

EXPERT MEETING: CHILDREN UGC AND THE MARKET

Opening

Sannette Naeyé, director of Cinekid, opens the meeting and welcomes the participants. Both in general, and specifically for Cinekid, there are really important questions to be answered about ownership, copyright and legal responsibility with regard to children generated content (CGC). Naeyé is looking forward to this meeting's input and encourages the participants to speak open and freely.

Introduction by Paul Keller

The chairman of the meeting is Paul Keller, Senior Project Leader of 'open innovation' for Knowledgeland, a think tank based in Amsterdam. Keller wants to stress that CGC must be viewed as a subset of 'Media Wisdom' - a concept coined by the Dutch Council for Culture which refers to the knowledge, skills and mentality that citizens need to have when dealing with the media required for social participation. Individual citizens are increasingly becoming producers of these media: in the United States 33 percent of the population share their own creations online, and 19 percent remix content they have found online. Statistics show that in Germany 7 percent of teenagers aged between 12 and 19 upload to MySpace, 10 percent upload to YouTube and 4 percent upload to Wikipedia.

According to Keller, the core problem with regard to the legal aspects of content created and produced by teenagers and younger children is that copyright is not designed for the individuals engaged in these activities. Copyright was invented for professional transactions, and children are currently confronted with what is an extremely complicated matter. As stated in the conference map, the aim of this meeting is to formulate – within existing legislation – concrete proposals for dealing in a digital environment with copyright on online material created by children, and for Keller a system like Creative Commons can be taken as a good example. The expert meeting will consist of two cases: market vs. child and child vs. market.

Case I: Market vs. Child

The first case is introduced by a short movie called 'copyrightcopyright' by Ronnycinekid07. It can be watched online at:

www.zappmixer.nl/index.php?project_code=7a9926e33f92d88c7fe5a1e874bd8fac.

Keller summarizes the current situation: children remix content, including copyright material, in addition to commenting and engaging: it is only natural for children to participate in this media environment and to try to deal with it, but this often happens without the permission of copyright holders. And there are other issues: are we happy with what children are creating online, and what can be done with something like Cinekid Studio? Children have been taught about citing literature - how to quote somebody, etc - but they have not been taught to deal with audiovisual material such as pictures or video.

The plea for the child is made by Roelien van Neck, a lawyer at Bird & Bird, whose focus is on e-business, data protection, ICT contracts and the Internet. Van Neck states that children have the right of freedom of expression, thought and education. These rights are established in the UN Convention on the Rights of the Child, and the internet is a medium where children can use their rights. But children should not be free to infringe on other people's rights. In terms of copyright, there are four aspects. First: the copyright legislation is not written for children - their parents are still liable as legal representatives. Second: there are issues raised

by combining copyrighted material - the end result is a product with a large number of owners. Third: the non-infringement-exception leaves room for educational purposes - why not create a licensing system specifically for children, along the line of Creative Commons? And fourth: website owners who publish copyrighted material made by children are still liable. Van Neck concludes by stating that within current legislation it is possible to protect both owner and children.

After this plea for the child, Bianca Bauer presents her case. Bauer is a Senior Legal Consul at Endemol International B.V., focusing mainly on ICT, e-business, (digital) media and copyright law. Bauer begins by stressing the importance of copyright for Endemol, where the core business is licensing content to other parties, and where the company exploits the value of its brands on different platforms: streaming internet, mobile phones, online games and participation television. For Endemol, new media channels are becoming more and more important, but the internet makes content vulnerable and makes it easier to use content for purposes other than consumption. In this situation, children can become victims. Copyrighted content can be used as a source of inspiration - the private use exception allows a certain leeway in this – but there is no allowance for publishing. For Bauer the question is: how can we prevent children from the unlawful use of work protected by copyright? First: the government can play an important role by providing information and setting up campaigns that evoke an awareness of the use of copyrighted material. Second: technology like Digital Right Management can play a self protecting role, although sometimes it prevents too much. Third: websites that include User-generated Content (UGC) can use filter technology, and YouTube recently started using such technology. Bauer concludes by stating that children should be encouraged to create content without using material taken from others.

Paul Keller remarks, in reaction to the pleas presented by Van Neck and Bauer, that children and teenagers have historically represented themselves with, for example, music. This used to happen in their own room, their own private space, but now they are presenting themselves on MySpace. Playing music in their room fell under the private use exception, but MySpace is potentially open to a larger public. For children the act is exactly the same. From a legal perspective it is different.

Plenary discussion

Job Hengeveld, a lawyer with Hengeveld Lawyers, asks whether we are being overprotective of children. Children can be very well educated in the meaning of property, and we shouldn't be afraid that we will be too harsh with them. It is simply a matter of creating awareness. Bauer responds by stating that it is the lack of awareness that creates problems: most content on the internet isn't a material 'thing' in the sense that marbles are 'things'.

Erik Vollebregt, a lawyer at Greenberg Traurig, remarks that in addition to rules you also have to provide boundaries. What should be done is to create a technical solution, such as providing mash-up materials on websites. But Naeyé doesn't see this working: you are not opening the world for a child.

Ed Norton, Director of Research and Development at Soda Creative, brings up a test case: what if a teenager re-edits Big Brother content to make a funny movie. Where is the crime? What is the harm that is being done? Manipulating content creates content, and such content can attract more attention to the Big Brother brand, thereby helping Endemol. Bauer doesn't agree: this content can't simply be given away. The question is: where should one then draw the line? A YouTube-like content filter can make it possible to earn money, but we can't just give it away. We can never undermine our business model: our licensees will turn to us and ask why we're giving the content away for free.

Keller adds that it is only possible for bigger companies to use content protection technology and make agreements for letting certain kinds of content through, but this will not work for smaller organisations like Z@PP or Cinekid. Van Neck wants to make an important distinction: there is no harm in using copyrighted material in a school context. Naeyé has a question for Bauer. Cinekid recently had a project involving visual literacy: children were asked to submit movies about love. If a child submits a small movie consisting of some Big Brother content, can this be published on the open internet? Bauer says that Endemol won't be happy! A logo is perhaps free, but they should be always consulted in advance. Naeyé wants to know what the solution would be. For Bauer, from a personal point of view, children should be able to use the content, but the problem is that you don't know who is behind the computer.

Ingvill Nyborg, Executive Producer of Fabrikken, a UGC show for the Norwegian Broadcasting Corporation, notes that when it comes to children using material owned, for example, by Endemol, they are always contacted to make sure that permission is granted. Nonetheless, it is not very often that children use copyrighted material for this particular television programme.

Rosie Allimonos, Children's Interactive and On-Demand Producer for the BBC, proposes to open an archive with copyrighted material that is free to use for a period of three to six months. The BBC is experimenting with this idea, and maybe bigger companies like Endemol can do this as well. Remco Pijpers, from Mijn Kind Online, wants to add that the government encourages children to produce media on Kennisnet, for example. The government should provide content that can be freely used, probably under a Creative Commons license. Rachel de Wit, who works for the youth department of the KRO, a Dutch Broadcasting Company, mentions that the company behind the popular computer game *World of Warcraft* gives its scripts away for free use. This can be a great example for other companies.

Vollebregt wants to stress that the purpose of copyright is to offer protection and gain. Free material may fit in the *World of Warcraft* business model, but for Endemol it just isn't possible. A good idea would be an image bank for children. You could lobby content owners to put some of their content in the image bank: most companies have a section for press material on their website, and maybe they could also put some 'material for children' online.

Okke Delfos Visser, Head of Legal Affairs for the Dutch anti-piracy Foundation BREIN, envisions a larger role for websites in preventing copyright infringements. YouTube is already taking responsibility. Using a filter creates some freedom for bigger companies: some back catalogue material can be allowed. Small websites cannot afford a filter. But if you cannot, what is your business model then? Most of the websites that provide content are commercial and should be treated as such.

Keller thinks that giving away copyrighted work such as back-catalogue material will not work. Children want to remix what is hot - the number one hits. Also, non-commercial use doesn't exist: it is about public or private use. We might consider the exceptions. Keller asks the participants to come up with some recommendations: what is good behaviour when it comes to the use of copyrighted material for the child, the platform and the content creator?

As Endemol we can't do a lot besides providing information on the website, says Bauer. In the education system there should be more attention paid to copyright. What is allowed should be mentioned, but also what is not. Ehtimaad Raïs, Project Manager at Z@ppmixer, notes that most children are aware of the rules. Z@ppmixer is a game, and all games have rules. From her experience with Z@ppmixer, it is also possible to see whether a game is made by an adult or a child.

Bert Groenewoud, of the Dutch broadcast organisation Teleac-NOT stresses the importance of media wisdom and learning how to live with the internet. Delfos Visser believes in the freedom of children to create things. The child should not be asked to bear too much responsibility, which should be the job of the network or website publishing the content. Cinekid has a great website and is taking responsibility. But at the other end of the spectrum there are websites which do not, like the ring tone website Wuzzon.nl.

Sipke Kloosterman, from the Dutch website Kidsbeeldbank.nl, pleads for a 'blind eye policy' that allows children to experiment. With a song it is more obvious when it is copyrighted, but it is not so clear with pictures found, for example, on Google Images. Van Neck ends with two proposals. First: educate children on the basic rules of copyright. Second: allow non-commercial use of copyrighted material.

Keller sums up the discussion with a few remarks. Platforms should accept the limitations and follow them. All games have rules, and if you disobey the rules there are consequences. Content producers should provide more information about what children are allowed to do and what they are not allowed to do. Maybe they can be allowed to use their content in a non-commercial way, as in the case of a 'blind eye policy'.

Case II: Child vs Market

By way of introduction the following movie is shown:
<http://www3.cinekid.nl/front/gallery/ecard/mtg/25728>

Keller wants to make clear that there are actually two cases. The first case is a situation in which a child puts something on his or her blog and a big company or television entrepreneur rips it off and publishes it for profit. In which it is pretty straightforward that without the permission of the child this is a violation of the copyright. But the second case is more interesting. What happens when you upload something to YouTube, and when children enter into a relationship with organizations that are much more powerful and have much more knowledge and recourses?

The plea for the child is once again made by Roelien van Neck. The central question is: what happens when a child creates a completely new work on their own? In which two issues are important for van Neck.

The first issue is copyright and contracting. When a child publishes his or her own work on a third party platform, there are two approaches that websites like MySpace or YouTube take: either a license or a complete transfer of rights is necessary. The problem is that children do not have the legal capacity to enter into these contracts. Van Neck is in favour of a system of licenses, primarily because in most cases there is no economic justification for a full transfer of rights.

Another issue is privacy. In any case where a third-party takes a picture that includes a child's face or any other part of the body that enables identifying them, privacy is involved. You cannot simply publish personal information online. There are guidelines for the protection of personal data on the internet, and these also apply to children. Third parties should be aware of this when allowing children and teenagers to publish their own content online.

The next plea is made by Ingvill Nyborg. She is a producer of the NRK television show *Fabrikken*, to be seen on Norwegian television. The show is developed to generate opinions and feelings in children, and they send in their own movies. Nyborg explains that almost everything is edited due to the bad sound and image quality, but they don't get any remixes - it is all original material. For everything that is published on the web or in the show,

permission is required from both the child and the parents. But the use of copyrighted music in the movies made by children is still problematic: for every piece of music they must receive permission. All the rights of the movies made by the children are transferred to the NRK, and if someone is to be sued, it will be the NRK.

For Keller, Nyborg's plea could indicate how difficult it can be for children to publish their own work on, for example, a web log if there is no one, like a public broadcast company, taking responsibility. Whose responsibility is this? Vollebregt remarks that on the one hand children can own their copyright, but on the other they are not able to legally dispose their copyright. The child has no legal standing in entering a contract. The problem with copyright is when you have a dispute as to who owns a work, you have to prove that you were the person who created it. If you start a fight with a big company, they will say: "It can't be that you ever thought of it yourself, because we already had it on our files ten years ago".

For Hengeveld, the main problem is that when a work becomes commercial valuable, people do not play nice anymore. Children cannot anticipate the consequences of their acts, and you need a system where adults take responsibility, protecting children from liabilities and infringements. In the case of CGC, the responsibility should be on the adults. That's the only workable solution.

Keller wonders what we do when children want to get things on television or place them on YouTube - in most cases they have to enter some kind of license agreement. Maybe for children there should be additional feedback, a pop-up box that shows basic conditions like: "You just gave us a license to use your work, if you remove your work, the license disappears". Vollebregt remarks that it would be very beneficial for children to have a sort of 're-think' clause that makes it possible for them to remove their content. Because a lot of times you see children making movies with their mobile phones, and when they put them online they get into all sorts of trouble with their friends. Hengeveld mentions that it is hard to take material offline once it has been published.

Adonna Alkema, who is a lawyer specialized in trademarks, advertising and copyright-related issues and working for Klos Morel Vos & Schaap, thinks that such a clause would actually help YouTube: if they clearly explain to a child what happens with their material, and what kind of rights are involved, they would have better arguments later on because the child knew what was going on. But in Alkema's view a clause like this would not serve to protect the child.

Pijpers says that the privacy issue is also important. The Dutch broadcaster NCRV has a programme called 'Praatjesmakers' in which parents are encouraged to submit their movies and grant all their rights to the NCRV - which is then allowed to do whatever it wants with the material. The parent is the one who gives consent, but the children will see themselves 10 years later on YouTube, and wonder why their parents agreed to broadcasting this movie.

Van Neck wants to stress that in some cases privacy can be more important than copyright. If a child or even their parents changed their mind, based on privacy laws you can still say: I don't want to have my face shown on television, even if I have given away the copyright. It is clear that it has to be a reasonable request, but privacy is quite far-reaching because it is a human right.

At the end of the discussion Naeyé wants to make it clear that most of the solutions brought forward today may work for television but not for something like Cinekid Studio, which is a far more open platform. Cinekid Studio takes its legal measures, but when a child wants to take its work offline, it is hard to do so once it has ended up in Google's cache.

Summary and conclusion

Keller ends the expert meeting with some remarks about ownership, copyright and legal responsibility with regard to CGC. In general there is no catastrophic failure: it is not going totally wrong. If real damage has been done, there are ways to deal with it within the legal system.

The main conclusion for the first case, market vs. child, is that there is a need for more awareness and education. It concerns a general understanding of the consequences of behaviour in relation to copyright and legal responsibility in the digital public domain. Raising awareness on this topic is not something that can be based on classical education alone. It concerns negotiation, and this requires clear communication from and for all parties involved. In most cases children are hopefully clear about their actions, but platforms and content distributors should also be clear about the conditions under which they offer content. In addition, content producers and content owners should try to be as clear as possible regarding what they allow and what they don't.

In the second case, child vs. market, Keller states that it is in everybody's interest to make conditions and rules clear and explicit, in the way that a Creative Commons license does. When it comes to copyright, the provision of information concerning 'rules and regulations' would seem to be a very powerful tool in helping people understand the things that they usually don't.

After this, Keller makes some general remarks about CGC and copyright. If you transfer your rights, these rights should be re-transferable or cancellable. The responsibility lies more with the platforms than with children. Prior notice and clear procedures will, in the end, prevent a lot of serious trouble. According to Keller, another important issue is the relationship between parents and children. Coming to a conclusion requires further research, but it is probably not correct to simply assume that parents always make the best decisions for minors when it comes to using or publishing copyrighted material.

In reaction to this summary Bauer wants to stress, considering the fact that there are so many organisations dealing with content generated by children, that it might be an idea to come up with some sort of policy regarding a trademark or logo that implies: you can safely use our organisation if you want to do something with your content. Something in the way of an industry wide 'stamp of approval'. Bauer realises that this would be very difficult, but thinks that the idea is worth considering.

Naeyé thinks that is a great idea. It should be possible to have at least a short overview of some simple rules on what is allowed and what is not. Bauer notes that there are always details, but if you can reduce the risks by providing a set of general rules, that would be very helpful. For Naeyé, such branch-driven policies should come in the first place from branches themselves. Keller remarks that this could be something for the media wisdom programme.

Delfos Visser wants to emphasize that a 'notice and take down' procedure only works for 'bonafide' websites, and that a passive 'notice and take down' procedure is an obligation for a website. There is also an active component for websites. Keller remarks that the idea of this meeting was to focus on bonafide websites, like Cinekid or Z@ppmixer, and how we can give those websites a little more reassurance so they won't run into trouble. Delfos Visser agrees with that. We can agree that, for example, what Cinekid does is okay. You set a standard, but you can't apply it to other sites.

Keller thanks all the participants for attending the expert meeting, and is confident that something constructive will result from the issues that have been raised.