



Inside the Creative Industries

Copyright on the ground

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Inside the Creative Industries: Copyright on the ground

‘Creativity and innovation always build on the past. The past always tries to control the creativity that builds on it. Free societies enable the future by limiting the past.’ Professor Lawrence Lessig (2004)

The copyright industries

Copyright, which arises automatically on creation of qualifying works, protects only a work arising as a result of ‘independent intellectual effort’, not an idea itself. The term of such protection is limited, with different periods in some countries. In general, over recent decades, legislatures faced with the question of the proper term of copyright have most often opted to extend it. In the UK, copyright now persists for 70 years after the death of the creator for artistic and literary works and films, 50 years after the creation or publication of a sound recording or broadcast and 25 years after the publication of a ‘published edition’.

The objective of copyright law is primarily to balance the public benefits that can arise from the widespread circulation, use and reuse of a copyright work with the need to provide protection, incentive and reward to the creator or owner of the copyright by granting a limited monopoly to exploit the copyright to that body or individual. Economists recognise that, in the absence of intellectual property (IP) protections such as copyright and patents, there are various types of intangible assets that would be under-produced by the market, because there would be no clear incentive for commercial organisations to produce them. On the other hand, the metaphor of ‘property’ must not be taken too literally: the law exists both to encourage the commercialisation of work and to produce a vibrant public sphere, not to grant rights for their own sake. This has been explored in greater detail in a previous ippr paper (Withers, 2006).

This paper concentrates on sectors which are variously described by terms including *creative industries* and even *media industries*. I shall most often use the term *copyright industries*. There are distinct characteristics of the copyright industries, which distinguish them from wider creative endeavour and which allow us to avoid the use of the loaded term ‘creative’. Unfortunately, much of the research into and statistics for the scale, growth and other characteristics of these industries draw across a wider landscape including industries such as fashion and architecture where copyright may have a lesser value per se than in others such as software, television, music or publishing. For the sake of accuracy, this paper aims to focus on the copyright industries wherever possible.

Nonetheless, statistics for the creative industries include those that rely primarily on copyright and, as such, are broadly helpful in determining the relative importance of the sector to the UK’s economy. For instance, in the period 2003-04, the creative industries employed 1.8m people directly in the UK in around 113,000 companies and many more smaller and freelance enterprises (NESTA, 2006). They accounted for eight per cent of UK Gross Value Added and were growing at an average rate of six per cent for the previous six years; approximately twice as quickly as the UK economy as a whole (DCMS, 2005).

It is widely predicted that the creative industries will continue to grow in size and also in comparative importance in the economy. This is part of the wider trend of economic activity towards services and away from manufacturing but is also part of a distinct opportunity for the UK to build on the existing strengths of its creative industries, many of which have global reputation, reach and impact and to position them more centrally to our economy over the coming years.

But just as the creative industries are not necessarily all copyright industries, it is incorrect to assume that IP is the sole source of value in the copyright industries themselves. The worst mistake made in discussion of this field of innovation is to lump together businesses, individuals and networks which have precious little in common, all because they have something ‘creative’ about them. Unless we can start to distinguish types of innovation that rely heavily on IP protections from those that rely on them less heavily, and identify types which do not rely on IP at all, we have no means of fine-tuning our copyright system.

One of the key distinctions that can be drawn at the outset is between small-scale, diffuse innovation, and large-scale, centralised innovation. Those who argue against the existence of IP in the digital age will commonly point to open source software development and amateur publishing as examples of how quality products can be created without traditional financial models. As valid as these examples are, they cannot be

compared to the development of large-scale innovations such as high-budget films, which require large upfront investment and cannot be produced through collaborative, networked models in the manner of open source software for example. A novelist or musician will often produce their early work without any upfront investment; a film-maker, by contrast, must be able to satisfy an investor that there will be a reasonable return on investment, and IP is one important basis for offering this assurance.

And yet, anecdotal evidence from investors and leaders of copyright companies suggests that while intellectual property concepts are clearly central to the financial exploitation of commercial creative work, other critical factors are also at play. Two of these in particular are worth examining.

Speed to market

First, one of the most important things we have learned from efforts to combat digital piracy is that speed to market has a much bigger impact than many people have thought on the profitability of media content. Exploring the US film industry Elberse, and Eliashberg find that the longer the time lag, the weaker the relationship between performance of domestic and foreign release (Elberse and Eliashberg, 2003). Consumers are increasingly unhappy with the creation of artificial scarcity – such as geographically limited releases of films or TV shows, regional DVD encoding and so on – in order to support the business models of content distributors such as movie studios, and television broadcasters.

If a TV show is available now in the US but not yet on UK television, for instance, and the means to access that show exists, then some people will find a way of meeting demand for the show and feel entitled to do so – especially when they perceive TV to be a free-of-charge medium and therefore believe that no one is being damaged by their moves to obtain access. The UK is now the biggest market for illegal TV downloads in the world (Envisional, 2005).

This does not in any way condone the making available of such goods but it is important to recognise that it is happening, as parts of the copyright industries are now doing. For example, the recent announcement by some Hollywood studios of simultaneous DVD and online release of films (known as ‘day in date’), including Hollywood blockbusters such as King Kong, signifies a step in the right direction as far as some viewers are concerned. The threat of piracy has been one factor in shaking the creative industries out of their torpor while pushing consumer behaviour and wishes to centre stage.

Strength of brand

The second factor is strength of brand. We are seeing the beginnings of a major shift, this time in the balance between the relative positions of distribution and aggregation brands – such as record labels, TV channels and publishers – in the direction of the brands of creators. People buy music by Robbie Williams, not EMI, films by Stephen Spielberg, not Dreamworks (as was). This shift is part of a larger evolution in industry structure which has been going on for many years.

It could be argued that the brand of the distributor becomes less important as the company itself becomes larger and encompasses more sections of the market. For instance, loyalty may well exist to tiny dance music labels, games developers or niche classical music labels even though any one of these may be owned by a larger company. These distributors are perceived to have a closer relationship than larger commercial entities to their product. Developing such relationships may play a more important role in securing future revenue streams where it results in audiences *willingly* paying creators for goods they value. This could result in major copyright industries focusing less on distribution, and more on research and development, commissioning and discovering artists, investment in creative works and marketing.

Of course, as is also well known, companies are also inclined to rely on informal IP protection as a way of securing revenue. It is for this reason that Digital Rights Management (DRM) technologies increasingly form the backbone of rights management in the digital age. As markets move to an increasingly retail- or aggregator-driven model, the necessity of efficient and, if possible, automated rights management becomes paramount. This goes far beyond the simplistic conception, which is all too common, of DRM as an anti-piracy measure designed simply to lock content to a given device or service. This function of DRM technologies, known as copy protection, is only one part. DRM has another, possibly more central function, namely that of managing the transmission of value – whether that value is music, money or kudos – from one place to another. One view of this is that ‘DRMs support an orderly market for facilitating efficient economic transactions between content producers and content consumers’ (Glickman, 2006).

Clearly, there are important questions concerning the proper and necessary scope and extent of the market for such digital content transactions. These questions are at the heart of this paper and the ippr research project, 'Intellectual Property and the Public Sphere: Balancing Competing Priorities'. However, it is difficult and at worst impossible to imagine a market for digital content products, however defined, that can exist without accepted, functioning and fair DRMs. For many in the industry, it is time to move beyond the oppositional stances often adopted in this debate to find new ground that can stand within the boundaries of both reasonable economic and social demands.

Creativity and the complex network

For the past three hundred years, all copyright distribution companies have operated as, in essence, closed and controllable systems. This is a result of one salient characteristic of cultural markets: they have generally operated around products that are limited physically (for example, a book or a CD) or temporally (for example, a broadcast or a performance). In other words, products have been scarce and relatively immutable. In what John Howkins calls the 'digital flip' (Howkins, 2001), this scarcity, which has often been artificially produced or reinforced using techniques such as the progressive release of films across territories, is disappearing. In addition, powerful cultural factors arising from the empowering effect of digital technologies are undermining the current system still further by fuelling changes in behaviour. Taken as a whole, this is producing complex networks of innovation and sharing that cannot be easily bracketed into 'cultural' and 'economic'.

At the widest level, this has always been the case: every copyright work becomes, by definition, part of the culture and most cost money or time to make and have the potential to generate revenue. Some copyright works become culture-defining: depending on the particular part of the culture in which you reside these could be Shakespeare or Eminem, *The White Album* or John Cage, *Tomb Raider* or *Match of the Day*. Others are ephemeral or impact only a small group. Increasingly, and for many, our place in society is in part determined by our cultural predilections. I like a band, a composer, a writer and these affect my view of the world, the make-up of my peer group, my social life. They are not the only factors but they are significant. In some socio-demographic groups, such as teenagers, they can take on heightened significance. This is one of the reasons that 'spaces' owned by teens, from their school bags and lockers to their MySpace web pages, are dominated by statements of affiliation to bands, actors and the like. Goffman (1956) wrote of 'public displays of identity where people can explore impression management'; this aptly describes MySpace profiles.

This culture-defining role, of course, is precisely what the creators and distributors of copyright goods want to achieve. No sensible record company, writer or producer sets out to minimise their impact on culture. They are driven by the desire for self-expression and commercial success to create works that resonate with elements of culture in such a way as to become popular or highly valued, or both. They almost certainly do not set out to create intellectual property rights per se – although this is a very significant by-product.

The digitisation of content is already beginning to have a wider impact on the culture surrounding copyright works. In the age of scarcity, audiences had no option available to them for recommending a TV show, say, or a music track than either to discuss it with a friend or, in the case of music, play it to them. Gradually, first through audio and then video tapes, loose networks of recommendation and sharing began to appear in the analogue world. Broadband internet connections, media-equipped mobile phones and Personal Video Recorders are accelerating us towards a reality in which people do not just have to talk about copyright products, they can send them, in real-time, as clips, previews, recommendations or in their entirety (Godes and Mayzlin, 2004; Dellarocas, 2003). These people-formerly-known-as-the-audience are beginning to expect to be able to do these things.

One example would be the extensive use of copyright media within the MySpace.com community, which is especially popular among young people. Here we see images, sound files and movies appropriated for self-expression – with no intention to piracy or thought to the copyright implications. This is a form of digital quoting, a digital scrapbook in some ways. Technically, although little or no harm comes to the commercial copyright monopoly of rights holders, this is breach of copyright. It is counterintuitive for many outside the copyright industry and its lawyers to think of it like this, whatever the technical position. After all, it is the most ardent fans that are using material in this way. Their use may well even have a positive effect on the sales of copyright works and even on the rise of a band. The Arctic Monkeys came to prominence through the MySpace site, and Lily Allen was signed to a records label after one of her songs proved popular on there.

The new 're-mix' culture

In some demographic groups, it is also increasingly common to mix together copyright works, overlay or combine them with original creative work and, in the process, create new copyright works. This so-called 'Re-mix Culture' is becoming increasingly common as both the technology and the required skills become more widespread. It shares common roots with the so-called 'modding' culture of computer games (modification of a piece of hardware or software in order to perform a function not intended by the original producer) and with open source software, but it also has distinct characteristics. As Lawrence Lessig, Professor of Law at Stanford Law School, put it in the Financial Times 'the law of intellectual property will not easily accommodate this remix creativity' (Lessig, 2005).

Clearly there is a fine line here between influence and plagiarism, particularly where concepts such as the format of a TV show are concerned. We have recently seen a number of high profile legal cases concerning TV formats such as *Survivor* and *The X-Factor*, although few have come to court. In the world of music too, sampling culture has grown, alongside music technology, to a position of significant importance in both mainstream genres and the huge electronic music field. The professionalisation of sampling, and the development by lawyers of a so-called 'sampling right' to facilitate it are, like much of copyright law, is simply not designed for the scale of use of these technologies by ordinary people that we are now beginning to see. In 2004, DJ Dangermouse produced *The Grey Album*, a mix of the vocals from Jay-Z's *Black Album* and the Beatles' *White Album*. After he issued 3000 promotional copies of the work, he was served with a 'cease and desist' order from EMI Records, which holds the copyright to *The White Album*. Despite the ban, *The Grey Album* remains popular and available to download via the internet.

These are new forms of behaviour happening on a mass scale. As a result, some in the copyright industries feel the need to disparage them for not representing true creativity. There are definitely differences between mixing and modding and what might be labelled the 'first generation' creativity of a composer or songwriter. But they are creative acts nonetheless, although they are sometimes acts designed more for self-expression or as elements in a cultural conversation within a small group than as mass market entertainment products.

The difference between these uses of content in the context of a conversation or for self expression, and the intentions of the commercial copyright industries, are usually significant. We should consider whether new works created from more than one original work, and original, first-generation works, should be treated in the same way. There is an argument that encouraging creativity at all levels, not just within an elite commercial group, benefits the creation of a digitally literate society as a whole. Is it necessary, wise or even feasible to restrict this kind of activity in the long run? The media literacy agenda of the UK's telecoms and broadcasting regulator, Ofcom, aims to provide citizen-consumers with 'the ability to access, understand and create communications in a variety of contexts' (Ofcom, 2004): if it is true that the UK economy is to continue to move more towards the provision of services and that creativity, per se, as numerous politicians have said, is a key tool for the UK's future prosperity, we should be seeking ways to find an accommodation between the copyright industries and these new forms of behaviour. Such behaviours may herald a grassroots flowering of new forms of creative work, which we should be encouraging. They are also likely to provide a number of the creative talents of the future.

This further underlines the pressure towards a revised balance between the monopoly granted by copyright and the benefits of openness, the public domain and permitted uses of copyright works. No copyright industry exists without being aware of this balance; indeed, one way or another, the creation of new work rests on it and always has done. This delicate balance can be upset by addressing the issues from single positions, usually voiced by companies and individuals with overriding short-term interests in one particular direction. It is the job of policymakers to tackle these questions in the real context of economic and social policy as a whole, not simply in defence of the status quo.

Business models: new options for commercialising creativity

What has been less than helpful in debates over IP in the digital age is the suggestion that business interests lie on one side of the argument, while interests of amateurs and idealists lie on the other. The situation is far more complicated than this. As Will Davies's ippr Working Paper argued, what counts as economic logic differs depending on which business model one has in mind (Davies, 2005).

Gradually, the market for creative work is finding a new equilibrium. The skills of the age of scarcity – hit-making, hype and cross-media promotion among others – remain important. There is a sense, however, that they are being supplemented by the skills of the age of plenty, the exploitation of the so-called long-tail (see page X below), the importance of authenticity of voice, and the power of communities of interest. Business models based on wholesale are being swept away by retail and ultimately by peer-to-peer and social networking approaches. This paper will now seek to examine these different business models that are at work in this emerging environment.

The winner takes all

The age of mass production and mass media brought with it the hits-driven, winner-takes-all mentality (Frank and Cook, 1995). Product development, PR, marketing and investment strategy had to be predicated on the likelihood that only 10 per cent of songs, albums, films, and books would go on to make a significant profit, maybe another 20 per cent would break even and the rest would be commercial failures. Huge sums of money could be made by the hits and this is still the case. The winner-takes-all model is alive and well and has plenty of life left in it. Works and artists who reach a mass audience remain the best way to produce the most value and profit. The film industry, for example, continues to rely heavily on ‘tent-pole productions’, that is films that perform well at the box office and create revenue to subsidise other not so profitable works (Elberse *et al*, 2005).

This is going to continue to happen. Indeed, given the increasingly global nature of media, it is likely that the biggest hits will be bigger than ever. Previously, the creation of artificial scarcity, limited competition in the market and a professionalised network of commentators, reviewers and payola operators were the major part of the way in which profits were made. Increasingly, these roles are being supplemented by individuals acting as part of social networks, by bloggers, search engines, recommendation systems and the like. It is well-nigh impossible to control these, but the effects of producing work that is well received and of perceived high quality can be even larger than previously, now that these new networks and systems are in place.

We can observe the market in action through television formats such as the singing competition X-Factor. The artists produced by this process usually have a Number 1 hit shortly afterwards. This is, of course, unsurprising as they become hugely popular, as proved by their winning of the show. Whether these artists develop successful careers over the long term has less to do with their popularity from winning the show and more to do with their overall talent and sustained ability to match their music to an audience group and to remain in the public eye. But this is winner-takes-all media in its purest form. When it is able to attract the attention of mass audiences, it is more powerful than ever. For decades we have been accustomed to assuming that what we get is what we want. This is the self-fulfilling prophecy of the hits-driven market. But what is emerging because of digital technologies is another model of consumption that suggests we may want more than we are given after all.

The long tail

As Chris Anderson, editor of *Wired* magazine, put it in his seminal piece ‘The Long Tail’, ‘popularity no longer has a monopoly on profitability’ (Anderson, 2004). Anderson used the piece to coin one of the most talked about ideas of current times, the ‘long tail effect’. This theory suggests that the main problem for copyright industries in the pre-digital world was finding local audiences. Whether you ran a cinema or a DVD rental store, or even a local radio station, most business models relied on carrying only content that could generate sufficient demand to earn its keep. Anderson, and others since, have shown how the so-called tyranny of physical space is entirely responsible for the way in which most copyright companies think. For them, as Anderson says, ‘an audience spread too thinly is no audience at all’ (Anderson, 2004). Coupled with this is the fact that there is only so much time for a person to spend on copyright products and only so much capacity to get products to them in the first place, in the form of spectrum for TV and radio, for instance.

This environment produced the hits-driven culture discussed above in which the mass market was equated to quality and demand. In fact, this market often just represents ‘familiarity, savvy advertising and broad, if somewhat shallow, appeal’ (Anderson, 2004). There are many reasons, most of them ‘hardwired into human psychology’ why hits can be a good thing. But most of us want more than a diet of hits and it seems that the more we get the opportunity to match content to our real tastes, the more we like it. The hits-

driven culture is a creature of scarcity; it is only part of the answer to the future of the copyright industries in a world of plenty.

Businesses like iTunes, Amazon and Netflix – to mention just a few – are showing that there is not just demand for tracks or books or DVDs outside the mainstream, but also profit to be made. More than half of Amazon's book sales come from outside its top-selling 130,000 titles; that is from outside the range stocked by the largest bookstore. This non-hit section of the market forms the long tail of purchasable content. The economic basis of this was brought to light by an influential 2003 paper that pointed out a significant gain in consumer welfare produced by the increased product variety available in online bookstores (Brynjolfsson *et al*, 2003). In the language of business, equate consumer welfare with profits and you have a winning formula.

Anderson and others have pinpointed three types of businesses that thrive in this long tail environment. First, there are the *long tail aggregators*, outfits such as iTunes, which bring together the full range of content (hits as well as long tail) to provide compelling consumer propositions with breadth and scale. If you combine together enough content previously considered a commercial failure you can rapidly create a market that is bigger than that for the hits.

Second, there are niche suppliers and producers who are capable of bringing together communities of interest around their products and either remove the need for an aggregator – such as a broadcaster to make available old episodes of TV shows – or trade their position relative to that aggregator for a different, and possibly more profitable position, relative to a new aggregator. This is beginning to happen as independent television producers move towards self-distribution of programmes, especially via services such as Google Video, which allows users to search for, watch and buy content from a collection of films, television shows, music videos and personal productions. This service is different to a TV broadcaster in form, but not as different in function as some would suggest. Search engines and blogs are providing the third business function of the long tail: that of filtering, searching and finding. Many businesses that are native to the internet exploit the long tail effect in one way or another. Ebay finds buyers for products, Amazon is the world's biggest bookstore, iTunes the same with music, and Craigslist brings together personal buyers and sellers in a new form of classified ads.

Sophisticated long tail businesses, such as last.fm, which allows users to specify musical likes and dislikes in order to deliver a personal radio service, Google Video and others are combining these three facets and forging new relationships with audiences. Like Amazon and iTunes they provide users with the opportunity to interact with content, and to add value to the service itself, by submitting reviews (Amazon) or bringing together personal selections of content for recommendation (Last FM and iTunes). Clearly, there is potential here for value, and therefore revenue, to be created more efficiently for existing works than has ever been the case. The long tail is an enormous opportunity for the copyright industries.

Impacts and implications of the new business models

Before they can take advantage of the long tail opportunity, companies must first make sure that as much content as possible is made available: the costs of continuing to offer back-catalogues in digital form is minimal, meaning that they can afford to never take publications or music out of print or circulation. Then they need to evaluate pricing strategies. There is not necessarily any relationship between the costs of a product from the pre-digital age and the price point that is appropriate to it when it is delivered digitally. For instance, pricing structures of CDs are based on costs of distribution (including transportation), production of a physical good (including the accompanying booklet) and a large retail mark-up. Music sold on the most popular music download site, iTunes, continues to be offered at price points roughly equivalent to the cost of a CD.

Back catalogues and content that did not reach 'hit' status on initial release can be rediscovered by new generations of enthusiasts. Production and marketing will increasingly form the main proportion of the cost base of copyright industries, replacing distribution and manufacturing costs. Eventually, some of the cost savings should begin to make their way to consumers, especially regarding material where the initial investment has long since been recouped.

However, many in the copyright industries understandably have concerns at the massive changes these new business models bring about. A major issue is channel conflict, which continues to occupy many in the creative industries. Channel conflict is a term used to describe the inevitable conflict between the

maintenance of existing business models and the rise of new ways of doing business. The recorded music business is approaching a key inflection point regarding digital music delivery. At the time of writing, there is still a compelling economic rationale for preserving the CD business model but this will be overtaken within a matter of years by digital delivery. We have already seen the first UK single to reach number one in the music charts on the strength of digital downloads alone ('Crazy' by Gnarls Barkley, a duo that includes DJ Dangermouse, mentioned above). The history of that particular copyright sector is riven with similar events, the original rise of the CD being the most recent, as new technical formats have arisen every generation or so. History shows that the change, once it arrives in the mass market, is sudden and massive. It also shows that copyright companies generally behave completely rationally, on their own terms, as they attempt to extend and exploit their existing channels right up until the point of no return. Then they switch, some more successfully than others.

Perhaps the most significant role in the new digital market is played by the new aggregators, however. Some of these players have global reach, such as Google and Yahoo; others are ultra-local, for instance a person's favourite blogger. As yet, however, few if any of the new aggregators have a direct relationship with the creation of new copyright works. This may be changing, however, as new media platforms become more mature in their own right and therefore become platforms for other more traditional forms of content funding. Yahoo, for instance, is already beginning to enter the terrains traditionally dominated by broadcasters and publishers by developing content that would also be suitable for distribution via a broadcast network.

The long tail phenomenon's impact on copyright itself, rather than just the copyright industries, should also be considered. There are two points to make. First, the long tail has often been predicted to bring with it 'the death of the blockbuster': indeed, second-week sales of 'big hits' are declining at a steeper rate than ever before. Instead of one creative work being sold to millions of people, numerous pieces of work will individually be sold to a smaller audience. This means that to make money, copyright industries need to own more content than ever before. Second, they need to have content that has the potential of longevity. Where content has the potential to be saleable for several decades into the future, rights-holders are likely to want to extend their ownership of content for as long as it has an economic value. While this may prove a good thing for creators, who will no longer see their works lying unpublished and unavailable, with the cost of keeping a digital product available far less than the cost of keeping a physical product in retail stores, it also has an impact on how we determine optimal length of copyright term. Most arguments for shortening copyright term revolve around the fact that the majority of creative works decline in value to the point that it is no longer worth supplying them to market long before their term of copyright protection expires.

As the cost of supplying an existing product goes down, the potential for securing future economic return goes up. Whether or not we believe this should impact the length of copyright term itself depends on one's conception of the purpose of copyright itself. For some, operating under what Netanel (1996) calls the 'neo-classicist' approach to copyright, its primary goal is market efficiency. Under this reading, copyright enables owners to charge users for access to creative works in order to determine what creative works are worth and thus to create a guide for resource allocation. Copyright owners would also be entitled to retain rights for as long as they were economically valuable. To counter this position, it may become more necessary to have a clearer understanding of the social value provided by goods coming out of copyright, and to make a coherent case for copyright above and beyond an economic instrument.

The future of advertising

Advertising models are being equally hit by the end of scarcity. Digital video recorders that allow viewers to skip the ads, pop-up blockers and adware filters are seen by some as the death knell of advertising and thus of the creation of value for copyright creators that is often funded by the advertising dollar, especially where magazines and newspapers are concerned. This view is fundamentally misconceived. It assumes that the intention of advertisers is to advertise in this traditional form rather than considering their wider purpose of engaging with appropriate audiences in order to form relationships that may encourage them to feel positively about the brand or product and perhaps even buy it.

Advertising as we know it is another blunt instrument with roots in an increasingly bygone age; but that does not mean that the methods formerly known as advertising, through which brands reach possible consumers, are not evolving. Neither does it mean that new, more efficient forms of advertising will not evolve as well. The fastest growing area of online advertising – and much of the reason for Google's

massive market capitalisation – is the booming search advertising segment typified by Google's Adwords. Search advertising was worth £768.4m in 2005, bigger than the whole radio market and 78.8 per cent up on the previous year (*The Guardian*, 2006). This is a method for reaching an audience that was unheard of considerably less than 10 years ago. It is advertising which is based entirely around the 'long tail'. It has recently caused some controversy among newspaper publishers. Consumers expect online news content to be free and so newspapers' online presences have been funded by internet advertising. However, news search engines, and other content aggregation systems, mean that increasingly consumers do not have to access the originating site, and therefore be exposed to the accompanying advertising, in order to access the content itself. The World Association of Newspapers has most recently accused Google of 'stealing' news providers' content while collecting vast amounts of money through their own advertising systems. To overcome this, news providers can either seek to charge for access to some or all of their content (for example, the *New York Times* and the *Financial Times*) or build an online brand that is strong enough to bring consumers straight to it, by adding features such as blogs and podcasts. *The Guardian* has managed one of the most successful online news brands and has recently launched its 'Comment is Free' section: a vast array of blog content that provides opportunity for interaction between individual writers and their readers.

Event sponsorship, product placement, branded content and company websites all provide opportunities for reaching audiences and often rely on the creation of copyright works. Ofcom recently announced it would relax rules on product placement in television shows, seen as one solution to countering the ad-skipping feature of Personal Video Recorders (PVRs), while films such as the *Matrix* have generated large sums of money through providing prominent placing of products such as Siemens' mobile telephones (Elberse *et al*, 2005). Advertising in gaming environments has also been on the increase, with commercial companies seeking to establish a presence in virtual environments such as Second Life ('a 3-D virtual world built and owned by its residents' – www.secondlife.com), while more traditional console-based games, such as *Gran Turismo*, have also featured advertisements.

Increasingly, firms have looked to capitalise on the audiences captured by social networking sites such as MySpace, offering commercials that are able to be distributed virally, for example by people emailing it to one another or making it available for video streaming on their MySpace profile. Coca Cola has recently launched a campaign designed specifically for the internet, while lottery firm Monday has developed spoof video content, designed to be emailed from person to person. Spending on internet advertising has been on the incline for the past few years, exceeding the £1 billion mark in 2005 (Internet Advertising Bureau and PricewaterhouseCoopers, 2006). If current growth rates continue, it will overtake the level of spending on national press advertising during 2006.

Regardless of what platform is used to deliver advertising content, it is likely to remain important for many years to come, especially given the massive increase in choice an explosion in digital technologies has provided. Whether films are released 'day and date', that is released on formats such as DVD or distributed via the Internet the same date as their cinema release, advertising remains the principle tool for creators to give their product prominence in a saturated market (Elberse *et al*, 2005). In a world of informational abundance, it is somewhat obvious that companies will rely more and more on brand loyalty and reputation to secure economic return. Copyright may prove a flexible enough tool to cope in this digital age. Since it is an asserted, rather than automatic, right, rights holders are given the choice as to how free they want their content to be, while still retaining the ability to prevent infringing uses where they see fit. However, as brands become more important, and are increasingly significant in our cultural and media landscape, further problems could arise. As commercial companies rely on their brand to create revenue, they are likely to want to assert more control over how this brand is used. For film makers, musicians and other artists, incidental use of brand names, trademarks, logos and slogans that may be crucial to an accurate portrayal of modern life could provide a legal minefield as rights clearances become increasingly difficult and costly to achieve.

Hybrid models

In practice, most copyright companies are experimenting with a range and blend of models in a bid to make sense of the rapidly changing conditions in which they find themselves. This is the classic innovation conundrum (Christensen, 1997). There is an economically rational and largely defensible tendency to protect the current model of commercial behaviour right up to the point when it finally becomes untenable. We have seen aspects of this process in the time that it has taken for the recorded music industry to begin

to come to terms with the implications of digital delivery, a log-jam that is ultimately only being removed as a result of players such as Apple entering the market. This is a common theme in innovation studies; the new market entrant that is able to shake up the status quo. Companies that were previously external to the sector and not affected by its rational defensive commercial strategies are often the only players capable of catalysing change. It should be said that taking a defensive strategy makes sense for an incumbent company, although this behaviour has been known to have side effects that are damaging to both consumer and the wider public good.

Conclusion

Public policymakers have three tasks ahead of them if they wish to influence this complex socio-economic environment for the better. The first task is to look at how copyright works as part of the overall system of value transfer and, if possible, to explore the potential to reduce inefficiencies and friction within that system. The change from an environment of scarcity to a world approaching ubiquitous access to content changes the order of magnitude of scale of transactions with which the copyright system needs to deal. As usage of content expands and non-professionals increasingly get involved and want to mix copyright content into their self-expression and creativity, we face a profound challenge to the model.

The second area of policy concerns the context in which copyright work is placed. This is a classic area for political decision-making. The key areas for consideration are the extent of digital rights management and its relationship to wider public policy and concepts of fair dealing and, in turn, the length of copyright term, thus, the extent and definition of the public domain.

If we allow the erosion of public benefit by technological protection measures that derive their rationale mainly from anti-piracy protection (again, this is a valid position from which to address the issues but somewhat simplistic) then it will be difficult to turn back the clock and rebalance the priorities in future. France has recently reviewed its digital copyright bill with the rights and needs of consumers in mind. This represents a step towards a mature consideration of the issues, whatever the political motivation and precise provisions.

The third and final tool available to public bodies and policymakers is to influence the content available in the market place and the mode of copyright that is applied to it. As an example, the Wellcome Trust recently threw its weight behind open access publishing, while acknowledging that there could be commercial impacts from its decision (Wellcome Trust, 2005). In a similar way, Teachers TV is a member of a consortium of bodies including the BBC, the British Film Institute, Channel 4 and the Open University, that has established the Creative Archive Licence, a licensing model that promotes the primacy of the bodies' public purpose and thus their funding rationale. In the UK, this issue is most extensively debated in the context of the BBC but the same principles apply to public procurement of content. Given the spending power of government, the tool of public procurement, and approaches to rights retention which are limited to the commissioner taking the rights they need and no more, could have a major impact on parts of the copyright sector.

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