



***COPYRIGHT THE FUTURE:
DEVELOPING A COPYRIGHT AGENDA FOR THE 21ST CENTURY***

RESPONSE FROM ACAP (AUTOMATED CONTENT ACCESS PROTOCOL)

ABOUT THE ACAP PROJECT

ACAP (Automated Content Access Protocol) is an initiative of the European Publishers Council (EPC), the World Association of Newspapers (WAN), and the International Publishers Association (IPA) which between them represent many thousands of newspaper, magazine, journal, database, book and online publishers worldwide. We welcome this opportunity to contribute to this latest consultation about the future of copyright and to emphasise the crucial role that copyright continues to play in the future of publishing.

ACAP is designed to improve the tools available for the *management of copyright* in the online environment, to the long term benefit of rightsholders and consumers alike. It is a non-proprietary communication standard, developed by the publishing industries; its purpose is to ensure that anyone who publishes content on the web can *communicate* the terms and conditions of access and re-use of their content at machine-to-machine level – allowing technology to manage permissions, particularly those involved in business-to-business transactions. Our initial focus has been on the relationship between publishers and those online aggregators, particularly the search engines, which use automated techniques to harvest (that is, to copy) enormous quantities of content without seeking or being granted any permission to do so.

Until ACAP was available, the terms and conditions of use that publishers have established for their online content have been contained in legal documents, buried deeply on their websites. Very few people read these – and the software agents that crawl a site simply *cannot* read them, rendering them of very limited value.

ACAP translates these legal documents into a universal machine-readable and machine-interpretable language. The rightsholder decides the terms and conditions that should apply to their content and uses ACAP as the communications tool to express these terms.

ACAP is designed to put content owners back in control of their online content in a way that facilitates the development of new online business models, delivering more access to more content on the net, optimising the role of aggregators in the distribution channel – and ultimately ensuring the availability of a huge diversity of high-quality content for consumers.

Devised by publishers working in collaboration with search engines during an intensive year-long pilot in 2007, ACAP will revolutionise the creation, dissemination, use and protection of content on the worldwide web. ACAP's scope is now being extended to other business relationships and other media types including music and the audiovisual sectors.

The ACAP protocol is free to implement. Over 700 websites in over 40 countries worldwide have already implemented ACAP v1.0. However, the major search engines have so far chosen not to adopt the new protocol. We are actively seeking the support of governments – in the UK and elsewhere – to hasten the adoption of ACAP as *the* standard for the communication of online permissions information.

The role of ACAP in supporting online business models

Intellectual property rights play a crucial role in the future of publishing, in particular online. Copyright gives rightsholders the freedom to decide how their content can legitimately be used by others. The successful development of all the media industries has been underpinned by copyright, contributing massively to every developed economy; finding effective solutions to the challenge that the Internet represents to copyright is vital to economic well being. The ability to express and share permissions for access and use in standardised ways forms an essential part of the infrastructure necessary to allow content to flourish as effectively on the network as it does in the physical world.

The problem that ACAP seeks to resolve is both complex and of the greatest possible importance to the future of the economy and the health of society more generally. We welcome the assurance given by the Intellectual Property Office that the main thrust of this review is “*to ensure the UK is adequately equipped to support UK industry on the international stage*”.

Executive Summary

Copyright: We see no reason to question copyright law itself as the legal basis on which creative businesses are formed. It has worked for 300 years. However, although current copyright law is broadly fit for purpose in the 21st Century, it is patently clear that we lack the tools to make it work effectively online. Tools like ACAP are essential to make the communication of permissions information clear, precise and readable by machines, making it impossible for anyone to argue they “didn’t know” what they could or couldn’t do with content belonging to someone else. Communication is a better solution than litigation.

ACAP as a solution: Law makers are beginning to recognise the potential of ACAP (and similar technological tool kits); ACAP has been endorsed by EU Commissioner Viviane Reding in the Communication on Content Online and has been cited as a possible solution to the digital rights challenge in the UK Government’s recently-published interim report on Digital Britain. More political support is required, however, to encourage the adoption of ACAP throughout the value chain.

In today’s highly competitive business environment, it should not be acceptable to build business models on the back of other people’s investment in content without their permission and without sharing the financial benefits of using that content.

Search engines and copyright: Google’s CEO Eric Schmidt recently complained that the Internet was stagnating because of lack of new, high-quality content. What he described as a “cesspool” Internet full of “false information” has been created by the failure of the network to develop into an effective content market. Speaking recently to Ad Age magazine, Schmidt said: "Narrative sustains the [media] business...but the future of high-quality journalism is a huge problem. A reasonable prediction is that there will be fewer voices. More money is needed to fund high-quality work." Schmidt is apparently keen for trusted brands to come to the rescue of the stagnant Internet, something which they will only ever be in a position to do if there is an orderly marketplace in which the intellectual property rights are fully respected, particularly in business to business relationships (like those between search engines and publishers).

Response to specific questions

Does the current system provide the right balance between commercial certainty and the rights of creators and creative artist?

The delicate balances between different interests that are represented in copyright law (and are essential to its functioning) can best be maintained by ensuring that it works as effectively on the Internet as it does in the physical world. In the absence of the

appropriate technological infrastructure, the management of rights and permissions on the Internet is an impossible challenge. There are simply too many transactions, and the granularity (and therefore the value) of those transactions is too small.

We believe that the only solution is to use technology to overcome the challenge that technology has itself created. *“The answer to the machine lies in the machine.”* This can work to the benefit of all players in the value chain, not least creators and creative artists.

Are creative artists sufficiently rewarded/protected through their existing rights?

ACAP has no specific view on this, beyond asserting that creative artists are free agents, and in most circumstances own their copyrights at the point of creation. They should be free to manage those copyrights *in any way they choose* – selling them, licensing them, or giving them away.

Is our system too complex, in particular in relation to the licensing of rights, rights clearance and copyright exceptions?

In the absence of an appropriate technology infrastructure, the complexity of the challenge can seem daunting. However, as with so many other challenges of modern life, technology can be used to manage that complexity in ways that are invisible to the user. We don't have to know how a mobile telephone works in order to be able to use it – and the complexity of that global network is at least as challenging.

Does the legal enforcement framework work in the digital age?

For reasons we have already described, we believe that, unaided, it does not.

With the barriers to infringement lowered, and the barriers to enforcement raised as a result of the slow and expensive court system, certain protections given to online intermediaries in the Copyright and E-commerce directives and the reluctance of online players to embrace initiatives such as ACAP, it is no surprise that effective enforcement on the Internet is virtually impossible and rarely if ever cost effective.

The Digital Britain interim report addresses the issues facing content providers in order to enforce their intellectual property rights against persistent infringement, something which we welcome (following similar assurances in the Gowers report).

Does the current copyright system provide the right incentives to sustain investment and support creativity?

Copyright law provides the same incentives as ever for investment and creativity which it has successfully stimulated for hundreds of years. However, the tools which translate that incentive into actual economic benefit are not yet fully working in the online environment. The dizzying speed of development of the Internet has contributed to the development of this gap, which has led to a situation, hopefully temporary, in which much investment in creativity online is rewarded with substantial audiences (and the audiences rewarded with the content) but insufficient economic benefit to justify sustained long-term investment at the same level.

Equilibrium between the players in the value chain has not yet been achieved, with disproportionate benefits accruing to players who have not invested in creativity. In many cases existing, more profitable, off-line businesses provide the financial bridge to support the less profitable online activities. The current recession will, in some cases, serve to reduce the ability to sustain that bridge which may result in investment being reduced or the availability of content online being restricted.

However, we see this situation as temporary and the creation of proper tools such as ACAP will help, when adopted by more of the players in the value chain, to rebalance and create economic and cultural opportunity in the online environment which will enrich it for all the participants.

Better technology, not new legislation, is the solution

Is this true for both creative artists and commercial rights holders?

All rights holders are vulnerable to the same challenges online. Some creators will be happy to see their content freely exploited by others, and do not seek financial recompense. They should, of course, be free to make their content available to others on any terms that they choose. ACAP does not discriminate in its capability to support any business model and any size of publisher, from the self published author to the international media business.

Is this true for physical and online exploitation?

ACAP is relevant only to online exploitation.

Are those who gain from content paying for it (on fair and reasonable terms)?

No, in many cases, they are not. ACAP was initially born out of the challenge publishers have faced in asserting their online IP rights and preventing third parties from copying their content without consent without permission or deriving disproportionate benefits from their use of the content due the inability to control that use beyond a simple “yes/no” permission.

The search engines, for example, are beneficiaries of a seemingly limitless free resource which has been entirely paid for by other people. They are owners of sophisticated technology and operate in an environment which has formed around their activities rather than the other way round.

We believe that universal acceptance of ACAP will facilitate the relationship between content providers and search engines and other aggregators, to the benefit of all stakeholders.

What action, if any, is needed to address authentication?

Industry-led initiatives to make the ownership of copyright in particular works easier to identify should be encouraged. In a world where unauthorised copying is under control and the demand for permissions is therefore increasing, new markets, tools and economic incentives will emerge to fulfil the demand.

In considering the rights of creative artists and other rights holders, is there a case for differentiation?

There is no obvious case for differentiation.

If so, how might we avoid introducing a further complication in an already complicated world?

There should be no requirement to introduce further complication.

Conclusion

A well functioning copyright system creates incentives for creativity, incentives for investment in creativity and the widest possible availability of the widest possible range of creative output, at reasonable cost for consumers.

Clearly an important part of those incentives is economic and success in creating popular works should reflected, where the creator chooses, by economic success as well.

Over the history of copyright, the law has responded to technological advances which might damage the balance of incentives – for instance the advent of photocopiers, television, recording devices and countless other changes have all thrown up challenges for the copyright regime.

When changes have been made to copyright, and the market has responded to those changes, their success can be judged by whether or not the incentives still exist; that can in turn be judged with reference to the size and vibrancy of the creative economy.

On that basis, the copyright regime has been an enormous and continued success driven by careful changes in the law sustaining a market in which innovation, entrepreneurialism and creativity have led to sustained growth.

If our shared aim is to allow that growth and success to continue and accelerate, we need to consider not the basis of copyright, which is as appropriate today as ever, but the means by which it is translated into practical outcomes in the market. To the extent this isn't happening today it is because the “old world” tools of paperwork, licences, contracts and one-to-one discussions preceding transactions are out of date. New tools are being created and all the players in the copyright value chain need to be encouraged to adopt and embrace them.

Better technology will provide the tools we need to make copyright function effectively on the network.

Automated Content Access Protocol

ACAP

www.the-acap.org

Contact:

Mark Bide

ACAP Project Director

Tel: 020 7620 4433

Email: mark.bide@rightscom.com

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