



## 'User Generated Content, Copyright and Business Models'

*A summary of the workshop on May, 15<sup>th</sup> 2007*

In this workshop copyright issues regarding user generated content (UGC) were discussed. Goal was to get a better grasp of the most important bottlenecks that companies - active on the market for UGC - encounter and how they affect their business models. The workshop was organized as part of a European FP6 programme 'Citizen Media' ([www.ist-citizenmedia.org](http://www.ist-citizenmedia.org)). In this project new ways are investigated on how to exploit the huge amount of user-generated content in innovative ways to support people in their daily lives and how technology will enable social change to strongly involve users for co-creating networked applications.

TNO is responsible for developing a vision on market perspectives for user generated content, including the way in which regulatory issues and policies affect business models for user generated content. This workshop was one of the activities organized for this purpose.

### **Copyright infringement**

#### *The bottlenecks*

The workshop started with a presentation on recent developments in the media landscape - addressing the notion of the 'long tail' and strategies from different categories of media companies.

The discussion started with the problems that service platforms (and content owners) face when users upload content that is not (entirely) their own, infringing copyrights of the original right holders.

- The costs for either moderating and or removing material in which copyrights are infringed or of clearing copyrights for all UGC on platforms offered by service providers are high. The use of 'professional', copyright protected content, especially the music (background, soundtrack) in user-generated content proves to be a bottleneck for service providers. In the Netherlands, clearing these rights collectively costs 130 euro for every 90 minutes, adding up to large amounts of money once a service becomes popular. This makes it impossible for the providers of the platforms for UGC to create a viable business model. Apart from music, there are countless user generated clips online that use snippets of movies, series and other 'professional content,

Owners of platforms disclosing UGC fear that this might lead to court cases by film studios and other companies that are the owners of the copyrights and that want to commercially exploit their content.

- Co-creation: if people want to use each others work, they need to have permission from the other (non) professional content creators. A distinction is made between a compilation, a co-created work or an edited version of existed material. For a compilation, one needs to clear existing publication rights. Right clearance gets more complicated when the co-creation goes beyond a mere 'compilation'. If existing material is altered or takes a different meaning because it is placed in another context, the original author(s) needs to give permission to do so. For co-created work, a central 'director' needs to be given a mandate to make choices concerning exploitation rights and rewards for co-authors. Apart from a creative commons license, there is no rights management mechanism in this area.

### *Solutions?*

So far, there is no clear solution to deal with this problem. It is tempting to say - especially for service providers - that copyright holders must loosen up and find totally new business models, but this might be too much to ask. Negotiations with copyright holders - like the Dutch collective copyright management organisation for music, Buma Stemra - seems the most obvious solution. Other possible directions towards a solution include:

- Develop standards and tools to measure use and implications for rights management the status of the material available online. So far, negotiations on exploitation rights are mostly based on rough estimations of actual use of the material and right holder associations often make no distinction between content disclosed and content that is actually used or viewed.
- Service providers could share revenues generated by UGC with right holders - everybody wins some.
- A 'Fair Use' principle could be implemented. Fair use is a doctrine in United States copyright law that allows limited use of copyrighted material without requiring permission from the rights holders. It provides for the legal, non-licensed citation or incorporation of copyrighted material in another author's work under a four-factor balancing test:
  - purpose and character of citation;
  - (public) nature of the copied work;
  - substantiality of citation in new work
  - effect upon original work's value;It is based on free speech rights and is unique to the United States<sup>1</sup>
- Discussions and coordination with right holders could take place in the early phases of the development of a service, not only afterwards.
- Education of users; making them aware of what they can and cannot do and making them aware of the economic and cultural relevance of copyrights
- Users could be stimulated to use music that has been cleared from copyrights.

## **Responsibility & Liability**

### *The bottlenecks*

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<sup>1</sup> Adapted from Wikipewdia: [http://en.wikipedia.org/wiki/Fair\\_use](http://en.wikipedia.org/wiki/Fair_use)

A second concern for the providers of platforms of UGC is to what extent service providers are liable for the copyrights' infringements and, consequently, if they can be held liable for copyright infringement. The extent to which a service provider is liable depends on whether or not the distributor modifies, edits or checks the content before it is published. The distributor 'creates its own responsibility' so to say; the more it modifies, edits or checks the content, the larger its share of responsibility for infringement. Another factor that determines if service providers are held responsible for infringement are the revenues made from a certain clip of content. Generally, only when a service becomes popular and generates revenues - becomes 'a big fish' - it is interesting for copyright holders to make the effort of suing.

#### *Solution?*

- Bar infringers: one of the main issues in the discussion on liability is the effort service providers make to ban copyright infringement and (repeating) infringers. This requires either moderating before publication or banning copyright infringers after notification by copyrights holders. The first option requires a major effort; the second one requires a strong identity management.
- Technical solution: 'fingerprint' illegal content to make sure that the content can be traced back to a user and doesn't get uploaded with a new username.
- Settle: if rights holders protest against infringement, the service provider might offer a revenue sharing deal on the work in which the content is used. This strategy is viable only for companies with considerable market power.

### **Copyrights on the user generated content**

#### *Bottleneck*

Service providers have an incentive exploiting the rights to content in as many ways as (legally) possible; in different media, on different markets and for different purposes. Other important issues are the right to make changes to the content after publication. Depending on the business models, service platforms can use different models. Revver for instance, a service that relies for its advertising revenues heavily on the syndication of their content, uses a proprietary system in combination with Creative Commons. This is a modular licensing system that allows people to sign away some rights, but reserve others. However, for the commercial exploitation of content, Creative Commons may not be sufficient, as this licensing system does not offer a distinction between different *exploitation* rights (per platform, market, etc.). On top of this lack of standardised exploitation licenses, there is an economic incentive to have only one type of contract between users generating content and the service provider. Diversity in licenses might complicate large scale exploitation for service providers. It is more difficult to apply a strategy based on large scale aggregation of user generated clips (into a channel) or automated advertising systems if the copyrights for each clip of content are different.

#### *Solution?*

- It is important that users understand what they are signing, when they are required to agree to the 'terms of use' before uploading their content: different workshop participants suggest these should be shorter and more comprehensible. However, offering users different ways of presenting their content on UGC platforms and offering different copyright arrangements should not compromise the usability: too much choices and buttons will scare users away.

- The way in which service providers treat copyrights's issues can also become a value proposition to potential uploaders. It should be clear to the creator what will happen to his content. Will it be exploited for other purposes? Sometimes this is desired, because it means free publicity or a career boost. Already, different platforms apply different copyright policies according to the possibilities they offer to boost a career.

## **Other issues**

### *Bottlenecks*

When it comes to UGC, legal issues are not limited to copyrights.

- Intellectual property law also addresses portrait rights. People 'caught on camera' need to give permission to publicly disclose the footage. This especially applies for footage taken in a private setting.
- Neighbouring rights need to be taken into account. These might include: performers rights (in performing, the interpretation and performance itself can be perceived as an authoring activity; not be confused with performing rights), producers rights (mainly concerned with prohibiting/licensing reproduction and distribution) and for example database rights (the right to extract content from a database that took the investment of considerable human, technical and financial effort).
- The internet is not hampered by geographical borders, creating new problems concerning different legislations in different countries. We did not deal extensively with this issue during this workshop, but it is definitely an issue that needs to be taken into account and has an impact on platform providers' strategies.
- Thirdly, the problems addressed during the workshop also touched on other aspects of law. For instance: Agreements such as those captured in the 'Terms of use' of websites fall under the umbrella of contract rights and consumer protection. Lack of transparency and other criteria for consumer protection are part of the electronic trade legislation. Using technology to detect and prosecute infringers can conflict with privacy legislation.

### *Solution: technology?*

Although technological issues were only discussed briefly, they might be part of several solutions. The participants in the workshop had different opinions on the extent to which infringement can be minimized by using technology.

- (Technological) standards could be developed that keep track of the status of content available online. Examples are period of availability, popularity, copyrights that are owned, etc. If these are interoperable standards, content might become more versatile. From an economic point of view this would mean low transaction costs.
- Management of content and rights (DRM) in order to track down illegal copies, versions or mesh-ups of work and identify the people who do this.
- Technology offers the opportunity to relate rights management with revenue sharing models and facilitate money transactions

There are several Technological Protection Measures (TPMs) and Digital Rights Management (DRM) systems available. However, DRM systems are often proprietary systems, and TPMs are known to cause compatibility problems. Several workshop participants make a plea for more interoperability in DRM systems.

## **Conclusion**

The dialogue on copyrights, infringement, liability and DRM systems for user generated content has just started. More common ground needs to be created in order to enable service providers and right holders to build business models that suit the interests of all stakeholders involved. This also entails making copyright management transparent, fair and easy-to-use for the creators and users of user generated content. There is a need for models that facilitate the negotiation process between copyright holders and service providers dealing with rapid market developments.

**Present at workshop:**

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