

**For the Encouragement of Learning**

**Copyright 1710-2010**

**Anniversary Forum**

**London, 9 April 2010**



## **“For the Encouragement of Learning”**

The world's first copyright law was passed by the English Parliament on 10 April 1710 as 'An Act for the Encouragement of Learning'. The Queen Anne Statute, as it is known, marked the beginning of modern copyright law. Professor Gillian Davies, author of 'Copyright and the Public Interest', describes it as 'the foundation upon which the modern concept of copyright in the Western world was built', quoting Halsbury's 'Laws of England', edited by Lord Hailsham, as saying, 'In changing the conceptual nature of copyright, it became the most important single event in copyright history' and Barbara Ringer, US Registrar of Copyrights, as saying, 'It is the mother of us all, and a very possessive mother at that.'

The 300th anniversary provides a unique opportunity to review copyright's purposes and principles. If today we were starting from scratch, but with the same aim of encouraging learning, what kind of copyright would we want?

To answer this question, the British Council is organising a series of meetings in London, Shanghai and elsewhere. Our starting point is the question, What is the purpose of copyright? And, once that is agreed, even tentatively, how could we achieve it? Is the list of 'qualifying works' the right one? Should copyright arise automatically or should rights be registered? Is 'copyright' the appropriate name? How do we balance access and ownership? What are the optimal lengths of copyright terms? What is the role of moral rights, and of personal data and privacy? What do we mean by 'fair' in the phrases 'fair dealing' and 'fair use' and how do we uphold this fairness in practice? Is fairness in a physical world different from fairness in the digital space? How do we define unlawful copying and how do we promote a fair regime of sanctions and penalties?

The possibilities of creating and copying have expanded dramatically in recent years. Digital technology is not only an astonishing technical change but has sparked profound changes in the relationships between individuals, business and the public domain.

To start the debate we invited a wide range of people to contribute ideas, proposals and suggestions. We are deeply grateful to all those whose contributions are included here. During the London Forum and throughout the year we will be adding more.

John Howkins  
Chair of the Copyright 1710-2010 Forum

## List of Contributors

**Jay Aldeguer** President and CEO, The Islands Group, Cebu, Philippines

**Americo Amorim** CEO, MusiGames Studio, Brazil

**Amelia Andersdotter** Member of the Piratpartiet, Sweden, and Member Elect of the European Parliament

**Hasan Bakhshi** Director, Creative Industries

**Yochai Benkler** Jack N. and Lillian R. Berkman Professor for Entrepreneurial Legal Studies, Harvard Law School, and author of 'The Wealth of Networks: How Social Production Transforms Markets and Freedom'

**Peter Bloch** Members of CAS-IP, the intellectual property focal point of the Consultative Group on International Agricultural Research

**Dame Lynne Brindley DBE** Chief Executive, The British Library

**Dr Ian Brown** Senior Research Fellow, Oxford Internet Institute, University of Oxford

**Shuckri Bundakji** CEO, DNMconnect and a licence holder of Universal Publishing Production Music for the Middle East & North Africa. He is a former CEO for SonyBMG covering Middle East and North Africa

**Kay Chapman** Members of CAS-IP, the intellectual property focal point of the Consultative Group on International Agricultural Research

**Farooq Chaudhry** Producer with Akram Khan Company, London

**Jez Collins** Birmingham City University

**Ruth Daniel** Fat Northerner Records and Un-Convention

**Cory Doctorow** Science fiction author, activist, journalist and blogger, the co-editor of Boing Boing and the author of the bestselling TorTeens/HarperCollins UK novel 'Little Brother'

**Andrew Dubber** Birmingham City University

**Bronac Ferran** Writer and part-time Senior Tutor, Research in Innovation Design Engineering, Royal College of Art, London

**Professor Brian Fitzgerald** Professor of Intellectual Property and Innovation, Law Faculty, Queensland University of Technology

**Alex Fleetwood** Director of Hide&Seek Productions, London

**Tim Frain** Director of IPR Regulatory Affairs, Nokia

**Gao Fuping** Professor of Law, and Dean of Intellectual Property School, East China University of Political Science and Law, Shanghai

**Volker Grassmuck** Sociologist and media researcher and organiser of Wizards of OS

**Ramy Habeeb** Director and Co-Founder of Kotobarabia, the first online e-bookstore that specialises exclusively in Arab content

**Richard Halkett** Director of Strategy & Research, Global Education, Cisco Systems

**Andy Heath MBE** Director, Beggars Group, and Chair of UK Music

**Anna Higgs** Producer at Quark, London

**John Howkins** Author of 'Creative Economy' and 'Creatives Ecologies' and Chairman of BOP Consulting and Howkins & Associates, Shanghai

**Peter Jenner** Emeritus President of the International Music Managers Forum (IMMF)

**Octavio Kulesz** Digital publisher, Editorial Teseo, Buenos Aires

**Rok Kvaternik** CEO, Ernst Klett Publishers, Ljubljana

**Lawrence Lessig** Director, Edmond J. Safra Foundation Center for Ethics, and a Professor of Law, Harvard Law School. His latest book is 'Remix'

**Gerard Lemos** Partner at Lemos & Crane.

**Ronaldo Lemos** Director, Center for Technology and Society, Fundacao Getulio Vargas, Brazil

**Simona Levi** Based at Conservas and organiser of the Cultural Forum, Barcelona, which produced the Charter for Innovation, Creativity and Access to Knowledge

**Li Heng** Board Chairperson and CEO of Beijing International Copyright Trade Center, and Executive General Secretary of China International Copyright Expo

**Ian Livingstone** Life President, Eidos

**Juan Mateos-Garcia** Research Fellow, Policy & Research Unit, NESTA

**Mark Meharry** Co-founder of Music Glue, a London-based digital services company

**Anita Ondine** Writer and producer of immersive stories, known as 'transmedia' experiences, that fuse film, TV, web, mobile and gaming into integrated storyworlds

**Jon Pettigrew** Founder of Maxus

**Dr Frances Pinter** Publisher of Bloomsbury Academic

**Lord Puttnam CBE** Labour Peer

**Gail Rebuck** Chairman and CEO, The Random House Group

**Francesca Re Manning** Members of CAS-IP, the intellectual property focal point of the Consultative Group on International Agricultural Research

**David Rowan** Editor of 'Wired UK' magazine

**Mark Shuttleworth** African entrepreneur with a love of technology, innovation, change and space flight

**Jeremy Silver** Digital media adviser and entrepreneur who has focused on the music industry for the last fifteen years

**Adam Singer** Media executive and adviser and Chairman of the British Screen Advisory Council

**Hardesh Singh** Finalist of the 2008 International Young Music Entrepreneur Award organised by the British Council

**Martin Smith** Managing Director, West Bridge Consulting, and formerly Chair of the Young Vic Theatre Company

**Lynne Spender** Writer who has recently completed her PhD on copyright and digital culture

**Tamara Tatishvili** Head of the National Film Centre of Georgia

**Bill Thompson** Technology critic and blogs at andfinally.com

**Jimmy Wales** Co-founder of Wikipedia

**The World Intellectual Property Organisation (WIPO)** is a UN agency with 184 member states

**Derek Wyatt** MP for Sittingbourne and Sheppey (1997-2010)

## **Contributions**

**Jay Aldeguer, President and CEO, The Islands Group, Philippines**

### ***Starting from Scratch, What Kind of Copyright do We Want Today?***

The retail/fashion industry is witness to the proliferation of design piracy due to the minimal or even no protection afforded by law to original authors of fashion works including clothing and shirt design. Knocking-off is rampant in the fashion industry and with the advent of technology by which high-quality copied designs can speedily be recreated, there comes a point where a consumer may not even be clear which designer created the original and which designer merely copied it. Design piracy, in effect, lowers the sales volume and affects the business of the original designer because of the cheaper imitated version made available as an alternative for tightly-budgeted consumers. Due to the aforementioned predicament, I would want a copyright legislation that would give a clearer and stronger protection to authors of original designs and works of fashion. Said law should impose stricter penalties for violators or imitators of these fashion design originals. But equally important to the substantive facet of the copyright laws is the promotion of awareness about these laws and the respective rights of the creative designers and authors. This is especially the case for third world countries where most designers may be more concerned on the income generation or business aspect of their design rather than the protection of their intellectual property rights.

**Americo Amorim is Chief Executive Officer of MusiGames Studio**

### ***Proposals for Copyright in the 21st Century***

I propose:

1. Freedom of physical media. If the user acquires a licence for a song, book, etc, he can use it anywhere he wants (MP3 player, cellphone, e-book reader, computer, etc).
2. Compulsory licensing. There should be a universal way for a licensor, say a game developer, to go to one place and clear all the rights (say, the publishing and master recordings) for any song from any publisher or label. Something similar to how collecting agencies work for public broadcasting.
3. The user needs to try the content before buying; say, by listening to the whole song for one time, instead of only 30 seconds.
4. Legal content has to be as cheap as pirated copies; this is the only way to reduce piracy in poor and developing countries.

5. Subscriptions with flat rates. Users should be able to pay a certain, and low, amount of money and legally able to download any song they want, and the industry has to find a way to distribute these amounts in a fair way.

6. There should be one global database of IP with information about rights-owners' information, licences, etc. This would allow anyone to check how specific content can be used (for example, songs under a Creative Commons licence). The law should require any author, publishing company or recording label that wants to protect their IP to have to submit their information to this database and keep it updated.

**Amelia Andersdotter, Member of the Piratpartiet, Sweden, and Member Elect of the European Parliament**

### ***Copyleft and Copymore Instead of Copyright and Copyleft***

Information is everywhere today, part of the background noise. That is a big change from the times when information and access to information were scarce. Imagine when my grandmother was young and it was difficult getting a hold of a newspaper: now, when I read the news I don't only read the news, I look up concepts I found extra interesting online. I locate a couple of scientific essays on the topic trivially. Check the historical records on the topic in five minutes. Information is background noise now, it's accessible, it's there.

Unfortunately, we don't have legislation that reflects those changes. The current legislation is adapted for, and even wants to promote, scarcity of information. You won't find users of information services or indeed any citizens at all who have a relationship with information corresponding to a scarcity model. When thinking carefully about it, you will probably find that having such users and citizens isn't even desirable.

So our information management laws need to change. Essentially, legislators and lobbyists all over the world will have to abandon the idea that restricting access to individual pieces of, or copies of pieces of, information is good. It's not. We need laws that encourage abundance of each piece of information, and make use of the wealth derived from the fast spread of those pieces. Our legislation should make us copy more, not copy less, and copyrights should essentially be turned into copylefts.

**Hasan Bakhshi, Director, Creative Industries, and Juan Mateos-Garcia, Research Fellow, in NESTA's Policy & Research Unit, London**

### ***Evidence-Based Policy and Double Standards***

Law is not the only instrument through which individual behaviour is regulated in society: social norms, the market, and technology also play a crucial role in favouring some activities and discouraging or preventing others (see Lawrence Lessig's 'The New Chicago School', *The Journal of Legal Studies*,



Vol 27:2, 1998). These other regulatory forces can in some cases undermine, or in others strengthen, the effects of the law. Indeed, laws are often designed to channel or curb these forces, as when certain markets are regulated or made illegal.

Take the case of copyright legislation, originally put in place to guarantee incentives for creativity and innovation. Copyright may positively harm creativity if it is implemented in ways that undermine the social norms that allow artists to draw inspiration from others' expression of ideas. Similarly, copyright can obstruct the development of new markets where content is more easily accessible to everyone but where originators are still rewarded (for example, when wider diffusion creates new audiences or increases demand for allied goods and services, such as live performances in the case of music). Consumers may turn to unlawful sources of content as a result. An undue emphasis on copyright may also lead to the design of technological architectures that hinder fair use; draconian Digital Rights Management measures being one example.

The upshot of all this is that there is a risk, as yet not properly assessed, that strengthening copyright might actually damage the same creative capacity that it is supposed to uphold. Its net effects on creativity and innovation cannot be established on theoretical grounds alone.

The implication for policy, as James Boyle reminds us (see 'The Public Domain: Enclosing the Commons of the Mind', Yale University Press, 2008) is obvious: all proposed changes to copyright must be grounded in empirical evidence, and there should be a formal requirement built into all new legislation for empirical evaluation to see if it is working as intended, or whether it is generating any unanticipated effects. We expect nothing less in other areas of state intervention. IP researchers in the UK must also rise to the challenge and conduct far more empirical studies that are aimed at evaluating the full effects of changes in the law.

**Yochai Benkler is Jack N. and Lillian R. Berkman Professor for Entrepreneurial Legal Studies, Harvard Law School**

### ***Seeding the Commons of the Networked Information Environment***

The networked information economy radically decentralises the capital cost of capturing, storing, processing, and communicating information, knowledge, and culture. It inverts the model at the heart of modern copyright: centralised distribution of highly-capitalised copies, which provided a point to capture revenue to support a class of professional authors and creators independent of other institutional models: patronage, state funding, services (teaching, performance), and advertising.

In the networked information economy the most important inputs are widely distributed in the population. This makes two things possible: (a) an important part of the information environment can be created by socially-motivated

individuals and groups; and (b) intrinsically motivated creators can sustain lower-cost, lower-return revenue models that do not depend on aiming for multimillion dollars jackpots supported by hyper-protective regimes that place enormous costs on the new sources of social-cultural production.

My proposals emphasise support for these new forms of creation, in reliance on a robust public domain, while preserving primary commercial exploitation for parts cultural production that relies on controlled release.

### *Reforms*

1. Default should be public domain. Registration should be easy, online, coupled with a nominal charge (say, equivalent of \$1). This releases vast quantities of materials that are by-products of social creation into the public domain.
2. Initial term backed out of a reasonable business model per industry. Depending on the discount factor in any given industry, terms might range from 18 months to five or ten years. The test: if you came to an investor and told them: you will make R return by D date, at what point would R at D be meaningless to the ex ante investment decision. Commercial exploitation rights are not about moral claims to authenticity; they are about money.
3. Renewal terms should be easily available with escalating fees. Commercial exploitation rights should escalate to levels that would only be worthwhile for a small number of works that continue to have substantial commercial value. Owners of commercially-valuable inventory should have the power to extend coverage, but fees should make them internalise the cost of making those materials unavailable for downstream creativity.
4. Add a core moral right to attribution; non-waivable, or waivable only under very clear statement rules, perpetual or very long-term. Enforceable only by requiring attribution, not damages. Require with deposit of the work a discrete, standards-compliant mark for the work that would ease automatic attribution.
5. All transformative use beyond slavish copying should be freely available to pursue, as long as it does not generate revenues to the transformative creator beyond a minimal level. Publishers of transformative works will be liable under a compulsory licence once the revenues they generate from direct payments for the transformative work reaches, in any given year, an amount greater than, say, the greater of the annual income that constitutes poverty level for a family of four in (a) the country in which the transformative, downstream author is domiciled or (b) the country in which the copyright owner is domiciled (to avoid taxing developing world creative reuse). This assures that the relevant line for liability is not 'commercial/non-commercial' but 'trivially-commercial / non-trivially commercial'.

## **Dame Lynne Brindley, DBE is Chief Executive of The British Library**

### ***The Primacy of Learning - Information Policy for a Networked World***

*'The purpose of intellectual property law...should be, now as it was in the past, to ensure both the sharing of knowledge and the rewarding of innovation', Adelphi Charter.*

The Statute of Queen Anne was described by the English Parliament as 'An Act for the Encouragement of Learning'. In spite of the huge technological changes we have seen since then, more than ever we recognise the special place as a society we must give to knowledge. Terms frequently used by modern politicians like 'knowledge economy', and the European term 'information society' testify to this.

Societal advance and creativity are dependent upon a framework that allows for the most efficient dissemination, reuse and sharing of 'knowledge goods' possible. Creativity is a term frequently linked to the entertainment industry, and not often enough to the public creation of knowledge goods that are rooted in our investment as a society in learning. The creativity that comes from places of learning can, in the true sense of the word, often be truly life-changing: the mapping of the human genome and the world wide web to name but two examples.

Copyright regulates much access to knowledge, as do an increasing number of other regulators such as database rights and contracts. We also see increasing international norm setting through supra-national bodies like the European Union and WIPO. At this point in time we need to maximise access to knowledge, as our economy increasingly depends on it, yet we appear to be making access structurally more complex than ever.

A positive information agenda internationally is needed to focus on promoting and simplifying the legal tools that exist for regulating knowledge goods. Many of the global developments in the last couple of decades in this area have been disproportionately influenced by the needs of the entertainment industries and consumers. The importance of knowledge and learning to the economic and social advancement of society requires a more considered approach that puts learning and knowledge at the heart of the international IPR system. Just as in the 17th century, so too today information policy formation must aim to create the widest access and most efficient dissemination of learning and research possible. To quote from another great historical work, the American Constitution, the purpose of copyright even today should be to foster education and learning, namely 'to promote the progress of science and useful arts'.

**Dr Ian Brown is Senior Research Fellow, Oxford Internet Institute,  
University of Oxford**

### ***Reconsidering the Fundamentals of Copyright***

The 300th anniversary of the Statute of Anne is a fitting moment to reconsider the fundamentals of the copyright regime that it introduced. Concerted lobbying by publishers, record labels and film studios during the 20th century increased the scope of copyright far beyond that envisaged in 1710. Yet new recording, editing and distribution technologies - especially the Internet - reduce the need for costly capital investment in creativity, while increasing the opportunity cost of exclusive rights that block the reuse of existing works.

Starting from first principles, it is not at all clear that the 'encouragement of learning' requires property-like rights in creative works. Academic authors are principally motivated by attribution. It is merely a coordination problem between researchers, research funders and university promotion committees to ensure the availability of scholarly works and textbooks in open access form. Free global availability of these works would greatly increase the rate of progress in science and the useful arts, the defining purpose of copyright in the USA Constitution. It would have a particular impact in the schools and universities of the developing world. Publishers might retain their role as discoverers and marketers of high-quality content, although this in the longer term might be supplanted by Internet-supported distributed reputation models.

For mass-market entertainment products, a much more focused legal regime would provide sufficient protection to justify investment in creative development and marketing. A medium-term right of remuneration or commercial exploitation would complement other revenue streams such as merchandising, advertising, touring and exhibition. The net present value of rights several decades hence over unpredictably popular content are unlikely to influence businesses' investment decisions either way.

An exclusive 'right to copy' is an unenforceable anachronism in a world filled with consumer technology that can copy, remix and redistribute works at almost zero marginal cost. Governments should be developing new legal frameworks to support necessary investment in creative works while enabling the benefits to society that flow from widespread sharing and reuse. Sadly, they instead seem focused on negotiating a secret 'anti-counterfeiting' treaty that will turn copyright into an even greater barrier to a productive and equitable information society

**Shuckri Bundakji is CEO, DNMconnect**

### ***Copyright: Starting from Scratch***

The course of copyright has been predicated on new technologies. Today, the digital world represents both boon and threat to the income of copyright creators. Paper, mechanical devices and even digital containers (CDs, DVDs,

etc) have from the outset proved to be more of a friend than foe to the creative industry. However, complex algorithms that the internet is built on has exacerbated the shortcomings of an otherwise tolerable world served by physical and broadcast distribution. While one can only muse on the notion of 'starting from scratch, what kind of copyright would we want today?' the reality is that circumstances cannot be undone and where in the world do we have a choice in the matter?

Inertia against change goes beyond the requirement for a successful resolution of a legislative debate. Since the question was first asked in 1710 when the Queen Anne Statute was implemented, social and commercial interests have over time manifested in the form of associations, guilds, societies and government agencies canonized by laws that could not have conceived of a disruptive digital environment. Yet answers may inadvertently exist in some unlikely corners of our world.

Many of today's developing countries have in fact missed technological revolutions and have little to no history of copyright encouragement. While such attributes are not in itself grounds for national pride, the opportunity for 'getting it right' is most easily within their grasp.

To demonstrate the point, let us take the case of (but not limited to) music or spoken word copyrights in say any resource rich Arabian Gulf nation. Without exception, their copyright laws, being new and brief, are unencumbered by practices that currently hamper developed markets in facing a digital world.

In fact, these Gulf Arab nations are in the enviable position of bypassing archaic barriers represented by centuries of traditional practices, rules and regulations to catapult them to the 21st century. They have a clean sheet to streamline legal and regulatory processes and spur creative productivity and entrepreneurial growth. Many digitally efficient legal models can in fact be designed, tested and applied in countries that have not shared the historical progression of developed copyright markets such as in UK, USA and such others. For example, innovative product uses that permit authors, artists, consumers and businesses that use music (video, broadcast, film, video games, telecoms, and on-demand music providers) could be well served by one of many all-encompassing legal formulae that would be unimaginable in a mature legal environment.

A progressive Arabian Gulf nation could with little difficulty provide the kind of copyright we would want today; that offers clear and practical guidelines embracing a digital world; a centralised means of control and efficient licensing of rights thereby creating a globally usable copyright model to international acclaim.

Fortuitously, modern Arab leaders have the unique opportunity of reaching back a millennium into their enlightened history to pick the mantle from the 9th century mathematician, Al-Khwarizmi (in whose name the term 'algorithm' is formed and upon whose methods the modern digital world exists), to enact copyright solutions for a new age.

## **Farooq Chaudhry is a producer with the Akram Khan Company**

### ***Creating Gifts***

I've always struggled with the notion of copyright. Though I understand the need to protect the work of artists I have the belief that what is created are 'gifts'. Gifts that when given cannot be owned. In the Western World we are preoccupied with the notion of commodity and its intrinsic value. It has brought out the best and worst out of us and in my mind fosters a romantic and artificial notion of the artist's value. I like to think that nothing in our lives can be owned. Not even our children.

We are only custodians of all that is precious in our lives. Perhaps in that capacity it is our responsibility to protect all that we create. I hate to describe the work that the dancer Akram Khan creates as 'our' work. I insist on calling it 'the' work, therefore removing all sense of ownership.

Maybe it is a naive wish but I hope for a world where the notion of copyright is abandoned for something more humane and representative of the generosity of creativity.

**Jez Collins, Birmingham City University; Ruth Daniel, Fat Northerner Records and Un-Convention; and Andrew Dubber, Birmingham City University**

### ***Is Copyright a Barrier to Creativity?***

With the approach of the 300th anniversary of the Statute of Anne, we would argue that in essence the idea behind copyright, rewarding and protecting authors is one we support. However, what we do question is whether copyright in its present incarnation is fit for the current age and actually hinders creativity rather than encourage it.

For our contribution we want to look at just one aspect of copyright: access to, and knowledge of, ownership of work.

It is believed that the vast majority of all recorded works ever released (estimates place this in excess of 90% of releases) are not currently commercially available in any form. This represents a phenomenal wealth of cultural capital that is locked away and inaccessible simply because it is not considered commercially expedient for labels to make it available, and there is no incentive or imperative for them to do so.

In addition, scholars and archivists are unable to preserve, develop, access and expand knowledge around works that are bound in restrictive copyrights. As a result, when approached from a purely economic perspective, understanding of popular culture becomes limited and the commercial interests and profit motives of entertainment corporations are held to be more significant than the growth of human knowledge and understanding.

Here is a practical example to illustrate what we mean. Fat Northerner label have been working on a project to rework John Cooper Clarke's poetry by contemporary artists. Tracking down rights-holders has proved incredibly difficult. We approached the Performing Rights Society (PRS) who advised us that some of the tracks may be owned by EMI. We approached EMI who advised that they only own some of the tracks. After months of searching, we still cannot find the copyright owners to the majority of John Cooper Clarke's catalogue which is threatening the project and the work that 30 artists have put in.

What was initially a cultural project quickly became a minefield of legalities, permissions and detective work. We are still not totally sure of the legal situation if the album is released.

We propose some new ways of thinking about copyright, for discussion:

1. Creation of a central, online register of copyright works that is free, open and unambiguous.
2. The development of a resource for bands to independently sign up to and submit their music and copyright information.
3. The release of commercially inactive or economically unviable works into the public domain under a 'use-it-or-lose-it' copyright clause.
4. The reduction of copyright term, but each term renewable for active commercial works, so as to reward creators without lockdown of cultural works in the process.
5. Strong fair use and non-commercial use provisions.
6. Permission for non-commercial use assumed for all orphan works.
7. Strong copyright exceptions for libraries & scholarship.
8. Active expansion, promotion and propagation of the public domain.
9. Audit of major record label back catalogue to discover and liberate lost works.

**Cory Doctorow is a science fiction author, activist, journalist and blogger**

### ***Copying is Life***

If there's one lie more corrosive to creativity above all others, it is the lie of romantic individual originality. Today, 'copyright curriculum' warns

schoolchildren not to be 'copycats' - to come up with their own original notions.

We are that which copies. Three or four billion years ago, by some process that we don't understand, molecules began to copy themselves. We are the distant descendants of those early copyists - copying is in our genes. We have a word for things that don't copy: 'dead'.

Walk the streets of Florence and you'll find a 'David' on every corner: because for half a millennium, Florentine sculptors have learned their trade by copying (but try to take a picture of 'David' on his plinth and you'll be tossed out by a security guard who wants to end this great tradition in order to encourage you to buy a penny postcard).

I learned to write by copying. In 1977, when I was six, my father took me to 'Star Wars'. I couldn't figure out how a made-up story could be so exciting, so I went home, stapled some paper together and trimmed it to book size, and wrote out the story as best I remembered it, doing it over and over again as I strove to unpick it.

Today, I earn my living by copying: taking ideas that excite me and combining them in ways that are mine, but never wholly mine.

If copyright law is to truly nurture art and creativity, rather than merely lining the pockets of the last generation of copyists who now declare themselves to be pure of all replication and wholly original from the first word to the last, it 'must' recognize and celebrate the wonderful thing that is copying.

**Bronac Ferran is a writer who lectures part-time at the Royal College of Art, London**

***Copy Shifts: Rewriting the Rules for the Ne(x)t Generation***

There's a time when every generation realises it is being superseded by the next. It then lays the ground for the future. Digitally-driven innovation is now encouraging new forms of cultural research and production. Education and entertainment increasingly involve audiences as participants and collaborators, co-creators, co-designers and active contributors. We can see the future in today's trends. Downloading is popular because young people want to be doing things fast not spending lots of time or money. We need to understand models of innovation and make the law work accordingly.

Whatever happens to copyright as a system of collective action, it has to be adaptable and persuasive. How might contemporary approaches to copyright evolve to best reflect the social and political changes within our society?

Balancing what is kept open and what is not is a critical challenge; many now feel that publicly-funded research and production should where possible be



accessible, open for re-use, by others. Open access movements within science have helped pave the way for other fields. If innovation in the public sphere is desired, then openness in relation to the production and circulation of ideas is a vital activity. How do we safeguard openness as well as have a commitment to privacy? This requires new thinking not just about law but about the overall nature of human creativity: we need a 360 vision, a new kind of network literacy.

Objects that are mutable, collaborative, intelligent and recombinant call for new types of ownership which leave some things open and capable of future variation. Seeing copyright as a field with multiple gateways and multiple channels full of possible variations and options and opportunities for combinations of agreements which can suit and fit the developing direction of contemporary practices must be the best way ahead. Some leading artists are evolving new models of ownership together with institutions (including British Council) which allow for shared and collaborative reward and responsibility.

A rigid and unyieldingly defensive approach to copyright seems at odds with the shifting nature of contemporary society. A balanced copyright system for this century needs to take account of the unstoppable wave of creative expression unleashed by contemporary technologies.

Arts and design schools, other research and teaching centres, business courses for cultural entrepreneurs, law schools can play a role tracking case studies which help to renew the roots of copyright placing it inside a broader network of connections. We seek a new pact between interested players to design a legal system that sees itself as the friend rather than the foe of contemporary innovation. This in essence is both the opportunity and in this case the design challenge. We need a new imaginative process of invention in order to achieve the best possible systems to encourage this exchange. This is in my view a design challenge not a moral crusade.

**Professor Brian Fitzgerald is Professor of Intellectual Property and Innovation in the Law Faculty at Queensland University of Technology**

### ***Copyright: Promoting a Win-Win Scenario***

One of my main concerns with copyright law as it stands today is that it does not adequately accommodate the affordances of the digital environment in that it provides 'controls' over distribution and reuse of copyright material. This allows old (and potentially inefficient) business models to predominate. Some have argued that the issue should not be about control but rather the proper remuneration of culture and creativity.

*Distribution.* We should be trying to remove the copyright owner's control over distribution or more strategically incentivising them through the law to utilise new technologies to accommodate consumer preference. We could do this by:

- Reviewing the scope of copyright limitations;

- Reviewing the scope of provisions relating to the secondary liability of entities that develop and distribute new technologies
- Developing market-driven revenue sharing models between key actors

*Reuse.* Disputes over fan fiction and more generally the non-literal copying of material through, for example, the development of 'sequels' has raised concerns over the ability of the author to control downstream activity. It has also lead to the questioning of who should be regarded as an author. How can we factor the notion of 'relational creativity' into concepts of authorship?

We should allow more downstream reuse without permission and in turn develop better guidelines for 'benefit sharing' in these instances.

*General.* On the whole, current copyright law is too much of a win-loss scenario. Owners are either right or wrong or users are either right or wrong. How can we promote win-win whereby we have owners and users collaborating to create more opportunity and revenue streams? To some extent this has to come through creating better models for benefit sharing. The Google Book Settlement for all its flaws is an early example of what we are likely to see in the future: the leaders of the traditional copyright industries joining with leading Internet distributors to create new revenue and access regimes that did not exist before.

## **Alex Fleetwood is Director of Hide&Seek Productions**

### ***An Act to...***

As a producer of new kinds of cultural product, working in an entrepreneurial way, with a diverse range of clients in the commercial and cultural sectors, current debates about copyright are largely irrelevant to me. Copyright has become synonymous with the protection of endangered cultural industries. The UK's Digital Economy Bill enshrines a defensive position around established media businesses. And games - which is what Hide&Seek make - are in many ways uncopyrightable. A game design is an idea. Only the physical expressions of that idea - the code, the assets, etc. - are copyrightable. As our value as a company derives expressly from our ability to design games, we need to create value in ways that barely touch on copyright.

So what kind of Act could help us? If we were starting from scratch, where would we start? Perhaps, with an Act to incentivise the creation of new kinds of cultural product for the public good. An Act to encourage the cultivation of all the qualities of the social human being (Karl Marx). An Act which recognises that our fine arts were developed, their types and uses were established, in times very different from the present, by men whose power of action upon things was insignificant in comparison with ours (Paul Valery). An Act to build open environments where everyone is allowed to share knowledge and work together toward common goals (Red Hat Software).

Such an Act would have to proceed, as I have, from the fact that it's never been easier to copy.

## **Tim Frain is Director of IPR Regulatory Affairs at Nokia**

### ***Licensing not Levies***

The UK is blessed by not having private copy levies on digital (or analogue) recording equipment or media. It is no coincidence that the UK has one of the most vibrant, innovative and well-functioning markets for licensing digital content.

Introduced in some European countries as a crude remuneration model in a bygone analogue era as a quid pro quo for consumers being able - and permitted - to copy unlicensed content, notably on to blank cassette tapes, private copy levies are no longer appropriate or fair in the world of digital content.

Promoting consumer-friendly access to attractive legal offers of digital content means focussing on licensing not levies.

Private copy levies should never be, or allowed to become, the primary or significant revenue source for digital content. This would serve only to discourage licensing at a time when service providers are making substantial investments in developing and launching new digital offers.

The reality is that the levy system is an impediment to the development of effective licensing models because licences can be structured to carve out activities where private copy levies are regarded as potentially more lucrative than direct licensing. Full-scope licensing is critical.

The more digital content and authorised usage that consumers are able to acquire as part of a fully licensed service the less need there is for private copy levies by way of compensation. Furthermore, direct licensing means financial returns are closely correlated to actual use of content. By contrast, levies systems are regarded as 'rough justice' even for artists and creators because, notoriously, they do not always see their just rewards.

Also, the more that content is made easily accessible through services that appeal to the consumer the less incentive there is for consumers to indulge in piracy by acquiring unauthorised copies. By contrast, the private copy levy system is inherently serving to perpetuate piracy because it tends to give rise to the misconception that the device owner can download content indiscriminately whether authorised or not.

The UK should count its blessings and continue to foster a climate conducive to the development of a vibrant and thriving market for the distribution of

legitimate digital content through attractive and innovative services for the benefit of consumers, based on direct licensing.

At the European level there needs to be a fundamental reform of the private copy levy system. In the short term, there should be a freeze on the expansion of private copy levies to new digital products. In the longer term, private copy levies should be phased out for all digital products in favour of alternative licensing-based approaches which ensure rightholders and creators are properly and fairly rewarded.

**Gao Fuping is Professor of Law, and Dean of Intellectual Property School at the East China University of Political Science & Law**

***Copyright 2010: 'If Copyright Hadn't been Invented, What Kind of Copyright Would we Want?'***

If copyright hadn't been invented, I would want to create a benefit-sharing system that would make it possible for independent creators to share the financial benefits generated from the commercial exploitation of their creations. The benefit-sharing system should primarily target commercial operators, rather than non-commercial individual users.

It should be an underpinning of such a system that individual creators, actual and potential, have the right to participate in cultural creativities through sharing, disseminating and utilising pre-existing materials to create new works.

Another key principle is that commercial business operators (including the State and government) should compensate the creators, provided that the value of the services or products offered by them is substantially relied on or enhanced by the use of copyrighted creations.

The copyright system is the unavoidable product of a market economy or any form of economy that is reliant on commerce and trade. Commercial players primarily go after private commercial interests and law makers should remain cautious of the negative impacts on people's freedom of participation in culture, caused by the commercial pursuits of business operators.

**Volker Grassmuck is a sociologist and media researcher and organiser of Wizards of OS**

***A Copyright Exception for Monetising File-Sharing***

Copyright is driven by technological innovation. But from radio to audio and video recorders, the Internet and most recently peer-to-peer (P2P) file-sharing, each innovation has met with resistance from the established culture industries. In each case, however, the industries eventually realised that these innovations were a source of new revenue so long as they could develop new business models, often requiring legislative support for new legal licences in

the form of private copying exceptions. As large number of individuals began to enjoy a large number of uses of a large diversity of works the conventional response of the droit d'auteur systems was collective management. But the USA also chose a private copying exception, subject to a levy on equipment, in its Audio Home Recording Act of 1992.

Ever since P2P networks were introduced in 1999, industry has responded with law suits, technical protection measures, 'consumer education' campaigns and calls for stronger legislation. Their calls are currently centred on the so-called graduated response, popularly known as 'three strikes and you're out': after two warnings, ISPs are legally required to ban file-sharers from using the Internet for up to one year.

These strategies have not lessened the growth of file-sharing nor increased the revenues for authors. Indeed, since the start of Napster, a different approach has been suggested: permission for the legal private online sharing of published copyright protected works for non-commercial purposes subject to a collectively managed levy. Just like the private copying exception, this would ensure both the freedom of citizens to use copyright works in certain ways and the right of creators to an equitable remuneration.

Like every major re-adjustment of copyright law, it raises a number of questions: How to collect the levy? How to measure the sharing of works to ensure a fair distribution of the levy proceeds to authors and performing artists? How to avoid hardship for poorer and disadvantaged citizens and how to ensure digital inclusion, particularly in developing countries? What is an adequate rate for the levy? How can collective societies be reformed so as to ensure their transparency, internal democracy, equity in distribution and public oversight?

After more than ten years of debate, we now have sophisticated answers to these questions. The debate has moved from specialists to mainstream media and political parties, leading to pilot projects like William Fisher's Noank Media and legislative proposals for implementing it in copyright law in France, Italy and Belgium. It is clear that it is a feasible and necessary part of the emerging social contract between authors and audiences.

The decisive question is how we, as citizens of the knowledge society, want see ourselves. Do we prefer to see ourselves as consumers and as objects of market research, advertising, surveillance, technological restrictions, deterrent campaigns and juridical repression? Or do we see ourselves as partners in an arrangement where we all provide creators whose works we enjoy and share with each other with decent working and living conditions to create them?

*For further information see: <http://www.vgrass.de/?p=193>.*

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**Ramy Habeeb is Director and Co-Founder of Kotobarabia the first online e-bookstore that specializes exclusively in Arab content**

**15 Years**

Works of Art should fall into the public domain after

**15  
YEARS**

(unless it is still earning the artist 20% of what it did in its top grossing year...  
Then the artist can apply for an additional 5 year extension.)

**Richard Halkett is Director of Strategy & Research, Global Education, Cisco Systems**

### ***Making Things into Thoughts***

People seem to have greater respect for 'things' than they do for thoughts. When music became digital, piracy exploded; newspapers see their share prices collapse as people read for free online, not for fee on the train; and, as books become files and not folios, Amazon and Apple try to allay the fears of publishers that a similar fate awaits them and their crumbling industry.

There seem to be two reasons for this. First, once something is a thought and not a thing, copying is very possible - perhaps people have just wanted to commit piracy forever. Second, people perceive its value differently: it should be cheaper, they feel. Some of this is justified: without the need for printing, shipping, stores and staff, music, books, anything should be cheaper. But some of it is not: there just seems to be something innate in our psychology that means that things are more valued than thoughts.

This tidal wave is about to crash into another set of industries. 3D printing is on the way, and so those things that were very much things, will very soon become thoughts. 3D printing is most easily described as inkjet printing that squirts plastic instead of ink so that you can 'print' entire objects in your house based on the instructions you give it. Soon, the MakerBot, an open source 3D printer, will be available for under \$1,000.

So, let's leap to the end of this story: a world when many things can be manufactured at home or at least in nearby manufactories and the 'value' is in the design, the 'print instructions'.

This is great news for many reasons: costs will go down, sustainability will improve (less shipping), customer satisfaction will increase (no lack of inventory, no waiting times, increased ability to customise).

But companies use our willingness to pay for the physicalness of things to hide costs that we might not like to pay but all benefit from: such as staff costs

and the profits which benefit shareholders and (in theory at least) the rest of the economy when they are spent. When costs are driven to zero, what happens to these things?

The solution is twofold: (a) clear, well-defined, protected intellectual property rights that are (b) correctly priced. We need a marketplace for designs that is open to all, where prices can be set either by the seller (who may want to manipulate the quantity sold in either direction) or by the public, based on perceived value. And we need to support this with a new standard for encrypted design - a form of intelligent DRM for design.

But, more profoundly, this means that design and engineering will have to become volume industries, not value ones. Aside from a small and diminishing number of luxury suppliers, where name matters more than function, design will have to become democratic.

**Andy Heath, MBE, is Director, Beggars Group and Chair of UK Music**

***Copyright 2010: A Thought Piece***

Nothing has occurred that requires us to re-examine the necessity of copyright as a market enabler, that both protects creators and provides a foundation for an economic structure for the market that exists in their creations. The same cannot, by any means, be said about the requirement to review the application and enforcement of copyright. Digital distribution has created a disruption in that market-place of such a proportion that it has bewildered both the commercial stake-holders in that market and the exploded customer base.

However, it is almost certainly not because copyright is complicated. Conventional cultural industries have for nearly a century created wonderful assemblages involving hundreds of licences from hundreds of different sources, and they managed perfectly well. Ask any film producer about assembling the rights to make a movie and you will hear of an efficient, professional team who put it together. Ask a new entrant business about distributing cultural IP on the web, and they bemoan the fact that they might have to secure just twenty or thirty licences to establish a pan European business. Don't blame copyright, blame the protagonists.

As Stephen Timms, the UK Minister for Digital Britain said on BBC-TV's 'Panorama' programme recently, 'We would have been delighted if the internet and the content companies had reached an agreement about how this should be addressed. My sense is that there hasn't been the depth of discussion, debate and reflection that there ought to have been over quite a long period and that is why government had to get involved.' Too right!!

However, government has approached this in such a disorganised fashion, that most players have lost faith in those government departments that are supposed to be there to support them. Accordingly, UK Music recently

published, 'Liberating Creativity', a document focusing on the role of government in the cultural IP market, and I repeat here the first request in that document. Were it to be agreed upon, it could be a hugely significant first step in resolving the issue of copyright, its application and enforcement, in the digital era.

*'That Government form a Creative Industries Cabinet Committee. Reporting directly to the Prime Minister. it would be comprised of Secretaries of State and those ministers whose responsibilities include any aspect of the creative industries. It should also include commercial leaders from the creative industries who have a significant level of experience and success in their relevant sectors. It would be responsible for developing, driving and delivering all government policy relating to the creative industries, across all government departments and agencies, so as to ensure a consistent, coordinated and priority approach to policy. It should also be responsible for commissioning much needed creative industry economic research, modelling and forecasting.'*

**Anna Higgs is a producer at Quark, London**

### ***Redrawing the Map***

As a young creative entrepreneur, distilling things down to the basic essence, it could be said that all my business has is its reputation and a library of rights. However, in a knowledge-economy driven digital age there seems to be more leverage to be had by the use and possibly even abuse of traditional concepts of intellectual property - look at YouTube, Spotify and Creative Commons. I would like to redraw the map to create a world that helps to protect value through more open source thinking as without it, there's a very real chance we could fall behind in the race for creative innovation.

**Peter Jenner is Emeritus President of the International Music Managers Forum (IMMF)**

### ***New Digital Copyright Required***

The original copyright bargain was that, in return for knowing who was printing what, Queen Anne granted temporary monopoly rights of copying to the printer/owner; hence 'copy right'. This was always in the UK a property right, but was justified as being a way to incentivise the exploitation and origination of printed creative content, to the benefit of the public, and to help keep an eye on 'seditious thought and speech'.

As technology developed in the music world along came the player piano, then talkies and phonograph records and radio and public performance of copyright works and recordings, then TV, cassettes, CDs/DVDs and so on. Each required capital intensive manufacturing, and controlling these plants, which could copy works in bulk, was a viable challenge. All these new rights



were wrapped up in exclusive rights of reproduction and public performance, and these rights were enforceable, given the right statutory powers, approvals and regulations. This approach could still be stretched to satellite radio (a capital-intensive technology) and also to webcasting, but here (and especially in the USA) the problem became greater as the technology and capital required for each service became more easily available.

When the technology got to P2P and other consumer-driven file exchanges, control breaks down. It is impossible to police everyone with a computer who can copy files and distribute them with relative ease and at minor cost. Furthermore the process of sending a copy increases the supply of that file so there is a problem of inverse scarcity: the more the files are 'stolen' the greater the supply of files in the market as a whole.

If we wish to reward people for their creativity we need to find a way to pay them for their work according to the demand for that work (the alternative being direct state payment to artists, which is not normally considered desirable). The obvious place to charge, to minimise transaction costs, is at the network level, and the music service level. The former would cover the non-commercial use of copyright content and the latter value-added services. In both cases, extended collective licensing is a very attractive model, as is collapsing music copyright into one charge, leaving the industry (under regulation) to equitably split revenues.

In this new context I would like to suggest that we should be looking at de facto remuneration rights (as opposed to an exclusive rights regime), so that anyone can use the content subject to paying the collective licensing body. Remuneration rights could both ensure that the creators actually get paid and also open up competition, so that the power of the existing oligopolistic structure of the music industry could be reduced, while the power of the collective would be enhanced to the benefit of both users and creators.

As is so often the case, the devil would be in the detail. But the aim of simplifying licensing and payments to enable new business models to develop, and to permit new creators to come into the market and for everyone to have an equal rate of payment for use of their work would surely be to give real benefit to the traditional creators, new 'derivative' creators and end-users. All would gain from the benefits that the new technologies permit - always the justification for copyright.

**Octavio Kulesz is a digital publisher at Editorial Teseo, Buenos Aires**

### ***Three Hundred Years Later. A New World, the Same Concerns***

EPISODE 1. 'What is virtual can have real effects'. This was the conclusion drawn by the Argentinean Professor Horacio Potel in 2009 right after the trial against him had come to an end. What had happened? Since the early 2000s, he had been managing a few websites related to European philosophers where he included information about their lives and ideas, as well as PDF

versions of their books. The problem was that some of those works, such as Jacques Derrida's, were not in the public domain, which led the rights-owners to take legal action against his unauthorised copies. However, the public reaction to the process was immediate and overwhelming: thousands of students and researchers flooded online social networks to express their discontent, the general claim being that Potel's sites were vital, since very few people could otherwise enjoy those expensive translations imported from Spain. Eventually, on 13 November 2009, the Argentinean justice decided that Potel's actions did not justify penal prosecution and all charges were dropped.

EPISODE 2. October 13th, 2009. Astounding presentation made by Zhou Hongli, Chief Copyright Officer of the Chinese company Shanda Literature Ltd, at the Frankfurt Book Fair. According to Mr Zhou, China has 338 million netizens, which is four times the whole German population. Shanda constitutes the largest Chinese online literature community, with hundreds of millions of pages being viewed every day, almost 40 million registered users and around a million authors. The company only charges a few cents per page viewed, but as the extension of the market is huge, its profits are considerable. Authors get a high percentage of the total income (20 to 50%), which turns Shanda into a better alternative to traditional publishing houses. According to Mr Zhou, its business model - an online platform that sells digital texts at a price the public is able to pay - has been so successful that a large number of Asian companies have imitated it.

TODAY. Three hundred years later, Anne's legislation may still give us a lesson. Indeed, on the one hand, in its time it helped to curtail the power of old monopolies (such was the case with the Stationers' Guild), thus contributing to everybody's interest. On the other hand, it gave the industry a strong boost by protecting the new creators' and the creative entrepreneurs' rights. In 2010, when the web revolution and the emerging countries are reshaping the world, we should work relentlessly on new business models, not necessarily relying on traditional licences. In fact, as no old law will stop the digital age and its effects, we urgently need to revisit traditional copyright, especially if we want to foster the publishing industry and to keep the Statute of Anne's very spirit alive.

**Rok Kvaternik is CEO, Ernst Klett Publishers, Ljubljana**

### ***What is Copyright?***

What is the role of copyright in education? How will copyright apply to the e-learning platforms of the future? What can we say today about the shape of learning in the 21st century?

The learning processes of modern educational societies will never be the same again. Not only are technologies changing but also people's perspectives are becoming e-oriented and will become completely so in years to come. People who learn online seldom think about copyright, whether

pupils in primary education or students at university; nor will their teachers; nor will anyone who consumes knowledge; and their attitudes towards e-learning affects written sources as well.

Does this mean the future of copyright is totally endangered? Not very likely. And not to the extent some people imagine today.

Copyright as we have known it over the past two decades, where every author and every original material has total protection, will not exist in the future. Material will evolve from many different individual works and group initiatives. Blogs, twitter reports, Facebook comments, texting and photography from phones, as well as professional equipment - everything will be available to everyone. Copyright in each individual work will disappear and will not require us to obtain the author(s) permission to be shared with users around the world. We know that already.

Education, in turn, will exploit this capability of getting and using resources free of charge. Only a few content packagers and providers will be able to sell their material profitably: the very best of photography and music, upscale sources of information (super quick information) as well as some kinds of educational or specialised software.

Are we publishers extinct, therefore, as a software guru predicted to me a decade ago? Most probably, yes. The term, 'publisher', which is historically so closely connected with the concept of copyright, will no longer be used in its original sense. Publishers as the buyers and sellers of copyright will hardly exist. Instead, the term will be used to describe anyone who uses content in any way. Copyright will be reserved and relevant only to those few users who need for various reasons (business, science, government) to use indexes, filtered information, quality materials and what is described as benchmarked content and who will have to pay a premium price for such copyright registered material. The nature of this restricted material will change continually under intense competition. As I see the challenge, this is how copyright will look in future.

**Lawrence Lessig is Director of the Edmond J. Safra Foundation Center for Ethics, and a Professor of Law, at Harvard Law School.**

### ***For the Love of Culture***

The problem that we are confronting is the result of a law that has been rendered hopelessly out-of-date by new technologies. The solution is a re-crafting of that law to achieve its estimable objective - incentives to authors - without becoming a wholly destructive burden to culture.

The first step is to make the copyright property system more efficient. Currently, it is practically impossible to identify who owns what for the vast majority of work regulated by our copyright system. A better solution would be to shift to the copyright owners some of the burden of keeping the copyright

system up to date, by establishing an absolute obligation to register their work, at least after a limited time. Thus, for example, five years after a work is published, a domestic copyright owner should be required to maintain her copyright by registering the work. Failure to register would mean that the work would pass into the public domain. The government should establish the minimal protocols for these registries, and permit registrars to compete to service that registry. Successful registration would meet the first obligation of a property system - tell the world who owns what.

The second step is to recognise that the vast majority of the problems that we now face in preserving and securing access to our cultural past is caused by the failure of the past to anticipate the radical potential of technology in the future. The thicket of legal obligations that buries film, music, and every other form of creative work (save books) should be re-made using a rule that gives current owners the ability to secure value for those rights, but through a clearinghouse that would shift us away from a world of endless negotiation to a world where simple property rules function simply.

For any compiled work - like a film, or a recording - more than fourteen years old, the law should secure an absolute right to preserve the work without burden to the current owner. Whether copying happens or not, the act of preservation should be free of legal restriction.

Beyond preservation the law should enable a simple way for the compiled work to clear perpetual rights to that work alone, so that it can be made available, even commercially, forever. Once a work is made we need to recognize that it has its own claim within our culture. And so long as the necessary permissions to make the work were secured originally, then at some point in the future (again, say fourteen years after its creation), the parts lose the power to control the whole.

The third change is the most difficult. We need a renewed effort to strike a balance between protecting and limiting markets. It would be a mistake to destroy new markets by eliminating copyright protection where it would do good. It would also be a mistake to assume that all access to culture should be governed by markets, regardless of the effect it has on access to our past. Instead we need an approach that recognizes the errors in both extremes - - that of copyright abolitionists and of those who would seek to licence every single use of culture - and that crafts the balance that any culture needs: incentives to support a diverse range of creativity, with an assurance that the creativity inspired remains for generations to access and understand.

*This is an edited extract from Professor Lessig's article 'For the Love of Culture', first published in 'The New Republic' 26 January 2010. The full text can be accessed at <http://www.tnr.com/print/article/the-love-culture>*

## **Gerard Lemos is a Partner at Lemos & Crane**

### ***Copyright by Consent; Privacy by Agreement***

The internet, search engines, mobile phones and all the other technologies available for sharing information are said to have blown a big hole in copyright protection and an even bigger hole in personal privacy. Quite legally, you can find out my name, numerous images of me, my age, the name of my partner, where I live, how much I paid for my house, what I look like, what my house looks like, who my parents were, the companies of which I am a Director, quite a lot about how much I am paid and, of course, my expenses. You can download numerous speeches I have given and articles, reports and books I have written. You can examine in microscopic detail the variations in answers I have given to the same question. Then you can write a blog as if you knew me well and millions of people I don't know and you don't know can find out all about both of us.

All this is available with a few clicks and drags; no longer are private detectives and endless hours in libraries needed. All of this information can be mashed into a reasonably accurate picture of my lifestyle and my ideas, and in a knowledge-based economy my ideas are precisely the things I want to protect. They are a kind of intellectual property and I don't want you to sell them as if they were your ideas. So has the wall of privacy been torn down? Will copyright ever exist in its old form again?

I want to suggest that we could have copyright by consent; privacy by agreement. For every piece of information about me or you on the internet there should be a box at the bottom of the page which says, 'Gerard Lemos does not want you to use this information without his permission'. I can then tick that box and I reckon 95% of the world would respect it. The other 5% will breach whatever rules are put in place anyway and I would hardly be worse off. Customs are always more powerful than laws. As far as the internet is concerned, it has developed faster than our ability to develop customs to regulate and change our learnt, shared behaviour.

Commercial copyright is of course another matter. There will also always be highly sensitive areas like drug patents. Government information will always require careful handling as well, though I am sure most official information is kept secret because releasing it is more uncomfortable than dangerous. It's not that the citizens don't trust the political leaders; the politicians don't trust the citizens. But I am certain that the default should be towards openness even in commerce and government. Restrictions should be the exception. Copyright will be eroded but permission should only be needed when prohibition has been asserted; if permission is always needed as a matter of course the world turns more slowly and we are all the losers.

**Ronaldo Lemos is Director of the Center for Technology & Society at Fundacao Getulio Vargas, Brazil**

### ***Beyond Copyright***

Most of today's creativity takes place outside the sphere of traditional copyright. A lot of it occurs at geographic or online peripheries where copyright is unknown, irrelevant (the author does not care about it), or unenforceable. Peer-to-peer sharing, torrent communities, and even YouTube operate similarly to the streets and alleys of the world's metropolises, where information flows freely and new forms of culture and innovation emerge. All this happens as the result of different incentives from those cherished by the copyright system. Music scenes such as tecnobrega (Brazil), funk carioca (Brazil), kuduro (Angola), coupée décalée (Ivory Coast, France), bubbin (Surinam, Holland), cumbia villera (Argentina) and cumbia (Mexico) demonstrate the vitality, popularity, and economic strength of cultural markets that have little connection to traditional copyright.

These two videos by anthropologist Hermano Vianna, Regina Casé and Estevao Ciavatta illustrate what is happening in many parts of the developing world and show how technology is being appropriated in the global peripheries to produce different business and cultural models that go beyond copyright.

[www.youtube.com/watch?v=hJ78j-JKS\\_4](http://www.youtube.com/watch?v=hJ78j-JKS_4)  
[www.youtube.com/watch?v=zIgsL1LbNFI](http://www.youtube.com/watch?v=zIgsL1LbNFI)

**Simona Levi is based at Conservas and was the organiser of the Cultural Forum, Barcelona**

### ***Don't Panic, Just Remember to Mention Your Sources***

We want to be recognised for our skills

Copying is the memory of our times. It is natural. It is inevitable. It is fair.

Imagine copyright does not exist. Maybe we want a 'talent incentive'.

Because culture must be Libre.

But Free Culture does not mean supplanting others.

It means adding new authors, new modifications, improvements and returns.

People can only let things be Libre if their contributions are recognized.

Even when they are 'anonymous'.

So, don't panic, just remember to mention your sources.

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haven't written it, which amounts to the same thing), remember that you probably would not like others to do the same thing to you. So don't panic, mention sources. For the same reason, if you use part or all of this text, we would prefer that you do it for passion, not for money. If you do it for money, it would be a nice gesture to share the proceeds with the author. Even if you just send some flowers.

<http://www.youtube.com/user/conservas#p/u/19/U9dth0JxSSg>

## **Li Heng is Board Chairperson and CEO of Beijing International Copyright Trade Center**

### ***China's Copyright Industry in Development***

When China began its copyright industry, it was already behind the world. Even now, we are still in the initial stages of initiating, exploring, cultivating and developing the copyright industry. Although copyright is an intangible asset, it is a core competitive aspect for Chinese cultural enterprises. According to statistics, the copyright industry has contributed 6.5% to China's GDP and 6.8% to employment, which is better than some countries with more advanced copyright markets.

China passed its first copyright law in 1990, and then in 1992 China joined the Berne Copyright Convention. Since that time, China's copyright market has essentially been on the same track as the rest of the world. During the 15 years of negotiations between China and the WTO, WTO members were especially concerned about China's IPR protection (especially copyright protection). In the spring of 2006, the Chinese government said it would 'vigorously develop the cultural creative industry' as a main strategy in the macro-economic development, which will lead to China's copyright industry having unprecedented development opportunity and should lead to better protection, as China will have good reason to protect its own industry. The Beijing International Copyright Trade Center was established under such an environment. In the last several years, BICTC has successfully established a copyright public service platform, e-commerce platform, and industry gathering platform, which are significant actions for China's copyright industry to be on the same track with the world and enjoy healthy development.

It is our opinion that three points are essential in China's copyright field. First, substantively China's copyright is a business matter but the protection of copyright is a legal matter. The surge of globalisation has left the Chinese people more and more interested in the business potential of copyright. Especially since China opened up 30 years ago, it has become of great importance to connect copyright to industry and the copyright industry to market.

Second, China needs to expand the copyright trade to bring copyright into the market and help the copyright industry to develop in a healthy and stable

manner. For many years, China has only attached importance to traditional copyright products such as books, magazines, music and video products, but we haven't paid sufficient attention to emerging industries such as software, film, animation, games, toys, ceramics, and textiles. We must search for and find benefits within each specific industry.

Third, the sustainable development of China's copyright industry needs a complete and standardised copyright evaluation system. We need to integrate the resources of the capital market so we can contribute the maximum benefit to the national economy. Without a completed and standardised evaluation system, China suffers the consequences of not effectively absorbing capital. We must establish a rational financial index to analyse the return on investment This is of great significance.

With the joint efforts from the global copyright community, China's copyright industry will have a bright future.

**Ian Livingstone, Life President, Eidos**

***Copyright Underpins the Value of Everything we Create***

In the digital age, defining ownership of intellectual property by law is essential. Copyright underpins the value of everything we create. Lara Croft wouldn't be the same without it!

**Mark Meharry is co-founder of Music Glue**

***Copyright Law Rocks!***

We are currently going through a period of unprecedented change where the worlds of telecommunications, arts, technology and government are colliding into one another with enough force to affect the lives of almost everyone on the planet. Historians may well refer back to this period as the Information Revolution, or potentially more befittingly the iRevolution. One thing is for certain, the global content and broadcast industries are on the brink of collapse and in the next five years new models will emerge that until a few years ago would have been incomprehensible, yet will become as staple to our lifestyle as newspapers, radio, books and television have been during the last century. One word, perhaps overused, that perfectly fits the general climate of this period is 'disintermediation' or the shift of power away from the centre of tradition supply chains.

Fundamental to this shift is the development of new paradigms which are currently being built on a constant, stationary foundation which we all know as copyright law. Copyright law has until now stood the test of time and I see no reason why it should not continue to do so. Many of the 'new world' thinkers are critical of the existing copyright laws; however, the law itself is not the biggest risk on the horizon facing the new models. Legislation, introduced by



politicians in an attempt to enforce copyright law (like the UK's Digital Economy Bill) poses a far greater risk to the new models.

Politicians are not experts in telecommunications or technology and are easily influenced by those who have access to them. As a result, legislators appear to be influenced by the traditional broadcast and content industries. It is time for the world to face up to a few facts, however. We are shifting from an economics of scarcity into an economics of abundance, in which consumer access to content is no longer limited by shelf space and radio bandwidth. The days when broadcast media effectively controlled what the public consumed (and in many ways, what they thought) are over. Multinational media companies that influence the outcome of elections of the world's super powers are no longer in possession of 'super powers'. If you think this change will be stopped by legislation, think again. If you think the pace of change can be controlled via ISPs, think again. Indeed, now is the time for us all to simply 'think again'.

Whether we change copyright or don't, or whether we introduce legislation or not, change is coming and it will be significant. Changing copyright law could destabilise the process temporarily, but it will not be stopped. Introducing legislation which forces ISPs to monitor access to the internet will slow down some illegal activity, but only temporarily. In five years, when the dust settles, we will all understand the new models, the new companies will be established, the power will have shifted and employment in the creative industries will rise. The artist communities will continue to thrive and consumers will continue to consume. Leave the law alone and let us get on with it PLEASE.

### **Anita Ondine writes and produces immersive stories, known as transmedia' experiences**

#### ***Copy, Right?***

If we start from scratch  
A blank slate and fresh ideas  
All is possible

Let's ask this question:  
What would copyright look like?  
In an ideal world

We'd share our ideas  
And we'd encourage learning  
An open culture

Where art flourishes  
We express ourselves freely  
And knowledge is shared

In my ideal world  
Copyright is dead, and we  
Live creatively

## **Jon Pettigrew is the Founder of Maxus Ltd**

### ***Copyright is a Friction***

I have been trying to obtain permissions to show a growing set of videos on the web since 2000. I did not think that it would take a decade of exploration to achieve very little.

My intention, since I cashed out of a web1.0 music internet business, was to find a way to inspire, entertain and educate global audiences about art, by which I mean the visual arts, not performance. Since 2000 I have made over 250 films about art, artists and photographers, none of which are legal to have available on the web, if one accepts the way in which the components of video clips, as we now refer to them but did not in 2000, are constructed. Lawrence Lessig and others have often referred to the implications of the other, newer name, now outdated itself, of mash-ups. For instance, speculating how long it would take a teenager to gain permission to combine a variety of video and audio including music, if all the components were sourced and the respective rights owners, or their legal partners were found and asked. I am that teenager.

To be of global interest and reach, the amount of the English language in terms of commentary or on-screen text needs to be minimal. The narrative arc of the films - some 60 seconds, others up to 3 minutes - is often taken with a musical sound track. I have sometimes described this art service as MTV but art not an Act, or as CNN 4 Art. In fact I have as many art-with-music videos as MTV had when they launched on 1st August 1981. We all have 20:20 hindsight that MTV would work, but no-one knew anything then.

There are many examples of the ways in which I have tried to pay a fair licence fee for music, art, photography and text (such as poetry read as a voice-over). I do not want to be that teenager being 21st century creative, I want to have mutually balanced rights. For the time being, there are either purposeful or inadvertent frictions put on requests for art licensing, music licensing, photography licensing and text licensing.

Two examples may show some of the issues. I paid access fees to Tate Modern and for a film crew with a presenter who is the art critic for a leading UK Sunday quality newspaper. I was about to spend more real money to pay for the edit into some art clips, but sought permission from the rights owner's agent. I was told that I should have asked permission a year in advance and specified the exact works of art to be included.

I have filmed the photographer of the three earliest Rolling Stones shoots, in London locations, at two shows, and interviewed Stones fans for a day at

BAFTA. I had planned to make five 3 minute clips and wanted to license five recordings of early Stones music. 18 months later I have had no responses to my numerous, repeated requests. Copyright is a friction.

## **Dr Frances Pinter is Publisher, Bloomsbury Academic**

### ***Rebooting Copyright: A Note on Terms***

I would like to contribute a thought on copyright terms. The 'one size fits all' concept has clearly created barriers to the legitimate and indeed desirable flow of information and knowledge. We joke about copyright term extensions being enacted whenever Disney is at risk with Mickey Mouse falling into the public domain, or wealthy ageing rock stars worrying about amassing even more money to leave to their offspring. Yet, for much of what is under copyright the rewards to the rights-holder are reaped during the first few years. Thereafter interest in the product is minimal and the cost of controlling copyright is disproportionate to the rewards.

So, how might we find our way towards accommodating the huge variety of materials that are currently protected under lengthy copyright terms? I believe we might look back in history to a time in the USA where copyright was automatic for 14 years and renewable for another 14 if the copyright holder requested it. At that time there was a copyright register, since abandoned, in part because it was thought that copyright should be an automatic right, and also because of the practical difficulties of administering such a register.

Today we could, with a slightly different approach, ensure that copyright is automatic for a first term, but easily extendable if a rights-holder wishes to do so, by way of registering such an extension. Anyone wanting to use material that may or may not have had its copyright extended need only do a quick check with the registry. The technology for maintaining such a register exists, what may be lacking is the will.

Some may argue for the registration of copyright interests from the start. I suspect this would be rather more difficult to implement at this stage, however, it may follow on in future from the successful implementation of the registration of the extension.

If such a two-phase copyright process were enacted it would present an opportunity to consider current copyright terms. In all likelihood a shorter first term than the minimum 50 years decreed by the Berne Convention would be more appropriate. To achieve this change at international treaty level would not be easy, but it is time to recognise that following Berne to the letter does not necessarily mean success in following its spirit. The proponents of Berne could not have imagined today's digital environment. But along with the Act of Queen Anne both provide guidelines for attaining a balance of interests that should not be ignored.

**Lord Puttnam CBE is a Labour Peer**

## ***Some Thoughts on the Future of Copyright***

As a rights-holder I entirely recognise the importance of maintaining and even strengthening the economic entitlement which flows from intellectual property *rights*.

Along with all the other participants in the films I produced, I am the very happy beneficiary of a consistent, annual flow of revenues from a number of the films I produced. That seems to me an equitable reward for success.

What enables those revenues to flow to those who made them is the notion that copyright is respected – otherwise, over time, and in a world of high-speed broadband connectivity, revenues will be substantially diminished, leading to an inevitable decline in the appetite for investment in *new* content.

But whilst I absolutely understand the importance of promoting and securing value from copyright, nothing like the *same* degree of energy and imagination has yet gone into discussions around the use of rights to enhance access and diversity, understanding and learning.

We need to explore these possibilities for unlocking copyright in ways that are about far more than simply ‘permitting’ various forms of passive consumption; but rather by seeing them as a massive catalyst for the encouragement of a whole new world of creative collaboration, sharing and learning.

Here’s a cautionary story, drawn from the archives of C-Span, the US public service broadcaster:

In 1994, a proposal from Christopher Dodd, the Democratic Senator from Connecticut, set out a thoroughly imaginative way to use the value of past intellectual property to support contemporary artists and scholars.

The ‘Arts Endowing the Arts Act’ would have added 20 years to the term of copyright protection, and used a portion of the income from those extra years to underwrite current creative work.

Under the rules then existing, US copyright had protected an individual's work for his or her lifetime, plus 50 years; corporations with works ‘made for hire’ held rights for 75 years.

Under Chris Dodd's proposal, at the end of each of these terms, the rights to an additional 20 years would have been publicly auctioned, some of the proceeds going to build an endowment dedicated to the arts and humanities.

Tragically Dodd’s proposal failed; and four years later Sonny Bono’s proposal for the extension of copyright term by 20 years passed, but with *none* of the public benefits that Chris Dodd had attached.

This time around *all* the benefits from the Bono proposal simply accrued to the incumbent corporations and individuals.

You could almost hear Sonny Bono re-writing the title and lyric of his most famous song as 'I GOT *MINE* BABE'!

When reflecting on this missed opportunity, I like to remember that memorable moment at Robert Kennedy's funeral, when Teddy Kennedy said this of his brother:

'Some men see things as they are, and ask why. My brother dreamed of things that never were, and asked - why not.'

So I'm suggesting that we likewise *dare* to take a fresh look at the possibility of an environment in which 'rights owners', when faced with difficult, sometimes even challenging questions, look at *each* issue from the perspective of:

Why not?

Rather than -

"I own it, therefore why on earth should I – after all, what's in it for *me*?"

What I'm suggesting is just a small shift; but it's a tiny shift that could, over time, *begin* to make an *enormous* difference over time.

## **Gail Rebeck is Chairman and CEO of The Random House Group**

### ***If There Were No Copyright, Would We Want It; And, If So, What Form Would It Take?***

Quite simply: copyright guarantees creativity. It encourages people to think new thoughts and develop ideas which can be honed into unique works with the promise that they can potentially earn a living from doing so.

The expression of a person's ideas belongs to them as much as their house, car or coat and the principle of being compensated for the time, effort and creative input needed to generate something new has to be protected. If there were no copyright we would want to invent it.

Faced with a blank sheet of paper, and given the task of creating 'copyright', I believe the outline would actually look very similar to what is in place today. Try as one might to reinvent the wheel on this, my conclusion would be that the UK's copyright framework isn't only fit for purpose; it is the best, and arguably the sole, means of managing high-value creativity and originality.

For those who might ask, 'why then does it not seem to be working, especially in the digital age?', the response is threefold. Firstly, we have not responded with enough imagination and verve to the emergence of the Culture of Free, and provided a counterforce with the focus and education that was required. Secondly, Government has been slow to equip copyright owners with the

legislative tools needed to protect their content. And thirdly, aggregators, search engines, and other intermediaries in the digital sphere have not yet fully developed and implemented the tools and standards which would allow machine-to-machine digital copyright permissions to be invisibly, seamlessly and painlessly interpreted and acted upon, enabling content owners to post information in the digital space, safe in the knowledge that third parties could no longer exploit it without permission.

Copyright is a positive attribute, essential in our new age of media and increasing piracy. In this pioneering era nothing is more important than the continuing flow of creative content and nothing but copyright can ensure that flow continues, and indeed expands and deepens. We need content and we need copyright - they are both the essential guarantees of our creative future.

**Francesca Re Manning with Kay Chapman and Peter Bloch of CAS-IP,**

***If Copyright Hadn't Been Invented, What Kind of Copyright Would We Want?***

Many would answer the Forum's question by saying, 'we do not need copyright at all.' But copyright, if well designed, can serve end-users, creators and the public.

*Common regime.* A strong international convention with unalterable conditions will be in place. Moral rights will be interpreted and applied uniformly in all States. A common agreement to enforce them uniformly is essential to ensure that copyright protects culture. If harmonisation is not possible on an international level, it will at least be on a European level.

*Fair dealing/use.* Understanding when a consumer can use a copyrighted work without infringing a copyright holder's rights is clear. Extended terms are defined so that the boundaries of the commons are preserved; the work itself uses a comprehensible code system (as in Creative Commons) to communicate to the public what users can do and in what circumstances.

*Derivative works.* Copyright cannot extend to derivative works. Authors of works which derive from copyrighted works do not need authorisation from the original right-holder. However, a high degree of originality is required to grant protection to the derivative work.

*Registration.* The requirement for an international registration of copyrighted works facilitates the identification of the rights-holder, thus making it easier to provide legal access to works; the more legal access there is, the fewer reasons there are for people to opt for non-legal methods.

*Responsibility for infringement.* There are clear parameters of responsibility for breach of copyright. Copyright has its own regime of primary and secondary liability without forcing the application of common law principles of 'joint-liability' or rules from other intellectual property systems, like patents. In

this way, end-users and service providers have a better understanding of when they would be in breach of copyright.

*Term.* The copyright regime promotes creativity and cultural activity. Protection lasts only for the life of the author.

*Collecting Societies.* The online world now takes advantage of the possibilities offered by digital formats to include all relevant licensing/payment systems in the file, so that artists are paid directly rather than using collecting societies. In this way consumers do not have to pay every time they use a copyrighted work. This system strengthens the link between artists and users.

*Conclusion.* Copyright law has one purpose: the promotion of culture and artistic creativity. In this regime, rights, especially if in the hands of non-authors, do not become mere commodities, as this could harm both the public interest and, ironically, also artists and creativity itself. By achieving this balance, current technology is fully utilised to ensure that knowledge and information is freely accessible and widely disseminated. Further, this copyright regime has a significant impact, not just on artistic expression, but also on research and innovation by creating a free flow of information.

## **David Rowan is the Editor of 'WIRED' magazine**

### ***Facilitating Creativity***

In an age of constant disruption - when we can barely guess which technologies will be dominant in five years - our greatest hope lies in the human potential for creativity. The law's role should be to facilitate that creativity, not to police it: to promote experimentation and innovation, not to stifle it because it may clash with the commercial interests of existing power groups. The lesson of the past 'digital' decade is that legal recourse, via traditional copyright law and political lobbying to extend it, will fail to preserve the status quo that previously benefited the established music, film and print industries. Human instinct, after all, is to share and create, and the enforcement of ever more restrictive copyright law will not stop that. Only when the content industries belatedly embrace new business models, and experiment creatively with fresh means of building revenue, will they create the conditions for their longer-term economic viability - and which provide a fair benefit to the originators of that content.

**Mark Shuttleworth is an African entrepreneur with a love of technology, innovation, change and space flight**

### ***It's Time to Get Creative***

It's time to get creative about the incentives for creation.

If there were no copyright then we would want to give people who change the world for the better through writing software, making music and doing scientific research, incentives to do what they do and keep doing it. Incentives designed for the future, not the past. The result would look so different to copyright that we should probably call it something different.

Some ways we should shape those incentives are:

*Allow creativity to build on creativity.* Without regulation the market tends to entrench the position of yesterday's successes at the expense of others who could be successful tomorrow. Guarantee the opportunity to continue creating. Some building on will need to be compensated, but reverse engineering for interoperability, learning, and tinkering should be free.

*Enable collective creation.* Acknowledge that the scale of socially important work is often only possible through communities in which many members share their work. Open licences help make this happen but they also help us imagine how to re-invent intellectual property, the next step is creating similar mutual sharing arrangements for publicly financed knowledge.

*Reward content creators and not content accumulators.* You shouldn't have a claim unless you are using the idea to build something. Society needs people who are ready to act. Creators should be able to sell their rights but the purchasers should use them or lose them.

*Limit the duration of rights.* It's a common fantasy to have one good idea, and then we can sit back and take it easy while the money flows in but life isn't really like that.

*Run the numbers.* Business models for creative works are based on profitability within a few years, and not the decades given in copyright law. Do some empirical research before setting the default rules.

*Ensure open education.* Rights should never be a tax on the next generation. Everyone loses from limits on the ability of future generations to learn, future innovators are lost to competitive markets.



## **Jeremy Silver is a digital media adviser and entrepreneur**

### ***Now We're All Self-Publishing***

In 1616, the playwright Ben Jonson became the first author to assert the copyright in his *Workes* by depositing a copy at the Stationer's Registry. He was at the height of his popularity and wanted to assert the primacy of his version of his plays. Until this time it was common practice for theatre troupes to roam the land, staging plays with huge variations in how the parts were performed because they simply didn't know how the original went or because they wanted to make their own comment about a local situation or political event.

Today, artists in all areas of the creative arts are changing things and mixing things up precisely because they and their audiences know exactly how the original goes. The Grey album by Danger Mouse can only exist because of the Black Album by Jay Z and the White Album by the Beatles - that is also the reason it's not available to buy.

The ironic reality is that copyright law can no longer protect artists from consumers copying their work unless they try to do it legitimately and commercially at which point the mechanisms of enforcement make samples, mash-ups or remixes slow, expensive and sometimes impossible.

Our legal framework has been established in modern times to make sure, as Larry Lessig puts it, that no one could do to Disney what Disney did to the Brothers Grimm.

And that's a problem.

I think the switches need to be turned around the other way so that works are accessible by default. The electricity of culture needs to be allowed to flow - unless a creator expressly needs it not to. There must be an obligation for creators to be named and paid. Copyright should become an attribution and a remuneration right. not a reproduction right.

At the same time, some other factors are colliding with these concepts that make our position even more complex. The spectrum of who is a creator is radically expanded. We are all becoming creators and publishers of our own lives. So do we need to decide when a work becomes a cultural good? When someone commits fulltime to producing it? What is the definition of publication? When someone else posts a photo of me on Facebook? When they tag my name? When I eventually might say. 'That's OK'? Or, 'That's not me?!'

And it gets more complicated. Social networking sites take part ownership of the user-generated content posted on them and make a lot of money out of it. In exchange the users access the functionality of the site, although it may not be ever expressed in quite those terms.

But not only do Facebook, Google and YouTube monetise with ads, they also aggregate for sale huge amounts of personal data about us as users too. Personal data derived from our postings, our photographs, our chat messages, sometimes aggregated, often targeted right back at us. So, in a very commercial way, the daily minutiae of our lives have become content and perhaps need exactly the same protections as our published works require.

**Adam Singer is a media executive and adviser and Chairman of the British Screen Advisory Council**

### ***Copyright Koans***

1. Copyright exists to maximise the common intellectual wealth of society. A collateral benefit is rewarding the creators of IP.
2. Copyright is regulated information, and is an information access issue, along with privacy, and socially acceptable content. If you can't control access, or privacy, you can't control copyright.
3. Copyright in an 'information era' means all objects are manifestations of intellectual property. No copyright no economy.
4. Copyright is similar to monetary systems, as money is also regulated information; so financial control models adapt readily to copyright.
5. Copyright is akin to VAT. Copyright is a transactional tax on leasing. Good taxes optimise revenue against collection costs. Collection costs include any form of impact on society.
6. Copyright is fine; the anachronisms are in the optimisation models, and optimisation models are era specific.
7. Copyright optimisation models of yesterday are the sumptuary laws of information...*Dude*.

**Hardesh Singh was a finalist of the 2008 International Young Music Entrepreneur Award organised by the British Council**

### ***21st Century Copyright Must Serve to Protect Cultural Rights***

In my mind, copyright for the 21st century ought to recognise the difference between raw data and the finished, commercial product. The purpose of copyright should remain to encourage learning, with emphasis that the beneficiary of the 'opportunity to learn' should be the wider public rather than authors. To put this another way, it is the right of the public to learn' which needs to be protected, not the right for authors-owners to withhold their product from public consumption. However, this must still take into account the need for authors to derive commercial value from their works.

One way to encourage learning is to encourage the deconstruction of a product, i.e. to encourage the study of the sum of parts which created the whole. We need to recognise that the real value is in the talent required to create a product, and not the product itself. By doing so, anyone can have access to the same sample of raw data, but the final product will be unique to the talent behind it, and ought to be rightfully attributed to and commercialised by that particular individual.

Musicians, for example, should have exclusive right to monetise their musical works, but the law should encourage them to share the raw building blocks (in this instance, the raw multi-tracks) of said works for public construction and deconstruction, while providing for their right to be attributed for the creation of the raw data.

The idea really is to encourage the development of a master repository of culture and content, one that is accessible to anyone, even a school kid in a developing country who otherwise may not have the means to create the building blocks required to develop new works.

Copyright in the 21st century must move beyond a territorial framework and instead encourage the learning and sharing of global culture and knowledge. Everyone should be encouraged to add to this pool of raw data, and to dip back in to keep re-imagining new forms of expressions, inspired by data from beyond their own cultures.

**Martin Smith is Managing Director, West Bridge Consulting**

### ***Copyright and the Consent Principle***

In 1984, whilst working at the Council of Europe in Strasbourg as an adviser on the implementation of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (really sexy stuff!), I learned about the legal concept of 'prior, informed consent'. It reflected what I wanted to argue as a general proposition, that citizens and consumers should have control over the use to which their personal data can be used by corporations and governments.

More than twenty years later, in Paris, I heard the French film director Claude Lelouch complain urbanely, and as much in sorrow as in anger, about the repeated, unauthorised appropriation and 'mashing' his celebrated film 'C'etait un Rendez-vous' over a period of more than three decades. Why did nobody ever ask?

Subsequently, and by extension, I have always associated Lelouch's cri-de coeur with the arcane world of data protection, and specifically the principle of prior consent. It is now for me the key issue in the continuing debate about copyright.

Some artists are happy to put their work into the public domain unreservedly. The American folk singer Woodie Guthrie was, as befits the idiom, the patron saint of this ultra-libertarian approach to intellectual property. The great majority of artists and rights-holders, however, take a different view. They really do appreciate being asked if someone wants to make use of their work. And they want to be paid for their efforts.

Regrettably, it has become fashionable amongst the theocrats of internet communitarianism to scorn the very idea of authorial consent. Moral rights? How reactionary! How uncool! The zealots of the Facebook generation demand the right to 'share' your stuff whether you like it or not.

Just as 'data subjects' should be able to control their own personal data, so artists and rights-holders should be able to control what is done with their work - whether to make it available for sharing free of charge, or to license its use on commercial terms. The good news is that technology now offers us a range of potential solutions. Digital fingerprinting and metadata allow us to categorise, tag and license digitised content according to multiple classifications. It also allows for access to content to be blocked if an associated fee has not been made or waived.

Unfortunately the administrative and commercial framework needed fully to realise these potentialities has not kept pace with the technology. A proposed Rights Agency, which incorporated the core of one possible approach, was briefly floated by the UK Government in 2009, but just as quickly abandoned. The necessary leg work had not been done.

All citizens who depend for their living either on their own writing, composing, performing, inventing, choreographing or designing, or on the creative work of collaborators and colleagues, are entitled to see the consent principle re-asserted and made fit for purpose in the digital era. We have the technology, but a solution to some exceptionally difficult issues of law, administration and enforcement remains to be found.

**Lynne Spender is a writer and has recently completed her PhD on copyright and digital culture**

### ***The Seduction of Copyright***

*'...There is ample evidence, from the principles espoused by the Pirate Party and the less radical Adelphi Charter to the continued file-sharing and subversive activism of many of the copyleft, that it may be more efficacious to change the law than to try to suppress digital culture', 'Digital Culture and the Challenge to Copyright Law', PhD Thesis, Lynne Spender, 2009.*

We must make fundamental changes to copyright law or risk its demise. But copyright law is seductive. There are temptations to play with it. Just a little stroking here and there and the law can be retained, as can the lawyers whose expertise, status and incomes depend on it. However, starting from

scratch means reconceptualising a creator's right to manage copyright within a digital context and this allows little room for emotional and economic baggage.

We might simply replace the cluttered and often arbitrary code of copyright law with new rules that most people think are sensible and fair. Jessica Litman refers to a 'free-use zone' where significance can still be attached to intellectual property but where an intuitive distinction can be made between commercial and non-commercial work ('Digital Copyright'). Thus copyright might be recast as an exclusive right of commercial exploitation. Making money from someone else's work without permission would be an infringement, but non-commercial use of the same work would be lawful. A similar result could be achieved by expanding fair use guidelines to constitute a general right to freely re-use copyright works in the creation of new works. Both changes to the law would reflect the two streams of cultural production that already exist.

Australian research with print and digital creators supports Litman's approach. Regardless of their creative medium, none of the creators could afford to take legal action, even if they wanted to. (The digital creators didn't want to: they were more likely to be flattered than offended when their work was copied). Almost all expressed a desire for a copyright-free space where creators could share, sample, borrow and repurpose works without invoking copyright law.

That this might involve a system of registration of copyright works is not necessarily prohibitive. It seems not too much to ask professional creators - who manage to register their cars on an annual basis - to also register the works that they wish to be available for commercial exploitation.

Any new law must also dramatically reduce the period of copyright protection. Acknowledging the transitory nature of much current produsage, and that being first to market has greater economic (and other) benefits than those derived from the 4% of copyright works that are commercially viable after twenty years, the Swedish Pirate Party wants a five-year limit. Rufus Pollock somewhat ironically found that 15 years (almost the same period of protection first set by the 1710 Statue of Anne) was the optimal period of protection for digital works (In 'Forever Minus a Day'). Benedict Atkinson suggests a limit of 18 years from the date of creation, the age of legal majority ('The True History of Copyright: The Australian Experience 1905-2005'). He poses the idea that a copyright work is to a creator as a child is to a parent and that at 18 years of age, each should be legally free. This should surely seduce creators, as copyright law has for so long seduced lawyers?

**Tamara Tatishvili is Head of the National Film Centre of Georgia**

***For the Encouragement of Learning***

In the case of Georgia's creative sector I would like to address two issues that I believe are important to reach wider audiences and encourage learning.

These are the 'personification of copyright' and the 'voluntary loosening of copyright'.

In the communist era, ownership was virtually repressed. The benefits of ownership of an idea were mostly confined to the author's attribution, and any financial incentives were insignificant. The Soviet Union's copyright law adhered largely to Western standards. However, everyone was encouraged to make reference to at least several quotations of comrade Lenin, even if the subject was the study of 'The reproduction cycle of the Tasmanian devil population in captivity'. Other than that, the paramount rule was that everything belonged to everybody and effectively to the State. For the consumer the product (such as a film) was always associated with the State, of which everyone was an equal stakeholder and therefore the perception was that it belonged to them as much as to the author.

Old habits die hard, even 20 years after of the collapse of Soviet bloc. From the perspective of Georgian consumers there is a disconnect between the 'product' they consume and the 'author' behind it. This leads to my first point that copyright has to address: it needs to become more personalised. The viewers of an unlicensed movie might feel more guilty and less willing to do the same again if they realise that by their actions they violate the property rights of a specific individual rather than of a more abstract organisation.

The second reform that needs to be addressed is to ensure that copyright does not restrict the dissemination of ideas to the right audience. A relevant example is probably Wikipedia: by making information available to a wide audience, it encourages learning and leaves it up to the public to decide the value received and to make their individual donations.

In the era of the Internet, when data exchange has almost no limits even between the furthest parts of the world, the discussion of copyright law in multi-cultural contexts could not be more relevant.

**Bill Thompson is a technology critic and blogs at [andfinally.com](http://andfinally.com)**

### ***The Future of Copyright***

The Statute of Anne was 'An Act for the Encouragement of Learning'. What if, instead, it had been 'An Act for the Encouragement of Sharing'. What if copyright, instead of being a state-granted monopoly on the right to make copies, was a state-imposed obligation to do just that?

After all, nothing is created in isolation, and nothing comes of nothing. The products of the creative imagination do not stand alone, unique products of one mind or one company. Perhaps the fact of creation should not, in itself, allow the effective expropriation of the intellectual common ground as a reward for adding something new to the rich and complex stew of culture.

If those advising Queen Anne had seen how copyright has stymied creative expression, placed barriers around so much modern culture and distorted our use of the Internet, the most powerful machine for sharing ever devised, then they might have thought differently.

So let us then recast copyright as a grant of stewardship over an element of our common inheritance, offered to a person or institution, for a limited period, but see it not as a privilege but a burden, one that charges its holders with an onerous responsibility which they can best discharge by ensuring the widest possible dissemination, full access by all means possible, and the maximum feasible use and reuse, of any copyright material they hold.

In this world anyone granted a 'copyright' is obliged to use it to fertilise the fields of creative endeavour, knowing that history – and not the market - will be their judge.

### **Jimmy Wales is the co-founder of Wikipedia**

#### ***'One size fits all' dresses virtually everyone badly***

If we were inventing copyright today, surely we would want to acknowledge that 'one size fits all' dresses virtually everyone badly.

Rather, we should acknowledge that artists and creators of all kinds have varied needs to protect or share their work, and the law should allow and encourage both financial rewards through protection in some cases, and free sharing in other cases, as the creator chooses.

### **The World Intellectual Property Organisation (WIPO)**

#### ***Copyright 2010: Recreating Copyright for the 21st Century***

Copyright industries are under assault and creators are in disarray. The landscape has changed dramatically in the past ten years. The value chain from creation and content development to production, delivery and use is rapidly changing. The industries that create, produce, commercialise and distribute content are struggling to convert traditional value chains and develop effective distribution models against a backdrop of pervasive illicit copying of copyright material, where the very principle of getting paid for creative works is under threat. Market changes are also occurring in developing countries. And yet, while the digital world creates unprecedented opportunities also for developing countries to develop and distribute local creativity, rampant piracy is a deterrent to many would-be online content businesses.

Law, technology and the market have become the drivers of the new digital ecosystem, while technology is moving at a much faster pace than regulatory and market developments. The digital world has raised issues for rightholders

impacting on their ability to determine and extract value from online activities. The digital world has created uncertainty for users overloaded with available content. Intellectual property is not an end in itself. The time-honoured goals of copyright are to reward creativity and incentivise investment in cultural products, and thereby promote economic, social and cultural development.

We must find ways to respond to these challenges. Our priority is strengthening the global infrastructure for copyright and related rights with a view to better servicing beneficiaries and users of the copyright system. This requires a multifaceted approach that includes education, technological solutions and business models that can deliver creative content in attractive and sustainable ways.

The challenge of maintaining the 'balance' between the rights of copyright owners and the public interest figures prominently in discussions at WIPO, including in respect of the WIPO Development Agenda, approved in September 2007 and currently in the process of implementation, and perhaps more interesting to this audience, in the Standing Committee on Copyright and Related Rights (SCCR), where the issue of limitations and exceptions is at the top of the Agenda.

Any regulatory framework must maintain flexibility to accommodate such changes to ensure that traditional value chains convert to the new digital reality - this against a backdrop of growing online IP infringement that puts at risk the financing of tomorrow's culture.

The wide availability of content delivery platforms is based on standards and hardware for which interoperable content management technologies are critical. Technology should be used to develop availability of creative content through effective metadata that can be used to deliver content for free uses or remunerated exploitations that allow creators to derive new revenue streams. This calls for a heightened degree of standardisation within the digital media chain; in a highly networked environment, cross-sectoral cooperation is required to an unprecedented extent to ensure the interoperability of metadata for exploitation of primary, secondary and even tertiary markets and user needs.

Technology has also brought a notable shift in consumer behaviour. In most countries, there are many more consumers than creators and performers, creating political challenges for policy-makers in managing discussions on copyright. Copyright law itself has come to seem arbitrary and unfair to users who see the near-zero cost of digital reproduction and are reluctant to pay more.

As custodian of the major IP treaties and through a comprehensive technical assistance programme, WIPO is the natural focal point for discussion on international copyright issues and more largely on creativity in the twenty-first century. This calls for more active engagement by the Organisation. It calls also for more active dialogue with all stakeholders to make our mission more



attuned to the collective consciousness of the international community and to win the battle for public opinion.

A searching, international inquiry is called for - at the intersection of copyright, digital technology and business - to determine the best ways to promote creativity, and to enhance access to creativity, in a complex and dynamic environment.

**Derek Wyatt is MP for Sittingbourne and Sheppey. He is stepping down at the next election**

***A Complete Re-think on IP-Copyright-Patent Law***

I find it hard to reflect on copyright without also examining its brothers and sisters which include intellectual property, digital rights and patent law. I no longer think you can discuss copyright in isolation.

I have been a huge fan of the work of Larry Lessig at Harvard University; he has successfully sought to add a very substantial formalisation of copyright under a creative commons licence. I hope he can hear my standing ovation for his magnificent efforts.

I regret we have such complex patent laws which were supposed to protect the inventor but which have grown topsy-turvy and become such a pain that many no longer seek their protection. I have been struggling to understand why patent laws only protect the inventor for five, renewable to a maximum of 20, years whilst a writer keeps his or her copyright for 70 years after death. I was not surprised at the campaign by our musicians and composers to ask for the same rights as our authors.

My real concern is that in this digital age, my own intellectual property has been taken without my permission and certainly without a fee by so many social networking sites who have then sold them on to advertisers and polling companies. These are our rights and should be enshrined in human rights legislation.

It will therefore come as no surprise that I favour a complete re-think on IP-copyright-patent law. My own Government continually fudged it whilst I was an MP (1997-2010) as arguments raged between government departments as to whose responsibility it was. It was ever thus...tiny-minded civil servants serving themselves not the creative community. Alas, I am not hopeful that if there is a new Government on 6 May 2010 that they will have this uppermost in their minds. We shall all be the poorer for it.

For further information, contact

[Copyright2010@britishcouncil.org](mailto:Copyright2010@britishcouncil.org)