

Challenges and Opportunities Faced by Micro-Entrepreneurs to Legally Screen Movies in Rural South Africa

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Abstract: The entertainment industry world-wide provides lucrative business opportunities, and within South Africa, this market is still underdeveloped, especially within rural communities. Within this context, the FP7 MOSAIC 2B project aimed to empower micro-entrepreneurs by providing them with a Cinema-in-a-Backpack, which is a set of equipment allowing them to screen movies in rural areas within South Africa. However, to ensure compliance, these micro-entrepreneurs had to acquire the necessary licenses, which proved to be challenging given the regulatory environment as well as the different stakeholders involved. Using a systematic literature review as well as the MOSAIC 2B project as a case study, this paper reports on an investigation on the process and procedure necessary for a micro-entrepreneur to acquire licenses in order to screen multimedia content within rural South Africa. The paper provides an overview of the regulatory landscape as well as the nature of the film industry in South Africa. The main contribution of the investigation is a process model that could be used by a micro-business to understand the requirements and process to follow when acquiring a legal licence for the screening of multi-media content within South Africa.

Keywords: Multi-media licensing process, ICT4D, MOSAIC 2B

1. Introduction

In 2013 the South African film industry revenue was approximately R2.4 billion, which translated into an increase of 7.3% from the previous year according to Price Waterhouse Coopers (2014). In addition, the industry contributes approximately R3.5 billion towards the gross domestic product in South Africa and provides more than 25 000 jobs to the labour force [11]. There has been significant growth in the South African film arena over the past couple of years. However, the landscape is dominated at present by big movie distributors such as Nu Metro and Ster-Kinekor, as well as big festivals that screen multimedia content resulting in a decrease in local audience support because of the closing down of the film houses in townships according to Mboti [5].

This research study was conducted within the context of the MOSAIC 2B project¹, a FP7 FIRE project that was executed by a consortium of European and South African partners and that focused on the use of digital cinemas for mobile empowerment of micro-entrepreneurs within South Africa [6]. The MOSAIC 2B project provided micro-entrepreneurs with the mechanisms and equipment necessary to screen multi-media content as mobile cinemas in rural areas in South Africa. The ultimate goal of MOSAIC 2B was to determine whether such mobile cinemas could result in sustainable micro-enterprises [6]. In the MOSAIC 2B project the focus is on underprivileged individuals with some business

¹ <http://mobile-empowerment.org/>

experience and these micro-entrepreneurs conducted their businesses in relatively under-resourced communities in terms of edutainment [6].

The MOSAIC 2B project investigated the feasibility of micro-cinema businesses in rural communities by providing content through alternative means (Delay Tolerant Networks (DTN)). The micro-entrepreneurs (MEs) were supplied with Cinema-in-a-Backpack equipment, which consisted of a portable battery pack, projector and speakers, as well as a tablet with the MOSAIC 2B application allowing the ME to order, download, pay and screen movies for rural communities within South Africa².

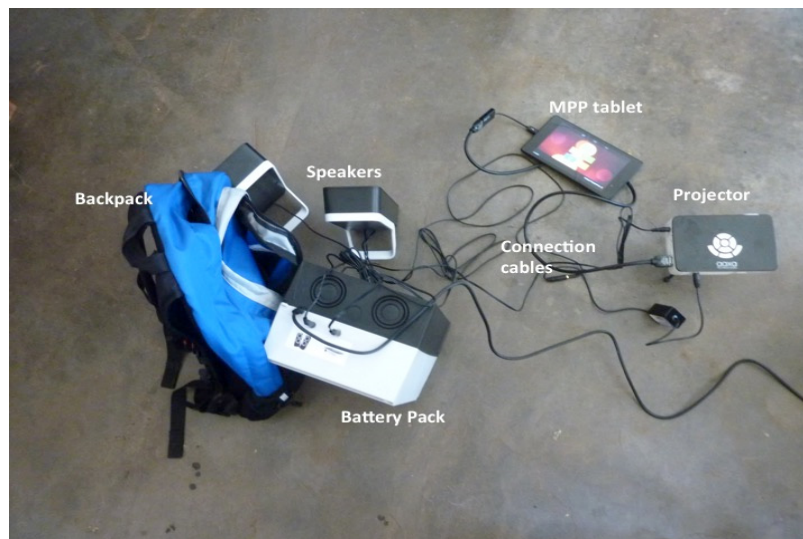


Figure 1: MOSAIC 2B Micro-entrepreneur Equipment

The MOSAIC 2B project terminated at the end of 2015 and some of the major findings include that there is a need and an audience for such small entertainment businesses within rural South Africa. The business model suggested that such micro-cinemas would support an additional income stream given the nature of micro-enterprises within rural South Africa that generally have multiple income streams, and finally, the most significant obstacle for such a micro-cinema business is the regulatory requirements as there is no way that such a micro-business could legally operate given the costs and requirements within South Africa.

This paper in the first place provides an overview of the regulations and legal requirements in terms of licensing necessary to screen multi-media content in South Africa. The objective of the research study was to develop a process model for the process required to establish a micro-enterprise that screens multi-media content legally. The process model was developed using a systematic review of available literature and using the MOSAIC 2B project as a case study.

The paper is structured as follows: in Section 2 background on the film industry within the South African context is provided in order to discuss the broader business case. In Section 3 the regulation landscape with regards to licensing as well as regulatory bodies that impacted on micro-cinemas businesses, are discussed. Section 4 presents the motivation and mitigation factors of piracy. Section 5 introduces the process-model contribution and discusses some findings. Section 6 concludes and suggests possible future research.

² The official MOSAIC 2B website is at <http://mobile-empowerment.org/> and video about the project is available at <https://youtu.be/kfgrC-K9L7g>.

2. The South African Film Industry

According to Eckardt [3] there were almost 400 screening venues in the South African market in 1928 that were mostly screening Hollywood blockbusters. The local production of movies increased dramatically during WWI, and locally *African Film Products* was one of the companies that endeavoured to produce as many movies as they could to meet the demand. Eckardt further states that around 47 pictures were filmed during 1916-1925 due to demand and shortage of the international supply of movies because of the world war. After this period when the war ended an economic normalization occurred and as a result the local market was not able to compete with the rest of the world and thus slowly declined.

The Department of Trade and Industry (DTI) has offered film incentives for many years and recently seems intent on enhancing South Africa's attractiveness as a production location. Cape Town is now regarded as one of the most desired film destinations and the city and surroundings are often visible in movies and advertisements.

The film distribution market for local films is challenging, for instance, if a film gets a distribution deal the film is often only allowed a week to make it or break it or it is pulled out to make space for the next film. Furthermore, these films in most cases do not get marketing funding and exhibitors claim up to 60% of the profit from ticket sales as stated by Schalkwyk [10]. For example, even including a movie such as *Semi-Soet's* box-office success of R9.6-million, 40 000 downloads on DStv Box Office on Demand and its release on iTunes, the producers have claimed no profit to date [10]. According to Young [13], 96% – 98% of content in cinema in South Africa is provided by the 8 Hollywood studios and the remaining screen time is shared with not only South African studios but the rest of the world. According to the 2009 NJVF indaba, South African films cost 9 – 20 million to produce and only 40% of these films make between R100 thousand and R 4 million profit, 22% make less than R100 thousand profit and only 38% make over R 4 million profit [13].

In summary, due to large international studios dominating the film industry, it is challenging for local producers to make a profit. One way to enhance the South African film industry could be some incorporation into the international scene through such marketing incentives as those provided by the DTI. In spite of the challenges, the local industries do produce films for a dedicated niche market, but profitability remains strained and there is a need to investigate alternative markets and distribution avenues such as provided by the MOSAIC 2B.

3. Regulatory Landscape

Licensing is the legal activity when assets belonging to one party are made available to another party via a contract. In the aforementioned case these are assets in the form of intellectual property or rights. The licensor grants rights to the licensee [12], the licensor is the rights owner and the licensee is the party that wishes to gain access to the rights.

In order to understand how and why it is important to get permission from the license owners it is important to first understand intellectual property rights. Intellectual property refers basically to anything that has been created by an individual, whether it is a picture, a song or a speech [12]. Intellectual property can be summarised as the intangible property that is the result of creations of the mind, inventions, symbols, names and images, for example a patent for a new product or the copyright to a slogan or name of a company.

What are intellectual property rights? Intellectual property rights are the rights that have been granted to the owners of creative works to benefit from the work that they have created. The rights have been outlined in article 27 of the universal declaration of human rights [12]. The importance of intellectual property rights were first recognized at the Paris convention for the protection of industrial property in 1883 and the Berne Convention of the

protection of literary and artistic work in 1886 and both treaties are administered by the world intellectual property organization (WIPO) [12].

Copyrights is mainly applied to items such as literary works such as books (a novel or autobiography or anthology), films, music, artistic work like drawings, paintings or sculptures and architectural designs [12]. These rights are also applicable to live performances of an artist, recordings and photographs. It is generally agreed that if intellectual property is not protected then the quality of products will decline as a result. For example the generation of high quality products are more likely to decline as there are no incentives in terms of economic benefit for the creators.

Copyright law generally grants creators of content protection for whatever they create generally called works. “Works covered by copyright include, but are not limited to: novels, poems, plays, reference works, newspapers, advertisements, computer programs, databases, films, musical compositions, choreography, paintings, drawings, photographs, sculpture, architecture, maps and technical drawings” [12]. Content owners or rights holders hold the exclusive right to use or authorise others to use the work on agreed terms. The rights holders can authorise or prohibit the use or misuse of the content such as reproduction, translation and adaptation for other types of media [12]. The unauthorised use of somebody's intellectual property is broadly called piracy. Piracy will be discussed in the next section.

A license agreement is a legal contract between two parties known as the licensor and the licensee. In typical licensing agreements, the licensor grants the licensee the rights to produce and sell goods, apply a brand name or trade mark or use a patented technology owned by the licensor [9]. Money is paid to use a copyrighted item such a film that is owned by somebody else, this can be considered a licensing fee. And contract is an agreement based on consensus subject to both parties having a capacity with which the agreement has to be legal and physically possible. Furthermore which sometimes has to meet certain formal requirements, made with serious intentions of creating a legal obligation that in turn gives rise to the parties’ rights and duties [7]. The serious intention to be bound to the agreement distinguishes a contract from an agreement of a social nature for example meeting for lunch. The requirements for contract are consensus, contractual capacity, legality, physical possibility and formality [7]. Within the context of this paper, a license agreement is a contract under which the owner of the copyright allows the licensee to legally distribute content not owned by the licensee.

In South Africa copyright and intellectual property rights are protected by two organizations namely SAFACT (The Southern African Federation Against Copyright Theft³) and the FPB (The Film and Publications Board⁴). SAFACT was established in 1999 as a Section 21 Company and its primary role is to protect the intellectual property rights of its members in the Southern African film, home entertainment and interactive games industries. The FPB was established in response to the the Films and Publications Act (No 65 of 1996) and its goal is to regulate the media environment within South Africa.

In order for an individual or company to legally exhibit or distribute films or any other media they need to first register with the films and publication board of South Africa. This is in accordance with the *Films and Publications Act, No 65 of 1996* section 18(1) (a) which stipulates that “Any person who distributes or exhibits any film or game in the Republic shall in the prescribed manner on payment of the prescribed fee and register with the Board as a distributor or exhibitor of films or games”. Section 24(1) (a) of the act also states that “any person who knowingly distributes or exhibits in public a film or game without having been registered with the Film and Publication Board as a distributor or exhibitor of films or games shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment

³ <http://www.safact.co.za/welcome.php>

⁴ <http://www.fpb.org.za/>

for a period not exceeding six months or to both a fine and such imprisonment”. Given this definition, the next section discusses piracy.

4. Piracy

Piracy is the unauthorized usage and or reproduction and distribution of copyrighted content. Piracy is one of the major challenges faced by the film industry as a whole. Piracy has many negative effects on the film industry as well other creative disciplines. One of the challenges experienced is a poor culture of enforcing the anti-piracy laws leading to a lucrative black market that fund many illegal activities and criminal organizations.

One of the main motivations for piracy is of course the cost of obtaining legal content. It is often drastically cheaper to download a movie online or to buy a counterfeit DVD on the street. In South Africa approximately 17.5 million people have access to the internet [4] and all these users are potentially able to pirate movies. South Africa is also regarded as a lucrative market for counterfeit good because of the higher GDP per capita compared to its surrounding neighbours according to Bilstein [2]. The country adopted more western media, life style and technology than other African countries and a large part of the population can speak and understand English. All these factors contribute towards the motivation to pirate content.

In a study by Arnab & Hutchison it was found that the cheaper cost of pirated products is not the main reason that people buy pirated goods [1]. The inconvenience of getting legal versions of a product was cited as the main reason that people obtain pirated products and the second reason was that sometimes the material simply isn't available locally.

In South Africa it is difficult to mitigate piracy as enforcement agencies are under staffed and under resourced. SAFACT is agency that is charged with reducing piracy and since SAFACT was established there were a greater number of cases regarding stolen intellectual property but conviction rate hasn't been that high due to a lack of enforcement in courts, sometimes because judges don't consider piracy a serious crime [2]. Unfortunately this is often the case in most non-specialized courts for white-collar crimes. Some defendants have escaped conviction by reversing the burden of proof of ownership during the court proceedings.

One significant advantage in South Africa of successfully enforcing laws against piracy is that the local film industry should have a better commercial success and that could support more jobs and allow the film creators to finance their own projects.

5. A Licensing Process Model for Micro-entrepreneurs

This research was conducted by conducting a systematic literature review to determine license processes and the process model was constructed given the specific case of the micro-entrepreneurs in the MOSAIC 2B project, a FP7 project funded by the European Union and Department of Science and Technology. The overall aim of the MOSAIC 2B project was to investigate alternative distribution channels and business opportunities for multi-media content to rural communities. In MOSAIC 2B micro-entrepreneurs were equipped with Cinema-in-a-backpack equipment as well infrastructure and training to enable these micro-entrepreneurs to host movie screening events in their local, rural communities. Part of this project was the acquisition of the necessary licenses to ensure that the screening events are legal, and the process for obtaining these licenses are modelled in the contribution within this section.

Within South Africa, two main stakeholders were identified namely the FPB and the content owners that owns the copyright of the content. In order to conduct legal screenings, it is necessary to obtain a screening license from the FPB and a license agreement giving permission from the content owners.

Given the specific case of a micro-entrepreneur and a micro-mobile-cinema in rural South Africa, it was challenging to obtain the right permission and agreement to screen content. It was very difficult to get a hold of the different stakeholders and decision makers regarding the content given the fact that this was not a normal case. Each content owner also has a different set of requirements for screening their content, and it is therefore necessary to beforehand decide on the content that will be relevant for the specific case and then start negotiations with the content owners. The agreement is between the micro-entrepreneur and the content owner. In some cases there are additional stakeholders that are charged with handling the leasing out of content screening right such as the MPLC (the Motion Picture Licensing Company⁵).

The FPB is relatively successful in what it is mandated to do in terms of mostly anti-piracy and anti-child porn as well as managing compliance. This stakeholders is however limiting for the micro-enterprises because they have to negotiate a license agreement with different stakeholders and the cost involved is substantial. In addition, the license needs to be renewed every year as the license expires after 12 months and it is necessary to reregister and pay the registration fee again.

Figure 1 illustrates the two types of licenses required for a micro-entrepreneur to screen multi-media content. The first is a *distributor / exhibitor license* if the aim is to exhibit or screen copyrighted content. Once in possession of that the micro-entrepreneur is obliged to get a *content owner license* agreement stipulating that he/she has permission to screen the content from the content owners.

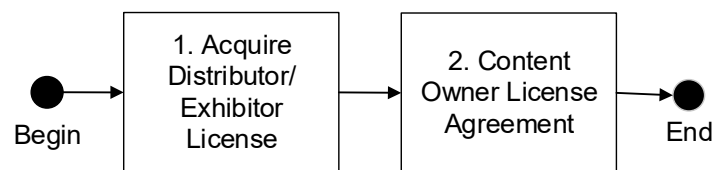


Figure 2: Licensing to be acquired

The *distributor or exhibitor license* is obtained from the FPB and the *content owner license agreement* is an agreement between the micro-entrepreneur and content owner so that they have permission to distribute content. Once both the licenses have been acquired a micro-entrepreneur will be able to screen the content and will be doing so legally under the laws that are currently present in South Africa. In Figure 2 the steps involved to obtain a *distributor or exhibitor license* from the FPB are depicted:

- **Step 1:** Application forms can be downloaded from the website (<http://www.fpb.org.za/classifications/registration-forms-regulations>) or the forms can be requested by calling the call centre and they can either email or fax the forms depending on what is preferred by the person calling in.
- **Step 2:** Once the application form has been obtained, the required documents should be collected.
- **Step 3:** Establish the tariff, pay the requested amount and obtain proof of payment. Several different tariffs are involved when ascertaining a license and these tariffs change on an annual basis. The relevant tariff as it stands in 2015 for a micro-enterprise is R1500.
- **Step 4:** The forms need to be completed and submitted to the FPB with the supporting documents either by post, or fax or the application can be dropped off by hand, including the proof of payment.

⁵ <http://mplcsa.org/>

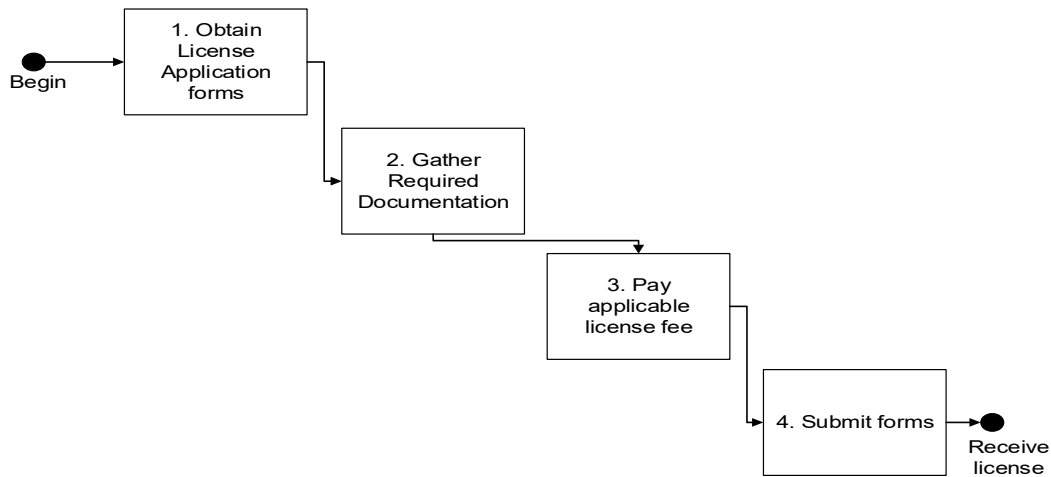


Figure 2: Steps in acquiring a distributor or exhibitor license

The process to obtain the *content owner license agreement* is different for each content owner or distributor. There is therefore not one generic process. In Figure 3 the prominent steps for the acquisition of the *content owner license agreement* are depicted:

- **Step 1:** Determine which content would be distributed and also consider what platform the content will be distributed and the means of distributing or exhibiting the content. For example content could be playing a DVD, VOD, online streaming and or a cinema type business.
- **Step 2:** Once the platform and the content has been decided on it is necessary to determine who the owners of the rights to the content you wish to exhibit are as well as what their copyright restrictions entail. For example some distributors are big companies such as Disney, or local suppliers such as Soul City⁶, Short and Sweet⁷ and Indigenous Films⁸.
- **Step 3:** Once the owners were identified, it is necessary to contact the owners in order to negotiate the license agreement.
- **Step 4:** Negotiate agreement - some content owners do not have official structures in place so it might be necessary to negotiate how to obtain a license agreement from the parties involved. If the content provider has established protocols in place to address such matters then the contact person will further elaborate and explain the required documents and prerequisite information required to move forward.
- **Step 5:** Determine the cost involved. If the cost is too high, different content might be considered depending on the goal.
- **Step 6:** Obtain licensing proof. Ensure that you obtain proof of both licenses stipulating the terms and conditions of the licence agreement. This is the final step.

⁶ <http://www.soulcity.org.za/>

⁷ <http://shortandsweet.tv/>

⁸ <http://www.indigenousfilm.co.za/>

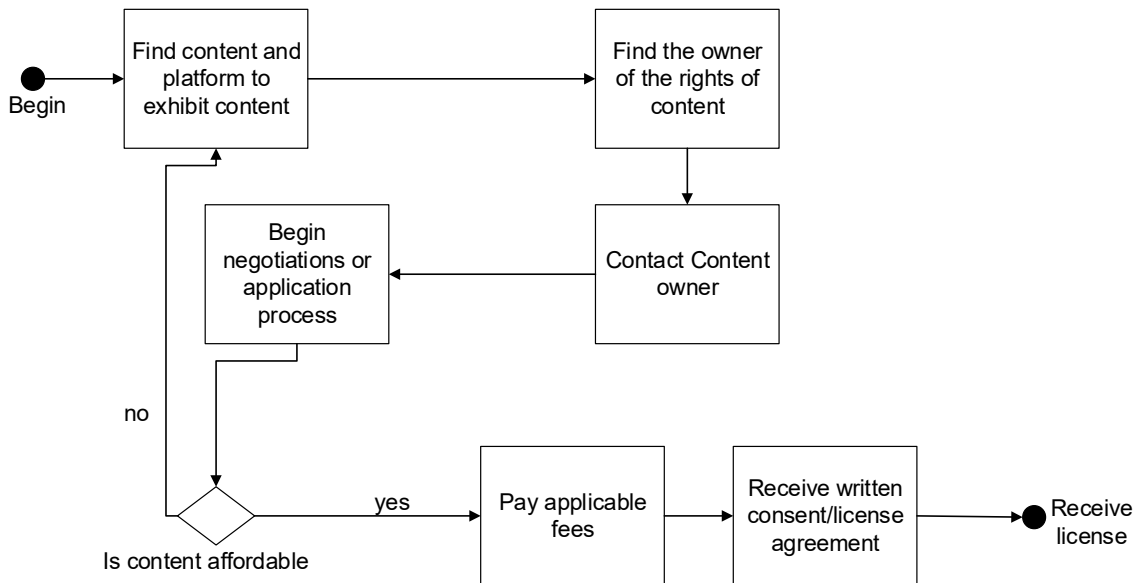


Figure 3: Step in getting a content owner license agreement

As depicted in the models provided, the processes a micro-entrepreneur has to follow to obtain the necessary licenses to screen multi-media within South Africa are quite comprehensive and costly. Within MOSAIC 2B the project facilitators had to determine these requirements. Given the resources of the micro-entrepreneurs, it would have been a major obstacle for them to acquire the licenses to screen content legally. Furthermore, the cost of obtaining the licenses is unattainable. Most micro-entrepreneurs managed to generate an income ranging from <R100 to R300 per screening event, whilst the typical cost for the necessary licenses for a micro-entrepreneur would be several thousand rand. In the MOSAIC 2B case, a licence category did not exist for the specific case of micro-enterprises and mobile cinemas and special licenses were negotiated that cost more than R20 thousand.

6. Possible opportunities

The first and most obvious opportunity is the income that could be generated from the entrepreneurs running the micro-businesses. If the legislation can be simplified then piracy would decrease due to content being available at a reasonable cost especially local content. Less piracy goes hand in hand with the better enforcement of intellectual property rights of the content owners. Lastly the gap for local films to get screened would be fulfilled and the intended audiences would view the films.

7. Conclusion

Given the demand for entertainment and the popularity of multi-media entertainment, as well as the lack of cinema in rural communities in South Africa, there are business opportunities for micro-enterprises based on mobile cinema as determined by the case study of this research, the MOSAIC 2B project. However, one of the main aspects that has to be considered are the regulatory environment to ensure compliance when screening multi-media content. This paper developed process models as part of the MOSAIC 2B project that captures the main steps necessary for a micro-entrepreneur to obtain licenses for screening copyrighted content.

Further research could be executed to determine how licenses could be made more affordable and the process more accessible to empower such mobile cinema micro-enterprises and exploit the business opportunities as identified by MOSAIC 2B. Further

research could also include how more local contact can be screened or promoted by the local film distributors that would be fair and profitable for them.

Acknowledgements

The MOSAIC 2B project and project partners are acknowledged for their support of the research conducted for this research study. More information about MOSAIC 2B is available at <http://mobile-empowerment.org/>.

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