den eksisterende strukturen i

musikkindustrien?

Knut Bøhn: Den kan jo det... Uten å ha tenkt så veldig mye over hvordan det skulle organiseres i 2016, så antar jeg jo at kollektiv forvaltning ville være naturlig, og det vil jo være en fordeling da, av det som forvaltes. Men... Nei, jeg vet ikke... Jeg har ikke så inngående kjennskap til f.eks. Norwaco, men jeg vet jo at det er såpass mange rettighetshavergrupper representert til enhver tid i en sånn type fordelingsdiskusjon, og jeg tror kanskje musikk stiller enda svakere nå, enn i den forrige privatkopieringsvederlagsrunden, all den tid det er opplest og vedtatt at musikkbransjen egentlig går så det griner. Jeg tror egentlig også at det definitivt er andre uttrykk i kulturlivet som har større utfordringer enn musikkbransjen. Altså, bokbransjen... Musikk er veldig enkelt, ikke sant. Jeg har en favorittartist, favorittlåta mi har jeg sikkert hørt 5000 ganger. Jeg har noen favorittbøker, jeg har lest de kanskje 3 ganger. 3-4 ganger, fordi jeg tilfeldigvis liker å lese bøker flere ganger. Det sier seg selv at modellen ikke er så veldig vanskelig å etablere for musikk, men det er veldig vanskelig å etablere modellen for bøker, og nesten like vanskelig, sikkert, å etablere en modell for film.

Lars Reiten: Du kan si det sånn at, om du har en inntekt fra en privatkopieringsavgift som er nedadgående, så kan du si at det selvfølgelig er positivt fordi folk bedriver mindre privatkopiering. Eller så kan du si det sånn at det er ikke nødvendigvis slik at man bedriver det mindre, vi vet jo at i Norge så bedriver man det mindre iallefall i form av musikk... Men så kan man snu det litt på hodet og si at folk bare har funnet andre måter å få tak i ulisensiert innhold på, i den forstand at det kan streames via ikke-lisensierte opplastninger på Youtube, eller at folk legger ut bootlegs på Soundcloud, eller sånne ting.

Knut Bøhn: Mhm... Med forbehold for Soundcloud, så gjelder jo det i veldig liten grad musikkbransjen...

Lars Reiten: Ikke sant. Tror du da at en bredbåndavgift kan erstatte en privatkopieringsavgift på fysiske lagringsmedier?

Knut Bøhn: Ja, altså... Det kommer litt an på hva formålet er, ikke sant. Formålet må jo være å ha flere som bidrar til produksjonen av norske kunst- og kulturuttrykk. Sånn sett er det i min verden aldeles rimelig at noe som ville lignet på en sånn bredbåndavgift er hensiktsmessig, og fordi det er hensiktsmessig, er det da også fornuftig å innføre det fordi det forutsatt at det faktisk kommer produsentene til gode. Det må man jo anta, for det har jo privatkopieringsvederlaget gjort i form av disse fondsordningene. Det er ikke noen grunn til å tro at det ikke vil være et kjærkomment tilskudd, og derfor så er det effektivt fordi det når produsenten. Det kan jo hende... Jeg vet ikke helt... Når det gjelder musikk, spesifikt... For meg personlig er det en god ide at Telenor deler på overskuddet sitt som oppstår fordi folk vil ha rask bredbåndsaksess. Det er fornuftig. Men jeg synes jo det er ganske enkelt å forstå at Telenor ikke nødvendigvis deler den oppfatningen, ikke sant.

Lars Reiten: Finnes det noen fordeler ved å introdusere en avgift på bredbånd sånn det står i dag?

Knut Bøhn: Ja, med det forbehold at det forvaltes på en sånn måte at det faktisk når... Forsterker og stimulerer et produsentmiljø, et produksjonsmiljø, så er det jo helt klart fordeler med det.

Lars Reiten: Hva kan de være...?

Knut Bøhn: Hva de kan være? Hvis man klarer å stimulere et produksjonsmiljø så har jo det ringvirkninger i alle mulige retninger. Ikke minst at... At den som er interessert fortsatt har muligheten til å oppsøke norskproduserte, men selvfølgelig, den som har lyst til å delta i den norske kulturproduksjonen må jo se at det finnes en produksjon å delta i.

Lars Reiten: Hva tror du ulempene kan være da?

Knut Bøhn: Nei... Ulempene må jo være at man på et eller annet nivå ender opp med en modell som var så dårlig at forbrukerne oppfatter at bredbånd er overpriset, pga. denne avgiften da. For alt jeg vet synes folk at bredbånd er overpriset i dag, det vet jeg ikke noe om, men det vil jo være veldig uheldig selvfølgelig. Det vil jo være en ulempe om det sprer seg en slags oppfatning, at fordi man vil produsere norsk film så må jeg som ikke er interessert i norsk film i det hele tatt, betale en skatt. Det er jo, liksom, det er ikke så veldig fjern type innlegg på en million Facebook-sider, ikke sant. Det vil jo være uheldig.

Lars Reiten: Dette har jo vært undersøkt... Jeg leste nettopp en rapport om en kulturflatrate i Tyskland, hvor det foreslås at en kan betale... Dette er riktignok fra da ulovlig nedlasting var et mye større problem i dag, ihvertfall i musikkbransjen... Det foreslås at det kan være sånn at en betaler frivillig 5 euro i måneden, kan

laste ned til privatbruk alt du vil, og dele med dine 50 nærmeste venner... Det som jo er en av mange utfordringer, er jo når det kommer til opphavsrett, at den ikke består trestegstesten fra Berne-konvensjonen, såvidt jeg har forstått. For å spille litt videre på dette... Tror du det kan finnes en måte å implementere en sårn type avgift, kanskje på en annen måte og med en annen struktur, uten å gå på akkord med grunnlaget for opphavsrett?

Knut Bøhn: Nei... Når du beskriver den modellen som da er foreslått i Tyskland, det har jeg ingen som helst tro på. Ikke i et opphavsrettslig perspektiv, for det underminerer jo hele ideen, og som du sier med trestegstesting. Nei, det må... Det ville være veldig vanskelig å... Det er jo søtt det at den skal være frivillig, men det er mange andre problemer knyttet til det, hvertfall at en ikke er tvunget til å betale...

Lars Reiten: Ikke sant... Den modellen har jo blitt gått bort fra etterhvert, utfra mange grunner... Et annet aspekt ved dette er jo at om en innfører en bredbåndavgift, og det har jo blant annet Marte Thorby sagt litt om for et par år siden, i forbindelse med et forslag fra Storstein Spilker, at dette på en måte kan... Det kan det jo i dag, også, som er grunnlaget for dette spørsmålet... Det at en sier at en betaler en lisens, kan teknisk sett legitimere at en laster ned ulovlig, eller konsumerer ulisensiert materiale, hvor pengene ikke kommer tilbake til den rette verdikjeden... Kan det finnes en måte å unngå den problemstillingen på? Rundt det å teknisk sett tillate ulovlige aktiviteter knyttet til innhold beskyttet av opphavsrett?

Knut Bøhn: Ja, det kan det jo helt sikkert. Det er ikke noe vanskelig å følge aktiviteten fra den ene terminalen til den andre, så det kan jo helt sikkert implementeres det altså. Det er jo litt den samme utfordringen som gjelder datalagringsdirektivet. Det finnes jo ikke noe insentiv for den som er nærmest til å betale kostnaden. Det finnes jo ikke noe insentiv for den for å argumentere for hvorfor man skal ta på seg kostnaden. Da forsvinner liksom hele... Den verden vi lever i søker jo minste motstands vei hva den type pragmatisme angår. At en kommersiell tilbyder skal tilby seg en plass i en sårn kjede som er til ulempe og en ekstra kostnad for tilbyderen selv, det tror jeg ikke er en modell som er levedyktig.

Lars Reiten: Dette er veldig gode svar på litt klønete formulerte spørsmål... Hvis en skulle en introdusert en bredbåndavgift i dag, hvordan kunne den fungert... Da tenker jeg litt på om man kunne finne struktur for hvem som betaler hva... Kan det være en fastpris, utfra tilkoblingshastigete, basert på antall nedlastinger, eller finnes det andre måter å løse det på?

Knut Bøhn: Det enkle svaret er jo det siste alternativet. Det finnes jo sikkert andre måter... Det vet jeg ikke... Det aspektet ved tretrinns testen har vi jo tatt, altså at den som tilegner seg opphavsrettsligbeskyttet materiale skal på en måte honorere det direkte. En bør jo forsøke å holde det perspektivet i siktet. Hvis man... For meg så er det helt rimelig at man skattlegger... Det er jo denne diskusjonen som foregår med NRK-lisensen... Det er helt rimelig at man skattlegger det faktum at jeg tilegner meg det noen har produsert på en måte som passer meg. Det må jeg være forberedt på å ha en kostnad ved, som f.eks. NRK-lisensen så langt, eller det som nå blir etterfølgeren til den. Det er helt rimelig. Også kan det godt hende at det skal være rettighetshaverorganisasjoner som forvalter dette, fordi du på den måten kan ivareta et kulturpolitisk aspekt, eller så kan man si «sorry mac, det hører hjemme i 60-åra, det er ikke noe vanskelig å la pengestrømmen følge den som tilegner seg material» og velge den løsningen istedet. Det kan godt hende. Det er mulig det er andre typer problemstillinger knyttet til det, det vet jeg egentlig ikke, men en kan jo tenke seg at... Bortsett fra sårne rene statistikkensyn, så har ikke NRK brydd seg om hva det er av deres produksjon du har tilegnet deg for prisen av lisensen, ikke sant. Det kan jo hende det er noen sårn mystiske personvernensyn som noen ønsker å bringe inn i diskusjonen, fordi at... Hvis det nå var sårn at jeg skal betale en slags kulturproduksjonsskatt, bare for å kalle bredbåndavgiften noe annet et øyeblikk, så kan det godt hende at jeg var komfortabel med det, men ikke så veldig komfortabelt med at noen visste hvilke kulturproduksjoner jeg tilegnet meg fordi jeg la ut for den skatten. Det er mulig det er veldig søkt, men det kunne være en type problemstilling knyttet til hvordan en implementerer en sårn type avgift i det hele tatt. Det er mulig jeg spora helt av her...

Lars Reiten: Nei, du, det er bare bra det. Det er mange aspekter ved dette her. Jeg har ikke tatt på meg noen lett oppgave, det er ikke sikkert jeg har tatt på meg en veldig aktuell oppgave en gang...

Knut Bøhn: Nei, jeg får litt sårn ekkel følelse på akkurat det altså (*ler...*) Jeg ville ikke henvendt meg til musikkbransjen ihvertfall...

Lars Reiten: Nei, det var som jeg sa da jeg snakket med noen fra IFPI her forleden, at det kan jo hende at istedet for at jeg lander på 70 sider med akademisk materiale, så kan det hende at jeg lander på at svaret på

problemstillingen rett og slett bare er «nei». (ler...)

Knut Bøhn: Jeg tror det er veldig mange positive effekter som kunne oppnås for andre produsenter enn musikk, men det tror jeg også handler om at musikk er i en særstilling, for folk er villige til å bruke utrolig mye tid på å høre den samme musikken om, og om igjen, og det setter musikken i en særstilling. Som internettprodukt, som vann, liksom...Du skrur på krana, du blir aldri overrasket, men du blir jo heller aldri at... Det er bare vann som kommer ut uansett, liksom. Mens de andre, der er jo terskelen for å slutte å skru på krana mye lavere. Det er en grense for hvor mange ganger du leser den samme boka... Jeg tror det er en grense for hvordan folk flest kan utnytte et bokabonnement for eksempel. Det er andre som har mye, mye sykere mødre enn musikkbransjen har da...

Lars Reiten: Ja, ikke sant. Mye av grunnen til at det fungerer i musikkbransjen er jo at en faktisk tillater at det aller meste av innholdet er tilgjengelig. For å se på film- og tv-industrien f.eks., der er det så mye rettigheter, et mye mer intrikat nettverk av rettigheter til en viss grad, og mange flere folk som har forskjellige interesser for ikke å lansere ting på allmenne og lovlige internettplattformer innenfor et visst tidsrom, mye pga. kino og reklameinntekter, osv. Men det er jo der musikkbransjen har lyktes, at det er et produkt som er så åpent og tilgjengelig, at folk sier at det lovlige alternativet er bedre enn det ulovlige alternativet... Det er jo der jeg tenker at dere (*Phonofile*) medspiller, eller ihvertfall respondent på dette her, for dere er jo midt i den utviklingen som har vært i bransjen de siste årene, etter at Spotify og andre begynte å komme opp fra idéhatten.

Knut Bøhn: Mhm. Samtidig, er vi bare den som stilte til rådighet lastebilen, ikke sant, vi verken bygde veien eller lagde trafikkreglene.

Lars Reiten: Nei, men innimellom så må man jo se på lastebilen som... Hva lastebilen frakter også... Jeg går litt videre. Knut, dette er veldig interessant. Hvordan kan det være mulig å rettferdiggjøre en bredbåndsavgift ovenfor de forskjellige partene som er involvert? Da tenker jeg på forbrukere, rettighetshavere, internettleverandører, kanskje til og med politikere... Det er jo de som må ha noe å si på dette også...

Knut Bøhn: Det er jo som på alle andre måter, at man må forsøke å få folk til å forstå at det er... De kollektive løsningene som gjør at, spesielt i et lite land som vårt, at vi har de løsningene vi har. Det er ikke sånn at du... Altså... Du kan ikke begynne å betale til Folketrygden etter at du har ligget på sykehus i fjorten dager, det er for sent... Det må man bare forstå, og hvis ikke folk forstår det intuitivt, så må det jo en politisk vilje til for å ta den dugnaden for å folk til å forstå det. Jeg tror egentlig folk forstår det, altså, men du har jo den der... Det er veldig vanskelig, det med å stille folk opp mot at du skal betale for noe, eller dra til Sverige, eller Pirate Bay for å få det billigere. Det er selvfølgelig bøygen. Folk med de aller beste og edleste og nobleste intensjoner, har lett for å skjelle til pris allikevel. Det er klart det er veldig vanskelig. Men hvis man var politiker så må man bare si at «hør nå her, fra i morgen så er det 300 kroner i året for hver husstand» eller hva det nå er «ferdig med det». Men jeg skjønner jo at det er veldig få sånne... Stortinget... Jeg synes de overrasket litt i forhold til å ta en diskusjon - før de var nødt - med å diskutere offentlig sitt syn på hva som kommer etter NRK-lisensen. Det synes jeg var... Det hadde jeg ikke trodd. Det tenkte jeg var litt lovende, i den forstand at det kan bety at det kanskje kunne være forståelse for, og kanskje også vilje til, å gjøre noe i et litt mer utvidet perspektiv, hva kultur angår. Kanskje.

Lars Reiten: Hvordan kan en avgift være økonomisk gunstig for de forskjellige aktørene i musikkbransjen?

Knut Bøhn: Det kan tilføre mer penger?

Lars Reiten: Ja, ikke sant... Finnes det noen annen måte det kan være økonomisk gunstig på? Jeg kan gå litt videre over på neste spørsmål, som har litt mer med dette å gjøre. (*tar resonnement rundt potensielle 100 millioner fra bredbåndsavgift*) Det kan være et inntjeningspotensiale her, hva tenker du om distribusjon av de pengene dersom det potensialet eksisterer?

Knut Bøhn: Det var jeg forsåvidt inne på i sted. Det er to modeller. Da dette begynte å bli diskutert så var det nok ganske uaktuelt gjele ved en sånn... Pengene prorateres og følger bruken. Det har man jo nå mange års erfaring med å gjøre, med det voldsomme datagrunnlaget som er fra Spotify hver måned f.eks., så det er ikke noe vanskelig å fordele det basert på bruk. Jeg vet ikke helt... Jeg tror det er mange gode grunner til at man skulle håndtere det kollektivt, og så distribuere det utifra organisasjoner som f.eks. TONO og GRAMO eller den type rettighetsforvaltere. Det som jo tradisjonelt har vært litt vanskelig med det er å få med de som har en veldig stor andel av bruksgrunnlaget. I musikken så har jo Universal en markedsandel på 40% eller noe i den

duren, det er veldig vanskelig å få de til å med på noe annet enn at de skal ha noe annet enn 40% av de 100 millionene. Men, man kan jo også... Det vet jeg ikke helt... Man har vel etterhvert anledning til å... øremerke distribusjonen av skatteinntekter, tror jeg. Og det offentlig kunne jo bare bestemme det der, sikkert. Jeg vet ikke helt. Hvis det skal ha noe for seg som en skatt for å stimulere norsk kulturproduksjon, så ville det nok være bedre om det var kollektivt forvaltet, enn en til en. Det med en til en, det forsterker jo på mange måter bare dagens mektige produsent. Jeg klarer ikke helt å se for meg at det er... Jeg vil tro at en kollektiv forvaltning som så distribueres i et system hvor også nye produsenter har en sjanse til å få finansiering for nye prosjekter, det vil jeg tro var veldig gunstig. Sånn rent for utviklingen av norsk kultur.

Lars Reiten: Der leder du meg veldig elegant over på et sidespørsmål. Hvis man skulle tatt en del av pengene, si 25% bare for å ha noe å operere med, og satt de inn i et fond. Har du noen tanker om hvordan et sånt fond ville fungert?

Knut Bøhn: Jeg kommer ikke på i farten, ihvertfall, noen veldig store problemer med Fond for Lyd og Bilde, fond for utøvende, at man gjorde noe sånt. Jeg kan ikke se noe problem med det.

Lars Reiten: Jeg leste en rapport fra... Nå er jeg litt farget iom. at jeg er på UiA kanskje... Leste en rapport fra Nordgård-utvalget hvor det ble sagt fra plateselskapene, noe de også har sagt andre steder, at de kunne kanskje sett for seg en løsning sånn som filmbransjen har, hvor noe penger kan komme tilbake for å promotere norsk materiale i utlandet, eller eventuelt ta mer risiko på nye artister...

Knut Bøhn: Men det er vel meningen med et sånt fond at det skal komme tilbake til produksjonsmiljøet? *(Uklar lyd)* ...ikke et problem, liksom?
Lars Reiten: Nei, ikke sant. Spørsmålet mitt er egentlig om kommersielle aktører kan ta del i dette fondet, da.

Knut Bøhn: Ja, det er klart. Ja. Selvfølgelig. Nå antar jeg du snakker om de kommersielle tilbyderne, film- og musikkprodusentene. Nei altså, det fondet... Jeg tror ikke man skal reise rundt med en pengesekk på folkehøgskoler, liksom... Altså, dele ut penger til folk som har lyst til å synge. Det må stimulere et profesjonelt miljø, så får TV2 holde på med The Stream liksom, og synes det er morsomt. Det får være deres risiko.

Lars Reiten: Du var litt inne på det isted, men om distribusjonen skulle fungert optimalt, ville det vært behov for en enda bedre datainnhenting for å fastsette hvordan pengene kunne blitt distribuert, eller er det tilstrekkelig sånn som det er idag?

Knut Bøhn: For musikk er det tilstrekkelig, kanskje med forbehold for mindre radiostasjoner, men utover det er det helt på stell hva musikk angår, og jeg klarer ikke se for meg at det ikke skulle være det for film- og tv-produksjon heller.

Lars Reiten: Da har jeg kommet til siste spørsmål jeg, og det er på en måte dealbreakern her...

Knut Bøhn: *(ler...)* Svaret er nei... Nei jeg mener ja!

Lars Reiten: *(ler...)* Jeg har landet på et kanskje, selv...

Knut Bøhn: *(ler...)* Det er godt, da tar jeg det

Lars Reiten: Nei, altså, spørsmålet er om det er behov og grunnlag for en bredbåndsavgift?

Knut Bøhn: Et grunnlag er det jo definitivt, all den tid pengene renner inn til de som tilbyr bredbåndsaksess. Så grunnlaget er det ikke noe å si på. Behovet... Der er det jo veldig vanskelig... For 10 år siden ville jeg svart «Javisst, erru gæærn» også kjenner jeg jo at problemstillingen er litt sånn utdatert min hverdag i musikkbransjen angår. På den annen side så er min hverdag i musikkbransjen tilfeldig. Hvis min hverdag var i filmbransjen så ville jeg sannsynligvis svart «Ja, erru gæærn» så... Jeg tror at det kunne være gunstig for norsk kulturproduksjon om penger ble tilført gjennom f.eks. en bredbåndsavgift. Om det er det samme som et behov er jo ikke sikkert, men om det ikke er et behov så... Det ville være gunstig, tror jeg. Også kan man kanalisere som forbrukeren, tross alt... Det gjør ikke noe om bredbåndstilbyderen deler litt av de pengene tilbake til innholdsprodusentene, altså.

Lars Reiten: Grunnlaget for temaet er jo å se om det er mulig utifra hvordan strømmen av penger går i dag å

kunne innhente mere penger til f.eks. musikkindustrien, vi en alternativ løsning til de gamle modellene. Fra et avgiftsperspektiv, så er det som du sier kanskje litt utdatert i forbindelse med den teknologiske utviklingen, men samtidig så er det jo en gang sånn at det er mindre penger i innspilt materiale i dag enn for 15 år siden.

Knut Bøhn: Ja, men det kan minst like gjerne bety at folk lot seg forføre til å betale en avsendig overpris for en CD. Jeg tror nok at man kommer til å se tilbake på CD-alderen som seddelpressen i musikkbransjen, selv om totalverdien av musikkindustrien, den kommer sikkert bare fortsatt til å øke. Det er jo ikke så rart, det er jo mere... Det er flere folk, flere som produserer og en større samle katalog, så det er jo ikke så rart at totalverdien øker.

Lars Reiten: Nei, det er jo noe med at folk, utifra den forskningen jeg har lest, bruker den samme andelen på musikk i dag som i 99, for å ta et år som var gullalderen for innspilt musikk på CD. De bruker jo den samme andelen, det er bare litt annerledes fordelt...

Knut Bøhn: Mhm

Lars Reiten: Helt til slutt så er det jo et spørsmål om det er behov for en sånn type bredbåndsavgift etter at streaming kom inn i bildet? Jeg vet ikke om du har noen tanker om det?

Knut Bøhn: Behovet for finansieringstilskudd har jo ikke endret seg med streaming, for filmbransjen f.eks. Behovet har definitivt endret seg for musikkbransjen, fordi... Man har fortsatt den utfordringen at hva likviditet angår så var det en mye raskere omløpshastighet på inntjening av utgifter tidligere, så sånn sett er det en forskyvning av likviditeten, men behovet for finansieringstilskudd over tid har definitivt endret seg i musikkbransjens favør gjennom streamingtjenestene. Uten å ha så veldig inngående kjennskap til det, klarer jeg ikke helt å se at det samme har skjedd for andre kulturproduksjonssektorer. Det er veldig vanskelig for meg å forstå at det går like mye penger gjennom Netflix f.eks. tilbake til like mange produsenter, som det gjør på Spotify. Det går jo mere penger inn i Netflix, men jeg tror ikke de... Altså den... Den totale pengestrømmen, jeg klarer ikke se for meg at den fordeles på så mange som f.eks. musikkstreaming gjør. Dermed så er det jo... en brukbar mulighet for å kunne drive med musikkproduksjon som næring. Det tror jeg egentlig er ganske brukbart som det står, uten bredbåndsavgift. Jeg vil anta at det stiller seg litt annerledes for film og tv ettersom de produserer dyrere, opererer med mye dyrere produkter.

Lars Reiten: Er det noe du brenner etter å legge til som jeg ikke har vært innom?

Knut Bøhn: Nei... Det er vel ikke det... Jeg tror jeg ville forfulgt det faktum at Stortinget gjorde det de gjorde ved å diskutere arvtakeren til NRK-lisensen i full offentlighet, og egentlig på eget initiativ, og samholdt det med diskusjonen rundt bredbåndsavgiften. Hvis man utvidet perspektivet littegrann for den NRK-skatten, eller kringkastingsskatten, så er den ikke helt ulik det som vi for en liten time siden begynte å snakke om som bredbåndsavgiften... Finnes det noe som... Ting må jo modnes, og bredbåndsavgift er et veldig negativt ladet begrept. Kringkastingsskatt... Det kan godt hende det ikke er så negativt... Kanskje ikke det ploger så negativt i befolkningen som bredbåndsavgift nok har gjort. Kanskje... Det vet jeg ikke...

Lars Reiten: Det er et veldig godt perspektiv...

Knut Bøhn: Det er veldig spennende dette her altså, synes jeg, at de tar litt tak. Jeg syns de har surra seg litt bort, selvfølgelig, i forhold til dette med det å... Egentlig gi avlat til de aller fleste konsesjonsvilkårene til TV2 gjennom en kringkastingsskatt, men det er klart, de klarer å hente seg inn igjen på det. Det er litt imponerende de greiene der...

Lars Reiten: Mhm... Jeg tar å takker deg på bånd der, og stopper opptaket, så kan vi ta oppsummeringen utenfor opptaket.

Knut Bøhn: Ja.

Lars Reiten GÅR IGENNOM RESTEN AV INTERVJUGUIDEN MED *Knut Bøhn*. (SE INTERVJUGUIDE FOR NÆRMERE BESKRIVELSE) -

Total intervjudtid: ca 45 minutter

Bendik Hofseth

Intervju med Bendik Hofseth. 16. februar 2016, via Skype.

INTERVJUET STARTER MED AT *Lars Reiten* GÅR GJENNOM INTERVJUGUIDEN MED *Bendik Hofseth*. OPPTAKET STARTER I DET SAMTYKKE FOR OPPTAK HAR BLITT INNHENTET.

Lars Reiten: Yes. Spørsmål en, er egentlig ganske åpent, hva tenker du når du hører uttrykket bredbåndsavgift?

Bendik Hofseth: Jeg tenker på to ting. Jeg tenker på en ordning som kanskje erstatter den ordningen vi har i dag med copyright levy, eller kassetavgiftsfond, som på en måte handler om å få det vi kaller fair compensation for ureglementert bruk, eller privatkopiering, som vi har i Norge og i mange andre land, ikke i USA, men som vi har i Europa stort sett. Det er det ene, det andre er jo at en betaler en høyere avgift sammen med bredbåndsavgiften til opphavsrettslig beskyttet materiale på internett i sin helhet. Det vil jo da være mye mer omfattende og en dyrere affære, som ville syntes bedre og som henger sammen med mer kompliserte strukturer, som tvangslisensiering og endring av rutiner i mange land, faktisk globalt kan man nesten si. Jeg tenker på de to tingene, og at det to tingene ofte forveksles når man bruker uttrykket bredbåndsavgift. Det er jo noen varer, som strøm og vann, som har en sånn type økonomi at de er regulert som naturlige monopoler, også betaler vi per husstand. Det går an å tenke seg at man gjør det samme med verdensarven og med kunstnerisk, opphavsrettsbeskyttede verker.

Lars Reiten: Hva tror du er årsaken til at en sånn avgift ikke allerede eksisterer, for jeg tenker at det har blitt diskutert i forskjellige former i de siste ti, femten årene.

Bendik Hofseth: Ja, da må jeg spørre hvilke av de to jeg nevnte er det du tenker på da?

Lars Reiten: Det kan du egentlig få lov til å velge litt selv. Dette med fair compensation er vel egentlig, har vel egentlig vært tatt opp til, altså det å kompensere for ulovlig nedlasting tidligere, gjennom å sette levies på det i en eller annen forstand, men det er egentlig et veldig åpent spørsmål, så du kan få lov til å velge litt.

Bendik Hofseth: Ja, når det gjelder en sånn kassetavgiftsordning er det vanskelig å få til fordi det er mange som har mye å tape på det, og det er mange som har mye å vinne på at de offline-ordningene som finnes ikke erstatter online-ordninger. Det er også mange offline-ordninger, sånn som den franske og tyske som biter inn på segmentet fordi de har avgift på harddisker og alle lagringsmedier, så de er på en måte allerede inne i dette, og da vil det være rart å be om en bredbåndsavgift i tillegg. Det man har betalt for på bredbånd er jo hastighet og tilgang, også har det vært en viss roaming-avgift, men den er så liten, så ubetydelig, at den har ikke vært sett på som... Men en mulig finansieringsmodell her er jo at en betaler for den båndkapasiteten en faktisk bruker, for det er jo det som er interessant for teleselskapene. Med andre ord, hvis Netflix, som bruker 42% av båndkapasiteten, de betaler for det. De betaler faktisk en roamingtariff or det i Norge, og at det anerkjennes at dette er beskyttet materiale, da har vi finansiering, men da har vi en avansert finansieringsmodell som går på hvilken bruk man har. Mange vil hevde at det er en konkurransehennende modell fordi de store betaler mer enn de små. Det vil nok ikke Netflix være så glad for. Også har du en annen type tankegang her, som ville være at Telenor eller de som er båndtilbydere, legger på 100-200 kroner fordi de vet at du bruker opphavsrettsbeskyttet materiale. Initiativer vi har sett i den retningen, de tenker seg jo sånn at man kan eventuelt opte ut, si at «jeg bruker ikke opphavsrettsbeskyttet materiale, derfor vil jeg ikke betale». Det vil jo være veldig forskjellig her. Mange vil jo være som ekorn da, samle på filmer og musikk, mens andre vil bare bruke det til Facebook og e-post og vil synes det er urimelig. Det er en lang og vanskelig diskusjon uansett hvilken ende du begynner i.

Lars Reiten: Ja, det er jo det jeg tenker også her... Bare for å ta litt bakgrunnen for det spørsmålet: EU har jo kommet med veldig mye. Man har jo hatt en visjon om... De Grønne i Tyskland har jo hatt en sånn kulturflatrate som mange tyskere og også mange andre innenfor det segmentet i Tyskland, har tatt litt til orde for for å kompensere for det. Jeg leste en EU-rapport her om dagen hvor de nevner 42 nøkkelfaktorer for å lykkes. En betaler 5 euro i måneden og kan laste ned alt du vil og dele med dine 50 nærmeste venner... Det har jo vært en veldig komplisert prosess med veldig mye oppi det. Nå legger jeg kanskje litt føringer for spørsmålet, men jeg tenker at hvis en har undersøkt dette mye tidligere, så er jo da spørsmålet om hvorfor har en ikke fått det til dersom man har jobbet med dette de siste 10-15 årene. Er det noen andre grunner til det?

Samtalen avbrytes grunnet tapt tilkobling. Intervjuer ringer informantene opp igjen, og starter opptak etter en

liten påminnelse om spørsmålet.

Lars Reiten: Er det rett og slett, som du sier, bare vanskelig å få til...?

Bendik Hofseth: Jeg sier at... Delvis så er det uortodokse forretningsmodeller... Vi har jo ikke tenkt over musikk, eller det er jo bredere enn musikk, vi har jo ikke tenkt over bøker, filmer, musikk og bilder på samme måte som... Som skal være tilgjengelig og upersonlig på samme måte som vann og strøm før. Det har vi aldri gjort. Det er et paradigmeskifte, som uttrykker seg også økonomisk.

Lars Reiten: Jeg tror jeg... Vi kan vel egentlig gå videre. Jeg tror jeg fikk et godt inntrykk av hva du mente der... Hvordan tror du en bredbåndavgift, om den kan, da... Om vi legger til grunn at den kan... Hvordan kan en bredbåndavgift fungere som et supplement til den allerede eksisterende strukturen i musikkindustrien?

Bendik Hofseth: Som et supplement? Da tror jeg vi må tenke at det er den første varianten, en kassettavgiftmodell vi ser på. At det er for den type kopiering som gjøres utenom salg av eksemplarer, eller utenom lovlige lisensierte tjenester. Problemet er jo her, at... Du kan tenke deg Tidal, eller lovlige strømmetjenester, alle er interessert i at de får til en god og sterk økonomi, for det vil jo komme hele fellesskapet til - (*uklar lyd - til gode?*) - . Men hvis vi skal konkurrere med en privatkopieringsordning, hvordan skal vi praktisere eller håndheve det? Det er veldig vanskelig. Allerede i dag er det sånn at, Facebook f.eks., 60% av de som de sender, når du scroller nedover, er jo faktisk opphavsrettsbeskyttet. De har til og med laget et eget videoformat for å unngå å betale penger. Men de tjener jo enormt med penger på reklamen sin. De deler det ikke da med de som gjør tjenesten attraktiv. Det er jo veldig rart, og gjør jo også at Spotify og Tidal og Netflix og andre som gjør dette legitimt, de er inne i et segment som ikke er regulert ordentlig i forhold konkurransetilsyn og konkurransevridning. Google, ikke sant, burde jo betalt, kanskje 50-60% av overskuddet sitt til rettighetshavere for å være i det samme segmentet som disse er. Spotify, sist gang jeg leste om det nå, bruker 70% av omsetningen sin til å hente inn og lisensiere innhold. Hvis Facebook og Google hadde brukt det samme, så hadde vi... Eller... Det samme for de områdene de lener seg til og bruker opphavsrettsbeskyttet materiale på, så hadde vi hatt en helt annen økonomi, og vi hadde hatt et lovlig regulert marked, og det ville vært veldig mye enklere å stoppe gråsoner og grensetilfellene. Nå ble dette litt komplisert, men det jeg egentlig sier er at jeg tror ikke det er noen god modell at det er et tillegg. Det må enten være all-encompassing, eller så må vi regulerer internett på samme måte som vi regulerer andre markeder. Det er det som er vanskelig her, og det er jo det amerikanerne ikke vil, og det kan en jo godt skjønne at de ikke vil, fordi det er de som tjener alle pengene for de har mye svakere vern og kan gjøre ting som europeerne og asiaterne ikke kan.

Lars Reiten: Det er jo det du sier der som jeg tenker at er... Det er jo det som er nøkkelen til en viss grad. Det er utfordringen mellom et supplement og et substitutt og hvordan du legger opp de to... Eventuelt om de modellene, om det blir den eller andre eller noen i det hele tatt, det er utrolig komplisert og det er mange interesser, og du nevnte jo litt tidligere at det har et utilityaspekt ved seg, at bredbånd begynner å bli like vanlig som elektrisitet og disse tingene... Det som er en utfordring... At det ikke er en luxury lenger, som det heter på dårlig engelsk. Men, tror du at man kunne sett noe i en retning av at... Hvis man skulle innført det i morgen, hva kunne vært fordelene av å introdusere det?

Bendik Hofseth: Det er mange fordeler... Hvis en tenker seg at dette er en all-encompassing modell så ville jo fordelene være at vi ganske raskt ville skape store pengestrømmer i innholdsindustrien, for å bruke et veldig meningsløst, men dekkende uttrykk, altså i forhold til film, bilder, alt som er opphavsrettslig beskyttet. Det ville vært fordelene, og ville nok også gjøre at mange av de politiske uenighetene som i dag gjør at musikkindustrien, innholdsindustrien, ikke samlet lobbierer for en slik løsning, de ville nok forsvinne. Det ville skape et moment... Men, hvor begynner det og hvor slutter det, det er det som er vanskelig da. Hva skal beskyttes, hva skal ikke beskyttes... Det er dette som er vanskelig da... Du ser jo selv på strømmetjenester... De mest iherdige amatører kan lage meningsløs musikk som de klarer å få omsetning for, fordi de bruker virkemidler som digitalteknologien kan, da. Det vil ta lang tid før en sånn ordning vil bli presis, men det ville kickstarte innholdsindustrien igjen, det er jeg ganske sikker på. Det ville ta veldig mye tilbake posisjonen fra disse plattformtjenestene som idag på en måte er garantist og vennene til konsumentene, altså Facebook, Google, Youtube, de sitter mye tettere på konsumentene enn musikkindustrien gjør i dag. Musikkindustrien oppfattes som disse klagende, sytende folk som er negative til den utrolige tilgangen og positive veksten som internett har vist seg å være.

Lars Reiten: Du leder meg ganske elegant over på neste spørsmål her, og det er jo hva som er ulempene. Om det er noen flere ulemper enn de du har nevnt, for du har jo vært litt innom det.

Bendik Hofseth: Det er mange ting, det. Jeg er nok... Det er et veldig bastant skritt å gå, da, i forhold til... Nå blir det litt sånn estetikk og moral her... Beethoven sa alltid når han skrev musikk, at han skrev det fordi man ikke kunne henge det på veggen og gjøre det til sin egen. Altså eide det, da... Det vil påvirke hvordan vi oppfatter kunst, for det vil gjøre noe med opphavsretten. Jeg tror konsumenten vil føle at alt er deres. At de kan gjøre hva de vil med det. At de kan behandle det... At vi på en måte bartrer inn moralske rettigheter og vern for å få noen penger ut av det. Det er svakheten, da. Jeg kan ikke se helt hvordan man kan opprettholde en kontroll, sånn som Bern-konvensjonen tilsier, f.eks. i forhold til bruk i politiske øyemed, pornografisk øyemed, reklameøyemed osv. Alt vil jo, da... Oppfattes som fritt, da. Og som kjøpt, og betalt, og alles. Og det tror jeg er et voldsomt skritt å ta, for du gir slipp på de eksklusive rettighetene som ligger under der.

Lars Reiten: Tror du det kunne vært en måte å unngå den problemstillingen på? Den opphavsrettproblemmstillingen hvor man føler at man kan gjøre de fleste aktiviteter på nettet med opphavsrettsbeskyttet fordi man betaler en avgift. Tror du det kunne det vært en måte å unngå det på?

Bendik Hofseth: Jeg tror at... Skal bruke historien til hjelp, da... Når det gjelder utviklingen av sunne og bærekraftige forretningsmodeller så oppstår de ofte organisk. De oppstår ikke som resultat av sånne (?reaksjonære?) grep som dette tilsier. Det er et veldig drastisk grep, altså, som er uforutsigbart på mange områder. Jeg har jo skrevet en artikkel om dette som jeg kan sende deg...

Lars Reiten: ...det må du veldig gjerne...

Bendik Hofseth: ...hvor jeg peker på en annen løsning... Det jeg tror er den fundamentale problemstillingen her er at politikerne ikke har villet regulere dette området, fordi argumentet om internet freedom er så sterkt, og fordi internet freedom er blitt koblet til hele den måten mediet vever oss sammen på, vi liker så godt å være sammenvevd, vi mennesker. Kunst er på en måte en veldig god katalysator, det setter igang sånne prosesser hos oss, det åpner dører, vi blir på en måte mye mer vennligsinnet mot nære og fjerne venner og relasjoner fordi man bruker kunst som åpner... «Ah, du liker David Bowie, det gjør jeg også», ikke sant. Tilfellet er at de som har tilbudt denne kunsten, har tilbudt denne tilgangen eller samlet denne veven eller sammenkoblingen, er jo plattformtjenestene. De er unnlatt å betale, de skal ikke betale lisens. Da har vi et kjempeproblem, for da er vi på en måte lekk. Da er det en sektor av industrien som sponser en annen, og det er aldri noen god løsning. Det er det at disse plattformtjenestene sier at «det er jo vi som tilbyr dere den nye verden, det er vi som er de nye profetene, det er vi som er... Det er dette du trenger. Du trenger ikke det maset om opphavsrett, det er bare tull. Vi lever i en ny verden nå, hvor vi skal dele og alt er fritt». Men det er jo de samme som hevder dette som stjeler alle pengene, og som ikke betaler skatt, ikke sant, og som er asosiale, og som ikke er åpne, som ikke er transparente med det de driver med. Det er et paradoks. Det at politikerne ikke våkner opp til dette og begynner å regulere slik at vi unngår dette, det tror jeg er den ene store årsaken til at vi ikke kommer videre nå. Det er den største utfordringen. Det er der vi må ta fatt. Det ble gjort feil i disse WIPO-avtalene fra 1996, det ble gjort feil i e-kommersdirektivet til EU i 2001. Da trodde vi at Google og Facebook var start-ups som trengte litt hjelp, som var interessante, og som kunne få litt lettere tilgang til Safe Harbour, og... Det var ikke så nøye med personvern og ting og tang. Vi kutta noen hjørner fordi vi ville at dette skulle gå fort. Så tok det bare to-tre år, så var det de største - (*uklar lyd*) - ... Politikerne på en måte ga de det. De ga de det rommet. Da er det også de som må ta det tilbake.

Lars Reiten: Jeg bare sier det for the record, så jeg får det med i transkriberingen, at jeg bytter rekkefølge på to av spørsmålene, fordi du var inne på en ting som jeg kunne tenke meg å vite litt mer om, og det er... Hvis man skulle innført det, hvordan kunne man rettferdiggjøre en sånn type avgift ovenfor de forskjellige partene? Du var jo spesielt innom politikerne, så jeg tenkte jeg skulle høre om du hadde litt mer om det.

Bendik Hofseth: Hvilke parter tenker du på da?
Lars Reiten: Jeg tenker hovedsaklig på de som ville vært involvert i en slik avgift. Det går jo fra forbrukerne, som bruker det, rettighetshavere som er med i det fordi det er deres stoff som ligger ute, og som da vil havne under den avgiften på en eller annen måte, så er det politikere, for du trenger jo lovendringer, ihvertfall litt politisk drahjelp i en eller annen retning - og også motstand, for såvidt - også er det selvfølgelig internettleverandører, de som skal sette dette ut i livet. Det er rett og slett fra et bruks og sette-ut-i-livet-perspektiv, hvordan man kan rettferdiggjøre det.

Bendik Hofseth: Spørsmålet er hvordan man kunne bevisstgjøre politikerne?

Lars Reiten: Ja, eller rettferdiggjøre det, selge det...

Bendik Hofseth: Ja, sånn ja... Det måtte jo være at da er du kvitt problemet da, for det er ikke så dumt, så håpløst... Du kan se på online-lisensieringen nå... Den blir mer og mer fragmentert, det er vanskeligere og vanskeligere å finne innholdet, og noen tjenester er ulisensiert. I et veldig uryddig markedsbilde er det fristende å si at her må bare alle betale, alt må være tilgjengelig, og alt må betales for. Da har du det som kalles mandatory licensing, egentlig en sånn tvangslisensieringsmodell som vi har i Norge, og da vil det jo være tvistemålsordninger, og sannsynligvis sånne arbitration eller mediation... Det ville være organer som kan bestemme tariffen, og tradisjonelt har jo kunstnere kommet godt ut av det, bedre enn når markedet har regjert selv, fordi det er mindre for intermediære, ikke sant... De intermediære vil jo da jobbe konsentrert om markedsføring. Forlag, plateselskap, disse funksjonene vil jo være mindre relevante i en sånn sammenheng. Da er det er rent promoarbeid. Det er det å kuratere det materialet du representerer fram som ville være interessant. Så industrien ville blitt slankere, den ville bli mer effektiv, og handle om det den egentlig burde handle om. Det ville være mindre fett på skinka. Det måtte jo være et argument, og jeg tenker jo at jo mer fragmentert lisensieringsbildet er, jo nærmere er jo Spotify å gå til Brussel og si at «dette går ikke lenger, det forlaget skal forhandle der, og det forlaget der, og ingen skal ha standardtariffer, alle skal ha forskjellig betalt for sitt repertoar. Snart må vi forhandle med Elton John om sitt, og Lars Reiten om sitt... Det går jo ikke det! Da gjør vi ikke annet enn å...» Det er noe med at... Grådigheten og det å ta ut eget repertoar er blitt så attraktivt, og så mange gjør det, at det kveler den andre delen av industrien, som er nødvendig for å nå frem til konsumentene

Lars Reiten: Tror du det kunne ovenfor rettighetshavere også, at det ville blitt mindre fragmentering?

Bendik Hofseth: Jeg tror det. Og jeg tror det ville vært et veldig godt argument ovenfor rettighetshavere at det ville vært tvistemålsordninger, at det ville være en ny juridisk instans som satt tariffen, for det har vi veldig god erfaring med.

Lars Reiten: Du har noen overganger her som leder meg veldig elegant over på neste spørsmål... Hvis man skulle introdusert en bredbåndavgift i dag, på et mer praktisk nivå, om en ser bort fra det juridiske og teoretiske, men på et mer praktisk nivå. Hvordan kunne det fungert? Hvordan kan en finne en struktur for hvem som betaler hva? Går det på flat-rate, tilkoblingshastighet, måler man antall nedlastinger, eller kan det være noen andre løsninger?

Bendik Hofseth: Jeg tror det må være sånn som det er med strøm og vann, det kan være gode modeller. Der er det sånn at det er en fast avgift, en nettagift på en måte, også er det etter bruk over det. Hvordan det gjøres stoler jeg på at det går an å finne ut av, det tror jeg ikke er noen stor utfordring. Vi har modeller for hvordan vi kunne gjort - (uklar lyd) - i forhold til å fakturere.

Lars Reiten: Det er jo som du sier at det er dette med vann og strøm, og ordninger der...

Bendik Hofseth: Jeg tror ikke det er verre enn det altså...

Lars Reiten: Ikke sant... Hvordan tror du en sånn avgift kunne vært økonomisk gunstig for de forskjellige aktørene i musikkbransjen?

Bendik Hofseth: Det var jeg inne på isted, det tror jeg er fordi at det i prinsipp innebærer tvangslisensiering, og da vil vi av erfaring få høyere tariffen til de mykere rettighetshaverne. Du får ikke det forhandlings... eh... målene som Universal, plateselskap har i dag. Elton John ville... Hans markedsposisjon ville nok svekke, ihvertfall på dette området. Men det ville kanskje styrkes på konsertområdet, for det ville blitt likere for alle. Det er jo bra for mangfoldet, det er bra for konsumentene, det er bra for konkurransen, men det er ikke bra for de store gigantene

Lars Reiten: Tror du man kan finne en slags inngangsport for at det også kunne vært bra for de store aktørene?

Bendik Hofseth: Det tror jeg egentlig ikke, det er derfor de kjemper imot, derfor de ler av dette her. De er ikke interessert i dette for de mister makt, de mister kontroll over markedet, de mister muligheten til å styre tilbudet. Det er jo det de gjør i dag, og det er det masse penger å hente på, og det vet de veldig godt. Så de ville da - (uklar lyd) - bli aktører i en helt annen bransje de... Og det vil de nødig. Men som sagt, du må veie dette opp mot de eksklusive rettighetene... Ville forsvinne... Og nå snakker vi om å selge sjela si til Faust her, altså, det har elementer av det. Det er betenkeligheter fra diversitetsrepertoaret også. Det vil jeg si.

Lars Reiten: Litt av årsaken til den spørsmålsstillingen, og du svarte jo fint på det tidligere også... Jeg tenker at for å gjøre ting i en bransje med så mange aktører så må konsensus følge det til en viss grad, for det er jo sånn som vi har snakket om tidligere utenfor dette, så må man komme frem til en enighet, og så mange som mulig må være med på laget for at det skal fungere. Alle parter må jo ha en viss interesse av det, men som du sier det noen som kan tape på dette også... Det var en slag oppsummering... Men... Hvis vi legger til grunn at en avgift har et potensiale for å hente inn penger til bransjen, hva tenker du om distribusjon da? Hvordan kunne man distribuert pengene?

Bendik Hofseth: Det har vi jo et greit apparat for. Det måtte jo være da... Type... De organisasjonene som i dag har registre og rutiner på dette, og det er jo disse CMOene, eller opphavsrettsselskapene, de har oversikt og erfaring. De har medlemsregistre, de vet hvordan man utveksler pengene og hvordan man henter inn pengene, så de strukturene er på plass.

Lars Reiten: Utfra strukturene, men mer sånn praktisk sett, kan du se for deg et minimumskrav som du ville satt for hvordan man distribuerer det?

Bendik Hofseth: Hvordan da?
Lars Reiten: Hadde det vært greit med en sånn type avgift om en f.eks. kunne garantert at femti prosent går tilbake til de som eier åndsverket i en komponist/opphavsmannsforstand?

Bendik Hofseth: Ja sånn, ja. Hvordan man deler internt mellom rettighetshavere?

Lars Reiten: Ja.

Bendik Hofseth: Ja, det tror jeg faktisk også det går an å bli enig om. Der har vi erfaring og vi har presedens, så det går det an å tenke seg at en får til. Det vil jo være forhandling, men det tar man jo på bakrommet. Vi har jo gjort dette i andre sammenhenger, sånn som i Norwaco-selskaper, så er det jo mange rettigheter kokt inn, og det vil det jo være her og. Det vil jo være vanskelig å skille ut ren musikalsk fremføring fra fremføring med bilde osv. Du kan jo si at de som har mest å vinne her er jo bildesiden, for de tjener mye mindre på sånn type forvaltning i dag enn musikksiden har gjort.

Lars Reiten: Har jeg forstått deg riktig da om du sier at det finnes strukturer på plass allerede som en enten kan trekke inspirasjon eller konkrete erfaringer fra istedenfor å, på en måte, måtte finne opp hjulet på nytt?

Bendik Hofseth: Absolutt. Det finnes presedens både i forhold til de (?indre?) problemstillinger og det finnes presedens i forhold til hvordan man fordeler i forhold til sammensatte verk.

Lars Reiten: Tror du det er behov for å gjøre den distribusjonen enda mer nøyaktig, tror du er behov for å ha en enda bedre datainnhenting rundt...

Bendik Hofseth: Ja det tror jeg absolutt, og det måtte jo være et internasjonalt register på en eller annen måte som det kan kobles opp mot. Det var det vi forsøkte å sette opp i Geneve, i WIPO. Det er et veldig vesentlig element her, for hvis ikke kan en jo få masse juks med data, og vi klarer ikke å mekanisere avregningene. Så kan en også tenke seg at det er en kollektiv bit, at ikke alt er fordelt individuelt, men en kollektiv bit som holdes igjen i de respektive som er en kultur... Brukes til stipender, grasrotandeler, inkubasjon...

Lars Reiten: Ja, og der skal jeg takke deg igjen, for der ledet du meg nok en gang elegant over på neste sidespørsmål... Dersom deler av pengene kunne gått inn i et fond eller en stipendløsning eller noe sånt, hvordan kunne du tenkt deg at det kunne fungert da?
Bendik Hofseth: Det hadde jo, som jeg sa... Det handler om å styrke mangfoldet om nødvendig. Det handler om å styrke, eller gi unge muligheten... Dyrere musikk... At de har mulighet for å finansiere de som har store ambisjoner berettighet... Høy kvalitet... At det finnes ordninger innen kunstfeltet selv som kan trekke frem noe som er mer vesentlig enn annet. Det vi snakker om nå er en grå upersonlig masse av filer som fyker rundt omkring, og som avregnes automatisk. For å komplementere det, utdype det, for å korrigere det tror jeg det er nødvendig at det er en form for kuratering fra det kreative fellesskapet.

Lars Reiten: Et eventuelt fond... Kunne det vært rom for der at en kunne tillatt at de mer kommersielle, plateselskaper osv... Aktørene kunne søke på det også for å promotere i utlandet, eller få norsk musikk ut i et annet segment, eller ta mer risiko, eller hva de nå sier at de skulle ønske seg at de hadde mere midler til? Litt av grunnen til at jeg stiller det spørsmålet er at jeg leste gjennom rapporten fra Nordgård-utvalget, og både der og andre steder sier de (Plateselskapene) at det kunne vært ønskelig å ha en sånn type fond som f.eks.

filmindustrien har i Norge, hvor man kan få midler for å promotere og eksportere norskprodusert innhold til utlandet. Jeg vet ikke om spørsmålet kanskje forsvant litt i redegjørelsen her...

Bendik Hofseth: Nei... Det jeg beskriver er jo et fond - (*uklar lyd*) - ulike territorier... Onlinesegmentet inngår i en kulturell økologi da... I en biotop... I Norge som har veldig lite nasjonalrepertoar på samvittigheten ville det kanskje vært viktig å styrke det norske repertoaret. I England så er det helt andre ting som er viktig. Det kan være at det er mangfoldet som er understimulert, det kan være at... I Carracas, hva vet jeg, kan det hende at nettopp det monokulturelle er understimulert, at en har behov for å bidra til å skape store spydspisser, stjerner... Det kan være veldig ulike behov, i veldig ulike land, til veldig ulike tider, så det må være en fleksibilitet, tenker jeg, og en form for autonomitet i hver region, i forhold til en sånn ordning.

Lars Reiten: Da har jeg egentlig tenkt å ta siste spørsmålet mitt, og det er på en måte «dealbreakern»...

Bendik Hofseth: Ja...

Lars Reiten: Er det et behov eller grunnlag, eller begge deler, for en bredbåndsavgift, sånn som du ser det?

Bendik Hofseth: Nei, jeg synes ikke det. Jeg synes vi skal forlate det. Personlig synes jeg at bredbåndsavgifter er en unnvikelse fra å regulere internett. Vi må regulere internett. Vi må gjøre det vi gjør på alle andre områder. Det er ikke noe hokus pokus, det er ikke noe mystisk med internett, det bare virker sånn, for det er en sånn fantastisk måte å binde oss sammen på, men det må et politisk mot for å si at vi må ha kjørerregler der også. Altså, sønnen min... Instagramkontoen hans oversvømmes av porno. Han er 11 år. Det er helt ute. Vi kan ikke holde på sånn som samfunn, slippe til det styggeste av oss i alle mulige... Det dukker opp overalt, de mest prompete menneskene. Et sånt samfunn kan vi ikke ha. Et samfunn hvor sånne som Google og Facebook, de bare tar med seg alt som er av penger og aviser og kunnskap og lokale krefter forsvinner, fordi noen ikke følger med i timen og ikke tør. Da mener jeg politikerne. Jeg tenker at i det perspektivet så er bredbåndsavgift en sånn desperat... Vi kan gjøre noe radikalt, få til noe enkelt her da... Og dette er veldig tabu å si sånn i forhold til Peter Jenner, for Peter har vært veldig ivrig på denne ideen i alle år, men jeg har alltid opplevd den som en sånn våt sosialistisk drøm, mer enn en mulig realitet. Jeg tror det kan være behov for komplementære ordninger som erstatter en kompensasjonsordning, som kassetavgiften har vært i alle sine avskygninger. Noen land eller områder vil kanskje gå for det, mens andre ikke vil det. Det vil jo være en mindre inngripen i folks lommebok og valg. Fristelsen er så stor, at den friheten... Det er det at vi faktisk vil hverandre vel, vi mennesker som fører internettet frem. Den myten der må knekkes, for den er veldig farlig. Den kommer internett til å knekke på, for vi drukner i porno og ultrakapitalister. Så det er min personlige... Jeg skriver jo i artikkelen du fikk av meg nå... Jeg tror vi trenger å få lover og retningslinjer og politikk, regulering, som gjør at vi kan ta penger fra de som tjener penger på... Plattformtjenestene, som tjener penger på innholdet i dag, som ikke betaler. Jeg tror vi må ha gode internasjonale registre som vi samarbeider om. Og det er egentlig veven, det er det internett egentlig handler om. Det er å ha samme standarder og et apparat til rådighet med mulighet for transparens. Det er det som vi kan, på en måte, få til. Også... Skal jeg si noe mer om det, da... Eh... Hvis vi skulle hatt... Jo... En tredje ting som vi ikke har snakket, som er veldig ødeleggende, er jo dette såkalte «notice and takedown» som også henger sammen med safe harbour, jeg vet ikke om du kjenner til det begrepet, Lars?

Lars Reiten: Safe harbour, notice and takedown...

Bendik Hofseth: Ja, altså, det det handler om er at hvis jeg spiller i Stuttgart da, det har skjedd, også er det en eller annen i salen som tar opp det og legger det ut på Youtube. Da må JEG gå til Youtube å si at «vet du, hva, jeg liker ikke det opptaker av meg, jeg synes ikke jeg spiller noe bra på det, det er ikke noen bra versjon av den sangen som jeg prøver å selge plater av. Ta det ned». Det synes jeg er feil. Så lenge vi har det sånn, så lenge jeg må gjøre jobben og Google kan tjene alle pengene på det, da har vi et kjempeproblem. Det må være motsatt. De må spørre meg «her er det en som vil legge ut musikken din, er det greit for deg?», også kan jeg si ja eller nei. Da er min eksklusivitet ivaretatt, min eksklusive... I forhold til at det er mitt skaperverk som blir fremført, og jeg burde da kunne bestemme om jeg ønsker det eller ikke. Jeg skal ikke kunne... Så regelverket er på en måte snudd på hodet, da. Da har vi... Google fikk jo 560 millioner sånne notice and takedown-varsler, og vet du hva de bruker de til? Til å bygge opp en kjempedatabase. Da har jo de bedre oversikt enn noen over hvem som har skrevet hvilket verk, hvem som er rettighetshavere av ditt, og hvem som er rettighetshavere av datt. Så uansett hvordan du snur og vender på dette her, så er det en kjempe, kjempe, kjemperekraftbyll i dette systemet som heter Google. Som vi må adressere... Som noen må tørre å si at suger all kraft, og da mener jeg ikke bare pengekraft, men all innovasjonskraft, og all skaperkraft, ut av mange industrier.

Lars Reiten: Jeg tror det du er inne på der også var noe jeg hadde håpet du skulle komme innom, så det var kjempefint. Det er noe med det å kunne finne et system, uavhengig av... En quick fix, en kanskje litt for lett løsning, kunne vært en bredbåndavgift, om jeg har forstått deg riktig?

Bendik Hofseth: Ja...

Lars Reiten: Men det bøter ikke på hovedproblemet. Det kan hjelpe til med å forsinke det litt, kanskje, men hovedproblemet her ligger jo, som du sier, rundt safe harbour og rettigheter og det å kunne ta seg til rette på internett, da. Det er jo akkurat det som er... Problematikken her er jo rett og slett om man kan finne noe som kan bøte på hele problemet, eller må en ta det stykkevis og delt. Så er jo spørsmålet også at hvis du tenker en bredbåndavgift som en komplementær/supplementsgreie, om det er behov for det etter at streaming kom inn i bildet?

Bendik Hofseth: Ja... Det er et godt spørsmål, for streaming er jo en slags sånn ordning. Men da må jo også... Da må vi ta bort den rare konkurransen som disse streamingselskapene også er i, da. De må konkurrere mot selskaper som har like vilkår som de, med andre ord selskaper som også lisensierer. Da kan vi jo få en spennende flora av strømmetjenester som er kuratert, som har den musikken du liker.

Lars Reiten: For å følge opp det litt, for det kommer litt an på det mangfoldsspørsmålet også... Litt på siden... Tror du at streaming kan gå i en retning hvor ikke alt er tilgjengelig på en plattform hele tiden, at en kuraterer mer og får mere spissede tjenester?
Bendik Hofseth: Ja, og hvis det ikke gjør det så tror jeg uansett at måten musikken vektet på, tilbys på... Jeg var veldig imponert av Apple Music nå. Det tror jeg er det beste jeg har sett av forsøk på å trace min musikalske historie. Mange gode forslag, og gode ansporinger. Jeg tror nok at det er mye å hente på å kuratere ulikt. Men det betyr jo ikke at de trenger å ha mindre repertoar, men at de er bedre på å hjelpe deg til å finne det du virkelig har bruk for.

Lars Reiten: Er det noe du føler vi ikke har rørt innpå, som du brenner for å få med på bånd?

Bendik Hofseth: Neida, Lars, dette er veldig spennende for meg også det, å bli spurt om disse tingene og tenke litt over det. Det blir gøy å følge det videre, nå.

Lars Reiten: Det håper jeg også... Jeg tar å stanser opptaket her nå jeg...

Bendik Hofseth: Ja, det kan du gjøre.

Lars Reiten GÅR IGENNOM RESTEN AV INTERVJUGUIDEN MED *Bendik Hofseth*. (SE INTERVJUGUIDE FOR NÆRMERE BESKRIVELSE) -

Total intervjuetid: ca 49 minutter

Peter Jenner

Interview with Peter Jenner. 10th february, 2016

INTERVIEW STARTS WITH *Lars Reiten* GOING THROUGH INTERVIEW GUIDE WITH *Peter Jenner*. THE RECORDING STARTS ONCE ACCEPTANCE OF RECORDING HAS BEEN COLLECTED:

Lars Reiten: Right, Peter, what do you think of when you hear the term broadband levy?

Peter Jenner: Oh, what do I think... (long pause) It depends what you mean by broadband levy. ehm, and, ehm, I think it's an, I mean, I am of the view that it's possibly, probably, no. Possibly the way to go, in the sense that, given your background about the declining hardware levies and the problems that they have with that, I've been of the view that a broadband levy makes more sense, in as much as, you know, it was clearly political problems with the idea of putting on a levy on smartphones. And since, who's smartphones can cope with accessing content it's a real problem, that it's sort of this, you know, arbitrary levies on old technology in some place, and it's not in other devices and not in other territories, and it's now become a very dysfunctional structure. I think the levies weren't a bad idea. They generate money which is a good idea. And, so, I would switch it around and be basically in favour of broadband levies, because it seems to me that if you are accessing content you're going to have broadband. If you're having broadband, or paying for broadband, it's probably because you want to access content.

Lars Reiten: Yeah.

Peter Jenner: It's one of the, not the only reason, but it's a major reason, for having a broadband service, and it seems to me that the broadband companies, when they're selling broadband, are in fact selling, implicitly selling, access to content, and to free content, or cheap content, or probably free content, and... It might be legal free content, but it seems to me that it's as much problem with Youtube paying up enough money, and Facebook, and so on. So that legal, as it stands at the moment, legal free content is as much of a problem as illegal free content, you know.

Lars Reiten: Ahm, but you know, I think, you know, you've been, or people in general have been discussing, or different authorities have been discussing a broadband levy for the last decade, or so. Probably the last fifteen years. Why do you think it hasn't become a reality?

Peter Jenner: Partly because there's a sort of hysteria about taxes, and the politicians are really frightened of taxes. They're frightened of a new tax, and, though it's always the problem where you put something on for people. so what I don't ever download this, I don't ever use it for accessing content, and I always pay for content, and... I think you either have it or you don't have it, you can't say "Oh well, you're a good boy, so you don't have to pay the levy, but you're a bad boy so you have to pay the levy." How do you decide who's a good boy and who's a bad boy, and so on after the event. So, I think, you know, you either have it or you don't have it. I think there's a lot to be said for having a broadband levy. But then I think you do have to deal with them problems of double payment. So, then you have a problem of... If you're going onto services as Spotify where you have to pay, you know, you're paying a broadband levy and you're paying Spotify. Or if you're not accessing content at all, although you got the availability, you're not paying at all for that, so I think you've got to balance the actual usage with, ehm, the access charge. So, I always think somehow, how can we deal with that, ehm, it's like dealing with electricity, where you have a standing charge, and you have a, ehm, meter on how much electricity you're using, or with phones you have a, a... Line charge, and then you have some sort of payment for what you're getting on your line which includes broadband or phone calls.

Lars Reiten: I think I'm getting back to that... To, you know... to a little bit more philosophing...

Peter Jenner: Yeah, so I, I mean, I think that the major problem with broadband levies is people saying I don't use my broadband for anything other than, you know, ehm, Skyping my grand children in Australia. And... Its very hard to argue that you, you... Tough s***. And I think I would argue tough s***. I mean, at the end of the day you are, you know... The reason there is such, you know, such, you know, ehm, broadband levy, is because everyone uses broadband, everyone is accessing content, you know, ehm... Legal and non-legal, and... I don't see a problem, I think the alternative is that you got to make the, ehm... I think it's very, very hard, because it's so easy to get the content. People are gonna find free ways to get the content, unless it's just, you don't notice, and I, my feeling is that people just don't... I don't think many people would mind if you say: look, you know, the fee is so much a month and you can access all you want, all the content you want, you can get hold of for this, you know. Ehm... I think that's not a bad deal, and I think in terms of time, people might just think, well fine, that means I... And I think, sorry, the most important and valuable thing about this is that it maybe enables new, ehm, new entrance, new, new models developed, new ways of delivering content. And delivering content with other things, in other words that if you've got an online game

which has an online music with it as well, then you can get paid for that online music. And, you could afford to put music onto the games without having to go through licensing, enormous licensing. I think the great advantage of broadband levies is it reduces the amount of the transaction cost of, you know, who's getting what from where and how, you know, and who's licensing what now and... And all the black box issues and all the data issues, I mean, it... In a way, my attraction to broadband levies is in a sense a reflection of my dislike of what's happening at the moment in terms of how people get paid, and who gets paid, and, ehm, who isn't paying, and my idea of paying and, ehm... How you have free services and you have paid services, and, you have freemium services, and... I don't know... I don't seem to me a very sensible way... I can just look at it in terms of, in the UK we have very good BBC structure, nobody pays for it, a few people moan, but most people pay for it, and it's three pounds a week, about, you know thirty NOKs a week, and you get seven or eight radio stations, and, ehm, all... Very good in their way, all leaders in their set of the market, and you have TV stations and, you know, four TV channels and the world service. All this is paid for three pounds a month, I mean we get an enormous amount for that three pounds a month, and...

Lars Reiten: Three pounds a week, or...

Peter Jenner: Three pounds a week, and it's so valuable because everybody has... The BBC is able to do so much cuz it has such good revenues, ehm... That it can provide good services all across the board, which is why we have good, great coming out of the UK TV, and I think it also enables the record companies to do that, they don't have to destroy their programs with a lot of advertising, so it helps drive music, ehm... And I think the role of the BBC in the, ehm, in development of British pop music has been incredibly important, and, probably, partly because it is able to be innovative and exploratory, they don't have to just play the hits. What's interesting is that, in almost every, everywhere I've looked at it, commercial radio, which is ad-driven, plays a lot less number of tracks than paid-for-radio, you know, or government sponsored radio, you know. I don't know what the figures are in Norway, I've seen them in the past, but it's an enormous difference in the number of different tracks that are played on national radio, than are played on commercial radio, which just play the hits over, and over, and over, so...

Lars Reiten: There's even a Norwegian radio station that has a set playlist, which, they just rotate on the set playlist, and that playlist is set for... I don't know, a year, two years maybe. So they choose songs from, you know, one, one some type of hits, and then just rotate that, and they think they've been under criticism lately for introducing very, very little new music, and especially very little home grown music, into... that environment

Peter Jenner: No, no, no, because. The thing is that that sort of radio programming is all about playing what people are used to hearing, and not... So there's a predictability... So in a sense I could see that'd they not want to play new music, cuz that's unpredictable. The familiarity is part of what drives the thing, so, it can just go on, and you don't have to listen, you know.

Lars Reiten: You know, my third question is somewhat...

Peter Jenner: I've deviated, sorry.

Lars Reiten: (laughs) No problem... My third question is, ehm, it might have a little bit of pretext to it... How could a broadband levy work as a supplement to an already existing structure in the music industry?

Peter Jenner: Why, I don't think it affects the music industry, I think it affects the, ehm... It would just generate more income, I think, which is probably a good thing. No, I think it would affect the issue of, the charging and the pricing of, paid-for services. Would a broadband levy, as it were, legitimize people doing other services which don't pay? So, would the broadband levy end up with you just getting the same money as you're getting now, from Spotify and iTunes, and so on. Legal services. And, ehm, you know, would it enable people to develop these services which those existing services have developed. I think, the interesting question, variation, question off of that question is: what sort of services might developers who result of having a broadband levy, and if you had the broadband levy would that mean that the, ehm, the labels could be expected to charge a lot less? In other words, if you have the levy it means that the paid-for services could be cheaper. Or, ehm, if those were the same price they would have more curation, they had more value to them than just being locked into your own playlist. I think that the problem with playlist is you get stuck on your playlist, and you just go round in a revolving way, and then perhaps, you end up with a Pandora thing where you just end up going round and round in circles, and it becomes very conservative, cuz, you know... I think the interesting thing is how you develop and widen people's listening, you know, so... To me, that's what's really interesting about the golden age of FM radio in America, and also sort of John Peel, in the UK later on, is that, that, the issue of widening people's choice, presenting things they wouldn't otherwise have heard... And, you know, that, I mean, is really valuable, and... I think broadband levies could enable that to occur, and enable people to bring on services which, actually, are more genuinely curated. Because you could be able to do that, and you wouldn't have to pay very much, cuz you're collecting money from the broadband

levy, so that in a sense the need for the revenue, which is, you know, from Spotify. Okay. The need for the revenue from digital because of lost physical sales could be reduced by the broadband levy, therefore, in a sense, you would have a much freer approach to programming online, and you'd have a lot more of more interesting music coming in, and, ehm... Potentially, in the context of a broadband levy, which I think would be a good thing.

Lars Reiten: But, you know...

Peter Jenner: I wouldn't lose people's playlist if that is what they want, but I think a lot of people want new things to listen to as well as old music.

Lars Reiten: Yeah. In the extension of that question, do you think a broadband levy, do you think it should be a substitute, or do you think it should be a supplement to the existing structure? There are structures in place...

Peter Jenner: That's the question. I mean, I think that is absolutely the key question, and... I think that, you know, what those things do, the best of the services provide something other than just revenue. So, and the danger is that if you lose the revenue, do you then also lose what they do... So, and how do we, ehm, how do we cope with that. And also, what does a broadband levy cover? Does it cover video as well, does it cover games, ehm...

Lars Reiten: I think in this instance, from my point of view, it's to cover music...

Peter Jenner: Yeah, but then the answer would be, I don't listen to music, why should I pay a broadband levy?

Lars Reiten: No, exactly.

Peter Jenner: I think in a sense you have to accept that a broadband levy makes sense in terms of just content, you know. So my point in way is that it should be relatively high, but it should cover newspapers you read, it should cover films that you watch, videos that you watch. You know, that in other words it should be almost all content, and in a sense all content then becomes free, and you just pay a levy for your broadband access. And maybe then, if you use a lot of broadband you pay a bit more. Cuz, I think, that's the other thing, is it standard charge or metered charge, or both? And, I think, again that makes a lot of difference, and it seems to me you could have a standing charge and a metered charge, and you allocated the money that was received in order of what people had actually used, because, they know what people are using, they know how much of its music, how much of its film, how much of its video, how much of its, you know, newspapers, and how much is other things. And they could allocate that revenue according to those things, and they could analyse what's getting used within those contents, and that could be done relatively easily, relatively easily, ehm, and, ehm... It would be, probably, very good, it would be great, but then, you see, people who don't listen to any content, just wanted to be Skyping their grand children are going to winge and moan.

Lars Reiten: Yeah, exactly, ehm...

Peter Jenner: And politicians are very responsive to people winging and moaning, and on the whole people are much louder with winging and moaning, than they are with praise and, you know, rejoicing.

Lars Reiten: Do you think a, you know, do you think a broadband levy should, or could it, replace a private copying levy on the physical format?

Peter Jenner: How do you mean, the private copying levy?

Lars Reiten: You know, you have the private copying levy, or the blank disk, or the blank media levy, whatever you wanna call it, and... Should it, ehm, as we talked about earlier, that's decreasing. Do you think a broadband levy could replace that?

Peter Jenner: Oh, yeah, yeah, yeah, I mean, I.. There'd be no case for having... I mean, the number of faults with the existing levies as such, that I think it should go. I think that is one of the good reasons for broadband levies to get rid of the current device levies.

Lars Reiten: What are those faults?

Peter Jenner: The faults? The faults are that vary from country to country, they're very anti-competitive, they don't keep up with all the media, so that mobile phone, by a large smartphones don't have broadband levies on them because they would be too unpopular. In as much as, everyone is, there is likely to be 200 per cent penetration of broadband devices in not too long, i.e. that the average person has two devices, and, ehm... It doesn't make sense to be paying levies on those. I think that the overall usage gives a sense of what needs to be charged. I mean, you're not charged by the number of lightbulbs you have, you are charged by how much

electricity you use, with you lightbulbs. If you don't turn them on, that's your decision.

Lars Reiten: What do you... I think that, you know, this is very good. I think I am just going to move on to the next question, for a little bit, cuz i've kind of asked my follow up questions on this topic. If you were to introduce a broadband levy today, what are the benefits of doing so?

Peter Jenner: Why, I think the benefits is that it would open up the internet all sorts of of new services, new content services, which aren't relying on getting licenses from people who want enormous amounts of money up front. Ehm, and who, ehm, are playing various games to extract as much money as possible. It seems to me that rather than having to pay up front to get access, you should be paying for what is accessed. We should be encouraging the content - the spread that of content - and that would also enable us to encourage the spread of international content, in other words that, I've been struck by the fact that you can't get enough of not very deep catalogue from France in the UK, because no one can be bothered to license it. It seems to me the problem is the individual licensing of content. I think all content should be available from anywhere in the world, and what you should perhaps be paying for is the curation of that content. You could have a thing where you had a sort of intro. Intro to Brazilian music, you could listen to a bit, and go "Oh, I like that" and press a button and you get a whole lot more by that artist, that person or that type of music. I just think that the potential for cultural diversity is enormous. I think it could end up with Latvian people singing in Latvian being available in England. I think the richness... I'm really bored with the, sort of, anglo-american repertoire, and I think a lot of is has to do with language, and the feeling that people have to sing in English. Where they come from. I think it's terrible. I think it undermines cultural diversity, because I think language is an important part of music, and that music in foreign languages usually has a different feel, because of the rhythm of the language. And, ehm, I think the music of rock and roll is English, and that's why people sing in English, but I think that means that, sort of... What's could is the Icelandic where you get something because they are all, sort of, they all sing in, they all have their strange language and that leads to strange music, ehm, and I think the same thing applies in all sorts of ways. The rhythm of the language is reflected in the rhythm of the music, and the diversity of music reflects the diversity of language. Therefore, if you reduce the diversity of language in music, you will reduce the diversity in music.

Lars Reiten: Just a follow up on something you said. How, I might not have understood you correctly... How do you see a broadband levy strengthening cultural diversity in a sense?

Peter Jenner: I think in a sense it would enable what appears initially to be small audience to be developed by fans, so in other words the Brazilians - I use that as an example - the Brazilians in the UK could put up Brazilian music and it would be available for people in the UK to listen to, and UK people would listen to Brazilian music a little bit, and that could help to develop Brazilian music in the UK. Not because it's a question of helping Brazil, but simply because it is different, has different feel, different sorts of music. Say for Spanish music, Flamenco music or Indian music.

Lars Reiten: Following up on that, if there is an advantage, my next question is disadvantages. Are there any? What disadvantages are connected to introducing a broadband levy?

Peter Jenner: I think the price, obviously the question is what price the levy would be, and could one still have paid-for services. I think it is hard. If you were to reduce all the paid-for services, which would include things like Netflix, if you're replacing all the paid-for services, ehm, the levy would be very high, which means it would put off young people, important people, and I think that is a real challenge. That I think is the biggest negative, whether the broadband levy would reduce the paid-for services and the curated services that are provided. Am I right in thinking it would encourage and stimulate services, or would it in fact discourage and destimulate new services. I think there are argument both ways. I suspect that people will still pay for things, you know, there are free libraries and people still go to book shops. I suspect that if you can get all the music that you want if you are poor, you are still going to get more curated things and things that you want which are more specialist. If you're a gamer and you like games, and you don't want to have any f***** music in your games, you just wanna get on with gaming, or you might want to have music. Well, if you want to have music, let's have music there and collect some of the money, and if you don't want music you could turn it off. That too should be reflected in the end on how you split the money on a broadband levy. I think the other disadvantage is that it would require the cooperation of Telcos which might not be interested. Without them it would be very hard, and if they set their heads against it, they could make sure it's a failure.

Lars Reiten: Yeah, I think I'm getting back to that... Some people might say, or some organisations, or some acts in the industry might say that introducing a broadband levy could in a sense compromise foundations of copyright...

Peter Jenner: I don't think there is any question it would undermine the foundations of copyright. Depends what you mean. If you say that copyright is about getting peoples permission, I think it would undermine that, and I am quite happy about that. If it means that you're undermining the copyright as an existing institution, I

would have no problem with that at all. I think that, in other words, all the other things I don't like about copyright is all the things like "take it down", do this, and I think content should flow pretty freely, unless it's really, ehm... I would let people have (?law?) objections to some extent. I do think that the, ehm, you know, content should be freely available to everyone. But then, what I am in a way saying, is that everyone have got to pay quite a lot to get their broadband access. What would come with this is that you got to somehow make broadband pairable, so that poor people, old people, have got to be able to get it, and clearly also deaf people and blind people have got to have access. In some way or another, how we deal with that, seems to be a problem, you know.

Lars Reiten: Do you think... Or rather, I'll stick with the original question, how can you implement a broadband levy without compromising the foundations of copyright.

Peter Jenner: Well, is copyright about permission, or about getting paid? If it is about permission then I don't give a damn if it goes. If its about getting then I think we can deal with that. So I think it undermines copyright as a permission thing. You could say "we'll leave that to moral rights", and if theres is something you find to be a really offensive use of your music, you should be able to stop that on moral grounds. You shouldn't be able to stop it on financial grounds. Whether you can draw that distinction, whether that makes sense, whether if that is workable I'm not sure. I think the reality for me is that moral objections to the use of your music, I'm going to go with. Financial objections, you know, damn I don't care, it's culture, it's all right stuff, everything belongs to everyone. No one invents anything from scratch, we all build on the shoulders of giants and all that nonsense, but it is true, you know. No one invented the scales, no one invents language. Language is constantly shifting, music is constantly shifting. No one invents it. People do change it, or steals it or uses it, or absorbs it. I think that being able to access content and not having to pay big money up front and having to find people is what's required, but the big expense is that everything would have to have a numeric identifier attached to it in some way. That is a huge issue. All this audio, these clips from films, all these pieces of music... The data issues are enormous, but in a way I don't mind that, if you can say that if you don't want to provide the data you don't get paid. If you want to get paid, get yourself registered, and if you don't bother to register, then you don't get paid. You still got your copyright, you are still gonna try and get paid. To me copyright is about getting paid for their work, is not about people demanding permission for people to use their work, or for using their copyright. Copyright and permissions are a way of extracting rent. You could say the Beatles have been extracting rent because they have been so famous for a long time. The big issue is rent. How far is the current structure a reflection rent, rent-seeking by the major labels.

Lars Reiten: Just to follow up on disadvantages, the opposing of the opposition to a broadband levy in the past, not necessarily the model we are talking about here, but the previously introduced models, which have been on the terms of illegal downloading and piracy, and on how to deal with that. People who are opposed to the model itself argue that on a technical level, a broadband levy - in whatever shape or sense you see it - could legalize illegal activities surrounding copyrighted material...

Peter Jenner: That I've got not problems with. On moral grounds I'm with it. If it means you are not getting paid for the use of your material, fine, cuz you would get paid for the use of your material. You might not be able to extract rent from it as well, getting something because of it's scarcity, you are just extracting extra money, not for it's functionality, but because you can. Rent is about money you can get. Rent is what Universal charges Spotify for the content, so that they can get A, B and C. They need the content for their services, instead of just being paid for their content, they have to pay extra cuz if they don't they won't get it, and they have to have it. The economic content of rent.

Lars Reiten: Just to clarify a bit, I think the opposing voices in this discussion have been very much saying that if you were to for instance, you know, older models have been saying that you get a sort of carte blanche to download of your hearts desire from wherever you want in different shapes and forms. People say that is essentially legalizing piracy, it is essentially saying it is in a grey zone. It is not saying that on paper, it's not saying that what used to be illegal has now become legal, essentially distributing copyrighted material. On paper it is still illegal, but on a technical, practical basis, people could say that I am paying this, so I could download whatever I like.

Peter Jenner: I would go along with that. In a way I have no time for copyright. I think copyright is about rewarding creators, it is not about people playing games of copyright. If people access some particular content bundle, the people who created that content bundle should get paid, should have remuneration, because we want them, if we like that bit of content we want those people to make more content. We don't get bundles if we don't provide them with money from the first, then they will never make the second bundle. You have got to pay, you got to reward, creators who people like in order to stimulate them to do more. There is an album and I want to buy that. We will get more content getting created, I think. I think that the problem of the number of permissions that one has to get to make anything work now has gone right out of hand, so that multimedia works become very, very difficult. I think there is a lot of development that will occur with

multimedia products in the future, simply because of cut and paste. We could be cutting of new development because people can't afford to clear things. That's already the case that people can't clear things, and that things can't be done because you can't get clearance. I think that's not right. If people are just holding stuff for ransom, that to me is not right.

Lars Reiten: Have I understood you correctly that you are saying that if it's on a term where it should not compromise technically with the copyright held by creators, but doesn't matter too much if it compromises copyright held by other rights holders, such as labels, etc. Or? Because it's too much?

Peter Jenner: The value chain starts with the creators and ends up with the end user. What you need to do is to work out how you can maximize the amount of creation getting to the end-users. If the end-users like the content that should be reflected through, into a system where creators can afford to create more. The people who enable that transaction, the people in between, their job is to make it work better and more efficiently

Lars Reiten: Moving on to the next question, we already touched upon some of it... On a more technological level, how do you see a broadband levy working if it were to be introduced today? You could say on a technical level, without it having to be, but my follow-up question is a little bit technical.

Peter Jenner: I am not a technician, but I am sure it could be dealt with. My view in a way, is that the way it should work is a combination of standing charge and volume. There should be a meter measuring the amount of content you consume, or however you measure it.

Lars Reiten: It is almost if you know my follow up question. How would you determine what to pay? Is it based on flat rate, connection speed, amount of downloads, or any other way?

Peter Jenner: It's very interesting, cuz I too see it, the broadband, as a content delivery utility. If you look on it as a utility, the way we charge for utilities is by standing fees and meters, and in a sense that is what I would do. What I would then look at is that we want to make sure that the content that is the most accessed is the content that get's the most money. Basically, stuff that we like will get more money, and that means that the people who make the stuff that we like will make more stuff that we like. I think that is what the market should be doing. At the moment that is not what the market is doing, cuz there are so many people getting in the way, there's so much rent-seeking on the way through, that that's not happening. The money isn't filtering back from user to the creator properly. That's a problem, stuff getting in the way of it getting from the end-user to the creator, that's what I want to see happening, and I think at the moment too much of it is taken up on the way.

Lars Reiten: How could you justify a broadband levy to those parties who are involved, everything from consumers, rights holders, ISPs or Telcos, or even politicians. If you were to say that "this is what we should go for", how could you justify it? There probably is a lot of different objections, but justification is key. How could you justify a broadband levy to the parties involved?

Peter Jenner: It might be just transaction costs, which would be initiation costs. It would stimulate innovation, it would mean we could do things, and the technology could be used properly, and it seems to that one of the key things is that of cut and paste. If you think of the potential of cut and paste, it is absolutely enormous. We are hamstrung with cut and paste, because you can't clear everything, or it's practically or economically or informationally too difficult. How can I clear this clip from the 30s, or how can I have Mickey Mouse dancing to my music that I just made, which might be a really interesting thing. How can Mickey Mouse dance with an ewok, and have Charlton Heston coming in telling them to be on their way? I might want to do that. I do love the idea of having imagery from WWI or WWII or imagery from gangster movies in the context of things. The rich imagery we have from photos and TV and film from the past, and all the rest of it is fantastic. We should be using it. It's great. Both in terms of information, and in terms of entertainment and broadening horizons. The broadband levy could, and this I think is the most important thing for me in many ways, could help to reduce the growing linguistic, ehm, hegemony of english. The language and cultural hegemony of anglophonia. I think that is really bad, I would love to hear really good Chinese music come through, and in the end it will come through, that I can bare to listen to. Chinese movies, Brazilian music. African music. There is so much richness what we don't hear, and it is all being drowned out by imitation anglo-american, more american-anglo, sort of culture. I think that to me is the big thing. If young people around the world feel that they have to sing in English in order to get a wider, global market, then that is a very bad thing in the long run. If younger people increasingly sing and speak in English, the language will die, or culture will die, like the sami culture which is only just holding on. Globally that is going to go on, slowly, if we are not careful. The cultural monotheism of english, I think is really bad. Certainly in this context of Europe we should be very vary of people not writing or singing in... One of the things happening at the moment that I find interesting is the growing availability of non-English speaking, long form video, which seems to be gathering speed. It's the richness. I don't want to hear just Americans and Brits on TV. Having Scandinavian, although not being far-away different, is good. It's a different thing. If we are getting

French and Italian things, maybe we'll start getting African soaps on British TV, or available online. It's beginning to happen, that we can get away from the dominance of national TV companies and the big corporates. It will be much more choice, too much choice, but if there is enough choice it will form itself into sections, so that it again becomes like library, so you have the history section with the British, American and European history. You have that range of things, you don't just get the top ten Dan Brown books at Starbucks, but you also have the other things. That is what is really important, is that we have the other things.

Lars Reiten: I'm guessing this is more or less from a consumers point of view, increasing cultural diversity...

Peter Jenner: Yeah, but it's also from a creators point of view.

Lars Reiten: Yeah. Practically speaking, how do you see a broadband levy helping to improve and enhance cultural diversity?

Peter Jenner: If the content is there, people will start watching and engaging with it. If we all become much more aware of each others culture it will do the world a lot of good. If I understand more about what happens in Africa and what happens in the Middle East, that will actually be better for all concerned. What are the tumults in the Middle East all about? Part of it has to do with and awareness of what we are not getting. An awareness of what they are getting in America and so on and so forth. In order to get American stuff that we like, we have to get rid our own indigenous culture, but I think you keep your indigenous culture, if you want to wear a fallos you can do all that stuff, but you could also look at other stuff and have a combination. Diversity, I mean it seems to me its about diversity, the more we see that the other is different, but like ourselves. That I think is the big bonus, as we remove or limit the fear of the other, or the prejudice against the other.

Lars Reiten: On the topic of diversity, some people could argue, if they were to argue against the broadband levy, that 30 per cent of the content on Spotify has never even been played, and just because there is a possibility, just because the catalogue is big, doesn't mean that there's an interest.

Peter Jenner: Whatever happens, the amount of stuff that is available is going to exponentially explode. Whatever happens. I think that in the broadband levy what we could be doing is that the payment will be paying for curation rather than paying for content. That I think is very interesting, because then you could have people explaining, you know, selecting, the best of Brazilian music, the best of Nigerian film, the best of, you know... These things I think could become really interesting an really positive. Iranian movies, I think there are some fantastic Iranian movie. I've never seen one, but I know there's a lot of good Iranian movies.

Lars Reiten: Well, that was the clarification I was looking for, not a specific answer, but a clarification. How could you justify it to the telcos? Why should the telcos and ISPs go along with this?

Peter Jenner: I think it's encouraging more broadband usage, so they'll get growth or charge more. It's simply gonna drive their business. I think that we are not utilizing... There should be good content for everyone, at the moment there isn't, you know, sort of stuff for kids... There'd be great to have a lots of music for old people. One of the best things, apparently, for people with dementia is music from their youth. That's not available, but it could be, but no one could be able to license it, but they could be there A lot of it's just knocking around, people could dig it out and put it up. I think that the... It might also make the... In some senses the internet's been something for young people, so in some senses tend to lock out old people. The more we go into the internet, the more it locks out old people, and the more old people feel isolated from society. In some sense I think we've gone so far we got to make it available for everyone, and we've got to make sure there is content for everyone, and we got to make sure that everyone can use it, in the same way me make sure that everyone can speak and read. We need for everyone to be able to use it, a computer to access content online. The more government uses internet to do their social services and their data collection, health service things and all the rest of it, the more everyone needs it, and we got to all get into it cuz it is coming anyway. What is happening at the moment, is that there is some things which old people can't use, and there's government data... Say we have voting online, if I don't know how a computer works, I am not gonna vote. I'm gonna be disenfranchised.

Lars Reiten: That leads me to a different question in this circumstance, as well. It's really two questions, but let's do the first one. In terms of consumers, you have Phil, 29, who uses the internet a lot, and is more literate on the internet than Mary, 84, who uses her internet connection to check her bank account, because the bank has a two quid charge if you go there physically. If you were to say that everyone has to pay, it's simple enough to justify it to Phil who watches Youtube and downloads different material, but how do you justify it at the other end of the aspect?

Peter Jenner: Well, I think we insist on water being available for everyone? We insist on electricity being available for everyone, and gas, and telephones...

Lars Reiten: So it's the utility argument?

Peter Jenner: It's the utility argument. Increasingly in the modern world you are going to need it, and to be part of society, you're going to have to know how to use and have access to the internet. In ten years time, if you suggested it is not a utility, people would laugh at you...

Lars Reiten: How do you justify it to politicians?

Peter Jenner: To the politicians?

Lars Reiten: How do you tell it to the politicians that "we want to introduce a broadband levy, could you please help us get it out there?". As you said before, no one wants to be the politician who introduces a new tax. How do you justify it, how do you say that this is the way to go?

Peter Jenner: Well, the government could pick up the tab. Some of the tab, because of using it for governmental reasons, for health, for information, for feedback on policy and all the rest of it. In some sense to be able to access the population is of enormous value, and no one queries that there should be radio, the only queries are whether it should be private radio or semi-national radio like we have with the BBC or NRK. I think you could argue that having access to broadband is something everybody should have. I think you can deal with that, I think that's a trivial issue. What isn't trivial is the idea that... It has got to be sold as a positive, so you go to remove something to give you something. I think that what you do is that you say it's reducing the cost of government, and therefore the government will subsidize its spread and will introduce it, and the government will give you basic coverage.

Lars Reiten: In terms of cultural content; if you were to put a broadband levy of cultural content, cuz that's essentially what we are talking about. Do you put a broadband levy on content, or do you put a broadband levy on the entire broadband?

Peter Jenner: I think you put in on the broadband...

Lars Reiten: But if the money goes back to the cultural content industry?

Peter Jenner: It's what people use. It's for what people use which needs to be paid for, so in other words you don't have to recycle the money back to people. Skyping their grand children in Australia, you don't have to compensate for that. If people are using it to look at films from Australia, the money should go to Australia, for people watching that film. The interesting question is what should be the rates that you charge, but then we have a similar problem with what should be charged for electricity, and we have regulators for that. I think it would have to be a regulation issue working out how... It would have to be international. I mean, it's not gonna happen straight away. How do you deal with it all? The amount of electricity we use now, versus a hundred years ago. Somehow or another, we have to accept that we are going to need to have... Find a way of paying for content online, which shortcuts the route from the end-user to the creator. At the moment, in a sense, partly the answer is that at the moment we are spending far too much money on the intermediaries. If we tidy up the intermediaries, it would probably end up being overall not the levy... I mean, for heavy users it would probably mean that they are paying less, and for moderate, medium users would be paying about the same. For light users they would be paying a little more, probably, cuz the assumption that in a way, the average use would go up, so the average payment in some ways would go up. But I think that there's all the advances of scale, as well, involved. At the moment there's a financial restriction on who can really get into the broadband game. I would like to reduce that financial restriction on the creative side, and on the content provision side. The cost thing is one of the key things, back to your thing on how do we sell it to politicians, they've got to be able to see that there is some benefit, some cost benefit of providing this additional thing. If we are just providing cheaper broadband for everybody, why?

Lars Reiten: Going back a little to the original topic in a sense, how do you think a broadband levy could be financially beneficial for the different acts in the music industry?

Peter Jenner: Well. It depends on the whole structure, but basically the computers would allocate all the money that's coming through, and it would be based on registries and on identification of use. At the moment I think that if everybody saw how much money was going to the record companies, as opposed to how much was going to the creators, there would be outrage.

Lars Reiten: But if it has the potential to bring in money, if a broadband levy has that potential, how should you distribute the money?

Peter Jenner: Well, if you know there's a revenue source, people will lend you money. If you have got a record showing that you have a thousand hits today, 2000 tomorrow, the day after you had 5000 hits, and the day after you had... Two months later you had a million hits, then people would invest in things. At the moment it's very hard to see how you can access the content without giving a lot of money to record companies who then keep it to pay themselves huge wages, and also to distraught the market and to make life

difficult. The amount of money that is involved in accounting, and in things like the discovery that the average TV or radio stations use, is being charged a 140% of what they should be paid, because of the confusion and lack of... We've got to clarify... In many ways we get the worst of both worlds.

Lars Reiten: Do you see a way where... If you said you had ten million pounds, how do think that money should be distributed?

Peter Jenner: I would allocate it according to who's watching or accessing the content, the music content. It would mainly go to the creators of that content, so therefore you would need people to decide who were the creators and what is a fair, what is the right way of allocating money. But we do find ways of doing that for radio money.

Lars Reiten: In essence you are saying that there's a base line of statistics.

Peter Jenner: Yeah.

Lars Reiten: So you would need substantial data collection...

Peter Jenner: Well, you have a, say in things like PPR (price per record), you have a different ratio on who gets what from a recording, which sort of works. You could have that similar sort of structure for video and for anything else.

Lars Reiten: Who should distribute the money, then?

Peter Jenner: In terms of music I would have all the money coming through things like PRS and PPL, for music, so that all music content would get through through PRS and PPL, and they would have the information of who to give it to, and they would be under obligations to be efficient and economical, and I would leave that to very tough regulation.

Lars Reiten: Who should give them the information?

Peter Jenner: They've got to develop the information, we have to between us all we have to develop the data. If you want to have accurate distribution, not accurate, but good and fair distribution of revenue, you've got to have a very good information on what's being accessed. If we decide that "that is one per cent of what people are watching" then what is that one per cent? Who are the people within that one per cent. You'd have to develop ways of doing it, in the same way that we developed in some way or another with copyright. Notions on how we deal with PPL, you know. It's not perfect, everyone has it slightly differently, but you don't hear a lot of complaints.

Lars Reiten: Is there a minimum that you would set for distribution, a minimum requirement?

Peter Jenner: In terms of amount?

Lars Reiten: In term who should get what, is there a minimum? Cuz...

Peter Jenner: I think the question is whether... That is another very interesting question, what would be the impact of this on the structures of the content industries, in terms of origination. I think the idea that you have someone who collects and distributes it amongst other worthy people is a pretty good idea. Collection societies are a very good idea. I think also you need to have... What does the camera man get as opposed to the musicians, as opposed to the star, as opposed to the writer... You would just have to in the course of time develop your own views on that, and come to some sort of "wisdom of Solomon", you know. It's not very fair now, that's the advantage. I would hope there would be a better distribution, more even distribution than there is now. It might be that it would be less even due to the amount of content that's coming through, and the problem of choosing it, that it may be very much a thing that is going to drive people into hits. Because of the amount the content, hits become even more important, and therefore gobble up in a higher proportion of the revenues, so I would hope that we would do our best to make sure that it's as wide... The revenues are spread widely... But at the end of the day, if people wants to watch s***, then s***'s going to be paid better than the other stuff.

Lars Reiten: Just to come back to... You have been saying a lot on the topic of cultural diversity through the interview... If you were to put money into, say a fund, some type of fund. How would you see that fund work if it were to get, say 30 per cent of the ten million quid that we already talked about. If they were to get 3 million quid to put into the fund, and distribute it into some of type of music, diversity, or some type of music fund. As you know in Norway we have a fund that gives out money to people who wants to record, and who wants to make installations, and compose music for different things. How do you see such a fund work? It might be one of those questions with a riddle wrapped in an enigma, wrapped in a...

Peter Jenner: Yes, exactly, I think it is one of those... I think that one would not want to just be driven by popularity, but it would be one of the criteria. You don't want it all driven by, sort of, art snobs, or the middle

classes, upper classes or whatever, or the masses. I think you just have to hope. In way it's like the BBC. I mean the BBC is one of the most popular radio stations, it's also the most popular classical radio station, and the most popular news station. Somehow or another... To some extent, if the flow back of money reflects the popularity or the amount of usage, then there would be some way in which that is going to be reflected. At the same time you have to have start up funds, so that, say, two per cent goes into start up funds so that people could apply. In a sense everyone should have a chance. Interestingly, I keep on talking about the art schools in England in the sixties, and what was important about the art colleges is that you didn't have to have any A-levels, any academic qualifications, you just had to have folio. You got your folio and you got into art school, and you got paid a grant, and your tuition was paid for for three years, and the you could of and be on the dole, and go of be paid unemployment benefits for several years. From that a lot of great bands started, and I think that if you have that same sort of, ehm, openness to that sort of approach, so you could go in to someone and say "look, this is what I'd like to do" and they'd give you a small grant to do it, and then if you don't do it that's alright, it's just written off, but you will find it hard to get a second grant, you might be able to get a second grant if that is also a write-off, it would be very hard to get a third grant, and then you'd be in the dumper. Equally if you make the first grant work, it is easier to get... I mean, I would reward success. I would reward good ideas, initially, and then I'd reward success of what their ideas were, in other words, what people respond to best. But not entirely. I think a bit of both. You don't have to have a single system, you could have a variety of systems. You could have the cultural fund, the art fund, the popular fund, you know.

Lars Reiten: Should there be room for commercial powers, in this sense the labels, to apply from the same fund. In Norway there was a discussion, it may have been a few years ago, that the commercial film industry does get a lot of government funding because they want to promote movies abroad, although that has changed with Music Norway a little bit. For instance Sony, or Universal or Warner can't apply for money because they have a commercial interest in it. I know from before that the labels themselves have been saying that it would be very nice if they could have some type of fund where they could apply, the commercial music industry could apply for as well, because that would mean that they could take more risk, in creating a larger portfolio, giving three or four more homegrown artists the chance to release their material, and market and distribute that. Do you think that is a valid argument? Do you think they should be able to apply for the same money?

Peter Jenner: Yeah, I don't mind that, but what I would do is making sure that you sort of ring fence that money, and you have a sort of Norwegian development thing, and it's not just used as a way of getting money from Norwegian government to promote Anglophone music. I think you can envisage things like that, and I see no reason why shouldn't have a... Why Sony Norway, who has a staff of like four people, but has a bit of taps into Sony stuff, but can apply for development money for an arts, and try to promote and market them. I don't see that that's a particular problem, but I do think you have to be careful that it is not used to just subsidize overseas stuff.

Lars Reiten: I'm actually at the last question, and it's a defining question. Is there a need for a levy on broadband? I know it is a yes/no question, but in that case why/why not, you know...

Peter Jenner: It's something we should go on looking at, I think that there is a lot to be said for it. I think that the reasons why we had levies, tape levies and so on, was a legitimate... There were good reasons behind it. I think the need to stimulate and protect cultural goods within national boundaries is important, the need to look after rich and varied new experiences is all worth while. Basically... The broadband levy as such I think could do something if it was used properly, whatever that is. However that is. If it was used in a positive way with a positive mission. If all it is is a way of getting money, it's not really very interesting, but if it's a way of enriching, if it could be used to enrich, the social and cultural experience of the people, and perhaps a political experience and all those other positive things, then, absolutely, I think it is a good idea. I think it's a question of how it is set up. If it's set up in such a way that all it means is that the money goes through multinational corporations, then let's not bother. At the moment, if it meant that there's a better chance of people getting their music and their works, their creative work, out to the public and being seen and being made, and there's a way for it to be promoted and new things can happen, then yes, it's great. Is it necessary? No. Is it desirable? If it's done in a way, you know... If you could say what is desirable and you can then structure a system which is likely to generate that, then that's a good thing. I think that one should also be very careful of, and very mindful of the reality, and the law of unintended consequences. So whatever you do, it should be constantly under review. I think it's very interesting to see how much the lottery fund in the UK has done to help museums and the cultural life in the UK and various things like that. I think these things can help. I think you just have to be very mindful of it, and keep it very open and under constant review, you know... Ehm... To have... I think, in a way, my view is that the digital world is going to be fundamentally different, and that we have to think about how we make it work. And... Ehm... That... You know... Has the government subsidized electricity? I'm sure they have. Have they subsidized developing water. I mean... Might the broadband levy sort of seize to exist after a bit? Quite likely. Enough money would be coming

through, then you could as it were, you know, just tax the beneficiaries of the broadband levy, so that it doesn't hit the consumer. Ehm...What was the question again? (*laughs*)

Lars Reiten: Is there a need? And a base for that matter, for a broadband levy?

Peter Jenner: I don't think there's a need, I think it's a good idea.

Lars Reiten: Is it a base for it, though?

Peter Jenner: I think it's a good idea, and, as it were, it changes the game, and makes us to think about what we should be doing with the internet. I think the internet has got so much possibilities, and is being so under-utilized, you know, in a positive way, a creative way. I think a broadband levy as a way of stimulating things should be used. Is it the answer to everything? No. But, I think it's something that's worth thinking about. I think it's something we have to think about. I mean, that's why I'm trying to get (?putting?) about copyright. What is copyright in the digital age? I don't think that the idea of having to get everybody's permission and all that stuff, that's obviously nonsense. That's one of the things copyright does, that you have to get everybody's permission, is that in fact once people die it becomes impossible to clear their stuff. It becomes increasingly impossible in regards to, sort of, big whatevers. They may have an estate that can clear it, but then you have a situation where you get these complete block head people controlling estates. I think it's the, probably from Roger (*Wallis*) was it? I think it was (?*Berlioso*?) or someone, or someone else, who was gay and had his boyfriend, and married his boyfriend, and then he died and everything was left to the boyfriend, and then the boyfriend got another boyfriend, and he had, you know... So you ended with someone who had nothing to do with the music, controlling the content...

Lars Reiten: Yeah, ehm, the plumber nephew of... yeah...

Peter Jenner: Yeah, the plumber nephew of the great uncle... Is controlling an estate and deciding whether *Berlioso's* music can be played or not. To me that is ridiculous, and the idea of working what to with the money that you distribute from having such a long life of copyright is that you great grand children getting money to the estates, which I mean, it's ridiculous. What advance is that? The guy who's music is being used has been dead for fifty years, and yet money are still flowing through to him, which would be much better of going to the money of current artists. I wish I had the answers...

Lars Reiten: Well that's what I'm gonna try to figure out, I guess.

Peter Jenner: Well, I think you shouldn't try to figure out the answer, I mean what you can help do it to point of some of the possibilities and some of the possible dangers. But I think we are coming from a position that isn't great. That's the positive, is that we are not in a position where it's an ideal world. A lot of money is not getting through to the creators. Too much money is going through to the middle men, and it's far too hard to open a new digital service using music because of this. That is something that we should definitely think about.

Lars Reiten: Any other things that we haven't touched upon that you have been burning to bring into this conversation?

Peter Jenner: No, I just think that things should be available. Stuff should be available. Free, and, you know, and... If we use a lot we should pay for it. Who knows... I think the BBC is a fantastic model... And I suspect that even the NRK is, although smaller. Most of the best music in Norway is off of the NRK, isn't it?

Lars Reiten: They do OK I think. I mean, there's always going to be different opinions.

Peter Jenner: Yeah. They have to respond to social unrest in some senses, in other words, if they're just playing classical music and there's no pop music, like there was in England, then the pirate ships came on, and they thought that "we better have radio One!", you know. I think we have to respond with the mood of the time and the feelings of the people. At the end of the day there is some sort of political obligation...

Lars Reiten: To summarize the findings, there are a lot of findings... I have to go through the recording... We clocked in on 90 minutes, more or less. I am going to stop the recording now...

Lars Reiten GOES THROUGH THE REST OF THE INTERVIEW GUIDE WITH *Peter Jenner*. (SEE INTERVIEW GUIDE FOR DETAILS)

Total interview time: app. 1hr 29min

Cathrine Ruud

Intervju med Cathrine Ruud, Musikkforleggerne. 29 februar 2016, via Skype.

(Tilsendt hovedspørsmål på forhånd etter forespørsel.)

INTERVJUET STARTER MED AT *Lars Reiten* GÅR GJENNOM INTERVJUGUIDEN MED *Cathrine Ruud*. OPPTAKET STARTER I DET SAMTYKKE FOR OPPTAK HAR BLITT INNHENTET.

Lars Reiten: Jeg tar det første først, jeg. Hva tenker du når du hører uttrykket bredbåndavgift?

Cathrine Ruud: Ja... Jeg er jo litt sånn... Jeg kommer sikkert til å spørre mange spørsmål tilbake også. Det jeg lurte på da er hva man tenker sånn utfra ordets betydning, eller om det er uttrykket... Ja... Jeg kan jo si litt da... Sånn i ordets betydning er det at det setter fokus på en avgift på bredbånd, at det skal koste noe å ha tilgang til bredbånd. Jeg vet jo hva det er, men det er jo ikke bare tilgang til et bredbånd, men en ekstra avgift på bredbånd, i tillegg til det man allerede betaler for et internettabonnement. Samtidig så gir det assosiasjoner til skatt, avgift, altså, det er et negativt ladet ord. Også forbinder jeg det også litt med kassetavgift, og litt de gamle begrepene der. Det er vel det jeg tenker, altså, at det er et litt negativt rettet ord.

Lars Reiten: Hvis du går litt vekk fra ordet i seg selv, men den underliggende betydningen av ordet, har du noen tanker om det? Du var jo litt inne på det.

Cathrine Ruud: Ja, det at det skal koste noe ekstra å ha tilgang til bredbånd? Det var litt det jeg hadde tenkt å høre med deg om. Jeg har lest litt om dette, men jeg synes det er litt vanskelig å, altså, å forstå... Jeg skjønner veldig godt hvorfor man legger på en avgift, men, litt, hva får man tilbake for det. Hva slags fildeling er det snakk om? Er det da fri tilgang til ulovlig nedlasting, ulovlig fildeling, eller er det fildeling, for det er bare snakk om en avgift for at man får tilgang til, eller at bredbandleverandørene har tilgang til innhold som produseres? Jeg synes det er litt vanskelig å forstå hva det er man... Hvordan dette innholdet utnyttes, da. Skjønner du hva jeg mener?

Lars Reiten: Ja, jeg kan jo ta litt om det jeg vet så langt. Fra tidligere så har dette vært tenkt som en avgift for å kompensere for ulovlig nedlasting, men så viser jo statistikken i dag at ulovlig nedlasting i form av torrents og P2P innenfor musikkbransjen, er iallefall i Norge ikke et spesielt stort problem lenger.

Cathrine Ruud: Ikke sant.

Lars Reiten: Det er på en måte litt den gamle modellen, også har jeg tenkt på om det er mulig å finne en ny modell, er det mulig å hente inn penger fra noen, for ikke å nødvendigvis kompensere, men være med på å finansiere...

Cathrine Ruud: Ja, skjønner hva du mener, men da tenker jeg litt på, hvorfor det? Skjønner du hva jeg mener? Hva er det man får igjen? Jeg skjønner veldig godt det at hvis man kan laste ned ulovlig, så gir det mening å betale en avgift for det, men... Det er jo så mye innhold som er lisensiert og regulert på nettet allerede, så jeg får ikke helt tak i hva slags innhold man da skal betale for, da.

Lars Reiten: Nei, og det er jo, uten å svare på det spørsmålet, så er det på en måte det jeg tenker at jeg at er den inputen jeg vil ha. Det rundt hva en skal betale for. Jeg har jo ikke noen ambisjoner om å si at dette er... Altså, i ytterste konsekvens så hadde jo ambisjonen min vært å si at dette er alle meningene, dette er hvordan man løser det, slik skal modellen være, kjør på.

Cathrine Ruud: Ikke sant.

Lars Reiten: Så tenker jo jeg at jeg ikke tror jeg kommer frem til det. Det kan jo tenkes at, som jeg også sa til Knut Bøhn i Phonofile, at jeg skriver 70 sider om dette, også lander jeg på at svaret er nei. Bruke 70 sider for å beskrive hvorfor svaret er nei. Men det er en tanke rundt det at det er en tidligere forsøkt ting som man har snakket om, og som man har tatt inn i noe politikk, gjennom De Grønne i Tyskland som har tatt dette inn i EU-programmet sitt i 2011 eller 2009, jeg husker ikke helt. Men så har hverdagen for innholdsindustrien endret seg fra CD-alderen via en sånn «lete med lys og lykte»-periode i 10 år fra starten

av 2000-tallet, også har man funnet et svar som alle er sånn tålelig greit tilfreds med i dag. Det er betraktningene rundt om det er noe vits i, hva man skal kompensere, jeg ønsker, og jeg håper jo det er det vi kan se litt på, da...

Cathrine Ruud: Jammen, den er grei.

Lars Reiten: Så skal ikke jeg svare altfor mye på det, for da går jeg litt utover den forskergreia rundt at jeg skal lytte...

Cathrine Ruud: Det skjønner jeg.

Lars Reiten: Hvis man sier at dette forslaget er introdusert i ca 2005 og at man har diskutert det de siste 10-15 årene, pluss/minus, hva tror du er årsaken til at vi ikke har en slik type avgift på bredbånd i dag?

Cathrine Ruud: Ja... Det er jo litt vanskelig å spekulere i det... Men utifra hva jeg har lest om det så synes jeg det virker som om konseptet er altfor vagt til nå, og det er jo litt de spørsmålene jeg hadde i stedet et bevis på. Jeg synes i teorien at det er en veldig god idé, og det er jo veldig mange som har slengt ut forslag om det, og alle virker som om enes om at det er løsning på noe, men at det virker litt for vagt, sånn gjennomføringsmessig. Det virker ikke som om det har vært så veldig mange forslag på hvordan det skal gjennomføres i praksis, det har vært mer spørsmål rundt det, og mer konkrete forslag, og ikke så mange løsninger, synes jeg. Også er det det at det er et veldig betent område, den klassiske diskusjonen mellom hensynet til forbrukerne og de som skaper musikk. Hvor går grensen for hva som er en rimelig balanse mellom disse to, og det er jo det man i de 10 årene har prøvd å finne ut av, og som man fortsatt strever med. Det er fortsatt for mange uløste spørsmål rundt det. Det er bra du skriver om det, for jeg synes ikke det virker som om det er så mange konkrete forslag til hvordan det kan gjennomføres.

Lars Reiten: Og det er jo fint, for mye av det som har kommet opp rundt dette her, og det har du sikkert lest litt om... Litt av feedbacken jeg får når jeg snakker om dette er at jeg blir litt sånn fildelingshippie, og at all informasjon på nettet skal være fri og sånne ting, og det er jo ikke mitt beliggende i det hele tatt. Tankegangen er jo, som du sier, at man har diskutert det så mye og aldri funnet en løsning på det som er god nok for alle.

Cathrine Ruud: Ja, ikke sant, det er vanskelige hensyn å diskutere rett og slett, så jeg tror ikke det er noen som kanskje har... Det virker ikke som om det har kokt ned til noe, egentlig. Man har slengt ut et forslag, som er godt i og for seg... Ja... Det er vel egentlig det jeg tenker rundt det.

Lars Reiten: Hvordan tror du en bredbåndavgift kan fungere som et supplement til en allerede eksisterende struktur i musikkbransjen? Jeg tenker at det på en måte er der en må starte, for mange av de forslagene som har vært har gått på å rive opp en struktur og bygge det hele opp på nytt igjen, og det å gjøre store strukturendringer er jo ofte en krevende prosess...

Cathrine Ruud: Ja... Jeg var litt sånn usikker på hva man mente med spørsmålet... Jeg tror jo det kan fungere som et supplement, dersom det gjennomføres på en god praktisk måte. Jeg ser vel ikke at det nødvendigvis må erstatte noe annet, eller at det ikke passer inn i den strukturen som allerede er der. Jeg får litt assosiasjoner til privatkopieringsvederlaget, at det er litt i samme bane som det.

Lars Reiten: Tror du at en sånn bredbåndavgift kunne erstatte privatkopieringsvederlaget?

Cathrine Ruud: Nei, det tror jeg ikke, for det er jo to helt forskjellige... Eller, det er jo på en måte ikke det, men...Ja, nei, det har jeg faktisk ikke tenkt helt på, men... For privatkopiering... Ja, det er litt sant, hvordan de går litt inn i hverandre, men nei, jeg ser vel ikke at det kan erstatte det, nei, det gjør jeg ikke. Jeg tror det må være strukturert på en litt annen måte enn det det er.

Lars Reiten: Hvordan da, tenker du?

Cathrine Ruud: Nei, jeg er litt usikker på det. Jeg ser vel egentlig at det kan kompenseres på samme måte. Jeg tenker litt på Norwaco som allerede utbetaler vederlag for privatkopiering, at de er en naturlig instans for å kunne fordele disse pengene, men om det erstatter det, det er litt vanskelig å svare på. Det har jeg vel ikke tenkt sånn umiddelbart, nei.

Lars Reiten: Jammen, det... Det er fint... Hva tror du fordelene ved å kunne introdusere en sånn avgift kunne vært?

Cathrine Ruud: Ja... Fordelene er jo fra vår side at det kunne løst en del problemer. Det er igjen hva er fildeling, hva er innhold på nettet? I vår forening så jobber vi veldig mye med... I disse dager har vi det vi kaller en internettkampanje, hvor vi har kartlagt... Altså det er også ulovlig å legge ut grafisk, altså noter eller tekster på nettet, og tilgjengeliggjøre det åpent på internett, så vi har hatt en del runder hvor vi har sendt ut brev til diverse aktører, alt fra bedrifter, foreninger, barnehager, blogger og lignende, som har lagt ut dette ulovlig, hvor vi prøver å fjerne det. Det er lang prosess, og man vil aldri få bukt med det problemet, eller ryddet opp i alle de nettsidene, så jeg vet ikke om det også er noe som kunne vært inni dette her da... En slags kompensasjon for opphavsmennene bak dette, og ikke bare film og lydfiler. Sånn sett hadde det løst et stort problem for oss, på den måten. Det bør være en rimelig kompensasjon for opphavsmenn, ihvertfall hvis det er snakk om ulovlig nedlasting, en kompensasjon som ikke har vært tilstede tidligere, at det hadde løst et veldig... Problem... Forbrukerne, hvis det er snakk om ulovlig nedlasting, men også ellers, at de kan laste ned på en rettferdiggjort måte, uten dårlig samvittighet, uten straffeforfølgelse eller straff. Og hvis det er individuelt fordelt så vil det gi en veldig god kompensasjon for den direkte ulovlige nedlastingen som foregår. Også... Altså, som du sier, så er ikke ulovlig nedlasting et så stort problem i Norge som det var, men den kampen mot det er uansett vanskelig, selv om strømming nå har begynt å ta over. Det er en veldig enkel løsning på det problemet, hvis det er snakk om ulovlig nedlasting. Det vil kunne sikre at det som skaper musikk får mer penger å rutte med, mulighet til å skape mer musikk, kunne leve av det de gjør, sikre norsk kultur, altså norsk-språklig produksjon, og at de vil da få rimelig betalt for det de gjør. Det er en slags rettferdighetsans over det, vil jeg si. Prinsipielt så er det en god idé for rettighetshaverne. For forbrukerne... For det jeg tenker er jo at selv om det er bredbandsleverandørene som skal betale for dette, så vil jo den prisen ultimativt gå tilbake til forbrukerne.

Lars Reiten: Erfaringen viser vel ofte det, ja...

Cathrine Ruud: Tradisjonelt så... Men, selv om det kan virke som en straff, så er det kanskje et mer imøtekommende forslag enn det å straffe og bøtelegge... Det er et forslag på en løsning, et kompromiss. Et forslag som kan gavne begge sider. Det er veldig enkelt og forståelig, og det er litt det forbrukerne trenger, noe lett å forholde seg til, men da må det også være velargumentert og godt begrunnet hvorfor man skal gjøre det. En fordel... Men det kommer litt an på det spørsmålet rundt hva de får igjen... Hvis de får igjen... Altså, enten det er å benytte seg av ulovlig nedlasting, så får de noe igjen på den måten, og at det er da uten dårlig samvittighet, som jeg sier, men hvis ikke blir det litt vanskeligere fra forbrukernes side.

Lars Reiten: Jeg skal foregå... Det er egentlig et bispørsmål på det neste spørsmålet som har litt med ulemper å gjøre, men du var så inne på det, at jeg bare skal foregå det bispørsmålet. Det er den tematikken, som mange nevner er litt av problemet med dette, at det å gi en sånn kompensasjon i ytterste konsekvens kan føre til at folk tenker at sånn teknisk sett, så kan vi bare, som du nevner rundt noter, at da kan vi bare legge ut noter, for vi betaler for dette her.

Cathrine Ruud: Ikke sant.

Lars Reiten: Tror du det finnes en måte å unngå den problemstillingen på?

Cathrine Ruud: Ja, at de... Ja at det ikke skal bli sånn fritt bruk av alt mulig rart?

Lars Reiten: Mhm

Cathrine Ruud: Det er et veldig godt spørsmål. Det må jo være veldig tydelig når man betaler den ekstra avgiften hva den går ut på, hvordan det skal skje, men det vet jeg jo ikke helt. Det må jo være visse kriterier eller retningslinjer for denne avgiften. Hva skal den inneholde, rett og slett, men mer detaljer enn det, vet jeg jo ikke, tror jeg.

Lars Reiten: Nei, litt av grunnen til det spørsmålet er jo at når dette har vært foreslått tidligere, så har blant annet IFPI vært ute å sagt at dette i ytterste konsekvens legaliserer det å bruke opphavsrettsbeskyttet materiale enten ulovlig eller ulisensiert. Det sier på en måte at «eg betaler en avgift, så da kan jeg, enten det er en krone, fem kroner, femti kroner eller hva det nå er, så kan jeg per definisjon finne noter til et helt musikalsk Arne Nordheim-verk, for eksempel, og spille med kvartetten min...

Cathrine Ruud: Det er en ulempe ved det, hvis det ikke er det som er meningen. Så jeg er helt enig i at det er en ulempe. Men måter å omgå det på, det skjer jo uansett, også har vi jo lover. Åndsverksloven forhindrer jo det fremdeles hvis ikke man gjør om de lovene til å kunne passe en sånn avgift, så det er jo en måte å unngå det... Altså, det vil jo ikke fortsatt være noe mer lov, hvis ikke det presiseres eller endres sånn sett, da. Så vil jeg også... Det har jeg satt som ulempe... Det vil være en legalisering av brudd på opphavsretten. Det er litt det... Du sa jo det at tidligere så var det det som var involvert i forslaget, men det er det jeg også lurte litt på da, de sidene der, hvor langt en går der.

Lars Reiten: Tidligere så har for eksempel EU foreslått, rundt det jeg kaller kulturflatrate, for det er det det har hett i politisk øyemed i sin tid, så har de foreslått at man betaler en fast, men frivillig avgift hvor en kan laste ned via ikke-kommersielle fildelingsaktører, også kan man dele dette med sine femti nærmeste venner, for eksempel. Så kan man alltid diskutere om det er veien å gå, det er nok ikke det nå lenger, uansett, men om det var en veldig god idé i sin tid kan man jo alltid diskutere. For å være litt uhildet et øyeblikk, så har vel jeg landet på at det er en veldig tungvint og ikke spesielt formålstjenlig måte å gjøre det på.

Cathrine Ruud: Nei, Tyskland er jo i en litt annen situasjon enn oss, også, så kanskje det...

Lars Reiten: Ja... Men så er det jo som du sier... Det er dette jeg er litt ute etter, om man skal innføre en bredbåndavgift, kan man gjøre det uten å gå på akkord med de tingene som allerede er i åndsverksloven?

Cathrine Ruud: Ja, ikke sant. Nei...

Lars Reiten: Det er som du nevner her, at det kan man jo, såvidt jeg forstår.

Cathrine Ruud: Kan du ta det en gang til?

Lars Reiten: Hvis man innfører en bredbåndavgift, kan man gjøre det uten å gå på akkord med opphavsrettslovgivning?

Cathrine Ruud: Ja... Men da må det jo være veldig tydelig hva den skal innebære. Da går det jo ikke å ulovlig nedlaste, da må jo lovene endres.

Lars Reiten: Har du noen flere, du var litt inne på det, men om du har noen flere ulemper?

Cathrine Ruud: (ler) Jada, jeg har mange ulemper... Det er litt det jeg sa isted, at det er masse ubesvarte spørsmål rett og slett. Du skriver jo ulempene ved å introdusere det, så det er jo litt i forkant av en introduksjon, men... Også skal det være frivillig? Hvem skal betale? Hvordan det praktisk gjennomføres og sånne ting. Hvis det skulle vært frivillig, hvor mange ville gått med på det? Hvis alle skal betale kan det bli sett på som en slags kollektiv straff, at ikke alle benytter seg av internett på samme måte, og i like stor grad. Ja... Det er litt sånn at det kan hindre litt innovasjonen på gode løsninger, det kan fremstå som en litt lettvinnet løsning kanskje. Man ser jo at ved å innføre andre gode løsninger så hindrer man ulovlig nedlasting, for eksempel, hvis det er tilfellet, mens her gjør man på en måte det motsatte, man går litt i feil retning, kan man si. Også er det jo spørsmålet rundt hvem som skal kompenseres, hvordan skal fordelingen foregå, og det at det er forbrukerne som må betale prisen i ytterste konsekvens, mest sannsynlig. Så er det dette med åndsverksloven, at det kan være litt vanskelig, utifra det vi snakket om, eneretten kan man jo ikke gjøre noe med, altså det vil være en litt sånn sell-out av rettighetshaverne, kanskje, og noe man har kjempet for i veldig, veldig lang tid. Også kan... Det kommer litt an på hvordan dette skal måles, altså hvordan man skal innhente informasjon, og hvordan... Hvordan kan man innhente informasjon for å vite best hvordan dette skal fordeles videre. Da kan jo personvern hensyn komme inn. Sånt er ikke jeg så veldig god på, hvordan man skal registrere dette, men det kan være et problem. At det kan være sånn overvåkningsfølelse over det. Også... Så er det dette med at, litt sånn sell-out av rettighetshaverne på en måte...

Lars Reiten: Hvordan da?

Cathrine Ruud: Nei, da går det jo på dette med ulovlig nedlasting da, at hvis de går med på... Ja... Det går i motsatt retning av hva man kanskje har prøvd å forhindre de siste 10-15 årene da. Også... Hvis det legaliseres, så kan det gå på bekostning av gode løsninger, som sagt, at man går litt tilbake. Så vet jeg ikke om det er så veldig, den balansen mellom forbrukerne og rettighetshaverne, om det er en god nok årsakssammenheng, er jeg litt sånn usikker på. Om dette er en logisk måte å gi tilbake penger til rettighetshaverne på. Om den er lett å forklare, og godt nok argumentert, er jeg litt sånn usikker på. Og det

forholdet mellom forbrukerne og rettighetshaverne er allerede ganske konfliktfylt, hvis du skjønner. Jeg tror kanskje... Så er det litt problematisk at internett er noe man... Det er på en måte en slags rettighet det også, det er kanskje ikke en menneskerettighet, men det å ha tilgang til internett og det å blandet inn det her der, kan sees på som en liten ulempe da. Ja... Også hva slags innhold er det som skal kompenseres for? Hvor skal det stoppe? Det er jo så mye innhold, det er jo så mye mer enn musikk og film. Det er jo så mye grafisk, som jeg sa, journalistisk innhold, alt mulig rart, og hvordan skal man fordele dette, hvordan skal man sette en pris på hva som er mer verdt? Også kan det skade den normale utnyttelsen av verket, og det er vi veldig opptatt av. Det er derfor vi saumfarer litt internett og sånt. Vi har jo også noteforlag som gir ut bøker og lignende, og det er ekstra skadelig for dem når det havner på internett for det er så utrolig lett å kopiere opp, bare en sang, for eksempel, som man kan finne i en notebok. Noteforlagene har ikke vært så raske på banen som Spotify og de andre, til å lage et system for noter, tekster og lignende. Man har ikke det, så det vil kunne skade... Selv om man vil få en økonomisk gevinst av det ett sted, så kan man tape på en annen måte, hvis du skjønner. Så er det litt med dette som jeg sa at det oppleves ikke så veldig innovativt, eller, det kan virke som litt rask løsning og en litt defensiv løsning, holdning, at man kan... At forbrukerne og musikkbransjen generelt nå er ute etter mer originale, velargumenterte, innovative løsninger. Også... Ja... Ja?

Lars Reiten: Nei, jeg tenker at det er masse ulemper, så det er godt å få det på bånd også. Det er masse ulemper ved dette, og det er jo det jeg skal prøve å finne ut av, om man kan få noen svar på de...

Cathrine Ruud: Det er fordeler også, men de er kanskje... Det er jo sikkert det som er litt av greia med at det har tatt ti år også da, at det er lettere å finne ulempene... Men det gjelder generelt med mange ting. Folk er veldig kritiske, og det er veldig mye lettere å finne ulemper ved ting enn å se løsningene.

Lars Reiten: Ikke sant, og fordelene sett opp mot alle ulempene, så er jo fordelene i hovedsak en økonomisk vinning...

Cathrine Ruud: Ja... Og som... Som leder av en organisasjon som beskytter rettighetshaverne, så er jo det en veldig stor fordel, absolutt, det er det. Hvis det er for ulovlig nedlasting, men også annet, så er jo det noe man ikke har fått kompensasjon for tidligere, så det er jo absolutt en stor fordel, og noe som ville ha løst veldig mye for rettighetshavere og opphavsmenn.

Lars Reiten: Ut fra det jeg har funnet ut, så kan det nok tenkes at det har noe for seg. Jeg så litt på tallene fra Fond for Lyd og Bilde med den gamle kassetavgiften, og fra de fikk inn penger fra kassetter til dagens statlige overføringer, så er faktisk summene de har å dele ut bortimot halvert. Det er jo derfor jeg lurer litt på om det kan ha noe for seg.

Cathrine Ruud: Det tror jeg absolutt, men det er viktig at noen tar tak i det på en ordentlig måte, og nettopp ser på litt mer av detaljene i det. Nå virker det jo så diffust og vagt.

Lars Reiten: Det er masse bra input her, og du nevner masse jeg skal spørre om senere, så jeg går litt videre (ler..)

Cathrine Ruud: (ler...) Ja, men det er bare å...

Lars Reiten: Hvis man skulle begynt å snakke om eller introdusere en bredbåndavgift i dag, hvordan ser du for deg at den kunne fungert? Da tenker jeg litt... Du har jo vært innom noe av det, men hvordan kan man for eksempel finne en struktur for hvem som betaler hva?

Cathrine Ruud: Da er jeg litt usikker på hva du mente... Hvem som betaler hva? Tenker du da på valgfriheten rundt det, eller om det er bredbåndbrukerne, eller hva...

Lars Reiten: Ja, det er to ting, og hvis det da eventuelt er forbrukerne, gjør man det da ut fra en fast avgift, gjør man det ut fra tilkoblingshastighet, kan man måle antall nedlastinger, eller finnes det en annen type løsning, kanskje?

Cathrine Ruud: Jeg tenker kanskje at en sånn flat rate er det enkleste å forholde seg til, men samtidig så er den mest rettferdige måten vel at man ser på hvilke opphavsmenn, eller... Hvem som er berørt, hvilke innholdsleverandører som er berørt, og at man i så stor grad som mulig individualiserer vederlaget. Det vil jo si at man registrerer hva som... Men hvordan, det vet jeg virkelig ikke... Om da forbrukeren skal betale

mer for at man bruker mer, benytter seg av mer? Det er jo det mest rettferdige, absolutt, men om det er gjennomførbart, det vet jeg ikke.

Lars Reiten: Jeg har på en måte skissert tre modeller rundt dette. Sånn som jeg ser det, bare for å gjøre det litt enklere å se sammenhenger, så finnes det på en måte tre forskjellige modeller her. En flat rate, en flat avgift på 1 kroner, 5 kroner, 50 kroner, hva det nå enn måtte være, også kan du gjøre det utifra tilkoblingshastighet, for erfaring tilsier at jo bedre bredbånd du har desto mer interessert er du i å laste ned. Eller så kan du gjøre det utifra antall nedlastinger, og noen mener at det kan måles veldig greit og godt. Bruk. Og at bruk og hastighet ikke nødvendigvis har noe med hverandre å gjøre, at du kan ha en hundre megabit-linje selv om du bare streamer fra Spotify og sjekker nettbanken.

Cathrine Ruud: Jeg synes ikke det med hastighet er en spesielt god idé, det blir altfor mye basert på antakelser og lignende. Flat rate er kanskje den enkleste, men også kanskje den mest urettferdige, for den tar i hvert fall ikke hensyn til hvem som gjør mest, og hvem som ikke gjør noe i det hele tatt. Det blir litt sånn kollektiv straff igjen, over det hele. Da tror jeg den tredje modellen kanskje er det som virker mest fornuftig, hvis det er lett å gjennomføre, og personvern hensyn og anonymitet og alt sånt ivaretas.

Lars Reiten: Hvordan kan rettferdiggjøre en sånn type avgift til de som er involvert? Du har jo vært inne på det tidligere, men da tenker jeg på forbrukere, rettighetshavere, politikere - for det må jo noen vedtak gjennom her, for å få det til på et eller annet vis - og for eksempel internettleverandører.

Cathrine Ruud: Ja... Altså... Rettighetshaverne er det vel kanskje enklest å selge det inn til. De får et vederlag som de ikke har fått tidligere. De vil få mer penger å bruke til å skape ny musikk, men så har man jo også det som jeg sa litt isted, at hvis det blir sånn at ulovlig nedlasting i prinsippet legaliseres, så er det kanskje litt vanskelig å selge inn til rettighetshavere. Og hvertfall... Det kommer også litt an på fordelingen, hvordan man skal selge det inn og argumentere for det, for hvis det er snakk om at man oppretter et fond, individuell fordeling, så kan det føles veldig urettferdig at man går med på en sånn løsning om man ikke får tilstrekkelig igjen for det. Men sånn i utgangspunktet, så er det vel ganske lett å selge det inn til rettighetshaverne, at det skal være en kompensasjon for deres skapende innsats, rett og slett. Forbrukerne... Ja... Det kommer helt an på hvilke forbrukere du snakker med, tenker jeg. Bruker de innhold mye? Hvis de ikke gjør blir det jo helt... Ja... Hvis man har den registreringsmodellen, og man registrerer ingenting så er det kanskje fint, men hvis det er sånn at de kan laste ned så mye de vil, ulovlig og lovlig, så er det også kanskje lett å argumentere for. De trenger ikke bekymre seg for straffeforfølgelse. Det er en veldig enkel løsning for alle parter, så vil det jo være lett å... Det kommer jo litt an på hvordan man argumenterer for det, men de vil jo måtte skjønne at dette er for det beste for rettighetshaverne også. Det er et slags kompromiss da, vil jeg si. Det kommer helt an på hvordan løsningen blir, for alt dette her, egentlig. Og for internettleverandørene... De får penger for at... De tilbyr noe til kundene, men det er på en måte kun tilgangen til innholdet, det er jo innholdet som er interessant for forbrukerne. Noe er jo også hvor raskt det er, og alt det der, men uten innhold så er på en måte bredbåndsleverandører ikke verdt så veldig mye. Da er det kanskje naturlig at de er med å bidrar, tenker jeg, selv om jeg synes det er litt... Jeg har litt problemer med årsakssammenhengen der, egentlig. Og politikere... Det er jo bare å se på... Altså, strømmetilbud og sånt i dag, det er jo en god løsning, men de fleste er jo ikke fornøyd med det, det gir jo ikke en god nok kompensasjon til alle norske musikere. Man ser jo at norskandelen på strømming er nede på 12 prosent eller noe sånt... Det er veldig lite som går igjen til norskprodusert innhold da, og det ser man jo også på film og lignende, så for å bevare at produksjonsnivået kan holde seg høyt og at flere folk kan leve av det, så trenger man nye ordninger for å beskytte dette. Det er jo noe de bør være interessert i å ivareta.

Lars Reiten: Bare et litt oppfølgingsspørsmål. Du nevnte litt med forbrukere og det at de på en måte får en mulighet til å ikke være forfulgt hvis de laster ned ulisensiert innhold. Tror du det er veien å gå, eller tror du, sånn vi snakket litt om tidligere, at en på en måte kan... For å stille spørsmålet på en litt annen måte, med bakgrunn i det. Må man ha en bare en tanke i hodet, eller går det an å ha to tanker i hodet samtidig, i den forstand at man også ivaretar opphavfolkene, i den forstand? Det var litt upresist stilt...

Cathrine Ruud: Ja, jeg vet ikke helt om jeg skjønnte det, men jeg synes ikke det er noen god løsning at de betaler en avgift, også legaliseres... Det synes jeg ikke er en god løsning.

Lars Reiten: Da misforstod jeg deg, kanskje...

Cathrine Ruud: Ja, jeg prøvde bare å sette meg inn i forbrukernes hode, at de kan laste ned så mye de vil uten å tenke på straffeforfølgelse, eller lignende. Men jeg synes ikke det er noen god løsning, jeg er jurist

også, så jeg synes ikke det er veien å gå i det hele tatt. Ulovlig nedlasting. Så når jeg svarer på det så er det at jeg forsøker å sette meg inn i...

Lars Reiten: Ikke sant. Da skjønte jeg hvor du kom fra. Jeg skulle bare klargjøre at jeg ikke hadde noen i Musikkforleggerne, som sa at «ja, de kan bare laste ned» (*ler...*)

Cathrine Ruud: Ikke sant. Nei overhodet ikke, jeg prøvde bare å sette meg inn i... Jeg er litt sånn usikker på denne modellen, for jeg har lest litt, og i mange står det at man skal kunne, eller man er for en sånn fildelingsløsning og en kompensasjon, men så står det at det ikke må skje i strid med åndsverkslovens bestemmelser. Så det var litt mitt originale spørsmål, om hva slags innhold er det da som er igjen. Hva får man igjen får det, da? For å betale en sånn avgift.

Lars Reiten: Det er et godt spørsmål. Jeg skal ikke legge noen føringer, men jeg skal være så direkte å si at jeg tror ikke det er mulig...

Cathrine Ruud: Nei, det er det jeg også ikke helt skjønner, så da er jo det eneste alternative ulovlig nedlasting, at det legaliseres... Altså, det legaliseres jo ikke, for endringer må jo til, men det er jo en tenker ved en slik avgift sånn umiddelbart, enten det er nedfelt i retningslinjene at det skal være sånn, eller at en endre lovene på det, eller at det er psykologisk, at folk vil tenke sånn ved å betale en avgift.

Lars Reiten: Hvordan kan en avgift være økonomisk gunstig for de forskjellige aktørene i musikkbransjen?

Cathrine Ruud: Ja... Det kan jo være, hvis man får inn et stort vederlag, så vil jo det naturlig... Det kommer helt an på hvordan det vederlaget innhentes, hvor stor potten er, hvordan det skal fordeles. Om det er gjennom stipender, fond, individuell fordeling. Hvordan er det man merker det? Så er det jo selvfølgelig litt de forskjellige modellene du nevnte i stad, hva skal avgiften være på, hvordan skal man... Det kommer an på dette om det er ulovlig nedlasting man snakker om eller ikke. Det har man jo ikke akkurat fått noe penger for tidligere, men kanskje vil det øke ulovlig nedlasting, og slik gå utover normal utnyttelse av innholdet. At man betaler for det på en annen måte. Så... Jeg vil si at strukturen for hvordan dette fordeles vil ha mye å si for hvor økonomisk gunstig dette vil være. Men at enn avgift... Den vil jo være et vederlag man ikke har sett tidligere, og således vil det jo være gunstig uansett, men det er bare et spørsmål om hvor mye.

Lars Reiten: Ikke sant. Du ledet meg så elegant over på det, så da går jeg over på neste spørsmål om distribusjon, og hvordan disse pengene kunne blitt distribuert. For å bare ta litt bakgrunnstall for det, så det kan være litt lettere å se hvor mye vi kan snakke om. Jeg gjorde et regnestykke for å se om det hadde noe inntjeningspotensiale, og hvis du tar inn en krone per abonnement i Norge, på bredbånd og mobilt bredbånd, det er da alle som kan koble seg til 4G, så har du ca åtte millioner bredbåndabonnement i Norge, fordelt på to millioner kablet og cirka seks millioner mobilt. Om du da bare setter en krone og det er tolv måneder i året, så har du nesten hundre millioner kroner i året.

Cathrine Ruud: Ja, og det er jo betydelig, og veldig, veldig bra. Men da er det en flat...

Lars Reiten: Da er det en flat rate, og sånn at i sin enkleste form, hvor mye kan du tjene inn.

Cathrine Ruud: Det er jo betydelig mye som ville ha gjort en forskjell. Privatkopieringsvederlaget er vel på 45-46 millioner, tror jeg.... Så det er klart at det ville kommet godt med. Absolutt. Distribusjonen av det... Man har jo mange måter, det kan jo... Det kan jo være i form av fond, stipender, eller individuell fordeling gjennom Norwaco. Tenker at det kanskje er... De fordeler allerede privatkopieringspengene, som er en individuell fordeling, og det er naturlig at det kanskje hadde ligget innunder de. Men de har jo også 35 medlemsorganisasjoner som skal være enige i at dette er en god idé, og veien dit er jo ikke så veldig lett.

Lars Reiten: Innenfor musikkbransjen så har man jo allerede litt strukturer på plass gjennom Gramo og Tono, og så videre. Tror du de kunne hatt noe med dette å gjøre? Rettighetshaverorganisasjonene...

Cathrine Ruud: Ja... Gramo kjenner jeg ikke så godt... Jeg vet jo hva de er... Tono... Vi er jo en underorganisasjon av Tono, og jeg tror ikke det faller naturlig innunder Tono å gjøre dette her.

Lars Reiten: Da må jeg nesten spørre hvorfor, for det er mange som mener at Tono kan ha noe med det å gjøre. Det er bare interessant å høre hvorfor ikke.

Cathrine Ruud: Nå har ikke jeg tenkt så veldig mye på hvorfor ikke, men... Det er jo bare basert på hva de gjør i dag, men... De innhenter jo allerede avspillinger, eller fremføringer, på en veldig nøyaktig måte i dag på andre områder, men... De er jo et fremføringsforvaltnings... De forvalter fremføringsrettigheter, og... Jeg synes det er mer naturlig at det ligger under Norwaco, men jeg kan tenke litt på det, altså.

Lars Reiten: Neida, det er litt sånn initial reaction-greie, dette her...

Cathrine Ruud: (ler...) Ja, ikke sant...

Lars Reiten: Men det er veldig interessant å høre at du tenker på den måten, for veldig mange svarer at Tono er naturlig og det er strukturer, og det er interessant som et nyanserende argument, hvorfor...

Cathrine Ruud: Ja...

Lars Reiten: Men... Jeg lurer litt på her da om... Hvis hele eller deler av pengene, la oss si at hvis man fordeler 100 millioner, så kunne kanskje 75% prosent gått tilbake til artister, forfattere, rettighetshavere, så må sikkert distributører og plateselskaper ha en liten del av... Si at man da har 25% igjen som man kan putte i et fond, som Fond for Lyd og Bilde, for eksempel. Hvordan kunne du sett for deg at det fondet kunne fungert, da?

Cathrine Ruud: Hvem som kunne søke på det, og sånt?

Lars Reiten: Ja, for eksempel...

Cathrine Ruud: Jeg er litt... Hva er det som gjøres i Fond for Lyd og... Hvem er det som kan søke der i dag da?

Lars Reiten: Det husker jeg ikke helt på stående fot, men utifra... Det er vel mange enkeltkunstnere og mange enkeltindivider som trenger finansiering til...

Cathrine Ruud: Ja, det måtte jo vært noen som kanskje... Hvor det er vanskelig å fordele individuelt... Fange opp grupper som det er vanskelig å fordele individuelt til... Utsatte grupper. Noe sånt. Men samtidig noen som det også brukes innhold av på nettet. Jeg vet ikke... For det felles beste, fellesløsninger, noe sånt. Er det ikke det fond ofte gjør da?

Lars Reiten: Jo, det er jo det. Litt av bakgrunnen for det spørsmålene er at plateselskapene tidligere har sagt at de på lik linje med filmprodusenter, at de ønsker å ha mulighet til å få tilskudd for å finansiere eksport og markedsføring av musikk i utlandet, også sier de at kommersielle krefter på filmsiden har anledning til å gjøre dette, kommersielle krefter på musikksiden har ikke det. Det har man sagt før. Det jeg egentlig lurer på, i forlengelsen av spørsmålet, er om du kunne sett for deg at det kunne vært mulig for kommersielle aktører å søke penger for å for eksempel få inn nye norsk-språklige artister i porteføljen, ta mer risiko, markedsføre bedre i utlandet...

Cathrine Ruud: Ja, absolutt. Det ser jeg for meg. Det synes jeg er en god idé. Og så... Ja... Alt som er med på å føre til mer skapelse av nye verk og ny musikk som så går igjen og brukes på internett, som så går igjen... Det blir jo en slags sirkel... Det ser jeg for meg kan være en løsning.

Lars Reiten: Det er jo mange som mener at det at for å kommersielle krefter å tjene penger på søking i offentlige fond, er jo ikke akkurat, det er ikke alltid det man vil, så det er bare interessant å høre om rent kommersielle krefter kan ha mulighet for å gjøre det.

Cathrine Ruud: Ja, i denne sammenhengen så synes jeg det.

Lars Reiten: Nå har vi holdt på syv minutter lenger enn jeg lovte deg, ser jeg her, så jeg tar siste spørsmål. Er det behov og grunnlag for en bredbåndsavgift?

Cathrine Ruud: Ja. Det er jo kjempevanskelig å svare på, egentlig. Jeg har vel ikke... Er det meningen at man skal konkludere der?

Lars Reiten: Nei... Du kan si det sånn at om jeg får utifra fire intervjuer at alle sier «nei, det er det ikke», så skjønner jeg at det er det ikke, men så er det så mange nyanser....

Cathrine Ruud: Ja, det er veldig mange nyanser, og det er veldig vanskelig å svare på uten at de detaljene er mer på plass. Behovet er nok der. For rettighetshaverne så synes jo vi at det hadde vært en fin ting. Spørsmålet er jo bare om det er gjennomførbart, hvordan de juridiske, om det går på bekostning av det... Det er så utrolig mange faktorer inne idet. Jeg synes absolutt det er behov, og kanskje grunnlag, for å utforske det videre. At det er en såpass god idé at man kan, såfremt disse detaljene gjøres... Da skal på en måte alt komme sammen, alle hensyn skal ivaretas. Klarer man det så tror jeg nok det er grunnlag og behov for det. Om det er den beste løsningen, det er jeg litt mer usikker på. Det har litt å gjøre med det jeg nevnte istad, dette med innovativheten, at det kan hindre det litt, at en lener seg litt på dette, hvor man ser at det er nye løsninger som kanskje favoriseres litt mer. Kanskje bedre å se litt mer på strømmemodellen og de løsningene man allerede har, og prøve å rydde opp litt mer der. Men jeg synes absolutt at det er nok materiale til å utforske det videre, men da er det så mye som må på plass før man kan svare ja eller nei.

Lars Reiten: Det er godt du svarer det da, så har jeg ikke mistet temaet helt... (*ler...*)

Cathrine Ruud: (*ler...*) Ja, jeg synes det er interessant, altså. Og det er tydelig at det er et behov for... Når det har blitt pratet om såpass lenge, og det var vel et par år siden Filmprodusentene tok det opp på nytt, igjen... Da virker det jo som om det kanskje er behov for å utforske problematikken og tematikken litt videre. Det er interessant, kan man vel si, men man må ha litt mer klare svar før man kan svare på om det virkelig er en god løsning.

Lars Reiten: Bare for å ta et lite oppfølgingsspørsmål. Tror du det kan oppfattes som en quick fix på et mye større problem, en mye større strukturutfordring?

Cathrine Ruud: Ja, det tror jeg. Det er kanskje litt sånn det oppfattes, men det har også sammenheng med at det er så mange løse tråder, at... At det er... Ja, jeg tror absolutt at det er grunnlag for å utforske andre løsninger først. Når jeg leste det med Filmprodusentforeningen, så virket det veldig... Det har med årsakssammenhengen å gjøre, jeg synes de argumentene de kom med- nå er jo dette filmbransjen da - var litt lettvinne og ikke så godt argumenterte. Det var litt sånn at «dere bruker innholdet så derfor bør dere betale». Det virket litt sånn manglende... Inspirasjon og innovasjon til å gjøre noe annet, ihvertfall i den bransjen. I musikkbransjen har vi kanskje kommet litt lengre.

Lars Reiten: Er det behov for en sånn type avgift etter at streaming kom inn i bildet?

Cathrine Ruud: Det er et godt spørsmål. Igjen, det kommer litt an på dette med ulovlig nedlasting. Strømming har vel tatt mer eller mindre over der, så sånnsett er det kanskje ikke behov, men samtidig så er det mange som er misfornøyd med hvordan fordelingen av streaminginntekter er idag, så den er ikke helt ferdigløst den heller. Så, jeg vil ikke si at det ikke er behov for det på grunn av strømmingen.

Lars Reiten: Ikke sant. Har du noe du føler vi ikke har kommet inn på, sånn før jeg avslutter opptaket?

Cathrine Ruud: Nei, jeg tror vel ikke det. Jeg synes det er litt vanskelig, for det er så lite kjøtt på beinet. De argumentene jeg har lest er veldig endimensjonale. Det virker ikke helt godt tenkt gjennom, synes jeg. Også er det litt det, innledningsvis, hva får man igjen for en sånn avgift? Er det sånn at man skal ulovlig laste ned, eller da blir det jo ikke ulovlig lenger, men da må man igjen gjøre om på lover og alt. Er det det man får igjen? Hva med tilgjengeligheten til innhold? Det er det jeg sliter litt med å skjønne, da.

Lars Reiten: Yes. Jammen, supert Cathrine, da tar jeg å stopper opptaket der...

Cathrine Ruud: Ja.

Lars Reiten GÅR IGJENNOM RESTEN AV INTERVJUGUIDEN MED *Cathrine Ruud*. (SE INTERVJUGUIDE FOR NÆRMERE BESKRIVELSE) -

Total intervjutid: ca 59 minutter