



ippr Seminar Summary: “Do we need to protect the public domain?”

ippr Manifesto for a Digital Britain

“Do we need to protect the public domain?”

**ippr, 30 – 32 Southampton Street, London WC2E
17th February 2005, 14:00 – 16:00**



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AGENDA

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| 14:00 | Welcome and introduction, Kay Withers Research Fellow, ippr |
| 14.10 | Damian Tambini, Head of Programme for Comparative Media Law and Policy and UK Project Lead, Creative Commons |
| 14.30 | David Ferguson, Chair, Creators' Rights Alliance |
| 14.50 | Cory Doctorow, European Affairs Co-ordinator, Electronic Frontier Foundation |
| 15.10 | Q & A |
| 15.55 | Close and vote of thanks |

'Do We Need to Protect Public Domain?' – Seminar Summary
Institute for Public Policy Research
17th February 2005

Background

Utilitarian justifications of property, such as Hardin's tragedy of the commons, have long espoused the efficiency of private ownership. Similarly, those in favour of the protection of the commons often rely on arguments relating to the efficiency of fewer public property rights. This event will consider the relevance of public domain content, both to competition and innovation, and as a public good of itself.

It will consider recent initiatives, such as Creative Commons, which aims to provide a more flexible range of freedoms and protections to creators; the role and requirements of creators; and, the relationship between public domain content, property rights and competition and innovation.

The event was held at ippr on 17th February 2005, 2 - 4pm.

Speakers included:

- **Damian Tambini**, Head of the Programme in Comparative Media Law and Policy (PCMLP), Oxford and UK Project Lead for Creative Commons;
- **Cory Doctorow**, European Affairs Co-ordinator for Electronic Frontier Foundation;
- **David Ferguson**, Chairman, Creators' Rights Alliance.

Is there a threat?

Policy on public domain is struck by a paradox: we have endless new informational and cultural resources, which means that its tricky to argue that copyright is shutting down access, closing off the public domain. But there is a fragmentation of the public domain, as described by Cass Sunstein. Public Service Broadcasting, for instance, is under threat from segmentation. Digital Rights Management (DRM) segments the market even further. The new technologies enable new freedoms, but copyright and DRM constantly inhibit them.

In addition, the 'Development Agenda' is now being discussed at WIPO. Propertisation is creeping into more and more areas, and the Development Agenda is trying to analyse the outcomes of this. For instance, collection of facts on a database can now be copyrighted in Europe, but not in the US. And the result is that databases, such as Google, have grown fast in the US, and stagnated in Europe. Hence, if your goal is to enable the creation of databases, extending property law in this area is harmful.

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There are efforts to preserve the public domain. In the US the Internet Archive project is working to save data that would otherwise be lost. The project has won a copyright exemption in the right to break DRM protections so that copies of software can be archived and saved. But there are plenty of areas of digital archiving which are currently being overlooked, such as early video games for which there is no legal way of archiving. Distanced learning materials need ways of being released, so that people in the developing world can legally access educational goods from overseas.

Copyright and the User

From the point of view of a user, it is very difficult to recognise the legal status of a piece of content, when they come across it on the internet. Policy-makers have failed to engage with the question of the transparency of copyright, the extent to which people know the legality of what they're doing with content. Linking, cacheing, mirroring are other issues which policy is not engaged with at the moment.

Public domain used to be easily definable: it was what had been created by deceased people, who weren't going to complain about it being reused. It is now far more complicated what with publicly funded broadcasters and museums, the internet and other public utilities.

There was a view that copyright shouldn't get in the way of everyday enjoyment of culture and goods. Copyright is not intuitive to those who are not specialists. It makes no sense to people that they can't have something which isn't costing anyone anything to give them.

Copyright and the Creator

Copyright is not a sacred cow; it is a tool for creators. Large businesses use copyright in an over-bearing fashion; David Ferguson made it clear that Creative Rights Alliance is not on the side of large business.

There are a number of points which need to be considered with any proposed change to the copyright regime:

- Some artists are lone geniuses, and others are serial collaborators. Those who don't want their work reused should have the right to stipulate that.
- Artists also need a 'space for work', which is made possible through earnings on copyright. How do you get paid for creativity? Either payment is made at the point of production, which is how Creative Commons could work. Or it is made as content is consumed, which is why we need copyright.
- Most creators are extremely poor. The impact of copyright on the income of the most famous has distracted us from the vast majority of artists.
- Artists feel that their work is a profound expression of themselves, and it is wrong to sever their connection with it. Copyright is the only current means of protecting their work.

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Extending copyright retrospectively offers no conceivable public value. Questions about extending it prospectively are more worthwhile. But it is unlikely there a business out there that has a 50-year, 100-year, 1000-year business plan so extending copyright is unlikely to affect creativity.

Creative Commons

Creative Commons is not the answer to the new problems, but it is an answer. Creative Commons is not simply giving stuff away online. It falls within copyright law. But because it is a voluntary, non-profit scheme, it isn't a public policy solution.

There was feeling amongst creators that copyright was being “demonised” by the Creative Commons movement and that this was unhelpful. It is the American multi-nationals which should be opposed, not copyright. Additionally the viability of Creative commons schemes for new artists was questioned as it is not a law firm, and it has never actually helped an artist file against someone who is breaking the license.

What needs to be done?

In general, we make public policy interventions where the market cannot supply something. This includes public service broadcasting, culture, health and so on. We are used to public subsidy for artistic, creative, educational materials. And we are used to a degree of conflict between those objectives and industrial objectives, such as reward for innovation. The answer to the question ‘should we protect public domain’ depends on a second question: will the market supply clearly-labelled, reusable content? The policy framework also needs to protect freedom of speech. There are economies of scale that could be realised in terms of licensing frameworks. Already, the public sector is using lots of different licenses; these could be made more widely available.

A recommendation was made that the Ofcom public service publisher should adopt a Creative Commons/Creative Archive compatible license. There should be Ministerial support for a public sector copyright forum. It was also felt that more research is needed on the ‘public value’ of public domain.

We need to ask which elements of creativity are propertised and to what extent. For instance, in telecommunications, telecom companies used to propertise the details of the last caller was, but email de-propertises this by publishing it. The goal is telecommunication, and depropertisation worked better.

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| Name | Title | Company |
|---------------------|---|--|
| Paula le Dieu | Project Director | Creative Archive, BBC |
| Peter Spark | CEO | Ecsponent |
| Julia Rowntree | | |
| Anno Mitchell | | BBC iCan |
| Elan Closs Stephens | Chair | S4C |
| Neal Lawson | | |
| Catherine Adams | Productivity Team | HM Treasury |
| Anne Macadam | Productivity Team | HM Treasury |
| Nick Toon | Head of Public Affairs | Channel 4 |
| Nikos Gorgolis | New Media, Information and Society | LSE |
| Aaron Martin | | LSE |
| Mariam Garibyan | Project Co-ordinator | PERSEUS Project, LSE |
| Simon Terrington | Managing Director | Human Capital |
| Anne Barron | Law Department | LSE |
| Liz Parratt | Communications Adviser, Office of the Clerk | |
| Tom Rivers | Legal Adviser | Association of Commercial Television |
| Martin Vogel | Project Lead | BBC iCan |
| Dagmara Kodlubanski | | London Borough of Camden Council |
| Henneke Sharif | | |
| Paul Cunliffe | | BBC |
| Lee Gage | Solicitor | Harbottle & Lewis |
| Rufus Pollock | Director | Friends of the Public Domain |
| Peter Houppermans | | PA Consulting |
| Andrew Oakley | Technical Architect | Message Labs |
| Grahame Danby | Inquiry Manager | Culture Media and Sport Select Committee |
| Hannah Charlton | Online Change Manager | Arts Council England |
| Elizabeth Kanter | VP Government Affairs | Marconi |
| Bill Thompson | | |
| Zoe Sujon | Tutorial Fellow | LSE |
| Tim Aldrich | Senior Adviser | Forum for the Future |
| John Byford | Head Legal Deposit Strategy | British Library |
| David Brown | Head Publisher Relations | British Library |
| Dr Michael Duggan | Head Internet Policy | DTI |
| Sara Conway | Director of Policy | British Music Rights |
| Alfie Dennen | | MoblogUK |
| Tom Chance | Project Lead | Remix Reading |
| Andrew Park | | |