

Copyright law and creators' earnings: Empirical evidence

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Findings

1. Cultural markets are winner-take-all markets

Top 10% of creators receive a disproportionately large share of total income (photographers/illustrators/artists: 45%; literary authors: 60-70%; composers/songwriters: ~80% of total income).

2. Portfolio lives are typical

Median earnings of *professionals* are low (UK: photographers/illustrators/artists: €18,000; literary authors: €12,000). Most creators have earnings from another source (second job, partner).

3. Copyright law has failed its aim

to be— “one of the main ways of ensuring that European cultural productivity and production receive the necessary resources and of safeguarding the independence and dignity of artistic creators and performers”.

(InfoSoc Directive 2001/29/EC, Recital 11)

Context

ESRC (1996-99)

Impact of digitisation on global music industry

Arts Council (2004)

Artists' responses in music and media arts

ALCS survey of 25,000 writers UK/Germany (2007)

DACS survey of 5,800 visual creators UK (2011)

ESRC/IPO levy study (2011)

Questions:

Trends in authors' earnings?

Does the legal and institutional framework matter?

- Rights provided (e.g. moral rights; levies)
- Copyright contract law
- Function of collecting societies

The copyright element in earnings?

1. Copyright: Contractual income

- Publishing contracts
- Production contracts

2. Copyright: Collectively negotiated income

- Collecting societies
(PRS/MCPS-GEMA)
(ALCS-VG Wort)

3. Non-Copyright artistic income

- Grants/commissions
- Performances/readings
- Sponsorship
- Seminars/teaching

4. Income from non-artistic sources

- Family support
- Capital
- 'day time job'
- Social security

Methodology

National statistics

earnings/tax (ASHE/SB)
insurance (KSK)

Collecting society databases (MMC 1994)

Surveys

(Kulturrat 2006; PEW
2004; Towse 1990s;
Austrian Composers
1993; Throsby
2003/2010)

ALCS & DACS studies (2007/11)

1. Household income
2. Individual income
3. Artistic income
4. Collecting society income
5. Grants

plus questions on

- Professional profile
(career/genre/media)
- Demographic profile
(age, location, households)
- Contractual practice
(royalty rates, buy-out contracts,
disputes)

Who is an author?

Various definitions:

- Copyright, commercially published, time, amount of income, sustained professional practice, membership of professional body, reputation/quality indicators etc

Sample: collecting society membership

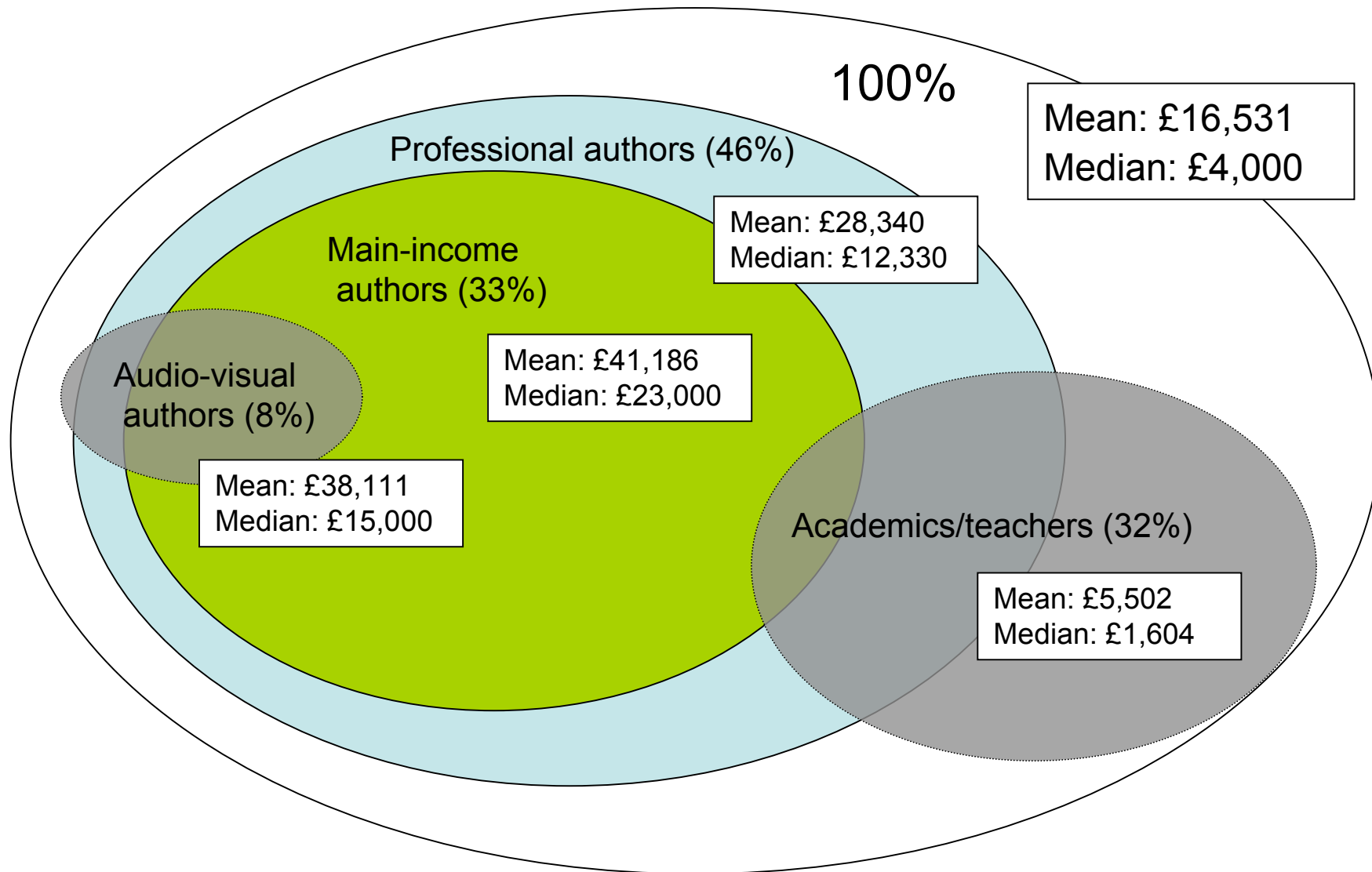
Benchmarking (tax, insurance, collecting society distributions, previous studies)

Defined three sub-samples:

- Professional authors (allocate more than 50% of their time)
- Main-income authors (earn at least 50% of individual income)
- Audio-visual authors (according to answer “main media/genre”)

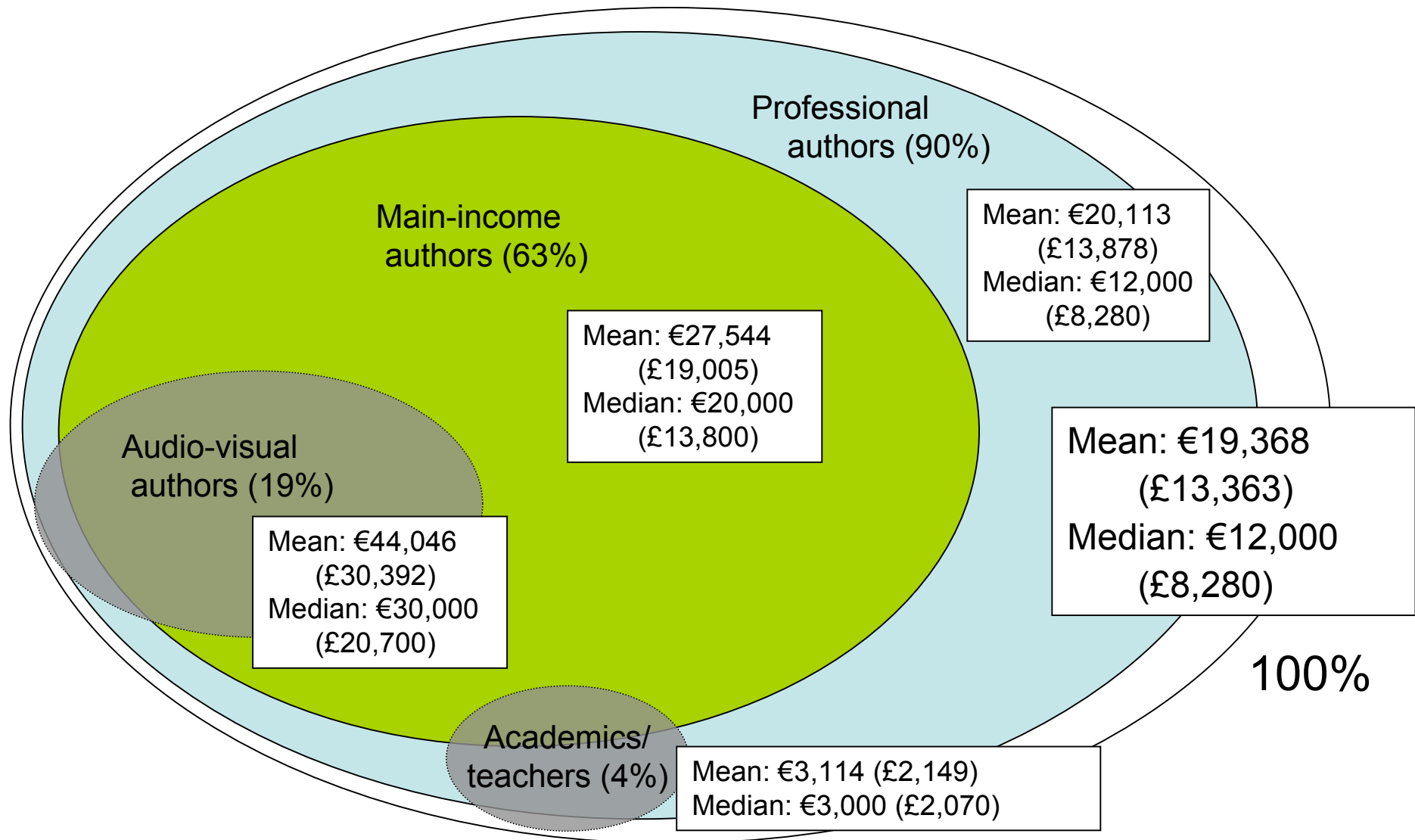
UK authors: earnings from writing (2004-05)

Sample – membership of collecting society (ALCS)



German authors: earnings from writing (2005)

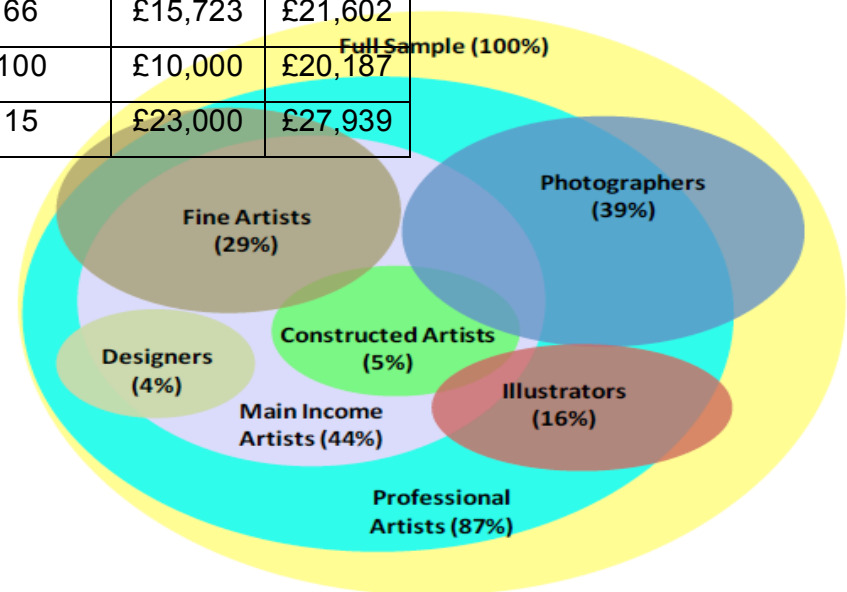
Sample – membership of professional body (VS, VDD)



UK visual creators: earnings (2009/10)

Sample – membership of collecting society (DACS)

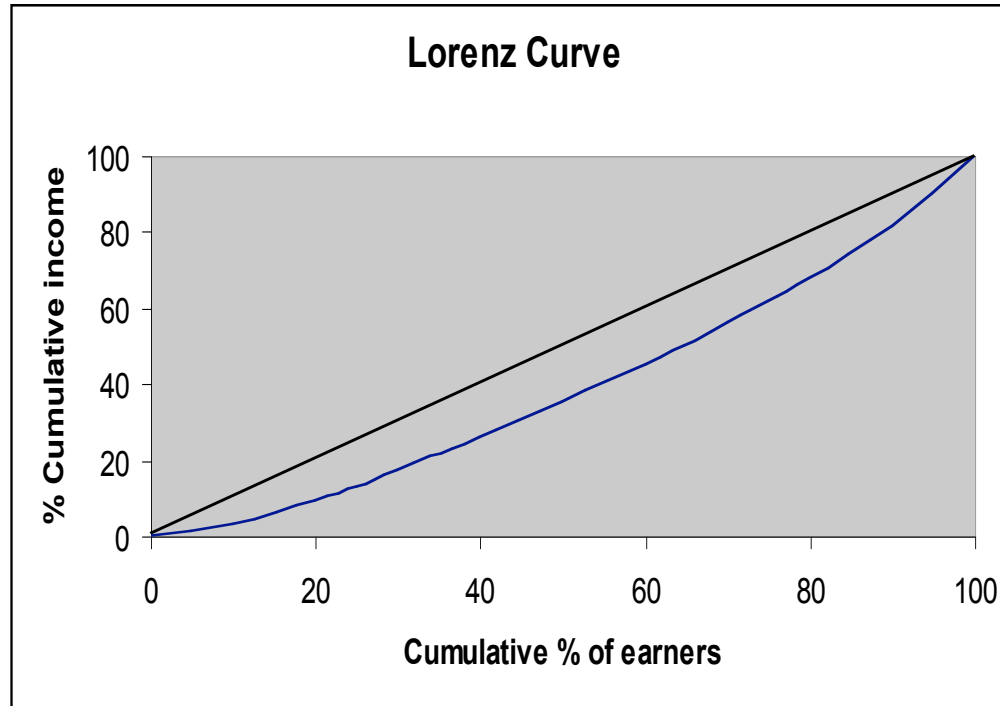
	% (By Total Responses)	Total Responses	% (By Income Responses)	Income Responses	Median Income	Mean Income
<i>Full Sample</i>	100%	590	100%	391	£12,000	£23,052
of which:						
<i>Professional Artist</i>	87%	516	87%	340	£16,000	£26,143
<i>Main Income Artist</i>	44%	260	66%	260	£20,000	£28,820
<i>Constructed Artist</i>	5%	31	6%	23	£27,000	£30,154
<i>Photographers</i>	39%	228	43%	169	£15,000	£26,084
<i>Illustrators</i>	16%	96	17%	66	£15,723	£21,602
<i>Fine Artists</i>	29%	173	26%	100	£10,000	£20,187
<i>Designers</i>	4%	25	4%	15	£23,000	£27,939



Lorenz curve analysis

- **Lorenz Curve:** a graphical representation of the distribution of income in a given population. The straight diagonal line is the “perfect equality line”, representing the scenario where every member in the population earns the same amount.
- Cumulative percentage income or wealth in the vertical axis y is plotted against cumulative percentage population in the horizontal axis x . The more “sloped” the curve is, the more unequal is the distribution: “winner-takes-all” market.
- The degree of concentration (or inequality) can be represented in one number, the **Gini Coefficient**, calculating the deviation from the straight line. The Gini Coefficient ranges between 0 (perfect equality: every member receives the same income), and 1 (perfect inequality: one member receives all the income).

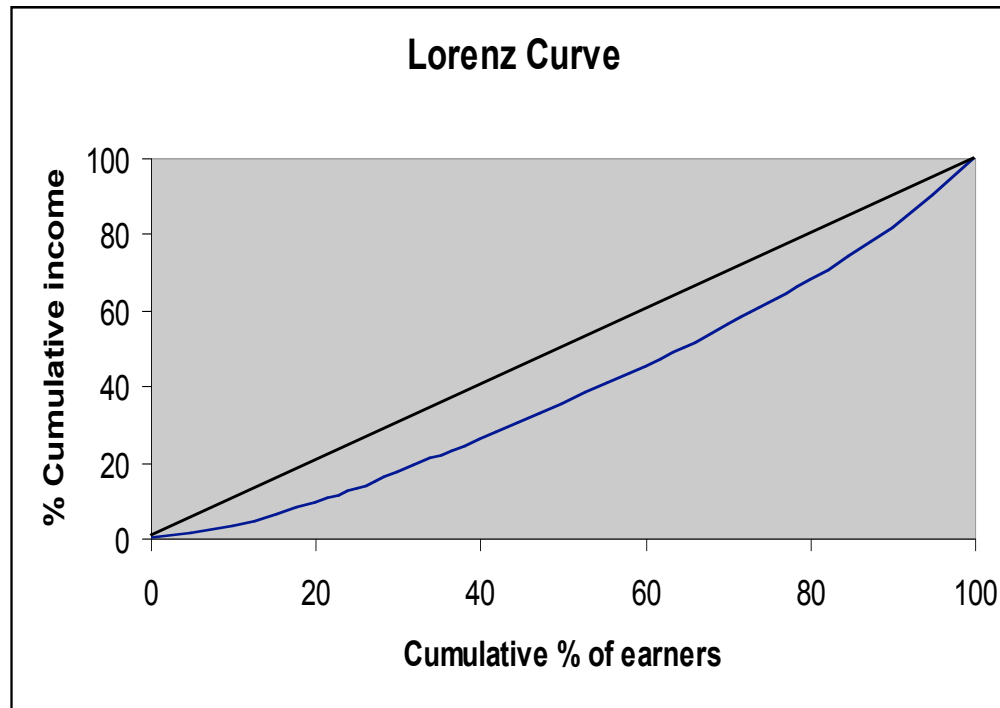
UK: Annual earnings (gross) all employees (2005)



*Source:
Annual Survey of
Hours and
Earnings (ASHE),
Office for National
Statistics*

Mean ('average') earnings	£23,400
Median ('typical') earnings	£19,190
Gini Coefficient ('measure of inequality')	0.33

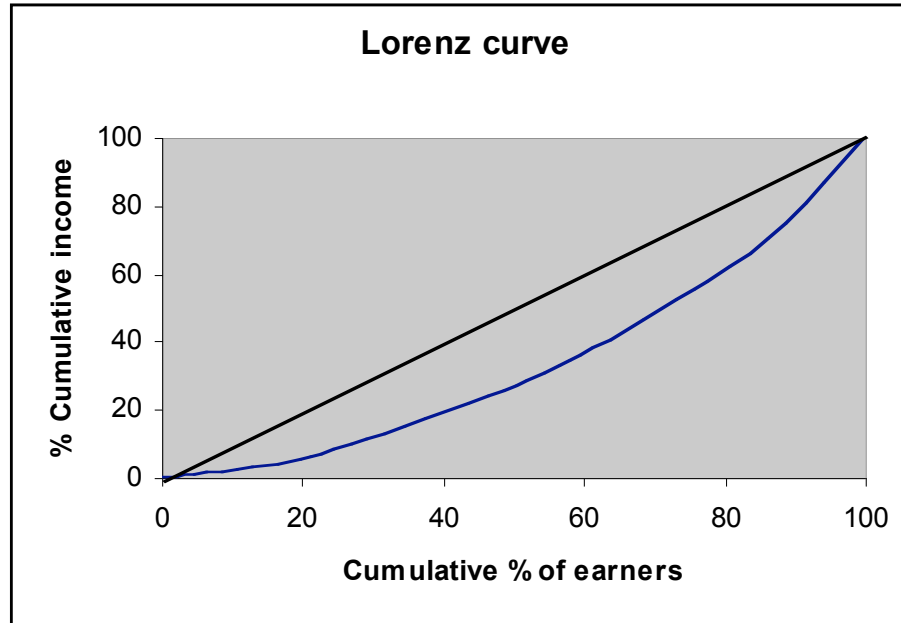
UK: Annual earnings skilled metal & electrical trades (2005)



*Source:
Annual Survey of
Hours and
Earnings (ASHE),
Office for National
Statistics*

Mean ('average') earnings	£23,985
Median ('typical') earnings	£23,251
Gini Coefficient ('measure of inequality')	0.22

Germany: Annual earnings (net) all employed (2004)

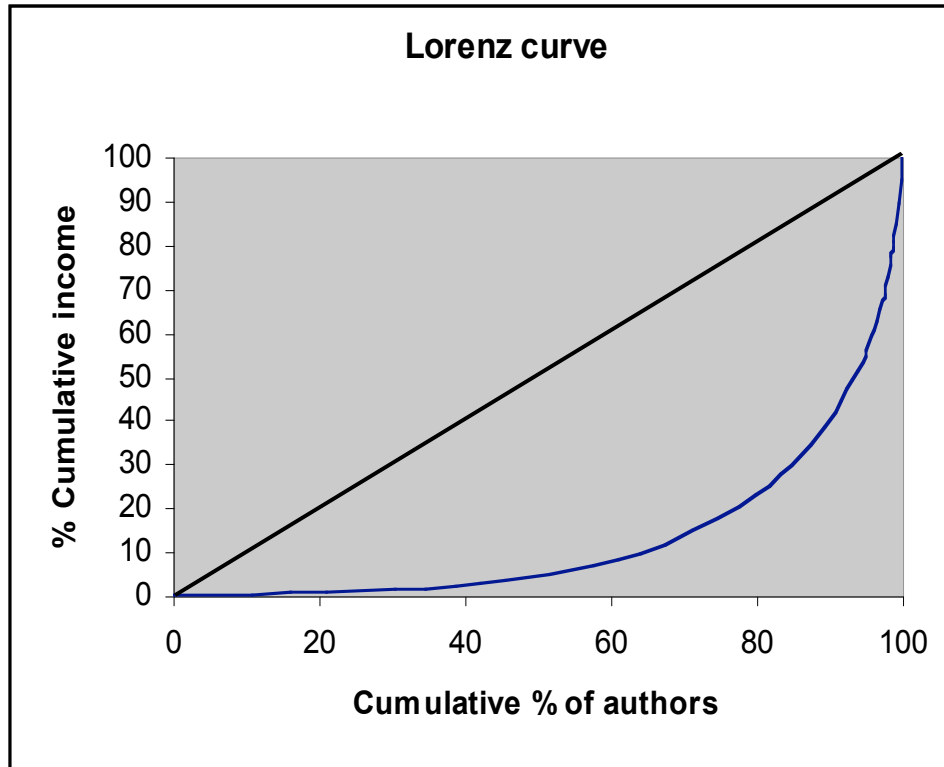


Source:
Mikrozensus 2004
Statistisches
Bundesamt (federal
office for statistics)

Mean ('average') earnings	€31,157 (£21,187)
Median ('typical') earnings	€28,730 (£19,536)
Gini Coefficient ('measure of inequality')	0.31

(2004 exchange rate: €1 = £0.68)

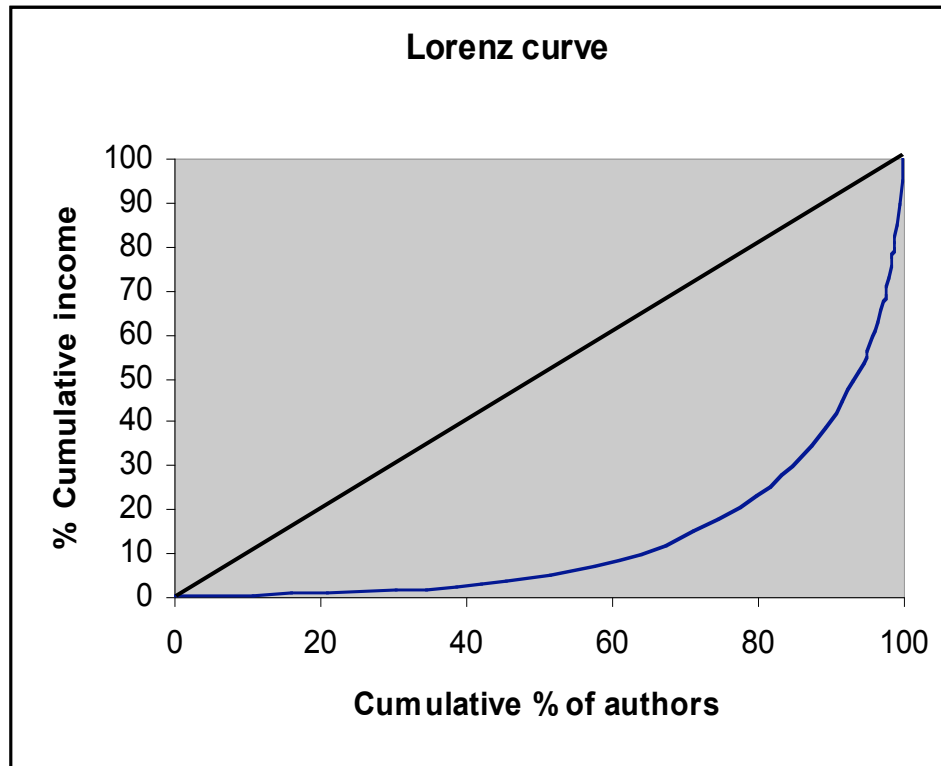
UK: Annual earnings from self-employed writing (2004-5)



Source:
ALCS Survey
UK writing income
(full sample: $n = 1,153$)

Mean ('average') earnings	£16,531
Median ('typical') earnings	£ 4,000
Gini Coefficient ('measure of inequality')	0.74

UK: Annual earnings from self-employed writing (2004-5)
“professional authors” (= more than 50% of time allocated to writing)

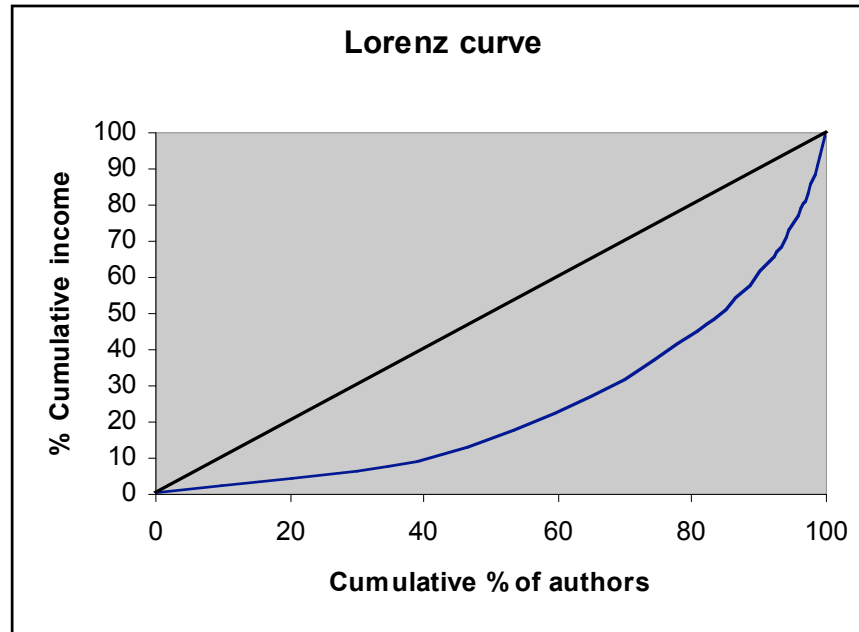


Source:
ALCS Survey
UK writing income
(sub-sample “professional
authors”, n = 525)

Mean (‘average’) earnings	£28,340
Median (‘typical’) earnings	£12,330
Gini Coefficient (‘measure of inequality’)	0.63

Germany: Annual earnings from self-employed writing (2005)
“professional authors” (= more than 50% of time allocated to writing)

Source:
ALCS Survey
German writing income
(sub-sample “professional
authors”, n = 182)



Mean ('average') earnings

€20,113 (£13,878)

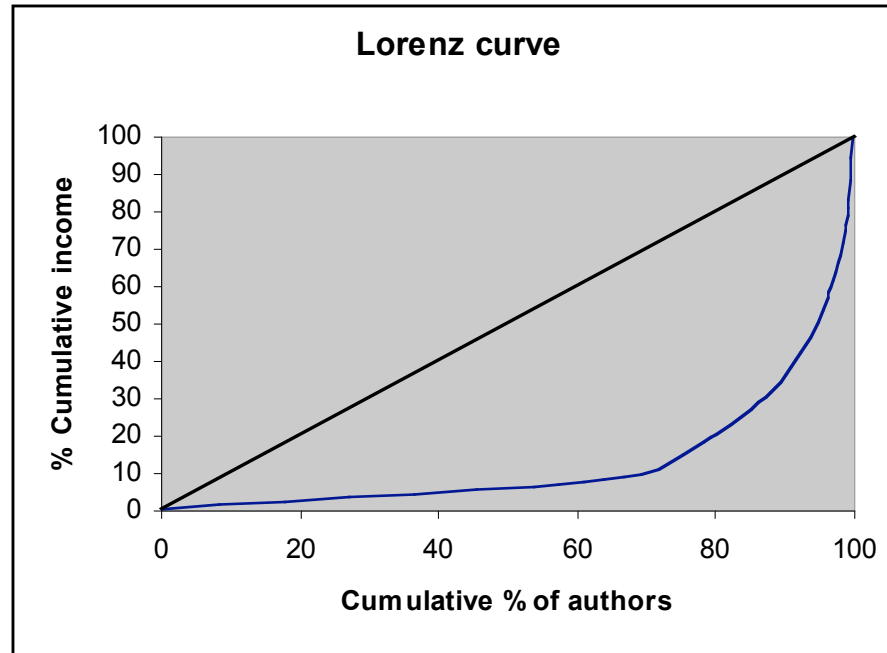
Median ('typical') earnings

€12,000 (£ 8,280)

Gini Coefficient ('measure of inequality')

0.52

Germany: Annual earnings from self-employed writing (2001)

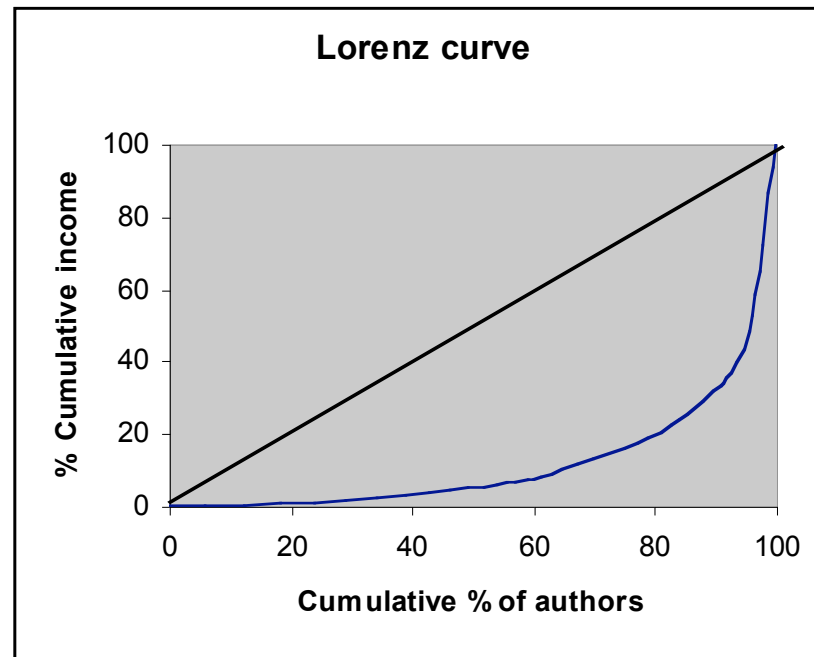


Source:
Commissioned
analysis of all 24,436
tax payers with
writing income (2001)
Statistisches
Bundesamt (federal
office for statistics)

Mean ('average') earnings	€17,306 (£10,557)
Median ('typical') earnings	€ 7,163 (£4,369)
Gini Coefficient ('measure of inequality')	0.83

(2001 exchange rate: €1 = £0.61)

Germany: Annual earnings from self-employed writing (2001) of those tax payers who earn more than 50% of their income from writing



*Source:
Commissioned
analysis of 10,220
“main-income” self-
employed tax payers
(2001) – (sub-sample
of previous slide)
Statistisches
Bundesamt (federal
office for statistics)*

Mean (‘average’) earnings

€33,976 (£20,725)

Median (‘typical’) earnings

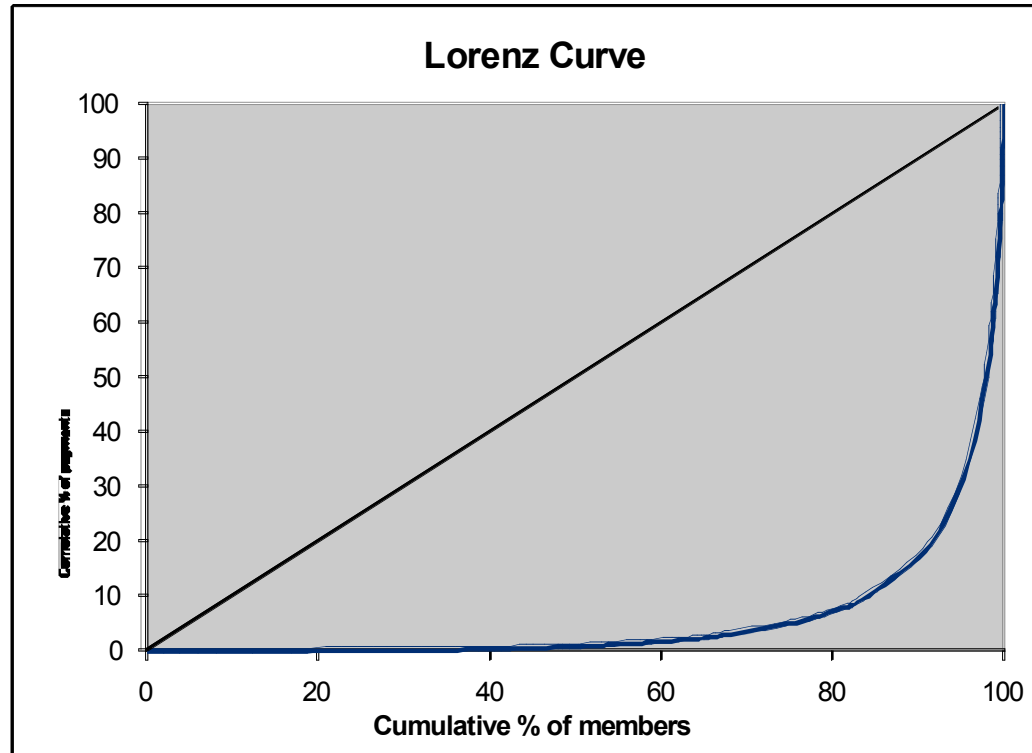
€10,375 (£6,329)

Gini Coefficient (‘measure of inequality’)

0.75

(2001 exchange rate: €1 = £0.61)

UK: Performing Rights Society distribution (1994)



Source:
MMC report,
Performing Rights
(1996)

n = 15,500

10 writers more than £100,000
204 more than £20,000
459 more than £10,000
848 more than £5,000
1,438 more than £2,500
8,237 under £100

Mean earnings ('average') earnings	£1,420
Median earnings ('typical') earnings	£ 84
Gini Coefficient ('measure of inequality')	0.88

Writing income as % of total individual income

<i>Percentage of UK professional authors for whom writing income contributes:</i>	<i>% of authors</i>	<i>Mean writing income</i>	<i>Median writing income</i>
More than 50% of total individual income	59.6	£41,186	£23,000
More than 75% of total individual income	48.4	£48,101	£26,500
More than 90% of total individual income	42.8	£50,090	£27,696
100% of total individual income	40.0	£49,542	£27,500

<i>Percentage of German authors for whom writing income contributes:</i>	<i>% of authors</i>	<i>Mean writing income</i>	<i>Median writing income</i>
More than 50% of total individual income	63.1	€27,544 (£19,005)	€20,000 (£13,800)
More than 75% of total individual income	52.9	€29,225 (£20,165)	€20,000 (£13,800)
More than 90% of total individual income	45.5	€30,287 (£20,898)	€20,000 (£13,800)
100% of total individual income	40.1	€29,475 (£20,337)	€20,000 (£13,800)

Contribution to household earnings

UK professional writers	<i>Writing income</i>	<i>Individual income</i>	<i>Household income</i>
Valid responses	525	514	501
Mean (£)	28,340	41,017	55,620
Median (£)	12,330	25,337	37,000
Coefficient of Variation (%)	204.9	146.4	115.1
GINI COEFFICIENT	0.63	0.51	0.47

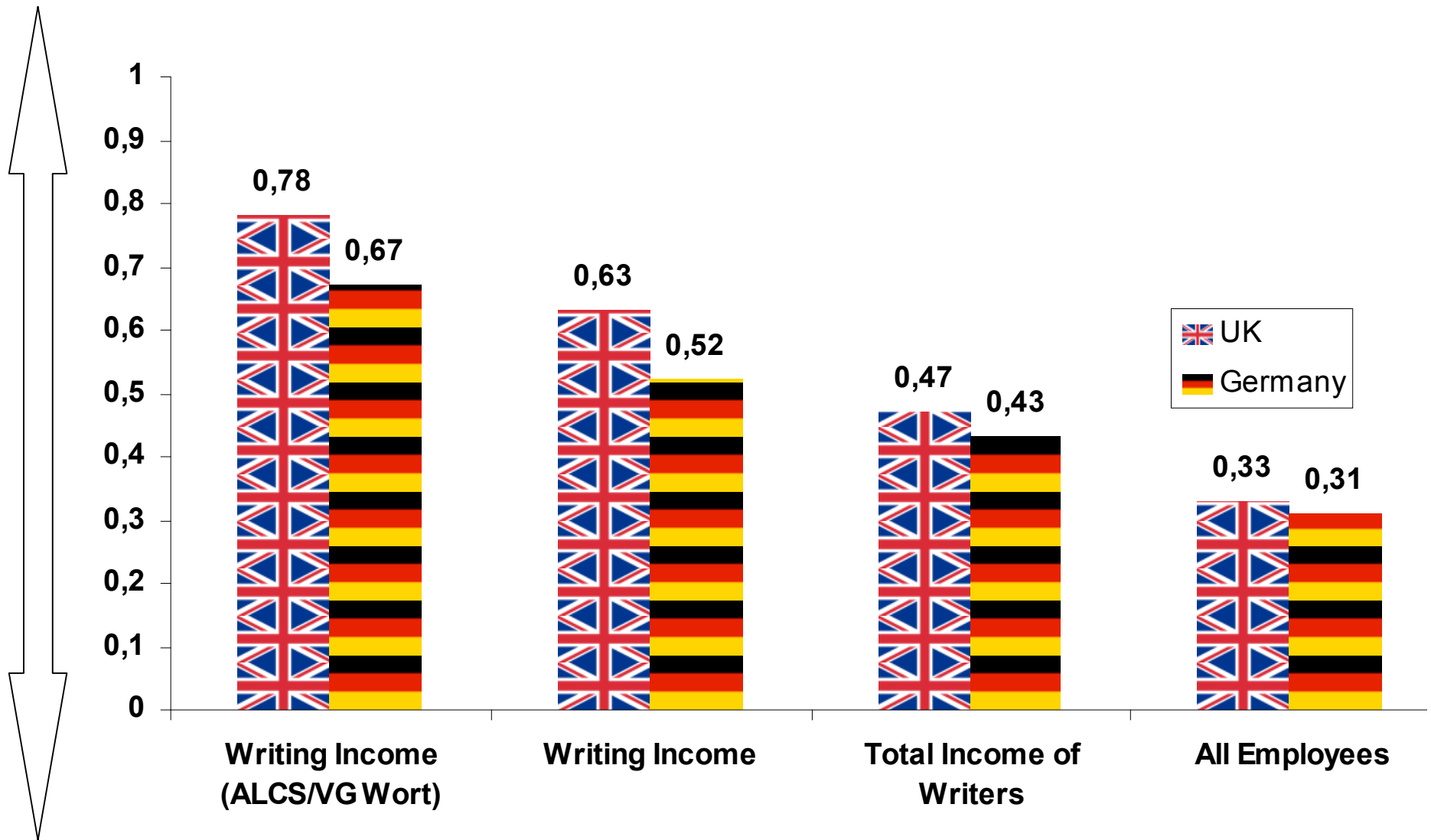
German professional writers	<i>Writing income</i>	<i>Individual income</i>	<i>Household income</i>
Valid responses	169	168	164
Mean (€)	20,113 (£13,878)	27,913 (£19,260)	41,644 (£28,734)
Median (€)	12,000 (£8,280)	21,000 (£14,490)	30,000 (£20,700)
Coefficient of Variation (%)	132.7	96.4	87.7
GINI COEFFICIENT	0.52	0.43	0.42

UK professional writers ALCS income GINI = 0.78

German prof writers VG Wort income GINI = 0.67

Unequal distribution of income

(1 = one person earns everything)



Equal distribution of income

(0 = all earn the same)

Writing income of professional authors with and without contractual changes

UK

<i>Have you succeeded in changing the terms of a contract in 2005?</i>	<i>Valid responses</i>	<i>Mean writing income (£)</i>
NO	245 (57%)	22,950
YES	180 (43%)	40,507
<i>t statistic</i>		2.87***

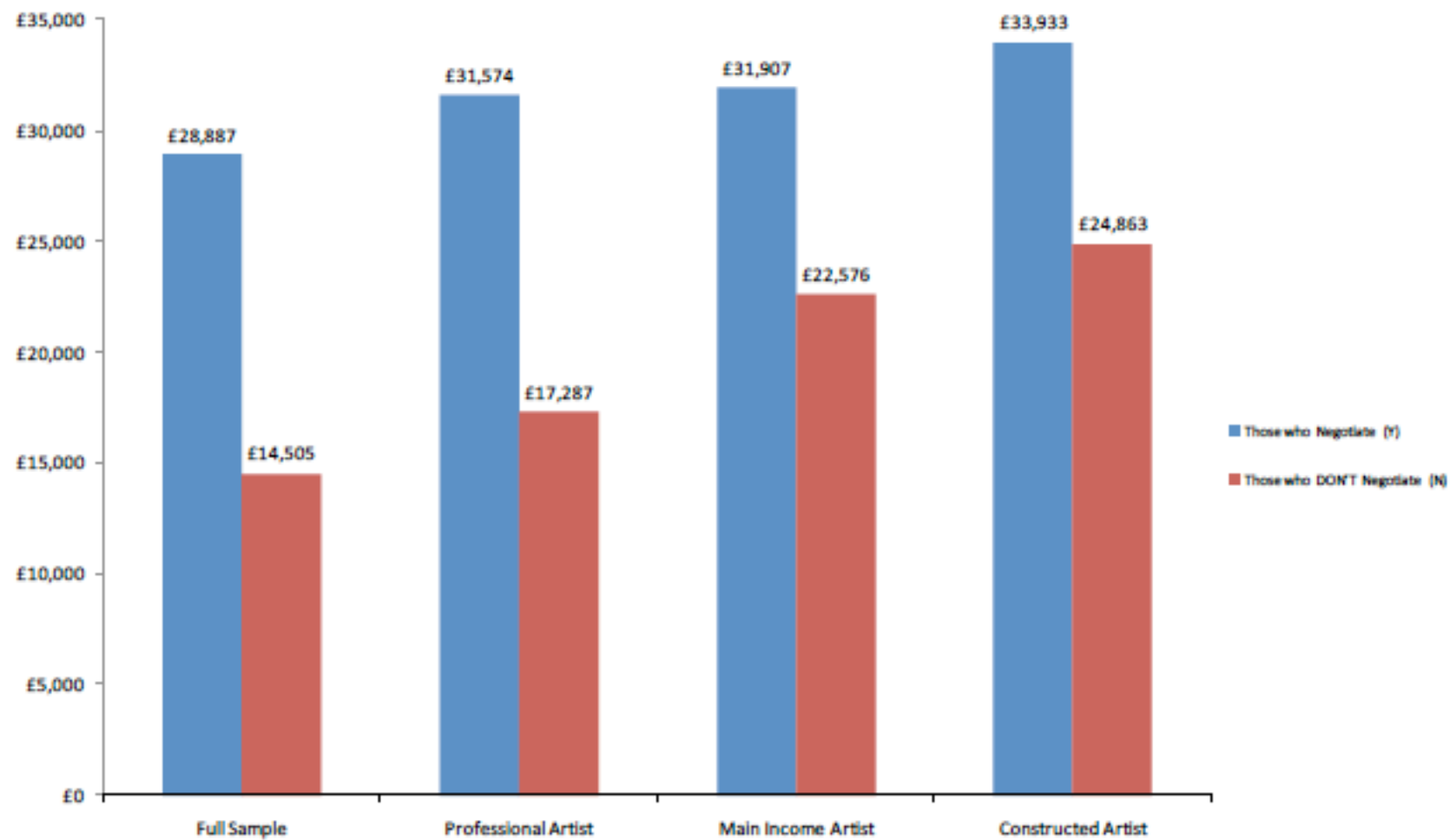
Germany

<i>Have you succeeded in changing the terms of a contract in 2005?</i>	<i>Valid responses</i>	<i>Mean writing income (€)</i>
NO	95 (56%)	13,080
YES	76 (44%)	28,964
<i>t statistic</i>		3.73**

Moral rights disputes:

UK = 11.4%; Germany = 24.6 %

Difference in mean income of visual creators with or without attempts to negotiate



Findings

1. Cultural markets are winner-take-all markets

Top 10% of creators receive a disproportionately large share of total income (photographers/illustrators/artists: 45%; literary authors: 60-70%; composers/songwriters: ~80% of total income).

2. Portfolio lives are typical

Median earnings of *professionals* are low (UK: photographers/illustrators/artists: €18,000; literary authors: €12,000). Most creators have earnings from another source (second job, partner).

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How to overcome failure of © policy

1. Review author/copyright rhetoric

“Our creativity and success depends on strong copyright protection.” (European Recording Artists petition, 1999)

“An extended term is good for promoting Europe's performers and the cultural vibrancy of European sound recordings.” (McCreevy, Feb 2008)

Empirically, copyright benefits only a small number of creators with bargaining power.

Parliament needs to be wary of those speaking in the name of creators.

2. Articulate policy goals: *innovation – diversity – reward*

Fighting piracy is not a policy goal. Objective of *“tackling the infringements at their source”* is misguided. (3.5.3, Commission IP Strategy, 25 May 2011)

“Britain has for generations enjoyed an enviable competitive advantage in music and book publishing. The future of these industries is now in the hands of three US companies - Apple, Amazon and Google.”
(John Kay, Financial Times, 25 May 2011)

EU key challenges: create such companies; improve financial share of creators

3. Negotiate a new European copyright settlement

Facilitate a coalition of artists, aggregators and consumers (replacing the “right owner coalition”).

Explore shift from exclusive to remuneration rights.

Producers will have to accept a patent rationale for exclusive rights.



Arts & Humanities
Research Council

script

Independent Review of Intellectual Property and Growth

Submission by Professor Martin Kretschmer¹

on behalf of the Intellectual Property Foresight Forum

<http://www.ipforesightforum.ac.uk/>

Response to consultation J: 2011

This submission makes two recommendations:

- As a policy compass, the review should articulate a general **use-it-or-lose-it principle** with regard to all intellectual property rights.
- For the specific case of copyright law, the review should implement the principle through the tool of **term reversion**. Under the proposal, copyright will only be assignable for an initial term of 10 years, after which it will fall back to the creator.

The proposal is compatible with international and EU law.

The effects of the intervention will be to open up unexploited back-catalogues.

It will remove obstacles to social and commercial innovation (complementing interventions on the scope of protection: "exceptions").

By stimulating artist led innovation, term reversion is also likely to improve the financial position of creators.

¹ Professor of Information Jurisprudence, Director of the Centre for Intellectual Property Policy & Management (www.cippm.org.uk), Bournemouth University. The author would like to thank the following colleagues for their comments on an earlier draft of this submission: Prof. Lionel Bently, Prof. Roman Deazley, Dr Makeen Makeen, Prof. Ruth Soetendrop, Dr Andrea Tosato, Prof. Ruth Towse, Prof. Charlotte Warde.

Policy proposal

(submitted to UK 'Hargreaves' Review)

– As a policy compass, the review should articulate a general **use-it-or-lose-it principle** ...

– ... the review should implement the principle through the tool of **term reversion**...

... copyright will only be assignable for an initial term of 10 years, after which it will fall back to the creator.

<http://www.cippm.org.uk/publications.html>