

On “diffusion” and making distinctions

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About a month ago I was rather surprised about what I discovered on the World Social Forum Nairobi website when I visited it to officially register the Copy/South Research Group as a participant. I started to tick off and fill in the various boxes --- where our group is based, what type of group we are (advocacy, community, research), our e-mail address. etc., etc. Everything was going fine until I came to the pull-down menu asking in which field of activism we worked. Our small informal group of activists and academics (located both in the North and global South) do research work in the field of copyright issues in the global South and so I thought “intellectual property” was the correct box to tick. But, just as I was about to do so, I noticed --- to my astonishment --- that the “intellectual property” tick box occupied the same box as “Creative Commons.” The clear implication was that if a group worked on “intellectual property” issues, it also necessarily also worked on -- and supported the concept of --- “Creative Commons.”¹

This personal --- and seemingly quite trivial ---- experience with what we could call “the politics of the classification” got me thinking about how ideas such as Creative Commons (and others) spread and become implanted as unchallenged and seemingly progressive approaches in our movement opposed to neo-liberal globalisation. On the one hand, there is no doubting that Creative Commons (henceforth CC) is becoming popular in certain circles, especially in the North, but more and more in the global South.² Although launched just only three years ago in California, USA, a June 2006 weblog report from CC suggested that there were now 140 million pages of CC licensed content available on the Internet.³ Indeed in certain circles, CC is definitely “the flavour of the month” and during a conversation at a recent

¹ The basics of the Creative Commons approach to copyright licensing can be found on the home page of Creative Commons: <http://creativecommons.org/>

² Mind you, as the overwhelming majority of CC material is accessible only on the Internet, the radically disparate level of Internet access in the South and North rather privilege Northern CC users and CC content.

³ Mike Linksvayer, ‘Midyear licence adoption estimates’, <http://creativecommons.org/weblog/entry/5936>

intellectual property conference in Caracas, Venezuela, one information activist was quite astounded that I had any criticism whatsoever of CC and its approach to the use, by contractual licenses, of what copyright lawyers call expressive “works” (books, artworks, music and the like.) At the same time, our growing movement is a transnational one and what academic theorists of global social movements call the cross-national “diffusion” of approaches and tactics is one of its defining characteristics.⁴ Cheap international air travel, NGO growth in the South (often funded by Northern-based agencies), and the growing access to the Internet in the South mean that it really should not surprise us that those organising the WSF registration and group categorisation process would conflate activism around intellectual property issues, such as that undertaken by Copy/South and other groups, with CC.⁵

Yet, on the other hand, **before** any tactics or strategies or approaches are adopted by our movement through this process of “diffusion”, it is **critically important** that they are analysed and debated in great detail. Despite the use of what may appear to be fine-sounding words, such as “open access”, we need to ask a number of questions about any proposed forms of contestation and challenge to global capitalism, including in the field of information and its access. Surface appearances and “spin” simply aren’t good enough when the stakes are so high and the chances of chasing after “false dawns” so numerous.

Among the questions we might ask: What are the ideological assumptions underpinning a particular tactic or approach? Is there a danger that, by embracing a particular approach as a mere short-run tactic, we may “get stuck” within the limitations and supposedly “common sense” assumptions of that approach --- in other words, the practices of that tactic may become naturalised as supposedly “the only way to do things” --- and, as a result, we never emerge out the other side? Although a particular tactic may be reformist, can it work, in time, to build the forces and alternative ideology needed over the longer term “to destroy the capitalist cage?”⁶ Who is

⁴ “Diffusion is the most familiar and the oldest form of transnational contention. It need not involve connections across borders, but only that challengers in one country or region adopt or adapt the organisational forms, collective action frames, or targets of those in other regions.” Donatella della Porta and Sydney Tarrow eds., ‘Transnational protest and global activism’, (Lanham, USA: Rowman and Littlefield, 2005) p. 3.

⁵ To this list of factors, we could add --- and I am certainly NOT lumping WSF organisers into this camp --- “up and comers” from the South who see they can make a career out of becoming (chiefly because of where they grew up) supposed Southern “spokespersons”, message carriers, and habitual attendees on the mostly Northern-funded activist conference circuit. Recently a leading member of one such Southern-based group, which has a “watching post” in Geneva at the WTO and WIPO, told a conference that “We (that is, WIPO) need your input on this issue.” Such self-identification with those with whom one rubs shoulders and breaks bread with on a daily basis is a particularly dangerous phenomenon among some NGOs.

⁶ “Our vision for the WSF in Africa [should be] to destroy the capitalist cage which imprisons Africans and all of humanity’s social, economic, political and cultural development.” Trevor Ngwane quoted in ‘A Freedom Song’, WSF 2007 Newsletter, Vol. 1, No. 2, 16 November 2006.
<http://www.wsf2007.org/wsf07%20newsletter2.pdf> (Brackets in original.)

supporting this approach and who is against it? And finally --- and certainly not least importantly --- in the case of orientations first developed in the North, how applicable are they in the global South? ⁷

In short, we need to ask many tough political questions, ***we need to make distinctions between tactics which lead us into dead ends, unnecessary detours, and cul-de-sacs and those which confront and weaken our enemies and their pervasive ideologies.***

There is not the space here to do a full-scale analysis of CC.⁸ Briefly, we can say here about CC: Yes, we need to recognise and appreciate that those who decide to make their stories and articles and songs available to the public through the use of CC contractual licences demonstrate a positive attitude to sharing. As well, many proponents and users of CC licences are, in their own individual way, implicitly trying to make some kind of a well-intentioned statement against the traditional model of copyright ownership and control that vests such overwhelming power in the hands of publishers, recording companies, and other multi-national rights holders.

But, at the same time, the CC approach works in various ways to normalise and naturalise the copyright system as the one --- and only --- way to create and to use written, musical and other types of work.⁹ The founder of CC, US law professor Lawrence Lessig is a strong advocate of copyright laws, the market, and property rights as key pre-requisites for creative work to be produced. He has written, for example, that “[C]opyright is a critical part of the creativity; a great deal of creativity would not exist without the protection of the law ...And as it (copyright) has expanded, it has expanded the opportunities for creativity.”¹⁰ (Such a view rather diminishes the tremendous sweep of creative works produced across Africa and the South generally, today and in the past, that had nothing to do with the laws, “incentive”, and ideology of copyright.¹¹) As for the supposedly positive role

⁷ Writing here as a Canadian who has lived in the UK for more than a decade, I would add that the location --- North or South --- where a concept has first been articulated and “diffused from” is definitely a secondary question. Yes, it is an issue we definitely need to be sensitive to, but we need to avoid the narrow nationalism and parochialism that dismisses the ideas of those from the North as “not relevant to us in the South” or to claim, on the other hand, that Southerners necessarily know best. Those in the South have had to confront many Southern-borne traitors and false prophets.

⁸ For a fuller and more developed critic of the concept of Creative Commons, see pgs. 167-170 in the Copy/South Dossier (www.copysouth.org)

⁹ Is it only a coincidence that copyrighted works in many countries are so designated by the well-known symbol ©, while CC uses CC?

¹⁰ Lawrence Lessig, ‘The Future of Ideas’ (New York: Vintage Books, 2002).p. 107-108.

¹¹ “In traditional African societies, information and life skills have always been passed on from generation to generation, through oral traditions and folklore for the good of the whole society. With the new trade agreements being negotiated and drawn up under the Trade-Related aspects of Intellectual Property Rights (TRIPS), the World Trade Organisation (WTO), and the World Intellectual Property Rights Organisation (WIPO), African Societies are required to adopt copyright regimes that are contrary to the African understanding of information sharing.” **Gertrude Kayaga Mulindwam, Chairperson – Organising Committee, African Copyright Forum Conference, Uganda, November 2005. (Quoted in ‘Copy/South Dossier’, p. 84)**

of the market system and property rights, Lessig has written: "I am fanatically pro-market, in the market's property sphere. I don't doubt the important and valuable role played by property in most, maybe just about all contexts."¹² (A rather worrisome quotation to put on the banner of information activists wanting "to destroy the capitalist cage which imprisons Africa...")

Specifically about the CC approach to copyright, we can also say: 1) CC licensed works are still commodified works, "albeit ones that the creator can decide (or not decide) to make accessible, much like a person can decide whether or not to invite someone into her or his house."¹³ 2) Reinforcing the much discredited romantic notion of the author as an individual self-directed genius, CC licences give no additional contractual rights to users; again, it is the author who decides who gets to read and to listen; 3) CC licences give us no keys to unlocking the existing stock of *already* copyrighted and propertised books and other information...nor material locked up behind "user pay" toll booths on the Internet. 4) CC tries to impose and import a pro-copyright template into many parts of the world where it does not exist or exists only peripherally, including in the global South.

As for its supporters, yes, there are hundred of writers and musicians and other creators who endorse CC, but when CC leaders such as Larry Lessig tell us that they were "incredibly excited" when Microsoft endorsed CC in June 2006,¹⁴ one can only wonder how many free software activists asked: is CC so desperate for support that they need an endorsement from this predatory software monolith, itself a staunch opponent of accessibility to its own proprietary software?¹⁵

And finally, there is the wider strategical question we need to ask: will individual CC licensing by well-intentioned "good guys" be the catalyst to mobilize both CC proponents and users of CC licensed content to develop a wider collective challenge to the oppressiveness of the entire copyright edifice? This is really the key question: will this reformist tactic of CC create the conditions for a longer term and far wider struggle? CC only calls for individual "good guy" action; there is no link or call to wider collective action to erode the far wider havoc caused by copyright ideology than whether author or musician X gets to have a greater say over the use of particular copyrighted works. CC emerges then as "feel-good copyright" and analogous to believing that buying "fair trade" goods will bring down imperialism.

These same types of questions come up, again and again, in other key issues for information activists, librarians and others working --- some with

¹² Lessig, p. 6.

¹³ 'Copy/South Dossier', p. 168

¹⁴ Becky Hogge, 'What moves a movement', Open Democracy, 27 June 2006.

http://www.opendemocracy.net/media-commons/movement_3686

¹⁵ It is worth noting that leading CC organisers in the South were not consulted in advance about getting Microsoft's endorsement as I learned in a recent discussion in Caracas.

admirable passion and some with success --- to open up badly needed access for educational and other purposes across the South. Take the question of lobbying for the inclusion of "fair dealing" or "fair use" clauses in the copyright statutes in the global South.¹⁶ Numbers of countries in the global South still lack statutory "users' rights" in their domestic copyright legislation and, in this regard, they trail far behind the situation prevailing in Europe and the United States. (A brief background: until quite recently, copyright statutes in many ex-colonial countries, including many parts of Africa, such as Kenya, were enacted as almost word-for-word, carbon copies of statutes which existed in the "homeland" of their then or previous colonial masters, such as the United Kingdom; however, in this malicious "legal transplantation" of British copyright clauses and concepts to Africa, British "fair dealing" clauses were curiously omitted as a necessary requirement for its colonies and ex-colonies¹⁷).

Facing such a glaring legislative omission in the copyright statutes of the global South, it is certainly worthwhile for librarians and information activists from the South to organise to have "fair dealing" provisions included in all copyright statutes across the globe, including in the global South.¹⁸ In the global South, the current access needs of users are legitimate and pressing and cannot be put off until some future date when the global neo-liberal colossus crumbles. Yet, at the same time, to focus our lobbying and activist efforts solely on such limited goals is to lack ambition and to lose sight of the bigger access picture. In truth, the inclusion of "fair dealing" clauses in African copyright statutes will actually do very little to create global information justice. First, what might be considered "fair" by some in the United Kingdom or the United States is not "fair" for those in the global South; the information and access needs are radically different. Second, the amount of printed material that can legally be used under "fair dealing" provisions is pitifully limited. Instructors in literacy programmes need entire books for their work, not merely the use of a few isolated paragraphs that "fair dealing" provisions legally allow. Third, even the best "fair dealing" clauses on the globe do not meet the access needs of the visually impaired which current copyright laws cruelly restrict.

¹⁶ "Fair use" clauses (as they are called in the US) or "fair dealing" clauses (as they are called in most other parts of the world) allow a user to legally access and use strictly limited sections of copyrighted works without the permission of the copyright owner and sometimes without the payment of any royalty fees.

¹⁷ Perhaps this omission was not so curious after all, but more a question of self-interest for colonial powers and rights holders in the European homeland. Including "fair dealing" clauses in the copyright laws of countries such as Kenya would have given Kenyans some minimal rights as users wanting to access books which, in colonial times, (and still today) would mostly have been copyrighted by British rights owners; there was no point in putting a small dent in their balance sheets with the inclusion of "fair dealing" clauses.

¹⁸ Significantly, the leading global copyright agreement, the Berne Convention, does not require that its member countries, now numbering more than 160, to include "fair dealing" provisions in their own domestic statutes.

Again it is question of **making distinctions**, of appreciating the relationship between short-term tactics and the wider, longer-term struggle, of understanding what approaches should be “diffused” and which should not.

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The upcoming WSF in Nairobi will be the first WSF I have ever attended...and as I write this nearly seven weeks before it starts on 20 January 2007, I am already getting quite enthused. Our small group is co-sponsoring a joint event, entitled “**Unlocking the Global Information Fortress**”, with PALIAct Kenya and NIGD (the Network Institute for Global Democratization.) The date and time are not finalized, but it should not be too difficult to find our workshop on the WSF website or on the WSF site itself. You're most welcome to come; there is much to discuss and debate and to learn from each other.