

Reconnecting author rights, cultural rights and social rights

Strengthening solidarities among professionals in the book sector

By **Lionel Maurel**, March 2018

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Authors, publishers, booksellers, librarians and readers form what is commonly known as a "book ecosystem", an expression that reflects the interdependence between actors in the book field. However, over the past few years, the discussions, both globally and in Europe, about re-defining the intellectual property rights, and the evolution of practices in the digital era, led to division that gradually distanced these stakeholders, with the risk of weakening the solidarity that unites them.

Fortunately, new conversations have started, more specifically about the cultural rights, opening a space where this topic can be debated and addressed from a new angle with focus on issues related to the balance of rights. Starting from the idea that fundamental rights are inseparable, it seems possible to understand author rights, cultural rights and social rights as a coherent whole. The challenge is to find an approach that would stop opposing the book professionals, to re-establish coalitions towards the conquest for new rights.

Due to their specific position, independent publishers could play an important role in framing this collective discussion in the book sector.

Intellectual property debates in a deadlock?

Over the past 20 years, in response to the eruption of digital technology that unsettled all cultural sectors, an intense process of adaptation and renegotiation of intellectual property rights has been taking place worldwide. Treaties of the World Intellectual Property Organisation (WIPO), European Directives, and national legislation have succeeded, generally after rigorous debates opposing the proponents of hardening the intellectual property regime against those who wish a relaxation in favour of these uses.

These tensions are now culminating in the [revision of the 2001 European Copyright Directive](#). The political process, which has been under way for more than six years now, is coming to an end with the conclusion of the review in the European Parliament. However, the consensus is still very far from being reached.

¹ La Quadrature du Net is a French non-profit association that defends the rights and freedom of citizens on the Internet, advocates for the adaptation of French and European legislation to the founding principles of the Internet, most notably the free circulation of knowledge. As such, La Quadrature du Net engages in public-policy debates concerning, for instance, freedom of expression, copyright, regulation of telecommunications and online privacy.

Representatives of author rights holders push for a more robust protection of intellectual property rights, especially against the backdrop of the major digital players like YouTube or Facebook. They demand the establishment of a compulsory automatic [filtering of content on all platforms](#), as well as [special protection for the press publishers](#) allowing to control and charge for the indexation of their contents (known as “Google Tax”). These proposals generated strong opposition, particularly from associations for the defence of digital freedoms, who denounce the fact that these [excessive measures could undermine fundamental freedoms](#).

For their part, users’ representatives, including libraries, demand that digital uses be better secured through mandatory exceptions in education and research, or for the digitisation of works for archives. However, they oppose authors’ and publishers’ representatives who see in these multiple exceptions a risk for the preservation of exclusive rights. The intensity of the debate and the difficulty of finding compromises between these divergent opinions raise fears that in the end the new directive will not succeed in implementing and enforcing effective protection for right holders, and in developing the basic framework allowing a diversity of uses to expand organically.

This deadlock situation is also encountered at the international level with the on-going discussions at WIPO around copyright exemptions. In 2013, the [Marrakesh Treaty for the Visually Impaired](#) was the first in the world to establish an exemption mechanism concentrating on the type of uses. However, the debates that preceded its adoption were particularly difficult and the text is still not ratified by either the United States or the European Union. Another treaty dealing with exemptions for libraries and archives [is also under discussion at WIPO](#), but the discussions have likewise not moved forward for several years.

Faced with the abovementioned pressures, one of the more favourable outcomes could be achieved via the opening of other debates beyond intellectual property issues, in order to re-articulate it with other rights attached to a different status of book professionals.

Re-engaging the discussion via cultural rights

In parallel with these negotiations on intellectual property, another field for debate was opened regarding the implementation of cultural rights. As set out in the 1948 Universal Declaration of Human Rights, these rights were introduced and defined in the [International Convention on Economic, Social and Cultural Rights of 1966](#) and in the [2005 UNESCO Convention of the Protection of Human Rights, Protection and Promotion of the Diversity of Cultural Expression](#). Based on the “right to participate in cultural life” stated in the abovementioned sources, a rich doctrine is being developed which is discerned and articulated more specifically in the Fribourg Declaration of 2007. The implementation of those new rights is becoming effective as they are gradually incorporated in positive enforceable law. This process is well illustrated by recent legal reforms in France, for example in 2016 the Parliament explicitly incorporated the cultural rights in two laws respectively relating to [Decentralisation](#) and [Freedom of creation](#).

The conceptual connections linking cultural rights and intellectual property are complex, as cultural rights include moral and material rights of authors, but do not fully embrace the logic of “exclusive rights” inherent in the approach in terms of property. Copyright thus makes it possible to exclude anyone from using a protected work (except in the cases covered by an exemption), where cultural rights are conceived from the outset as inclusive rights aiming to organise the coexistence of practices. These differences provide scope for a number of tensions, as emphasised by Farida Shaheed, special rapporteur to the UN for cultural rights.

In a report submitted in 2015 (‘Copyright policies and the right to science and culture’), Farida Shaheed calls for a fresh approach to the balance of rights, in the sense of increased consideration for the objective of “promoting participation in cultural life”. She is critical of the toughening of

intellectual property rules, which she says may be detrimental to some aspects of cultural rights, such as access to knowledge or the right to education.

Most importantly, Farida Shaheed strives to promote a more comprehensive vision of the policies for implementation to support creativity, and not merely for protection of intellectual property rights (see page 13 of the report):

“Sources of income for artists can be increased, for example, by introducing a minimum wage, by strengthening their collective bargaining power, the introduction of social security guarantees, budget support for the arts and the adoption of measures concerning arts education, library purchases and immigration and visa policies, and measures to promote cultural tourism. Copyright laws should be seen as part of a wider set of policies to promote culture and the right to science and culture.”

Such a vision is tantamount to bringing together copyright, cultural rights and social rights, to address them not in opposition to one another, but, on the contrary, as an inseparable whole. While copyright has long been established as a fundamental right (through its link to the right to ownership), the status of social rights and cultural rights is still vulnerable, both from the point of view of their consecration by national laws or their opposability.

Rethinking the inseparability of fundamental rights

Indeed, one of the most remarkable aspects of the cultural rights doctrine is that it is based on the inseparable nature of fundamental rights, whereby the intellectual property approach tends on the contrary to create a hierarchy of rights.

An example from the French news illustrates how this concept is likely to offer a new way of considering the balance of rights. For several decades, free public readings in public libraries have not been subject to any legal framework in France. Librarians organised free readings to promote books, animate cultural life and contribute to nurturing the culture of reading among children.

Nevertheless, authors have always transferred the rights of representation related to public readings to publishers via publishing contracts. In 2016, a number of French publishers have appointed a management company (SCSELF, “Civil Society Publishers in French Language”) to exercise these rights and levy royalties on public reading. Once mandated, [SCSELF quickly indicated](#) that it intended to impose prior authorisation and payment on all reading, including free access.

Legally, French libraries had no means of resisting these demands, because the law does not cover this use. According to the interpretative framework of copyright, any use of works is seen as a “prejudice to the author, giving right to monetary compensation”. The French Librarian Association (ABF) chose to object, highlighting the fact that these requirements [were disproportionate and likely to hinder the exercise of cultural rights](#).

Libraries were rapidly supported by authors’ representatives, who refused to exercise their rights by charging fees for reading. Solidarity was possible as librarians and writers agreed to reject the idea that free reading would cause prejudice to the author. In the inclusive approach to cultural rights, public reading is indeed a manifestation of the right to participate in cultural life. It is not a prerogative that would belong to right holders, but a legitimate use that needs extensive discussions amongst all stakeholders to determine the boundaries of the exercise.

Finally, after a campaign aimed at challenging public opinion and public authorities, SCSELF [has abandoned the idea of the proposed fees](#) and an inter-professional agreement must now be concluded to exempt free public readings. It is remarkable that the invocation of cultural rights led to a practical and directly operational result, whereby having Parliament vote on a potential exemption would have been an arduous and uncertain process.

The above example shows the benefit of understanding cultural issues relating to the inseparability of rights, and this approach could be extended to social rights.

Conquering new social rights and rebuilding solidarity between book sector actors

Cultural rights intrinsically include the idea of social justice, offering a specific approach to address this crucial issue, which remains sorely absent from discussions around intellectual property. Farida Shaheed further promoted this approach in her report to the United Nations, which called for a full range of public policies to be considered for the creation and participation in cultural life.

Thinking about copyright, rights of use and social rights together is certainly possible, and we can even cite examples of legislation that have been able to achieve this synthesis in the past. This was the case in France with [the law that covers public lending of books in the library since 2003](#). This text provides for a legal license that allows libraries to buy books on the market and put them on loan for their users. Financial compensation, paid by the State and local authorities, is redistributed equally between authors and publishers through a collective management company (SOFIA). Moreover, part of the collected funds is also allocated to financing author pensions.

We see that such a mechanism is capable of simultaneously serving three objectives: 1) to give a solid basis to a collective use of culture, 2) to provide remuneration to copyright holders, and 3) to contribute to the funding of social welfare for creators. With the evolution of technology, the question now arises as to whether the law should be modified to also cover the lending of digital books in libraries. Apart from the United Kingdom, no country in the world has yet implemented a legal framework on this subject, but such an approach should be considered. This is particularly the case as it is an opportunity to start a fresh discussion, both to legitimate uses and to recognise new social rights for the benefit of authors, which are [increasingly precarious](#).

Such an approach could be broadened to reinforce solidarity between the diversity of stakeholders in the book sector. The example of public readings cited above is interesting in that regard. Finally, free reading in libraries will be exempted in France, but in the name of social justice, libraries could nevertheless contribute to solidarity funds that would finance the social rights of authors. The amount paid would not be used for compensation for any prejudice caused, but rather to contribute to the development of new social rights, which is completely different, both figuratively and practically.

On the basis of such solidarity, one could even go further by taking into account the benefits of setting up a fund for [“bibliodiversity” such as promoted by the International Alliance of independent publishers](#), to fund activities in favour of cultural diversity in the book sector. Such a fund could be driven by a levy on public lending rights in the library, whether on loans of printed material or digital loans. A discussion between independent publishers and libraries could be initiated in this regard, particularly at the [IFLA](#) level (International Federation of Library Associations and Institutions), as these proposals seem to coincide with the actions taken by the organisation to support the [2030 Agenda of the Sustainable Development Goals](#).

The creation of an international bibliodiversity fund would be valuable in expressing solidarity in countries where cultural rights and social justice movements are most needed. For example, the States wishing to support this dynamic could make specific contributions to UNESCO to fund these actions in favour of bibliodiversity. More broadly, it would make sense for the reforms to overhaul the digital tax system in Europe, and take into consideration the cultural dimension more specifically. The European Commission currently proposes a turnover tax on digital platforms, but on

the basis that excludes e-commerce platforms like Amazon. On the contrary, it would seem logical that such an actor, often criticised for their negative role on cultural diversity, not only be taxed, but also that some of these funds be allocated to the promotion of bibliodiversity.

Today, the book sector suffers from many weaknesses, especially because of the heavyweight players like Amazon, Apple and Google, which are rolling out global strategies to strengthen their dominant positions and exercise their control throughout the value chain. This situation requires actors who uphold different visions of culture to find a common ground on which convergences can operate based on strong shared values. In order to do so, it is important to move beyond current gridlocks, and to introduce the means of acting together for the rights of authors, cultural rights and social rights, reconfigured as an inseparable whole.

