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“The answer to the machine is in the machine”:

A Big Idea for the Digital Agenda submitted by the European Publishers Council

Our Big Idea

Our thesis is straightforward. Copyright *as law* is entirely fit for the new environment of networks and digital dissemination. But traditional *practice* for the management of copyright – individually lawyer-crafted licences, communication on paper, people-heavy processes – is a thing of the past.

We need to find ways of managing copyright that go with the grain of technology rather than falling back on cross-grained attempts to maintain a vanishing status quo. The internet inevitably brings with it the end of traditional ways of doing business, of high barriers to entry, of incumbency rights. Nevertheless, this does not imply that copyright has somehow become an outmoded concept. There may be many who would *like* it to be so – and some with strong commercial interests that it *should* be so. But before we allow them to destroy what copyright has created, we should think very hard about what we would be losing in its destruction.

Copyright was conceived as a tool to encourage creativity; over three centuries, it has become the engine of a hugely diverse media sector, a society which values the role of author and composer, of photographer and musician and recognizes their right to decide on how their creations are used. Without copyright (and related intellectual property rights), the media as we know it today – whether in entertainment, education or the delivery of news or other factual information – would not exist.

There are those who believe that we are watching the death throes of the dinosaurs of the old media; other lither and more agile “internet savvy” businesses will arise to take their place in the content ecosystem. There is, though, little evidence to suggest that this is so –

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almost all the businesses that are making real money out of content on the internet are dependent on other people's investment (of time and money) in creating that content and have become adept at avoiding the responsibilities and liabilities that go with content creation. Platitudes about the value of "the link economy" count for nothing in the real world. Unless the individuals and businesses which create content can find a way of making a return on their investment (whether or not the return they seek is financial), they will inevitably cease to create a diverse range of content (and those with time and money to invest will put it elsewhere). Copyright is what makes it possible to make a return on creativity – and it is critical to the development of a thriving and diverse creative culture on the internet. Currently, the diversity and richness of content on the internet is subsidised by content delivered in other – physical – distribution channels. When that subsidy is no longer available, or at least becomes less significant – as must inevitably be the case – the internet will come to be a drab and uninteresting place.

But how can we make copyright work in an environment where to make perfect copies and to republish content of any kind is so simple that we can all do it? "The answer to the machine is in the machine."¹ As we move into a machine-to-machine environment, the business of managing copyright must become a machine-mediated process, in which the complexity of copyright is completely hidden from the individual user, as it always has been in the past.

Building the technical infrastructure

What would it mean to bring the management of copyright into the 21st Century? This is not about "digital rights management" – or at least not as this phrase is commonly understood. Technical protection methods (TPMs) may have their place in the management of copyright on the internet, but they lie at the end of a process of rights management, not at its beginning. Technical enforcement is not the first issue to tackle.

The primary issue is about using technology to do what technology is really good at – managing data, particularly managing well-structured and standardised data, and using that data to automate the processes that control everything around us. Rights and permissions data needs to move centre stage, particularly in the regulation of business-to-business transactions.

¹ **Charles Clark, publisher and copyright expert, 1933-2006/** Charles Clark's famous aphorism was used as the title of a chapter that he contributed to *The Future of Copyright in the Digital Environment* (ed:P. BerntHugenholtz) published in 1996, but almost certainly predates that use.



We need to be able to identify the content being used and who controls in the rights in it; we need to be able to identify the user and the usage; we need to be able automatically to link these various entities together to complete a transaction. Data (those portions which do not threaten privacy or confidentiality) will need to be held in accessible online databases (sometimes known as registries, but not to be confused with any attempt to impose statutory registration of copyright works which we would oppose). Those databases will need to be linked together through a trusted (and trustworthy) messaging infrastructure. These in turn need links to secure transactional systems that handle payments that will support many different types of business model – from low value micropayments to high value “all you can eat” subscriptions. And this infrastructure has to be pervasive – as pervasive as the network itself.

In many different initiatives, coming from many different starting points, the work of building the infrastructure has already started. It would be an overstatement to claim that these diverse initiatives are carefully fashioned parts of a well-conceived master plan, and that each will simply slot into its allotted place. On the contrary, the key task of the next decade is to pull these different initiatives together into a coherent functional infrastructure. No one of the projects holds the complete answer to the management of copyright on the network, but each has its own part to play.

We do not have space here for a comprehensive *tour d’horizon*, far less for a detailed description of each of the projects, but the selection here points to the effort that is now being made by many different organisations to address this increasingly urgent challenge.

- Structured approaches to expressing licences and permissions are exemplified by ONIX-PL (ONIX for Publication Licences: <http://www.editeur.org/21/ONIX-PL/>), a standard format for the communication of publishers’ licences to libraries and other institutional customers) and
- ACAP (Automated Content Access Protocol: www.the-acap.org) a format for the communication of much simpler permissions expressions to manage online business-to-business transactions (including, for example, news aggregation). In the visual arts, we have the work of the PLUS Coalition (<http://www.useplus.com/index.asp>), an organisation which has made substantial progress in the development of standards to support the automated processing of the licensing of photographs and graphic arts. And, of course, there is the
- Creative Commons (<http://creativecommons.org/>), a philosophical movement as much as it is a standards initiative, which offers a range of machine-readable licences primarily appropriate to the management of non-commercial content.
- And at the more technical end, UltraViolet <http://www.uvuu.com/> is the most recent project seeking to deliver interoperable TPMs for home networks – for managing permissions in our growing consumer video and audio collections.

- And we are also seeing the development of the first online rights registries, for example in the work of the Book Rights Registry (<http://www.googlebooksettlement.com/>) being established in the wake of the Google Book Search settlement.
- In Europe, the ARROW project (<http://www.arrow-net.eu/news/>) has been established to facilitate the licensing of digitisation of library collections; this ambitious project has at its heart the concept of a distributed registry of rights information, linked by a “switchboard” – and we return to our telephone analogy. Other registries planned include a pan-European music rights registry and a registry of photographic rights planned by the PLUS Coalition.

A fitting project for the Digital Agenda

The Digital Agenda provides the perfect opportunity for a project to build the essential links in the infrastructure, to put Europe at the forefront of the digital content economy.

It starts from the deceptively simple premise – the creation of a “digital copyright” symbol, the 21st Century equivalent of the ubiquitous © symbol. This symbol – which should be readable both visually and by machines – provides the first essential in a system which is able to make clear that publishing content on the network is not freely available for use by anyone and for any purpose. Whether or not the content is protected by firewalls, this digital copyright symbol allows the rightsholder to make an unequivocal statement – this content is protected by copyright.

The power of the internet, particularly the semantic web or “Web 3.0”, for linking data then provides the engine for the development of the type of infrastructure which is essential for permissions management and transaction. The “digital copyright” symbol can link the user – whether a person or a machine – to human and machine readable copyright statements, licences and (where appropriate) to ecommerce engines.

The delivery of this project would involve bringing together a diverse range of stakeholders from every part of the digital economy – creators and rightsholders, service providers, data registries, standards organisations, rights users – in a collaborative effort to build an open, standards-based infrastructure with the lowest possible barriers to entry. Using the technical framework of Linked Data and the semantic web, this infrastructure can be built a piece at a time, and can be as scalable as the internet itself.

The © symbol was an invention of the early 20th century, a century of unprecedented creativity and change in the media; at an equivalent point in the 21st century, we now need to invent and deploy its digital equivalent, to enable and encourage the rich and diverse content environment which is a cornerstone of our civil society.

Annex - Key projects from the Digital Agenda which relate to our Big Idea

- **Key Action 1: Simplify copyright clearance, management and cross-border licensing by**
 - Enhancing the governance, transparency and pan European licensing for (online) rights management by proposing a **framework Directive on collective rights management** by 2010;
 - Create a legal framework to facilitate the digitisation and dissemination of cultural works in Europe by proposing a **Directive on orphan works** by 2010, to conduct a dialogue with stakeholders with a view to further measures on **out-of print works**, complemented by rights information databases;
 - By 2012, review the **Directive on Re-Use of Public Sector Information**, notably its scope and principles on charging for access and use;
- **Other actions:**
 - After an extensive stakeholder dialogue, report by 2012 on the need for additional measures beyond collective rights management allowing EU citizens, online content services providers and right-holders to benefit from the full potential of the digital internal market, including measures to promote cross-border and pan-European licenses, without excluding or favouring at this stage any possible legal option;
 - In preparation thereof, issue a Green Paper addressing the opportunities and challenges of online distribution of audiovisual works and other creative content by 2010;
 - On the basis of the review of the Directive on the enforcement of intellectual property rights, and following extensive stakeholder dialogue, report by 2012 on the need for additional measures to reinforce the protection against persistent violations of intellectual property rights in the online environment, consistent with the guarantees provided in the Telecoms Framework and fundamental rights on data protection and privacy.

The Commission will:

- **Key Action 5:** As part of the review of EU standardisation policy, propose legal measures on ICT interoperability by 2010 to reform the **rules on implementation of ICT standards in Europe** to allow use of certain ICT fora and consortia standards;
- Other actions:
 - Promote appropriate rules for essential intellectual property rights and licensing conditions in standard-setting, including for **ex-ante disclosure**, in particular through guidelines by 2011;

- Issue a Communication in 2011 to provide **guidance** on the link between ICT standardisation and public procurement to help public authorities to **use standards to promote efficiency and reduce lock-in**;
- Promote interoperability by adopting in 2010 a European Interoperability Strategy and European Interoperability Framework;
- Examine the feasibility of **measures** that could lead significant market players to license **interoperability information** to report by 2012.

Member States should:

- Apply the **European Interoperability Framework** at national level by 2013;

Implement **commitments on interoperability and standards** in the Malmö and Granada Declarations by 2013.