

The Future of IP Exploitation: Surviving the Digital Jungle

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Digital technology is fundamentally changing the way creative industries manage content and reach audiences. In the digital jungle, consumers no longer purchase a product like a book—they are now paying for access to intellectual property. It is more crucial than ever to handle IP rights strategically. Successful players must control and exploit IP in a digital world, identify tactics for success, and avoid the traps of competitors, device makers and pirates.

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Background

This white paper is the result of an initiative at THE ARTS+, part of the 2016 Frankfurter Buchmesse. THE ARTS+ organizers, supported by FADEL, a global provider of enterprise-class intellectual property rights and royalty management software, invited trade visitors to a free-form workshop to discuss “The Future of IP Exploitation in the Digital Jungle”. The ideas and concepts debated by a group of creatives, technologists, and publishing, copyright and legal experts form the basis of this paper.

About THE ARTS+

THE ARTS+ is a trade fair, conference and meeting place for the cultural and creative industry, which was held for the first time from 19 to 23 October 2016, during the Frankfurter Buchmesse. Its purpose is to exploit the potential of digitization for the creative economy, and to develop new business ideas.

What is the Digital Jungle?

Publishers and media companies have traditionally controlled most of the content supply chain – the entire process of selecting and editing content, packaging it into products like books, managing the release schedule, marketing, pricing and distribution.

In a digital world, the model is flipped. Consumers armed with an array of devices expect on-demand content delivered to their device. Market leaders like Apple and Google control digital distribution and aggregation platforms, setting their own terms for pricing and business models. Content creators can now reach an audience without the help of traditional editors and publishers via self-publishing platforms like Amazon, Medium.com and YouTube.

This new technology is fundamentally changing the way creative industries manage content and reach audiences. In the digital jungle, it is no longer a product like a book that is being bought or sold. Instead, consumers are paying for access to intellectual property. It is therefore more crucial than ever to handle those IP rights strategically. Successful players must control and exploit IP in a digital world, identify tactics for success, and avoid the traps of competitors, device makers and pirates.

What is the Impact on Content Exploitation and IP?

The discussion in THE ARTS+ workshop was guided by a series of topics and questions based on trends identified by FADEL in the broad content and IP market. Each topic in turn is proposed and discussed in the following sections.

Should we enable or resist the transition from content ownership (“buying”) to content access (“renting”)?

A central feature of digital consumption is the shift from buying content *products* to buying *access* to content. In music, purchases of physical discs and MP3 downloads have been displaced by the rise of subscription streaming services like Spotify, Apple Music, Pandora and Deezer. In television and film, Netflix has come to dominate the market, replacing DVD purchases with a forecast 100 million

subscribers in 2017¹. In publishing, Amazon’s Kindle Unlimited service offers a similar “all-you-can-eat” model.

For years, the content industry benefited from consumers’ desire to “collect” content – to display their libraries of books, movies and music as a mark of their cultural pedigree. Conveniently, this translated to growing volumes of physical product sales well into the 2000s².

As it turns out, consumers were not so wedded to collecting after all, and when faced with a more attractive business model in the form of the “pay for access” subscription, many were ready to switch.

With books being the category most resistant to the digital subscription conversion, it perhaps comes as no surprise that THE ARTS+ workshop participants at the Frankfurter Buchmesse felt that physical product remains a crucial part of the mix.

Those publishers with limited development of digital business models are missing out on growing new sources of revenue.

The consensus was that consumer preference is the most important factor – and successful publishers must meet the needs of both digital-first

subscription customers and those who want to own physical product. Books, maybe more than other media categories, retain an important emotional connection. “Bookshelves are still important. You want to show your interests to friends,” commented one group member.

Smart publishers need to meet all types of demand. This implies that those publishers with limited development of digital business models are missing out on growing new sources of revenue, and that expanding these digital revenues will not necessarily cannibalize print income.

There are sub-segments of the print industry which have been faster to make the shift to digital – for example educational publishers want to move to licensed digital product to reduce the second-hand textbook market, and they see the value in capturing students’ data via online learning platforms.

Using digital engagement to generate valuable data about users is crucially important, according to THE ARTS+ workshop participants. Many have seen the reported benefits Netflix has realized in its content acquisition strategy by using detailed data analytics.

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In publishing, the example of Wattpad³ was raised.

This is a platform for user-created fiction, especially episodic novellas. The platform is using analytics to better understand its millennial audiences, translating this into content for more traditional TV and Hollywood media, creating engagement with stories and brands, and supporting advertising⁴.

Wattpad is also an example of a “platform” model for self-publishing, a topic discussed later in the workshop.

1 Financial Times: Netflix on track to hit 100m customers after record growth <https://www.ft.com/content/8859f16e-ddcf-11e6-9d7c-be108f1c1dce>

2 Financial Times: UK CD sales slump to half of 2004 peak <https://www.ft.com/content/fd2df548-3565-11e1-a4ab-00144feabdc0>; Forbes: Six Reasons Why DVDs Still Make Money -- And Won't Die Anytime Soon <http://www.forbes.com/sites/dadehayes/2013/07/08/six-reasons-why-dvds-still-make-money-and-wont-die-anytime-soon>

3 Wattpad is a self-publishing platform for short-form content based in Ontario, Canada <https://www.wattpad.com/about/>

4 Techcrunch: Wattpad sets its sights on brands, publishers and Hollywood with Wattpad Studios <https://techcrunch.com/2016/04/26/wattpad-studios/?ncid=rss>

Should we switch the focus of rights management from supporting B2B transactions to meeting the specific needs of content consumers?

A common complaint from consumers is that they are unable to watch or read something due to the rights being unavailable in their market. Some technically savvy consumers are using virtual private network (VPN) connections to circumvent geo-blocking technology and access content intended for another territory.

In Europe, legislative initiatives like the Digital Single Market (DSM)⁵ are attempting to address some of these concerns, though at the time of writing it remains unclear whether the DSM will introduce a fully pan-European market definition (thus challenging the territory-licensing model that underpins the vast majority of intellectual property licensing deals), or will merely enable “content portability” where, for example, a consumer normally resident in France is still able to access their digital content services when travelling to Spain.

Separately, the European Court of Justice is considering whether consumers should be allowed to resell ebooks and other digital goods⁶. This topic is at the heart of IP exploitation in a digital world – while content creators and businesses are used to the concept of licensing content to each other, consumers believe they are purchasing a digital product in the same way that they buy a physical book in a store. They do not necessarily understand that they have merely licensed access to that title and do not own it at all.

Successful digital content businesses must place consumers at the center of their strategy.

Regardless of existing industry practices or new legislation, THE ARTS+ participants were clear that successful digital content businesses must place consumers at the center of their strategy. If the “traditional” industry fails to meet consumer needs, or leaves consumers frustrated, this opens the door to piracy, and to disruptive new industry entrants.

Are traditional gatekeepers like publishers being eroded by new platforms connecting rights owners directly with audiences?

A feature of the digital marketplace is the presence of platforms connecting buyers and sellers – eliminating traditional gatekeepers and middlemen. This goes beyond content (Airbnb for accommodation, Uber for transportation), but some of the biggest platforms are for peer-to-peer content publishing – YouTube in video, the more niche Medium.com for news and magazine writing, Lynda.com for business training content, Wattpad for fiction, and Amazon’s self-publishing service.

In the “old” model, physical distribution was costly and shelf space (or airtime) limited. Publishers, music labels and television networks therefore acted as editors to select and curate content, and fund its production and marketing. Only content approved by these gatekeepers found its way to the audience – and by constraining supply, retail prices were held high – covering the costs of the operation and creating a profit.

⁵ The European Commission Digital Single Market https://ec.europa.eu/priorities/digital-single-market_en

⁶ Ars Technica UK: Should it be legal to resell e-books, software, and other digital goods? <http://arstechnica.co.uk/tech-policy/2016/05/reselling-digital-goods-europe-e-books-software/>

In the “new” platform model, the marginal cost of creating and distributing a new piece of content is negligible. Content creators (authors, musicians, YouTube stars) self-fund the production of their work and distribute it freely via the platform. The market, not editors, then decides which content is successful by weighing things like recommendations, ratings and algorithms. The creators of the most popular content are rewarded with a share of advertising, sales or subscription revenues – although many artists will remain uncompensated.

This topic generated vigorous debate among workshop participants – including a fundamental question of artistic integrity: is it more important to reach the audience and have one’s work out in the public domain, or is it more important to be paid for producing it? This issue was of particular concern to one participant, an artist who distributes her work via stock image sharing platforms. Her concern was that many such platforms are one-sided, leaving the artists with a poor deal; “take it or leave it.” While the concept of crowdsourcing content and distributing it widely appeals to many people’s artistic ideals, it simultaneously leaves them feeling exploited.

Artists must play an active role to understand content licensing, to know their way around a contract, and to understand what rights they are granting.

Another complaint is that the peer-to-peer platform model merely replaces old gatekeepers (publishers) with new gatekeepers (technology companies). “Someone is always wanting to make money,” lamented one participant.

One idea was for traditional players, like publishers, to create their own platforms—however there are potential risks. Negative impact on legacy revenue and anti-trust implications when multiple publishers collaborate to create a platform are among the concerns.

It was also accepted that traditional players like publishers have not always done a good job of building a compelling customer experience when creating new direct-to-consumer propositions – leaving the door open to digital-native competitors.

The importance of data and analytics was again mentioned, with the strong feeling that anyone supplying content to a platform ought to, in return, receive data about how it is being used. Existing platforms are variable in the quantity and quality of data they make available to content suppliers.

A final – and vital – issue raised by content creators is the new demands the platform world is placing on the skills of artists and creators – particularly the business aspects of managing, exploiting and monetizing the IP they create. In a peer-to-peer model, there is no longer the backup of commercial, marketing and legal resources.

Content creators must now play an active role in managing their own business, particularly licensing their IP. Artists need to understand content licensing, know their way around a contract, and be conscious of what rights they are granting to a platform or consumer, how these will be marketed and how they will be paid.

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To what extent are content products evolving from a highly curated, pre-determined format like a book, to content products created dynamically “on the fly”?

In the analog world, intellectual property is normally defined by the physical container: the book or the DVD is both the product *and* the IP. While this model also works in digital – where the print book is replaced by a digital download – an emerging digital model is for dynamic content, created on the fly, licensed to the user, tailored to their individual needs.

This is currently most common with professional and educational content delivered through online platforms. For example, a lawyer or doctor may no longer buy a reference book, but instead will subscribe to an electronic service. Based on the case they are trying to resolve, the relevant information, drawn from a vast variety of sources, is assembled and delivered.

For this reason, some professional publishers are now managing the individual components of a “book” as separate pieces of IP. Each section of text, each image, diagram and photograph is managed and linked to a contract or license with the author, artist or stock image library. When one of these content assets is delivered through the electronic platform, or incorporated into a new product like an app, ebook or foreign rights sale, the IP can be accounted for, and the appropriate fees and royalties calculated and paid automatically.

Potential benefits to authors and artists include the ability to retain control of their material [and] to earn more.

THE ARTS+ workshop participants recognized the value of tailor-made content, and acknowledged that publishers must adapt to this changing market or die.

At the same time, some expressed concern about the impact on the creative process. If the content creator conceived their work as a whole, what is the artistic implication of slicing and dicing that material and repackaging it in different formats and products?

Should IP transactions evolve from fixed contracts with authors, artists and talent to a model of more flexible licensing from content creators?

If the concept of a book is replaced by managing the individual content elements within it, this also impacts the way IP transactions are managed. In traditional publishing, an author signs a fixed contract to produce an entire book – often including images and all. They receive their advance and earn that out against subsequent royalties. The work may be sub-licensed as a whole, for example for translation, for which the author may receive a further royalty.

This model is less appropriate in the online platform world. How should the author be compensated if a small section of their work is delivered to a professional subscriber? If the author’s work is regarded as particularly useful by platform subscribers, should they not receive a higher fee?

Publishers must adapt to this changing market or die.

THE ARTS+ workshop delegates identified the important difference between the concepts of copyright and licensing. For example, it is normally not possible to copyright the design of a piece of

furniture – but this can be licensed. They felt that many types of content creation in a digital platform world will move from the concept of assigning copyright to the notion of licensing a certain, limited use.

This model is already commonly used in film and television distribution, and is gaining in popularity in other creative sectors. The potential benefits to authors and artists include the ability to retain control of their material, determine how it is used by whom, and (potentially) to earn more if their content is exploited successfully in multiple formats.

Conclusions

Delegates at THE ARTS+ event included content creators and those involved in IP law and licensing. Much of the discussion focused on the impact on the creative, artistic process of the digital platform world. Will the creative process be diluted if artists must worry about IP licensing, contracts and finance? Are creators savvy enough to navigate this new world? Do they end up transferring control of their content from traditional gatekeepers like publishers, who are closely aligned with the creative process, to new technology company gatekeepers who are more concerned with the needs of end consumers and may treat creative works opportunistically, as a commodity?

Overall, delegates were excited about the opportunities for content creators to exploit their work in more formats and potentially to earn more money doing so. By thinking about their intellectual property as an asset to be managed, controlled, licensed and remunerated, many artists will be able to benefit from a bigger audience for their work and a larger commercial market.

About the Author

Rob Ambrose (@rambrose) moderated the workshop at THE ARTS+ and has written this white paper based on the discussion. Rob is a consultant, industry analyst, journalist and technologist with 30 years' hands-on experience in the media and entertainment business. He helps media companies and



vendors keep pace with the fast-changing digital content market and consumer demands by implementing effective technology solutions and transforming business operations.

Rob has expert knowledge of media business systems. He leads strategy and business development for FADEL, a global provider of enterprise-class intellectual property rights and royalty management software. He's also focused on the transformative impact of new technologies like AI and voice control, VR and cloud on the media technology landscape.

About FADEL

FADEL is a provider of cloud-based intellectual property (IP) rights and royalty management software for media, entertainment, publishing, advertising and high tech. The trusted authority for the tracking and monetization of intellectual property usage, FADEL enables businesses to verify, capture and manage rights and royalties for their IP assets through its portfolio of software and expert services.

As digital media content proliferates inside and outside the organization, companies not only need to manage the creation and distribution of the assets but also protect their usage. FADEL Intellectual Property Management (IPM) Suite has been recognized for its end-to-end capabilities across the IP licensing lifecycle – from negotiation to payment. FADEL’s newest product, FADEL ARC, empowers organizations to ensure that digital asset rights are adhered to and financial obligations are tracked and met.

FADEL’s IP management portfolio integrates seamlessly with best-of-breed technologies to ensure an end-to-end business process flow from contracts to rights to clearance to payment.

Download a fact sheet to learn more about [IPM Suite](#) and [Asset Rights Clearance](#), or [contact us](#) to request a demo.

