For a progressive agenda for innovation and creation

Results of Greens/EFA call and second phase of consultation

Important preliminary note:
the views expressed in this document do not reflect the Greens/EFA position but the one of the authors of the respective submissions.

We publish here the responses to the call launched in July 2012. We want to say a great thank you to all participants for their detailed and inspiring contributions. They are of great help to our reflection and to the building of a positive agenda on innovation and creation.

We are convinced that it is critical to reflect politically on the consequences of the changes introduced in our society by the Internet and new technologies. Information and knowledge became central in the organising of many human activities and in the economy. By addressing the issues related to the control of and the access to information and knowledge and by designing need approaches for their management, we believe it is possible to promote a more transparent, fair, democratic and ecological society. As Greens/EFA we want to protect the users of the Internet and their fundamental rights, but we also have the ambition to tackle issues related to the way society is organised. Creation and innovation depend on how knowledge and information are managed, while they can considerably benefit from the Internet and the new technologies. Their blooming can also play a key role in making society a better place.

The proposals that we received have been ordered according to different sections to facilitate the reading, but note that sections are only indicative. Contributors had the possibility to make their post anonymous; some did. Some people contacted us to discuss this call but did not send actual submissions. They will now have the opportunity to do so.

Indeed, **we decided to adopt a position paper on this issue before the Summer of 2013. We are therefore launching a second phase of consultation, which will allows us to go further into the details of proposals or to explore new domains and topics that have not been exposed yet.**

Any input is welcome. We are interested in changes in laws (contract law, competition law, financial law, intellectual property law, etc.), the design of new legal tools, new financing mechanisms, pilot projects or experimental initiatives. Help us think outside of the box.

Content of the note:

Section 1 - Transparency of "intellectual property" rights and facilitation of knowledge exchanges

Repository of copyrighted material

S1• Put forward a proposition of a global repository. Global repositories for all digital content would ease any licensing procedure, and thus facilitate innovation of services that are based upon such content. It is our opinion that such a repository would also promote and encourage standardized data and meta-data. This would again boost competition through lowered switching barriers, as long as all data would be transferrable to another service. It could also be a factor for lowering the threshold for analogue users, as the change over to the digital arena would be less challenging.

---From Thomas Nortvedt for Consumer Council of Norway, Six concrete, but non-exhaustive or finished proposals for a better administration and use of intellectual property, 5/6

S2• Works must be subject to an obligation for deposit in an archive in a format that will ensure public access after the expiration of the extended term of protection.

---From Trans Atlantic Consumer Dialogue (TACD)

Registration of copyrighted material

S3• Compulsory registration or copyright 2.0: Renowned legal scholars in many countries have searched for limited modifications that could correct the main perverse effects of the present framework:

- the captation of copyright benefits by players who do not contribute to future creative activity (heirs, managers of stock of copyright, those assignees who have little consideration for the rights of authors and artists),
- the multiplication of orphan and out-of-publication works,
- the scarcity and weakness of the public domain for some media, and limitations to its accessibility and its use.

Part of these efforts converged on a proposal for rendering the benefit of the economic rights part of copyright[1] dependent on a compulsory registration of works by their authors. This registration would be valid for a reconducible limited period (a few years). This proposals faces some difficulties: its requires a modification to the Bern convention[2] and may be rejected by digital authors who are littled inclined to formalities. The commercial exploitation and in some cases reproprietarization of their works would become possible when they abstain to register them.

With a focus more directly connected to the digital world, Marco Ricolfi proposed a copyright 2.0 model, according to which works would be placed by default under a regime similar to a Creative Commons licence, except when their author would opt for the classical model of copyright. To prevent the risk mentioned above of undesired commercial exploitaiton or possible reappropriation, the licence could be of the By-NC ou by-NC-SA type, permitting reuse, but submitting commercial exploitation to an authorization. Both approaches (limited duration registration and copyright 2.0) can be combined, as suggested by Marco Ricolfi himself. The adoption of copyright 2.0 would not dispense from the recognition of non-market sharing of digital works between individuals as this right can not depend on the will of a particular author, it is a direct consequence of the fact of having published a work in the digital sphere. However, copyright 2.0 would provide an elegant solution for remix rights (fair use type of rights such as quotation, parody, etc. remaining of course applicable even in the case of opting for the classic copyright).

---From La Quadrature du Net, France. See: http://paigrain.debatpublic.net/?p=5462&lang=en

[1] And not moral rights such as attribution or divulgation.
[2] The Stockholm protocol – which the US ratified in 1988 while they lived before under the regime of compulsory registration – forbids formalities as a condition of exercising copyright.

S4• **Registration of copyrighted material:** In order to avoid orphan works and to facilitate authors' remuneration, within a time frame of 5 years after the production, registration of copyright work should be compulsory for authors to enjoy commercial exclusivity. Unregistered work after 5 years would fall in the public domain.

---Anonymous submission

Bring transparency to the patent jungle

S5• Il est essentiel de développer des **outils afin de faciliter l'identification des droits de propriété** intellectuelle intervenant dans un champ ou dans le contexte d'une recherche, ainsi que leur acquisition, cession ou transmission selon les cas et les besoins des acteurs.

---Anonymous submission

S6• L'Europe doit promouvoir le développement de nouveaux outils d'information et de transparence sur les droits de propriété intellectuelle destinés à permettre aux acteurs de la recherche publics comme privés (et notamment les PME) de disposer des éléments leur permettant de s'engager en connaissance de cause dans la recherche et l'exploitation des inventions, dans l'acquisition de droits de propriété industrielle et dans la valorisation de la recherche. La transparence des prix, le développement de méthodes d'évaluation de la qualité des titres de propriété intellectuelle au niveau européen, ainsi que l'élaboration de référentiels communs sur les transactions portant sur les brevets sont parmi les moyens à mettre en place.

---Anonymous submission

S7• In the context of the fast proliferation of "intellectual property" rights, the Internet and digital technologies can allow greater transparency in the portfolios of "intellectual property" rights and in their management. New tools, such as patent and license registers but also the development by public institutions of licensing templates, are needed to facilitate and improve the identification, sharing and exchanges of such rights. Such information and transparency tools can improve the possibility for SMEs and public institutions to actively participate to innovation and develop inventions. The transparency of the costs and transactions are a necessity to make sure that "intellectual property" rights to not hamper innovation. They must be developed at national and EU levels.

---Anonymous submission

S8• The assessment of the quality of "intellectual property" assets and the accessibility to such information are determinant to avoid the increase in the number of bogus patents used as defensive weapons to block competition and patent thickets in technological fields that are important both economically and socially.

---Anonymous submission

S9• **Create a European Patent Licensing Facility**

1. Wide-ranging change in the knowledge-based economy calls for urgent EU IP initiative:

The dissemination of knowledge, and the evidence that innovations arises from combinations of existing inventions (as it has been underlined for KET technologies) means that the production and exchange of inventions are now the driving forces for job creation and economic growth.

In this regards Europe plays a small part in the evolution of the IP market, which has developed mostly in the US and Asia and the economic features of the so called knowledge "economy" are highly incomplete. In fact patent "markets" are opaque and asymmetric as they present unequal access to information, high search costs, uncertainty of transactions, dominance of large actors, secrecy of price formation, and this obvious market failure penalises especially European SMEs and PROs.

2. Knowledge economy lacks its very foundations:

Knowledge economy will remain an “empty concept” as long as it could not provide the same functions as those that have allowed the growth of industrial economy, that is:

- Meeting place for supply and demand for inventions, in order to promote the dissemination of knowledge and inventions,
- The possibility to invest directly in intellectual property asset to enhance innovation production and commercialization,
- The ability for commercial and financial actors to cover risks associated with intellectual property and inventions in order to encourage further investment in the field.

3. An efficient EU patent license market is urgently needed :

The top priority is to offer EU innovation players, and especially SMEs and PROs, a transparent and secure access to acquire and diffuse invention and IP right, i.e. to create a specific market mechanism which will provide following essential functions:

- Matching supply and demand (search patents to license, prospect potential interested enterprises…)
- Bundling relevant patents for industrial users
- Provide the exact legal status of each patent (ownership, validity, encumbrances, intent to license…)
- Quality rating processes give potential buyers objective assessments based on the intrinsic features of the patent
- Work with standard contracts clauses and/or standard information sheets so as to secure references for licensors and licensees
- Offer insurance services and products to cover the different risks (validity, accuracy, litigation…)
- Disclose the price of past transactions to improve the ability to anticipate the value of assets (in the same conditions as in many other markets)

The proposal submitted to here is then to create a “European patent licensing facility” composed of:
A « market place » operated by a market operator – as IP exchanges need an active process.
The main functions of the market operator will be to:

• Acquire rights on patents mainly through licenses with sub-license rights; most of the time ownership of patent will remain unchanged,
• Bundle and invest in maintenance and commercialization: operator will take three critical tasks: maintaining the patents, aggregating IPR; marketing and commercializing these clusters of patents. (Therein rest the essential financial needs of this operator).
• License on a non-exclusive basis mainly (but will be sufficiently flexible to not exclude other forms of commercialization).

A set of tools and services which will give SMEs and PRO access to the market (Smart worlwide data basis, transparent information on price and conditions of the transactions, patent rating system for decision making, standard contractual clauses, insurance products…)

4. Impact and benefits for Europe

The implementation of a license patent market accompanied by the appropriate tools and procedures will have structuring effects on the entire knowledge European economy:

• It will increase circulation of inventions and ability to cluster patents, and thus enlarge innovation capacity of European economy;
• It will lead to better access to exchange, acquisitions, commercialization, for SMEs and PROs and give SMEs a real choice between monetization and exploitation of their invention
• It will reduce the costs of transactions
• It will simplify and secure contractual procedures
• It will mitigate risks for patent infringement through allowing the simple acquisition of the necessary patent rights so to give freedom of operate to companies
• It will bring extra resources to research
• It will make the production of inventions the entire status of an economic asset. The knowledge economy will fully enter into the economic sphere, and makes its participants, active

economic agents, creators of innovation, jobs, and value.
• It will lead to the selection of the most useful inventions and eliminate patents of mediocre quality

This proposal does not intend to crowd-out other ways to monetize and exchange patents. It is an additional instrument to facilitate the establishment of a well-functioning EU IP market.

---From Patrick Terroir, Caisse des dépôts Propriété Intellectuelle*, France / Europartenaires*

Socially Responsible Licensing (SRL) or Equitable Licensing

S10• SRL encourages the nonexclusive or conditional licensing of patented technologies. The rationale is to generate the highest possible social benefit from publicly funded research. SRL could be the standard model for publicly funded biomedical research.

---From Trans Atlantic Consumer Dialogue

S11• Global Access Licensing as an instrument to ensure equitable access to public-funded research results: Currently, in the biomedical field, public research institutions patent their discoveries and transfer their knowledge to pharmaceutical companies for further development and exploitation. Here, all rights over further product development are given up by the research institution and limited to that specific licensee, normally a recognized pharmaceutical company or a small or medium enterprise (SME).

Within this current model of technology transfer, public research institution cannot ensure that their research results are used to the benefit of global health and that patients in need are granted affordable access to essential medicines. Specifically, licensees are granted a monopoly over publicly generated knowledge and can sell the final product, be it a therapy, a medicine, a diagnostic or a vaccine, at a price of their choice due to a lack of generic competition.

As a result, while some European taxpayers end up footing the bill twice (first by funding the initial research and subsequently by over-paying for a biomedical product), others simply cannot access some of these essential biomedical products because they have to pay for it out-of-pocket due to lower reimbursement coverage by health insurances (this is namely the case in eastern EU member states) or no insurance at all (as is the case in developing countries).

In recent years, more than 40 major research universities worldwide – including Harvard, Yale, Duke, the University of California and the University of British Columbia – have committed to implement innovative approaches to licensing.

The instrument of “global access licensing” (also known as “equitable licensing”, “humanitarian use licensing” or “socially responsible licensing”) is intended to ensure maximum uptake of public research results in resource-poor settings. One of the major components of this approach is to issue non-exclusive licenses for certain geographic such as low and middle income countries.

This enables producers in countries like India, Brazil, China and South Africa to manufacture affordable versions of public-funded, newly discovered medicines for neglected populations. Global accessibility of such products is thus significantly enhanced.

Texts of several open access licensing models used by these universities are available online, including:

1. The “Global Access Licensing Framework” developed by UAEM Students
http://essentialmedicine.org/sites/default/files/archive/GlobalAccessLicensingFrameworkv2.pdf

2. The “Statement of Principles and Strategies for the Equitable Dissemination of Medical Technologies” developed by the Association of University Technology Managers (AUTM)
https://www.autm.net/Content/NavigationMenu/TechTransfer/GlobalHealth/statementofprincliples.pdf

UAEM believes it is important to recognize that one of today’s most innovative and successful

economic sectors – the information technology sector – has long embraced R&D models such as open-source and collaborative product development, open access licensing, and patent pools.

When IT innovators in the Americas and worldwide first began exploring these mechanisms, they faced many of the same objections heard in response to a progressive agenda for knowledge ecosystems today: that innovation can only be driven through strong IP protections; that open knowledge approaches undermine traditional product development; that existing R&D models are the best of all possible worlds and cannot nor should not be supplemented or improved upon. Today, these objections have been dramatically disproved by the success of open-knowledge mechanisms in spurring impressive technology-sector innovation and growth.

The time has come to apply these same innovative approaches in the global health arena, for the dramatic benefit of neglected populations worldwide.

---From Lukas Fendel, Universities Allied for Essential Medicines Europe (UAEM - EU)

S12• When Governmental or EU research programs are directed towards tackling major societal challenges (health, climate, biodiversity), exploitation, transfer and licensing of results shall take place according to the principles of Global Access Licensing, to ensure maximum uptake of innovative solutions in the best public interest, and to foster accessibility of research results to those who are affected. Such licensing and dissemination practices may include the use of non-exclusive licensing as a standard procedure, the implementation of “differential pricing” or “non-assert policies”, the specific obligation of the licensee to grant direct supplies to affected populations, and other tools.

Note: Exclusive licensing in many cases hinders competition and limits accessibility of products to the very taxpayers who funded public research projects through their taxes beforehand. As a consequence, the United States National Institutes of Health (NIH) in their licensing policies promote the use of non-exclusive licensing: "NIH seeks to ensure that a licensee obtains the appropriate scope of rights necessary to develop a potential application of the technology. This ensures that as many companies as possible can obtain commercial development rights, resulting in the concurrent development of many potential applications. This is accomplished through: Negotiating non-exclusive or co-exclusive licenses whenever possible. This allows more than one company to develop products using a particular technology, products which may ultimately compete with each other in the marketplace. NIH recognizes that companies typically need an exclusive market position to offset the risk, time, and expense of developing biomedical diagnostic or therapeutic products, however, companies do not necessarily need to achieve that position by exclusively licensing a government technology used to develop that product. Instead, they frequently are able to add their own proprietary technologies to the technology licensed from the government to ultimately achieve some level of uniqueness and exclusivity for the final product. (source: http://www.ott.nih.gov/policy/phslic_policy.aspx)

---From Universities Allied for Essential Medicines Europe

S13• Specific licensing models based on social obligations that are linked to taxpayer-funded research should be promoted for results concerning technologies with potential for tackling major societal challenges, for example the development into a novel medical technology (e.g. drug, diagnostic or vaccine) or technologies for fighting climate change.

---From Universities Allied for Essential Medicines Europe

S14• Any proposal for research with the potential for further development into a novel medical technology, particularly related to rare, poverty-related and neglected diseases, including treatments, vaccines or medical diagnostics shall include a consideration of strategies to ensure the immediate and widest possible dissemination and exploitation of and access to this technology, where lack of access to the technology would pose a threat to public health.

---From Universities Allied for Essential Medicines Europe

S15• In the context of its programs, and in case of innovation that is highly relevant to developing countries' needs, including in the field of global health, the Commission shall include in the grant

agreement licensing conditions to improve access and affordability of biomedical products in developing countries by means of 'humanitarian use licensing conditions'.

---From Universities Allied for Essential Medicines Europe

Patent Pooling

s16• Patent pools are agreements between two or more patent owners who agree to pool some of their patents in order to be able to license those patents to each others or to third parties. Patent pools facilitate patent licensing and knowledge circulation. Patent pools are well known in the area of electronics and telecommunications ; they can today be for great use in other fields such as pharmaceuticals. The use of such tool should be encouraged by EU institutions.

The Medicines Patent Pool (MPP) supported by UNITAID aims to simplify and improve voluntary licensing negotiations with the aim of accelerating generic competition to lower the cost of patented medicines and stimulate the development of fixed dose combinations and paediatric forms for HIV/AIDS medications. In order for this to function, companies need to license their HIV/AIDS products to the MPP.

---From Trans Atlantic Consumer Dialogue /Health Action International

s17• La mise en place de 'Pools de brevets' dans certains domaines et la recherche ouverte doivent favoriser le décloisonnement de la recherche en permettant la mise en partage de titres de propriété intellectuelle moyennant le paiement de compensations adéquates aux détenteurs de ses droits.

---Anonymous submission

s18• The setting-up of patent pools should be encouraged in order to allow the sharing of patented scientific data and increase collaborative efforts and R&D cooperation on specific technological needs, particularly in the context of European or global societal challenges. This mechanism would be particularly suitable for technologies that are both complex and expensive allowing the avoidance of the blocking of research due to patent thicket situations.

---Anonymous submission

Open Source research

s19• Open source research: Open Source mechanisms allow researchers to collaborate and share knowledge with an open approach to IPRs. A number of Open Source initiatives have been launched in the medical field over the last decade. Open Source research can be an especially useful tool for neglected diseases, antibiotic research, or for certain conditions that are not properly addressed in a purely market-driven model.

---From Trans Atlantic Consumer Dialogue /Health Action International

s20• Open source[3] could be seen as a matter of social responsibility. Commitment to openness means sharing technology and resources with communities worldwide to help eliminate the digital divide, create economic opportunity, and foster equal access to technology. Opening up a technology allows others to contribute innovations that individual companies might never have devised on their own, or at least much more quickly. Open source model has resulted in a large and efficient ecosystem of software innovation, freely available to society. But under the standard framework of accounting standards for financial reporting used in any given jurisdiction, general volunteer activity is not reflected on financial statements; current legal framework for financial reporting doesn't allow reporting on them like on other asset[4]. Thus, financial statements could be insufficient to assess properly the performance

[3] http://en.wikipedia.org/wiki/Open-source_software
[4] http://ideas.repec.org/p/pra/mprapa/23680.html

and the value generation potential of open source developments.

A sustainability or social responsibility report is an organizational statement that gives information about economic, environmental, social and governance performance; organizational capacity to endure is based on performance in these four key areas. A growing number of organizations are using corporate non-financial reporting, encompassing the social, environmental and economic impact of their operations, not just as an accountability tool but to drive strategy, unlocking new sources of revenue and growth. Reporting enables a robust assessment of the organization's performance, and can support continuous improvement over time; it also serves as a tool for engaging with stakeholders and securing useful input to organizational processes. EU Commission is backing CSR [Corporate Social Responsibility] efforts in Small & Medium enterprises[5]. There are several recognized international standard for CSR, most important are Global Reporting Initiative standards[6]. Global Reporting Initiative develops standards tailored for industries.

A CSR standard for open source industry would help gain institutional recognition. Open source developments are now an opaque and dull activity in company reports; these reports don´t fully reflect an activity that is the key to creation an innovation. Institutional recognition through sustainability reporting would encourage open source activities.

---From Jesús García García, Spain

Bottom-up innovation

S21• Imagination for people is a platform that aim to promote bottom up innovation by detecting and showcasing innovative social projects, connect project leader with others, give them tools to self organise. Imagination For People is powered by a set of free components licensed under AGPL and Creative Commons. More information @ http://imaginationforpeople.org/en/

I'm not part of the organizing group behind the project, but I follow it closely and think it 's worth for you to check it.

---From Lilian Ricaud

Open access publishing

S22• Researches funded through educational institutions should be published under a format that allows sharing and reuse.

---Anonymous submission

S23• Educational institutions and communities should use educational materials released to the public under a free/libre license, and publish such materials.

---From FCForum. See: http://fcforum.net/charter_extended

S24• The publishing of results is at the heart of scientific progress, but academic publishing has became monopolized by an oligopoly of publishers. Their journals do not pay for the research, nor for the scientific validation through the peer-reviewing of articles, but privatize the result by publishing them. The consequence is the very high prices of publications. Consequently academic research is extremely hard to access not only for a lay person, but also for universities, schools and libraries. This is of course also a problem for students, researchers and public institutions in developing countries. The good news is that other publishing models are possible: open access journals is not only more adapted to the current technological context but also more adapted to the spread of information and knowledge and to boost research.

[5] http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/sme/index_en.htm
[6] https://www.globalreporting.org

To publish results under open access should be a condition for a research to receive public funding. Research and innovation build on the capacity of scientists, research institutions, private firms and citizens around the world to openly access, share and use scientific information. To increase the circulation and dissemination of knowledge, free open access to scientific publications, already embraced in the research program of the European Commission, should apply to all scientific publications which receive public funding. Publications should be made accessible as soon as possible, and in any event within six months of publication.

---Anonymous submission

s25• Open Access refers to the provision of open access to published research. The high cost of medical journals and high data access fees prevent the sharing of knowledge and wide use of crucial health-related information.

---From Trans Atlantic Consumer Dialogue /Health Action International

s26• Sustainable Open Access Solutions for Scholarly Books:

- Specialist book length publications in the humanities and social sciences (including but not exclusively monographs) are experiencing a crisis. Print runs have declined by 90% and it is harder than ever before for academics to find publishers willing to take risks on new works. Books that are being published are failing to connect effectively with audiences. The current publishing system is failing both the producers and users of scholarship and neglects many of the opportunities associated with networked culture.

- This proposal suggests that open access (OA) licences have an important role to play in resolving the inefficiencies of the existing system for publishing scholarly books. However an OA model for books needs to be tailored to the needs of academic communities, and publishers, as they relate to books rather than to journals. A model that helps libraries work together to maximise the positive side effects of their purchasing decisions and which separates the fixed costs of publishing books from the variable costs associated with producing premium versions of content should be supported.

- Publishing is the original 'copyright industry' (Deazley, 2006). As with other copyright industries, networked digital technologies that make it possible for anyone with a computer and an internet connection to copy and distribute content on a global scale at almost no cost are turning it on its head (Montgomery & Potts, 2010). Changes in technology are making it possible for academic communities to work and communicate in new ways. What academics expect from their publishers is changing, as are the expectations of Universities, research funders and reading publics.

- There is a growing sense that readers outside academic institutions would benefit from access to published research outputs (Department for Business, Innovation and Skills, 2012). The internet is also making it conceivable that researchers located in the global south might gain greater access to existing stores of knowledge, and to processes of research and knowledge certification (Noronha, 2006).

- At the same time, the 21st century has also seen cuts made to library budgets, even at the wealthiest institutions (Ipsos Mori, 2009). In the United States university library monograph acquisitions only increased by 1% over the 24-year period from 1980 to 2004, whereas journal acquisitions increased by 180% (Association of Research Libraries, 2007).

- Although digital technology has, in theory, made it possible for more people to access content at no extra cost, fewer people than ever before are able to read the books written by university based researchers. Instead, print runs have declined by 90% (Willinsky, 2009) and prices have risen as publishers attempt to amortise costs over a smaller number of units.

- Monograph publishing is caught in a negative cycle: A shrinking market means that these books tend to make a loss, especially in the humanities and social sciences. Unsurprisingly, individual authors are finding it harder than ever before to 'get published' because it has become less commercially attractive to publish them (Wasserman, 2012).

Knowledge Unlatched:

- When thinking about a more efficient approach to paying for monograph publishing it is useful to return to the question of who currently funds this activity. Most of the money that now pays for monographs comes from library budgets. The role of libraries as the only purchasers of monographs is closely linked to the difficulties that this area of publishing has faced. However, it may also be a key advantage when it comes to developing a sustainable strategy for the large-scale publication of scholarly books on OA licenses.

- Libraries have long worked together in consortia to secure benefits for the academic communities that they serve. Librarians have also been key players in moves towards OA academic publishing. By changing the way that this market is coordinated and separating the fixed costs of publishing from the variable costs associated with producing premium versions of content, it may be possible to help librarians to maximise the positive side effects of what they are already doing: purchasing scholarly books. By helping libraries to form an international consortium that pays a single up-front fee to cover the cost of publishing a book on an OA license, and allowing publishers to retain the rights to sell physical copies or value-added e-book versions, all of the stakeholders in the monograph market will benefit.

- Knowledge Unlatched is a not-for-profit Community Interest Company that is piloting a global library consortium that will coordinate the shared, up-front payment of the fixed costs of publishing scholarly books to publishers, expressed as a Title Fee. In exchange, publishers will post titles online on an open content license. The Knowledge Unlatched model provides a financially sustainable way forward for libraries, publishers, research funders and authors who want to ensure vibrant markets for scholarly books that are fit for purpose in a digital age. More information can be found at: www.knowledgeunlatched.org

---From Lucy Montgomery, UK/Australia

Open Data publishing

S27• We support the free open access and re-use of scientific data produced or collected through the financing of government agencies and public institutions in order to tackle societal challenges where predominant global public interests are at stake.

---Anonymous submission

S28• Ethical principles, including the Helsinki Declaration, require that data produced or collected by publicly funded research conducted on humans, for instance in the context of clinical trials, are made public, irrespective of where they take place in Europe or elsewhere in the world.

---Anonymous submission

Public institutions publishing policy

S29• Any work (report, study, etc.) that has been financed by public money should be made accessible on line, in interoperable format, easy to share, and free to be reused. Any reuse of such material, whether commercial or non commercial, should be published and offer the same open license conditions as the original material and not lead to its privatization. Any work financed by public money that is already made freely publicly accessible online, even if there is no mention of a licence specifying these conditions of access, cannot be retrive from open access.

---Anonymous submission

S30• There should be no copyright on laws, government reports, political documents and speeches, or regulatory compliance information.

---From FCForum. See: http://fcforum.net/charter_extended

Section 2 - Reframing the policy focus

Refocus policy development on evidence-based approach

S31• The current EU IP system is broken and is largely seen as illegitimate by citizens. The questions are why is the current IP system broken and how do we fix it?

EU IP law is not adapted to the digital age and that this leads to a disrupted relationship between creators and consumers, allowing intermediaries to strangle innovation. The EU needs clear and flexible intellectual property rules that meet consumers' and authors' expectations in a digital, borderless world.

---From Joe McNamee, Edri, Recommendation 1/6

Make access to culture and knowledge the core of policy making

S32• Access to content in the EU varies across the EU. What is accessible in one member states cannot always be accessed in another, if it is, only at vastly different prices. Music streaming service Spotify is available in some EU countries, unavailable others and available but restricted in still more EU countries. This runs counter to the notion of a single market and signals a clear need for intervention either through frameworks for cross-border licenses or expansion of exhaustion rules. Legislation should fit the consumers' expectations. This will only be accomplished when rightsholders embrace the digital environment and the possibility offered by new products and services. This would allow the development of a better access to legal content online and of more realistic prices.

---From Joe McNamee, Edri, Recommendation 5/6

Section 3 - Reform and harmonization of the current copyright system

Preserve and enforce the right to refer to existing publications

S33• The potential of the Internet and the Web lies in great part on "the possibility to make accessible, for instance through a link, any digitally published contents, provided one knows its URL. This possibility is the contemporary equivalent of referencing published contents. Referencing accessible contents through links is an essential condition of the freedom of information and expression. (...) Some right holders developed a very surprising theory according to which link or reference directories (such as BitTorrent trackers or servers providing links for P2P file sharing under other protocols) would constitute an exploitation of the works themselves, even though they do not store nor reproduce these works. (...) The pretense of some sites that they are entitled to prevent Web users from creating deep links pointing directly on accessible contents are unacceptable attacks against the right to refer and the freedom of expression. (...) Legal cases repeatedly established the indissoluble link between publishing some content and the freedom of others to refer to it."

---Quotes from La Quadrature du Net, France. See: http://paigrain.debatpublic.net/?p=5462&lang=en

Right of quotation

S34• Quotation, defined as the extraction of part, but not the entirety, of a work should be free and permited in all cases as a vehicle for the democratic development of the information society. This must apply in all cases in which the material quoted has already been made public in advance, whether it is quoted for educational or scientific reasons, for purely informational or creative purposes, or for any other purpose whatsoever.

---From FCForum. See: http://fcforum.net/charter_extended

S35• Modernize the right of quotation: The treatment of sites providing directories of links associated with the partial reproduction of contents should be based on a modernization of the right of quotation and the suppression of the sui-generis database protection defined in directive 96/9/EC, maintained by mistake while it has proven to be economically useless and harmful for access to information.

---From La Quadrature du Net, France. See: http://paigrain.debatpublic.net/?p=5462&lang=en

Fair use

S36• More rights to authors and private persons, fewer rights to corporations. European copyright law needs to be extended by a broad notion of protected fair use.

---From Gergö Barany, Austria

Legalize remixing, mash-ups, shredding, etc.

S37• Create a legal environment that allows creation of remixing, mash-ups, sweding, shredding etc. The raison d'être for IPR is to urge and pave the way for social-cultural creativity, amongst others by trying to balance the interests of the singular creator to the interests of our society as a whole. One could argue that this balance is askew, and that regulation for the last 30 years has been amplifying this. It is our belief that cultural arguments should triumph economical and personal ones with the framework of intellectual property regulation. From a de lege lata point of view, such an environment could be found within the fair use-doctrine, but hardly within a regulation of private use.

---From Thomas Nortvedt for Consumer Council of Norway, Six concrete, but non-exhaustive or

finished proposals for a better administration and use of intellectual property, 3/6

Exceptions and limitations

S38• Effectively harmonise copyright, including exceptions and limitations: Copyright harmonisation is essential to legitimise the copyright system and to complete a digital single market. There is a lack of consistency across, and harmonisation of, the EU copyright system.

It is difficult for creators, innovators and users to know what is permitted and prohibited in EU

Member States, rendering the cross-border launch of services practically impossible. As a result, European innovators would be better off launching any exceptions-based service in the United States, where they will have access to a single market ruled by a flexible "fair use" exception and one-stop-shop for licensing with rightsholders. The lack of harmonisation in the EU creates competitive disadvantages for European companies, and it hinders European innovation. It is not an historical accident that the major global companies that rely on copyright exceptions are not European and have no significant European competitors.

Clear, modern IP rules are urgently needed. Protection of IPR is an important issue and therefore the EU needs a coherent approach. EU IP law must respond to the opportunities generated by technological development without the perpetual need of legislative revision. The new set of rules needs to reconcile creators and innovators with users.

---From Joe McNamee, Edri, Recommendation 6/6

S39• Exceptions to copyright for educational and research practices: Reproduction of copyrighted material when for educational and research practices should be allowed and should not require permission from the right holder.

---From Trans Atlantic Consumer Dialogue, TACD

S40• Exceptions to copyright for educational and research purpose: Three major transformations are at work in the area of education and research practices with the digital era: educational practices do not take place only into teaching organizations; the notion of "educational resource" is meaningless since education practices can and do use any work or information; and finally, students are more and more authors or producers of contents and not just users of pre-existing contents. The present European approach of limited, heterogeneous and facultative exceptions for education is so much unsuitable that the European Commission itself considered in its Green Paper on Copyright in the Knowledge Economy to make education exceptions compulsory in Member States and extend their scope.[7]

The exceptions must apply to educational or research practices, independently of the frame in which they are conducted. For instance, the educational exception can not be limited to teaching establishments, or to the fact that the participants are registered students. Open education, in all its form, must be included, as well as cultural practice workshops or educational activities in libraries and museums. However, education must remain distinguished from other use by the nature and aim of the activity and by the distribution of roles between teachers, instructors, tutors or mediators on one side and participants on the other side. Research must be defined by the nature and aim of the activity, as it is or should be for R&D tax credits.

The exceptions must apply to all copyrighted works. Nobody can decide in advance which work or content will make sense in an educational practice. The exclusion of "published education resrouces" from the educational exception in countries such as France would be laughable, it it were not the sign of an undue power of lobbies on public policy.

[7] One can refer to the comments from La Quadrature du Net on this Green Paper (http://www.laquadrature.net/files/LQdNcommentsonCopyrightGreenPaper_0.pdf)

Education and research exceptions must not require financial compensation by users. Every author knows that there is no use more rewarding (in all senses) than having one's works used in education, for instance.

---From La Quadrature du Net, France. See: http://paigrain.debatpublic.net/?p=5462&lang=en

s41• The 'book famine' experienced by visually impaired and print-disabled people needs to be addressed. The Commission and Member States must support the adoption of a legally binding international treaty introducing an exception to copyright rules to ensure that people with disabilities enjoy access to cultural materials in accessible formats, and that laws protecting « intellectual property » rights do not constitute an unreasonable or discriminatory barrier to access by people with disabilities to cultural materials.

---Anonymous submission

Expanding the scope of user's rights

s42• Introduction of the submission: In order to enhance the innovation and creativity in the digital era a reform of the current copyright system is essential. The system needs a total re-construction as has been proven through several projects completed or still under their way across Europe. The strongest examples include: the Hargreavese Report, the Lisbon Council Report on Intellectual Property and Innovation, the German project Internet and Society Collaboratory. In Poland we came forward with a list of detailed proposals to amend the Polish copyright law. However this cannot be done on the national level. Hence we propose the following considerations for the reform of the European law.

File sharing in the digital society became an every day activity and is perceived by many as essential in order to boost creativity and innovation. It is crucial that file sharing is legalized. We are however acutely conscious that a debate over the method of such legalization is heated and very far from closing. Further we suggest the following amendments to user 's rights:

- **Personal use**. Exclusive rights should not cover personal use, which should be explicitly extended (also with regard to software).
- **Public use**. Exclusive rights should be limited to allow libraries, galleries and museums to fulfil their public mission also with the use of the Internet. Educational institutions should not be obliged to apply for licenses in order to use copyrighted works in education with the use of information technologies (e.g. e-learning). One should also explicitly allow for Internet reprints for information purposes.
- **Orphan works**. Exclusive rights should be limited if a work is orphaned, i.e. the copyright holder has not been found despite appropriate search or cannot be contacted for other reasons. However, the search procedures required by the law should not be too time consuming or expensive. Certainly, private (non-commercial), informational, educational and scientific use of orphaned works should be permitted as in our proposal for all other types of works. Additionally, with regard to other uses, holder of copyrights to an orphan work should not be allowed to exercise the full scope of claims. Copyright holder should be able only to prohibit the use of the work or demand the payment of a reasonable remuneration, without any right to compensation.

  We recommend to return to the obligation of registering works in order to obtain protection or at least marking them with a copyright note or a relevant licence mark (as e.g. CC licenses).
- **Technical security measures**. User prerogatives should not be a legal fiction. The law should not protect activities involving technical restrictions of uses that constitute user prerogatives – e.g. blocking the possibility of making of private copies through Digital Rights Management (DRM) technologies. DRM removal or avoiding DRM in order to enable exercise user prerogatives (and, more broadly – use a work in-line with a license) should be explicitly allowed. They cannot constitute a violation of the copyright law or the penal code provisions.

---From Helena Rymar, Centrum Cyfrowe Projekt:Polska, CC BY. Proposal for changes in copyright law, 3/4 (http://en.centrumcyfrowe.pl/wp-content/uploads/2012/04/CCPP_ICM_copyright-reform-proposal.pdf)

The clause of the most favoured Intellectual Property framework for libraries in Europe[8]

S43• Inspired by The clause of the most favoured European women[9], this call is about monitoring, comparing and reviewing the different national legislations existing throughout Europe, concerning libraries, and more specifically Intellectual Property.

The objective of this call is to support each country in the European Union to adopt this clause in order to work towards a harmonised legislation based on the most progressive conditions for libraries and intellectual property.

The core ideas are:

- to compile the current European legislation (or lack of legislation) about libraries;

- to select the most progressive legislation existing in the countries of the European Union on core issues such as information law, intellectual property law, digitization of library collection, culture and information society;

- to advocate for each most conductive national working rules;

- to lobby with MEPs to adopt these into the European context;

- to draw on national associations for libraries and archives to promote the clause through debates that foster European cooperation.

This program aims to be a developmental leitmotiv for librarians, archivists and information specialists throughout Europe as well as a supportive programme to increase intellectual property awareness and strengthening a free public access to information.

As stated in the conclusion of the European Council of 28/29 June 2012, "[…] It is also crucial to […] modernise Europe's copyright regime and facilitate licensing, while ensuring a high level of protection of intellectual property rights and taking into account cultural diversity […]"[10].

Only an update of the current copyright framework allowing cross-border access to users, facilitating large-scale digitisation process and supporting libraries across Europe will guarantee free and public access to information.

---From Vincent Bonnet (Director), European Bureau of Library, Information and Documentation Associations (EBLIDA)

Reduce copyright terms and scope

S44• Today's copyright protection time — life plus 70 years — is too long and does not serve it purpose: to help authors to create and live from their work. Copyright protection time should be reduced and at least brought back to the lifetime of the authors. Calculations of the optimal term of copyright, calculated by researchers of the Faculty of Economics of the University of Cambridge, indicated around 15 years with a 99% confidence interval extending up to 38 years.

---Anonymous submission

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[8] The use of the word library and/or libraries consolidates libraries, archives, documentation and the information sector.
[9] English version http://www.choisirlacausedesfemmes.org/anglais.html
Deutsche Version http://www.choisirlacausedesfemmes.org/allemand.html
Version française http://www.choisirlacausedesfemmes.org/la-clause/le-livre.html
[10] http://www.european-council.europa.eu/council-meetings/conclusions

S45• The current length of copyright term might not be ideal from a socio-economical point of view. In troubled financial times, we should have the right environment and incitements to rethink the terms as well. It could be practically problematic to reverse these kinds of legislation, but a thorough study could help shape also other aspects of IPR.[11]

---From Thomas Nortvedt for Consumer Council of Norway*, Six concrete, but non-exhaustive or finished proposals for a better administration and use of intellectual property, 3/6*

S46• More rights to authors and private persons, fewer rights to corporations. Protection of copyrighted works should not extend beyond the author's death because that only benefits corporations, not people.

---From Gergö Barany, Austria

S47• Introduction to submission: In order to enhance the innovation and creativity in the digital era a reform of the current copyright system is essential. The system needs a total re-construction as has been proven through several projects completed or still under their way across Europe. The strongest examples include: the Hargreavese Report, the Lisbon Council Report on Intellectual Property and Innovation, the German project Internet and Society Collaboratory. In Poland we came forward with a list of detailed proposals to amend the Polish copyright law. However this cannot be done on the national level. Hence we propose the following considerations for the reform of the European law.

We are worried to observe a tendency of increasing the restrictiveness of the copyright system manifested by strengthening the protection and increasing the scope and effective period of copyrights.

We suggest:

- **Shorter protection period**. Consecutive amendments extend the period of protecting works and related rights and create new categories of exclusive rights. We postulate to radically reverse this tendency and shorten the effective period of exclusive rights.
- **Revision of the scope of the term "work".** We also suggest a revision of the term "work" which is currently extended to all types of creative activity in a very broad sense. We suggest a discussion on extending the catalogue of exclusions from the protection of the copyright, inter alia by excluding the "usable" works, such as data bases, maps, building designs, menus, directories, etc. from protection.

---From Helena Rymar, Centrum Cyfrowe Projekt:Polska, CC BY. Proposal for changes in copyright law 2/4 (http://en.centrumcyfrowe.pl/wp-content/uploads/2012/04/CCPP_ICM_copyright-reform-proposal.pdf)

[11] http://www.rufuspollock.org/economics/papers/optimal_copyright_term.pdf

Section 4 - Private copy and private use of digital copyrighted material

Make private copying a mandatory right

S48• During the last years, we have experienced confusion on what is legal and what is not. We have also seen examples of TV-distributors deleting or altering content on PVRs [Personal Video Recorder], due to changes in subscriptions. Paid-for content is deleted in a manner which would be unthought-of 30 years ago. Regulating private copying in such a manner would represent a much welcomed decrease in the elbow room for contractual regulation/EULAs, thus making the market place for copyright protected content a safer place for users.

---From Thomas Nortvedt for Consumer Council of Norway*, Six concrete, but non-exhaustive or finished proposals for a better administration and use of intellectual property, 1/6*

Regulate the Internet through collective rights management

S49• While it's easy to get approval for the use of music in a jukebox standing in a café (through Buma and Sena), exploiting a jukebox on the internet is nearly impossible. For every song one wants to use (or movie, or any other protected work) the approval of the individual record company (or similar right owner) is needed; an approval that can be withheld without any reason.

For this reason it becomes a nightmare to create a new on demand streaming service. Starting new business models will require approval of all music- and/or film companies. This troubles the development of a fast variety of content. No wonder new legal services take so long to develop or never see the light of day.

Most use of music on the internet could easily be arranged, if we choose to apply the offline practise of collective rights management to the online environment: just by treating websites like YouTube, Spotify and 22tracks as a radio station or café. This would stimulate new business models to come, such as new demand streaming services. This would lead to more competition between suppliers, better services for consumers, as well as a more diverse market space online.

Finally, the issue of peer-to-peer use remains; individual consumers exchanging files on a non-commercial basis; an unstoppable phenomenon. This practice, however, is comparable to the old system of private copying. To check consumers' private copy behaviour is as unpractical and undesirable as it is to check everybody's activities on the internet in order to discover whether they are downloading or uploading copyright protected works. Therefore it would be logical to consider non-commercial up- and downloading as private use[12], which should be allowed by law (or by voluntary collective rights management), provided that fair compensation is paid. For example this compensation could be fulfilled by the internet subscription.[13]

Opposing these rather obvious solutions, which have proven their value offline for many years now, are mainly European Directives. The European Copyright Directive states that digital on demand services are the domain of the individual right holder and the E-commerce Directive safeguards internet service providers and platforms from copyright claims.

However, European Directives can be changed. It is time to do so.

---From Erwin Angad-Gaur, Platform Makers. See also http://www.boek9.nl/files/2012/Artikelen/Boek9_nl_-_Erwin_Angad-Gaur_-_Regulate_the_internet_through_collective_rights_management.doc.pdf

[12] At this moment downloading in the Netherlands already falls under the private copy exception.
[13] To protect legal business models however the commercial facilitating of peer2peer use should remain prohibited; collective right management could possibly regulate facilitating websites.

Legalize private use of digital copyrighted material:

S50• Private use of copyrighted material, including its reproduction and sharing in the private sphere, when not connected to commercial activities and economic profit making, should be allowed and not require the authorization of the copyright holder.

---Anonymous submission

Establish legal recognition of non-market sharing

S51• It must be ensured that copying of protected content for private noncommercial purposes is legal.

---From Gergö Barany, Austria

S52• **The legal recognition of non-market sharing is a necessity**. Many approaches have been tabled by experts and NGOs: "exceptions to copyright, compulsory collective management, extended collective licences, etc. (...) The exhaustion of rights[14] is the legal doctrine according to which when one enters in possession of a copy of a work, some exclusive rights that previously applied to it no longer exist. It becomes possible to lend it, to give it, to sell it, and sometimes to rent it. The exhaustion of rights is not an exception nor a limitation to copyright, even though it was codified or described as an exception or limitation in some countries (e.g. in the US) through a form of rewriting of the past. Indeed, the exhaustion of rights defines situations where exclusive rights no longer exist."

The approach proposed here to allow the legal recognition of digital non-market "builds from the activities that justified the exhaustion of rights for works on carriers (lending, exchanging, circulate, in other terms sharing). (...) One is led to a definition of the exhaustion of rights for digital works that is at the same time wider and narrower than for works on carriers. Wider, because one has to apply exhaustion to the reproduction right, narrower because one can restrict the exhaustion of rights to non-market activities of individuals without weakening too much the cultural benefits. (...)

Of course at stake is "a precise definition of the perimeter of non-market sharing of digital works between individuals".

Indeed, although nothing in international treaties call for it, this directive in its article 3.3 restricts the scope of application of the exhaustion of rights. This article states that *"The rights referred to in paragraphs 1 and 2 [exclusive rights of authors, performers and producers of phonograms, videograms and cinematographic or radiophonic works] shall not be exhausted by any act of communication to the public or making available to the public as set out in this Article."* "Accepting to cancel the exhaustion of rights amounts to annihilate the elementary cultural rights of individuals to use as they wish what they have acquired. Recently, the European Court of Justice reached an important decision (Decision for case C-128/11, UsedSoft GmbH / Oracle International Corp. of 3 July 2012) that recognizes the exhaustion of rights for works obtained by downloading, though restricting it to a given file that one would not be authorized to copy but only to transmit under a number of constraints. (For a detailed legal analysis before the recent ECJ decision, see this paper of the Italian legal scholar Rossella Rivaro)."

---Quote from La Quadrature du Net, France. See: http://paigrain.debatpublic.net/?p=5462&lang=en

[14] First sale doctrine in the US.

Delineate non-market sharing

S53• To delineate the non-market sharing of digital works between individuals. In the years to come, the delineation of a non-market sphere of sharing between individuals of digital works will be a key policy issue. Such a delineation is of course a condition of recognizing a right for individuals to share most likely in association with putting in place a new contributive financing.

(...) Sharing between individuals is the act(s) by which a copy of a file is transmitted (by swapping storage devices, by making it available on a blog or on a P2P network, etc.) from a storage "under sovereign control of an individual" to a storage under sovereign control of another individual. "Under sovereign control of an individual" is obvious for a personal computer, a personal disk or a smartphone[15]. However this notion also extends to a remote storage on a server, when the storage space is under the control of the user and no one else, for instance for the storage space of an ISP subscriber or cloud storage when the provider has no control whatsoever on the contents of the storage. Sharing is non-market if it does not give rise to any income, direct or indirect (for instance advertising revenue) for any of the two parties. The notion of income is to be interpreted strictly, as monetary income or barter against a marketable physical commodity. In contrast, to enter into possession of a file representing a digital work that can in other contexts be marketed is no case an income.

---From Philippe Aigrain, France, http://paigrain.debatpublic.net/?p=4212&lang=en

[15] There are some caveats for the latter, where the device manufacturer or the telecom operator often retains some control on the device and its contents.

Section 5 - Right of the authors and management of rights

Respect the rights of all authors

s54• Students or participants to educational activities are not different from other authors and must enjoy their rights as any other author. "The notion of user-generated content is a fiction invented by intermediaries who wish to freely use material for their own purposes while giving no rights to authors and contributors.

---From La Quadrature du Net, France. See: http://paigrain.debatpublic.net/?p=5462&lang=en

Right of academic authors

s55• We believe that the rights of academic authors should be strengthened in the context of the contracts they sign with publishers - a research paper should always be owned by the author unless it has been commissioned and fully paid for by a journal.

---Anonymous submission

Increasing the author's freedom

s56• Introduction to the proposal: In order to enhance the innovation and creativity in the digital era a reform of the current copyright system is essential. The system needs a total re-construction as has been proven through several projects completed or still under their way across Europe. The strongest examples include: the Hargreavese Report, the Lisbon Council Report on Intellectual Property and Innovation, the German project Internet and Society Collaboratory. In Poland we came forward with a list of detailed proposals to amend the Polish copyright law. However this cannot be done on the national level. Hence we propose the following considerations for the reform of the European law.

Authors should be able to manage their rights independently.

We believe that copyright should not limit authors in management of their works.

We suggest the following changes increasing the authors' freedom:

- The obligatory intermediation of a collective management organisation should be excluded in the case of the Internet.
- Taking advantage of collective rights management should not exclude independent management (including granting free licenses).
- An adaptation of a work published in the Internet with the author's consent and made for non-commercial purposes should not result in the infringement of the moral rights of the author of the original.

---From Helena Rymar, Centrum Cyfrowe Projekt:Polska, CC BY. Proposal for changes in copyright law, 1/4 (http://en.centrumcyfrowe.pl/wp-content/uploads/2012/04/CCPP_ICM_copyright-reform-proposal.pdf)

Introduce a monetizing model as a compulsory licensing-model for authors

S57• Even though no author necessarily capitalizes on a publication of a video to e.g. YouTube[16], the publication itself can be lucrative for the publishing site, and at the same time be both illegal and fulfilling the fundamental reasons for copyright all together. A standardized monetizing model, based on sharing the income from the visited site, except for creations that are in defiance with the droit d'morale, could facilitate new creations and should be introduced.

---From Thomas Nortvedt for Consumer Council of Norway*, Six concrete, but non-exhaustive or finished proposals for a better administration and use of intellectual property, 4/6*

Use of protected work not commercially exploited

S58• For protected works that are not commercially exploited, the EU should evaluate mechanisms to allow use without the permission of the right owners, including uses that would be appropriate as an exception to exclusive rights under Articles 13, 14 or 40 of the TRIPS Agreement, or under the considerable flexibilities of TRIPS Articles 44.1 and 44.2, to limit remedies for unauthorized uses of works.

--- From Trans Atlantic Consumer Dialogue, TACD

Freedom of non-market collective use

S59• Non-market collective activities play an essential role for access to knowledge and cultural life. They take place for instance in libraries, museums and archives. Typical activities are the free-of-charge public performance of copyrighted works in sites accessible to the public; the use of digital versions of copyrighted works by non-profit organizations; providing reproduction means to users within non-commercial organizations; and libraries or archives giving access to digitised resources they have in their possession.

Today, such collective use takes place within constrained, heterogeneous and ill-adapted legal frameworks. Prejudiced views according to which in the digital world, collective use would harm sales to individuals lead right holders to use their prerogatives to prevent libraries from letting users access digital works. In a context where the non-market exchanges between individuals would be legalized, it would nevertheless be paradoxical if we do not recognize extended collective use rights in parallel.

To this effect, one needs to put in place the following measures:

- Non commercial performance of copyrighted works: creation of a non-compensated exception, through the transformation of the exception for public performance within the family circle into a non-commercial public performance exception.
- On-line non-market use of copyrighted works: moral persons developing not-for-profit activities must benefit from the same access rights than individuals within non-market sharing.
- Provision by libraries of reproduction means (including lending digital reading devices) to users: such use must be assimilated to private copies, even when there is a transmission to a distant facility.

---From La Quadrature du Net, France. See: http://paigrain.debatpublic.net/?p=5462&lang=en

Licensing and restrictions in use

S60• It must be made clear that US-style restrictions on sale of textbooks and other content ("this book is only for sale in country X") have no legal power in the EU.

---From Gergö Barany, Austria

[16] http://support.google.com/youtube/bin/answer.py?hl=en&answer=2490081

s61• Licences granted by authors to publishers should be limited by law to not more than ten years.

---From Gergö Barany, Austria

Legal requirements for fair publishing and redistribution contracts

s62• One must absolutely defend the rights of authors and other contributors to creative works against what copyright has become. Dozens of treaties, directives and laws similarly invoke authors to justify measures that despoil the great majority of them and restrict in parallel the rights of the public who appreciates their works. The recent French law on out-of-publication works (pending review by the Constitutional Court) is an extreme case. This law ignores and tries to prevent any form of non-market access, it centers solely on the commercial exploitation of out-of-publication works, submitting them to collective licensing managed by a collecting society dominated by publishers.[17] Authors are left only with the possibility to opt out of the system. The public is deprived of any form of non-market access to works, which is in reality a key purpose of the law as seen by publishers, in particular when orphan works are concerned.[18] This extreme case illustrates a much more general situation. A recent English bill goes exactly in the same direction.

One must renew urgently with the approach of Jean Zay.[19] In the digital era, one must impose equitable terms towards authors, contributors and the public, not just for commercial publishing but also for commercial distribution. The basis for these equitable terms, to be enshrined in contract law, would be:

- A separate contract for digital publishing rights, with a limited duration corresponding to the reality of fast-changing digital technology and usage.
- In the case of a mixed edition (paper or other carrier and digital edition), the rule of a return to authors of rights as soon as one of the modalities is no longer available (with a reasonable delay after notification by the author, at most six months). It is not acceptable for the simple availability of a digital version to make possible for publishers to keep paper editions out-of-print for as long as they wish.
- Forbidding distribution platforms to impose terms that exclude the non-market distribution of works by their authors.
- Minimum royalty levels for authors and other contributors in commercial exploitation of their work, taking in account the strong reduction of costs in digital publishing.

---From La Quadrature du Net, France. See: http://paigrain.debatpublic.net/?p=5462&lang=en

Collective rights management

s63• Authors/creators should always be able to revoke the mandate of collecting societies.

---From FCForum. See: http://fcforum.net/charter_extended

s64• Legal monopolies for collecting societies should never be possible. Authors should be free to become a member to any collecting society, irrelevantly of the country of settlement and the citizenship.

---Anonymous submission

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[17] The representation of publishers and authors is required to be at parity, which with the presence of heirs of deceased authors amounts to an absolute power for publishers.

[18] Fortunately the European directive on orphan works should preempt this.

[19] Minister of education in the French government who authored a Projet de loi du 13 août 1936, in which one finds this (my translation): "The author must no longer be considered as a property owner, but as a worker, to whom the society recognizes specific modalities of remuneration due to the specific nature of the creations arising from his labour. It must be recognized that the protection granted to authors is of the same nature that those granted by the labour law and civil law to all workers. It is under the flag of their work, and not under the umbrella of property that a new legal framework must be built granting authors, for their interest and the collective interest, the legitimate protection deserved by all members of the "Nation of the human mind" according to Alfred de Vigny's superb expression", Documents parlementaires – Chambre, J.O., p. 1707, quoted in Anne Latournerie, Petite histoire des batailles du droit d'auteur, Multitudes (5), mai 2001.

s65• Free competition among collecting societies should be permitted, as with all private entities. Legal monopolies for collection societies should be abolished. Eligible authors and artists should be free to register with each society those works they choose, while leaving other works unregistered, or registering them elsewhere.

---From FCForum. See http://fcforum.net/charter_extended

s66• An author should be allowed to register different work with different collecting societies, as well as to leave other works unregistered. A collecting society should not be allowed to collect money for a work that was not registered with it. Collecting societies should not be allowed to prevent authors from using free licenses.

---Anonymous submission

s67• The EU directive on collective rights management should impose to allow for a separate management for various types of rights, which will permit authors to regain more power on exploitation rights and the non-market dissemination of their works.

---From La Quadrature du Net, France. See: http://paigrain.debatpublic.net/?p=5462&lang=en

s68• Each member to a collecting society should have a right to vote during the general assembly.

---Anonymous submission

s69• Authors and editors should not be represented by the same entity, as in the days of vertical organisations. Each member should have the right to vote. One member, one vote.

---From FCForum. See: http://fcforum.net/charter_extended

s70• The existence of a censal vote system[20] connected to elections by colleges, often separating large benefiters from small, frequently leads to a coalition of publishers (or other assignees of rights), stock owners of rights and heirs of deceased artists holding the majority of votes, with authors or artists contributing to future creation having only a minority of votes. The principle of one person/one vote must apply.

---From La Quadrature du Net, France. See: http://paigrain.debatpublic.net/?p=5462&lang=en

s71• Non-attributable money (whether due to the impossibility to locate authors or as the result of levies) should not be managed by collecting societies but by state agencies dedicated to culture for the promoting of creativity and creation.

---Anonymous submission

s72• Private collecting societies should not manage non-attributable levies. Any amounts that are not attributable to particular authors should be managed by the state for the purpose of promoting the creativity of society as a whole.

---From FCForum. See: http://fcforum.net/charter_extended

[20] Vote according to wealth, property or other assets.

s73• The treatment of the "undistributed" sums due to too small amounts. Sums that are not distributed due to a difficulty in localizing the benefiters, or because funds were collected for works on which the society did not hold management rights are either stored or redistributed to the other members, prorata of their income, which amounts to a significant subsidy of the wealthiest by the poorer or the public. This is not compensated by the measures in favour of small recipients that have been put in place by some societies.

---From La Quadrature du Net, France. See: http://paigrain.debatpublic.net/?p=5462&lang=en

s74• A total lack of transparency on the statistical distribution of the redistributed sums (ranked sums by decreasing order, distinguishing between sums redistributed to living artists and those distributed to assignees and heirs) make the collecting societies instruments of an unfair distribution of the collected funds. This data[21] must be of compulsory publication and auditable by representatives of authors, artists, consumers and users.

---From La Quadrature du Net, France. See: http://paigrain.debatpublic.net/?p=5462&lang=en

s75• Reform remuneration systems for creators, particularly regarding collective rights management.

EU policy should concentrate on constructing a legislative framework that users will respect.

Transparency and choice are vital to such legitimacy. The legal system must facilitate the facts that creation relies on reuse, that consumers can also be authors and that authors sometimes prefer non-royalty-based remuneration based. It is also important for the EU to have a coherent strategy that deals with the use of new technologies – for the good of users, creators and industry. From this perspective, the goal of the progressive agenda for innovation and creation should be to protect creators, innovators and consumers.

---From Joe McNamee, Edri, Recommendation 2/6

Make orphan works available

s76• The directive recently adopted at the EP (Certain Permitted uses of orphan works (2011/COD)) provides an unsatisfactory mechanism. One of the worse aspects of it is that it subjects public institutions such as libraries and museums to a financial risk that they are not in a position to face: indeed they are required to pay compensation to any rightsholder who was not identified and localized during the diligent search that concluded that a piece of work was orphan work, but who reappears and claims ownership. However, one positive aspect of the directive is that its leave a lot of room for interpretation to national governments in its implementation. For instance remuneration of reappearing rightsholders that couldn't be identified and localized could be limited to a symbolic payment that wouldn't endanger the finance of libraries and museums.

---Anonymous submission

s77• Library and archive rights to make available orphan works free-of-charge and with wide use rights. One has only to put in place an extended collective licence mechanism, giving libraries and archives as well as any other player whose mission it is, the freedom to make orphan works available in digital form, and to every person the freedom to access them and use them at least without commercial aim. This scheme would not require payment by users, but could be associated with a guarantee fund (financed by the State or parafiscal resources) which would protect users against claims of reappearing right holders (in general publishers or heirs of deceased artists). In no case should there be any compensation for use prior to the reappearance of right holders. Scandinavian countries have put in place schemes of this type, and their compatibility with the European legal framework does not raise

[21] It is not the identity of recipients that matters for the general interest (except from a tax viewpoint) but rather the degree of concentration of income and the proportion allocated to living authors and artists.

any doubt.[22]

On the bright side, it aims at making possible for libraries and archives to make them available to the public.[23] However, the present text requires a “diligent search” before an user can consider a work to be orphan. This entails a significant legal uncertainty, and may lead libraries (often risk-adverse) to abstain from exerting their rights.[24] It puts in place compensations for use of works before the reappearance of right holders. This risks leading to ambush behaviour, where some right holders would let use develop and when it it becomes significant ask for compensation. It lists limitatively the permitted uses, including forms of use that are not subject to copyright such as indexing and cataloguing. Finally, the list of possible beneficiaries is limited.

Despite these flaws, the European text is infinitely preferable to the French law on out-of-print works, that is entirely focused on commercial exploitation rights under a collective management scheme, despoils authors by leaving them only with an opt-out possibility, de facto forbids non-market uses, and deprives the public from the access to orphan works. Orphan works should be treated completely separately from out-of-print works. For the latter, it is authors who must be empowered, through the imposition of a separate contract for digital publishing and through a systematic return to authors of rights in case a paper book is no long in print.

---From La Quadrature du Net, France. See: http://paigrain.debatpublic.net/?p=5462&lang=en

[22] Cf. Allard Rignalda, Orphan Works, Mass Rights Clearance, and Online Libraries: The Flaws of the Draft Orphan Works Directiveand Extended Collective Licensing as a Solution.
[23] One can refer to the present state of the compromise text in the European Council and this critical analysis by by Paul Keller for the COMMUNIA association.
[24] Obviously, one can not permit to consider as orphan any work arbitrarily. Compulsory registration as described in point 12 will solve the problem only in the very long-term. One must thus define simple conditions, if possible implementable through an automated process, that authorize to consider a work as orphan.

Section 6 - Other patent issues

Harmonisation of substantive patent law in the EU

S78• Currently national substantive patent law is not harmonised within the Union, just de facto streamlined by other non-EU actors like the controversial European Patent Office technocracy beyond democratic controls. This is why the community patent and the patent court are bound to fail or at least become instruments not actually governed by the EU community method but kind of cockoo's eggs.

By harmonisation within the EU could unify the way the examination process works in the member states, improve best practises in patent examination via delegated acts and end the controversial European patent office governance with its extremist drift to unlimited bio patenting.

---From Marina Schäfer, Germany

Software patents and their clash with Freedom of Expression

S79• Software patents are censorship and restraint on freedom of expression of software writers, and this is an anathema in a free society, and a violation of the Fundamental Rights. The fact that software patents are a severe violation of the rights of speech of programmers has not yet been widely recognized; this is perhaps in part because most lawyers, judges and politicians are still insufficiently knowledgeable regarding computers to realize that writing a computer program is in fact a form of writing, not significantly more arcane than writing music, mathematics, scientific papers, or for that matter, laws. All of these forms of speech, including writing programs, deserve full protection under the Fundamental Rights.

http://philsalin.com/patents.html
http://www.softwarefreedom.org/resources/2009/bilski-amicus-brief.html

---Anonymous submission

Section 7 - Need of competition in the digital distribution

A preventive competition policy against distribution monopolies and their abuse

s80• Digital technology has enabled powerful non-market distribution channels and it has given an easier access to publishing and distribution to individuals and small-size organizations. Meanwhile, one has witnessed a considerable reinforcement of distribution monopolies or oligopolies that appeared during the cultural industry era. If the fusion between Universal and EMI is authorized, the resulting group will control 60% of licensing for distribution in volume for musical recordings in the large European countries. Apple controls 70% of the digital distribution for musical recordings. Amazon and Apple hold each a monopolistic control on one of the two segments of eBooks distribution. Netflix has a strong dominant position in the digital distribution of movies in those countries where it is active. Often integrated vertically from publishing to final distribution, entering in agreements with telecommunication operators, these groups:

- impose the economic terms and the conditions of distribution to authors and small publishers,
- restrict usage terms for the public often beyond what is desired by authors and artists,
- block in part the evolution towards an increased diversity of attention to works which should develop in the digital era.

Monopolies or dominant positions in physical distribution or live performance programming, such as LiveNation's for concert tours or Amazon's for paper book, record and DVD sales restrict the ability of artists and authors to cash on the notoriety they have obtained on the Internet.

This situation has developed through a major failure of competition policy. **Efficient competition policy must be preventive**, in particular in the digital world where once installed, dominant positions are incredibly difficult to challenge, due to network effects. In particular, **it is important that any distribution platform can distribute contents under terms that are as favourable than those conceded to its largest competitors. Compulsory collective licensing for digital distribution is the natural instrument to obtain this result.** However, one can not stop there. In France, a recent law has been adopted to impose a unique price for eBooks, that can be set by the publisher. It is incredible that the government advisers and the MPs did not understand (or feign to not understand) that this would lead to results exactly opposite to those that were claimed to be aimed at. It will permit publishers to agree among themselves on keeping the price of eBooks high and implementing a policy of higher prices for big sellers. This will institutionalize an unfair competition between these large publishers and their smaller competitors. By presenting the eBook as a substitute to the paper book and not a complement, one will undermines their potential synergy, that rests on a low price for eBook and on combined offers. Concerning the positive effects on bookstores that had motivated an earlier law on the unique price of paper books, they are non-existent for eBooks, despite efforts of some alternative publishers to reintroduce bookstores in the value chain of eBooks.

---From La Quadrature du Net, France. See: http://paigrain.debatpublic.net/?p=5462&lang=en

Pluristic media

s81• TACD calls upon governments to:

- Assess the impact that the growing concentration of Internet firms will have on the growth of the Internet and the future of the Internet economy.
- Ensure that competition law is enforced paying particular attention to the increasing vertical integration in this sector.
- Establish privacy and consumer safeguards as a central requirement in the context of merger review for Internet firms.

--- From Trans Atlantic Consumer Dialogue, TACD

Section 8 - Technological environment

Effective norms for enforcement of network neutrality

s82• For digital culture to deliver its potential, it must build on an infrastructure that is up to the challenge. We often take for granted what was actually a contingent opportunity: for 15 years, we were able to use reasonably open personal computers and a more or less neutral Internet.27 As information technology and the Internet disseminate in new domains and new use develops, these properties of openness and universality are seriously endangered by:

- the multiplication of devices that are controlled by proprietary players (in particular for mobile devices);
- the recentralization of services and applications;
- the attacks against network neutrality: discrimination against protocols, applications or sources;
- filtering and censorship;
- closure of devices in order to make it impossible or more difficult to go around these discriminations.

Network neutrality must now be understood as an exigence for all the chain that goes, for instance, from a mobile device such as a smartphone to a server operated by an end-user or under his or her control. European policy-makers and regulators made the disastrous choice of an attentist policy, while the evidence of harm is already present and acknowledged. Such an attentist policy amounts to accept the capture of the Internet as a common resource by the first comers or the more powerful. Up to now, only the Dutch Parliament (and in other geographic zones, Chile and Peru) adopted a network neutrallity law.

Maintaining and expanding a free common infrastructure, combining open devices and a neutral Internet, will require all the attention of the policy-makers and each of us. The lobbyists and the tears of the dominant operators of mobile telecommunication have up to now obtained the leniency of policy-makers. Let's not forget that they are responsible for a true predation on the budget of disavantaged households. The orientations of the European growth plan, elaborated in total improvisation, include a chapter on "smart networks" which should ring all the alarm bells. What we need are networks which it is smart to build, that is networks that stay efficiently stupid so that users can develop their creativity, their innovations, their sociality and their democratic processes without asking for permission to gatekeepers.

[La Quadrature du Net. See: http://paigrain.debatpublic.net/?p=5462&lang=en]

• Right to access neutral networks[25] The TACD calls upon:

- Governments to recognise, promote and encourage principles of net neutrality.

- Regulators to assess the level of competition in broadband Internet access, and to take steps to ensure that consumers have continued access to a neutral network.

- Regulators to prevent ISPs and network providers from engaging in unfair discrimination against content, services, applications, or devices.

[25] See also: Resolution on Net Neutrality (Infosoc-36-08) and Resolution on The role of Internet Service Providers (ISPs) in mediating online content and communications (IP-04-08).

- Telecommunications and competition regulators to require that ISPs and network providers provide fair and accurate information regarding Internet service plans, including average estimated speeds, any existing caps on bandwidth, and regarding content, services, applications or devices that may be blocked or degraded on their networks. ISPs and network providers should also detail their compliance with net neutrality principles and regulations. ISPs to provide consumers with information about limitations on Internet service plans, as well as any network management occurring on their networks and how that management affects access to particular content, service, application, or devise. Such management should fall within the scope of legitimate network management.

--- From Trans Atlantic Consumer Dialogue, TACD

Distribution federalism and interoperable platforms building on excising institutional infrastructure

S83• Crowd funding has generated lot's of traction during 2012. The American site Kickstarter is it the eye of this tornado giving examples of seed-funding in startups counting in millions of dollars.

- Some say Europe do not have a tradition of donations, that is why it is not taking off here in the same way. But if you do the exercise of adding up the biggest European platforms the turn-over in total excised the one of Kickstarter. We have a fragmented market/language situation making it difficult to build a very high closed castle like in the us. Thus we have to use other models to be competitive. What I do suggest is open standards to enable content to flow between systems and nations. The content it self do not care about the taxation system it could travel freely supporting the creators. Open standards would create circumstances of inter-operability between the systems and support mobility both digital and physical. The logical effect of the open standars is that content in such open system needs to be licensed under creative commons making it sharable and thus flexible to travel.

- In connection to the open standards we need to build upon the excising institutional infrastructure. A purely economical investment in many european industries does not come with the symbolical capital needed to enter into the "scenes". A public co-investment in Europe is more than money, it is a door opener. When thinking of the open-systems suggested earlier they need to stand in direct dialogue to the symbolic capital of the public sector. We can not import an american digital ecosystem straight off, we have to digitalize the logics that are here, rethink them for a distributed logic that suits our market.

- I would like to use our initiative www.crowdculture.eu as an example of such digitalization of the all ready excising institutional infrastructure. We have many example on how the bits support the atoms and expands the possibilities for the creative citizens since it taps into vast well functioning public networks.

- To express it in management terms. We can not build only on b2c systems but have to think b2g and keep the citizens in the center of this design process.

- As open standards plays together with creative commons and the right symbolic capital we will see a rapidly responding market where actors from geographically different areas remix, transform and combine content creating innovations and collaborations responding to local needs and in some cases making scalable solutions.

---From Max Valentin, Sweeden

DRMs

S84• Right to access digital media and information. DRMs should only be used under the following – cumulatively effective – conditions:

- The practical use of DRMs on the Internet must not generate unnecessary vulnerabilities with regard to consumers' equipment or personal information.
- User profiles must not be created. The anonymity of users of digital media must be protected.
- Copyright owners must not hinder consumers' use of digital media within the framework of prevailing legal prescriptions. This particularly applies to the right to make copies for private use and the right to transform content for private use.

- Because the relevant legal situation is often complicated, copyright infringements for non-commercial reasons must not be criminalized.
- The impact of DRMs on functionality should be limited to what is necessary to protect copyright and should not otherwise affect a consumers' use of content.
- The format of the storage medium must not be used for protectionist barriers that prevent consumers from exercising free choice and their legal rights. Consumers should be allowed to decide for themselves what player or platform they will use, and to move any content they have bought to any medium of their choice.
- Consumers should be allowed to circumvent DRMs if any of their usage rights are not respected.
- Copyright holders and providers of digital media must provide users at an early stage with comprehensive information regarding the scope of use permitted for digitalized and copyright-protected content. Enterprises must also provide fair, clear and comprehensible contractual conditions. These measures are required to ensure that consumer behaviour is legal and in line with market requirements and to avoid civil proceedings against copyright infringements.
- Consumers should have clear and "fair" rights to use digital material and not be penalized for simply moving with the times. The industry should develop new business options that are consistent with consumption patterns and meet consumers' needs.

---From Trans Atlantic Consumer Dialogue, TACD

S85• More rights to authors and private persons, fewer rights to corporations. Removal of DRM ("copy protection") from legally obtained content must be legal to ensure that consumers can use content the way they want.

---From Gergö Barany, Austria

S86• Beside the fact that it must always be legal to circumvent DRM restrictions, a ban in the consumer rights legislation on DRM technologies that restrict legal uses of a work should be introduce at the EU level. In addition, the law shall require that any limitation of use imposed technologically or through licenses appears clearly on the packaging of any good so that consumers are fully aware of what they buy.

---Anonymous submission

Interoperability

S87• Right to software interoperability[26] The TACD therefore calls on governments to:
- Analyse with a clearly defined consumer welfare perspective efficiency, cost, flexibility of all tools available to achieve interoperability.
- Close gaps in the legal framework that hinder the promotion of interoperability.
- Promote the creation and adoption of non-proprietary hardware and software interfaces through a combination of policy, legislation, regulation and procurement policies in addition to voluntary standards development activities.
- Adopt and make use of traditional ex-ante regulatory approaches. Apply effectively, enforce vigorously and adapt where necessary traditional consumer protection laws to the digital environment by amending information requirements (for example through clear/simple warning labels on products to signal lack of interoperability), adapting unfair commercial practices laws, clarifying unfair contract terms and sales guarantees legislation.
- Promote open standards through procurement.

--- From Trans Atlantic Consumer Dialogue, TACD

[26] See also: Resolution on Software Interoperability and Open Standards (Infosoc- IP-35-08).

Open source and free softwares

S88• Public institutions should always preferencially use open source and free softwares.

---Anonymous submission

S89• One Billion European Free Software Fund for essential free software projects: Critical free software such as operating systems, browsers, web platforms, communication tools, Office Productivity (Libreoffice) should be supported by the state to reape the full benefit of software autonomy of Europe. We have to avoid dangerous strategic dependencies on licensing foreign software, which also endanger our democracy. Only free software is compatible with the free trade paradigm because it does not exclude. Funding is aimes to keep the competence, capabilities and control over the essential technology in Europe.

---From Marten Sundergard

S90• Neuauflage von der "Linux füt alle" CD der Eruogreens.at : Die österreichischen Grünen hatten eine schöne "Linux für alle" CD vor einigen Jahren, wo Dany die GNU PL vorgelesen hat. So etwas sollte man noch mal neu machen, ist ja veraltet, vielleicht auf der Basis von Linux Mint und OpenSuse und dann innerhalb der Grünen Parteien oder an Gäste im Europaparlament verteilen. Das wäre super-cool. Man könnte dann auch gleich Musteranfragen und -anträge für grüne Gemeinderäte beifügen in Sachen Offene Standards, Open Source und Linux-Migration in den Kommunen.

---Bruni Dorn

Digital Base Fund

S91• Europe needs strategic independence concerning the very foundation of its IT infrastructure, esp. Operating Systems of network nodes, for homeland security reasons. Europeans have to control their Digital Base, in order to grow a digital business environment. Through targeted funding Europe should seize control&access and sustain open development. At first the EU-Commission is recommended to identify bottlenecks of the European Digital Base and put a European Software Strategy on track.

----- This proposal relates to the idea of "software autonomy". We have to ensure it just like "energy autonomy" (cmp. Hermann Scheer). Control and access over digital interfaces are as challenging for a society as control over supply of natural ressources, oil and gas. Dependency translates into extortion of a society at large. The Digital Base Fund strategically secures the base, a free information infrastructure. As an example: The web browser is a bottleneck of the European digital single market, so the EU should take action to keep the web browser free, seize control and ensure that web browsers may be kept free from undue commercial influence. 10 years ago web browsers were still a de facto monopoly, that was very dangerous as everyone had to use or support a single browser, now the market is more open but most web browser manufacturers do not support opencrypt certificates as default, simply because they are bribed by the certificate business. As that is of strategic importance we should simply get more control over development of web browsers and contribute financially. Operating systems, still most governments computers run.

Windows and administrations depend for their software on the Win32 Application Propramming Interface. Win32API is a dangerous bottleneck for the Europeans. Therefore the EU should contribute financially to alternative implementations of the WIN32 API. etc. So first the bottlenecks should be identified and then a European Software Strategy executed which is derived from these priorities.

---From André Rebentisch, Germany

Section 9 - Public domain resources

S92• A positive stature for the public domain and the voluntary commons: These last 30 years, the most important debates on culture and innovation regarded the respective definition of what can be made an object of private property or exclusive rights, and what must be considered as common. Examples of such debates were:

- the definition of the scope of patentability,
- the delineation of the use rights that must be recognized to everyone even for copyrighted works,
- the enforcement of exclusive rights and the burden of proof of either infringement or the legitimacy of use,[27]
- the ability to share voluntarily one own's works without being punished by losing some resources.[28]

Such conflicts arise in an unequal playing field. Exclusive rights invoke property rights, identifying intellectual rights with physical property despite all evidence of their different nature. They are also powered by the thick wallet of right holders. In contrast, the rights of each of us are dispersed interests, which can invoke fundamental rights, but without the public domain and communs being granted per se a legal standing.

For these reasons, researchers and legal scholars formulated the project of a positive statute for the public domain, voluntary commons and essential user prerogatives towards works, including the prerogatives of creative workers who need to access and reuse existing works.[32] The aim is to revert, or at least rebalance the situation where the public domain is at most considered as residual or as a market failure, the commons are considered as a territory that one has not yet been privatized, and the user prerogatives are considered as a tolerance that one has consented to because one had not yet found ways to annihilate them. On the contrary, as soon as a positive statute for these common entities will be in place, one will have to consider the impact of any measure on their perimeter, their growth, their maintenance and their effective accessibility.

---From La Quadrature du Net, France. See: http://paigrain.debatpublic.net/?p=5462&lang=en

S93• Protection of the public domain: Introduction of the submission: In order to enhance the innovation and creativity in the digital era a reform of the current copyright system is essential. The system needs a total re-construction as has been proven through several projects completed or still under their way across Europe. The strongest examples include: the Hargreavese Report, the Lisbon Council Report on Intellectual Property and Innovation, the German project Internet and Society Collaboratory. In Poland we came forward with a list of detailed proposals to amend the Polish copyright law. However this cannot be done on the national level. Hence we propose the following considerations for the reform of the European law.

Public domain must be protected and strengthen throughout realization of the postulates of the Communia's Public Domain Manifesto (available at http://www.publicdomainmanifesto.org). The postualtes should be debated publicly as the basis for copyright reform directed at the protection of the public domain.

In addition we also suggest to introduce (within a broader prohibition of appropriation of the public domain) an obligation to make available unprotected originals by the publishers of derivative works, as well as critical or scientific editions. They should be made available without technical limitations which could prevent the actual use of the work, while formally it is not subject to protection.

Public domain should be extended by public resources. Resources owned by public institutions or

[27] Traditionally, author rights and copyright have been associated with an a posteriori enforcement, usage remaining free but subject to a possible sanction by a court. DRMs, preventive measures, filtering and censorship have de facto reversed this presumption of legitimacy and created a presumption of infringement of exclusive rights.

[28] Example: many collecting societies refuse to manage commercial rights when an author or other contributor authorizes non-commercial digital use, though this might change (see above point 9) and the fact that some manufacturers and eBook platforms forbid any parallel non-commercial dissemination of the files they commercialize.

financed with public funds produce a special kind of content which should be treated as a common good and should be available in the public domain.

---From Helena Rymar, Centrum Cyfrowe Projekt:Polska, CC BY. Proposal for changes in copyright law 4/4 (http://en.centrumcyfrowe.pl/wp-content/uploads/2012/04/CCPP_ICM_copyright-reform-proposal.pdf)

S94• A Progressive Agenda for the Digital Public Domain

- Fostering creation and innovation is a serious task for the European legislator to meet the challenges of the Information Society. In doing so, policy-makers shall look beyond the system as currently framed by the "Intellectual Property" regime. At the core of this reform of perspective is the due consideration of the Public Domain.

- The Public Domain needs to be recognized positively. Through the existing "Intellectual Property" prism, the Public Domain is only considered as a vague "non-IP protected" zone. Such a negative and limited perspective failing to capture the Information Society's realities and opportunities shall be overturned. It is the European policy-makers' responsibility to enable a clear understanding and recognition of the Public Domain by the Member States, thus encouraging the development of diverse valorization models of content in the digital internal market. In this purpose, future policy shall be guided towards more flexibility, for the shared benefit of all creators and members of the society.

- Such a positive agenda shall be able to protect the right to access and reuse culture, education, science and public information. Works that can be freely accessed to and reused are the basis of the exercise of many fundamental human rights and values, such as the right to cultural expression and to education, freedom of expression, citizen democratic participation and economic and social innovation. The role of the Public Domain, already crucial in the past, is even more important today, as the Internet and digital technologies enable us to access, use and re-distribute information with a marginal cost of zero. The Public Domain is therefore a space guaranteeing fundamental freedoms but also a stepping stone for new opportunities.

- In order for the Public Domain to be recognized, protected, enhanced and thus remain available for all to use and build upon and after decades of measures extending copyright and threatening the Public Domain, it is time for regulation to adjust its scope of action to meet the real and positive dimension of the digital society.

- Based on the policy recommendations formulated by the Communia Thematic Network (The Communia European Thematic Network was funded by the European Commission until the end of 2010: http://www.communia-project.eu/) and on WIPO working document (WIPO Development Agenda recommendations 16 and 20 and WIPO Study by Séverine Dusollier, Scoping study on copyright and related rights and the public domain, CDIP WIPO document CDIP/7/INF/2, March 2011, http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=182617), Communia Association calls the European policy-makers to:

1.Define a legal status for the Public Domain.

2.Protect the Public Domain from private appropriation and underuse: the use of works in the public domain should not be limited by any means, either legal or technical.

3.Recognize the legal validity of voluntary dedication of works to the Public Domain by their authors.

4.Facilitate the identification of Public Domain works through registration mechanisms and Rights Management Information, thus avoiding the increasing phenomenon of "orphan works".

5.Promote the development of adapted rights management models like extended collective licenses.

6.Raise awareness about the Public domain among all stakeholders and citizens through the promotion of the Public Domain Day, a Communia initiative launched in 2010 and celebrated each year's January 1st (http://www.publicdomainday.org).

- This can be achieved through simple, but nonetheless strong, legal means:
  A. First of all, the Directive on the term of protection of copyright and of certain related rights 2011/77/EU), unfairly extending the duration of copyright protection and thereby eroding the Public Domain as well as the bargaining power of some "small" rights holders, should be annulled.

  B. The positive definition of the Public Domain shall be part of the legal instruments pertaining to "intellectual property" matters. The following language shall be introduced into the Copyright Directive (2001/29/EC):

     New Article 1.2 (f) :
     Article 1 – Scope
     (…)
     2. Except in the cases referred to in Article 11, this Directive shall leave intact and shall in no way affect existing Community provisions relating to:
     (a) the legal protection of computer programs;
     (b) rental right, lending right and certain rights related to copyright in the field of intellectual property;
     (c) copyright and related rights applicable to broadcasting of programmes by satellite and cable retransmission;
     (d) the term of protection of copyright and certain related rights;
     (e) the legal protection of databases.
     (f) the public domain, consisting of subject matters being free from copyright or related rights protection, which shall remain freely accessible and reusable.

     Article 2: Reproduction right
     Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part**, unless the rightholders have voluntarily relinquished their rights**: (…)

     Article 3: Right of communication to the public of works and right of making available to the public other subject-matter
     1. Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them**, unless the authors have voluntarily relinquished their rights**.
     2. Member States shall provide for the exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them**, unless the rightholders have voluntarily relinquished their rights**: (…)

     Article 4: Distribution right
     1. Member States shall provide for authors, in respect of the original of their works or of copies thereof, the exclusive right to authorise or prohibit any form of distribution to the public by sale or otherwise**, unless the rightholders have voluntarily relinquished their rights**.

     Article 7: Obligations concerning rights-management information
     (…)
     2. (…)
     (new second §)
     To facilitate the management of rights, the provision of rights management information shall be mandatory. A publicly available registry of rights management information shall be administered by the competent collecting societies.

---From Communia Association (http://www.communia-association.org)

Section 10 - Commons

s95• Establish a set of 3 institutions:

1) Institute for the Protection and Development of the Commons

This is an institution that effectively supports the creation and maintenance of the commons,
A) by diffusing knowledge about the legal and institutional means of creating and protecting them.
B) by creating a supportive infrastructure of cooperation that facilitates the creation of commons-oriented initiatives by those who have more difficulties accessing such necessary infrastructure
Example: the policies of the French city of Brest, led by Michel Briand
C) by maintaining relations with, and supporting the operation and maintenance of the for-benefits institutions that are most often associated with commons oriented initiatives

2) Institute for Open Business

This institution supports the creation of market value in cooperation with the Commons, in ways that are compatible and do not deplete commons-based value creation. Typically, this is the kind of Institution that would support open source software businesses, open textbook publishers, etc.. and support young and starting enterpreneurs who want to engage in such.

Example: the OSBR.Ca in Toronto

3) Institute for Benefit-Sharing and Commons Recognition

This institution focuses on patronage and various forms of support that do not destroy the peer to peer logic of voluntary contributions.
A) It creates a priori prizes, awards, bounties to support individuals involved in commons-based value-creation
B) in cooperation with the companies (stimulated by previous open business institute), it stimulates benefit-sharing practices from companies that profit from commons created value. It acts as a meta-regular for such practices, identifying weak spots and stimulating solutions for them.
C) it creates a posteriori patronage arrangements for individuals with a proven record in commons-based value creation
D) it studies and proposes policies for the overall stimulation of commons-based value creation

---From Michel Bauwen. See also: http://p2pfoundation.net/Category:Policy

Section 11 - Financing of creation and innovation

Innovation Prizes

S96• **Innovation inducement prizes**: Prizes are an incentive system to induce R&D for new essential medicines, and can be implemented in a manner that ensures competition, affordability and widespread access. Innovation prizes can function to incentivize parts of the innovation process, to reward research outcomes that are not expected to result in commercially viable products. An ambitious version of innovation prizes would include open licensing of the end products.

---From Trans Atlantic Consumer Dialogue /Health Action International

S97• **Biomedical R&D Treaty or Convention**: Proposals would secure and enhance sustainable financing mechanisms for R&D, in order to develop and deliver health products and medical devices which address the health needs of developing countries. The R&D Convention concept is predicated upon the principles of a de-linkage of product prices and R&D costs, open-knowledge innovation, competition among suppliers of products, access to and transfer of technology to developing countries. The WHO's CEWG recommends that formal intergovernmental negotiations on a binding R&D Convention should be initiated (WHO, 2012). European governments and the EC must support the adoption of such a convention and constructively engage in negotiations.

---From Trans Atlantic Consumer Dialogue /Health Action International

S98• To develop new financing models, such as innovation prizes, allowing to maximize the public returns of the financing of research, ensuring that innovation not only tackles the most urgent needs of society but also can benefit rapidly to European citizens.

---Anonymous contribution

Keeping pollution by advertising under control

S99• Advertising financing is a tempting solution for Internet-related activities, because it permits to go around one important difficulty: when one provides something of real but limited value to a great number of people, how can one consolidate this value in order to ensure the sustainability of one's activity? By selling the attention time of people to a unique player – the advertiser – one no longer has to convince one by one the users of contents or services to pay for them or support them. The problem is that the cost one pays for this convenience is very high. It's not just that the contents are polluted by advertising messages, or that users do pay for the advertising through its inclusion in product or service prices. The highest price lies in the fact that the creative or expressive act targets the advertiser and not or not only the virtual audience of those who may appreciate the work. Finally, advertising is a thief of time, it always tries to retain the attention it has captured and it strives at concentrating the attention of many on a limited number of productions and persons.

The matter is not of course to forbid to have recourse to advertising. One must however keep it under control, by authorizing without condition to put in place software for removing advertising from content flows on the user side and by requiring the proper signaling of advertising. Finally, one could consider a specific taxation of advertising, that should target equally all providers of advertising, regardless of their nationality or technology.

---From La Quadrature du Net, France. See: http://paigrain.debatpublic.net/?p=5462&lang=en

Cultural public funding and tax reform

S100• Among the infrastructures that make possible cultural activities, the resources of public action play a key role. They represent 30 to 50% of the financing of cultural activities depending on countries, maybe more if one accounted better for the contribution of indirect financing through statutes of teachers, researchers or similar jobs. Local government plays an increasingly important role, even though in some countries, the State continues to establish frameworks and models. The recent evolution of public financing raises serious questions. Public financing in the strict sense is at best stagnating, with a parallel multiplication of specific parafiscal fees feeding funds whose allocation is trusted to private or institutional players or expert committees.

Public financing plays a key role in making possible diffuse cultural activities through education, support to places and spaces, cultural mediation, long-lasting support to artistic networks. For all of this, resources are lacking. The parafiscal funds are often captured by instutionalized players, in a context that is not favourable to a renewal of forms and styles. This contributes to a distrust or rejection of specific cultural levies. Finally, in centralized countries such as France, the concentration of public aids on some large structures in the capital city constitute a major injustice.

One needs to:

- Drop the inefficient gesticulations such as the Google tax once proposed in France, and act on the fundamental parameters of tax resources in general.
- Clarify in which domains public financing plays a key role and must be maintained or amplified.

For the first point, it is absolutely necessary to revisit the definition of the country of origin that establishes the location of tax for the profits of transnational companies (whatever is their assumed nationality). Tax on profits as well as VAT must take place in the country of consumption (acquisition of licences, distribution of advertising messages, access to an on-line service), as soon as the turnover in this country is above a threshold chosen to make sure that these provisions will not harm the international development of SMEs (for instance one or several millions euros). This approach is motivated by considerations that go well beyond the cultural domain, but it will be much more beneficial for culture than efforts to tax specific companies chosen for their nationality while trying to protect their national equivalents.

For the second aspect, long debates will probably be necessary for outlining a new perimeter of public action, but one can already identify three domains where it is particularly relevant:

- To contribute to the basic conditions of cultural activities, in particular those conditions that enable individuals and small groups to engage into a durable exploration of creative paths without managerial constraint. The keyword is decentralization (towards local government) provided that resources are also decentralized (not just responsibility) and that the local actions are not small imitations of the central ones.
- To preserve and make available and usable the cultural heritage in all its facets. This task can and must today proceed in collaboration with the many societal projects for digitizing and making available the digital heritage. This collaboration will require the adoption of free use terms for the digitized works, including for commercial uses. Its impact will be as positive than the present public-private partnerships' is harmful: it will prevent the rampant reproprietarization of the public domain, and turn the public cultural institutions into trustees of the public domain instead of driving them towards participating into its privatization.
- To make possible for some costly projects and structures to exist, distributing them on various territories and submitting their activity to a critical debate.

---From La Quadrature du Net, France. See: http://paigrain.debatpublic.net/?p=5462&lang=en

Section 12 - Enforcement

Limits to enforcement measures

S101• Enforcement of copyright, patents and other « intellectual property » rights should be limited to large-scale commercial violation.

---Anonymous contribution

S102• **Demand for legal alternatives before granting or discussing any possible extension of IPR enforcement regulation**: It has been our argument all along that reasonable legal service will curb piracy. We have formulated this as the consumers goal, are the rights holders means. To a great extend this has proven to be right. In Norway, digital sales, both downloads and streaming, has corrected/substituted the loss in CD-sales. This development has taken place in parallel to the discussion and formal legal procedure of new enforcement legislation. (a proposal is due to be published this fall).This said, the music industry has come a long way compared to e.g. film or literature, and we should expect nothing less than all other means have been exhausted before proposing legislation that presumably go head to head with fundamental rights such as rights to privacy and due process.

---From Thomas Nortvedt for Consumer Council of Norway*, Six concrete, but non-exhaustive or finished proposals for a better administration and use of intellectual property, 6/6*

S103• **Move away from the current focus on repressive measures:** To accomplish a legitimate IP system, the current imbalance between enforcement of IPR and safeguarding users' fundamental rights need to be redressed. The focus on repressive enforcement strategies sends a message that the interests of users and creators are in opposition, rather than seeking to protecting both of them. In recent years, the tendency has been to over protect intellectual property using principles and rules created before the advent of the Internet, at the expense of civil rights.

---From Joe McNamee, Recommendation 3/6

S104• **Move away from privatised enforcement measures:** While law-based repressive measures are often counterproductive, the situation is even worse with regard to enforcement outside the rule of law. We observe a trend towards enforcement of copyright law through unpredictable cooperation" between industry stakeholders, often based on coercion of Internet industry players through liability measures. The EU needs a clear set of rules with proper safeguards to be applied within the rule of law, rather than privatising the regulation of our online freedoms.

Not only should protection of fundamental rights be at the heart of a positive agenda, but also access to culture and knowledge. New models are needed which allow creation to flourish, to the benefit of creators and society at large. A new copyright model is required for this purpose.

---From Joe McNamee, Recommendation 4/6

S105• **Three strike type laws:** These laws should be abolished in countries were they have been adopted: besides threatening freedom and being expensive they do not bring any concrete benefit to authors and artists.

---Anonymous contribution

ACTA signatories Should Protect Smaller Copyright Holders

s106• The Anti-Counterfeiting Trade Agreement (ACTA) overcomes some practical limitations of copyright law by granting new powers to large corporate copyright holders. In so doing it increases the market power of these large corporations compared to individual copyright holders who often compete with them in content creation as well as depending on their distribution networks (broadcasting, film, print). This increased imbalance of power will act against the interests of independent authors and will reduce competition in the content creation market. To level the playing field, signatories of ACTA should put in place equivalent measures to protect smaller copyright holders.

• **How ACTA fails to protect small copyright holders**: The copyright enforcement clauses in ACTA are designed to overcome the problem that actions for damages have little deterrent value for internet-based pirates. These pirates have few assets and are in legal idiom 'men of straw' when it comes to court action for damages. Signatories of ACTA therefore give copyright holders new powers to shut down such pirates. **These new powers are of no use to smaller copyright holders when infringement is by competing large corporations with deep pockets rather than by internet pirates**. Court action is expensive and risky and damages are normally limited to what the infringer would have had to pay had it asked permission (the 'willing seller' principle). This weak or nonexistent deterrent discourages large corporations from incurring even the very minor costs of complying with copyright law themselves when using the content created by much smaller competitors.

• The solution: exemplary damages: ACTA signatories, who have recognised the damaging economic effects of weak copyright law enforcement, should clarify their national law to make it clear that exemplary (also known as punitive) damages can be awarded in cases of reckless disregard for copyright law.

In the UK, for example, national copyright law allows 'additional damages', an anomalous term which might be interpreted to include exemplary damages. The UK Government in 2007 proposed to 'clarify' this section of the law specifically to exclude exemplary damages. This proposed reduction in the scope of damages would be quite contrary to the spirit of ACTA, and the Government should instead authorise by statute the award of exemplary damages in copyright cases as suggested above to uphold the principles enshrined in ACTA.

• The small cost of levelling the playing field: The clarification of national law proposed here would place a negligible burden on large corporations because it costs very little to institute a system of compliance which avoids a charge of reckless disregard. At the same time, the fairness which such a clarification would signal would help to neutralise some of the opposition to ACTA and thus allow all to benefit from its advantages.

---From Hugh Small. The author is a historian, www.hugh-small.co.uk

Section 13 - Miscellaneous

Accès aux savoirs, mutualisation des contenus, nouvelles pratiques éducatives

s107• Plusieurs propositions doivent être mise en œuvre pour faciliter le libre accès aux savoirs, la mutualisation des contenus et de nouvelles formes pédagogiques où les apprenants sont actifs :
- **les cours partagés**, aux USA le mouvement des MOOC ou les initiatives de manuels libres (Californie) se développent rapidement.

- l'Europe pourrait aussi impulser un **usage obligatoire des archives ouvertes** pour tourtes les publications qu'elle soutient. Pour le moment la publication systématique en archive ouverte se fait ponctuellement (par exemple a Ifremer) mais il faudrait la généraliser.

- et, de manière générale, les contenus que l'Europe finance dans ses multiples appels à projet devraient être **réutilisables** via une licence qui le permette comme Creative Commons.
- D**es fermes de service** devraient permettre d'utiliser les outils du web en respectant les lois françaises et européennes. Avoir un mél, un blog, des outils de wikis de listes devrait être possible sans passer par les serveurs US qui lisent vos mél et accaparent vos données
- De manière analogue on pourrait imaginer un vaste plan de soutien aux **logiciels libres** afin que la valeur soit mise sur les services et non les royalties.

- Enfin, concernant la **transparence** : rendre publiques les dépenses des budgets réservés (députés ministres), les mandats (électifs mais aussi dans toutes les agences et structure), les membres des conseils d'administration, les outils qui émergent du data viz permettent de dévoiler bien des intérêts croisés.

---From Michel Briand, France

Make the IP system compatible with the Union's human rights obligations

s108• Human rights protect people. In the EU, fundamental rights protect intellectual property (IP) rights holders. Does this make profit maximisation equally important as human dignity?

The EU intellectual property (IP) system violates human rights. It denies remix artists, independent rediscovery inventors and follow up inventors the fruits of their work. It hampers access to knowledge and culture. The Charter of Fundamental Rights of the European Union (Charter) elevates this human rights violating system to fundamental rights. As a result, the Charter violates human rights.

International human rights instruments show us the way out.

Table of contents:

1. Legal entities are not protected at the level of human rights.

In January 2006, the Committee on Economic, Social and Cultural Rights (CESCR) released its authoritative interpretation of article 15(1)(c) of the UN International Covenant on Economic, Social and Cultural Rights (ICESCR). Paragraph 7 reads:

"The Committee considers that only the "author", namely the creator, whether man or woman, individual or group of individuals, of scientific, literary or artistic productions, such as, inter alia, writers and artists, can be the beneficiary of the protection of article 15, paragraph 1 (c). This follows from the words "everyone", "he" and "author", which indicate that the drafters of that article seemed to have believed

authors of scientific, literary or artistic productions to be natural persons, without at that time realizing that they could also be groups of individuals. Under the existing international treaty protection regimes, legal entities are included among the holders of intellectual property rights. However, as noted above, their entitlements, because of their different nature, are not protected at the level of human rights."

2. Access to knowledge and culture and the rights of remix artists are protected at the level of human rights

Universal Declaration of Human Rights (UDHR) 27(1) and ICESCR article 15.1 (a) and (b), recognize the right of everyone to take part in cultural life; and to enjoy the benefits of scientific progress and its applications.

Under UDHR 27(2) and ICESCR 15(1)(c), artists have the rights to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Both UDHR 27(2) and ICESCR article 15(1)(c) do not exclude any author ("everyone"). They can only be interpreted as including remix artists. CESCR General Comment No. 17 clarifies with "creations of the human mind, that is to 'scientific productions', such as scientific publications and innovations, including knowledge, innovations" that inventors are included. The General Comment mentions inventors in paragraph 12. Then "everyone" can only be interpreted as including all inventors, including independent rediscovery inventors and follow up inventors.

3. EU law and the Charter violate human rights obligations

The EU IP system violates human rights. The system denies remix artists (copyright) and independent rediscovery inventors and follow up inventors (patent law) their human rights. It harms citizens' access to knowledge and culture - a human right. It gives strong protection to legal entities (not protected at human rights level), to the detriment of citizens' and artists' rights.

The Charter elevates this human rights violating system to fundamental rights. Charter article 17.2 reads: "Intellectual property shall be protected". This is conceptually wrong, IP rights are heavily lobbied rule based privileges. Many people regard the IP system as broken, or even oppressive. IP rights can not be regarded as jus cogens.

The Charter's preamble mentions "common values", a "spiritual and moral heritage" and "indivisible, universal values" and placing "the individual at the heart of its activities". Charter article 17.2 is not compatible with the Charter's preamble and undermines the credibility of the Charter.

4. Solutions

In "Intellectual Property and Human Rights in the Nonmultilateral Era", Peter K. Yu suggests adjustments, for instance exceptions and limitations, uphold TRIPS flexibilities, compulsory licensing, parallel importation, government use and just remuneration.

I note that, as both are human rights, the rights of authors and remix authors have to be balanced. There is no room for injunctions and high damages. The same is true for patent right holders and follow up inventors. And likewise, citizens' access to knowledge and culture rights have to be balanced with the rights of authors.

The rights of authors and citizens are stronger than the rights of legal entities. Humans have human rights, legal entities don't.

Charter article 17.2 has to be interpreted in the light of the ICESCR, otherwise, article 17.2 is void.

Links:

Peter K. Yu, Intellectual Property and Human Rights in the Nonmultilateral Era
http://ssrn.com/abstract=1926102

General Comment 17
http://sim.law.uu.nl/SIM/CaseLaw/Gen_Com.nsf/6a53968e2906c409c12568870055fbbe/4ed4ccda24ed2f11c12570cf0044d5ee?OpenDocument

---From Ante Wessels, Foundation for a Free Information Infrastructure, FFII

Proposal for a new global monetary, financial, and economic order

s109• Isn't it ironic that, despite the tremendous scientific and technological advancements and the massive increases in material production that have occurred over the past two centuries, the world finds itself in the grips of an acute multidimensional crisis. The most pressing aspect of this crisis is monetary and financial. The levels of debt carried by all sectors, both public and private, have grown exponentially, much more rapidly than population or any measure of economic output, and have now reached the point at which we are told that, even in the world's richest and most advanced countries, basic human needs cannot be provided for an ever greater proportion of the population. Why are we in such a predicament, and what can be done about it?

The root of the problem lies within the global system of money, banking, and finance.

The fundamental function of money is to enable the exchange of goods and services amongst producers and to facilitate the shifting of resources from one investment vehicle to another (i.e., to provide liquidity). It is now time to transcend erroneous concepts of money and outdated banking institutions, and to create new mechanisms that fulfill that function in a more just, equitable, and sustainable way.

The way to achieve that is quite simple, it involves a process called **mutual credit clearing**, which is simply the offset of debits (purchases) against credits (sales) amongst a community of associated traders. This is done directly without the involvement of banks and without the use of bank-created money.

Mutual credit clearing has a long history and is well established. It is today used by scores of commercial "barter" companies around the world to provide cashless trading for their business members. In this process, the things you sell pay for the things you buy without using money as an intermediate exchange medium. Instead of chasing money, you use what you have to pay for what you need. Unlike traditional barter, which depends upon a coincidence of wants and needs between two traders who each have something the other wants, mutual credit clearing provides an accounting for trade credits, a sort of internal currency, that allows traders to sell to some members and buy from others. According to the International Reciprocal Trade Association, there are more than 400,000 companies world-wide that use this process to trade more than $12 billion dollars worth of goods and services annually.

Perhaps the best example of a credit clearing exchange that has been successful over a long period of time is the WIR Economic Circle Cooperative. Founded in Switzerland as a self-help organization in the midst of the Great Depression (1934), WIR provided a means for its members to continue to buy and sell to one another despite a shortage of Swiss francs in circulation. Over the past three quarters of a century, in good times and bad, WIR (now known as the WIR Bank) has continued to thrive. Its more than 60,000 members throughout Switzerland trade about $2 billion worth of goods and services annually.

The ultimate objective is to create a new system of exchange based on the relocalization of control over credit. This system can be operated in parallel with the existing system of money, banking, and finance. It is entirely feasible to create payment mechanisms that are interest-free and based on local mutual credit clearing exchanges that are networked together to provide a means of payment that is locally controlled but globally useful. It provides the most promising and peaceful approach to resolution of our financial and economic woes.

I propose that a task group be commissioned with the mission of completing, within a period of 4 months, an optimized design and implementation plan for such a network.

---From Thomas H. Greco, Jr., thg@mindspring.com
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Beyond Money: http://beyondmoney.net
Tom's News and Views: http://tomazgreco.wordpress.com
Archive Website: http://www.Reinventingmoney.com
Photo gallery: http://picasaweb.google.com/tomazhg
Skype/Twitter name: tomazgreco
My latest book, The End of Money and the Future of Civilization can be ordered from Chelsea Green Publishing, Amazon.com, or your local bookshop.

Initiative to promote innovative light technologies

s110• Because the cheapest energy is energy saved (negawatt - Amory Lovins) our initiative we are contributing to development and popularization of idea of implementation innovative lighting technologies (SSL).

On 1 April there was made decision about creation of first educational and promotional website supporting the idea of implementation innovative light technologies in Poland. In spite of the rapid development of semiconductor lighting all over the world, polish elites in our opinion do not take sufficient action to implement this technology in our country. Therefore, we decided to start our activity.

The assessment of materials supplied to us is strictly in the framework of established rules. We do not promote products and companies if they do not have references. Terms located on our site guarantee an objective and equal treatment for all projects, companies and products.

Website started on 1 June and together with her there was created another website which is typical educational website. Because in the polish world of science there is no agreement in case of implementation SSL, on 2 June we created 3rd website and we invited all polish scientists to create it with us. These sites are:

1. www.ledmagazyn.pl
2. www.ledukacja.pl
3. www.ledopedia.pl (made on wikipedia pattern)

Actually we are working on positioning our sites, contacting ecological organizations, and collecting positive examples of implementation SSL.

Successes:

1. Interview for ledmagazyn.pl with President of National Fund for Environmental Protection..
2. Interview for ledmagazyn.pl with Minister of Economics
3. Guide for local authorities for practical implementation of SSL.
4. Collection and publication of more than twenty positive examples of successful implementation of energy efficient lighting in Poland.

We are interested in all forms of cooperation with institutes and organizations in Europe that act on the similar field to exchange experience and mutual support.

---From Wojciech Baryła, Poland