

Venezia, 16th October 2014



Piero Attanasio

Trends in rights information management and digitisation programmes



Partly funded by the European Union's ICT Policy Support Programme as part of the Competitiveness and Innovation Framework programme 2007-2013



What I will speak about

- Is copyright an obstacle to digitisation programmes?
- An economic interpretation of the current debate
- Business models for digitisation and right management
- The role of technologies

Is copyright an obstacle to digitisation programmes?

- It depends on business model
- If entirely funded by public money, with no return expected
 - Copyright is merely a cost
- When any return is expected from the exploitation of the content, some form of exclusivity is required
- It may be copyright-based
 - The decision power is up to the authors
- It may be based on other contractual terms (ex.: «Google-like» programmes)
 - Authors and their rights are an obstacle since there are two concurrent exclusivities

Cost of copyright acquisition

Cost = Remuneration + Search + Negotiation ($C = R + S + N$)

- Individual deals may happen when Value > Cost ($V > C$)
- The digital library dilemma:
 - Whether $S + N > V$
 - No $R (> 0)$ allows $V > C$
 - The digitisation programme becomes impossible
- The “obstacle” is not in copyright, but in transaction costs
- **N.B.:** It is not just a matter of high cost, but of relation between cost and value
 - V depends on:
 - The type of use requested
 - The individual work

Economic interpretation of the current legal debate

- The Orphan works:

“A work or a phonogram shall be considered an orphan work if none of the rightholders in that work or phonogram is identified or, even if one or more of them is identified, none is located despite a diligent search for the rightholders having been carried out and recorded in accordance with Article 3

(European Directive on OW, art. 2)

- In economic terms:

- OW are cases where $S > V$, for whatever exploitation of that work

- How the Directive regulates the issue?

- Essentially: to cap the *search cost* so to maintain it “reasonable” ($< V$)

Is it effective for digitisation programmes?

- Search cost is not all
- Experience shows that very often *Negotiation* is more expensive than *Search* ($N > S$)
- Any OW regulation just solves a minor part of the transaction cost issue

“Out of commerce” (OOC) works

- Libraries often claim that the OW Directive does not fit large scale digitisation programmes
 - $\Sigma(S+N) > \Sigma V$
- Need to move to a different model: agreements on OOC works
- Why commercial status is relevant? When a work is in commerce:
 - V is high
 - (S+N) is low
 - So: for in commerce work the transaction cost issue is not relevant
- Envisaged solution: agreements on OOC based on collective management of rights

The Memorandum of understanding on OOC

- Signed by representatives of European stakeholders associations in books and journals world (Sept 2011)
 - Authors (EWC, EFJ), publishers (FEP, STM, EPC), collective management organisations (IFRRO, EVA), libraries (CENL, EBLIDA, LIBER)
- Main principles:
 - Agreements to manage rights in OOC works can be reached by consent between all the stakeholders
 - VSA = Voluntary Stakeholders Agreement as a broader category of the “Extended collective licenses”
 - Definition and method for determination of the OOC status should be also agreed by the parties
 - A CMO can manage the rights of non members (presumption of representation), assuming that
 - it is genuinely representative of the rightholders category concerned
 - it makes best efforts to alert rightholders in question

New forms of collective management

- Collective management of rights is *the* traditional answer to high transaction cost of individual negotiation
- In the book sector, traditionally used for managing rights for secondary exploitation (e.g. reprography, public lending)
 - Low V of individual transaction, which makes $V < S+N$
- In digitisation programmes the licensed use is very primary:
 - Scanning and making available online is, in the digital era, *the* primary exploitation of a work
- What is “secondary” (from a commercial viewpoint) is the “category of work”, i.e. out of commerce

Trends in right management in the digital library field

Voluntary agreements may have two forms

V is low because of the type of use	V is low because of the type of work
All works are included Limited use (e.g. no-download, only preview, etc.)	Limited to out of commerce Primary use is granted (e.g. open access in the web or commercial exploitation)
One example: BokHylla in Norway	New law on OOC in Germany RELIRE project in France (Failed Google settlement)
Frustrating for users Higher prices Libraries pay for use that may have for free	Broader access Possible use of copyright as enabler of the digitisation

- Voluntary agreements that do not limit the scope neither to uses nor to the type of works are not conceivable in this view

Use Case: RELIRE

- Main elements of the new French law:
 - The BNF is asked to create an “out of commerce” database
 - The rights on out of commerce works are mandated to a CMO by the law
 - Rightholders may opt out
 - The CMO should offer to the original publisher the rights for commercial exploitation of the work in digital form
 - Need to reach individual publishers
 - If the publisher is not interested, the work is offered to other parties, on non exclusive basis
 - Objective: to stimulate new business models
 - All digitised books are stored and indexed in the BNF “Gallica 2” (and in Europeana)
 - Preview for books that are commercially exploited
 - In the long term, full text access for books that are not commercially exploited

Is it working?

- The BNF published in March 2013 the first list of **60,000 titles**
- In the six months period → **5,000 withdrawn**
 - Either opted out or commercial available
- SOFIA (the CMO in charge) started to offer to publishers exclusive rights for digitisation in March 2014
- In the first 2 months, licence granted to **341 publishers** for **28,580 works**

Copyright as an enabler of digitisation

- Copyright cost (S+N+R) is a minor part of the digitisation cost
 - No precise estimation available
 - 5 to 10% is a realistic guess
- The issue is that very often there is no budget to cover the remaining 90-95%
- Collaboration with private sector may be an option
- Exclusive right are essential to allow private players to recoup the investment
- My argument is that copyright is better than other contractual based instruments
 - Reducing risk of monopoly
 - Respect also moral right

The role of technologies

- A very famous quote by Charles Clarke is still valid in this field
 - “The answer to the machine is in the machine”
- Since the problem is in the transaction costs, the objective is to reduce them, which will make more convenient any deal, regardless the institutional / business / legal environment
- Transaction costs are related to rightholders search and negotiation; solutions should be imagined for both
- Technological solutions to transaction costs are complementary and not alternative to legal solutions
 - They may enable legal solutions that better balance the different interests of stakeholders

What we need

- We have advanced infrastructure to deal with book data
 - Descriptive data from library catalogue
 - Commercial data from the books in print database (BIP)
- These are based on well established international standards
 - Identification (ISBB, ISSN, DOI...)
 - Metadata (MARC, DC, ONIX...)
- We need the equivalent for dealing with “right information” about book works
 - Standard based “right information infrastructure”
 - This may enable the existence of multiple, interoperable information source

Figuring out solutions

- Creative Commons are a key starting point
 - Licenses available in legal wording, simplified illustration of the content and machine readable form
 - Main limit: only applies to uses granted for free
 - A CC-non commercial is useless to users that wish to use a work for commercial purpose
- Generalisation of the same concept
 - Develop a standard model to allow any rightholder to express any right policy
- Leading initiatives
 - Linked Content Coalition
 - RDI is within this stream
 - Copyright Hub in the UK

How this is relevant for digitisation programmes?

- It is probable that many rightholders of OOC works are glad to release them under a creative commons licence
- If libraries are able to reach them at little cost, both sides are happier
- One example: «**Declare your Rights**»
 - The University Library of Innsbruck launched (within the ARROW project) a tool for authors of PhD dissertations to grant the library the permission to digitise and make available online

Conclusions

- Right information infrastructures are for the benefit of both rightholders and users
- They may support collective or individual licensing schemes
- We all need to be open minded:
 - Rightholders in launching new business models exploiting new licensing opportunities
 - CMOs to manage also services based on CC and similar licensing schemes
 - Libraries to consider different options to find the best way to digitisation

Contact

Piero Attanasio - piero.attanasio@aie.it



Partly funded by the European Union's ICT
Policy Support Programme as part of the
Competitiveness and Innovation Framework
programme 2007-2013

