



ippr Seminar Summary: “Digital Rights and Digital Heritage: preserving creativity in the Internet era”

ippr Manifesto for a Digital Britain

**“Digital Rights and Digital Heritage: Preserving Creativity
in the Internet Era”**

**Atlee Suite, Portcullis House, Westminster
2nd February 2005, 5 – 7pm**



"Digital Rights and Digital Heritage: preserving creativity in the Internet era"

5.00 - 7.00pm

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AGENDA

- 17:00** **Opening by Derek Wyatt MP**, Chair All Party Internet Group
- 17.15** **Introduction, Will Davies**, Senior Research Fellow, ippr
- 17.20** **John Enser**, Copyright Law Specialist, Olswang
- 17.30** **Sarah Faulder**, Chief Executive, Music Publishers Association
- 17.40** **David Dawson**, Senior ICT Adviser, Museums Libraries and Archive Council
- 17.50** **Paula Le Dieu**, BBC Creative Archives Project
- 18.00** **Steve Sharman**, Digital Media Consultant, IBM
- 18.10** **Q & A**
- 18.55** **Close and vote of thanks**

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Background

This joint event with the All Party Internet Group looked at the role of digital rights management techniques and the preservation of content in the digital era. The opening address was given by **Derek Wyatt MP, Chair of APIG** and was followed by presentations from:

- **John Enser**, Copyright Law Specialist, Olswang
- **Sarah Faulder**, Chief Executive, Music Publishers Association, representing British Music Rights;
- **David Dawson** - Senior ICT Adviser, Museums, Libraries and Archives Council
- **Paula Le Dieu** - BBC Creative Archives Project
- **Steve Sharman**, Digital Media Consultant, IBM

The presentations were followed by a panel discussion and Q & A session moderated by **Will Davies**, Senior Research Fellow, ippr

The event was held 5 - 7pm, Portcullis House, Westminster

The copyright balance

Since its introduction into UK law in the 17th century, copyright law has sought to balance the interests of rightsholders, in providing incentives to create and protections for creative works, with the rights of wider society in order to encourage further creativity and grow cultural heritage. The main crux of the debate at this ippr event was whether, in the digital age, we have the balance right, if we do, how can we maintain it and if we don't, what needs to be done in order to redress any imbalance.

John Enser of Olswang highlighted the extent to which the current policy debate surrounding copyright and relevant legislation had been dominated by the US: the majority of academic focus has so far been on the rights and wrongs of the Digital Millennium Copyright Act (DMCA) and defining copyright infringement cases, such as Universal Studios vs. Sony Betamax, and A & M Record et al vs Napster, had been taken in US courts.

However, the wealth and strength of the creative industries is particularly important to the UK. Sarah Faulder, Music Publishers' Association, quoted figures published by the Department for Culture Media and Sport on the UK creative industries' contribution of 8.2 per cent to gross value added in the UK in 2001. Copyright is important, she stated, especially in light of findings from British Music Rights research that a high percentage of school children wish to earn a future living working in the creative industries.

But there was similar concern that the balance had been tipped too far in favour of rightsholders in the last few years, with anti-circumvention provisions contained in the DMCA and EU Copyright Directive, protecting digital rights management solutions which had great potential to restrict 'fair use' rights of consumers. There was similar concern that the use of technological measures to protect content could lead to 'digital lock out' in the future, and a diminishing of the commons – that is material freely available for use existing in the public domain.

To avoid this possible future, new alternative forms of protection, based on a commons model have been formed: most notably the open source movement and creative

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commons. Creative Commons was set up by copyright lawyers in the US, its most famous proponent being Lawrence Lessig, to provide alternative licenses that can be attached to creative content. The legally binding licenses can include a demand that the content be used only for non-commercial work, that any content it is used to create be given the same Creative Commons License, or it allows content to be given freely to the public domain with no rights attached whatsoever.

There is little argument that copyright should not exist, proponents of the Creative Commons model simultaneously express their respect for copyright's function; however, there are arguments that the current term of copyright protection (life of the author plus 70 years) is too long and that it does little to incentivise further creativity once copyright is awarded.

New Business Models

One of the biggest threats to the copyright balance has of course come with the penetration of higher bandwidth services allowing file swapping using peer to peer networks. The most famous example of this file-swapping phenomenon is of course Napster which was popular earlier at the turn of the millennium and used to swap music files. The music industry has to some extent responded to the threat this new technology posed to their businesses by developing alternative business models and through a series of high profile campaigns aimed at bring suit against the most prolific file sharers and downloaders. With increasing bandwidth the movie industry has now come under threat, with BitTorrent labelled as the latest ‘disruptive’ technology threatening the economic value of copyrighted works.

The extent of illegal file sharing over the Internet has been blamed in part on the music industry itself. The music industry was slow to recognise the potential of the Internet and failed to encourage business models based on the purchase of legitimate downloads. However, Apple's iTunes has rapidly grown in popularity and recently recorded its 200 millionth legal download.

There are other download sites emerging – including a re-born legal Napster, Real and a future product from Microsoft – however problems are now emerging with interoperability between digital players and digital formats. In particular, the rights protection used by Apple, while enabling some fair use rights, does not allow for music purchased from the iTunes music store to be played on any other portable digital music player apart from the iPod. Similarly, iPod users cannot use Napster or Real to download music. This highlights the importance of open standards in order to avoid harm to the consumer through potential ‘format wars’.

Digital Heritage

There have been recent efforts to create a ‘digital heritage’ for the UK. The Museums, Libraries and Archives Council is currently involved in a project to develop a ‘knowledge web’ allowing users to search for answers to their culture and heritage related queries. A presentation outlining the MLA's project is available on the ippr website.

The BBC has been engaged in similar activity working to create the BBC Creative Archives. Paula Le Dieu's presentation on this project is available on the ippr website.

ippr Seminar Summary: “Digital Rights and Digital Heritage: preserving creativity in the Internet era”

Several issues were discussed in the context of these two projects. The BBC is facing a difficult challenge in negotiating rights to release content through the creative archive, as are the MLA in encouraging projects such as community archiving where the rights of creative content used may not be known. There were also concerns that public institutions such as the BBC and museums may ask citizens to pay for access to digital archives, while there was feeling that tax payments should already cover this.

For the BBC, payment for archiving activities was presumed to come from the re-prioritisation of existing funds to deliver the public value and openness the BBC is committed to in its Charter.

Public vs Private

While the BBC through its creative archives project, and other public sector publishers are encouraging users to ‘rip, mix and burn’ content for transformative uses, rightsholders have similar concerns that such activity will further undermine their fight to get citizens to respect copyright and resist infringing uses. On the other side of the debate, there were concerns that with DRM and protections available for these technologies in law, the existence of the public online was severely threatened and that commercial content was ‘taking over’.

There was general agreement that both types of content should be able to exist online, however, it was recognised that there may be difficulties in teaching users to understand the difference between the two. An analogy of walking down the street, passing a bookstore, then a library and then a counterfeit dvd seller was offered, explaining how people understand these differences offline. However, it is not clear that such distinctions can be clearly made online, and even if they are, whether users will respect them.

The importance of media literacy was emphasised in delivering messages of ‘right and wrong’ content use. However, it is freely admitted that copyright is a complicated area, and fair use particular difficult to define. Providing clear accessible messages which can also communicate citizens rights to access may be difficult to do.

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<u>Adam Sutcliffe</u>	Business Affairs Executive	FIVE
Adrian Brazier	Digital Content & Publishing	Department of Trade & Industry
Alan Carter-Davies	Business Development Executive	EM Media
Alison Scowen	Head of Public Affairs	eBay UK Ltd
Andrew Hadfield		WEBER SHANDWICK public affairs
Andrew Katz		Moorcrofts Corporate Law
Andrew Miller MP		
Andrew Oakley	Technical Architect	MessageLabs
Andy Williams		Yahoo!
Anne Diack	Innovation Unit	dfes
Anthony Lilley		Magic Lantern Productions
Barbara Stratton	Senior Adviser, Copyright	CILIP: the Chartered Institute of Librarians and Information Professionals
Beatrice Rogers	Senior Programme Manager: Knowledge Economy	Intellect
Ben Thornton		Ben Thornton
Benedict Arora	Project Leader, Teachers' TV	DfES
Bill Thompson	Technology Critic and Journalist	
Brendan Tomlinson	Commercial Lawyer	BT Retail Legal and Regulatory
Bruce J S Macpherson		Weber Shandwick Worldwide
Calum Chace	Head of Media	KPMG Advisory
Caspar Melvill	Director of External Affairs	openDemocracy.net
Charles Smith	Director	Oaksys Tech Ltd
Chris Dawes		DCMS
Chris Thirkell	Director, Departmental Support	e-Government Unit (eGU)
Chris Watson	technical networks consultant	2PM Technologies Ltd
Christine Megson		Community Action Network
Damian Rafferty		Department for Culture Media and Sport
Damian Tambini		Programme in Comparative Media Law and Policy
Damon Hart-Davis		exnet.com
David Johnson	Editor, Doors	The Sunday Times
David Lee		Goldsmiths
David Mark Harrison		Ofcom
David Sinclair	Policy Manager - Social Inclusion	Help the Aged
Derek Wyatt MP		
Dominic Dudley	Business Editor	New Media Age
Dr Georgina Born	Reader in Sociology, Anthropology and Music Faculty of Social and Political Sciences University of Cambridge	Emmanuel College, Cambridge
Dr Paul Miller	Director	Common Information Environment
Dr Robert Sharpe	Digital Preservation specialist	Tessella Support Services

ippr Seminar Summary: "Digital Rights and Digital Heritage: preserving creativity in the Internet era"

Dr Theresa Squire	Physical sciences, IT and Communications Adviser	Parliamentary Office of Science and Technology
Dr. Anthony Hamber	Director	Learning Markets Analysis Ltd.
Edward Lewin	Public Affairs Manager	Hewlett-Packard
Emily Taylor	Director of Legal and Policy	Nominet UK
Emma Ascroft		Ofcom
Emma Fryer	Rapporteur	EURIM IPR Working Group
Fiona O'Brien	Development Manager	London Libraries Development Agency
Fred Garnet		BECTA
Gill Adams	Strategy and Communications	Hairnet UK Ltd
Grahame Danby	Inquiry Manager	Culture, Media and Sport Committee
Guy Nesdale		Ofcom
Hannah Charlton	Online Change Manager	Arts Council England
Harvey Jones		Exponential-e
James Strachan	Head of Online Services & Strategic Marketing	The National Archives.
James Tyler	Head of Communications	TeleCity
Jason Burg	Assistant Director Local Government	eGovernment Unit, Cabinet office
Jennifer Carlton	Programme Manager,	Intellect
Jens Birkenheim	Strategic Development Manager	Business in the Community
Jerry Fishenden	National Technology Officer	Microsoft UK
Jim Doyle	Member Support Services	Dacorum Borough Council
Jo Turner	Head of Arts Online and International branch,	Department for Culture Media and Sport
John Byford	Head, Legal Deposit Strategy	The British Library
John Thornton	Director of eGovernment	IDeA
Jon Akass		Media Citizens
Julian Coles		BBC Editorial Policy
Julie Howell	Digital Policy Development Manager	RNIB
Kay Withers	Research Fellow	ippr
Keith Cooper		The Local Channel.
Kelli Dipple	Webcasting Curator	Tate
Lewis Bronze	CEO	Espresso Education Ltd
Linda Royles	Chief Executive	British Association of Picture Libraries & Agencies
Liz Parratt	Communications Adviser (Head of Media and Communications Services)	Office of the Clerk, House of Commons
Lloyd Shepherd	Head of Development	Guardian Unlimited
Lucy Hillary	Copyright Manager	Tate
Luke Gibbs		LLM Communications
Marc Woolfson		APIG
Mark Owen		Harbottle & Lewis LLP
Matt Locke	Director, Creative R&D	BBC New Media
Micheal Hill	Public Affairs Manager	BT Group Public Affairs
Mike Coyne		System Simulation Ltd

ippr Seminar Summary: "Digital Rights and Digital Heritage: preserving creativity in the Internet era"

Naomi Korn	Copyright Consultant	Museums Copyright Group
Neil Breckell	CTO	2PM Technologies Ltd
Nick Hancock	Business Development Manager	Oracle
Nick Palmer MP		
Nick Penston		Cisco
Nick Soulsby		Nominet UK
Patrick Abrahams		The Local Channel.
Paul Bason		Culture Online
Paul Owens		BOP - Burns Owens Partnership
Paul Pedley	Head of Research	Economist Intelligence Unit
Peter Ferne	Technology Strategy Consultant	NESTA Futurelab
Peter Houppermans		
Peter Knowles	Editor, Parliamentary Programmes	BBC Parliament
Peter Thoms	Media Session Officer	Musicians' Union
Peter Wienand	Chair, Museums Copyright Group	Head of Intellectual Property, Partner, Farrer & Co
Pilar Guerrero	Regulation Affairs Assistant	Easynet Group PLC
Rafael Behr	Online Editor	Observer
Richard Allan MP		
Richard Jones		Barclays PLC
Richard McCracken	Head of Intellectual Property	The Open University
Richard Naylor		BOP - Burns Owens Partnership
Richard Steel	Head of ICT	London Borough of Newham
Rob Jonas		Yahoo!
Ryan Heath	Press Officer	Cabinet Office
Sam Shemtob		Association of Independent Music
Scott Walker		British Music Rights
Simon Harper	Partner	Berwin Leighton Paisner
Simon Kurs	Webwatch Editor	Doors, the Sunday Times
Simon Terrington		Human Capital
Stuart Dempster	Programme Manager,	The Joint Information Systems Committee,
Sue Kingsley		Exponential-e
Susan Biddle	Partner	Pinsent Masons
Susan Relihan		KPMG LLP
Tim Tarrant	Head of ICT Team	Teacher Training Agency
Valerie Peay	Pan Government Programmes	BT Government Marketing
Valerie Peay +1	Pan Government Programmes	BT Government Marketing
Valerie Peay +2	Pan Government Programmes	BT Government Marketing
Zoe Sujon	Tutorial Fellow in Media and Communications	London School of Economics