Conference & Workshops

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

Radio FRO – Conference within the frame of Ars Electronica 2005 – Hybrid – living in Paradox www.aec.at/hybrid

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Workshop: "Licensing for free publication of intellectual and artistic content in the www"

03. September 2005, Stadtwerkstatt – servus.at, Linz, Austria

Participants (among others):

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

Juliane Alton, IG Kultur Österreich (A) – JA

Matt Locke, Creative Archive Licence Group (GB) – ML

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

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

AB: I will introduce the initial speakers starting with Paula le Dieu, she is director of International and BBC's Creative Archive Licence departmen. I also want to introduce Juliane Alton, she is a copyright expert, she is - lets say responsible for a collecting society and therefore has some sort of insight and can give us a brief introduction into conflicts for artists between licences and being a member of a collecting society and will speak more from the perspective of an institutional provider.

PLD: Thank you. First of all I am going to start by saying, as I always do when I am outside of the UK, thank you for everyone for having this conversation in English. My first language is actually Australian, if you have problems understanding me then you please let me know. As I was introduced for the purposes of today I wear two professional hats. I am the executive director of Creative Commmons International, the other professional hat that I wear is that until quite recently I was the project director for the BBC`s Creative Archive project and I remain employed by the BBC as a special advisor to that

project. And it is that project that Matt Locke and I are going to talk about mainly today as a way perhaps of having a case study that we can look at and think about as some of the institutional challenges that exist with trying to create an open access archive of content such as the BBC's. So I want to start just very briefly by introducing what the Creative Archive project is, and then some very quick headlines about what we think are the main challenges, and I want to echo Alex' point that I am actually from one perspective much more interested in your experiences and your challenges and whether or not we can perhaps discuss how the Creative Archive is tackling some of these issues.

So, the Creative Archive for those of you who may have heard of it, is a project that was announced by the BBC two years ago, and it is a project to open access to BBC's audio and video archives and the BBC's general televisions and radio output. To give you a sense of just what that means: the BBC's video archive and television archive has about 600 000 hours of material in it, just to sort of put this in perspective it is 68 years worth of continuous viewing. So there is a lot of material in it and that is actually a very conservative estimate, some of the estimate of the material is as far as a million hours of material. Looking about a significant slice of the cultural heritage of the UK is literally locked up in this archive, assuming the archive has a million recordings and nobody has been brave enough to tell me how many hours that represents but we can bet a very significant body of work in it. The idea of the Creative Archive is to provide access to as much material as possible in a way that allows people to be able to download that material and watch it and listen to it, as well as the aspect which is critical: it allows them to take that material and reuse it in their own creative works, in other words remix the BBC into their own creative endeavours. That's it in a nut shell and just to touch on some of the sort of challenges - there are many challenges current in trying to take a project like the Creative Archive - but I think it can be summarised by three big headings.

One is actually the digitalisation, this is a challenge that I think that many of us involved in the libraries and museums and archive sector have faced for a long time now. This is not a new challenge but the sheer requirement of 600 000 hours of material that is on film stock and video stock of every possible conceivable type the BBC seamed to think that the best approach was to do as much diversity as it possibly could. So if we are looking at a very unusual type of film stock I guarantee you sitting there somewhere in

the BBC's archive. So in terms of the digitalisation challenge however clearly that poses some very difficult questions about how one digitises that and if it is cost effective and indeed time effective which doesn't mean that we are sitting in decades time still trying to slog through a digitalisation project. I don't want to over-emphasise where as I said this is a challenge that many of us have been grabbling over for a long time.

I think perhaps more significant in terms of a more recent issue has been the second big challenge for the BBC which was distribution. How do you provide a meaningful access to this digitised library of material? In other words how do you distribute it, how do you allow people to access this material. I think when we first announced this project two years ago sustainable distribution or a distribution that the BBC could imagine affording, was a really big part of the question mark next to whether or not Creative Archive would happen. And mainly because of the time we were still very much thinking in terms of the what was then the sort of traditional distribution or distribution mechanism which basically meant that the more people that wanted it the more expensive it was for us. The cost of distribution down the pipe just meant that we couldn't actually do this in a way where we would be able to sustain a popular service. The only way that we could actually think about doing a Creative Archive was if it was unpopular - it started screwing the head at that point. And of course peer-to-peer distribution technologies really started to make their presence felt almost at the same time, and certainly from my perspective to my profound relieve. I was able to then have a sweep of technologies that I could demonstrate that it was actually not only sustainable to distribute this material but actually a much, much more effective way of distributing access, of distributing this material. Again two big problems but they feel as if they are within domains that are either well discussed in terms of digitalisation challenges or domains where we feel as if we have a technical solution when we are talking about distribution.

The final sphere however which I think we are going to spend some time talking about today is rights, and I think certainly from an institutional perspective rights poses the most significant challenge to opening access to archives. The reason that rights are is so challenging is because the formation or the creation of an archive was very rarely undertaken and in fact I do not know of one with any sense of history to it that was undertaken with the foresight that something like the Internet might come along, that something like peer-to-peer distribution mechanisms might come along. And therefore

you may want to acquire the rights in the materials that you are accumulating in your archive, you might want to get all those rights in order to be able to allow people to access it in the way that we are talking about a Creative Archive.

Certainly the BBC did not have that foresight. As far as we see the rights eco-system in the BBC's archive is an extraordinarily complicated mix and match of rights ownership and rights acquisition. In other words the BBC as an organisation wants to be able to release this material but it does not own the bulk of the material within it's archive in a way that allows it to undertake the kind of release that we are proposing in the Creative Archive. So there is a very, very significant rights acquisition program that has to take place before the BBC can release this material. The more that I talk to institutions who are trying to undertake similar programs: We can have terrific conversations about distribution mechanisms about digitisation programs, about how do we actually attach metadata to this. Matt Locke had an interesting conversation earlier this week about some different ways of thinking about what can be an extremely costly part of the process, which is creating and attaching metadata to content, but still these are conversations that we feel as if we have a domain of expertise that we can draw on, these are conversations that have been taking place for some time now.

This rights acquisition side however feels like a new conversation. It's a conversation we are really trying to have … But I think it is like a new conversation, because effectively what we are saying to rights owners in this work is, we would like all rights in perpetuity, by the way we would like them irrespective of region, so international, and by the way, people can cut these up and do what they want with it. And strangely this is quite a significant shift for people who are professional television producers and all aspects of what it takes to make a television or radio program, they are not used to having a conversation wherein an institution is asking them for that broad range of rights.

ML: This is the spread sheet for some of the material that we are putting online, just to give you an idea about the many different rights negotiations we are having to have a range of small clips. These are actually some clips that are now available on the Radio 1 website as part of the current project to encourage DJs to mix BBC content. And even for a very short clip like 9 minutes there are issues about the presenter's rights, production and directors, BBC staff or not. We have to check the contracts to see if there are any

residual rights that the producers and directors own, the composers of any music, the musicians themselves, any CDs or library music, equity which is the actors union in the UK. Where there are contributers with all rights contracts, any stills that we use from film locations, co production, independent, any holdback on extract use I suppose ... And then a thing about potential cost. These clips, the DJ ones were relatively cheap, a few hundred pounds here and there.

The natural history unit material was the material that we thought would be the easiest and cheapest to clear, because as everyone says: Tigers don't have agents. If you filmed someone in the wilderness they are not going to - or hopefully you wouldn't get tigers to ring up the BBC demanding their rights. Anyway, they are very tricky negotiations, even in some of these cases there are lots of co productions, the cost quickly runs into thousands of pounds for one 50 minute program. And if you scale that across the 600 000 hours that Paula mentioned then that's simply unsustainable, you know that would be billions of pounds to clear rights for all the material in the BBC's archive. And so in a way we I think we are having to have a kind of chicken and egg tactic, we are having to manually and individually clear bits of content so we can get it out there and then hope that the projects are successful so that we can go back and negotiate blanket rights with some of the collecting agencies. I know that's where our legal team is at the moment, they are having ongoing conversations with the collecting agencies, the talent rights agencies, the actors union etc., to see if you can clear some kind of blanket rights or have some kind of way of not having to go through this clip-by-clip process in order to put the material online. And I don't know if there is really any breakthrough yet on that process, it is very difficult. But it is an incredibly, as you can see from these graphs, an incredibly complex and expensive situation right now.

PLD: I am assuming - as the Americans would say - that most of you in this room kind of "have drunk the cool aid" with respect to why it is a good thing for the BBC to want to do something like the Creative Archive. I think it is certainly worth specifying, the reason that I am going to this extraordinary length is that it represents an incredible number of hours and people's effort in trying to really find out each step by steps. And the reason that we are doing this is because we inherently believe that the BBC as a publicly funded institution has an obligation to make accessible this enormous wealth of cultural heritage. It has been broadcasting Radio to the UK and indeed to the world since the early part of

the last century, it has been broadcasting Television for sixty years now. It is an extraordinary window into certainly Britain and the world. And the majority of the material that exists in the archive does nothing but gather dust on a shelf, it's never seen again beyond that original broadcast moment: To lock something like that away when - again I want to emphasise - it has been paid for by the public - feels not only as a waste of opportunity in terms of being able to return value to the public, but it feels as if we were removing or neglecting or subtracting an incredibly important part of cultural development in the UK.

We now have a medium - the Internet - that allows people to engage in this material in their own creative ways. They can become their own commentator, they can become their own journalist, they can become their own television producer, they can even become their own scheduler if they want to put together channels of information that are relevant for their communities. And all we have to do, relatively speaking, all we have to do is to sort this problem out in order for that to be realised. As though this feels insurmountable, the reward feel as if it were enormous, so we keep plugging away, trying to understand how we can overcome some of these issues.

ML: I was just gonna say at that point why we are doing it. There is a bunch of people, friends of mine, who work for the BBC, who are all part of the same rough generation who in the 80s started using APEC computers and started coding. One of those in the UK was called the BBCB, it was a project that came out of the learning department of the BBC when we were doing projects about computing, about educating people about computing. Someone decided it was going to be a good idea if the BBC specified the computer that was relatively high speck, and marketed it as a BBC brand so that people at home could buy it and use it and we would type programming into how to use a computer and how to program it. BBCB along with other public computers like the Sinclair spectrum really gave a whole new generation the ability to start coding, the games industry in the UK really is a product of those early kind of teenage amateurs hacking in their bedrooms. So when I joined the BBC about 4 years ago I often had a lot of conversations with my peers about, you know, what could be equivalent now, the BBC wanted to do a similar project to create a new generation of kind of digital creatives. What would it be, it wouldn't have been coding because coding was, you know, so sophisticated now, and there aren't that kind of access problems that were with

computers in the 80's... So what would be the equivalent? And for me it was really about Creative Archive, really about creativity using audio-visual material. So in a way I see Creative Archive as a kind of similar project to BBC micro in the 80's.. It is a way of giving a whole new generation of young creative entrepreneurs the tools to do in their bedrooms at very low cost relatively sophisticated forms of creative expression.

In my current role I am Head of Innovation at the BBC and one of the things that we are trying to do is to introduce more open innovation models of which the Creative Archive is one example. We also launched a project in May this year called "Backstage" which is a bit like the developer networks that Google and Amazone and dotcoms have, were you release content as RSSV and API's services so that people can build applications using your content and your code. I want to create a whole sweep of projects like that around the BBC to encourage people to, as they say on the Creative Archive Licence Group network, kind of remix and reuse BBC content and materials. The Creative Archive and Backstage are for me part of a whole sweep of projects that I want see happen in the BBC that are opening up our stuff that people have paid for so people can reuse it, and a whole new generation of digital creatives in the UK can use that as a springboard for their own education and their own activities.

What we are trying to do now is to make sure that we deal in our production technologies and in our rights negotiations with the kind to make sure we've got the openings to do that...There is a lot of discussion going round windowing models for our commission content and interestingly, one of the propositions that we are currently debating, is that there should essentially be windows for every piece of content that the BBC commissions. There will be a period whereby the BBC public service side will distribute it free for consumption, so maybe if you like a seven day window where after broadcasting you can download it to view if you miss it on telly etc. Then there will be a period of commercial exploitation, so our partners or the BBC's own commercial organisation could release it as DVD or even distribute it commercially online. But then after that period, which might be a few years, the material would enter the public domain with no rights around it at all. So we are trying to negotiate a position with our rights holders and partners so that we would put a finite limit on the commercial window for exploitation. Now this is a very difficult negotiation and one of the difficulties is, that whilst it is relatively easy for people to build models proposing potential commercial exploitation of audio visual material, at

the moment it is very hard to make a similar case for the public value of releasing it online. So when we are going into these negotiations with rights holders we want to own the commercial rights and perpetuity.

We have to proof economically what the public value is of releasing the material online, and we can't really do that until we have started to experiment and started to release projects so that we can demonstrate what the public value is of releasing material in the public domain.

Question: Proof to who?

ML: Well it is really more like having a counter argument: We are going into negotiations with rights owners, they can sit down and show a spread sheet that may or not be true and can say we will generate thousands of pounds over the next 20 years, we own the rights. And we almost always have to counter that by saying it will put more value to the BBC in actually releasing material into the public domain. One of the things that the BBC is currently doing is we are going through a process of charter renewal where we have to make a statement to the government about why we deserve to have a licence fee for the next 10 years. And what the BBC has chosen to do is to turn round: What they have done in the past is to be very precise about what we think public value is and how we measure it. And so we are starting to get the tools to have very good modelling of what public value is and how the BBC generates it in other words, it is a very difficult thing and previously the BBC kind of didn't try to define it too much.

Question: It doesn't sound like a good strategy for programmers to use these tools.

ML: I think the problem before was that the BBC view was subject to other peoples' perspectives to what public value was. So whenever the discussion "Why is the BBC a public organisation?" came about other people would define public value for them, they would say public value is market failure, you only exist to provide the programming services that the market can't provide, or public value in certain genres such as news or religious or arts programming. The BBC never really came out with a statement out about what we thought public value was. There were really woolly statements like Lord Reeds famous "Entertainment and form", or Hue Weldon who said that public value was

about making good popular and the popular good, which is a fantastic piece of rhetoric but an impossible thing to actually measure.

So what we are now doing is the thing that the BBC provides value in 5 ways: We provide democratic value by encouraging debate and providing good news coverage, we provide cultural value by commissioning comedy, drama and other kind of cultural products, we provide educational value formally through our learning partners like the Open University and informally through lots of documentaries and other programming, we provide global value by reflecting the UK to the world but also by reflecting the world within the UK, and also we provide community value, we help make communities and support communities. So we are starting to have kind of a matrix within those five areas we can use to describe public value and that's going to be really important in our negotiations with rights providers in the future because we would be able to proof what we think is the public benefit of releasing material openly obverse to the commercial benefit of releasing it as DVD.

Question: This is clearly interesting to public broadcasters.

ML: We are launching what we call a public value test inside the BBC so that new services, new projects will be engaging according to a number of factors: impact and value for money and things like that, and that public value test will be what the governments use to approve new services and that will be where this matrix actually exists. They are still been drawn up at the moment and I don't know if the BBC are planning to kind of release those but they will release them to the public because it is part of the decision making process of new BBC services, so I think they will be very transparent. I will put you in touch with people working on that if anyone is interested in particularly those issues. Sorry, talked too long…

JA: I will start by giving an idea of how it would be possible to facilitate this task of giving public access to such a big archive which could be used by the public and which gives a benefit to the public. And one of the ideas in this aspect is, of course, that there are artists who would like to publish their work under a creative commons licence in order to give the possibility to use their works, to sample, to remix these works. Of course they themselves would like to do that with the works of other artists too, so they

would also profit from accessible archives where the works are usable in different ways. One of the problems they face is that many artists are members of collecting societies and the European collecting societies have very strict contracts with their members. I can give you an insight into that conflict just now by reading to you the answer of Austro Mechana, the Austrian collecting society for mechanical rights of musical works. A composer asked: "Can I do that, can I publish my work under a cc licence", and the answer was: "Right now there are no legal basis for members of AKM and Austro Mechana to publish works under a cc licence, the author's contract applies to all works even not yet reported to AKM and no interest of the author has been registered so far by the AKM to use a cc licence, so there is no intention to set any step in this direction". This was what an artist got as an answer by Austro Mechana and I could quote another complaint of an author concerning the German collecting society for music GEMA. They complain about non democratic ways to deal with the problems and they say in the board there are obviously tourists and not authors, this was the conclusion of this composer who tried to get a reasonable answer to his question. In march AKM, a big Austrian collecting society had a workshop on copyright, they do that every year in Krems, and no representative of the collecting societies had ever heard about creative commons, they had no idea about what that could be and why they should be interested in this matter. It will be interesting tomorrow to see Ms. Sedlaczek, representative of Austro Mechana, what she thinks about that. I think there could be a solution to that problem if the collecting societies take it seriously and try to figure it out together with their members, together with their artists.

Collecting societies at the moment do not collect the important part of the rights, they do not administer the right to publish something on the Internet. I know that GEMA tries to get this right now from the authors, they shouldn't give it to GEMA, I think it should stay within the artist's reach to publish it on the Internet themselves. The collecting societies administer mostly rights that can not be administered individually such as cable distribution, satellite distribution, blank tape levy, lending and rental rights, this kind of stuff which no one may or can collect individually. In the field of literature the Austrian collecting society collects the broadcast rights abroad, not in Austria, there the authors do it themselves, but if a broadcaster in another country broadcasts Austrian work they get the licence from the collecting society. This could of course be one conflict because as an author who really uses things in his works under cc licence you want at least non-

commercial broadcast stations to be able to take this work to broadcast and to distribute it. I think in every member contract of the collecting societies you will find some special problem that is in conflict with different licences but that's not the main business of the collecting societies.

I think a possible solution would be to create a licence that is not in conflict with those collective rights the collecting societies administer. You would have to give those collective rights to the collecting societies which by law are only possible to be collected by collecting societies like cable distribution etc. It would not harm the idea, if the users - maybe even commercial users, but mainly the public - if everybody can have access to the work, can use it at no or at low cost. I think it would be possible to establish a foundation which would be kind of an agent between artists that want to publish under a cc licence and the collecting societies, it would gather a mandate from the artist to negotiate with collecting societies. And then they would, I think, be forced to consider the problem seriously and adjust the contracts in a way that the member contracts are not longer in conflict with certain licences.

PLD: I am trying to link these two aspects together and leave anything else. The thing that I am struck by is, that whether we are talking about collecting societies and individual creatives whether to use licences as a way to express access to their material, or whether we are talking about something like the Creative Archive at an institutional level, that is using a very similar licence, in order to be able to provide access to a body of work. I think one of the things that links these two aspirations together, and also the challenges faced by and whether is that we have now this mechanism in this media that allows us to provide and have a-one-to-one relationship with the material and the consumer, user of this material, in a very unmediated way. The need to have been middle men, or middle mechanisms even, is rapidly diminishing. But this wasn't in the world that any of us imagined when we were creating legal systems, business models, and collecting societies represent a particular kind of business model. Certainly when we were thinking at the BBC rights acquisitions we didn't imagine this world coming along, and so I think the challenge that we all face is to understand how we introduce the nuances into our business models, into our access and distribution plan, when it comes to being a broadcaster.

But maybe we should just talk about you all, what brings you here? What is it that you are interested in?

David Bovil: I am originally from London, but now I am living and working in Vienna. I'm working on a couple of video archive projects, the main one for the new community TV station in Vienna which is going to be broadcasting in December, where it is most likely that the majority of the newly commissioned, maybe not the right term, newly produced material will be released on the cc licence. Robert Stachel here is dealing with licensing issues and is an artist, and Christian Jungwirth over here is the head of the station and negotiating with many of the institutions, one of the main issues coming up again and again is collecting societies and this intermediate stage where it's basically artists who are ambitious about their career and are at a loss to see and picture how it can fit into their professional career development. It is clear to me that non-commercial licensing is a non-collection of potential revenue that comes from commercial exploitation, and this fits in the missing gap which can make, if you like, work respectable to the professional arts community. I want just to leave that there.

I also want to ask a couple of direct questions, being English and working here in Austria. There are a couple of issues to do with BBC Creative Archive project which partly puzzle me and are directly relevant for people in Austria. One is new material, a fantastic amount of new material is being produced, so it's seems like this emphasis on problems of clearing rights of old material is a bit of white wash or something like that. In other words, people could really benefit and be supported if there are producing sites which they could use, where they could say we can plug into this project. The two things really seem to be a problem are the lack of clear processes from new material that has been created, and secondly the royal charter and King and Queen saying that - as far as I understand - that it has to be predominately UK use.

Oh, just on that one that intrigues me: What might happen to this whole story is you might want to get walls internationally building up, we say we are not letting ours go or maybe we can get some kind of emission trading going into the rest of the world that can team up against like the BBC and trade…. We give you all this content if you give us yours.

ML: There are two fundamental differences that the BBC Creative Archive licence and Creative Commons. One of them is about originality and the second one is advocacy. The second one is really a statement saying that if you make new material in a Creative Archive content you cannot use it to endorse a particular commercial or political agenda. Let's say the far right in the UK used Creative Archive material for a publicity video we can say no and stop it. Same as Labour couldn't use Creative Archive material to endorse it as the BBC is politically neutral it can't be seen to be endorsing any particular political stands. The second one is about UK only and that's really saying it can really only be used in the UK. I'd only mention two justifications for that, they are weak justifications, one is that distribution costs at the moment, there are distribution issues that can be very costly for us, to distribute it globally; but secondly the royal charter covers BBC's provision of content to the UK and there are some sensitivities about whether the BBC should be … The BBC World Services are run either by commercial organisation or by the BBC World Service which is actually funded differently, directly from the governments foreign office and not by the licence fee so… They are the two differences between the Creative Archive and Creative Commons licences. I would say though that they are really there as kind of emergency back stops rather than things we are going to very pro-actively enforce. So they are really there as a flagrant breach over those conditions so that we can use them as a back stop. You know, we do not have plans to track different individual downloaded Creative Archive clips over networks to see people are shipping them to the States. That's a complete waste of our time … but there were flagrant breaches we would be in a legal position to stop them…

David Bovil: It stops institutional collaboration…
PLD: Anybody with half a brain both within the BBC and outside the BBC knows that this is unbelievably stupid…
David Bovil: Are you excluding the lawyers then?

PLD: No, bless them, even they understand, that it is stupid. We just culturally have to see the BBC as a whole, and also it has to be said that the relationship the BBC has with government bodies as well in terms of it's funding security… Remit for the BBC is about the value of the UK, just as Creative Archive is forcing us all to re-evaluate meaning, many, many different things about what the BBC is there to do. It's also forcing a question of why we are drawing a geographical boundary around material in a

distribution mechanism were geographical boundaries no longer make any sense. And so I am eternally optimistic that we will see significant progress in terms of Creative Archive Licences and particularly the UK.

ML: I would also invite the chair of the Creative Archive Licence Group advisory group, that is an advisory group that meets once a month and includes people from within the BBC, it also includes representatives of our partners in the Licence Group, that's the British Film Institute, Channel 4, the Open University and our teacher's TV. But it also includes a number of institutions who aren't involved in the project but are interested in either helping us with the work that we are doing or maybe learning more so they can develop their own projects. And as yet from apart, like Lawrence Lessig who was really one of the people that I brought into help start the Creative Archive idea at the BBC. Apart from that we do not have any international representation and I would really encourage as the chair of that group people who would like to participate in that in what ever way. We are currently developing the themes for the next six meetings over the next six months, in every meeting we would focus on a particular issue. And one of those issues is going to be all about UK and international relationships, and what we want to do is bring in people to help us debate those issues amongst the Creative Archive advisory group and that's by far the best tool to raise these kinds of issues because all of the key senior executives of the BBC who are making these decisions would be at that meeting. So please come up to me afterwards or ring me if you want to be involved in that and I'll let you know.

PLD: While we do quick advertisements at a more intermediate level: www.creativearchive.bbc.co.uk has a myriad of feedback mechanisms on it and I would feel strongly about this, please, please take some time to, if you feel like writing a paper on it I will be delighted, if you only are comfortable writing a few words I would similarly be delighted. Because the more that we collect more of the thinking around what people outside of the UK are thinking about when they say, we would like access to this, so I think David your point about being able to have collaborative organisations, is a really powerful one. At the moment the only thing that people have in their mind is: They gonna steal it and they gonna do really bad things with it... Why would they do that?

ML: I think that collaborations ....

David Bovil: ...if the fines would be higher that would be really good, just with a few institutions ...

ML: Exactly, I was going to say that the best way to get over that issue would be to partner with organisations so that there is a notion of exchange, so that would both contribute material so that there would be a European Creative Archive or something like that. That would be a really, really good project that I am sure the BBC would like to lead on and get involved in!

Volker Grassmuck: You were saying before that the AKM people at this year's copy right meeting were not aware of creative commons licences, to be fair enough the licence was originally designed completely without the continental European levy system in mind, so there is a reciprocal ignorance going on here. Do you know of any debate inside of the circle, about adding another option to the licence where creative people get to choose whether they want a share of the levies or not?

JA: We are just starting this discussion here in Austria, and I don't know about Germany.

PLD: Perhaps I can comment: There are certainly differences in those jurisdictions that currently have creative commons licences around the world, certainly for continental European CC projects, but I would certainly add Australia which also has a very similar tension with collecting agencies. There is now a working group within the CC project that is looking at collecting societies and specifically how we can bridge that ignorance. I think that has certainly been a omission here that many projects did not develop with a sufficiently close relationship to the collecting agencies, in awareness of collecting agencies and conversely the collecting agencies have not been given an opportunity to really understand what CC is really about. So perhaps that is a meta-conversation that is going on. Unfortunately it's not my expertise, I don't know specifically what they are discussing about.

Volker Grassmuck: Maybe you could comment on the very different organisation and purposes of Creative Commons and collecting societies.

JA: Yes, it's quite a new idea but David mentioned that there is a lack of knowledge also among the artists of course. Right now there is going on an amendment of the Austrian

collecting societies' law. I think the draft has gone through the parliament already, it will come into force at the beginning of 2006. I wrote the comments to this draft for the Austrian Artist's Council and this was the start of quite a bad conflict within the Austrian Artist's Council, and there were especially the literature authors who said: We don't want to have any more free uses, we want to earn our income by our artistic work, and don't put in further ideas to force us to give all our works away for free! This was a lack of knowledge in a way... I think we need an institution, well it need not be an institution, it can be a kind of task force, a kind of interest group that assures both the authors and the collecting societies, to affirm the collecting societies that their business is not in danger, it's the other way round, take those ideas into account and deal with it in a proper way. And even more for the artists it can be a nice business model to publish under CC licences and at the same time maybe get levies' revenues from the collecting societies. It has become an emotional discussion as I showed with this quotation, we need to come down to a discussion on a rational level now and I think that such an interest group could do that. Partly this collecting royalties for artists could be in conflict with a non-commercial CC licence. That's why I had this idea that we could put in between an institution that collects the royalties from the collecting societies for those authors who publish under CC licence and we use that income to enhance the open content. This is in short the idea.

Volker Grassmuck: So some CC licence authors would get levies in any case and then some CC authors would say we don't want the money and that goes to improving the infrastructure for everyone and other authors say I want to allow sharing and copying and stuff but I want to get my levies.

JA: I don't know if it can be that individual, because it is a collective business for the collecting societies and the less different contracts they need the better for them. I think it would be better to develop one model, not two.

David Bovil: The problem is the cost...

Volker Grassmuck: One last comment I want to make is that the collecting society system is under attack from a completely different angle right now, from DRM. In Germany the debate at this point says that levies should go down as the number of

works released on the DRM increases and vice versa. If Universal says we don't do copy protection on our CDs anymore than the levies should rise again in theory. And that could be the same system with CCL works where you just look at the number of works that are licensed in that way you don't have to have an individual contract, where you change your individual contract with the collecting society, just as a statistical redistribution. So that could be solved the same way that this DRM problem will have to be solved anyway ... Just a comment...

Christian Jungwirth: I just briefly want to tell you why it is so important for us, setting up a TV station, to clarify this situation. Because I think the original intention of the collecting societies for having that exclusive right to manage rights for one artist, the intention was to protect the artist form being too nice to people, who ask them for a performance between friends, I know it happens and I know that people are sometimes quite happy that collecting societies can serve as an excuse for not doing any gig that people invite you to. But in this case we are not talking about music tracks being published under CCL, we are talking about artists who do exclusive work for TV programs and how I understand...

JA: Why exclusive?

Christian: Just for this particular example that seems paradox to me, I am just making an example: exclusive works for TV programs. So if I asked a friend of mine who is a musician and a member of a collecting society to do a sound track for my TV program, and I will only use this music for my TV program, so there is no option for this to be commercially exploited, still I couldn't put my program under CCL because that person, because that musician is a member of a collecting society. So I would rather have to download some music from some archive from the US and have music as a soundtrack from an US artist, than the music of my friend next door, and this is the paradox.

PLD: I think you are not the first one I hear to talk about that...

Christian: And people will still do it, and that's my point, people will not download music from the US artist because the value of having their friend involved is considered higher than the value to put it under CCL, so effectively it will lower the amount of the CCL on content from Europe

PLD: The thing that worries me most is that a case like this ... one of the reasons that CC has gone to great heights to culturally and linguistically and juristically support the

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licences when the idea was exactly to encourage local creativity, local industry, all of those sorts of things, but this particular blockage with the collecting agencies... As I say, you are not the first one to tell me, I am now sourcing my music from America, this strikes all sorts of horrors into my heart, I like America don't get me wrong, but this is not the idea to create a kind of cultural one way freeway of materials. So I think it's critical to address this and I think again the example that you give is yet another example of how nuanced the landscape has got. The collecting agencies were born in a time when it was much, much simpler to provide that mandate, to take the artists and try to secure as much as they possibly could for the artist's work. Now we are in a situation were the artists want both, the protection for the content of the commercial sphere of their work, but they also want to have a non-commercial view. Many artists that I speak to, particularly musicians, who use CCL by necessity, this is mainly outside of continental Europe but certainly in the UK, in Canada and the US, we are seeing more and more musicians talk about CC as a non-commercial licence as a big marketing tool. They think of it as a philosophical or ideological good thing to do, they think of it as a marketing tool, this is a way that I can build my audience, this is the way I can build my reputation, this is a way that I can build the number of people who will attend my concert, and they are very pragmatic about it. If you are looking for examples for this I would point you to a website or a business that has been around for a while now, called MagneTunes (http://edwin.chau.name/magnetunes/) MagneTunes is run by a guy called John Buckman, and it's a record company. There are a number of them that now exist, there is also a Gemondo (?) in Belgium, Fadingways, a record company in Canada[1], three that I know best. And all of them think about CC as a marketing tool and it's very straight forward for them. When you see those kind of business models emerging you start to understand …

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David Bovil: I would say convincing all these collecting societies would be a lot of work, for the next 10 years, or 20 years. I would certainly, from a military strategy, just target one in Europe. If we get one collecting society which will do it, and also under EU legislation you've got requirements to feel free to go to any collecting society I should

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[1] http://www.fadingwaysmusic.com/

think... So that means if you find one it will be possible to release my track with that EU partner...

JA: It's more complicated then that...

David Bovil: It might be more complicated than that but it's a damn strong argument, it's about as strong as you can get...

JA: Maybe yeah, try to find one music collecting society...

David Bovil: It will be very hard for a collecting society to say we will prevent you from releasing your work under a Finish collecting society, it will be hard for them to do that, it will be possible but it will be much harder than to say no it's against the rules.

JA: Finland might be a bad example because in all Scandinavia the music market is so much concentrated that within the collecting societies it's certainly not the artist but it's the labels and the majors who tell how they work, there is no influence in the collecting societies by the authors, it's just business of the majors, it's just one leg of a big company.

PLD: I think David does make a good point though in a strategic sense if you can take a step back I think is absolutely the right approach, as to try and focus on... I mean in the licence organisation we have been extremely fortunate, we have a very large volunteer community that is across all of Europe, so we can also afford to have conversations on a local level, as we see in Austria...

AB: Maybe I will bring up a topic we discussed to do with endurance. Can we say there is some sort of public interest, that we should legally have the possibility to publish this old stuff?

Manfred Lechner: I am the head of the library at the University of Art and Industrial Design here in Linz. We are confronted with the question how to deal with images, moving images and how to use them in research and maybe artistic works at the University. We have collected pieces of art, we have collected different materials and no one really knows how you can use it in your artistic or scientific work and how the rights are... Most of the answers I get is: You don't have the rights. Can you show some examples how Open University is working with these issues.

PLD: We share exactly the same issues here which is trying to understand what is the rights ownership in material that up until very recently, I'll be willing to bet, you thought it was yours, it was sitting on your shelf, you were creating it, you were looking after it, you were making sure that people could get to this material, to all extent and purposes, it felt like it was yours, right up until the point that you started to think how people might be able to reuse that material and then suddenly it's not yours anymore and... This is an incredibly complicated area and I am not a lawyer, I have a very amateur understanding of the law, but my general comment would be: You don't own it! By and large my experiences show that we don't own it. We have to go and either ask for permission or we need to go and acquire that material in order to be able to use it in that way. Just touching on Open University. Open University is in many cases quite fortunate. The reason it is quite fortunate is that, because of the nature of Open University, the give away in this in fact is the "open" in front of it, was that it actually was one of the few institutions that thought upfront, before it commissioned works, before it had works produced, that it might need to use them in lots and lots of different ways, and because of that not always but often they acquire all rights for the material.

Manfred Lechner: They produce them themselves?
PLD: Exactly. If they commission them internally clearly they acquire all rights from the contributers, but even when they independently sourced the material they were able to put a very good case on the table that said: We are Open University, we want people to be able to share this material amongst themselves, that's the point. So the Open University was in a slightly better situation than most of us, but if you're interested I'll be more than happy to be able to put you in contact with some of the people in Open University if you want to have a conversation with them.

AB: I'd like to add that in Hungary exists this very interesting mandatory licensing model where everybody is forced to let their works be published on the internet, they get a remuneration for it. I don't know what is your point of view in this debate, because.. Manfred Lechner, you are part of a collaboration between Ars Electronica Center and the Art's University, we once discussed this certain issue of the Prix works of Ars Electronica and the question: Is there some sort of public interest, this material should be published, how can someone refuse to give permission to publish it, or what shall we do if we can't find certain right's holder?

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ML: I think this is where we really have to fight against the worrying tendency coming from America of extending copy right terms on artist's work. We've got a minister for the creative industries in the UK who recently said that he was in favour of extending artist's rights to a hundred years plus the lifetime of the artist for music performances, and I hope actually we have managed to help lobby against that but it's an ongoing process.
JA: … the collecting societies will be on his side…

ML: It was interesting because you know the Department for Culture and Media and Sport have consulted the industry and the first question they had was: Who do you think the industry is? Is it just the collecting society? And it was very much influenced by particularly the music publishers and the collecting societies who were lobbying for the extension. And that's why in the BBC we are trying to agree on a windowing strategy where we made clear that works that we commission at a certain point in the future would enter the public domain. We are not there yet but our strategy right now is to make absolutely clear what the public service distribution window is, when we can distribute the work free to users under the license fee, what the commercial exploitation window is, and then at what point we would enter the public domain, and I think that is the most critical issue we have in all these rights negotiations. Moving forward is to get to a point where there is absolutely no question whether the work is available for distributional use or not, it just enters the public domain. That's a very, very tough battle and where a lot of the economic modelling I was talking about earlier is absolutely critical. We are currently sponsoring a research project with the IPPR, the Institute of Public Policy Research, a kind of UK think tank, and they are looking at digital IPP models on intellectual property for a whole range of domains. The BBC are one of a number of partners who are commissioning a report from them what these new economic models look like, and at the moment I am just trying to get as much evidence as I can to try to argue for the value of public domain, we want to extend the public domain as quickly as possible. In order to bring those arguments further on we need economic models to describe what the effective limits are of commercial exploitation in terms of time and what the result in public value is of public domain material. Funny enough the Economist in the UK has published a number of very interesting essays arguing that about 14 years is the original copy right terms of a 100 years ago, actually 14 years is absolutely adequate for nearly all potential commercial exploitation for huge amounts of published

material. They also come out in favour of having some kind of mandatory fee for extending that, so in actual to put the pressure back on right's holders to be overt about extending their own copy right terms outside of 14 years, so you would have say 14 years and after that you can pay a nominal fee of lets say one Pound to re-register that work for another 14 years. If you didn't do that it would automatically fall into the public domain. It was interesting that the Economist as a magazine that is not renowned for it's left thinking was quite in favour of that. That's kind of meta level of the whole kind of copy right field, that's the biggest battle right now, finding good arguments to convince particularly policy makers in government, why you know extending copy right terms is not a good idea. Because the very powerful lobbyists from the collecting societies, in particularly the music publishers, have very good arguments, or what seems like very good arguments, in their favour to policy makers about the economic interests of the artists and so on... We need evidence, we need very good evidence!

JA: This is quite cynical, but they use as an argument to extend the range of protection that the artists need better chances to fund their living on their art.

ML: It is interesting to make parallels to things like patent terms because often the music industries talk about their role of supporting developing artists as if they were their internal R & D labs, they talk about their role giving artists the time and space and heavy investments that they say they put into the artists development, which actually, I don't think, is critical. And I think one of the things we need to do to inform policy makers is to do good analysis of where R& D is going in industry. I do a lot of talks about innovation and trends in innovation and at the moment the biggest kind of trends in industrial innovation are towards open innovation models where you encourage exploitation of your IP outside of your business in order to increase market share or perhaps create secondary markets. But also what has been called "free revealing" Eric von Hippel who is a professor at MIT Sloan School has done some fantastic studies on what he calls "lead user innovation" where he demonstrates in a number of different sectors including scientific instruments and extreme sports equipment where innovators who are often users freely reveal their innovations in order to grab a market or two or to share knowledge ("Democratizing Innovation" http://mitworld.mit.edu/video/262/). And actually a number of products which then dominate the market were initially developed by lead users freely revealing their innovations to their peers and to their communities,

and he has pointed to the economic, there are actually some really good economic arguments that come down in favour of what he calls "freely revealing" because if you kind of freely reveal your innovation you have got a larger market which you can then develop secondary markets around. So there are some good arguments that have come out of heavy industries that we can start to use in the creative industries and the argument I am trying to make with the Department of Culture, Media and Sport, is that if they are looking at industry models they shouldn't use industry models that are 20 years out of date. If the creative industries are using a kind of rhetoric, if the rights and publishing agencies are using rhetoric around their investment in development, actually they are using a model to justify their arguments. Actually the trend is away from that, you need your right in order to invest in research, lots of open research models, lots of innovation models suggesting that there are other ways of getting value out of your IP that you can then invest in your R&D. And it is really important that we look at those and try and transfer them into creative industries, that you know the music publishing companies and their business model of: We need to make lots of money so that we can invest in lots of artists, the question is if that is really what they do. I don't think it is true, I don't think ANR is IND, I don't think they are the same at all.

PLD: This brings us back to some aspects of an earlier conversation that Matt was having about the struggle the BBC is having to re-inject this notion of public value and public good into the discussion, into the conversation, in many respects I see exactly the same need. If we take a step back and look at intellectual property law as a whole, there is a need to reconnect this component that is about what is public good, public value, and certainly I have the very, very strong view that public funds should deliver public value and public good. Which is why I feel particularly passionate about the BBC and simply extend that to publicly funded institutions, libraries, archives and museums. I strongly feel to be re-injecting that into the conversation, but I think also though - particularly with copy right - it was instituted originally to try and strike a balance between authorial incentives and public good. And it seems to me that we have lost a conversation about what is public good and how do we use this instrument to achieve that balance between authorial incentive and public good.

If there was one thing I would try to inject into this conversation is the importance always to be thinking about how do we find that balance, and I think many of the issues

we've discussed today, that the issue for example of community television in Vienna, the issues that we face in the BBC, the issues individual artists face, is that the artists themselves are starting, and the creatives themselves are starting to try and understand themselves: Is there a balance here? Is there actually value in this public good? And I think the answer is Yes. I think clearly the answer is Yes, but we have lost that part of the conversation, I think we have let that fade away, we are no longer practised in talking about the public domain and the value of the public domain. We have successive generations who don't have a relationship with public domain, because nothing that is culturally relevant to them exists in the public domain. Why on earth would they have a relationship with that. We are loosing the capacity to understand and appreciate the value of that public good, of that public domain. Sorry I spoke too fast and I waved my arms around, hopefully you get the general idea.

ML: There is another research project that Paula's been involved in and I slightly as well, that's been commissioned by the Royal Society of Arts in the UK. And they will be launching in a couple of weeks I think …a charter for intellectual property and public domain which sets out to address those issues. It has been an 18 months long research project and they are exactly trying to answer these questions that Paula has just raised: about what is the balance of value between intellectual property and the public domain, and how can you properly express the values, and how there can be measures for the relationship between the two, and the charter will set up a number of proposals for how governments and collecting agencies and a number of other important players in this field, how they should behave, it's a bit of a manifesto. I haven't seen a draft yet.
PLD: I actually haven't either.
ML: So we can't talk about it in detail…
PLD: I think it's going to be launched in October. Very progressive if you are interested in this area. (http://www.rsa.org.uk http://www.adelphicharter.org/)

ML: yeah and that would be.. that's been led by a guy called John Howkins who is an expert in creative industries, so although it will cover a number of domains including pharmaceutical and other industries, it will focus very closely on creative industries as well. So there are two big research projects IPPR and RSPCA.

AB: Matt, could you please repeat what you said a couple of days ago about databases and the social sphere.

ML: Yes. I was invited to talk at the panel on Wednesday announcing the Ludwig Boltzmann Institute for Media Arts and the brief I had form Dieter Daniels, the new Director, was to really give some learnings from our archive projects and some suggestions how the Boltzmann institute could approach the archive. I essentially recommended three things. We had three questions that we had to ask ourselves at the BBC with the Creative Archive.

One of them was: What is an archive, what does it actually represent? For me archives should be seen as the sometimes accidental product of social networks, they are the outcome of social exchange between creators, producers and the audiences and you should reflect that social activity in its representation. I wrote an essay for the Ars Electronica catalogue this year with the slightly outrageous title of "Letters growing them into dust" which explores how people use media as part of social exchange, often in a very intimate, personal way and proposed that all to often archives try to isolate the objects that they represent from that social discourse, so number 1 is archives need to preserve that social discourse and encourage new forms of discourse around the objects.

Secondly, what is an archive for ? It is definitely, as the Boltzmann Institute is tackling head on, about establishing a kind of history and canon about the scholarly pursuit of archives. But archives are also creative objects, that was the whole reason for the BBC, archives are not just for consumption and reflection, also for participation. To design an archive now, with the technologies we have at our hands without encouraging creative uses of them again would be a huge missed opportunity.

And finally the question was who is an archive for? Again, a lot of the presentations on the panel on Wednesday, where people were talking to experts about the archive, actually the archives aren't just there for the experts also they are there for fan communities. The BBC in trying to piece together it's archive has often gone to fan communities to find copies of works that we didn't have. Even in the 60s and 70s there were fans who would record broadcast TV programs by placing an 8 mm camera in front of their TV set, and the BBC actually has obtained footage of lost TV programs by finding

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those fans and getting their footage. So we have to engage with people who are passionate about the subject but maybe amateurs, I write again in the essay about mass "amateurisation", but that's true in scholarly areas as much as it is in production areas. But actually I think archives have to be seen to be there for everyone and that's why their openness is really important. If your archives are there to inspire people they are there to inspire the next generation of creators and entrepreneurs. So if you don't build an archive that is part of a social discourse, if you don't build an archive which is about inspiring creativity, if you don't build an archive which is open enough so that anyone can access it, then you are missing a huge opportunity.

Really the recommendations I had to the Ludwig Boltzmann Institute is that finally they are there to establish a canon and to encourage discourse amongst experts. But also they have got a huge opportunity to let a whole new generation of artists understand what's been going on in media arts in the last 25 years and to make new works which respond to that. If that isn't their goal, if that isn't their primary mission to inspire the next generation of media artists I don't really know what they are there to do.

PLD: I would like everyone to think – which is very much in the same scheme - which is this notion that everyone should be able to shape the archive, not just access in ways that are relevant to them but actually have a role in shaping the archive itself and I think this is the challenging thing for the archivists to come to terms with. That it's ok to be slightly chaotic, it's ok to be slightly anarchic because in allowing that you let people shape in directions that are relevant for their communities. This is extraordinarily difficult for, with all respects to the librarians and those associated with libraries, it's enormously challenging for librarians whose role is to try and make sure that a particular book is in a particular place, categorised under a system that has been devised by a number of experts in the area. I don't want to undermine the importance of doing that but I do want to say that it is critical that we also consider that having sort of fuzzy edges means that other people have a role in shaping those archives in ways that are relevant for their communities and relevant for their kind of engagement with the archive.

ML: Anyone who saw David Wineberger's talk yesterday at the Hybrid conference, he talks about: We are in a third order of knowledge now, post-Aristotle area where we no longer have to think in terms of trees and structures, but we can actually encourage an

ongoing conversation around products and not trying to look for a finish to that discourse, to be multi-layer and ongoing. An example I mentioned on the panel on Wednesday that combines scholarly pursuits with a very open access, is a friend of ours Phil Gyford who has built a site called "pepysdiary.com" (http://www.pepysdiary.com/). Samuel Pepys is a very famous diarist, he kept diaries in the 1400 or 1600[2], my history is terrible, but a long time ago. It is one of the only records of daily life we have of that era, a very famous piece of cultural history in the UK. And it's often published as his diaries, my friend Phil has always wanted to read them but they are quite lengthy and he never got around to it, so as a tool to force himself to read them he started publishing them as a blogg "Pepysdiary. com" and started to write the entries as if Pepys was blogging them in real time, so the project would take him another 10 years. It is a really interesting project, and what he did, because he is an incredibly talented coder, is he built some simple comment and annotation around the entries to encourage people to help him and understand what Pepys was saying, because Pepys often uses words or references which are quite archaic now, they are very old references that don't mean much. And what has happened with Pepys Diary is that it became a magnet online for a whole range of people who are really interested in Pepys, scholars, amateur experts, other people who were reading him for the first time, and there is now a huge discussion on that site, almost every other word on the diary entries people have annotated and linked to provide more information about who Pepys was referring to. Sometimes Pepys refers to going out to dinner with someone and someone would note an annotation saying this person was Lord dadadada, his relationship to Pepys was so and so. So what Pepys diary. com is now is a fantastic resource being produced by a huge community voluntarily, kind of similar to a WIKIpedia idea, but it combines loads of levels of debates from real expert scholars down to people who are coming to Pepys for the first time, and often people would come and ask questions about their own interpretations of Pepys and have them asked in the communities, and this was a bit accidental and for me it is a brilliant example of what archive should be doing. You know you should not just be commissioning experts to interpret the work but very simply... I mean Phil doesn't make any money out of this, he does it in his own time, he just has a server space. For virtually zero cost he's built what is now one of the primary sources for information of Samuel Pepys online, and he did it just by himself using blogging tools.

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[2] Actually it's the 17th century, see http://www.pepysdiary.com/

Manfred Lechner: Back to the new Ludwig Boltzmann Institute for Media Arts: I think the big problem with the rights question, it's 25 years of Ars Electronica, no one has thought about collecting an archive, no one has secured the rights, and we have to define this public interest of this works so we can provide open access to all these files. This is one of the big questions we are confronted with and we just don't know yet how really to deal with this.

ML: Sure there is an artist's interest. If you announced a very open strategy and said to artists "We are going to put this material online so more people can see the work, more people can talk about and discuss your work, let us know if you don't want us to do it", you would be surprised if you find artists that would actively say "No, I don't want to be part of this institution". I think you have to sometimes to get over the millions of micro barriers you have, you need to take one big leap and say we are going to do it. Now that happened in the BBC where Director General Greg Dike announced Creative Archive years before we would launch anything, but that kind of set the bar and suddenly it was like "Shit, we've got to do it now". I think if you can make a very bold statement about what the archive wants to do, then you'd be amazed about how many people will rally behind that vision. If you try a kind of piece meal pick through individual arguments you will be taking 10 years. I think you need to make a really bold step.

PLD: Do you think you've got a recipient community, a community that's able to fight, which the Ars Electronica is, a terrific example of a well defined community. A community that is willing to engage in the conversation. I think the BBC has such a large community and such a diverse community, it's much harder for us to define it and engage in a collective conversation, I'm generalising here but I would have thought the Ars Electronica community would be a much, much more fertile ground to take a much more proactive approach.

AB: But I think it's also the local approach that was interesting for me at the discussion two days ago. I thought, yeah, that would be really a pity if only these seven guys tell us what's the history of media art, this was when I went into the point. When I think on the other side for example the art team involved, this would be a big chance to involve all the students, to get a feeling for their own rights and to consider how they could publish

the work, for example everybody has to hand in a work, has to document it and put it in the database and think about it how its rights would be...

ML: The huge advantage for the Ars Electronica archive is that - there are a few exceptions obviously - most of the people that are responsible for the work are still alive. One of the questions for the archive at the panel was someone said that it would take six years for someone to upload 30.000 documents, but I'm sure they're not the only copies of the documents and I 'm actually sure that for each work that was submitted or proposed the artists have got other material that wasn't sent in to Ars Electronica. So if you kind of issued a call for the 30.000 people who wrote proposals to help build this kind of archive then you would get an awful lot of work done very quickly. And I think that is the kind of strategies which the archive needs to think about doing. There are also huge resources on the mailing lists of websites like rhizome and nettime and V2 and others, wehre the artists are discussing the works as they are being made, we've got one diary of Samuel Pepys and his life but there are kind of millions of versions of the history of Net Art out there in those networks and in those discussions. Not to try to reflect in the way the archive goes about it's business but instead to try and draw a kind of tree structure and say this is a story that feels like a really missed opportunity, anyway, go on...

Milos Vojtechovsky: One question, on how can you provide the thing that you mentioned before, that for any archive or commission it is necessary to give kind of social context for each item. If you are creating bigger and bigger archives you are loosing social content if you are not going to the state where the reality and the archive are equal.

ML: Yeah, yeah, that's a classic Umberto Eco essay on building a one to one map of the empire, you know it's impossible.

Milos Vojtechovsky: I just question the promotion of archives like the only one way of the reading... There is only the positive side of it, you can find lot of that, but I think what is important to say is that it is still a cultural construction and even a class construction, I don't want to state the Marxist point, but an archive is also the

representation of class superiority, it always was through the whole history, and BBC is also the result of imperialist exploitation of other cultures.

David Bovil: But if archives already exist, there is no point creating life balances, making it more personal, making it more accessible and building culture and context into them, these archives are just underground and covered in museums, galleries and libraries and are already, no one is building, very few people are building new archives here, they are dealing with old material and dealing with old problems.

Milos Vojtechovsky: There could be some communities who are not willing to be part of that, Aborigines for instance are claiming back their stolen art work, because they are not considered as art work by them, they are part of their own identity. I think there is a more ambivalent approach giving everything open, I think it's not only...

PLD: You referred to indigenous Australian populations, I'm Australian so I understand some of those issues quite well, but I intentionally never venture into that area because it is unbelievably complex, that's not to say that it is a really important area to consider and I think you raised an actually really good point there. And it's not just traditional knowledge and traditional communities, I think there are contemporary communities that have similar issues, they simply don't want to participate in a public conversation.

Milos Vojtechovsky: In a way you are always thinking of this one archive to create, your own archive, not only, but this is mostly the practice.

PLD: I think that what we are doing is, I think one of the great things about digital archives is that there is really the need to destroy the archive as it originally was institutionalised or manifested, but I think what we do shift is the way that the majority of people engage with the archive, and so in that respect it could be that we destroy the original archive because what we do see is a massive shift of practise to the new more...

JA: It's a reaction to the tendency to monopolise the cultural heritage, to exploit it commercially, so the direction is to open our archives and to give them to the people.

ML: Can I mention another project that I think is a really good model of how to combine the political importance of owning your story with an open strategy. I used to work as a photography curator before I joined the BBC as a photography & digital media director, and one of the galleries I worked at exhibited a project by the American photographer Susan Meiselas called "Kurdistan in the shadow of history" (http://www.akakurdistan.com/). Susan is a world renowned documentary and news photographer and became interested in the plight of the Kurdish people in Iraq and the border countries in that region, in particular in the struggle to express their nationhood and their sense of identity under years and years of prosecution. She got an award in the states, the Genius Grant which means you can spend a couple of years working on your own project, and she used the money to research the traces of Kurdish identity and Kurdish history through the photographs and the documents that where in museums and archives all around the world and she did two things with that: She exhibited them as an exhibition which was really the first time, she worked very closely with Kurdish people in exile and in Afghanistan and Iran and Iraq to help them to articulate their story and their history, which in a that way never had previously happened. That exhibition toured internationally, it started at the Menil Collection in Houston and it carried on. She also created a website and in every region the exhibition was shown she got in touch with the local communities and Kurdish exile and got Kurdish people to start submitting more of their own documents to the archive, their own pictures of their families, their oral histories of their lives and what they are doing. I haven't actually looked at the project for a couple of years, I was working on it in around 1998, 99. She was starting to build this huge kind of open resource for personal stories and histories form Kurdish people, and also relating that to the archive material that was going back a couple of hundred years. I think that's a great example of how empowering open access archives can be to communities that aren't represented in official histories and who do struggle to articulate themselves and their histories, so I think you can combine the two. You can combine the structuring process which is necessary for groups who are politically excluded to tell their story with the open access which enables other people to contribute and to shape that story and to develop it further.

AB: Okay we are going to shift the topic and go to literature.

Christian Berger: I am creating a literature audio archive at the present based on recordings from author's readings and literature discussions and so on. The project is supported by the European Union and we work together with Slovak and Slovenian literature organisations. It's a community radio in Germany and Slovenia and small publishing houses and so on. I wanted to ask if you have got any experiences in the sector of literature archiving and licensing in this regard. My experience is the collecting societies are not the problem because in most cases the rights are owned by the authors and by publishing houses and in most cases one or the other knows who has got the rights. But sometimes they don't know what rights there are, so it's very confusing for everybody, you get papers signed and they don't know what they sign, how is it I in Great Britain have you got any experiences?

ML: Paula will know far more about the particular rights position but I just want to mention two projects that the BBC has done recently in this area. One is through experimenting with podcasting, distribution with audio online and that is coming up against a lot of rights issues. Most of the things we released were speech programs, in particular one we called in our title by Melvyn Bragg who is a well known British broadcaster. We are podcasting them, and actually when we started indexing podcasts on their sites the BBC had three or four of the top ten podcasts from our content. We also did something that was very interesting from a rights position. Radio 3 which is the slightly more left field classical and contemporary music station form the BBC recently dedicated a week of their programming to Beethoven and the aim was that over that week they would broadcast everything that Beethoven wrote in his career so that people could experience the whole breath of Beethoven's work. And as part of that the decision was made to record new versions of the nine symphonies and we made the decision to make them available as mp3 downloads.
Christian Berger: Just his music, but this is another area, there are companies, there are distribution companies, you have not to ask everyone who is playing one instrument to get the rights, in literature you have…
ML: Just quickly to finish that off, for when we released the first four symphonies which were available to download in one week we had 670.000 downloads of the Beethoven symphonies which was just remarkable.
Christian Berger: Literature is a small area …

PLD: The first and the really obvious statement to make is that audio is easier than video by large. Video introduces a whole bunch of issues we can talk about that over a coffee in another time, and so it's even simpler when you don't have music, music is by far even in video some of the most complicated areas. So the good news is, I'm sure you have discovered it is a simpler field. I think one of the experiences we have had in particular is dealing with moral rights, we have had conversations with estates in particular, so not actually the author, the author is dead, and the estate that is now looking after the author's rights or inherited those rights, are often some of the most difficult people to deal with, even over and above the music industry.

Christian Berger: So you try to record living authors ... every one laughs...
PLD: Great plan ...hahahahaha.....great plan, this was the recommendation I was leading to. We can start with contemporary authors, that's a really good idea and then it comes back I think, I am being slightly glib but it comes back to David's earlier point. Our effort is very much on the archives and backwards looking, but I think there is a great deal of value to be had in thinking about how do we make sure that we don't continue to create legacies of rights difficulties. How do we make sure that as we move forward we provide as many mechanisms as possible for contemporary contributers to be able to join these communities as easily as possible, electing upfront that they want to be part of this opposed to us having to go back to clear things up. So my first point would be with contemporary authors, definitely the way to go. I think one of the other things we have encountered, as I said, is moral rights, and my understanding of it in a very, very sort of amateur way is that, we find authors become very concerned that their work, in a recording in a particular, maybe taken, or a part of it may be taken out of context, or it might be remixed in a way they are not comfortable with, you find this particularly with authors, they are particularly concerned with it. One of the things that we have found to be useful is to talk to them in terms of case studies. So rather than the sort of "This is what we're trying to do..." is to gather as many case studies as we can, a really powerful one for us is a science fiction writer called Cory Doktorow. Cory is a quite well known science fiction writer in the kind of small field of science fiction, and the really interesting thing about Cory is that he releases all of his novels under CC licence and he publishes the work commercially. ...

Audience: Sorry, what's the name?

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PLD: Cory Doktorow, you will definitely find him …

ML: He is very googlable[3]. There is also a very interesting project that's been running this year by Penguin books[4], who are one of the biggest publishers in the UK. They did a project called "Remix reading" or something, I can't remember the name, where they made available online mp3s on a number of audio books from some of their biggest titles and made them available and had a competition to encourage musicians in particular to use those audio recordings as part of a new track or to essentially remix and reuse it. And that was a quite high profile project in the UK. So that's an interesting case study.

Christian Berger: Are there recordings in your archive?

PLD: There are a lot, BBC Radio did a lot of readings.

Christian Berger: Is it possible to use them.

PLD: Not yet, remember the first issue I mentioned about dead authors in the States, we have a lot of work to do before we can get rights to use that material.

Christian Berger: Do you do recordings now?

PLD: We don't do as many interestingly, we don't do nearly as many contemporary recordings as we used to, the BBC used to do an enormous amount of readings on the radio. And at the moment we still don't require all the rights, having said that, the radio team is very much working now with all radio output to try and target those areas that we think would be most useful to pull into, I don't want to call it the Archive but, to pull into a broader distribution mechanism which includes being able to download mp3s, includes being able to podcast.

David Bovil: The BBC has such an international clout releasing one track in that way, coming back to this idea of piloting and exchange between institutions. So to be able to make a simple pilot as part of the BBC gives them the authority to start that project, and so by institutions on a European level working together like that in very small, one track steps, not the whole issue…

PLD : I will come back to Matt's earlier offer, Matt does chair the public advisory board to the BBC's Creative Archive project and I have it now on record that he has invited international participation, please take him up on this. This is a very important way to engage in this debate, more critically as what we have seen this advisory board create in the past is this partnership model in the UK. So we already have a road map here that demonstrates a participation in this group leads to action. So all of the earlier

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[3] http://en.wikipedia.org/wiki/Cory_Doctorow

organisations we referred to, teachers TV, Channel 4, British Film Institute, Open University, all of these people started out as members of this advisory board. So, it's a serious sort of step on the road map to be creating the necessary consortiums and partnerships that we are talking about today.

AB: Roland, can I ask you to do your presentation?

Roland Alton-Scheidl: I am the manager of Public Voice Lab, a software community, I have maintained Austrian CC Licences and introduced them one year ago, the opening was an open source water bottle event here at the Ars Electronica in order to say the idea of free software can be applied to any kind of media and we have applied that even to water. What I would like to do is briefly summarise the open questions because the Austrian CC organs, well, let's say people, we are not an organisation yet, we will have a meeting in mid October and would like to discuss what to do next, what kind of services are producers expecting from us. This will also have an influence if we are going to found an organisation or if we just stay a group of people. Briefly to summarise, I think we have a hybrid setup, to be in line with the motto Ars Electronica. Here are all the artists, and if an artist is publishing under the CCL, especially under non-commercial terms, it's very easy for community media to use that kind of contract. But if he or she is member of a collecting society, then it's going to get more complicated. The question is now if there is some kind of service which you are expecting from CC or us as a pressure group, which we should provide between these rights collecting societies and other parties who deal with content. So other parties could be e.g. commercial users who would like to access the database, or we have questions from mobile phone companies who would like to use some kind of content. So I think, it is okay if they remain in contractual relations with rights collecting societies, because artist would not be able to control it if such companies would use that commercially, they would not be able to collect fees from those companies. Either we are able to convince the rights collecting society to open their contracts to allow such kind of usage, and they would not to be able to collect from community media, or we offer them some kind of service so those fees are being collected or cleared in a proper way. This is an open question, do you think this is an appropriate way, or do you expect the CC Austria Group to offer such kind of a service?

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[4] http://www.penguin.co.uk/

Another kind of service could be is clearing. That would be to offer the rights collecting societies come directly to us and we try to find out what the artists really want to do, if they should be paid directly or if it is non-commercial use, because it has been published as non commercial, the fee should go into a for example some social project. Because this is part of the legal framework for rights collecting societies, they also have to fund social projects.

Another kind of service could be a registry. Currently it is not possible to register works which are CC licensed, there was a discussion two years ago and Lawrence Lessig said that there is some kind of non-disclosure agreement and we are not able to talk now. But we have been talking to colleagues in Germany, in Konstanz, and they would like to do such a service for those people who want to register their work under CC licence, and then it's much easier for the rights collecting societies to decide, ok this has been published under CC licence and we do not have to deal and collect here, but unless we do not have a central registry it is hard for the rights collecting societies to make a difference for which they have to collect and for which not. Another kind of service could be to hold rights for Collective Commons people. In the free software community there has been proposed an idea of a fiduciary licence, which means that if many people work together on a project, in case there is a law suit, because somebody is using this software in a proprietary environment, this group has no chance to fight for its rights at court. The idea is to give the rights to a fiduciary, to an association, in the free software sector this would be the Free Software Foundation Europe, and then you assign them the rights just in case there is a problem with your rights. And as we have seen, especially with the BBC and in the video scene, you have usually to handle a number of various rights, and then this might be useful model for the content area. Are those the questions we should try to follow in the future? I think, probably we should do this on a national level and find solutions here as case studies, and if, for example, we are setting up such a fiduciary model and if it is successful, we can propose that internationally, look we have solved this small problem with the rights collecting societies and then this can be taken over by other nations.

ML: Can I make one comment initially, and that is the key question: How you handle it is how these roles fit into a distribution chain. So in particular it is about the relationship with these roles. The reason why the BBC is experimenting now is that we know our

existing distribution models are becoming defunct. Our existing ways of transmitting TV and Radio are going to be replaced for large parts of our audience by IP based models, within the next ten years. And so the advantage you've got if you get the right kind of model is to take those roles and make them an automatic part of the distribution chain. An example of that in the UK is, there is a n ISP internet service provider called "Play louder" who have just announced that they cut a deal with one of the major music publishing companies, it's not Sony I think it's Universal BMG, they have essentially got a tracking technology in their distribution chain for the ISP, their kind of IP network that can record how music tracks are moving across the network, so if you join "Play louder" as a service provider, there will be levy included in your service fee which will give you absolutely free rights to use any peer-to-peer network to share any of Universal's music tracks. Well that includes ones that you might already have that you've downloaded illegally, because what Universal have done is, they have worked with the ISP to track how the music track are being shared and distributed across the network and used that to distribute the levy that every user pays. So what you are doing if you are a user is you are paying a small levy on your internet service access fee and you can just do what you want with the music, it's a blank agreement. It's the first implementation with a significant partner and it's really interesting that Universal have agreed to this because they see that they can still distribute money to their artists by tracking technology saying essentially what tracks are being shared.

Roland Alton-Scheidl: But this doesn't solve the CC problem and who should pay the levy for collecting rights for those who have no contracts?

ML: I think it shows that there are alternative models that can work, it doesn't solve your existing problem of the relationship of the rights agencies and CC, but it shows maybe a third way to use a rather terrible present term.

Robert Stachel: I just want to make one comment, I think there has to be some structure, like the one you describe, I don't know to what extent, or what legal framework should be behind it, but I think what we definitely need is some way to clear if usage is non-commercial or not. I can think of a number of set-ups or scenarios in which it is absolutely not clear if the usage is non-commercial. We really need that for our community television station because we intent to encourage people to use the CC

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licence with an incentive that we have in the regulations that is: They get the commercial rights or the right to sell their work much sooner than if they don't put it under CCL for non-commercial users. So all we want from the people who produce content in our community TV station is that we have the non commercial distribution rights, that we can rebroadcast it as often as we want and so on. So there is absolutely no point to ask them for any exclusive rights if they put it under CCL, unlike if they don't put it under CCL we will of course ask for exclusive distribution rights for a certain amount of time, this is probably for three months or something, but that is our main incentive.

But the question is: Is ORF, for example, a non-commercial institution or not? They will of course say it's not-commercial if they use content from our website, from people who produced content at the community TV station. They use it on national TV, let's say because we covered some event that they just didn't think it was important and then became important, they will use it in their main news show and don't pay us because they say we are a public service, we are non-commercial. So there not only needs to be a way to clear problems like that, there also needs to be some, let's say association, some strong group of people who will also say: Look, ORF that we have in Austria, is strictly not non-commercial, it's commercial usage.

JA: The question of commercial or non-commercial is the crucial point in this discussion, and the ORF is commercial and non-commercial and as far as I know the ORF has to have different accounts for it's commercial part and the non-commercial part. So on a basis of reciprocity it should be possible to use in your non-commercial part, this is the evening news for instance, use our stuff and we use your stuff. Yeah but, who is pushing that through?

Robert Stachel: Yeah, a hundred percent agreed, but you know it's not realistic!

PLD: I am also aware that we are running out of time. One of the things I certainly wanted to say now: Whichever CC country you come to, that the question of non-commercial for me, is the question that needs to be answered by creators. What do they think what commercial and non-commercial is? And some of the things that I would encourage you to do is to start having this conversation more and more and do exactly what you just describe, which is literally put together examples and be able to articulate

why ORF is a commercial piece of this. So you start to actually define, you start to build definitions. The reason I am encouraging to do this is because everywhere I go in the world people ask me what does non commercial mean and I don't know.

Christian Berger: There is another problem, because big companies use contracts with exclusive rights, and they take it all and that's the problem. It is necessary to start a discussion about not exclusive rights, just to give away not exclusive rights, authors in Austria mainly do this.

PLD: Yeah, well it's not until recently there was really no alternative for them to have a relationship with the consumer or the user, and their material was very difficult for them to do, unless they went through a very large intermediary. We have seen a shift now where it is possible for them to have a direct relationship with their consumer or the user of their material and we are all trying to adjust to what that actually means. And part of it is about, I keep saying this very nuanced, introducing other options into the range of ways that you can handle your work as a creator. CC explicitly defines itself as being something existing between the public domain and all rights reserved, it tries to provide some of this nuance, but when we talk about the contracts, exactly the same set of nuances needs to be developed. It needs to be a conversation that sort of says: As a creator, have a think now, it doesn't have to be all one or all the other, have a think if we can start to get a standard language into a record company contract for example, I know there is some terrific work being done in France on this. It's a point of some interesting work that is being done in France at the moment by one of the leading entertainment lawyers in France. He has created a standard contract he gives to his musicians, and basically it is a very well biased contract that the musicians of instead of sitting there confronted with a contract that, A they have little understanding, and if they do have an understanding which increasingly they do, they don't have the resources to be able to affect changes in that contract. They now have an alternative that they can say: You know, what I want is actually to use my standard contract. And it is still an unequal relationship, but least they have got something they can put down that articulates in contractual language what it is that they want. So, the argument it's too hard for us to change our contract goes away, that's by far the first argument that creators always hear: It's too expensive.

JA: But there is a legal tool to deal with that problem, in German it is called the "Zweckübertragungstheorie", and it's part of the German copy right law. It says: If you give away rights, do just give them for the purpose of your partner, the rest is not part of this contract. We don't have it in Austria, we try to introduce it, but we didn't succeed yet. In Germany it's part of the copy right law.

End of Workshop.

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