Is there any Digital Copyright Exchange in your future?
by Brunella Longo

The reason why I learned with enthusiasm of the Government initiative, matured through the Hargreaves' recommendations, to sponsor the development of a privately funded and industry-led Digital Copyright Exchange (DCE) was that I was simply waiting for it.

In fact, the idea of a simple, unified and opened to all DCE goes straight to the core of the question of the digital economy that no other Country in the World is in a better position to address: the lack of governance on the distribution of revenues coming from digital (and digitised) knowledge assets.

A Digital Copyright Exchange would be beneficial for all the actors that have been contributing to the digital economy and particularly those who are currently excluded or heavily penalised from the absence of a general "high volumes less value transactions" scheme capable to handle small royalties.

So I gave my contribution to the consultation (particularly on aspects of new text and data mining applications) and waited to see the follow up. Am I being an incurable romantic about the possibility to tame the Internet and bring order in the world of online contents and buzzed social media and online outsourced ephemerals?

The first time I joined a debate about copyright was in the early 1990s. There was an immense excitement (mixed with equal confusion) about access and re-use of contents stored in electronic archives.

I made a plain definition of the word "database" in a small book published by the Italian Librarians' Association in 1993 that, translated from Italian into several European languages, is still performing very well through various provisions including the European Council Directive that in 1996 established a "sui generis right" for databases. Very few credited me for that definition.

Among those who did are some open access "fundamentalists" who would like it scrapped with instrumental motivations (some Courts of law, particularly in Italy and in the Netherlands, considered public sector bodies not entitled to any database *sui generis* right).

At any rate, that outcome is here to stay: a recent decision of the UK Court of Appeal about licensing of media monitoring and e-clippings services, for instance, is based on the principle that databases do have right to legal protection no matter the software procedures used to retrieve their contents and other algorithmic tricks of the trade ([2011] EWCA Civ 890).

For a certain number of years I went on designing and prototyping new editorial products and web based archives mainly for large organisations in the creative industries that were willing to experiment new services and use Internet as a new medium.

We were confident that such products and services at some point would be protected under IP law and above all would have secure streams of revenue via subscribers or pay-per-use customers.

Other regulatory issues related to technological developments, particularly those concerning protection from piracy and limits to free riding and disruptive strategies, were simply underestimated or put off, waiting for the digital market to mature new business models and significant dimensions before trying any further specific regulation (a truly homage to the economic school of thought of the “Chicago boys”).

As a consequence of such over optimistic and hyper-liberal approach to legislative issues, many internet projects were simply decommissioned or frozen after the first dot-com bubble burst in 2000 - 2001: investors, publishers, media owners saw the promise of Internet as a new delivery channel simply vanishing whilst other critical events promoted a more risk-adverse approach to the whole technology thing.

So that was the way I came to my second great opportunity to rethink and discuss intellectual property issues, around 1999-2001. The demand of consultancy and information design services had been diverted towards educational endeavours based on technologies of collaboration.

This time the debate about copyright issues was driven by conflictual approaches on how to implement the DMCA (Digital Millennium Copyright Act) and the EUCD (European Unified Copyright Directive) in a profitable, compliant but still fair manner along with the exploration of new possible “Web 2.0” business models.

These were based on a sort of carrot and stick idea: what was not covered by increasing advertising and promotional revenues, could be handled via digital rights management software (for instance through ebooks devices / readers, software apps and new promising mobile and smartphones).

I made my contributions to the development of a culture of licensing and contractual agreements of articulated complexity - often easier to be agreed by lawyers than enforced with real users within academic consortia, public libraries and corporate wide area networks.

As a result of such efforts and frictions I became ad advocate of a copyright assurance approach that I must admit did not attract crowds of organisations so far: investing in usability, interface or partecipatory design and assurance requirements of databases and online services is expensive.

Conversely, we saw the extension and the endorsement of the “exceptions” regimes in all Western countries and the development of the Open Access culture, strongly sponsored by financial gurus and philantropists like George Soros with the BOAI (Budapest Open Access Initiative).

On the optimistic side, along with the socio-economic changes following the end of the Berlusconi era, I have recently started to see positive returns on investments several Italian institutions made with my small educational projects in 2000 - 2007.

Last year (2011) George Soros restructured his hedge fund management interests after the introduction of the Dodd-Frank Wall Street Reform and Consumer Protection Act in the USA.

With a completely different regulation under which financial groups must be more transparent in the way in which they manage benefits, access to credit and information about consumers and private investors, I guessed we had to expect another major wave of reforms or at least a serious review of legislative and governance issues affecting the mix of revenue streams of the diverse segments of the communication and creative industries, both in the USA and in Europe.

It is also true that several debates in London between 2009 and 2011 about the future of the City led financial and innovation experts to make some self-reflective statements in relation to open data and open knowledge goals: the fundamental problem of any knowledge communication agenda Today has become the absence of trust on the side of the consumer that is deeply penalizing research and academic world but it is also eroding trust in corporate and commercial projects.

Why should we want research institutions, for instance, engaging with local communities or looking for relevance and visibility over the internet via outsourced contents and an increased volume of undistinguished open access publications whilst we all know that almost anything accessible in open formats contribute inevitably and unintentionally to the resources freely available to the communication industry?

Agencies and freelance working as "outsourced custom content" providers reuse open access formats accessible over Internet without recognizing any royalty whilst this segment of the communication industry in the last years has grown more than radio, consumer magazines and newspapers advertising all together.

It's all about the future of authorship and intellectual property

My intuition was right in that I was not surprised to see the appointment of Richard Hooper to lead a feasibility study for the development of a Digital Copyright Exchange in the UK by the Government last November.

In fact it is now evident to me that the whole culture around the *process* of licensing of digital contents that has been investigated in the last 10 years does not make any further contribution to any savings or compromising strategy anymore in the traditional media and publishing segments - and it is not functional to any further growth and development of the digital economy neither.

I also have strong doubts about the sustainability of the "double standard" approach adopted by some large publishers, media, fashion and financial organisations that profit from the disruptions to their own IP rights while they control parallel secondary markets via private equities and other perfectly legal, although possibly unethical, solutions.

In fact the true capital behind any knowledge asset, trademark or patent is the trust you own from your audiences that you are resilient enough to overcome

weaknesses and vulnerabilities by the means of continuous innovation, adaptation, transformation and change.

Therefore I would have expected first of all a very large consultation to be launched together with the idea of a DCE and not a request for comments among specialists called to answer more than 100 very technical questions.

Nevertheless the Consultation's questionnaire prepared by the Intellectual Property Office supporting Richard Hooper turned out to be itself a source of evidence in that it confirmed that all the copyright law issues, including those apparently newest, have already been studied, dissected and mostly unsolved by the experts first of all through the "exceptions" regime and secondarily by the means of licensing agreements that are evidently not fitting for purpose as expected.

In 2010 the Internet economy contributed for more than 8% to the UK's GDP (Source BCG), more than traditional sectors like education or construction, but we still do not have any general and overriding mechanism, nor law or regulation specifically designed to recognise authorship and intellectual property rights over the internet.

The value of e-commerce global revenue grew to an estimate figure of US$ 963 for 2013 (Source JP Morgan) but how much of such figure goes to intellectual property owners?

There are 45.1 million bank accounts registered in the UK to use internet banking in 2010 (Source Keynote) that are expected to grow to 59.8 million in 2015. Almost everybody who is in a working condition, employed or self-employed, has access to private intranets, e-commerce websites, HMRC or NHS authenticated services. All communications are virtually tracked for commercial or security reasons.

Although the level of security and quality of such immense volume of electronic transactions is not yet satisfactory enough to assure complete certainty of their authenticity and integrity from a forensic point of view, it is highly arguable that such absence of total quality and reliability cannot guarantee enough certainty for the identification of authors and other rights owners.

Once called to collect your money, you must have a very good reason - not necessarily good for the community - to prefer anonymity instead (and even in this circumstance some Switzerland or offshore partnership may help).

I see the introduction of large scale, massive developments of micro-payments and micro-financing formulas for digital authorship or digital reproductions and other intellectual property rights as a true possibility to move on. Various digital exchanges are already in place and a unified common solution, sort of National Insurance for IP and Authors rights, can be designed with a fresh approach not just to the *process* of licensing but to the human rights principles we want to reward, incentivise and compensate. Also digital auctions, experiences of micro-financing programmes and many other digital projects currently under development in the financial sector all around the world can inspire solutions with more robust, just and positive returns for all.

So far, I must say that the first report of the DCE feasibility study documents reactions quite far from my enthusiasm.

Nevertheless it is exceptionally interesting because it discloses the existence of conflicts of interests, lack of design expertise and difficulties in recognising that a gap exists between the views of innovators and information consultants like me (and possibly also of some Government representatives) and the representations made by almost the entire world of traditional publishers, large academic and research institutions, media owners. The last, with few exceptions that arise from interests in archives and repository, simply declared during the consultation they have no problem in managing licensing processes, they do not need such a further DCE to be started up and above all they have no problem in managing rights of others, particularly those of people who they do not know who they are. Nobody wants to inherit debts with authors?

Let's hope that next steps and further developments do not need to call on European directives (such as the Unfair Commercial Practices and the Misleading and Comparative Advertising directives) to define and promote a new, reformed, pragmatical copyright legislation in the Country that invented it.

In conclusion I would say yes, it would be a very good thing to see a DCE in my future. Since I am not less than twelve (sixteen according to another scheme) years far from reaching the pension age, there is chance this expectation can be fulfilled before I retire.

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