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Title: Are creator and investor interests in copyright affected by converging technologies?

### **Proposition 1:**

There is no unified category of right owners, covering creators (authors) and investors (producers). **Creators** have four main interests:

- to see their work widely reproduced and distributed
- to receive credit for it
- to earn a financial reward relative to the commercial value of the work
- to be able to engage creatively with other works (in adaptation, comment, sampling etc).

Regarding the appropriate structure of author rights, this leads to three conclusions:

The creator has little to gain from exclusivity (it prevents widest distribution; it prevents access to other works; it does not ensure financial reward)

The creator has little to gain from transferability (under prevalent contractual practices, the creator can be bought out in a one-off commercial transaction)

The creator has a lot to gain from the so-called *droit moral* (a kind of creative trade mark, ensuring integrity of origin).

There are considerable economic inefficiencies caused by the costs of administrating rights.

Digital technology offers new possibilities of tracing use and rewarding the creator. Transforming collecting societies into regulatory bodies answering to society at large (not only right owners) may be the best way forward.

### **Proposition 2:**

**Investors** want exclusive and transferable property rights, to extract maximum returns from their investments. Exclusive rights, however, come at a cost to society.

Useful works become more expensive than they would have been (this is a direct consumer loss).

Works become available for creative engagements only on the terms of the right holder (this is a loss of cultural diversity, innovation and critique).

Automatic returns from a back catalogue of works subsidise existing large right holders, creating an entry barrier to the creative industries (this is an anti-competitive effect).

Regarding the appropriate structure of copyright, this leads to one conclusion:

Investors should be granted exclusive terms of protection only as a response to market failure: i.e. where without the incentive of exclusivity, a work in the ‘useful arts’ would not be produced at all.

In the past, the exploitation cycle of cultural products already justified only a short exclusive term (cf. Act of Anne of 1709/10: term of 14 years, renewable once). The faster digital dissemination and exploitation environment suggests an even shorter exclusive term. *Droit d'auteur* laws in the tradition of Berne (1886) have got this radically wrong.