

Why Ardito?

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My title is Why Ardito? I want to try and identify – and thus remind ourselves what are the key reasons why we are all here today in Barcelona and why Ardito is such an important European project. If we are clear about the reasons then we can be clearer about the solutions. Being clear as to what is wrong improves our ability to get it right.

There would seem to be five main reasons for Ardito. The reasons are interconnected and overlap each other.

Copyright Wars

First of all, on the political stage, at the macro level, in country after country, we still have and will always have sadly, what I have called the Copyright Wars. There is one going on in Australia as I speak. The Australian Productivity Commission recommended to the Australian Government the introduction of “fair use” following the US model. The Australian creative industries put up a fierce rear-guard action seeing this as an exception to copyright too far. Malcolm Turnbull’s Government has just responded that it is not minded to introduce fair use at this time. But the war goes on.

The Copyright Wars stem to some extent from the mid 1990s, in my view, when we – the general mass market - took over the internet from academics who had brought it to so brilliantly to life. The general mass market was encouraged to assume that the internet should be free. If revenues were needed, content should remain free and just be paid for by advertising - like the traditional tried and tested model of commercial radio and commercial television. So the idea that content in the digital world is free became indelibly associated with the internet/world wide web.

I had the pleasure of pioneering viewdata/videotex/Prestel in the early 1980s (the two way twin of broadcast teletext). Prestel failed in the end - superseded by the internet’s superior technology. But one thing Prestel got right from the start was a simple and easy to use micropayments system of page pricing. On Prestel from the start paid-for content (pages priced at any amount up to 50 pence) sat alongside free content (pages priced at 0 pence!). The internet still today does not have a robust easy to use micropayments system for the general mass market – although Dominic Young, who was my CEO at the Copyright Hub, is said to be working on it!

Ironically perhaps, despite the “content is free” assumption, academic publishers have all along had vast quantities of content behind paywalls (e.g. scholarly content) and subscriptions have persisted throughout the entire period (e.g. for academic journal content). Micropayments are also quite common in specialist markets. The Copyright Clearance Center’s RightsLink service is a commercial licensing service used by many to secure re-use and other permissions.

We pro-copyrighters did not, in my view, do our cause any good when we extended the term of copyright to life plus 70 years – a function of the need to harmonise the term of copyright across the EU. The EU could not remove rights and so had to harmonise upwards to the longest term – it was

life plus 70 in Germany and so that is what we got. But copyright, remember, is a form of monopoly and monopolists of all hues are rightly suspect. Life plus seventy years might be seen as greedy!

Getting a licence to reuse copyright material legally is difficult to do

Secondly, copyright licensing has been, and still often is, very unwieldy, difficult to do. Ros Lynch, my splendid British civil servant, and I were amazed in 2011-2012 - when we started our review for the British Government - at how difficult copyright owners made it for others to reuse copyright material legally. For example British schools routinely had to deal with twelve different educational licensing bodies to get permission to reuse material legally. Yes I said twelve. Restaurants and hairdressers in the UK had to deal with two different and separate music licensing bodies to get permission to play CDs of music to the public. Licensing of copyrighted content is very easy for SOME users (e.g. academics and corporates in specialist markets), but very difficult for others (e.g. the smaller, individual end-users in the general mass market). The Copyright Hub's main focus has been the smaller end-users.

Because copyright licensing for the general mass market is difficult to do, two things happen. Both very negative. Users pirate copyright material instead of seeking a proper licence to reuse - copyright infringement. And secondly, they complain to their politicians and seek to make their particular use of copyright material another exception. An example would be text and data mining. Both the piracy and the grumbling to politicians are very negative indeed – prolonging those Copyright Wars. Of course, some people with easy access to licensing schemes also pirate – because of financial, political, and ideological reasons.

By the way, using the word “piracy”, certainly in the English language, rather than “copyright infringement” may give the pirates a glamour that we should not allow them! Pirates of the Caribbean and all that.

Breaching copyright, outside exceptions of course, is against the law. It is also a breach of our human rights. Professor Michael Fraser, giving the Charles Clark Lecture at the London Book Fair in 2016, stated it all so powerfully:

“Copyright is the legal expression of a human right, guaranteed by Article 27 of the Universal Declaration of Human Rights...Article 27 states that

“(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.””

Creators should be paid properly if their work is reused – it is only fair

A third reason for Ardito follows so naturally from Article 27. Owners of copyright, creators, ought to be paid properly for their work – especially when it is reused. But the data surrounding copyright – this is heartland Ardito of course - historically has been very poor. Central to our vision is that good quality data facilitates licensing. And I fear that data continues today to be poor. Insufficient or under-used unique identifiers for creators themselves (party identifiers), insufficient or under-used identifiers for the actual copyright works (especially on the internet), and no unique identifiers for

the licences that permit reuse of such copyright works and thus tell you that the reuse is legal. Ros and I came across one case – not unusual – where £10million was ending up in the wrong pockets because of poor data. Creators complained to us about not being paid because their work got lost in the production process, for example when titles in a production got changed - thus composers were unable to track the use of their creation. Surely creators should be paid properly. Especially in the modern economy where the creative industries are taking a larger and larger share of GDP and wealth creation. Poor or non-existent data stops this happening. I remember pointing this out in a high profile panel session at a US conference. A very senior member of the industry told me haughtily I was talking nonsense – the data was fine. Comfortingly, many members of the audience over coffee agreed with me!

Tech companies are ambivalent towards copyright

This may slowly be changing but it remains a major problem and constitutes a fourth reason why we are here today. Several tech companies are themselves now creators of content, and as such this maybe changes their views on protecting copyright, including their own. But the harsh reality remains that proper attention to, and care of, copyright gets in the way of many tech company business models. I remember being told by senior people in social media that sharing is the heart of their business and copyright was therefore not really relevant. Search algorithms can quickly override copyright concerns. Copyright is frankly a bit of a nuisance for tech companies! And these tech companies have become, many of them, giant enterprises with huge lobbying and political support. It is reliably said that Prime Minister Cameron in the UK launched the Hargreaves review of copyright because Google told him that Google could not have started up in the UK because of our copyright laws. My work with Ros of course stemmed from the Hargreaves recommendation for digital copyright exchanges, in other words for streamlining copyright licensing.

It is however ironic that tech companies who are so ambivalent towards other people's copyright are ruthless in their defence of their own intellectual property such as patents and trademarks. This links to my final reason:

Intellectual Property (IP) is at the heart of the modern economy

The fifth reason takes us back to the first – the macro level, the political stage. All modern economies depend on intellectual property (IP). The big chip designer ARM in Cambridge, England, was sold last year to Japan for 24 billion pounds. It manufactures nothing itself. Without patents and design rights and copyright, it would be worth very little. 80% of the UK's GDP comes from services, not manufacturing. The creative industries, as already mentioned, depend on IP. A farmer told me recently how his business model was changing rapidly as he developed a valuable database about cattle breeding which other farmers needed access to. A 2016 report published by the European Patent Office and the EU IPO showed that 'all IPR intensive industries' account for 42.3% of the entire European economy and 38.1% of jobs in the EU.

So we should not be shy about championing intellectual property. We should stand up to the naysayers and be prepared to fight if necessary. That is why we are here.

Conclusion

Let me conclude by summarising what we should do to champion copyright:

- We must be careful, speaking for the UK, about accepting new exceptions to copyright and limitations on copyright. There are many other countries in Europe where market issues mean that an exception or limitation may be beneficial. But they need to be narrowly and carefully focused so as not to undermine the legitimate market.
- We must do everything in our power to streamline, make easier, the ability of people to reuse copyright material legally, especially for the general mass market.
- To accomplish this, we must improve data – with unique identifiers for parties. Here ISNI is making such good progress. “The mission of the ISNI International Authority is to assign to **the public name(s)** of a researcher, inventor, writer, artist, performer, publisher, etc. a **persistent unique identifying number** in order to resolve the problem of name ambiguity in search and discovery.” Party identifiers are helpful in making machines understand content better. Since they can identify the people who contributed to the copyright work(s), then that makes our job, everyone's job so much easier.
- We must improve data – with unique identifiers for copyright works, especially on the internet. I love the ISNI adjective “persistent”. We must not just have the identifiers but must insist on their use – persistently. Tech companies should not be allowed to delete unique identifiers – a copyright crime if ever there was one.
- We must improve data – with unique identifiers for licences. This would allow Google for example to resolve the vast number of take-down notices they receive, much more quickly and cheaply. This is something the Copyright Hub has worked on to make reuse of content much easier.
- But we have to be realistic. The traditional identifiers born in the analogue world – ISBNs etc – will not, for some time to come, travel on the internet embedded digitally in the content. Although I understand they were actually designed to do so. Thus the importance of Ardito pioneering the full use of clever watermarking and fingerprinting techniques. Then the Copyright Hub can link all the many different types of identifiers so that people, machines and browsers can understand more about where content comes from. The Internet is great at knowing where something is or should go. Now we need to join up the other end and make it plain where and who it came from. If we know where content comes from we can then design licensing systems more easily.
- Finally we should not forget what I call analogue licensing problems. Remember the twelve educational licensing bodies British schools had to deal with. The good Stephen Edwards has chaired a Copyright Hub Working Group to streamline educational licensing – with great success. He and his colleagues have probably saved more money for schools and CMOs than the whole of the cost of the Copyright Hub in its early years. Meanwhile the CEO's of the two music licensing bodies in the UK have got together and now provide joint licences – making life much easier for restaurants and hairdressers.

If we do all this and do it persistently, then we can expect

- Less piracy, less copyright infringement
- Less political lobbying to extend exceptions to copyright
- More money going to the right creators

- Reduction in the extent of the Copyright Wars
- Winning over tech companies to our cause and I believe to their advantage
- And finally, proper respect for all forms of intellectual property that underpin your and my modern economy

Thank you.

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