THE POST-CONFERENCE PUBLICATION

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UNDERSTANDING THE SOCIAL IMPACTS OF COPYRIGHT

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INTERNATIONAL COPYCAMP CONFERENCE 2014
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Introduction

Each year artists and producers, European Parliament members, Pirates, collecting societies, librarians and lawyers, scientists, politicians and educators from all over the world meet in Warsaw to participate in CopyCamp, the world's biggest international conference on the impact of copyright on the information society. All parties interested in the debate on the current shape of the copyright system discuss the future of law regulating the circulation of cultural goods on the Internet and its influence on society, science, education and art. In 2014 special attention was paid to the perspective of the Visegrad Group countries. The post-conference publication is a subjective selection of some of the most interesting presentations given at the third edition of the CopyCamp conference.

A variety of Polish perspectives along with views from other countries highlight common aims – and restrictions that may create borders in the Internet era. In her piece, Zuzana Adamová explores the role of collective-management organizations in Slovakia, while in *A Tale of Two Coprights* Dimitar Dimitrov indicates how "liquid lobbying" can best utilize communication technologies in our democratic processes. Łukasz Łyczkowski's *Copyrights in Social Media* shows who remains legally responsible for infringements, and Yngve Slettholm explains a licensing solution he's helped to instigate at the National Library of Norway. Jan Sowa draws conclusions from a survey of Polish writers conducted by Fundacja Korporacja Ha!art, about e-books and copyright issues. Marcin Wilkowski focuses on born-digital heritage preservation, connecting library efforts today with ancient archetypes, Michał "rysiek" Woźniak considers copyleft licensing and Richard Stallman's "four freedoms" for software (and any resources), and finally Jacek Zadrożny reveals the potential that available access technologies have for the broadest, most inclusive use of audiovisual culture – and, of course, the restrictions that copyrights can so readily impose.

Enjoy your reading.
Modern Poland Foundation

Zuzana Adamová

CULTURE VS. COPYRIGHT

I have called my presentation *Culture vs. Copyright* because sometimes I have the impression that the current copyright system – at least in Slovakia – in dealing with culture, supporting culture, protecting authors of copyright works or enabling better access to culture, does anything but this. Sometimes I listen to poor authors complain that they only receive "peanuts" for their work. On the other hand, I listen to businessmen complain that the copyright system is not transparent and they are willing to pay but don't like the fact that they usually don't know what they're paying for, why they have to pay so many collective management organisations (CMOs) and how it could be possible that they pay so much but authors are still complaining.

This is a situation in which no one's satisfied. Let's have a look at two copyright stories.

STORY ONE: MISSING MONEY

Slovakia, similar to most other EU countries, has implemented the system of private copy exception. This happened before the Information Society Directive from 2001 was transposed into the Slovak legal system. For many years, when someone asked the justification of the blank-tape levies system, the answer was that it compensated for the mostly illegal copying of works. It is interesting that after the ACI Adam case, the advocates of this system suddenly changed their opinion and claimed that this has always been a question of copying only from a legal source. Regardless of the ACI Adam or the Padawan case or any other CJEU cases, the sum of fair compensation is still surprisingly the same. The fact that it is totally unclear if a device or carrier is being used for private or business purposes, or which devices and carriers are relevant, is not reflected at all.

I'd also like to mention my personal experience. In 2009, I made a simple test of how the system of fair compensation works. As I am the author of many publications, I applied for fair compensation as a non-represented author (I imagine that 90% of non-represented rights holders actually don't know there is such a possibility to claim money). The particular CMO was silent for three years and I almost forgot that I had made this test. After that, I received an e-mail in which they explained that they have money for me but could not send it. Why not? The reason was simple. The amount of money was too small to be sent. It was only 2.56 euros.

Something is not correct. To illustrate my point, the biggest Slovak CMO collected 9.3 million euros last year and used 2.3 million euros for its administration costs (that makes almost 25%, and in 2012 it was 27%). The second biggest CMO collected 2.89 million euros and almost 600,000 euros was used for administration (more than 17%).

We could say that thanks to the private copy exception, the Slovaks have better access to culture. On the other hand, what is the price for it?

STORY TWO: THE 5-STEP TEST

Within discussions on the new Copyright Act, we have a very strong discussion about the 3-step test and its implementation into Slovak law. The 3-step test regulates the application of exceptions and limitations of copyright. According to it, exception and limitations are applied only in special cases (step 1), which do not conflict with normal exploitation (step 2) and do not unreasonably prejudice the legitimate interest of the author or other rights holder (step 3).

The problem is that while the rest of Europe is talking about flexibility in its interpretation, in Slovakia some rights holders represented by CMOs are trying to make the 5-step test instead. I am aware that the CJEU has partly disappointed (or surprised) many of us with its recent judgements dealing with exceptions and limitations. We could mention the cases of

OSA, TV 2 Danmark, VG Wort, Painer, etc. On the other hand, Slovakia went much further regarding the concept of exceptions and limitations.

Slovak supporters of restrictive interpretation fight for extra reductions of every single limitation, compared to the InfoSoc directive's wording. As an example, I can use the private copy exception again. According to the directive, a natural person can make a reproduction on any medium for private use and for ends that are neither directly nor indirectly commercial. However, according to the Slovak Copyright Act, a private copy cannot be made of architecture works, literature works, cartographic works, etc. This means that the limitation is even more limited on the national level. Additionally, supporters of this approach insist that the 3-step test still needs to be mentioned in the Copyright Act ("because otherwise the directive is not transposed correctly"). They go even further when they suggest that a 3-step test should be part of every single (already reduced) limitation, as an extra rule by which users should behave. This means that even if you apply the "limited limitation" precisely according to the Copyright Act, you always have to apply the second and third steps of the 3-step test, that is, a 5-step test.

We should keep in mind that there are 2,097,152 possibilities for implementing the InfoSoc directive. This is because the directive outlines 20 different optional exceptions or limitations, and each EU state can choose which of them it will implement into national copyright law. However, with this approach the total would be much higher and the harmonisation (or the coherent application, according to point 32 of the InfoSoc Directive) would be defeated.

CONCLUSION

As you can see, Slovak copyright law is quite strict and inflexible. Unfortunately, it is also quite common that no one is profiting from this system, either culturally or financially. In the end, no one wins – authors don't get money, entrepreneurs are in the dark as to where their money is

going and are limited when dealing with new innovations, and the public misses out on cultural opportunities.

Based on the stories above, we may come to a basic conclusion. We need a flexible system of exceptions and limitations (that aren't double limited), we need more transparent and better-controlled collecting societies and we really need a balanced copyright system. It's time for change. It's time for better access to culture.

ZUZANA ADAMOVÁ

PhD, director of the Intellectual Property Law Institute at Trnava University; teacher and researcher in the field of IP & ICT law. Zuzana is a founding member of the Arbitration Centre for Intellectual Property and Information Technology (ACIPiT) and she leads the project Creative Commons Slovakia.

photo: Wojciech Wójtowicz

Dimitar Dimitrov

A TALE OF TWO COPYRIGHTS: LIQUID LOBBYING TO LEVEL THE PLAYING FIELD

No, this title is not an original. It is largely copied. A derivative work that is legally unproblematic only because Mr. Dickens has been dead long enough. If I were to remix something newer, let's say if I came up with *Pirates in the Copyright: Disney's Chest* and included a picture and quotes from that particular work, well, that might get me into all kinds of trouble.

But copyright term lengths and how we deal with remixed content are just two of the fundamental questions we can no longer postpone. Information technology allows for sharing at virtually no cost. That is the positive promise the digital revolution has brought about. We must admit that this is a genuinely good thing and an opportunity for sustainable global development and improvement of people's lives.

The other tale is more ambiguous. It retells the old story that every revolution brings about a new culture and new economy, but also puts out of business those who cannot adapt.

We read these two tales. We've suffered them, we've enjoyed them. We've experienced the practicalities, patches and peculiarities. We've thought, debated and worked with and around these issues for more than a decade now. We're convinced that if we overcome knee-jerk reactions it is actually a simple task to drastically increase the commons and our ability to share content while leaving economic interests, and thus financial profits, virtually untouched. Wikimedia has recently proposed four such changes in its Position Paper. But this text is not about self-promotion.

CROWD-SOURCING LOBBYING ACTIVITIES

This text is about giving everyone with good ideas a fair fighting chance. Lobbying brings about negative connotations. Understandably so. While lobbying at its core is a democratic activity – it is about talking to public decision-makers – the underlying problem is the unbalanced representation it produces. The basic principle in a democracy is that each person's vote weighs the same. However, lobbying is about direct contact, which means investing time and other resources in establishing relationships, which costs money. The issue that lobbying has is not necessarily that the industry does it. The actual issue is that more money equals more relationships, which translates into more representation. This leads to the circumvention of the basic principle mentioned above. It corrupts the democratic decision-making process.

Since it's hard to argue that people and companies shouldn't be allowed to talk to public decision-makers, lobbying couldn't and probably even shouldn't ever be prohibited. We need to find a way to hack the system.

No matter how we organise, civil-society groups will never be able to put the same amount of boots on the ground as for-profit businesses. However, communications technologies also mean that a lot of tasks formerly done on location can now be spread across an entire continent. It also means that a lot more like-minded people can come together to work on a subject. The obstacles that remain are that strong relationships still require personal meetings, and knowing "what's going on" requires access to a lot of time spent on location and long-term dedication, something that volunteers often can't guarantee.

The solution could be a mix of user-generated activity and some staff hours. A little permanent paid time in the power centre to make sure that the monitoring and vital relationships are established, coupled with the energy, enthusiasm and scale of a volunteer network sitting somewhere in front of screens. A "liquid lobbying" structure – the term is modelled on liquid democracy – that allows every individual to invest

a few hours every now and then in lobbying on an issue one really cares about, while knowing that the effort plays into a general strategy and that things will not crumble if one has no time next month.

"THEN TELL WIND AND FIRE WHERE TO STOP, BUT DON'T TELL ME."

Opponents of copyright reform – who include, but are not limited to, publishers – are in fact not against the four points outlined above. The legal re-balancing we are proposing wouldn't hurt that industry. Those opponents are simply against any change whatsoever, out of fear that it might be a slippery slope that leads towards abolishing copyrights. And while it isn't a real intellectual challenge to argue that it is lack of change that is much more likely to kill copyright eventually, rather than a few sensible updates, this "I will block anything that comes my way" attitude could turn out to be poisonous for reform. The only things that law-makers shy away from more readily than bad laws are unsuccessful legislative proposals.

It takes really strong-minded, shrewd, resolute politicians aided by a dedicated civil society to make things happen and to implement reform.

TELL THEM!

We need to work on our liquid-lobbying tools. We need to ensure coherent messaging in a structure of hundreds of independently active volunteers. Having clear goals, strategy and lines of argumentation agreed upon beforehand helps. Finding the best ways of providing those volunteers with necessary know-how and background information is a necessity. Making sure everyone's time is not wasted and that everyone's effort is targeted is a challenge. A volunteer in the east of England should ideally contact their elected representative, rather than someone from Finland. We shouldn't be approaching the same people with exactly the

same message twice. User-generated lobbying must also stock up on user-generated knowledge. Tools should include campaigns like "Adopt an MEP", assistance for participating in public consultations, know-how information and events that allow personal interaction. While tools and methods are still experimental and need broad input and development, here's how to get on with the general campaign:

1. Define a vision (You're selling an idea!)
2. Set goals, and write down your core arguments
3. Who do you have to talk to? (Volunteers shouldn't be left wasting time deciding who to contact then figuring out how to contact them)
4. Citation needed! (Organize some proof supporting your arguments)
5. Communication (Ideally done by many volunteers who know who to contact and what to say)
6. Keep the topic afloat (Keep developing new ways of interesting broader circles of people)

DIMITAR DIMITROV

Bulgarian political scientist who currently works as Free Knowledge Ambassador of the Wikimedia Movement to the EU. He is based in Brussels where his major focus is to "fix copyright". Loves coffee, hates carrot juice and considers Twitter a benign version of the Internet.

photo: Wojciech Wójtowicz

Łukasz Łyczkowski

COPYRIGHT IN SOCIAL MEDIA

Social-media portals such as Facebook, Twitter, LinkedIn, YouTube and Instagram have currently become an essential backbone of the Internet, as demonstrated by rapid growth around the world. Four billion spots were played every day on YouTube, and each second, 58 photos were uploaded on Instagram in 2012. Social-media portals enable users to chat easily and efficiently, sharing thoughts and "staying connected". Furthermore, social-media portals have become an accessible carrier of copyrighted material and content protected by intellectual property rights. Social-media portals also facilitate users in sharing so-called user-generated content. The aforementioned factors seem to support the statement that users and their creativity constitute grist to the mill of social-media portals.

As a result of the massive exploitation of copyrighted material in social media, it is necessary to focus on some social-media rules on intellectual property and copyrighted materials.

First of all, the majority of social-media portals are based in the U.S., which impacts applicable regulations related to intellectual property and copyrights. Due to precise provisions in EU law, the rules of the EU are not applicable to portals not based on the territory of an EU member state. Hence, those social-media portals are not obliged to follow strict EU rules on electronic and Internet services.

Second, it is necessary to point out that all social-media portals are fully aware of the importance of intellectual property rights and copyright. All terms of use for social-media portals include an elaborate section about intellectual property rights, copyrights and liability for any copyright infringement. The main principle related to intellectual property rights and copyright commonly set forth in these terms of use

states that any act of publication, uploading or sharing done/performed by the particular social-media portal's users results in granting, for the benefit of the portal, a non-exclusive, free of charge, unlimited in time, worldwide licence to the content published, uploaded or shared by the users. Furthermore, portals reserve the right to sublicense, sell and use this content also for commercial purposes. These rights for portals mean that the portals are entitled to use this content for any commercial activities, including selling any content or information about a user's interests to other companies, such as advertising companies. Some terms of use also state that the removal of a user's account has no effect on the licence previously granted by that user. It's worth noting that users do not have to enter into any particular agreement granting such licence for the benefit of the social-media portals. Sufficient authorization for portals to use the content is constituted solely by the act of publication, uploading or sharing.

Additionally, by uploading, publishing or sharing content, users declare that the portals are entirely entitled to the content, in particular that they own the right to public disclosure of the content.

This declaration also includes the empowerment granted for the benefit of portals to dispose the moral rights of the content. As in the case of granting licence, no agreement is required for the declaration to be validly binding. Hence, its validity results solely from the act of publication, uploading or sharing of the content results.

On the other hand, social-media portals do not verify whether declarations of users are true and whether users have the right to distribute content to the public. Therefore, social-media portals reserve the right to file a claim against users once the data mentioned above, which has been included in the declaration, is untrue or in the event that a social-media portal may have potentially infringed copyrights or other intellectual property rights.

Taking all the above into consideration, some conclusions may be observed. Social-media portals exploit users, the creativity of users and copyrights for their own commercial purposes. Social-media portals compose the terms of use enabling them to hold individual users liable for any particular copyright infringement and, at the same time, intend to significantly limit their liability. These aforementioned aspects should be taken into account each time copyrighted material is published on one of the social-media giants.

photo: Wojciech Wójtowicz

ŁUKASZ ŁYCZKOWSKI

Graduate of the Faculty of Law and Administration and of the European Centre at Warsaw University. Since 2013, trainee advocate in Warsaw, currently works in the law department of the Association of Authors ZAiKS.

Yngve Slettholm

THE BOOKSHELF: FUNCTIONAL LICENSING THROUGH COLLECTIVE MANAGEMENT AND ECL

The Bookshelf project is run by the National Library of Norway, and I think it's an excellent example of a licensing solution for making cultural heritage available on the Internet. My organization, Kopinor, provides the rights, licensing the Bookshelf under the Extended Collective Licensing (ECL) model.

Being an author myself, I have a strong belief in copyright. With respect to making culture available on the Internet, I see copyright as a solution, not a problem. We may need some help from lawmakers, but solutions are available. Technological inventions will always come first, paving the way for legal development and new business models, and historically speaking the Internet is still a young medium.

The economy of culture is based on copyright. Copyright provides legal and economic protection to creative works, which is crucial for professional creators. The concepts of professionalism and amateurism are challenged by the Internet, but I believe everyone would agree that access to quality content created by professionals is important for all Internet users. In order to have professional creation, there has to be an economic outcome for the creator. If we want professionally created content on the Internet, someone will have to pick up the bill.

First, a few words about my organization. Kopinor is a collective--management organization founded in 1980 – when the photocopier was new. Kopinor arose as a solution to the challenges of new technology, primarily in the educational sector. Today, we license all parts of society. Digital use is included in the licenses, and our administrative costs are

low (around 11%), meaning that we are able to distribute significant amounts to the rights holders (around 32 million euros in 2013). Over the last few years, our income has increased, not the least because of digital licensing, including the Bookshelf.

Kopinor operates under the Extended Collective License, a legal model which is found in the copyright acts of all Nordic countries. Today, ECL is gaining increased attention, not the least concerning digital mass licensing. Great Britain has already introduced ECL, and other European countries are considering it. In the U.S. too, there is interest in this licensing model.

With ECL, a license from a representative organization like Kopinor will include the works of non-members on the same terms as members. With respect to the Bookshelf, the user is the National Library of Norway. Kopinor represents all types of authors and publishers of printed books used in the Bookshelf, and we could therefore enter into an agreement under an ECL provision of our copyright act (§16a). Consequently, the license also includes the works of all authors and publishers who are not represented by Kopinor, meaning that any book (by any author in the world) is included on the same terms.

Internationally, the scope of the Bookshelf is unique: the National Library will make 250,000 copyright-protected books available to the Norwegian public on the Internet. At the moment, more than 160,000 books are available; by 2017, all 250,000 books will be there. Any copyright-protected book published in Norway before 2001 is included in the agreement. The books can be read on screen on any technical device hooked up to the Internet. The system also provides a full-text search option to all works in the National Library, so you can find any word, name, expression or sentence that appears in all the published material – and read it if it's in the Bookshelf.

Unfortunately, I can't demonstrate it here in Poland, as the books are not available outside Norway, primarily due to issues of jurisdiction

and choice of law. However, we are looking at the possibility to open the Bookshelf up for foreign IP addresses, at least for other countries with ECL.

The annual price paid by the National Library is around 0.04 euro per displayed page per year. When complete, the Bookshelf will bring an annual revenue of 1.7 million euros to the rights holders. Authors and publishers may withdraw their books, but so far only 2 to 3% of the books have been withdrawn from the Bookshelf. The vast majority of books are there, including quite a few that are still commercially available. The Bookshelf does not necessarily inhibit the sale of a printed book; on the contrary, it may be regarded as an advertising channel. To a large extent, people still seem to prefer the printed book.

The Bookshelf proves that licensing through collective management and ECL can provide seamless access to a large number of copyright--protected works. Collective management is convenient, fast, innovative, cost-effective, simple and safe – and it secures money for professional authors, who may then concentrate on creating new works, to the benefit of us all.

Copyright fuels the digital economy; it does not inhibit it. In fact, copyright protection is a prerequisite for professionalism in the creative field, as well as for the digital economy itself. Several studies[1] prove that good copyright protection creates wealth, employment and economic growth. In order for this to happen, politicians must provide us with laws that function well and are adapted to new technologies. It is neither fair nor wise to leave all the profit to technology and telecommunication companies and nothing to the creators.

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[1] See, for example:

http://www.wipo.int/sme/en/documents/guides/copyright_industries.htm

http://www.wipo.int/export/sites/www/copyright/en/performance/pdf/economic_contribution_analysis_2012.pdf

http://www.innovationfiles.org/the-creative-cost-of-piracy/

The Bookshelf is a good example of creating access by ways of agreement with the rights holders. Many, including libraries, have tried the opposite strategy, of undermining authors' rights – but with few results and high costs. Licensing is the solution, not the problem.

photo: Wojciech Wójtowicz

YNGVE SLETTHOLM

Composer, PhD. He joined Kopinor, the Norwegian Reproduction Rights Organisation, as Executive Director in 2006. Since 2012, he has served as Chair of the Arts Council of Norway. He was elected Director of the Board of the International Federation of Reproduction Rights Organisations (IFRRO) in 2012.

Jan Sowa

"I'D PREFER NOT TO USE THE TERM 'THEFT'": POLISH WRITERS AND COPYRIGHTS

In 2013 and 2014, the team working with Fundacja Korporacja Ha!art on a research project in the sociology of literature interviewed 75 Polish writers.[1] One issue raised during the interviews was writers' attitudes towards digital distribution of literature (e-books) and the question of copyrights. We wanted to check how writers react to new forms of circulation in the literary field, and to hear what their opinions are regarding so-called content protection. It's well known that strict copyright regimes are justified very often using the interests of creators and by the need to protect creative work, though this conviction is being articulated by copyright holders (various kinds of private companies and rights-management organizations) rather than by the creators themselves. The area of the research that is reported in this text was devised to check the stance of actual content producers on these topics.

About a third of the interviewed writers have had the direct experience of having their work published in the form of an e-book. There's overwhelming support for this form of publication. It is believed to stimulate circulation of literature and (sometimes) to limit what is regarded as unjustified middleman profits (in Poland, at

[1] The full report from this investigation was published in Polish as G. Jankowicz i in., *Literatura polska po 1989 roku w świetle teorii Pierre'a Bourdieu. Raport z badań,* Kraków 2014. The project was financed by the Polish National Science Centre (file number DEC -2011/01/D/HS2/05129).

least half of cover prices are taken by wholesalers and retailers). No more than 15% of those interviewed don't like the idea of e-books as such; around 20% are ambivalent about it. However, the main reason for scepticism is the attachment to books as physical and material objects that can be held in the hands, carried around and so on.

Surprisingly, there seems to be no widespread fear of so-called piracy among the Polish writers interviewed. Only a small group, around 10% of those interviewed, criticized file-exchange practices, calling them, for example, "a socialist" or even "a communist utopia". The rest either have no opinion on the subject, treating it as just an element of the surrounding world (lack of clear opinions on issues among the people interviewed is a well-known plague of social research, and writers are no different in this respect) or are approbative or even affirmative regarding file sharing.

The most interesting group, comprising around a third of the interviews, consists of writers who unambiguously support the free exchange of content via the Internet. Two main arguments were put forward in the interviews in favour of this attitude. First is a sort of professional one: literature is a communicative act and as such "it wants to be free", to paraphrase this well-known (though also criticised) slogan. "Let it circulate" would be the quote that best expresses this attitude. Writers who subscribe to this mindset believe that the most important thing for literature is to be read by readers, and that unrestricted file exchange over the Internet is a good way to achieve this goal. Some also believe that it helps in spreading the word about their creations, and for this reason could be materially beneficial in the future. "I'd prefer not to use the term 'theft'. As an author I'm absolutely not worried about it [the copying of digital books over the Internet] (…) I believe it can be even to my own benefit if people download my book for free", as one interviewed writer put it. What they oppose is the unauthorised commercial use of their work: someone making money on it, then not sharing

the income. Some writers also mentioned the very low share of profits they receive. A common practice in the Polish publishing industry is to offer authors around 5% of the cover price. With an average book of fiction or poetry priced below 10 euros, this boils down to very slim profit for writers – only a handful of them derive substantial income from the book market. Their decision to favour free circulation of their work and its accessibility over miniscule profits can seem a rational choice.

Finally, there are those who believe that allowing their work to circulate freely online is a matter of reciprocity. Writers either declared that they also download content from the Internet (music, films, books they need and cannot afford) or use legally open and free products, thus believe it's right for them to contribute to this common wealth. Two quotes support this position: "When I need a book and cannot get it in any other way, I go ahead and download it (…) I'd like people to buy my books and to receive money from it, but I'm not hypocritical – I'm downloading stuff from the Net, so it's OK to let others download what I create"; "For years I've been writing using a computer with Linux, so it's my conscious decision that since I've been using open software and cannot do any coding on my own, because I don't have the skills, I can at least reciprocate by offering some of my own creations freely in the Net."

Three conclusions regarding copyrights can be drawn from the research. First, the actual creators, at least in the literary field, do not seem to be preoccupied with copyright infringements as much as companies and rights-management organisations claiming to act in the interest of creators and of creative endeavour as such. Writers tend to think that literature is, to an important extent, a communicative process and it requires the texts to circulate as much as possible. The benefits of freely sharing files online seem to outweigh losses caused by copyright infringements. Second, reciprocity is an important, though not the only, motivation leading

the writers to support an open circulation of their texts. Third, the attitude towards file exchange is partly shaped by the exploitative mechanisms of the book market – the middlemen have managed to cut such a huge share of profits that what is left for writers does not encourage them to actively defend the existing copyright regime.

JAN SOWA

Materialistic-dialectical theorist of culture, doctor of sociology. He's a research fellow in the Antropology of Literature and Culture Research Department at the Jagiellonian University. Member of the National Programme of the Humanities Development Council. Associated with Korporacja Ha!art in Cracow.

photo: Rafał Nowak

Marcin Wilkowski

A RIGHT TO COPYING AS A CONDITION OF BORN-DIGITAL HERITAGE PRESERVATION

Doing history means working with sources. If we imagine the work of historians a century from now, what sources will they be using to describe and understand our present culture and society? Certainly the Web should be used, as nowadays it's a platform of social and cultural exchange. Even in the context of the digital divide and with a rejection of solutionist thinking, it is obvious that the WWW represents a huge part of our reality and is becoming a historical source. This may be the first time in history when sources cover such a broad part of contemporary society. When Emmanuel Le Roy Ladurie, in his 1975 book on medieval Montaillou villagers in Languedoc, gives them a voice based on original testimony from Inquisition interrogations, it is a rare exception, because the most common voice from medieval times belongs to the ruling class, the state and church powers. Therefore historians of medieval times who want to explore how ordinary people lived have to use sources written by somebody other than members of the common class.

The Web is different, because by now it covers almost everyone and its protocols accept everything; the social-media revolution just makes the Web more open as it assumes the lifestream of millions – in September 2014, Facebook had 864 million active daily users. What's more, as Julien Masanés writes in *Web Archiving* (2006), the old questions on the size and quality of what is being archived have become redundant today. We're able to collect almost everything that's published openly on the Web and can do it because there's no capacity limiting the digital warehouse and nearly no cost in making a copy of

a digital artefact. The idea of heritage expands – we can even make experiments in preserving M.M.O.s, the massively multiplayer online games (the How They Got Game project at Stanford), and can archive not only the content of Web pages but also an experience of using them as in the proposal for Facebook archiving by Frank McCown and Michael L. Nelson (2009). But there is an obstacle: a copyright system within which copying can't be a neutral act.

If we turned back from the future to Egypt in the 3rd century B.C., we could observe pirate-like activity by the crew at the Library of Alexandria: ships come to the city's port and if they have a roll of papyrus, it's taken to be copied for the library so that all contemporary heritage would be preserved. Such book-seizing is mentioned by Galen, the Greek philosopher and physician from the 3rd century A.D., and is only a myth, as Roger S. Bagnall writes (2002). But if the Library of Alexandria is an archetype of librarianship at all, it can be used to show the importance of copying from the perspective of contemporary libraries' work in collecting and preserving born-digital heritage. This work can be done properly only if the freedom to copy is guaranteed.

The Web itself cannot be preserved – a library needs the freedom to copy it for the future. But nowadays it can't seize online content freely, like the one in Alexandria did with scrolls thanks to the order of King Ptolemy II Philadelphus. There is not even certainty that it can link to external Web resources, as we read in recommendations on the site of the American Library Association ("Do not engage in 'deep linking' unless you obtain permission in writing from the owner of the linked site"). So a library has the power and tools to preserve the Web, but not much legal support to do it. For example, it was only in April 2013 that the British Library got the right to freely copy and preserve British Web domains, thanks to the extension of the legal-deposit legislation on digital resources. In Poland, indispensable regulations are still awaited – and time flies.

The archetypical Library of Alexandria sought to own all scrolls written in its times. The threat for that library was the destruction of its holdings – in the end, it was destroyed by Romans, Coptic Christians and finally by the Caliph Umar I in the 7th century. Until our digital times, human-heritage holdings in libraries and museums were endangered by physical damage in war and hate inspired by religious or political ideas. Today, the old *culture of damage* seems to be obsolete, as we can technically save everything in digital form and copy it at no cost. But newly born-digital historical heritage is now endangered by legal barriers to copying: this is the *non-saving culture*. But maybe there's some grassroots alternative. If libraries can't freely preserve the Web or software as a part of digital heritage, regular people do this beyond the restrictions of copyright – see Benj Edwards' writing on piracy's preservation effect in the context of vintage games (2012), or discover Archive Team's activity towards GeoCities content after the 2009 shutdown (http://www.archiveteam.org).

But heritage is not neutral, and libraries and archives represent power, as Jacques Derrida (1996) and Wolfgang Ernst (Lovink, 2003) indicate. The vision of *saving everything* includes not only the question of defining heritage or gaining proper representation of the social reality. There is also the great challenge of digital rights, privacy and the right to opt out of the archive. Libraries and archives, public institutions of a democratic state, are supposed to respect these rights more than only-for-profit enterprises or unofficial shadow initiatives. You disagree? Try to completely delete your data from Facebook or your name from Google, our contemporary emanations of the Library of Alexandria's *desire for content*.

FURTHER READING:

Bagnall, R. S. (2002): "Alexandria: Library of Dreams",
Proceedings of the American Philosophical Society, 348–362.

Derrida, J. (1996): *Archive Fever: A Freudian Impression*, University of Chicago Press.

Edwards, B. (2012): "Why History Needs Software Piracy: How Copy Protection and App Stores Could Deny Future Generations Their Cultural Legacy", *Technologizer,* http://www.technologizer.com/2012/01/23/why-history-needs-software-piracy/

Lovink, G. (2003): "Archive Rumblings: Interview with Wolfgang Ernst . Nettime.org, http://www.nettime.org/Lists-Archives/nettime-l-0302/msg00132.html, accessed 12.12.2014.

Masanès, J. (ed.) (2006): *Web Archiving*, Springer, Berlin.

McCown, F., and Nelson, M. L. (2009, June). "What Happens When Facebook Is Gone?. *Proceedings of the 9th ACM/IEEE-CS Joint Conference on Digital Libraries*, 251–254. ACM.

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photo: Rafał Nowak

Michał “rysiek” Woźniak

FREE AS IN FREEDOM, NOT FREE AS IN BEER

Richard M. Stallman's quote, well known to free-software advocates, brings clarity to an ambiguous term: “free” can refer to freedom, or can mean “gratis”, and both can be on-topic as far as software is concerned. It has also become, in a way, the motto of the free-software movement.

Many initiatives draw inspiration from free-software philosophy – libre culture, Wikipedia, open educational resources, and many others, base on ideas floated by and tested within free and open-source software projects. The “free as in freedom, not free as in beer” thought is also present outside the freedom-loving software developers' world.

Usually it is the first part of the quote that gets the most attention and focus. It is about freedom, after all, and not about whether or not something is available gratis. This focus was (and is) required to clearly demarcate software, culture or educational resources that give and preserve freedoms of their users from those that are just available cost--free (allowing for access, yet denying the rest of the “four freedoms”): the priceless, distinguished from the zero-priced.

We might need to change that accent, however. Software developers, artists and educational resources creators, libre or not, have to eat, too.

FOUR FREEDOMS

Richard Stallman had introduced simple yet effective criteria of whether or not a given software (or any other resource, for that matter) is freedom-preserving. Its license has to guarantee:

0. freedom to run/use the program without any restrictions;

1. freedom to examine how it works and to modify it;

2. freedom to distribute it further;

3. freedom to distribute one's own modifications of it.

To make it easier to extend the set of libre software, in the first free-software license, the GNU GPL, one more trick has also been used – *copyleft*, the requirement that all software based on GPL-licensed software will also have to be distributed under the same terms.

The copyleft clause has since become a point of contention within the free/libre/open-source software community. The debate between detractors and proponents is as vivid today as it had been 30 years ago.

The former prefer non-copyleft licenses, like MIT or BSD; the latter promote the use of GNU GPL family of licenses.

The MIT/BSD crowd argues that copyleft denies developers of derivative works (in this case, software based on a GNU GPL–licensed project) the freedom to close their project or change the license.

The GNU GPL side points out that even if that particular freedom is denied in such a case, it's for the greater good – others, including users of the derivative work, have their four freedoms preserved.

The debate, then, concerns the freedom of the derivative work's author to close that work versus the four freedoms of all users, forever. And of course, this is relevant not only to software.

BUSINESS MODELS

Within the software-development world and outside of it, the copyleft clause tends to be considered "bad for business". Derivative-work authors would like to be able to close their works regardless of the licensing of

the originals, so as to earn a living on them – after all, how can one earn on something that is free to copy at will?

The answer lies with new business models, compatible with the culture of sharing (and the sharing of culture). Crowdfunding, voluntary payment-based models, making money on merchandise (like band T-shirts) or concerts, and (in the case of software) selling services like feature implementation, support or deployment, allow creators to thrive and earn a living in spite of – or, as is often the case, precisely because of – fans sharing their works.

These are not obvious and seem uncertain – yet more and more often they finance productions, both large and small. On the other hand, "tried and tested" ways of making money on creative work are no guaranteed way to make a profit. Even more so with the market saturated by huge companies.

Preference for non-copyleft licenses might stem from a lack of trust for new models: "I might want to sell a closed product based on this, what then?" However, if I can close something, others can, too. We're all worse off.

HEARTBLEED

The Heartbleed debacle illustrates this well. A trivial software bug in a popular free-software library, used on the Net by big and small alike to provide secure transmission, had huge consequences for the whole FLOSS[1] ecosystem, and broader for the whole Internet. It also remained undiscovered for years.

The software involved – the OpenSSL library – is available on a non-copyleft license. It's being used by companies, including most of the

[1] FLOSS – Free/Libre/Open-Source Software

heavyweights (Google, Facebook, Amazon, among others), in their products and services.

They use this crucial piece of software but are not really helping develop and maintain it. OpenSSL developers didn't have the funds for regular code audits that would have discovered the bug long before it caused any harm.

Large companies also do not share their modifications. OpenSSL's license does not require it, so why would they? It turns out that Facebook modified their OpenSSL version in a way that accidentally made it insusceptible to the bug.

Had OpenSSL used a copyleft license, requiring sharing modified code with the community, Heartbleed might have been discovered much earlier, causing much less harm.

NOT FREE AS IN BEER

Free software, libre culture, open educational resources development has its cost. Many thousands donate their time and expertise, and share the effects of their work. It is often overlooked, usually when, while arguing for use of FLOSS, the “it's gratis” argument is being used.

It is not. Time to start properly valuing the work put into those initiatives. And to support them, also financially.

Copyleft, as it turns out, can help here, too: if nobody can close my work, I myself can also use their enhancements. We're all better off.

photo: Wojciech Wójtowicz

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COPYRIGHT AND ACCESSIBILITY: WHEN PEOPLE WITH DISABILITIES CAN BE CONSUMERS OF CULTURE

I would like to deal with the encounter of copyright and access to information. What does it mean to access something? In computer science, this term is intuitively understood in the category of having or not having something – in English it's defined as *availability*. Another thing is *accessibility*, which may refer to access to information. In the case of electronic information, it can be perceived with one's sight or hearing. In this context, I'd like to mention several copyright-related problems.

Audiovisual materials have two layers of information: the visual one, images, and the audial one, for example soundtracks including dialogue. The first layer is not accessible to the blind and partially sighted, whereas the second layer is inaccessible to the deaf and the hard of hearing. What can be done about this? Obviously, it can be said that these materials are not intended for the recipients just mentioned. But it's not true that one must see and hear to perceive a film; there are methods of making visual materials accessible to the disabled. Captions are one method of presenting sound information – to favour the deaf, captions can be complemented with additional information stating that, for instance, a shot was heard, the telephone is ringing or music is playing. To deaf people who don't know Polish, for example, it's then necessary to provide a translation to the sign language which – contrary to common knowledge – is not the Polish language shown by means of signs, but a completely separate language with its specific grammar and terminology. The deaf claim that, in using it, it's possible to present poetry and rhyme. I'll take their word, though this seems extraordinary. The sightless have been provided with technology called audio

description, an additional track produced by a narrator who describes what is happening on screen. Applying such techniques, audiovisual materials can be made accessible to people who are disabled in terms of their sense perceptions.

Unfortunately, all these techniques, including captions, are derivative works. A new work is created and it is derivative of the original work, a film. Audio description refers to the image, so it interprets what is seen on screen. Translations to sign language, as with any other translation, are also derivative works. Authors of captions for the disabled say that their work requires creative input, hence derivative works are created. Here is where the problem with copyright arises.

What does our law say about it? Since 2004, the Polish Copyright Act includes an article concerning implementation of the directive allowing the usage of works for the benefit of the disabled. It seems to be one of the widest implementations in European copyright law. Nearly everywhere in Europe, there are additional restrictions, while in Poland the directive has been directly rewritten. Where is the problem? There are three prerequisites of acceptability of adaptations, which strongly narrow down the group of their addressees. The most difficult one is the non-commercial character of creating this type of adaptation, which causes several interpretational and practical problems.

Who could make use of these provisions? Article 18a of the Media Act requires that television should transmit a certain amount of materials accessible to the disabled. However, most TV stations are profit-oriented, joint-stock companies. It's very difficult to prove that the adaptations mentioned above wouldn't bring gains. It's also hard to artificially limit access to adapted materials for other recipients. The possibility for use of these materials by the wider audience is an obstacle for TV stations (also public TV) which, in most cases, decide to adapt their own materials exclusively.

The Foundation Kultury Bez Barier (Cultures without barriers) deals with making culture (e.g., films) accessible to the sightless and the deaf. They prepare audio descriptions and captions which are financed by both public and private sources. The Foundation already has huge resources of scripts and subtitles which could be widely disseminated as added features on DVDs, used in cinemas, etc. Unfortunately, these materials may only be utilised by rights holders, which leaves these resources largely unused.

Two recent examples make useful points of reference on these issues. The budget of the Polish film production *Bogowie* (*Gods*) was 6 million zlotys (1.44 million euros). There weren't enough funds, however, to prepare Polish subtitles, so the deaf aren't able to watch the movie. The second example is both less obvious and more detailed. There's an important event for the deaf community organised every two years: the Miss Deaf Poland contest. Public TV decided to cover the event and invite the winners for a studio interview. Unfortunately, the material, which was most interesting to the deaf, was broadcast without captions, thus was completely inaccessible to them. Eventually, they found and uploaded recordings to YouTube and added captions. By doing this, they infringed copyrights because they disseminated materials without the consent of its rights holders. Did they do anything wrong? The materials didn't have much commercial potential and it's doubtful that big advertisers would've invested huge amounts of money to place their ads on the broadcast. Due to the public TV's intervention, the materials were removed. However, after further protests by the deaf community, public TV withdrew from their decision and wrote a long letter about its merits to the deaf community – it's now available on the Internet.

One solution to this problem would be updating Article 33[1] of the Copyright Act. Such a change would enable distributors to provide films introduced to the Polish market with captions or audio descriptions. As long as this culture is a niche, it will not be interesting to producers and distributors.

I'm a bookworm. Before I went blind, I read a lot. When I lost sight, I began using audiobooks. But I couldn't use e-books because, for a long time, electronic books were protected by DRM-type systems[1] which don't cause any technical problems to most people, but to us such e-books are useless – as an access-control technology, the sightless can't adapt it to their needs because it blocks adaptations. When Poland withdrew from using DRM, it turned out that we can now use e-books and, luckily, almost all best-sellers in Poland have their electronic versions.

Restrictive copyright and protection against copyright infringement can very seriously restrict access to culture for the disabled. Let me quote an excerpt of the UN Convention on the Rights of Persons with Disabilities which states that it is recommended that copyright be constructed in such a way that it does not restrict access to culture for the disabled. In Article 30, the UN Convention says:

3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

These words from Article 30 provide the international standard – and perhaps, at least for now, the human one. Today, it's contingent upon specific legislation to keep putting this standard in place. As with the circumstances discussed above in Poland, the rebalancing of opportunity and opposition is on ongoing process. The ramifications for communities with many varied concerns are easy to detect.

Translation: Marta Skotnicka

[1] **DRM designates access-control technologies applied in e-books to protect their content.**

photo: Rafał Nowak

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CopyCamp is an exceptional meeting of all parties interested in the debate on the current shape of the copyright system. Every year, experts representing cultural institutions and the media, artists, scientists, lawyers, politicians and activists meet in Warsaw to discuss the future of law regulating the circulation of cultural goods on the Internet and its social repercussions.

The three editions attracted over 140 speakers – among them, an American artist Nina Paley and Professor Eben Moglen from the Columbia University in New York, Cory Doctorow, science-fiction writer and publicist and Birgitta Jónsdóttir, poetician, human rights defender and member of the Icelandic Parlament – and over 1100 participants from Poland and abroad. All conference materials are available at: http://copycamp.pl.

The CopyCamp Conference is part of the Future of the Copyright project conducted by the Modern Poland Foundation, financed by Trust for Civil Society in Central and Eastern Europe. Strategic partners of the event are: Authors' Association ZAiKS, Samsung and Google. Supporting partners are: Coalition for Open Education and the Kronenberg Foundation. The project is also financed by the International Visegrad Fund. The event is organised under the auspices of the Ministry of Administration and Digitization. Our media partners are, among others, Newsweek Poland, wyborcza.biz, ngo.pl, Forum Odpowiedzialnego Biznesu portal, culture.pl, WikiRadio.

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