Conference & Workshops

"DIY Databasing! Technical and legal aspects of Free Access to Information in so-called Information Society"

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Panel B: (No) free access to information in so-called information society

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Participants:

Maria Berger, MEP SP (A) - MB

Paula Le Dieu, Creative Commons International (GB) - PLD

Ursula Sedlaczek, austro mechana (A) - US

Eberhard Hilf, Association "Copyright for Education and Science" (D) - EH

Volker Grassmuck, Humboldt University Berlin (D) - VG

Host: Alexander Baratsits, Radio FRO (A) – AB

http://www.fro.at/ars05/participants.html

AB: Yesterday we started with a workshop where we worked on the problems arising with databasing and copyright issues. There were some results, but also conflicts, for example between Creative Commons licenses and collecting societies, which rights should be reserved and which not. The outcome was that the possibilities digitisation offers to us, like pitching and shifting, copy and paste, taking information from all over the world etc, do work on a technical level. But from the perspective of property rights it is much more complicated. What are possible models to deal with the existing copyright regime, especially worked out on an international level (here in Europe by the EU). I ask all participants to describe what are problems in this field and what are models for solving them. To my first question, Volker Grassmuck, we invited you to present us the idea of content flat rate.

VG: I am a researcher at the Humboldt University at the Center for Cultural Technology. I am fascinated by the digital revolution, by the PC's potential as the universal means of production of symbolic goods and the internet as the universal means of distribution of these symbolic goods. Of course, retaining and venturing of these symbolic goods, fighting against other attempts to roll back these potential. There is a digital counter revolution going on. And one name this counter revolution takes is "DRM". That is not Digital Radio Mondial which we heard before but Digital Rights Management which attempts to pull digital barbed wire into the digital infrastructure in order to control copyrights. The model we are proposing is modelled after something that has been in existence for 40 years, is time tested and has a lot of advantages: the way the private copying exception of copyright law is being dealt with in continental Europe. We pay a certain amount for every copying device, every empty media, every photo copy we make. The money goes to a collecting society which redistributes the money to creative people whose works we copy with the help of copying devices and onto portable media that we bought before.

So: On the one hand we have the freedom of users to make copies without first having to ask permission. That is what the law grants us as a right. And we pay without threatening privacy. So we do not have to say who we are, we don't have to ask permission of a rights holder for making a copy of an individual single work, which is the model that DRM proposes. The idea here is: there is a technically protected environment in which we play certain media files in a media player, and in the media player there is a button "I Want to make a private copy", and then there is an internet connection and the provider says "Ok, you may make a private copy which costs you so much. Please pay now!". That is a model that involves tracking personal data because the right you receive this way is attached to you personally. And the system is based on controlling that only this authorised person can make that copy. The alternative is to create a flat rate payment.

Of course, on the side of the creative people the advantage of the traditional private copying system is that they receive a remuneration. Their works can circulate freely

and still they will be paid for the use of their works in the private realm. So, the solution for file sharing networks is to allow file sharing and to put a levy on those file sharing rights. Such a file sharing network can not be controlled, because as far as we know at this point, all the attempts to technically control file sharing networks and to sue people have failed so far. This idea would involve a rather big system, and of course we can talk about all the different elements like how the usage of the files can be tracked so that the people whose works are being used receive a remuneration.

There are a lot of legal issues involved, how such a new exception to the newly introduced right of making available can be constructed in the international legal realm. There are solutions to all these problems. There are several ways to construct this. For example the proposal of Terry Fischer, head of the Berkman Center of Harvard Law School, to put the public copyright office in charge of administrating such a system. In Continental Europe there is no such a public office, there is no copyright office. So the logical place to put this system could be the collecting societies. We discussed the problems with the collecting societies already yesterday.

A third solution is emerging now, a private solution, which among others the electronic frontier foundation suggested. New services create an overlay of existing file sharing networks with filtering technology, which after the fact are registering how many works were shared and collecting money from users (via a subscription fee) and then are distributing the money according to the measured usage to the rights holders in question. Again we would have the advantages of freedom of usage, of being able to share and on the other hand there will be a remuneration for creative people.

PLD: I belong to two professional spheres, one is that I work for the BBC as an advisor to a project to create a Creative Archive. The other job is that I am the director of Creative Commons International. Which effectively means that I work with Communities that are starting to grow around Creative Commons licenses all around the world. I just want to make that point because I am not actually a lawyer. I want it to be very clear that I am completely unable to engage in legal conversations

although I try. I definitely defer to my colleagues who are much better at that kind of conversations. The question is around the Creative Archive licenses which I think is a slightly different take and I know that there is a great deal of interest in the Creative Archive and the licenses. The Creative Archive is a project the BBC started a couple of years ago to open up access to the BBC's audio and video archive. And to give you a sense, the archive is made up of - we think - our best estimate at the moment – is about 600.000 hours of video or film material and of half a million audio recordings. So it is a very significant cultural heritage archive, particularly for the UK but also for the whole world.

The Creative Archive project is a project trying to open up access to that archive in a way that allows people to download this material and, to download it and watch it as you would expect. But also critically to re-use the material in their own creative works. In other words, we want people to be able to re-edit the BBC. That is probably the best way that I can describe it. In order to do that we have a number of issues, and one that I want to focus on is the means by which we communicate to people using this archive what they are allowed to do with this material. What permissions the BBC as the copyright owner of this material does allow people to do with this. We are very much inspired by the work Creative Commons has done in terms of developing a license to express different rights and to license different permissions. And the BBC in turn wrote their own license, namely the Creative Archive license. And it bears a striking resemblance to the Creative Commons license, so if you are familiar with them you will notice the similarity of the CA license. There are a couple of distinctions and I am sure we will discuss them later on if there is interest. The thing that makes the Creative Archive license special is that it has a juridical boundary, you can only use CA material within the UK. It always raises eyebrows when I say that. And there is also a section that talks about using the material for endorsing particular political views, and this comes back to the BBC's understandable interest in trying to remain objective in the political spectrum and they in turn ask the users of BBC material also to respect that objectivity.

That is the CA-license. Alex also referred to the thinking that we are doing on the Creative Archive with respect to thinking about how we cannot only provide the content to enable people to further their own creativity. But how we can also let our audiences play a part in shaping the archive themselves, so that they have a role to play in making the archive meaningful for their communities. One of the ways that we are thinking about this is very much asking our audiences to participate in describing and categorising the content in the archive. We hear a lot of talk about this idea that users of material are the ones that shape and name the material, rather than for example a librarian being the one who officially categorises something. We are trying to flip that over, trying to create fuzzy edges around the archive. In the fuzziness we let our audiences play their role shaping the archive which I think is critically important in terms of making sure that the archive stays relevant for those audiences. The best librarians in the world with the best will in the world find it very difficult to anticipate every need that will arise when somebody uses the archive.

AB: Eberhard Hilf, you are from the Aktionsbündnis Urheberrecht und Wissenschaft. You are an expert in education and research. What are the problems about keeping the promises of digitisation and the ways to use techniques and research for education. What did you work out in your group?

EH: I have a background of 40 years of being a researcher and academic teaching at various universities. By that I have a clear vision what scientists, a very small community, need in terms of information management. They want to be read by their colleagues world wide without barriers. They want to get the most modern technical devices to make their work as effective as possible and they don't want to be interfered by money, which means governments should take care of it. Why that? Because of the enormous catalytic surplus for the nations, if science works as effectively as possible. It is not worthwhile to think about selling information and restricting information within the science community. It clearly harms the competition between nations and universities.

We wanted the most modern tools so we started to use email in 1978. We set up the first webserver in 1993 and we were asked by the German government how to improve the usage of a database. We invented the end user principle, that end users should ask or query themselves and not via a library. By that we improved the database by more than a factor of 1000. The result was that the government driven institution running this database immediately sold it to a commercial company. Later on we were asked how to organise the free access to information. In 1995 we started a world wide distributed network of open access information. A search engine going across all professional physics institutions in the world. We have the riddle which I would like to discuss in this panel of the information rising. There is enormous worlds of open access prime scientific information on these web servers, about 20 % are found by Google. About 5 % are found by Google Scholar. Even less are found by the open access initiative complying data and service provider activities. So, you see that the open access science information is much easier than people think and people know. Many people don't know that 90 % of the commercial publishers allow to save your own file on your open access local server. Instead they are timid and afraid. This shows the business models, either let's keep the paper age business model with digital means, which we call the timid business model or let's go over to open access.

The final point is how do we organise it? We have DINI, a German initiative of network information, which is a gathering of the large German scientific libraries, universities to set up an open access network within the academic and university institutions in Germany. And DINI spreads leaflets, workshops, recommendations, works on international standard committees and so on. And I am in the executive board there. Finally, the Aktionsbündnis Urheberrecht für Bildung und Wissenschaft is a loose gathering we formed last year. We formed the Göttinger declaration where we think that the copyright should be reshaped such that the prime objective is to fit the needs of the research scientists and draw from there what kind of competitive services we need from the industry and not vice versa as it is done right now from the German government, which is mostly listening to the lobbies of the large commercial industries which are trying to keep up the present industry workforce not going the

other way around. The Aktionsbündnis is active in lobbying all the members of parliament and the ministries. When we entered the ministry of law in Germany we found that all the commercial publishers and all the agencies responsible for taking the copyright from the authors already had been there, we simply didn't know that we should have shown up. So, we finally had a go to the minister herself, we found that she is just balancing the law in the way the pressure she gets from all sides, she wants to take the balancing side. If the scientists don't show up their requests will not be met. That is why we try to keep our activities up as we can.

AB: The shift back to music. Ursula Sedlacek comes from Austro Mechana, on of the biggest collecting societies in Austria. How can we fulfill the needs of creative people to spread their works and to be able to use the works of others – nobody makes everything up from nothing, everybody works in a certain context? What are the discussions in your collecting society?

US: I am completely new to this community, I have been working for Austro Mechana since January and before I had been working in the environmental policy which has a lot of parallels with the music business, you won't believe it. So, I am not an expert in Copyright for the time being. Our problem is that we haven't been confronted with the needs of Creative Commons, we have been confronted with new platforms and business models and I have to work in the interest of 16.000 rights holders who want me to enforce their rights towards these platforms, providers and so on. We don't have a problem to find business models or whatsoever for these platforms, the main problem is that we haven't got good data for the distribution for our license fees.

To come back to the question of creative licenses, well, we haven't been confronted with these needs so far. Maybe I am the wrong person to be in this place, you should have asked rights holders, because they can decide what should happen with their rights. And I will do it, because that is my business, I am not standing here for myself. For the time being they want us to enforce their rights. If they come to us and say we want to have split models, enforcement of rights and Creative Commons, we

have to think about it. That is clear. At the moment, because Dr. Berger is my neighbour here, the basic problem that we have on EU policy level now is, that we are faced with a draft from the digital market, by a person called Mr. Lüder, and the draft is called "cross border collective management of copyrights in the own land business". This is a threat for small societies and rights holders because what they want is that rights holders can concentrate their rights within one big society. They don't think of little composers and Creative Commons, rather of the big publishers in the Anglo-American business and they will concentrate their rights with 2-3 big societies. What will happen? All the platforms and content providers will make their business with these big societies and they won't bother about small and local repertoires. They will not be interested to bargain again with 3 or 5 other small societies to get local repertoires. How will these composers and creative people come into the own land market?

AB: Maria Berger, you are member of the European Parliament and have been dealing with copyright issues now for 3 periods. Maybe you could talk about the European approach towards copyright and maybe can also give a short comment on Ursula Sedlacek's fear of what could happen if this idea of competition between collecting societies is realised.

MB: Thank you for the introduction. Having been a member of the European Parliament since 1996 and of its legal affairs committee more or less involuntarily, I had to become an expert with my favourite subjects of my university times, meaning all intellectual property rights and different laws we have in the member states. I just want to recall some of the principles along which we try to find regulatory principles, which can not solve all the details that have to be solved in the end by the stakeholders. We had a discussion now in the European Parliament and with the debate and vote on the software patent directive it became very clear that even though we are very ambitious lawyers in the EP and think that things should be regulated once and for ever, for certain issues it is simply impossible. In particular, you can establish certain European legislative principles, you can empower certain

groups to improve their bargaining position but finally, you have to have a lot of agreements. If the legislator went too much into detail, you will not help anyone in this area. The free access to information – and that is a problem - we don't have a concrete description of what this right implies, we have a political aim but there is no system yet by which you can draw a solution for the daily rules. You have to find them for each issue.

The dangers for the free information societies are not so much from copyright but from media concentration. I know that these two elements are linked, but still the purely commercial driven concentration which we see in Europe is the main danger. We just had a report in the European Parliament particularly on the developments in Italy, Poland and Hungary. If you want to maintain free access to information the main fight is still against media concentration. Then, the second worst which could have happened is the software patent directive, software which we now have protected by copyright. And that was not enough for the big companies. They wanted to have a much stronger patent protection. This doesn't work for all content industry, but for software patent law protection would have been much stronger than copyright protection. And that was what the big companies were looking for. It happened to me for the first time in the European Parliament that Bill Gates wanted a date with me. Unfortunately I had no time to meet him. But it shows that there is much money involved in this area. The existing conflicts between the free access to information and those interested in Copyrights. The time when we were doing in the parliament the so-called copyright directive, it was actually a time where authors were endangered to completely run out of their rights with digitalisation. There was a good point in asking for at least some minimum harmonisation in having some kind of protection. It was not only the individual rights but also the view that if Europe wants to become a strong Europe in the digital age it will be on content and not technics. So we have to support all those producing content and support their rights. This DRM system – I know there is a lot of criticism – helped us at that time when we did the legislation to give more exemption to the rights of those who have a copyright. Otherwise the law would have been stricter if these technical possibilities would not have existed.

What we now do is, I mentioned that we have some principles harmonised in Europe, but in the European law in this area as much as in other areas we always have rules giving member states this or that kind of exemption. What we are lacking now is really an overview on what happened with the transposition of the existing copyright directives of the European Union. So I asked our scientific services in the parliament to do a study by which we hope to see on whether the balance between the rights of free access and those of other stakeholders works in the member states. Because there are many occasions where we get a lot of complaints that the free access is endangered and that we have gone too far in the protection of copyrights. We will have to see whether there is some justification necessary. It is an area where the legislator has a very difficult task to get the balance right, not only for today but also for applications in five years with new technical developments.

One of my colleagues in legal affairs, Mercedes Echerer, was very much working with the collecting societies. Of course there are a lot of problems with collecting societies but if we want to come to a European system without national borders, a European license, somehow we will need these collecting societies. They should follow more transparent and democratic principles which was always one request by the European Parliament because there are many complaints from those who are represented by the collecting societies. It is not always transparent who they manage and who is getting what, .. but finally we will need them. I know these concerns that the commission would favour the bigger ones but when it comes to the legislation as such it will be a directive to be adopted by the European Parliament and the Council and the commission does only the draft. I think this will be an issue raised from the side of the European Parliament.

AB: There are several issues: one is the directive on collecting societies, one is DRM and content flat rate and how this concept worked out. The third is the Creative Commons and collecting society issue. Let's start with the future collecting societies directive. As far as I know in this study it says that collecting societies also have a

cultural policy task, for example the money they receive from the levies are also distributed to social funds and funds for creative production. This cultural policy is private fun and not really the business of collecting societies, at least in the view of the directive. They want to have the money distributed the way works are used. Is this a threat for the creative production in Europe? In Austria these funds are important because a lot of creative production wouldn't exist without these funds.

US: I think Dr. Berger mentioned something different to what I was talking about. She talked about the resolution of the parliament, we call it "Mercedes Echerer", which is completely in line with our policy. And in this resolution the EP set some standards and tasks for the work of the collective management societies. We agree on that and it could be a very good way. What we see now is a big gap between those who say: the collective management societies are business entities and they have to work according to business rules and this is the content of the study I was talking about. So, no social and cultural issues. You have to license music and distribute the money, this is your job! As we see ourselves this can't be our task, because we in Austria want to enforce creative people in our country, we want to do something for the next generation. At the moment we have the regulation in our "Urheberrechtsgesetz" that 50 % of the blanket levy income is distributed for social and cultural issues. For instance, we give money to the expert music agency, which also supports a platform for young musicians to distribute the music themselves. Even the publishers agreed on that. We give money to projects and whatsoever. If the study is put into effect however this will be the end of these activities, that is clear.

EH: Another question to Mrs. Berger. Thank you very much for addressing this issue in a very constructive way. In practice in Germany we have many difficulties with the European Union decisions, the directive on Copyright, which has a disastrous influence on the present discussion of this law in Germany. Just to give you an example, with one line saying "Any service that can be done by a commercial company has not to be done by a government institution." This means, when I want a copy of a commercial journal I go to an order service, we have one in a public library in Hannover and I get

it for whatever they charge. At present there is a case at a court where this is doubted and the new reform draft from the government would say: "According to the european parliament directive we are no longer allowed to have this service but we have to rely on commercial services." Which would then have the monopoly and charge at least 10-30 times as much per copy. In essence this directive says: "What about your own job? If this can be done by a commercial company delegate then it should be done by someone there". So, how do you see that we as scientists and scientific organisations can inform and get information we need with regard to copyright and to legalisation of the whole system in the digital age.

AB: DRM is the core regulation of this directive.

VG: The statement that DRM helps to put more rights into the European Copyright directive is something that I can't accept like this. First of all, DRM was not an idea of the European Parliament but is just transposing what the VIPO Copyright Treaty obliged European law makers to implement. What you posed as an improvement I think is a catastrophe. The finite list of copyright exemptions in the EUCD is completely out of touch with a highly dynamic, evolving, changing online digital environment. To say that this is the list of limitations and exceptions and it will be like that until the rest of our life before there will be another European Copyright directive, that is the end of the story. That is technically extremely unwise and I don't see the political wisdom in closing a discussion at this point where balancing the interest of exploiters, creative people and users of information needs to be done – not on a daily basis – but it is changing, it is very dynamic.

To say, we have talked about this and that is the end of the story, I say is a catastrophe. It also blocks attempts for flexibility for example in providing a content flat rate if we are looking for a legal solution as I mentioned in my first statement. There is a market solution as well, but if we leave the decision making process to the market, and that is the general tendency expressed by DRM, until now the balancing act was a political process negotiated publicly with all stakeholders. Now what

happens is, that the rights holders get this instrument of DRM and they can determine what can be done with copyrighted material and what not. That is completely beyond any public debate but left to the market. The reasoning is, if the market doesn't accept it, if we as consumers don't buy it, DRM it is going to fail. That is taking this whole dynamic and crucially fundamental issue out of the public debate and putting it into the market and the same is happening regarding the direction the EU commission paper on collecting societies is going. Again saying: we have a public collective organisation with an internal democracy discussing how this collected money should be used. Now we move away from this model and leave this to the market place. We have entities that would compete for the commercially most lucrative rights. They will take these rights and give the rights holders advantages, more money. Then they will be very willing to put their rights into these either big collecting societies in Europe that we have now or even new organisations that propose to collect money, be more efficient, it is only about online rights so we don't have to bother about these analogue offline rights which are very difficult to manage, so we can be very efficient and give a lot of money to the rights holders. In effect, that is a privatisation of a collective democratic system that we have now. And I think that are the two sides we are talking about now: market or collective model.

EH: Imagine a paper of a scientist in the analogue age. There is just one copy held by the publisher. That way he has got a monopoly to do whatever he wants with it in the future. The new copyright reform even wants to avoid future possible technical ways of using it without asking the authors, which is ridiculous. In the digital age we want to be read world wide, which means any digital copy, any archive of the same document is as good as the original. There is no way of keeping the information back. Open access is desperately needed by the scientists. It is not served and guided by the political legislation. That is why this new institutions are there, trying to set up a completely independent service, independent of the commercial publishers, with the consent of the German science ministry and the German science foundation, same thing in England. Setting up an open access system where any scientist is forced to put his prime new research findings first open access on a server. Then he is free to

re-use it commercially in any way, write books, sell it on the market, go to commercial publishers, but the information as such has been funded by the government and has been put free for the sake of the future of the nation.

Audience: It is basically a question about the lack of knowledge at the center. It seems to come up in several places here. All the problems that the center has. I have been in a circle of conferences for some years that have to do with content flat rate. There is much research, much knowledge and understanding in that lecture circuit, which has to do with these issues. I was very interested in i-pods, your comments to do with open access journals and so forth. The solutions are there. People know these issues, they know how to address them. But there is a recurring problem which you expressed in your experience of talking to people and politicians at the center. This structural problem of the sorts of voices that are being listened to. I am gonna phrase this question as directly as I can to a very important issue in this context, collecting societies. As an artist, I have been in any number of creative events around Europe. More recently, in the last few years, dealing with Creative Commons and these licensing issues, fascinated by the problems of collecting societies. This is my very first experience of meeting face to face a collecting society. They represent authors, creative people's rights. Yet they aren't really visible to me. The lack of knowledge and communication that has been historically here between what is happening on the internet, on legal things, what young musicians are doing. The social processes and the financial and legal institutional structures of collecting societies is coming to a crunch. It is the same with the EU, the same issue with going to talk to politicians. It is a structural institutional problem. I want to pose the question to the collecting societies, what is your structure of representing artists' views and information, who votes and decides, who do you represent, how are you elected? My understanding is that it is almost the same as the EU, in that the main lobbying interests are actually publishers'. A third of your board is probably publishers. A young artist, people who aren't well published, aren't well represented. And so we have basically a structural problem of these ideas that are emerging. A lot of creatives who want to do things differently, and no mechanism for the dialogue to occur. That is why I am very

grateful you are here and I am really hoping that you can continue this dialogue with the artists, with younger generations, with the internet and with politicians. But I think something needs to be done about your institutional structures.

US: As I have said before I am very new in this business, and very new in Austro Mechana. AM, as I got to know, has done excellent work in collecting and distributing. But our composers and lyricists only get to know us by their income form. And of course I want to break that up because if we have more competition everybody should know who he is talking to and who we are and what are our problems that will be those of the composers and lyricists of tomorrow. We have a representation problem, but you must consider: on the one hand we have to do business very effectively and efficiently. On the other hand we have to represent 15.000 composers, lyricists and publishers and they don't all share common interests. At Austro Mechana, we are a public limited society, we have 46 members of the societies and of course they can't represent all the interests. So what happens mostly to young artists is that they get funded by SKE, the fund financed by the blanket levy incomes that we get. We have a very engaged manager there who knows the scene and the people and gets in contact with them.

Audience: The role of publishers?

US: In the case of Austro Mechana the relation between composers and lyricists and the publishers is a 35:65 per cent. Well, they are rights holders like everybody else. And in Europe we have this split model, thanks. Because in America you have the copyright model and the buy-outs model. The publishers stand behind this study that was now edited because they have business interests mainly. At Austro Mechana we have managed to have very competent and sensitive publishers on our board and in the societies. But we always have a fight against the major publishers like Warner, Universal, Sony BMG. They want to get on the boards of the big collecting societies and want to influence decisions. In Austria, we managed to keep them away from our boards, but you can't argue because they are strong rights holders and get a lot of

money from us. If we speak about representation we would have to think how we can get them into the society but keep them away from the main decisions. If there was a publisher in this room he would kill me for that. But they are rights holders like anybody else.

Audience (difficult to understand): (rights holders representing money but not interests)

EH: As an outsider I didn't understand why you need a collecting society at all, in the digital age. Exactly, as he says, it is not about collecting information anymore but finding information in the digital age. Anyone can put all this information on the web. In science it is mostly done and we only have a problem to find it in the internet and sort out the relevant from the irrelevant. That is why there are no upcoming highly sophisticated semantic tools to filter information. Anyone can put his information on his work on the web free of charge, independent from any collecting society. What is needed then are institutions intelligent enough to find the information for those to who you want your work to be known. That is definitely not a collecting society but an information finding society. That has nothing to do with publishing, but with search and retrieval, which is quite a different professional service.

Audience: I have to ask a general question because I am just a generalist. But in listening to this discussion I can see kind of a left and a right wing, from our point of view: the left wingers are the people who want to open it up, and you represent the other, the legalistic side. I am Austrian who lives in America and what happens in New Orleans currently is for me an image of what you are talking about. New Orleans was never supposed to be built where it was, it could not be sustained. And at this point people are talking about building the dams higher so that the city can be rebuilt. What really has to be done is that the city needs to be bulldozed because it is in an inappropriate space. I don't know how long it is gonna take the American government to realise that, but that is what is going to happen, because the conditions are changing. Just as we are in an era of global warming that will no longer allow New

Orleans to exist. I think in a very similar way the digital age, the information era, the very strict interpretation of copyright laws will go in the direction of New Orleans, sooner or later. So, this is not going to change over night but it is an irreversible trend as far as I can see with the very general availability of information. So, none of us are in the position to bring that change about. Political power listens to public power, so we need to join a very general discussion about the significance of open and artistic interaction and do that very consciously with ultimately a political aim. I am very familiar with the Museum of Modern Art in Vienna, and they are somewhat underfunded and they are trying to become a collection as all museums are, but they are at the same time discussing whether it really has a means to have a significant collection and does a modern museum still has to have a permanent collection. This is a discussion going on in all domains and I think again a very general discussion by intelligent people open towards many different members of the public is going to make the transition easier rather than more difficult.

AB: Maria Berger, referring to Mr. Grassmuck and his statement that DRM is a catastrophe, you ordered a study on this critique trying to trigger a discussion process on this issue. Is there a possibility to address such criticism?

MB: The study we organised now, also the European Commission will come up with one, they are not limited to certain developments. The idea is to find out whatever aspects of copyright law and its application do actually pose an obstacle to free access and how things developed since this European directive came into effect. I think it contains a lot more substantial law, maybe not enough, and of course the list of exemptions, that was the big debate, when we had it in the European parliament I was one of those who wanted to have a long list of exemptions. But if you want to have at least some kind of harmonisation it doesn't help if you say these are the rights of the authors in Europe, and then you say each member state is free to make use of these 15 exemptions but can invent new ones everyday. Then you have no legal effect. But you might be right, so to say, when you are fighting for the rights holders, in the digital age you are somehow in a lost position. But maybe we find new

systems to provide them with a revenue, that makes purpose of it. As long as we don't have the system, I as a politician am paid for my work, and you as a professional too, so why shouldn't composers be entitled to be paid for their work. You can not say from the outside that you are in a lost position, even though you might be right in the long run. As things are changing, and this study is aiming at making a picture of the given situation, and in the light of this there might be a revision of the European law. But this applies not only to the digital rights management but also to other aspects.

Audience: I have a question a little bit said from both sides. I can understand that for scientists it is important how you get your knowledge distributed and how the other can get it. I am from an editor form a German radio, we have protected all the rights of our format for one year because the author and everybody else gets paid for that, and after one year they get paid again if it is broadcast. And now we start to podcast, and with podcasting suddenly the whole rights which we have protected are gone, but I mean I am fine giving that free to the world to get it on their mp3 player. What are the new possibilities of making the material and everything available and find a system which makes it possible for the authors and composers and actors to survive, still to live from their work. And how can it work without passing by big institutions but maybe directly, I would like to have some ideas, how can we do that?

VG: Basically, the system would be the same like I described for the private copying levy. There are places where payments are made already and you add something on top of that. That may be some kind of subscription fee, it can be bundled with your internet access charges that you pay to your internet service provider and the question is how this money gets distributed to its rights holders. There are all sorts of models emerging for that, audio finger printing is a popular method for that. It is sort of a cryptographic summary of a certain song that can be created on the fly and that is rather specific to a certain tune, so specific that there are services to which you can whistle a certain song and whistle it via mobile phone and the system sends an sms back with information what title it is, who the rights holder is and where you can buy

it. That way it would be possible to have very detailed information, more concrete information than we have now.

There are companies who do market research how peer to peer networks are used. They look into the shared folders of the people and that is a rough estimate because not every song somebody puts into their shared folder gets downloaded. So it might not be popular at all but it sits there in that folder. For trends in music research that is sufficient, but not for redistributing the money. But again there are other technologies emerging and my impression is that at this point there is a struggle going on between technology providers, Shawn Fanning, the original provider of Napster, is building one of these technology suits. The major labels that look at these technologies and say ok it looks good, we try it, and maybe they withdraw again, or demand more protection. This is something that happened to a service provider in the UK, which started with such an overlay of the existing networks. On top of these peer to peer networks they built a structure that allows to measure the actual usage. They got major labels to sign onto that system. After a couple of months the rights holders demanded more technology and now it is basically a regular download service with DRM and other protections. That is shifting.

Do the consumers accept DRM? We have now won the first empirical study on acceptance. Done by a research project called Indycare. And the answers to the acceptance of DRM were rather clear. People don't want any restriction at all, that is what DRM delivers, they don't want it. Also for these alternative systems emerging I see a very bad chance for DRM and in the long run I think as was mentioned before free distribution, open access to information will prevail.

PLD: I am not sure that the BBC is gonna be particularly useful, I don't know your context. The reason why I say that is because the BBC's business is about delivering public service. In some respects what we are trying to do with the Creative Archive is understand how we can improve the public's return on investment that they make in the BBC. So we are very much interested in how we can improve that investment.

And so we are very much interested in how we can get more people to see more BBC material, more people engaging with that. I think also for us the slight distinction is we are talking about an existing archive as well. So the critical thing to think about is when I talk about 600.000 hours of video, the vast majority of that has not been seen since it was first broadcast. So nobody is making any money out of it. So this is also about trying to make sure that this material has an ongoing life. If I was to flip that into a commercial context one of the things that I would be asking is "What is it that you are trying to archive? Are you trying to build a profile for your radio programme?"

Podcasting is an extremely fabulous way to do that. It is a great way to get greater distribution, recognition and that is what you are trying to achieve. That is a really important consideration to therefore pass on to the contributers to that programme who I suspect are also very interested in having larger audiences, greater reputation and recognition. What I would say, something to add in to all of the things that had been discussed is, there are new currencies emerging, and we need to be aware what roles those currencies have to play in these business models. It is not all just about money, there is also an opportunity for us to think about other currencies like reputation, recognition and audience sizes as well.

Audience: I want to ask a question directly following up on this. It is the content flat rate. And I want to ask it as directly and provocatively as I can because there is some timidity which I really don't understand. The ORF is a very powerful monopolistic broadcaster in Austria and there is a lot of general widespread dissatisfaction with its role as representing the creativity and culture in its institutional position. What is the difference between the subscription fee of the ORF and the content flat rate concept? Why is nobody talking about the idea that you pay 120 Euros per year for the ORF and yet a small radio station cannot distribute some money with the collecting societies. Why aren't the collecting societies interested in figuring out how to distribute this vast amount of money which goes to one monopolistic central provider.

One thing about the technology: you get lost in technology, it is not a problem. It used to be a problem for the BBC figuring out how who watched what TV-programme and what to concentrate on. There was no way of telling but it is simple nowadays. We can use these BBC's techniques in order to distribute funding. Not just to one monopolistic broadcaster but to small radio programmes, to podcasters, to community TV stations. Why is this not said loudly?

VG: A very brief answer. In the case of the public broadcaster, money gets collected from everyone and then editorial staff decides what gets produced and what everybody gets to see. With the content flat rate everyone listens to what everyone wants to listen to and the original authors get paid to their popularity. So, it is editorial staff that decides, it is all of the users who decide, that is the main difference.

Audience: I also agree that this subscription fee for monopolistic broadcasters has to be discussed in a way that there is a call for content. To say that there is a big budget and then different media and providers and journalists say that they would like to provide certain good content to the internet, to radio and to TV, and do it. The budget then flows to the journalists and content providers. I think this is a model that we have to start discussing now as many people are not happy with what the monopolistic broadcasters are doing and how they are covering their cultural and also national duties. I would like to ask a question: Why did you protect the rights of your programme for one year? Look how the open source community is doing it. It is a good model. They say very strictly: I give it away for free, and there are four freedoms included, also the right that things can be changed and adapted, and what happens is that the authors of the software are getting seen very well, get additional requests to make adaptations of the software, and there is some business additionally. If you want to promote your station than give it away for free and people come to you and will say, you make a good show and they will hire you to do additional shows for companies, whoever.

Audience: I totally agree with both of you, mostly it is the author himself who wants to be protected. Mostly it's the author himself who wants to be protected, I am not from a small radio station but of one similar to the ORF. People want to get paid for being broadcast again, most authors are living from being rebroadcast, they are used to that, and they don't want to be paid only once. On the one hand I very much agree to give the rights away for free, on the other the authors have to live every day.

Audience (Juliane Alton?): There is a public interest to use those contents at reasonable conditions to get back what we invested as tax payers. In parenthesis I wanted to say that the collecting societies try to do this in their way and in their field. One possibility to get back what we invested in is the private copyright. In the Austrian copyright law we didn't only have the right to make a private copy, we also had the right to make a copy for our own use, which is a big difference. Private copying excludes professional use. If I think about the problems that Eberhard Hilf has as a scientist, he needs access to different contents as a professional. It is no private use if he as a scientist wants to copy something, and this is a problem that the info directive gave us. Because in Austria, we had more possibilities to use content than we have now after the amendment of our copyright in 2003. I think one possibility to get around this could be to talk about different kinds of usage. Commercial use is one thing, private use another, it is consuming. And there could be another kind of usage, this could be use in public interest. Then we get in the libraries, the world of science and we could give them access to content at reasonable conditions.

AB: Maybe you can also address this conflict, with these Creative Archives licenses based on Creative Commons. And in continental Europe for these reserved rights of the collecting societies you suggested a solution.

Audience: Ursula Sedlacek said that Austro Mechana has not been confronted yet with the desire of publishing works under Creative Commons license. Maybe it has not

reached the board, to the head of the administration but I know about artists who already asked "Can we as members who have a contract publish our work under CC license?". And there was an answer by a collaborator of AM, Mr. Kolmer I think, who said that there is no legal basis for that and we have not been confronted with the desire so we don't bother at the moment.

US: You have to make a difference. That was one case. We offer exemptions for composers and lyricists, who are singer songwriters and want to put their own production on the market. They can exempt us from collecting the license fee for them. That is a very simple solution.

This is on a work-work basis. In most cases you don't have one rights holder to the work, you have at least a composer, a lyricist … There are at least four. And to have this solution you have to have the consent of four rights holders. I just want to give a short overview of what we really do. The people of Austro Mechana are not like me, hanging around and having sophisticated discussions. Most of us work in the documentation and they register works day by day. And there are composers who shift their rights from one publisher to the other, there are publishers shifting their rights from one publisher to the other. And this goes on and on and on. There are millions of works registered. And their are millions of rights holders registered. If somebody can do it himself, good luck. But it took a long time for all the collecting societies to build up this documentation and this is not information you can find on the net, absolutely not. It is knowledge and know-how of centuries and we are always investing in our systems to keep the information current. I don't want to interfere in artistic interaction, that is not my job, my duty is to enforce the rights of the publishers and lyricists who ask me to do so.

Audience: If I may continue here, the collecting societies do a very good job in collecting the money for commercial uses and I know it is only possible at high costs and high investments. It is a difficult job. I agree when you said that you have a problem on the level of how the different rights holders are represented. I think you

can work on it and solve it. I think we need less exclusive rights, we need more possibilities that you can license your work several times. If you do like that this could solve many problems. I would like to give my rights as a composer to the collecting societies for commercial uses and I don't like to exclude myself from uses and that is what many contracts do now. If the collecting societies can amend their contracts and allow for example non commercial or public interest use of their repertoire, of course if the rights holder agrees.

US: The insiders know about the GEMA criterion. That means that you can put certain rights out of the treaties of the collecting societies like broadcasting rights, whatever. That works. I said if the composers ask me to offer a split system between enforcing rights and free rights on a work to work basis without making their own production. I fear some day this demand will come up. Then I am in big trouble, because at the moment we are fighting with big technological problems to keep the business running as it is now, and this will make the whole thing much more complex and I fear much more costly. We have to solve it of course, but it can't be that it is much more costly than it is now.

Audience: You say you represent 16.000 rights holders. Can I get a sense of whether those numbers have been constant over a period of time or whether you have seen an increase in recent years that might reflect the increase in the ease of production that we have seen through digital technology. In Australia there is an enormous amount of material being produced and consumed that isn't represented by collecting societies because there is an opt-in arrangement on the part of the artist whether they opt in to this collection mechanism. I am interested whether this 16.000 number is fairly stable or whether your base of collections is increasing.

US: As far as I can see it has been fairly stable, if not rising. In Austria copyright is protected 70 years after the death of the author so we don't have living authors and composers... That system is not compulsory.

Audience: I guess my suggestion would be that the micro transaction model that many of us are suggesting that you move towards might provide a greater base of funding through increased amounts of represented rights holders. It seems to me that you are suggesting that it is the cost of individual transactions that is the bottleneck in providing more flexible ranges of representations of your rights holders. Because you only had 16.000 represented individuals, there is only a slice of the creative activities that you can efficiently represent in a financially viable manner. Do you see a way where if you move to the scary model that you mentioned that you could do it in a more financially viable way?

US: Now I just play a business lady. Because you know the 80/20 rules. The 20 per cent of your clients who make 80 per cent of your turnover. So I am not interested in the little composers that only bring me costs. Then I switch back to my role as a manager of a collecting society that sees itself as somebody who brings something to the cultural diversity and who has a task towards the next generation, so I have to try everything to get you on the boat.

Audience: I just have a short comment on the 80/20 rule. I would encourage you to look at the work that Chris Anderson has been doing on the so called long tale economics. He has showed quite convincingly that if you can build a market or service where there is a minimal additional cost for extending inventory, so if you could for example automate your collection processes for these micro markets, you could create huge amounts of alley of your businesses out of the 20 percent that you suggested. He has shown how this works for a retailer like Amazon, where adding inventory has zero marginal cost. They generate a third of their income from the so called long tale of the power curve. There are economical models that make it viable to service those small niche composers as well. And there is some really good research out there that you can look at to ..

Audience (Matt Locke): With the technology we have now archives are not simply a set of finished products but they are part of an ongoing conversation, I think

actually David Weinberg said it better in his talk at the Ars Electronica Conference, when he said that we are now in a third mode of our understanding of what knowledge is where we no longer have to rely on all kind of taxonomies and structures and trees but we can see knowledge as a dynamic ongoing production process of which individual artefacts are merely kind of random and kind of points in an ongoing conversation. The question for all archives is not only how do you provide access to the individual objects that your archive represents but how can you set up a social network so you can encourage creative production, re-use but also exchange.

Audience: Can I ask a very specific question to Mrs. Berger, when you are discussing the copyright issues and the regulation. Don't you think that collecting societies should be organised in a more transparent and democratic way, that is what we think is necessary. It is not anymore allowed to form them as a non profit organisation. Some of them are organised as a limited company where at the end the money which can be distributed among the shareholders counts. What I think is necessary is re-think and re-implement the structure and we do have in fact such kind of organisational laws, the "Genossenschaft", where every person is a member with one vote and every artist should be a member in a coop organisation. I know of rights collecting societies which are coops but where not all artists are members. I think it is very important that the artists stand up and say we need collecting societies for different difficult tasks, for collective rights which need to be collected in complicated ways. They have the engines and software how to calculate that but we want to have full control and democratic control. Has that been discussed to make that more transparent and to give the collecting societies in the hands of the owners and the beneficiaries.

MB: I think I mentioned the efforts of my former colleague Mercedes Echerer who was in particular engaged in getting our focus on the problem of collecting societies when we were discussing the copyright directive, because much of the functioning of the copyright directive depends on how the structure behind looks. The status for the

time being is that it is not so much a question of the European Union, there are following national laws. There are more or less strict national systems, that is one of the problems. They have a terrestrial principle more or less, this is already a little bit problematic under EU law. Only when we come to a situation that the commission comes forward with a draft directive on the role of the collecting societies, a European license system, then as the EP we can impose certain conditions on the interior structure of these societies, and of course I would prefer this collecting a more democratic than commercial model, and then we can impose additional criteria like transparency, democracy and so on..

We know these concerns, many of us in the EP were tempted to think of systems for managing the rights without collecting societies because their reputation is apparently so bad everywhere, the first reflex was to forget about them at all and think of systems without them. Also the background study of the commission comes to the conclusion that somehow we need them, but we need them more open, transnational, Europe-wide, competition, transparency …

EH: Instead of the discussion of left and right it is the discussion whether politicians listen to their voters. For me and my colleagues it is seen immoral to take money from collecting societies because we are already paid by the government. So the collecting societies money should be restricted to private authors who need the money. Why don't you listen to the voters? In Germany all the scientific societies and the major institutions have signed the Göttinger declaration stating that the authors who are publicly funded have to first of all put their findings open on the web and only then reuse it privately for their purposes.

Audience: I would like to take the pressure a little bit from the collecting societies and in comparison to the public broadcasters like the ORF they are a paradigm of democratic principles. The ORF, the question about considering the bandwidth and the distribution of creative content that they provide as a paradigm example of a content flat rate which could be distributed to independent producers in community media. I would like Paula to talk about how in the UK we have a regulatory authority for

bandwidth and public broadcast and how they are looking at the monopolistic position of the BBC and proposing ways in which money can be directed to alternative sources.

Audience (Matt Locke): Interestingly one of the proposals by Ofcom, the UK government agency that regulates broadcasting and communication networks, was for a PSP, public service publisher, the idea that some of the license fees could go towards other smaller publishers that would use mainly broadband networks as ways of distributing content. The BBC responded to this in two ways: one is, we are committing to spend a lot more money from the license fees supporting other media producers, we now have quotas for both TV and online commissioning. And we have been having meetings with a lot of independent media production houses to join our commissioning like that. But it is clear that within the next 10 years the license fees have to change in some form.

Audience: I just want to put in the Austrian context: this is what is happening in the UK in terms of the internal debate, as far as I know there is no public debate about similar sorts of distribution of this collected central public broadcast money to independent producers in this country, and I find that amazing.

End of Conference.

For further interest listen to the Lecture "Perspectives for Creative Archive Licences in Austria and elsewhere" by Juliane Alton and Paula Le Dieu
Electro Lobby, ArsElectronica, 03. September 2005:
http://www.aec.at/en/festival2005/podcasts/podcasts.asp