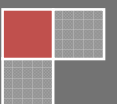


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**BALANCED AND EFFECTIVE DISSEMINATION OF
CREATIVITY OVER THE INTERNET FROM MAKING IT
POSSIBLE TO MAKING IT HAPPEN**

**Paper presented at the WIPO forum on Enabling
Creativity In The Digital Environment: Copyright
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Introduction

We have spent the last two days discussing issues of copyright documentation and infrastructure within the digital networks. These include the public and private registration systems, copyright documentation and practices copyright infrastructure for business models online as well as preservation of creative material in the digital environment; maintaining a balance to taking into account issues of public interest and preservation of creative material in the digital environment. The question now is, how do we ensure that we have balanced and effective dissemination of creativity over the internet?

It is important to look at the various opportunities available over the internet, the challenges and the measures that have been taken or could be taken to allow for the dissemination of the works. The legal and administrative frameworks need to be in place to support the dissemination of the works online. This will also include the creation of linkages between the registration and documentation systems, digitisation of works, use of social networking sites, utilisation of existing infrastructure, among others.

Legal and Administrative Framework

The internet is said to be a 'borderless' network to the extent that it can be accessed by anyone in any country for as long as there is internet connectivity. Several issues have been raised in relation to the applicability of copyright law over the internet. These have been tackled at various levels especially in relation to reproduction and dissemination of the works.

The World Intellectual Property Organisation Copyright Treaty (WCT) of 1996 attempted to address some of these issues and provided for *inter alia* the right of making available and the provision for the protection against circumvention of technical protection measures and rights management systems. In light of the discussions, the ideal situation is one whereby the national laws include these provisions taking into consideration the public interest to ensure access to knowledge.

Most of the Laws such as Kenya, Botswana, Uganda, Nigeria, Ghana among others have provisions that prohibit the circumvention of technological protection measures as well as removal of rights management systems. However, these laws do not provide for exceptions to the anti circumvention provisions and in effect excluding the uses under fair dealing in the digital

environment. Other provisions such as the right of making available have been included in the rights granted to creators of copyright works under the right of communication to the public.

Private registries

Public registration and legal deposit systems provide a platform for creative content to be made available online, where the same has been digitized. The Global documentation system (GDA) which is currently being used in various countries in South America and Africa is an example of a public registration and deposit system that at least makes the titles of the works available to the public.

However, where the documentation system allows for uploading of the material onto the server, such as is the case with the private registries and documentation systems, the owners still maintain the right of making available and all that the public registry does is provide for a database (such as the name of the author, title of works, date of creation etc) from which the public can make further research from other relevant depositories. These will provide the licences/authorization to download and use the works or direct one to the rights holders.

From the research on private documentation systems, it is evident that by making available information related to existing creative material and its licensing conditions; these systems could enable the production, the re-use, and the distribution of creative material in the digital environment.

From making possible to making it happen- Infrastructure

User generated platforms

The legal framework provides the legal basis but there is need to ensure that the creative content made available in a balanced and effective manner; taking into account the interests of the users and the rights of the copyright owners. Several models have come up in the recent past and include the public and private documentation systems as well as platforms for the provisions of contents and user generated platforms. Issues such as licences, whether through creative commons or specific licences are covered to enable access to the material. User generated platforms such as YouTube and Facebook require that any material that is uploaded does not infringe upon any existing copyright.

There are several other platforms that provide not only the data made available registration systems but they also have the creative content and provide various means of accessing the same. Flickr, facebook and Jamendo, both offer certain categories of works through their websites that include photos, videos and music online. They have user generated content that may be shared among the friends and or other users of the services but these have to be within the provisions of copyright law.

Flickr allows for the use of the works subject to specific licences to their works or they may use the creative commons licences¹. Jamendo on the other hand prefers open licences although the users may have other licences attached.² The creative works are made available on these websites. Jamendo's business model is based on the commercial licensing of the music it hosts (and other value added services). Jamendo specializes in offering use licenses such as background music for shops and businesses or synchronization for advertising, etc³

The provision of copyright documentation on online platforms to publish or share works is an emerging model as illustrated above. 'In terms of network effects and technological infrastructure, it seems much easier for platforms such as Flickr or YouTube (or even Facebook) to integrate copyright registration features than it is for existing registries to become competitive with these platforms. This could happen through cooperation (such as between Jamendo and Safe Creative) or acquisition (for example, an online platform could simply buy a registry instead of internally developing a trusted registration platform).'⁴

Google Books

Google service that allows users to search for books that have been scanned in agreement with the rights holders. There are 4 different viewing systems based on the agreements; No view,

¹ As of June 23, 2011, Flickr hosts 189,559,895 CC-licensed photos. Of these, 53,567,081 can also be used for commercial purposes and 124,848,391 can be modified to create derivative works. Additionally, 44,097,267 pictures are licensed under CC BY or CC BY-SA which allows both commercial uses and modifications. (See WIPO Study on Private Registries 2011)

² As of June 23, 2011, Jamendo hosts 49,257 albums: 2,053 are licensed under CC BY; 9,739 under BY-SA; 25,369 under BY-NC-SA; 519 under BY-NC; 1,270 under BY-ND; and 9,819 under BY-NC-ND. (90 albums are also available under the now obsolete Creative Commons Sampling Plus license while 194 albums are available under the Creative Commons NonCommercial Sampling Plus license.) (See WIPO Study on Private Registries 2011)

³ *ibid*

⁴ *ibid*

snippet view, limited view and full view. This provides the owners of the creative contents to make available and disseminate their works online. According to *Google*, there are over 129,865,000 books around the world, of which 15 million books from more than 100 countries in over 400 languages⁵ have been scanned to date as part of the *Google Books Project*.

Mobile telephone Service Providers and Premium Service Providers

The use of mobile telephones in a country like Kenya has grown from a subscriber base of less than one million in the year 2000 to 22 million in 2011. These provide a platform for the dissemination of creative works especially with the introduction of broadband services. The premium service providers maintain a catalogue of creative works especially music and sale make these available to the mobile service providers at a cost who in turn sell them to their subscribers. Initially, this was mainly for ring-tones and ring-back tones but now includes the music downloads. The creative authors, should be able to make use of these services to make their works available online.

The mobile phone coupled with low calling charges can provide a platform where all the new technologies and business models discussed may be used for instance the ultraviolet. Most of the users are online using the mobile phones allowing them access to the user generated platforms, documentations systems. This will include the different business models that rely either on advertising revenue or the subscription/licensing models.

Google Kenya

This year, Google Kenya was launched and provided a platform for the dissemination of creative content from Kenya. Google sought to get clearance/permission from the rights holders to upload their works onto Google Kenya making it available to the users.

Use of advertising

Advertising provides an avenue for the remuneration for the use of creative content online.

Meta-Documentation Projects

⁵ See <http://booksearch.blogspot.com/search/label/announcements> (last accessed on June 14, 2011).

They do not collect copyright material but instead provide the standards and best practices for the registries and documentation systems. Examples were Creative Commons and Picture Licensing universal systems.

The OSCRI (Open Standards for Copyright Registries Interoperability) Group includes several private copyright registration systems including Safe Creative, Registered Commons, and Genero (a Norwegian service). It also includes Creative Commons⁶ and Jamendo, as well as SemanticCopyright.org and Attributor.com. The OSCRI initiative represents “a platform for the study and development of standardization rules and protocols in the copyright field, with the main aim of creating a scenario where all copyright registries are compatible between each other.”⁷

Task Force on Creative Content

The Government of Kenya, through the Ministry of Information set up a task force to deal with issues of creative content which *inter alia* include the dissemination and making available of the Kenyan creative content online. The task force, which is mainly made up of creative authors and a few relevant government officials has been working on modalities and looking at the existing infrastructure available to ensure the effective dissemination of the works online.

The Government, through the ICT Board, Ministry of Information launched the Kenya Open Data came up with an initiative where they would fund creative authors (companies and individuals) to come up with digital creative content that may be disseminated/made available through the digital networks. This was in response to the increased demand for the digital content to be used online as well as over the mobile telephone networks. The grantees could take advantage of the existing infrastructure or come up with suitable platforms for the creation and dissemination of creative content.

⁶ See also Frank Tobia, December 12, 2008, “Closing: What’s next in 2009” reporting Nathan Yergler’s list of future technological initiatives from Creative Commons, available at <http://labs.creativecommons.org/2008/12/12/closing-whats-next-in-2009/> (last visited on June 21, 2011). The list included an item called “OSCRI / CC Network and creating an interoperable registry with Safe Creative and Registered Commons”.

⁷ See WIPO Studies on Private Registries

Challenges

The main challenge is lack or limited digitisation of the works as well as clear platforms for the dissemination of the same. This is an issue that is being addressed by the ICT Board by facilitating those who wish to generate digital content.

The creative authors have not fully embraced the opportunities available over the internet and would still rather deal with the content 'offline'. The existing private registries such as the Collective Management Organisations are reluctant to share the information available that would be used to help in the tracing, identification and possible dissemination of the works.

Many are trying to re invent the wheel. The Collective management organisations should embrace the new technologies and work outside the 'box'. It is clear that they are set up for specific purposes that involve reproduction and public performance and broadcasting.

Payment methods have been a problem due to the slow uptake of credit cards and other plastic payments that may be used over the internet. This is a problem that has been partly solved by the use of mobile money transfer using the telephone networks.

Conclusion

The creative authors should take advantage of the existing infrastructure to ensure that the works are disseminated in a balanced and efficient manner.