Sharing Knowledge and Access to Intellectual Property in the Internet Age

Content wants to be shared! And authors and publishers seek a broadest possible audience for their works and products. The caveat is that the work must be accessed and shared legally. With this as a starting point, allow me, initially, to make three basic observations.

LEGAL ACCESS MUST BE MADE EASIER THAN ILLEGAL – UNAUTHORISED - ACCESS

The first observation is that, a main challenge is to make it easier for users to access and share knowledge legally than illegally! This is a challenge that involves efforts way beyond those of the copyright holders.

The copyright ecosystem has two main components: Primary markets, and secondary markets.

The primary market - typically online subscriptions or the selling of books, journals, newspapers, magazines, etc., - contributes most to the publishing ecosystem.

The secondary market includes uses administered by CMOs, such as RROs, and refers to forms of reuse of already published works. This includes photocopying, digitisation and sharing of works through digital networks. It complements the primary market; it does not compete with it. Income from the secondary market is of major importance to the rightholders. In nearly half of the EU Member States authors and publishers are remunerated for certain secondary uses of their works through copyright levies.

A Pricewaterhouse Cooper (PwC) study in the UK showed that some 25% of the authors derives more than 60% of their income from secondary licensing. For publishers, it is a major driver to invest in new content development.

Member States have also introduced exceptions to the exclusive rights for certain defined uses of copyright works. However, unremunerated exceptions must be limited to instances where primary and secondary markets cannot fulfil a market need efficiently and effectively. Broadening of them would potentially lead to job cuts and reduction of investments in new works and innovation. It is thus the development of new business models and access forms, including the ones linked to digital publishing, that is likely to suffer from it, leaving the hegemony to other countries. Is that what we want?

Jaron Lanier, the US computer scientist behind the expression ‘virtual reality’, in his book Who owns the future, points out the negative consequences of all information coming for free to the end user. He notes that a fundamental problem today is that web information being free obscures the fact that people created all the data that is being made available. He calls for a “humanistic information economy” where people are compensated for their data contribution. Otherwise, what he refers to as the Siren Servers –Google, Apple, Amazon, a handful of other companies – will monopolise everything, and that is not in the interest of anyone, in the long run not even the Siren Servers. It is therefore indispensable to restore the value of data. Information, content, airwaves, etc., should be paid for. There is a huge difference between paying something and paying nothing for information. The difference, in my view, includes whether to create a basis for sustainable economic growth or not.
The aim must be to combat unauthorised use of copyright content also through making it easier to access content legally than illegally!

The acknowledgement of the importance of the creative sectors in the digital economy has resulted in several EC initiatives aiming at developing practical solutions for user access to copyright works, such as the Licences for Europe. These initiatives merit the support of all stakeholders concerned.

Rightholders have also taken the lead in the Linked Content Coalition, which aims at offering an Internet based solution to seamless legitimate use of content in the digital network. These are, hopefully, just a start of other initiatives to come that will make it easier to access content and share knowledge. But solutions cannot be rightholder driven only; users must express clearly their needs and participate actively in the dialogues, in order for rightholders to see how they can be responded to. The best way to dialogue is not to walk away from it!

**THE FUNDAMENTAL PRINCIPLES IN THE COPYRIGHT FRAMEWORK IS FIT FOR PURPOSE**

My second observation regards the legislative framework. The fundamental copyright principles grant exclusive rights to copyright holders, combined with the possibilities to introduce certain exceptions or limitations to those rights in national legislation. These are also the basic principles in the EU copyright framework.

Copyright is a fundamental human right, recognised in Article 27 of the Universal Declaration of Human Rights. It provides creators with a living and enables them to create new works. Exceptions and limitations must be based on the internationally acknowledged principles of “the three-step” test.

I would argue that those fundamental principles in copyright legislation are still valid in the Internet age and fit for purpose. They enabled

- Finish Nokia to become the world’s number one mobile phone producer - copyright was far from being the reason why Nokia lost that position - and the development of success stories such as those of Skype in Estonia, Spotify in Sweden or Viber in Cyprus;
- Europe to be a leading force with respect to developing solutions for making cultural heritage available;
- One of two jobs to be in IPR dependent activities
- Putting a halt to piratical activities of illegal services such as Pirate Bay
- Rightholders and CMOs to continue to develop new services to meet dynamic user demands for new forms of access

They have also, according to the Presidents of OHIM and the EPO, allowed the EU to shape “a modern and balanced system of IP rights, which not only guarantees innovators their due reward but also stimulates a competitive market.” We need to ensure this to be continued and not distort the balance.

As a basis for assessing exceptions and limitations to the exclusive rights, I cannot at present see any instrument that could replace the three-step test, with the same legitimacy, accuracy and
authority. In respect of allowing rightholders to develop dynamic business models, rigid interpretation of competition regulations in the EU has proved to pose more of a challenge to them and their representatives than current copyright regimes.

This does not mean that new legislation may not be required. IFRRO has, for instance, welcomed the proposal for a EU Directive on Collective Rights Management. With the increased importance of collective management in the administration of copyright it is only logical that framework conditions regarding governance, accountability and transparency are examined more closely. To this end, IFRRO is also involved in a WIPO initiative to identify good governance principles and standards globally for CMOs to follow.

**ACCESS TO COPYRIGHT WORKS ADMINISTERED BY AUTHORS, PUBLISHERS DIRECTLY AND CMOs IS THE BEST WAY TO SEAMLESSLY ACCESS COPYRIGHT WORKS**

The third and last observation regards the best ways to enable seamless access to intellectual property.

Internet and the digital environment offer opportunities, and their development cannot and should not be stopped. Rightholders acknowledge that users, such as educational institutions, companies, governments, students, teachers, researchers, managers and workers at all levels – society, in fact – need resources for access to copyright works that eliminates hurdles and enables simple, fast and convenient access them.

Access to works means that users can find them, retrieve them, use them and share them with others. Finding a work means being able to both find the work they want and the owner of the rights to that work. In some cases retrieving a found work can be done at no cost, in others payment is required. The work may simply be used for own personal purposes, for teaching purposes or for business or information purposes. In both academic and non-academic arenas, works are shared in a variety of ways: The work can be photocopied for either use inside the organisation (for example, in the classroom for teaching) or outside (by a company to market their wares). It can be e-mailed, posted to an intranet or to Internet, stored in a database, transformed into an entirely new work, translated, or reproduced in a version accessible to the print-disabled.

A well-functioning copyright system to enable legal access to copyright works plays a central role in sustaining the creative industries. In a fast changing world where technologies move with an unprecedented speed, regulations do not have the ability to offer the required flexibility. Agreements with rightholders and their collectives do!

Access to copyright works through agreements with rightholders directly, supported by user access through rights administration by CMOs is what best meets dynamic user needs to legally access text and image works in constantly changing environments: it offers the safest, simplest, fastest, most innovative, most convenient and most cost efficient way to seamlessly access content from multiple rightholders. An IFRRO publication offers best practices on how copyright holders and RROs work to achieve this.