

CHAPTER V: ENTERTAINMENT, LITERARY AND ARTISTIC ORIGINALS

Introduction

One of the changes made in the 1993 SNA was the recognition of entertainment, literary and artistic originals as fixed assets. In 2003 a task force was set up by the European Union (EU) to develop guidelines for measuring their gross fixed capital formation (GFCF), capital stock and consumption of fixed capital. The report (EU 2003) was presented to the GNI Committee in November 2003 and a few amendments to the recommendations followed. The amended recommendations were subsequently accepted in a written procedure of the EU.

The recommendations of the OECD Task Force on IPPs and the earlier EU Task Force are consistent with two exceptions, both of which reflect changes made in the 2008 SNA: (i) that concerning licences to use and reproduce and (ii) that concerning the measurement of GFCF when summing costs. In addition, the report of the EU task force did not address the derivation of volume estimates, but they are addressed here.

32. Definition and scope

In the 2008 SNA, entertainment, literary and artistic originals are defined as follows:

10.115 Entertainment, literary and artistic originals consist of the original films, sound recordings, manuscripts, tapes, models, etc., on which drama performances, radio and television programming, musical performances, sporting events, literary and artistic output, etc., are recorded or embodied. Such works are frequently developed on own account. Subsequently they may be sold outright or by means of licences. The standard conditions on when the originals and copies are recognised as fixed assets apply. If an original is acquired as a valuable, its production does not count as own account production of a fixed asset but it may have been classified as work-in-progress.

Although the definition and scope have not changed from the 1993 SNA, the measurement of GFCF is affected by other changes in the SNA, as noted above.

33. Coverage of entertainment, literary and artistic originals

33.1 Introduction to coverage

This section considers a wide range of products that could potentially be categorized as originals. Four criteria to assist in determining whether they should be treated as originals or not are postulated below. They are then used in an assessment of the main components of entertainment, literary and artistic originals, with arguments for and against inclusion. Special cases are considered and proposals suggested. The section ends with a final list of proposed products that could be included under the entertainment, literary or artistic originals component of the national accounts. For some of these items there is a strong case for inclusion, while for others it is not so clear cut and it is recommended that countries should make their own assessment using the four criteria.

33.2 Criteria for inclusion

For an item to be considered an entertainment, literary or artistic original it should satisfy the following criteria:

1. The item must be covered by copyright.
2. The work should have primary artistic intent. This means that the original should be produced with the original itself as the end product, not as an interim part of the production process of another product or asset.
3. The item must satisfy the capitalisation criteria, as for any capital item to be included as gross fixed capital formation. That is, the 2008 SNA requirement that a capital asset must be intended to be used in the process of production repeatedly or continuously for more than one year.
4. The item is not covered elsewhere in the national accounts. If the item satisfies the criteria above and it is not capitalised elsewhere in the accounts then the item should be included as an entertainment, literary or artistic original. Items which would be excluded here include software originals and valuables.

The EU task force identified copyright law as being an important element in deciding the coverage and measurement of originals, and Eurostat undertook some research to discover more about this extremely complex area. Annex I contains the summary results of this investigation.

One could argue that there is an inconsistency here between the treatment of R&D and the treatment of originals because legal protection is not a necessary condition for R&D to be recognised as a fixed asset. The rationale is that units often find it not worthwhile to seek legal protection for R&D because they are able to gain the benefits of exploiting it without doing so and it may be better not to draw attention to it. Entertainment, literary and artistic originals, on the other hand, have value only because they are able to be copied and/or distributed, and so legal protection is vital.

The EU task force found that copyright law was not fully harmonised across EU countries, but there were a number of international conventions (and some European legislation) that provided general guidelines for copyright protection and the handling of copyright-related monetary flows within and between countries.

The following sections discuss each potential original, whether it satisfies the criteria above and some special cases for which the EU task force provided guidance.

33.3 *Films*

This category should include all short and long films that satisfy the inclusion criteria. Films will include those produced initially for cinema showing and those produced for the DVD, video and television markets. All types of film originally produced as silent movies or those with special effects such as 3-dimensions should be included. Foreign translations, reworked originals and director's cut films often released after the first original do not generally have separate copyright (though this may vary country by country) and therefore should in theory be included under the original film.

Residence of the film producing company³¹ must be established so that the value of the original is recorded in the national accounts of the correct country. This is particularly pertinent for film production, which can often involve a large number of "location" shots that could be filmed in various places across the world.

It is important to understand what constitutes a film, *i.e.* what is the original? During film production many thousands of shots will be taken and the film may constitute many parts. Many processes such as script writing, auditioning, filming, editing, re-filming, graphical editing, sound editing and many more will be necessary before the film is ready to be screened or distributed. Only the edited final version of the

film should be recorded as the original with an asset value. All other processes or sections including unedited shots cannot be considered as originals in themselves. These would not satisfy the criterion of primary artistic intent because they were produced with the intention of including them as part of the finished film. They are also unlikely to be issued with separate copyrights.

Film scripts (and by extension music created specifically for a film) are a special case. The legal treatment of copyrights for these – as part of the copyright of the film or as individual items with their own copyrights – differs between countries. The script, like the unedited shots could be considered as a component part of the film and not necessarily produced with the intention of being a stand-alone item. However, film scripts are marketable in their own right and they can have their own separate copyright from the film. As such it is possible that the script will be de-facto treated as an original and recorded as a literary work (since royalty payments associated with film scripts are unlikely to be distinguishable from other literary works), but it should not be recorded separately under the category of films.

33.4 *Television and radio programmes*

Copyright law covers television and radio programmes, therefore they both satisfy the first criterion. In general, most television and radio programmes will also satisfy the primary artistic intent criterion.

With respect to the remaining criteria, the treatment of television and radio programmes is simplified if they are considered as virtually the same items. Except for the addition of visual media for television programmes the nature of the programmes produced is very similar.

Both industries categorize programmes as either "stock" or "flow". Stock includes documentaries, drama, music, arts, history and education programmes. . Flow programmes include news and game show episodes. The distinction is derived from the nature of the programmes. Stock programmes have a longer life because they are suitable for repeat performances or replicated in different countries. Flow programmes have a shorter life and are unlikely to be repeated. For example, a news programme is likely to be relevant only when it is shown close to the time of the newsworthy event. Shown later, the meaning and title of the programme would be different, probably transferring from news into history or documentary.

The distinction between stock and flow programmes provides a natural break between those programmes that satisfy criterion (3), the capitalisation criterion, and those that do not. Only stock programmes should be included as entertainment originals. It was felt that this is more important for TV than for radio. Flow programmes do not satisfy the criterion of use for more than one year so should be excluded.

Sports programmes are a special case. Although initially the sport programme would seem only relevant when shown live or very close to the time of the sporting event, there is often a desire for such programmes to be seen again, sometimes many years later. As such, the distinction between stock and flow programmes for sporting events is not so clear. It is suggested that sports programmes be excluded from the category of entertainment originals and hence treated as flow programmes. The reason for this reflects the fact that the rights to broadcasting sporting events, while often very valuable initially, usually decline very quickly in value even if highlights from the events themselves are subsequently re-broadcast.

Advertisements are a further special case. Although advertisements probably satisfy the criterion of primary artistic intent, they would generally be used for less than one year as part of an advertising campaign and hence should be excluded from entertainment originals.

33.5 *Literary Works*

All published works with separate copyright should be included in this category as long as they satisfy the inclusion criteria.

All complete works, regardless of subject or style should be included; including preferably audio books and multimedia versions (e.g. e-books) of literary works. However, there would need to be separate licences for different media for the same asset, otherwise the addition of new media would not contribute to the value of the original.

Other examples for inclusion in this section are pamphlets and music scores. Although it could be argued that music scores are part of the piece of music, which is a final original, it is equally possible that the score has value in itself in the same way as a film script discussed above. However, like film scripts, music scores should not be recorded separately under music.

Newspapers and magazines generally have a life of less than one year in the same way as news programmes on television or radio, and therefore should be excluded from capital expenditure estimates on literary originals. (Individual copies may become valuables.)

33.6 *Musical Works (including music videos)*

As with most IPPs, the concept of a musical work is not straightforward. First of all we must consider what is to be defined as the original. For any piece of music there is a composer and/or writer, musicians and performers. There are similarities with film production. In theory, various stages or parts of the music production could be considered an original, for example, the music score or the sound itself and the finished article such as the performance whether recorded or live. As discussed later, it is important that the “chain” of originals is properly measured, so as to avoid possible double counting.

The proposed inclusion criteria simplify the problem. All music under copyright should be included in musical originals if they are likely to last more than one year. The primary artistic intent criterion is satisfied in all cases as long as we consider the “music” itself as the important article not the medium through which it is listened or the component parts that are required to produce the music, e.g. the music score, the musician or singer.

It is suggested that all music regardless of the intended medium should be included as an original. Therefore, music videos should be included. All advertising jingles, scores, etc. should be excluded in parallel with the treatment of advertisements on television or radio.

33.7 *Slogans and brand names*

Slogans and brand names are legally protected under “Trade Mark” and should not be considered as originals.

Table 12: Coverage of Entertainment, literary and artistic originals

Category	Item	Inclusion criterion satisfied? (Y or N)				Include as original? (Y or N)	Comments
		1	2	3	4		
Entertainment: Film	Film (any length or style), but only the edited final version	Y	Y	Y	Y	Y	
	Location shots forming complete sections of a film	N	N	N	N	N	
	Unedited shots	N	N	N	N	N	
	Translated films	Y	Y	Y	N	Y	If separately copyrighted
	Reworked original films	Y	Y	Y	N	Y	If separately copyrighted
	Director's cut movies	Y	Y	Y	N	Y	If separately copyrighted
Entertainment: Television and Radio	Stock programmes (documentaries, drama, arts, etc.)	Y	Y	Y	Y	Y	
	Flow programmes (news, game shows)	Y	Y	N	N	N	
	Sport programmes	Y	Y	N	N	N	Recommend sport be treated as flow programmes
	Advertisements	Y	Y	N	N	N	
Literary Works	Full books regardless of media (e.g. paper, audio, e-books)	Y	Y	Y	Y	Y	Status in copyright important for audio and e-books.
	Pamphlets	Y	Y	Y	Y	Y	
	Music score	Y	N	N	N	N	
	Newspaper articles	Y	Y	N	N	N	
	Magazine articles	Y	Y	N	N	N	
Musical Works	Music under copyright (regardless of medium e.g. CD, music video etc)	Y	Y	Y	Y	Y	
Artistic Originals	Models as used to produce a building or structure	Y	N	N	N	N	
	Models as a scaled version of original produced later (e.g. for collectors or as a toy)	Y	Y	N	N	N	
	Prototype	Y	N	N	N	N	
	Paintings	Y	Y	Y	N	N	Treat as a valuable in GCF
	Sculptures	Y	Y	Y	N	N	Treat as a valuable in GCF
	Antiques	Y	Y	Y	N	N	Treat as a valuable in GCF
	Jewellery	Y	Y	Y	N	N	Treat as a valuable in GCF
	Photographs and images (not paintings)	Y	Y	Y	Y	Y	
	Maps	Y	Y	Y	Y	Y	

33.8 *Technical and Architectural Drawings*

Most buildings or sizeable structural projects require advanced and detailed technical or architectural drawings and plans. In their own right it could be argued that these drawings have artistic value. However, the criterion of primary artistic intent is not satisfied because the drawings have been produced as part of the production process of the building or structure under construction. Therefore, technical and architectural drawings should not be considered as originals, even if they can have individual copyrights.

33.9 *Models*

The available guidance does not clearly specify what should be included as models. There are numerous possibilities from scaled down versions of large objects such as famous buildings to prototypes.

The purpose of a prototype is to aid the design process of the finished product. Therefore, prototypes do not satisfy the criteria of primary artistic intent for the same reasons as architectural drawings discussed above. Prototypes should be excluded.

Similarly, a model used in the same way as architectural drawings does not satisfy the primary artistic intent criterion and should therefore be excluded.

In theory a scaled version of a famous object produced after the "original" object could be considered as an original. However, scaled models of this kind would probably not satisfy the criteria to be considered an original (in fact they would probably only enter consideration as a valuable, if they acquired a rarity value), and should be excluded from the definition.

33.10 *Paintings, sculptures, antiques, fine art and jewellery*

Originals should be distinguished from valuables, defined as objects of fine art such as paintings, sculptures, antiques and other stores of value such as jewellery.

The distinction between some items mentioned in the 2008 SNA and ESA95 for inclusion under artistic originals such as "renderings" (e.g. portraits, images, reproductions and pictures) and the items listed above for valuables is not clear. The term "renderings" causes some problems. Some decisions have to be made so that in practice all of these items can be collected in the accounts. The inclusion criteria help to simplify the problem.

Portraits and pictures should be treated in the same way as paintings and therefore they fail the fourth criterion as they are covered elsewhere in the national accounts, *i.e.* as valuables.

All other valuables explicitly included as valuables in ESA95, such as sculptures, antiques and other stores of value such as jewellery should not be considered as artistic originals because they would not satisfy the fourth criterion and to include them could lead to double counting.

Images and reproductions, along with photographs, are covered below.

33.11 *Photographs and Images (reproductions or copies from books)*

Photographs could potentially satisfy the main criteria as they can be highly valuable and are often very marketable. Photographs can be covered by copyright and can be reproduced and used repeatedly: the image may be used in newspapers, magazines, on posters, in books or on television for example. There are also vast photograph libraries, now available on the web. Therefore photographs should be included as

originals as long as they are covered by copyright, they are created with primary artistic intent and they satisfy the remaining inclusion criteria.

33.12 *Maps*

Maps are covered by copyright and they can also be created with primary artistic intent. In many respects there is little difference between a map and any other literary work included earlier in this section. Indeed the royalty flows associated with maps are highly unlikely to be separately distinguishable from those of other publications. Therefore, for practical reasons, maps should be included as literary originals.

Recommendation 39: Entertainment, literary and artistic originals should be defined to include at a minimum - films, TV and radio stock programmes, literary works and musical works. Other originals should be included if they meet all of the following four criteria:

1. The item must be covered by copyright.
2. The work should have primary artistic intent.
3. The item must satisfy the capitalisation criterion, the same as for any capital item to be included as gross fixed capital formation.
4. The item is not covered elsewhere in the national accounts.

34. Conceptual issues

34.1 *Nature of originals*

Originals have three features which warrant particular attention.

Embedded originals

It is very common for one original to be used in the production of another. For example, a piece of music may be used in a film, or a script may be written for a TV drama series. The music or the script may have a value in its own right. If an original is completely embedded in another original and does not produce income otherwise, then it should not be recorded as a separate asset. However, if an original contributes to the production of another original and in addition earns income from the provision of other services, then it should be recorded as a separate asset in the same way an industrial piece of equipment used to produce other fixed assets is recorded as a fixed asset in its own right.

Consider the following example, which arises because of different valuation methods for different originals (which are discussed later).

Example

A film company pays royalties to a musician to use their music in a film. The music original is valued using royalty flows, and the film is valued using production costs.

Assume we have two types of assets: Asset **F** (Film) valued by the production cost approach and asset **M** (Music) valued by the net present value approach. Asset **F** has a 2-year service life and asset **M** has a 3-year service life. We have perfect information – that means that we know all the flow of income the two assets generate during their service life. In this example the rate of interest is 0, so the NPV of future payments is simply the sum of the future payments.

Asset M is produced just before period 0, and it generate royalties in each of the following 3 years equal to 100 per year. Using the net present value approach, the value of asset M is worth 300 (100 in each of the three years) at the end of year 0.

Please note that the payments of royalties in years 2 and 3 regarding asset M is payment from other users of asset M, for instance radio stations.

Asset F is produced during year 1 and its production cost is equal to 1,100, including royalties. Using the production cost approach the value of asset F is equal to 1,100 at the end of year 1.

The value of asset M is reduced by 100 at the end of year 1 compared with the end of year 0 because the NPV of future royalty payments is now 200.

Table 13 Example of music original used within a film

		End of year 0 (stock)	Year 1 (flows)	End of year 1 (stock)	Year 2 (flow)	End of year 2 (stock)	Year 3 (flow)	End of year 3 (stock)
Asset F	Production cost, excl royalties		1000					
Asset F	Royalties (payment for use of asset M)		100					
Asset F	Income flow generated by asset F				550		550	
Asset F	Value (production cost approach)	0		1100		550		0
Asset M	Royalties		100		100		100	
Asset M	Value (NPV)	300		200		100		0
Asset F+M	Value	300		1300		650		0

It can be seen that there is no double counting on the balance sheet. In year 1, when asset M contributes to the production of asset F, the increase in the value of the former is offset by the decrease in the value of the latter due to the consumption of fixed capital. The same would be true of the total value of production if it were measured net of consumption of fixed capital.

Double counting can occur if assets are valued by summing costs and the same costs are used to value different assets. This should be avoided (see recommendation 3). In some cases the way the data become available is helpful. For example, it is common in the music industry for flows of royalties to be divided up by rights management agencies, rather than be paid to the performer (who will then have to arrange payments of rights to the composer, etc). Rights management systems have evolved to avoid this situation. Thus, the use of royalties flows to measure the original held by the performer and the original held by the composer involves a low risk of double counting.

Divisible rights

As described in annex I, originals often have several different types of rights associated with them. This issue is considered under “Royalties and rights”, below. The conclusion there is that originals are in principle divisible, although there are practical dangers of attempting to do so.

Originals and copies

Many of the artistic creations in originals are subject to copying for distribution to final users. If the proportion of artistic originals legally copied for further productive use is relatively small (perhaps limited to prints of films for distribution), they can be ignored.

35. Valuation of entertainment, literary and artistic originals

The 2008 SNA allows four different possible valuations for entertainment, literary and artistic originals:

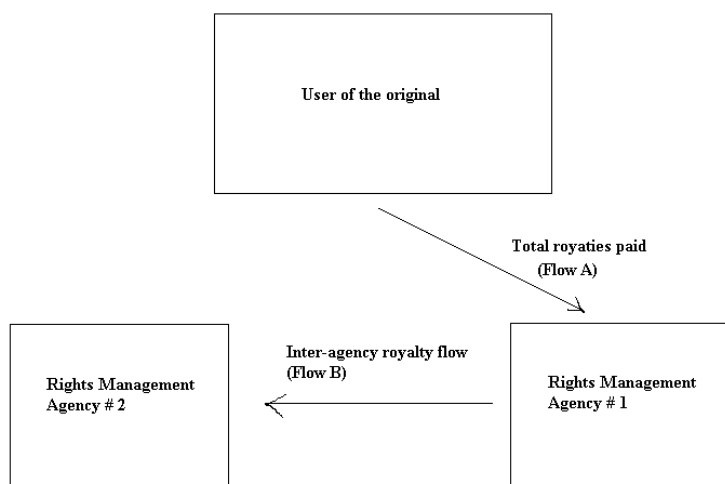
- a) The purchase price of the original, if traded.
- b) The purchase prices of similar originals.
- c) The production costs of the original.
- d) The discounted net present value of future receipts.

Clearly option (a) is the preferred valuation method, but many originals are produced on own account and so one of the other valuation methods must be used. Option (b) is not viable since, by definition, there are unlikely to be “similar originals” for reliable valuations. This leaves options (c) and (d) as the only viable options for valuing non-traded originals.

Under business accounting standards (for example, International Accounting Standard 38), companies are required to capitalize those intangible assets which have a reliable valuation and which the company fully controls. This means that the purchase of an original (which is equivalent to the re-assignment of all of the rights to the original) would lead to an entry in the balance sheet of the purchasing company. From the point of purchase, the company is required to either depreciate or to periodically review the fair value of the asset. The EU task force examined the accounts of several major companies in the fields of literature and music, and concluded that these companies were indeed capitalizing the purchase of originals. This means that a data source is potentially available from business statistics for traded originals, though in practice it will not be possible to combine business data with the valuation methods set out below (due to the inherent risks of double-counting). Future developments in business accounting (e.g. through changes to accounting for takeovers) could nevertheless improve the available data from business accounts.

The EU task force concluded that the production cost approach would be most appropriate for films and TV/Radio productions.

The EU task force concluded that the net present value of future receipts approach would be most appropriate for industries where there is an established system of royalty flows (musical, literary and photographic and imaging works). It is important to recognise that all receipts to the originals should be considered when valuing the original – for example, in Denmark libraries pay a fee to the authors of books lent out and this fee should be included in the measured receipts. Royalty flows for literary and musical works are usually handled by a small number of rights management agencies, or are dealt with directly by publishers (who ensure that royalty flows go to all those with a claim for a particular original). There are flows of royalty payments between agencies, and this could lead to double-counting of receipts for valuing originals. Enquiries by several members of the EU task force concluded that the agencies are able to separate royalty flows into those to/from other agencies and those to/from abroad. In the diagram below, the flows of royalties between the two agencies (flow B) should not be taken into account when calculating the value of the original. The value of the original is determined by the income received by the author from the Right’s Management Agency # 2.



The other issue to address for the net present value approach is how to use flow data to derive an underlying stock figure for originals. The EU task force recommended the following formula³²; used by several countries in Europe:

$$W_j = H_j * (1 + r_j - i_j) \quad (1)$$

Where W_j is the present value of originals produced in year j , H_j is the sum of royalties paid in the total economy during the year j , r_j is the nominal growth rate of royalties compared with the previous year and i_j is the nominal interest rate used for discounting. The estimates of r_j and i_j could be estimated from a single year or by a moving average over up to five years. It is important to note that the royalties in this context are not restricted to those received by the author, musician etc. They can include revenues earned by other institutional units that have rights related to the original, such as production companies and publishers.

Recommendation 40: The value of film, TV and radio programme originals should be measured by summing production costs. Production costs should include royalty payments made for the use of other originals.

Recommendation 41: The value of literature, music and photographic/image originals should be measured by modelling royalty flows (from whatever source), using a formula $W_j = H_j * (1 + r_j - i_j)$, with the nominal rates r_j and i_j estimated separately, or an equivalent formula. Where W_j is the present value of originals produced in year j , H_j is the sum of royalties paid during the year j , r_j is the growth rate of royalties compared with the previous year and i_j is the interest rate used for discounting. The estimates of r_j and i_j can be estimated from a single year or by a moving average over up to five years.

36. Royalties and rights for entertainment, artistic and literary originals

There are three kinds of flow associated with entertainment, literary and artistic originals that need to be considered:

- i. Payments for the outright sale of some or all of the rights associated with an original.
- ii. Payments for limited rights over an original that do not constitute a change of ownership.
- iii. Payments for the one-off use of an original.

In principle, the outright sale of part of the total rights over an original diminishes the value of the original to the seller, and conversely generates something of value to the purchasing enterprise (. It is of course always possible that the seller, such as an artist, retains a significant proportion of their rights but these rights will be worth less if certain rights of exploitation have already been sold.

However, there is a practical obstacle to recording the “splitting” of originals, and that is the separation of the flows. If flows of payments relating to the purchase and sale of permanent rights cannot be distinguished from royalty flows relating to a one-off use of the original, then it will not be possible to split originals satisfactorily. Basic statistics do not appear to contain separately identified outright sales and purchases of originals.

The second category also relates to the sale of rights over the original. The distinguishing feature between the first and second categories is that in the first the buyer assumes the risks and rewards of ownership, whereas in the second the buyer does not. Licences to reproduce and distribute can occur in both categories and they are likely to be the predominant type of transaction in the second category. In the latter case, restrictions in the licence agreement imply no change of ownership has occurred and the payments should be treated as royalties (or rentals).

36.1 *Domestic flows*

It appears that data for domestic transactions concerning originals are not commonly collected in business surveys. The EU task force examined questionnaires from the UK (for films and TV) and Greece (audiovisual industries) which showed that direct data collection (of both royalty flows and costs) is conceivable, provided that the business register is sufficiently detailed to allow the suitable population of firms to be identified. Existing data collections could be examined to see if new questions could be added to satisfy the needs of national accounts in estimating originals.

National-level representative organisations could also be a useful source of data, and government records (for subsidies, or special taxation records) might be useful if an industry is subject to special arrangements.

Other promising sources of data, already mentioned, are rights management agencies. Surveys of these agencies should ask for the following splits:

- a) Royalties for one-off use separate from payments for rights over a longer or indefinite period,
- b) Royalties payments paid and received to/from other domestic rights management agencies, and
- c) Royalty payments paid and received to/from non-resident rights management agencies.

A corrigendum has been issued for this page. See: <http://www.oecd.org/dataoecd/61/61/44756265.pdf>

36.2 International flows

In terms of *cross-border flows*, the 2002 MSITS introduced specific categories in the EBOPs categories for “other royalties and licence fees”, for “audio-visual services”, and a memorandum item for “audiovisual transactions”. Moreover, as described in chapter I, the 2010 MSITS and EBOP classification categories include changes that will further improve the situation in the following areas:

- A separate category, *Licenses to reproduce and/or distribute audiovisual and related services*, within *Charges for the use of intellectual property*.
- A breakdown of *Audiovisual services* into *Audiovisual products* and *Other audiovisual services*, with a further *of-which* item for the former, reflecting *Audiovisual originals*.
- The inclusion of a supplementary item *Audiovisual transactions*
- The inclusion of a further supplementary item *Licenses to use audiovisual products*.

Given that existing, centralised data collection mechanisms do not currently meet the requirements, it will be necessary for statistical offices to collect data directly from enterprises and organisations in the industries.

Recommendation 42: Countries should examine existing direct data collections from the originals-producing industries (for example, audiovisual questionnaires) to determine if new questions could be added to assist measurement of originals. Collection of royalty data from rights management agencies should ensure that there are breakdowns for inter-agency transfers and also for cross border royalty flows.

37. Prices and volumes

The EU task force made no recommendations concerning volume measurement and so what follows are the recommendations of the OECD Task Force on IPP responsible for developing this handbook.

The value of an original is determined by a combination of a number of factors, including:

- a) the tastes of consumers
- b) the size of the consumer market
- c) the popularity and reputation of the producer of the original
- d) the extent of advertising and promotion
- e) the intrinsic quality of the original

With the exception of (c), and possibly (b), all of these factors are difficult to quantify. This makes it very difficult, if not impossible, to measure change in the market price of originals.

As noted above, one way of valuing originals is as the net present value of future receipts, and indeed this method is recommended for valuing originals where there is an established system of royalty flows (musical, literary and photographic and imaging works). It is also recommended that formula (1) should be used to value these originals. The royalties are in fact rentals payable for services. H_j can therefore be decomposed into constituent price and volume components, such that

$$H_j = \quad (2)$$

A corrigendum has been issued for this page. See: <http://www.oecd.org/dataoecd/61/61/44756265.pdf>

where Q_{ij} is the volume of services provided by product i in period j , and P_{ij} is the corresponding price of the services. Substituting (2) in (1) gives

$$W_j = \dots * (1 + r_j - i_j) \quad (3)$$

A volume measure of the left hand component can be derived if there is a suitable price index for royalties. Of the right hand component, the value of the real growth rate (r_j) of royalties paid can be readily calculated, likewise. A real value of the interest rate (i_j) can be obtained by simply keeping it equal to the value in the base period. Hence, deriving a volume measure of the value of an original, valued using the formula in (1), can be obtained if there is a suitable price index for royalty payments. But deriving a price index for royalty payments faces the same difficulties as deriving a price index for originals.

Most royalty payments arise from the sale of copies, and it is possible to measure changes in the prices of copies (on CDs, DVDs or books, for example) or services provided using copies (by cinemas and theatres, for example). Thus, if it can be assumed that there is a strong correlation between the prices of copies and the prices of royalties, then price indices of copies could be used as surrogates for price indices of royalties and so volume measures of originals could be derived.

There would be a strong correlation between the prices of copies and the prices of royalties if royalties are determined as a fixed proportion of the sale price of copies. If this is not the case, then a high correlation is most likely if royalties account for a large proportion of the sale price of copies.

The only other option is to measure the price change of originals as the price change in the inputs.

Recommendation 43: If royalties are predominantly determined as a fixed proportion of the sale price of copies, or royalties account for a large proportion of the sale price of copies, then the price indices of copies can be used to derive volume estimates of entertainment, literary and artistic originals. Otherwise, suitably weighted input price indices should be used.

38. Capital measures

As for other forms of IPPs, capital measures should be derived using the perpetual inventory method (PIM). The EU task force noted that the legal life of the copyright on an original is generally the lifetime of the author plus 70 years, or 50 years for a performed work. However, they considered that the legal life of the typical original would be very much longer than the economic life of the original, and (based on an examination of existing country practices) concluded that a 5-10 year life could be recommended for all types of originals. Ideally the service lives should be based on empirical data such as the discounted present values of royalties.

The EU task force considered the form of the depreciation function to be applied to originals, and concluded that the function must reflect relatively rapid depreciation in the first few years of an original's life. For some originals, such as recorded music, it is entirely possible that the majority of their value is realised in the first two years of life. The EU task force noted that ESA95 (paragraph 6.04) specifies that linear depreciation is the general approach recommended, but that geometric depreciation is also possible according to the pattern of decline of the asset.

The EU task force members did not feel that they could specify a single preferred depreciation function, but two possibilities were mentioned:

- Linear depreciation with a suitably defined Winfrey retirement function.
- Geometric depreciation with at least a double-declining balance.

Nevertheless, the EU task force concluded with the following recommendation:

- Originals should be depreciated with a model which leads to fast depreciation in the early years of the originals' lives. Service lives should be set between 5-10 years.

Given this, and recommendation 15, (the geometric model has a number of advantages and should be used unless there are strong conceptual or practical objections), the case for using the geometric model seems particularly strong for entertainment, literary and artistic originals.

31 If the film is produced by a joint venture then ownership is allocated to the respective countries.

32 The derivation of this formula is described in Background document to doc.CN 383- Item 4, Meeting of the EU Working Party on National Accounts, 10 October 1998. It was derived empirically by the German NSO, DESTATIS. Briefly, using royalties and interest rate data from the early 1950s, the net present value of copyrights was derived using six different service life and age-price profile combinations. The above formula was found to closely approximate the average of the six results.

ANNEX I: COPYRIGHT

The definition of copyright has evolved over several hundred years in various countries, but it was only in the twentieth century that copyright conventions were negotiated internationally. Successive international meetings in Berne and Rome in the 1950s and 1960s set down some common definitions and standards for copyright, which have generally been incorporated into national legislation. The conventions also established systems through which payments related to copyright could be channelled. Most, but not all, EU countries are signatories to these conventions.

Copyright is intended to provide protection for the rights of an author in works of his or her “authorship”. These works must be “original” (that is, they cannot be copied from pre-existing work) and they must be “fixed” (sufficiently permanent to be used, perceived, reproduced or communicated for more than a transitory period). No artistic merit or beauty is required for copyright protection to apply. Thus a business directory could qualify for copyright protection, for example.

The definition of “original” is a source of considerable ongoing discussion. A work can be original even if it contains elements taken from elsewhere (for example a book may contain pre-existing photographs), though of course the copyright for the work covers only the new elements, with the pre-existing elements having their own copyright protection. The legal definition of whether a work is “substantially similar” to another work (and therefore cannot be considered an original) is being continuously redefined by court cases in many countries.

Copyrighted work does not now have to be marked with a copyright sign. Copyright is automatic upon creation of the work, although it will usually be necessary to register the copyright if the author wishes to exploit it economically. Registration can be made several years after the creation of the work, if it has remained unpublished until that point. The copyright of a work generally rests initially with the author, unless the author is working “for hire” (ie. an employee or on contract) for a company, in which case the company has initial ownership of the copyright.

Copyright can be viewed as covering a number of rights. The rights identified in the conventions are:

- Reproduction
- Modification
- Distribution
- Public Performance
- Public Display

In most countries, these rights can be “assigned” (ie. bought and sold) either together or separately. Each right can potentially be licensed by the owner to another party. In certain circumstances, the author cannot enforce a copyright even if their work has been used – for example where there has been “de-minimus” copying, or where the use has not been for commercial purposes. For two EU countries (Germany and Austria) the copyright must stay with the creator of the work and cannot be sold, however that does not prevent the licensing of the work.

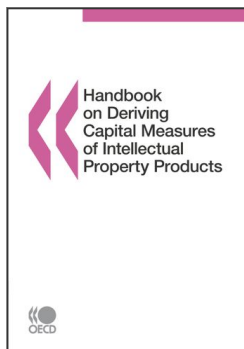
The European Commission has introduced legislation over the last decade to improve the harmonisation of copyright in the EU. The main two legal acts have been:

Council Directive 93/98/EEC of 29 October 1993 “harmonizing the term of protection for copyright”. This act sets the period for the rights of an author of a literary or artistic work to the lifetime of the author plus 70 years. The rights to a film or audio-visual work rest with at least the principal director, and possibly other co-authors. Rights of performers shall expire 50 years after the date of the performance.

Directive 2001/29/EC of 22 May 2001 on “the harmonisation of certain aspects of copyright and related rights in the information society”. This act clarifies copyright, and related matters, so that it can be applied consistently to new forms of creativity arising from the ‘information society’. It defines reproduction and distribution rights, and requires countries to ensure adequate protection against illegal copying.

There are also separate legal acts relating to copyright protection for computer programs, broadcasting of TV programmes by satellite and cable retransmission, and databases.

The Commission has recently introduced a new proposal for a Directive on measures and procedures to ensure the enforcement of intellectual property rights. This proposal would harmonise the systems of protection and redress in Member States. Nevertheless, it is quite clear that the EU does not have a fully comprehensive system for the definition and protection of copyrights in every country. The European Commission is actually prevented by the Treaty from interfering with the system of property rights in any member country, and the existing specific elements of legislation have been pursued under the auspices of improving the internal market.



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