Copyright and cultural heritage - transcripts from BILETA conference 30 March 2009

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COMMENTS

Panel 1: A global digital register for the preservation and access to cultural heritage: problems, challenges and possibilities

Estelle Derclaye (chair):

Before we start the debate, there are two questions that I was thinking about, if I can, not stir the debate but give some questions to think about to not only the commentators but also the audience and the speakers. I was really interested by the comparative overview that Tanya gave about the legal deposits requirement in different countries and I was interested to find out that the sanctions for not depositing the copies were frankly so ineffective apart from interestingly in New Zealand and in France. That triggers the question whether the legal deposit requirement is really efficient and therefore would provide a comprehensive list of works. I thought the provisions on legal deposit were really interesting because they would allow already the creation of a register even if not in digital form because we have seen that is something we have to work on, i.e. also making it mandatory to deposit digital material and things that are on the internet and my first question is whether it really efficient in a way. Does anybody know what the percentage of works is which normally should be deposited but aren’t i.e. because people do not deposit them and there is no sanction or the sanctions are so inefficient that people do not comply? So that is my first question.

The other question that I had was the issue about the private and public ownership of a future possible central digital register and I think that there is a linkage with cultural heritage. We see also different perspectives in the copyright debate - Menell not agreeing with Pessach or having different points of views - on whether it would be better to be a private venture or whether it is more advantageous to have a private digital register rather than a public one. There is a related question I would like to ask to Lucky: I suppose it is the member states who have the obligation of preserving cultural heritage but what does that mean concretely? What do they have to do? Do that they have a choice as to whether they give that task to a private company or different private companies or to the state or a public entity or whether it can be co-funded? What is the flexibility and what is the arrangement in this respect in the international heritage conventions especially the 2003 one, which deals with intangible heritage? So these were mainly my two questions, to think about before we start the debate but with that point of view I will give the floor to Tim Padfield who is the first commentator.

Tim Padfield, National Archives:

I advise people on copyright generally but I think I am here to represent archives and in my experience that means on the whole unpublished works, so I have to say that I have almost nothing in common with those two speakers which was of immediate relevance to me because legal deposit on the whole in my experience does not apply to unpublished works and in my experience as well a register is unlikely to be of any use with unpublished works. There are fundamental differences it seems to me between library and archive materials, and there is one especially fundamental difference within the UK in that unpublished literary
works are protected until 2039 regardless of their date of creation so I keep having to tell people that records in my office dating back to the 13th Century are still protected by copyright, which I think is preposterous but nevertheless that is the law. And so because copyright in unpublished literary works is of such long duration and because they are of such wide variety, there is actually no one to represent the owners so I do not see how you can have a collecting society to represent them either. I find it interesting actually how often people tend to forget that unpublished works are protected by copyright. And yet I would have thought, I have never counted as it is impossible to do so, that there would be many more unpublished copyright works than there are published. Every letter, every email is a distinct copyright work. So that is something to make people think about.

It is interesting to think about legal deposit and registration. There was, as I am sure at least some people will be aware, a registration system in this country up until 1912 and the records of that registration system between 1842 and 1912 are in my Office so I have looked after them and they provide easily the best collection of photographs in The National Archives. It is also the collection of photographs that contains the most information because people have provided the name of the photographer and the name of the copyright owner and a description of the photograph and so on, and we have all that information attached to each photograph. The limitation on the registration system was that it is almost impossible to identify a photograph from a description and as a result almost everyone who registered their photographs deposited prints, which is why we have such a wonderful collection of photographs. But because of the difficulty of description it would be very, very difficult I think to have an effective system of registration in this country even for artistic works, leaving aside unpublished literary work like letters where I cannot conceive of it being possible. And my experience from looking at the registers is that a very tiny minority of people ever bothered to register and on the whole they registered when they wanted to sue. A lot of people registered only when they wanted to sue because the courts decided that there was a copyright in a photograph even before registration. The Act did not provide for copyright as a result of registration. It said that you had to register if you wanted to sue. So many people actually registered in order to sue, which does not seem to me to be quite the purpose of the registration system.

One other thing I ought to say about cultural institutions in general, libraries and archives, is that in my experience they are risk averse and I would have thought that rights’ owners ought to be more willing to trust cultural institutions with their works than they are members of the public. I find it really strange that the Gowers Review recommended amendment of fair dealing so that it would be extended to all types of work, non commercial research and private studies currently being limited of course to the literary, dramatic, musical and artistic works. They did not recommend a similar extension for libraries and archives. I found that really weird because we have greater protection for rights owners when we are copying in libraries and archives than you do under fair dealing.

Richard Brousson, Legal Counsel at the British Film Institute:

The BFI is a registered charity operating under a Royal Charter which provides that the BFI should encourage the arts of film, television and the moving image and promote their use in education and as a record of contemporary life and manners as well as caring for and providing access to the widest possible range of British and world cinema. Copyright plays a critical role in the work of the BFI which holds in trust for the nation its collection of films, television and related materials in the BFI national archive and plays a leading role in the development of education about the moving image. As a body which relies on its trusted
status as both a repository of copyright works and an organisation which uses materials in
which copyright subsists in the discharge of our national role, we endeavour to ensure
complete compliance with the legal framework even though at times it has proven to be time-
consuming and problematic. The British Film Institute holds Britain’s national collection of
film and television in trust for the nation and it is unquestionably the world’s most significant
archive of the moving image and is one of the world’s greatest cultural treasures. It is also
the world’s busiest moving image archive. In the last 4 years more than 20 million people
worldwide have used substantial amounts of material from it including for a number of
documentary series broadcast by the BBC. Parts of it are accessible in every school in the
UK and the public have bought hundreds of thousands of DVDs featuring archive imagery.

But the current web of copyright laws is interfering with the rights of the public to get proper
access to their national collection. They are denied the opportunity to experience much of the
most potent imagery that constitutes their cultural heritage and it tells the story of how we
have come to where we are today. Moving images have a raw power that is perhaps greater
and certainly more immediate than almost any other media. It is the way everyone who was
born in the middle years of the 20th century onwards has experienced the world from
devastating news footage of war and famine to the most evocative stories and cultural
constructions of our era. Much of the material held by the BFI has been restored and
preserved at public expense. If it were left to the rights owners, much of this vital heritage
would long since have rotted away and yet the BFI is not permitted to let the public who have
paid to preserve it have access to it. BFI believes that creativity and innovation should be
fairly rewarded. People who make a living in this today should be rewarded today. In time
those moving images will go on to form part of our national story. Alas from this point
onwards the legislative balance currently is wrong. Current copyright laws place the
custodians of national collections in a wholly inappropriate and exclusive regime where
extensions of private monopolies prevent the public from having access to material that
makes up their cultural heritage. One of the recent drivers behind the recent efforts to kick-
start the creation of a digital Britain is that of addressing exclusion i.e. providing broadband
connection to everyone in the UK. But in a digital world where technologies exist as never
before to give easy access to Britain’s heritage exclusion will still exist in the form of no right
of access and this must be addressed.

We suggest the current copyright regime has got to change. Considerable public funds have
been and continue to be spent to ensure that material in the national collection of film and
television is kept in conditions which will ensure future generations are able to see this vital
historical and cultural resource. Technological development has enabled access to this
material on a scale with a reach unimaginable even 20 years ago. The BFI has pioneered
wider online availability to Britain’s film and television heritage through its film and TV
database, film download space, YouTube channel, ScreenOnLine, Invie and leadership of
the Screen Heritage UK Project. The longest established of all these is BFI ScreenOnLine, a
lottery funded website which launched in 2003. We were able to negotiate the rights to more
than 3,000 titles free of any payment in the majority of cases to extracts from films or TV
programmes and in about 20% of these cases to the complete work. The material on the site
is available free but only to UK schools, colleges, universities and public libraries. We have
not done any work on expanding this service to users at home because of the cost of the
licences that make it impossible for us to afford to offer such a service. Worthwhile though
our ScreenOn initiative undoubtedly is, it should be noted that it provides access to less than
0.5% of the material in the national collection. In any case, the BFI’s currently only
permitted free of charge to provide public access to little more than 5% of the whole of the
national collection i.e. that in which rights are owned by the BFI or is out of copyright. We believe that a number of relatively simple changes can be made to IP laws which would transform public access to the national collection but I will save that detail for this afternoon otherwise I will have nothing to talk about.

John Robinson, responsible for legal and international business affairs and in particular copyright policy and collective licensing at The Design and Artists’ Copyright Society who is going to speak:

Thank you to T. Aplin and L. Belder for a very interesting session this morning. A few comments and I will try and keep them brief because we have got to work to time. I was very taken by the public/private dichotomy that has emerged this morning and I am sure we will be hearing more of this later on today. There are several different aspects where it crops up for me and I think there is a relationship between public registry and private individuals that needs to be looked at in some way. A registration arrangement is clearly intended to afford a status of some kind to copyright works so what is that status and what does this registration mean and I think we also ought to consider what are the burdens of registration for individual creators not necessarily corporate copyright interests but individual artists, individual writers. If they have to register their works, what does it mean for the creativity that we purport to value so much? I think, it is also and I am sure this will crop up as well, the effect of the gaze of the cultural heritage institutions it is not value free and we have been hearing from the speakers this morning but also from my fellow panellists about cultural heritage and I think we ought to consider how is this heritage constructed, how is the discourse that we are talking about informed by perspectives and ideologies, who does it leave out and who does it include and why. So it is not a value-free sort of topic for me really. I realise that this is a long way from my specialist as a sort of copyright person but I have been so interested by what I have been hearing this morning that I felt I had to comment on it.

As far as the copyright aspects of this, I think that Professor Belder’s propositions - the three general propositions, I think I agree with, I think they are good and I think that the case has been made. I am less sure about the points for debate that she raises and specifically in this area of orphan works. I think that the whole area of orphan works needs further exploration in this context, we need to differentiate between uses of orphan works made by cultural institutions and from commercial interests. For those who have been following the American orphans debate, you will know that there is quite a lot of commercial interests in using orphan works for commercial purposes. I think that we cannot have any sort of blanket statements like this going unquestioned. I also think that the term orphan works is unhelpful, some of you will have heard me rail about this before and I think if the metaphor is children just because you cannot see the parents of the child, it does not mean that it is an orphan and it does not mean that it is a foundling either although I like the foundling approach. I think that there is question to be asked about the public nature of copyright organisations. I accept that in Continental Europe it maybe a little bit different compared with the UK. A copyright organisation such as DACS receives no public funding so the idea of artists paying to support cultural heritage when they have already produced the work which is being preserved does not seem to sit terribly well with me. I think as far as the point on the European legislation is concerned, I don’t think that I would agree and I think that is because certainly in the UK there are a couple of examples we can look at where there maybe solutions using the copyright framework and licensing within the copyright framework. DACS is in discussion with the museums sector at the moment about some sort of blanket licence that would allow for the digitisation of works in collections with a view to making them available on line and
in all sorts of ways that would fulfil the public access requirements and developments that museums and cultural heritage organisations wish to fulfil. We think this can be done at a reasonable cost, we think it can be done with minimum difficulties as far as the museums are concerned and they seem to like the idea.

As far as orphan works are concerned generally, DACS is a member of the British Copyright Council who represents a wide range of copyright interests in the UK and a proposal on orphan works was made to the UK Government some time ago and we support this idea because with some modest adjustments to the existing legal framework we think that it will fulfil the requirements of those that wish to and need to use works where the authors have not yet been identified but significantly will also address the points that were summarised by Dr Aplin about the European approach to this. There is a right for individual creators to participate and thus to withdraw if their works are used and they become found, but there is also a right to compensation of some kind. So I am sure that has probably used up my five minutes – thank you very much indeed.

Estelle Derclaye:

Thank you very much Mr Robinson. I think that there are a few issues here which will provoke debate especially from Lucky and other people in the room. I was trying to connect but I think we will need Tanya here. I think you refer to the document that Professor Stirling has written. (J. Robinson: yes that’s right). This is the proposal that he made to the British Copyright Council; it is available at [www.qmipri.org/documents/orphanworksjas.pdf](http://www.qmipri.org/documents/orphanworksjas.pdf), if you are interested to look at that document.

Trevor Cook, partner in the Intellectual Property Department of Bird & Bird LLP, Solicitors:

I am here to represent the practitioner’s perspective and the practitioner’s perspective is to represent whoever is paying him and represent their interests at any one point in time. Although, in the spirit of full disclosure, I do have a number of links with the British Copyright Council, we also, as a firm and I personally, have a number of links with individual rights’ owners and also various internet service providers so I have a range of perspectives which I find myself having to represent from time to time.

It is very hard to summarise those in any single presentation or single observation made now. I suppose from a practitioner’s perspective what one wants to be able to do is to provide one’s clients with clear advice. That is what they come to us for. It is very nice when you are given carte blanche to run away with an interesting area of law - is it on that side of exception, is it on this side of exception - but what our clients want is clarity and as I think has been said, there are many clients who are risk averse in this situation and I don’t think they are limited necessarily to the public sector. So what does one want from that point of view? I think, to follow up from a point which John made, is that one source of clarity is licensing systems and in particular the concept of extended collective licensing which derives from the sort of Nordic model to deal with concerns about orphan works. The problem we have in just implementing that in the UK without actually changing the legislation is that one is granting a licence and so arguably authorising an infringement in relation to something over which one has no rights and so some modification to the existing framework of the law needs to be made to meet that. But as the beneficiary in the legal profession as the user in various other contexts of various licences from copyright licensing organisations, one has at
least the certainty that one is operating within a particular framework without liability rather than having to fight your way through various exceptions and reservations. Another point about licensing as a preferable approach to exceptions and reservations is from the view about rights’ owners themselves. In terms of the enforcement perspectives which I also get involved in as a practitioner, the rights owner very much wants to have things dealt with by means of licensing rather than exceptions and reservations because exceptions and reservations for the benefit of various people along the value chain can really tie your hands in terms of how you undertake those enforcement activities especially if you want to run various indirect or contributory infringement type arguments, and I will come along to that later.

One final comment this morning is there has been a lot of discussion about registers and the status of these in relation to article 5(2) of Berne. I must admit I haven’t come here prepared to think much about article 5(2) of Berne but I would have thought it does deserve some more discussion later in the day because, for example, in my understanding (and I could be corrected by the US lawyers in the audience), there are still benefits in the US system of actually having been registered in terms of presumptions and things like that. So I don’t think article 5(2) of Berne should be presented as a blanket ban on registers. There may be benefits and it is implicit of course in any extended collective licensing system that you should have some sort of method of undertaking a reasonable search so I don’t think the benefits of having registers should be thrown to one side without a very clear analysis of what precisely article 5(2) of Berne does proscribe. Thank you.

**Dr Gaster, Principal Administrator, DG Internal Market, the European Commission:**

So just a couple of remarks actually. We should not forget in this debate the European dimension so it should not be a debate at national level only. Solutions should not only be found at the national level. We talk here about cyberspace after all, so accessibility will be on line. Therefore the first problem we are having differences in the approaches of the different EU member states. And we should also forget about territoriality of copyright. Actually if I may just mention some specificities of the British system. Crown copyright, fair dealing and other specificities. Perhaps I should mention ownership - who owns the rights. This is not harmonised completely at EU level; this may be different in continental Europe. Therefore the first thing which must be considered is actually people should start comprehensive stakeholder dialogue by taking into account differences so we must overcome the territoriality issue. As a need for mighty territorial licensing and this is possible only with the consent of those concerned. The other option which would exist is legislating and not only harmonising but providing [...] limitations and exceptions. I understand that what we have know in article 5 of the Infosoc Directive 2001 might not be sufficient for that purpose; there is the need for doing more if you want to actually pursue this approach. I would also like to mention that of course digitising means digital copying, copying is an act restricted under copyright. And there is limitation to what you can do when it comes to limitations and exceptions, the three step test under the Berne Convention and article 13 of TRIPS. This is the law that applies throughout the planet actually.

So I should also from a continental perspective mention the issue of moral rights. Moral rights have not been tackled ever at an EU level and you will find it difficult to find any solution on legal grounds but they come into play here I am afraid. So the term of them is of interest. I understand that the current project involved will actually extend out of copyright works for obvious reasons. I shall also mention that digitalisation rate in museums according
to my understanding is very diverse in Europe. There may be 50 extra percent at Paris; it may be far less than 1% of most of all other member states. There is a problem there and not to due to public funding but to do with laws. Here compulsory licensing for orphan works. I am aware of compulsory licenses for example granted in Canada. This is an approach which is debateable. Of course then we come to the issue of the appropriate level of the royalty of the license fee.

Well you will hear later from me that I am actually a fan of legislating and I have always been. We have got several copyright directives in place and it is quite some time now that we have no longer legislated so my colleagues are actually considering a debate at this stage – this is in the Green Paper which was published on 16 July last year and the forward-looking IP package that was named. And so, the issues which are interesting us here are sometimes explicitly sometimes implicitly addressed in that Green Paper. It is the beginning of the dialogue. Green papers normally should lead to hearings, to consultation exercises based upon questionnaires and later on fuller documents and this is what was done in 1988 and 1995 at previous occasions on copyright. Which means that there is a long way that we have to go – a long way still. There will be no immediate responses; responses can only be given by stakeholders themselves when they negotiate. But in the end I believe there is a need indeed that the legislator fixes this problem and a need for a new directive or possibly even more, it could be a regulation. This is very popular in Brussels, legislating at EU level, that will take more time than might be appropriate. That is my comment.

Estelle Derclaye:

Thank you very much Dr Gaster for this insider view. How much time might we have to wait do you think?

Dr Gaster:

I can look in a crystal ball... It actually depends also upon the composition of next college of commissioners of course.

Roxanne Peters, Academic Image Rights Manager at the Victoria and Albert Museum:

My work involves licensing images to third parties; I work with users and creators of content, essentially to enable access to our collections through licensing and image rights management. It is a great opportunity to be invited to join the discussion today and thank you to both speakers for your fascinating viewpoints.

In considering how to encourage the access and preservation of copyright works in a digital environment, in the first instance it would seem plausible to create a global register and central database of rights holders and listing of the custodians of objects. However there are a number of things to consider. Firstly there are a number of existing projects which aim to provide similar objectives and therefore we need to consider the problems of multiple database and incompatible metadata. For example the WATCH File is actively working towards collating information on rights holders from the literary and artistic fields whilst the MILE project addresses the problem with orphan works. These are both great resources but in order to streamline the process in gaining access to our cultural heritage, it would be beneficial to have a one-stop shop for these overlapping resources.
Secondly, given my experience in licensing images of the V&A’s diverse collections, I believe that in order to achieve any sort of cohesive approach, the current exceptions of copyright law need to be shaped to allow for the digitisation and communication of works for non-commercial purposes. In addition to the ongoing proposal of introducing collaborative models with copyright holders and their representative organisations, as John was speaking about earlier, I think it would support museums in being able to provide access to the nation’s collections and allow them to utilise their finite resources more effectively.

The V&A holds about 2 ½ million objects and whilst a number of works are in the public domain, we also represent a huge amount of contemporary art and design. We also have number of orphan works and also works, the copyright of which has been assigned to us. We are in the process of digitising our vast collections and images are regularly put on line in an effort to fulfil the public’s expectations. To fulfil our responsibility in disseminating knowledge and encouraging creativity and research, we need to strike a balance in providing access whilst respecting the copyright holders’ interests. In light of this discussion as to the access of works in a digital environment, it may be necessary to determine usage rather than user of cultural content. V&A Images is part of the trading arm of the museum and walks the tightrope of maximising revenue for the museum through commercial image projects, whilst also providing free access to content online to the academic community. This dichotomy allows for more content to be created from the income that the museum generates from its assets.

One area I was not clear on before attending today, was how much access people would have to images and information on a central register and who would manage the content and also who the end user would be? I think that needs to be looked at in terms of what kind of access people would have whether it would be to view an image or download it and what use would be made of that image. Whilst I believe that a digital register may be a long term solution to the facilitate the access to copyright works, there needs to be clarity in what is meant by non-commercial purposes and how we move forward in the here and now; - I know Lucky spoke about non-commercial purposes earlier - and I think really a lot of the issues are about how to define what non-commercial as opposed to commercial is and what the activities are and what the resulting damage could be to copyright holders and custodians of the nation’s collections. The V&A, as you may be aware, has made attempts to define this grey area, for those accessing the collections and has gone some way to support the public’s requirements. It is not about restricting access, but safeguarding our cultural content through adopting a pragmatic approach. However, I think certain exceptions within current legislation do hinder us being able to fulfil that remit with putting our collections on line for viewing purposes. I think that today’s discussion will raise those issues and help us move forward and create a framework for the future for our collections.

Ben White, Copyright Compliance and Publishing Licensing Manager at the British Library:

Thank you. I am going to look at really just two things – preservation and access. I am going to move away from the law and try and place some of the discussions in reality. One of the issues is that you have organisations tasked by government as if they are working in the 20th century but are working in the 21st century networked environment. I think it just not the responsibility for those organisations themselves but also the government to realise and fund cultural organisations appropriately in the digital age. Traditionally the role of Museums,
libraries, archives is to get people in through the front door, giving access to what they hold and then preserving that material. In the case of the British Library for example we have the 2003 Legal Deposit Libraries Act which brings the spectrum of digital preservation forward. We are trying to build an infrastructure to allow us to hold and preserve the memory of the nation. My background is publishing. Access to me is a by-word for partnership. This is a skills set that does not exist within cultural organisations particularly strongly and again you are not seeing appropriate government money to allow libraries, certainly in this country, to actually digitise and then re-publish this material. Cultural organisations are expected to become web-publishers but I think that the mindset within institutions is very different and the funding is also very different. So I think that debates like today’s are forward thinking.

One thing I do think is the case is that citizens are interested; they do want digital access to what sits in museums and libraries and I think that was witnessed by the crash of Europeana when it launched however embarrassing that was, I think that was a good sign that it does show societal and cultural interest. To me we are in a very confusing position, I think what we need to do going forward because everything has changed and I shall explain why I think everything has changed in a minute but I think what we need to do is to get to the position where we can better within the law differentiate between public interest and private interest. I think at the moment copyright law does not make that difference particularly well. I think that is further hampered by the public policy formation discussions that almost exclusively focus on issues of piracy and enforcement. Of course those are important issues, but when did you last read an article about mass-digitalisation and copyright in the cultural sector? I do not think you ever did. I think if you pick up The Guardian Technology on Thursday you probably have read about music piracy quite a lot so I do think that at a public policy formation level things need to become slightly more mature and reflect where we are as citizens - which is in a network world. So everything has changed, last year according to the Nielsen books in this country we published about 120,000 books. According to our own statistics we published about 2,000,000 websites in this country. Copyright law and what copyright relates to has expanded exponentially. I think that the debates are again slightly too focused on what we think about economic exploitation and legitimate economic exploitation and conversely that which is in the public domain. It is quite interesting we digitised about 100,000 books, we excluded some of the books that we were able through a couple of databases to actually identify that they were copyright works. So we have taken those books, which we did not digitise as they were in copyright. We have run this through Nielsen Books scan data and to my absolute amazement one third of those books were published. I thought nothing would be in print but a third are actually published in the States and actually if you look at it these are published in the States not by the rights’ holders but by other publishers because this material is in the public domain. So I think in terms of the debate we need to have a slightly more sophisticated debate about what is economically viable and what is not. I think these issues about access are made worse by concepts like the Long Tail. I think it is made worse by the fact that, in this country, our mother tongue is English. With concepts like the Long Tail, you create the illusory view that there is large economic gain in material going back 100 years. I think we have issues around duration. Martin Kretschmer is in the audience, Martin talks about issues around duration, colleagues from Bodleian I think are in the audience. It is interesting to see that, because of duration in European Union, Google are blocking material post 1870 in their library projects in the European Union. So if I want to go and see books from the 1870’s I have to go on a plane to New York. So I think again very, very confused environment. I do think that it is important that cultural organisations that are publicly funded have the space and are funding in order to preserve culture, perhaps in a
more neutral environment. There is no guarantee of course that the Google book project, that material will stay in the public domain.

So very, very quickly registration, I think registration is an interesting proposal. If you look at the United States until the 70’s when they had to register material – 85% of material was not re-registered. I think what is important is that we ask, what are the repercussions of not registering for copyright law. I do think there is a role for collecting societies to play here but I have a couple of concerns that the collecting societies’ role is really around reprographics, a very analogue concept. Is their role licensing for mass digitalisation purposes, re-publishing by the cultural sector? We do see the word, disintermediation where publishers want to go direct and therefore again what is the role of collecting societies going forward? Particularly again in a digital environment where material is to go on the web and yet collecting societies represent physical boundaries which we no longer see. So although I do think there is a strong role for collecting societies I think we need to accept that there are limits in the way they are currently operating. And that leads me on to the issue of exceptions. We have talked about orphan works. I do think that exceptions can facilitate mass-digitisation and I think that they are important. We need to be able to perhaps differentiate economic interests from educational interests, cultural interests and work towards perhaps a better balance than currently exists at the moment.

Andrew Murray, reader in law at the London School of Economics and also the Legal Project Leader of Creative Commons England and Wales:

Quite a few things to say. One, I do not represent anybody who is involved in the stake holder side or anything involved in managing institutions or keeping registers. I suppose if Creative Commons represents anybody, it represents everybody who is not fulfilling one of those specific roles. I presume I am here mostly to talk with my Creative Commons hat on but I can put my other hat on as well. Something Ben said struck me, fitting in with the Creative Commons ethos; he said you have got 20th century organisations and 21st century networks. I think Creative Commons would add to that in a large sense - and 19th century copyright law. The amount of time that people today have referred to the Berne Convention as if we should treat it as a holy cow which means that we can’t in future re-consider a digital copyright movement is very interesting. For those of you who do not know that much Creative Commons and hopefully you all do, we are a kind of alternative licensing system if you will. We are a way to allow people to set limits on what can be done with their work and also a way to get around some of the problems, although obviously not all, of losing an author in an orphan work later on. If you know the original author who has put the Creative Commons share alike BY licence on it, then you know you are able to reuse that work, hopefully unless that person has changed their mind in the interim, in which case they should notify Creative Commons so we can log that. You know that you can then use that work for most types of use as long as you share it, it is the same licence and you give accreditation to the original author. Creative Commons developed in the last ten years or so because a lot of us are involved or interested of online culture and society. I am an intellectual property lawyer historically but now I have moved more into on line culture and regulation. We saw a second enclosure movement coming. Copyright seemed to us to be enclosing more than copyright had been designed to enclose in the 19th century when much of modern copyright law was developed and in particular we see that what happens today is a move from the oral tradition to the written tradition for the second time in a sense and so much of what was oral discourse is now being written down and theoretically is covered by copyright – not theoretically, actually. I had my Twitter stream earlier on today - for those interested in my
Twitter stream which is going backwards and forwards, apart from me - it can and come up and say for instance: A twitter from Stephen Fry, if you follow Stephen Fry: “no one can tell me religious, it is wonderful atmosphere here at the festival”. Well, who would have known that before? Where would it have been recorded? Twitters from the Script-Ed conference going on in Edinburgh today, for anybody who is interested: Andreas Gaudemas [?] says: “A very interesting talk from Anthony Toutman about institutional international IP framework”. This had been oral but now it is written down and where it was oral was not fixed and it was not covered by copyright law. Now it is written down, now it is fixed and now it is covered by copyright law.

Where does this go? Well so far what I have heard this morning is talk about what was the role of heritage institutions in perhaps issuing a record, a central registry etc. and this is all very important. But to me copyright does two things to information. One, it makes it a resource and two, it makes it a record. So part of copyright law is to provide the resource for creativity so that people can rebuild on other people’s creative expression. The other thing is to record history and that is very much what we have been hearing about today. Heritage Institutions I think, and I am sure Ben and others may disagree with me, are focused mostly on the record function. They are mostly on keeping things there for history. They provide a very useful resource function as well but let us be honest about this, it is a pretty elitist resource; you do not get the average person who works in the ship yards, if there are any left, on the Clyde, nipping down to the British Library to do some historical research. So it really is mostly aimed at people like those in this room. Whereas what the internet does is it in theory can open out this resource to everybody. I am not saying I have an answer as to how this works and I am just throwing out some ideas here. Creative Commons is a bit about the other, it is a bit about the resource, the creativity. What we do is we allow people to label things as available for reuse, as available as a resource and then a database is very helpful, it can pick up on our tags. Google have a very good Creative Commons search if you want to look for material to be reused. Also Flipper has a very useful, powered similarly and has a very similar and useful page for Creative Common search that allows you to find images to reuse. These are privately funded, they are private institutions. So the last thing I am going to say is: what is the rule of the deposits institutions in this? If we had the digital rights, who decides what goes on the digital register? I am pretty sure that British Library or anybody else who runs a digital register is not interested in my Twitters back and forth between myself and Andreas Gaudemas [?] or are not interested probably in what Stephen Fry says, even though he is officially a national treasure. Who decides what goes in and how do we decide what is culturally valuable now? We have to sometimes look back. Who could say that a headline in 1983 saying Gotcha could be a culturally historical thing when we look back at it 26 years later. Or one from 1992 saying will the last person out of Britain please turn off the lights. Both of these represent points in British history. Would these get into the register and with so many things being produced these days: who is going to decide? So I will leave it at that.

Estelle Derclaye:

Actually that is very interesting because I read an article in the Financial Times in September last year talking about 75th anniversary of the BFI and there was a quote by Stephen Frears saying: how do you actually determine what we are going to preserve? Because it is true, we might think that now it is not very interesting but maybe in the future it will be. So a very difficult decision to make and how do we do it? Maybe we do not have answer. Basically it is a very difficult point maybe we should preserve everything but is that possible? There is the cost issue and there is also a “place issue”. I mean: where do you put this, with digital
technology we have more place than back then with books with took much more place especially with big books. So maybe we have a solution there but maybe not. But that is very good point.

I am sure that people with have an idea or an opinion on that. But before we open the floor to comments from the audience, I would like to invite, last but not least,

Dr Harjinder Obhi the Senior Litigation Counsel at Google for the EMEA region:

I wanted to lend my support to some of the points made by previous speakers. I think that the one that really stood out in my mind was the comment made by Ben about the public interest idea of copyright. I think it is very clear in UK law that the public interest should trump copyright; it is there in section 171(3) and was considered in Ashdown - unfortunately the court did not take the opportunity at that time to extend it. But I think that the public interest argument for copyright is incredibly important and needs to be debated further. Now, I think it is vital that cultural history and heritage is preserved. I think there are long term benefits to society that are absolutely clear, everybody realises that recording books, recording sculptures, works of art is just incredibly useful for the future. Now the preservation has got to be done while the works are pristine; there is no point in waiting until they are degrading, so it has got to be done now. That is the challenge. I think Lucky and Tanya picked up on some important points and I agree with some of the comments they made. Orphan works are a huge challenge and just to put some flesh on it if you just take the example of a book; Ben mentioned 1870. If you just take for argument’s sake 1840 as a date for a life of an author plus 70 years, so works before 1840 are in the public domain just for argument’s sake. How much do we know about books which are around now? Well if you take 1950 - that is, probably a few decades - that is probably the amount of time that we have got reasonable certainty - this is just an argument - as to who owns the copyright. In between the period 1840 and 1950 is 110 years. All sorts of things could have happened people have died, rights revert, assignments end, terms end, geographical limitations are different, all sorts of things can affect it. The law of succession that could change as well. So I think we should not underestimate how huge a problem orphan works are, a challenge I should say, not a problem. And I think legislation is going to be necessary. There is no other way, whichever way it gets dealt with, either as an exception or as some sort of licensing regime. Registers, I think, are only a partial solution. They could be helpful but I think we have heard some of the difficulties here already with registration so I do not think that that is the end of it.

So in the next ten minutes or so, what I would like to do is talk about three areas and using the Google Book Search project as an example. First of all, I would like to talk about Google’s philosophy in relation to books. I would like to make some remarks about the Google Book Search settlement agreement in the United States and then I would also like to talk about how Google Book Search works in Europe.

So what is Google’s philosophy? Why do we have Book Search? Larry Page and Sergey Brin are the founders of Google back in Stanford in the early 90’s. Their original idea was actually to make an index of the books in the library for research purposes. They were both doing research. That was their original intention. They got side-tracked by the web search idea and you know turned it into an engine, obviously making it a business. But later on, Book Search came back to the agenda, it was back on their menu so it is central to Google’s mission. Google’s mission is to organise the world’s information and make it universally accessible and useful. And that really is what Google is trying to do. Now I should make it
clear that Google does not think that books will die out. Books are here to stay – there is something innate in them. People enjoy handling them. I have got children, my kids love using the computer, love playing on computer games although I try to avoid that. But they are very happy sitting down with books and flicking through them and sitting together and reading them. I think there is just something innate about it. Good bookshops are doing very well which also shows that books are here to stay. In relation to the information about the existence of the book - so you think about all the work that has ever been written - information about the existence of the book should in my view be something which is available to all. Why should it be the preserve of just some private library? What we are trying to do with Book Search is to create a browsing experience which is similar to what one experiences when you go into the book shop – you can pick up a book, you can look at it, you can decide whether you like it and then decide to buy it or not and ideally we think that you should be able to shop around for it as well, shop around for the best price. It is all about informed choice for the reader and freedom of choice.

So a few words now about the Google Book Search settlement. This is the settlement of the US class action, a class action by the authors and publishers classes, represented by the American Association of Publishers and The Authors Guild amongst other litigants. It is a groundbreaking agreement because from our perspective, we think it enables us to do much more than we could have done either alone or after a court ruling (because we think we would have won!) It opens access to millions of books in the USA and it also creates an entirely new market for authors and publishers to benefit from. It provides new opportunities for libraries, academics, researchers and users of libraries – basically book readers to get access to books. Now the agreement is subject to the court’s approval and it is a huge subject on its own so what I would like to do right now is to show you where you can find information about it. [Harjinder starts live display of Google book search on screen] So if you go to “more”, click on “books”, here is the sort of basic page of Google Book Search. Over here is the link to the ground breaking agreement with authors and publishers, click on that, FAQ’s on the left. Lots of FAQ’s, so you can ask lots of questions and if you want more information and actually read the settlement agreement, just go to this site and it will tell you all about it.

So what I would like to do now then, is explain how Google Book Search works in Europe. So there are essentially two programmes: a library programme and a partner programme. The partner programme is open to authors as well as publishers, although at this moment in time it is mainly publishers who use it and there are over 20,000 partners at the moment. So each of those people have terms and conditions with Google and in terms of libraries there are just over half a dozen libraries involved in the programme. In all of these programmes Google digitises books for free but I should say that in the European Union we only digitise out of copyright works or works with the authorisation of the copyright owner.

So now I am going to try and show you examples of how this works. So let us say for example, I am an Australian student and I want to know about, there were lots of references today to colonisation – let’s talk about colonisation. So if I type in voyages, Captain Cook, I get the result the top one there is the voyages of Captain Cook by James Cook. This is the book which is available for full download if you look at the pdf here, it is an out of copyright work, so that is 34 megabytes. If I click on about this book it tells me lots of information about the book, for example that it was digitised in January 2006 at Harvard so it was part of the library project there and that it was published in 1842. You can search within the book as
full text, there are pictures of course and here are some dancers in I suppose what was the colony. You will notice there are no advertisements or anything here.

The next example is, say I am a student of literature and I want to find out about Proust. I type in Cambridge Companion Proust and I get lots of hits, the one at the top here is a book which is part of the partner programme. So here is the cover. If I go to ‘about this book’ it will tell me that this is published in 2001. It is part of the partner programme so you can only see a limited preview of the book itself. Now there are places here to buy the book and if you go to the preview page, and scroll down a bit those links are repeated here about where you can buy the book. There are sponsored links here, these are advertisements so there is advertising revenue there. There is information about the publisher.

The last example is an example of a book which has been scanned in the United States but which we are, well let’s just demonstrate. So imagine now that I am an art student and I want to know about the teaching of art and I am looking for a specific book from Mathias. So here I have a book which is published back in 1932, it was digitised in 2006 at the University of Michigan; and what I can do here, is I can search within the book. So for example, if I want to know about crayon techniques, I can just look up ‘crayon’, and I get hits here with reference to crayons but they are in a snippet view. So, thanks to fair use in America I am allowed to show you this here.

At the risk of embarrassing Estelle I think I will end with an example, [types in Derclaye], so this is Estelle’s book here. So if you want to know about databases ask Estelle. This is obviously here by virtue of the publisher, so it is part of the partner programme.

So I would like to suggest that this is a win/win situation for everyone. It is good for Google because it is fundamental to the Google mission, it improves the comprehensiveness of our search offerings and it means that more people are going to use the product. There is an added revenue stream which we get. It is good for readers. So the example that Andrew gave earlier about the Clyde ship worker, he can access the book from anywhere even from up in Scotland. You can word search within books and download books and copies of copyright works within Europe as well.

Partners, essentially publishers but also authors, get to advertise their stock for free, they can open up their back lists. I think Cambridge University Press reported a 20% increase in revenue soon after they started using the system. They get the ad revenue stream and they can attract targeted customers. Of course authors get a greater visibility for their work and more sales. Book sellers get links to their shops so they can show that they get directed readers but also I think the knowledge of the existence of the book is a benefit to book sellers as well because people come armed knowing about the book when they go to the shop. Libraries of course can increase their readership and further their charitable goals.

So I would like to end now with a quote. This is from the Bavarian State Library and they said: “We are opening our library to the world and bringing the true purpose of libraries, the discovery of books and knowledge, a decisive step further into the digital era. This is an exciting effort to help readers around the world discover and access Germany’s rich literary tradition online whenever and wherever they want.” Thank you.

Estelle Derclaye thanks the commentators and then opens the floor.
PANEL 2: Authorship and originality: should copyright attach to digitised, restored or reconstructed public domain works?

Trevor Cook:

Another question which arose out of that discussion of the Sawkins case was I assume that the existence of the German neighbouring right protection for the reissue of public domain works would in fact mean that under the German copyright law it would be questionable as to whether or not Dr Sawkins’ reconstruction would be protected in Germany.

Andreas Rahmatian:

He would get protection certainly for when any kind of comments or things he makes which would be literary works so in this respect it would be protected as such (…).

Trevor Cook:

Then going to one of the problems you identified in terms of the digitisation of originals, this has already happened actually in terms of what you were saying about the destruction of original works as a result of digitalisation. Well, not as result of digitisation but as a result of micro-filming. Many, many series of newspapers of the 19th century were destroyed when they were micro-filmed pre-digitisation and as a result, all the issues were lost, sold, have been distributed, can no longer be found and the quality of the micro-film is in many cases extremely poor. So that is an aspect of cultural heritage which we have lost as a result of the actions of libraries.

[The recording device unfortunately did not record the rest of the comments].

PANEL 3: “Archiving exceptions”: are they adequate to preserve and access copyright works?

Trevor Cook:

I think what we have heard this afternoon is uncertainties. What we have in the UK in terms of exceptions does not address archives. What we also however is an uncertainty, the very real uncertainty about the three step test when you apply this to wider archiving. Moving away from the specific example you gave, I thought your comment about access not archiving is what would be important in the future. When one thinks of the challenge to a business model which survives on a thousand copies of a book being published, multiple access outside libraries on the internet becomes a hard square on any basis with the three step test and so that is then moving away from archiving to providing access to material and I think this is one problem from the rights sense prospective with archiving at least as it has been presented. We have heard today about two issues archiving and orphan works and for example the British Copyright Council as we said earlier has been pushing for a licensing solution, an extended licensing solution to deal with the issue of orphan works. They are as far as I understand dead against changes in the law related to archives but who knows if there
was a proper dialogue between them and the libraries in relation to the needs of archiving. But it would have to meet also the concerns of creators who are publishers who would be out of business on the example I have given. If we turn to the observation made earlier by Barbara Stratton - licenses override exceptions – licenses can work both ways they can provide certainty where exceptions provide none and I think what we have heard this afternoon from the commission and Professor Torremans, has been that we have little immediate hope of an answer based on exceptions and perhaps no ultimate hope of an answer based on exceptions on some analysis of the three step test. The only way forward is going to be a licensing one.

Tanya Aplin:

I would just say a couple of points. The first is, whilst it is encouraging the debate is starting now, it is somewhat depressing to think that this debate could have been had many years earlier. In fact, there were the beginnings of this debate shortly after the WIPO copyright treaties when you had article 10 of the WIPO copyright treaties which talks about taking forward exceptions and limitations into the digital environment. So we have been on notice about this for some time but as is the case with exceptions and limitations, they tend to get overlooked in the face of widespread piracy and strengthening rights holders’ positions.

In terms of the debate we are having I would agree with Paul that the debate needs to be a wider one. It has to embrace not only which exceptions should be made mandatory if any, but also the relationship between the exceptions, limitations and DRM and also contract. Whilst article 6(4) does deal with DRM and exceptions and article 5(2)(c) deals with archiving is one of the exceptions protected by article 6(4) and there are a number of exceptions which are not and also the directive is silent on, it is not completely silent on the relationship between contract and exceptions, but it does say that article 6(4) does not apply to the extent that works are made available online. I certainly agree that there has to be a wider debate that will have to embrace these three issues.

In terms of the specifics of an archiving exception, I would agree with Paul that we need to think about increasing the number of copies. It may not be helpful to put the number on it, it may be more helpful to talk about reasonable copies made for archiving and then you have best practices develop by industries perhaps. In terms of who can benefit from the exception, I mean here it is interesting to note the UK IPO asked for views on whether the exceptions should be extended to museums and galleries in recognition of the role that they play in preserving cultural heritage, so again we have got the question of: do we frame the exception according to the user, or do we frame the exception according to the usage? How important is that distinction? Whilst so far we have done it according to the user because we have assumed that the user reflects a particular kind of usage, but now we seem to be talking about certain kinds of usages rather than particular users. In terms of the scope of the exception, it is true that section 42 and article 5(2)(c) which is in the directive does not allow for access, it is really only dealing with preservation so we need to look at that. But I do think, I would agree with Trevor here, there is a real concern that allowing the making available of digitised works has the real possibility of conflicting the three step test. I would have thought that there at least we are talking about the exception with the remuneration but probably it is better to address this issue through licensing.

Lord Justice Jacob:
Now a man once who was an archivist who is now turned himself into a large-scale pirate and publisher. Tim.

**Tim Padfield:**

We certainly make material available. I think it is an interesting question what archiving is. In this context “archiving” is not a word which means anything to me at all. As an archivist I understand an archive as being a place where original records are preserved, that is to say unpublished materials, and talk of archiving published works sounds a bit strange for me. I think of it as making copies of published works. So in this context I think section 42 is dealing with what I would call preservation copying; that is to say you make a copy in order to be able to preserve the original and I am talking in terms of unpublished materials here. So if we are making a preservation copy then the purpose of doing it is simply to make sure that the original survives, nothing to do with access. Preservation to make sure that we still have that one original document. Certainly as I understand it when the Act was first formulated, the idea was that you simply have a preservation copy so that access is no more available than it had been to the original; the purpose was not to create more access, the purpose was to preserve the original. I think that as far as section 42 was concerned that is what we should still be looking at. We should be looking to make a preservation copy. I was a bit surprised that Paul did not talk very much about digital materials; I think your example of films was interesting but I think computers are even more interesting. People were using Amstrad pcw’s not very long ago and I do not think that anyone is likely now to have access to a machine with a pcw disc. It was only 15 years or so ago that they were available and they were available for quite a lot of people. So I think we need a provision which allows copying as much as necessary in order to preserve an original so that there is no greater access available than there was before.

Access I think is an entirely different issue and I think it would be perfectly possible, whether it would be practicable I don’t know, but it would be possible to add an access regime onto the existing archival provision. We already have section 43 which provides for an archive to supply the copy of an unpublished work so long as the purpose is non-commercial research and private study. I do not see why it could not be possible to make available a catalogue on line and allow people to apply for copies. You do not have to make an original work available, you are not communicating the work to the public but you could supply a copy in response to a request.

I just have one other observation which does not really relate to what Paul was saying but I think people might like just to be aware that archives actually do benefit from an orphan works provision which people are all to keen to forget. It survives from the 1956 Act and provides that we can supply copies even with a view to publication of a work which is at least 100 years old and whose author has been dead for at least 50 years so long as we do not know the identity of the present copyright owner.

**Lord Justice Jacob:**

Thank you very much – well that was an extraordinary clear, distinction between archiving and making available and that may be the key to some of this.

**R. Brousson:**
I am in the happy position of agreeing with probably all of the commentators. I think that even if these exceptions are extended they are still not going to provide us the ability to make material available. Practically the BFI has dealt with this by licensing rights and restricting access in some way either digitally or physically. Screenonline is a way that we provide access through digital certificates and passwords to clips of audio visual material and we have managed to license this material mainly for free by having it within a walled garden. Our other solution has been to roll out mediatheques ideally eventually throughout the whole country - there are presently three - where the general public can view material including entire titles by going to a dedicated terminal so the access is physically restricted. Rights holders have generally provided generally free rights to this because they do not see this as a threat.

I would just like to make one other point, one possible solution might be with moving image material anyway, to look at the public lending right and whether this which presently applies to books, could be extended to moving image material and making it available through a digital equivalent of the public library. For example, a website provided by a public organisation such as the BFI to enable online access to material held in a national collection. The principle of the public lending right is in our view correct, that the creators of a work are compensated for the use made of their work by the public while the state makes central funds available which enable the maintenance of easy access to the knowledge, information and culture that sustain a democratic system. In short, the public lending right recognises the need for access to knowledge and culture and the need to pay those who create it.

LJ Jacob: that last idea won’t go down too well just in the current economic climate.

J. Robinson:

But I think it is a really idea, taking a bit of legislation that comes from a very different perspective and that is part of central government funding in support of public policy. I would not have thought of applying that in these circumstances so I am very grateful to you for raising it as a point for inclusion in this debate – a fascinating idea. I think that all the points that I would want to make have really been made particularly by Trevor but by also by Tim. We are not really talking about archiving in this context at all we are talking about a completely different activity that was never really envisaged by the section as it currently stands. Ok, so where do we take that then if we think that the activities that we are describing and considered desirable underneath or within the meaning of an expanded exception; if we want to do them how do we do them in a way that is fair and balances the interests of all concerned? I have to conclude obviously as a representative of licensing body that I think licensing does provide a way forward in this context. I think specifically collective licensing could be a way forward rather than a purely transactional and individual heavy transactual cost based licensing, I think collective licensing is probably something to look at here. I mentioned the museums’ license that we are hoping to develop this year, there may be other ways in which if archiving or archives in general wish to take their activities further maybe we would want to talk with them about what would be possible. We are always open to suggestion for solutions of this kind. But I think that I would like to thank Paul for a very clear analysis of the shortcomings of section 42 as it relates to online activities. It is quite clear that it is not fit for purpose, if this is the purpose we want it to cover. Thank you.

End of panel.
Panel 4: The view of the Commission on all the issues discussed and what does the Commission envisage to do in the future?

Paul Torremans commenting on Jens Gaster’s paper:

[...] We need to address the fact that all these nice, cosy bilateral agreements between collective management organisations are not really promoting a single market. You would have thought that we were getting a very different discourse than what we had in the 1980’s. If you then go the Court of Justice, apparently, the whole judgement is full of references to nice cases like Tournier, Lucazeau and others. You think: well we thought something was changing but apparently not. The Advocate General did suggest things might change the court goes back and said no thank you we will stick to the old recipe. There is this fundamental debate to be had; it seems to me that we have different people managing this file pulling in different directions. Jens made it quite clear that his department does not necessarily agree with what Mrs Redding and her people are doing. It seems to me the competition people are number three, and apparently the court does not like what their have been saying or at least does not follow. So I think that there is a lot of work to be done there and maybe one should not put too much hope on this easy solution “multi-territorial licensing would with us very quickly”.

I think yes there is a very fundamental problem with optional exceptions in the law but as long as we don’t manage to somehow put some order in there, we will have problems if we all have different exceptions we can all do different things and that we don’t put things on line. I say this in part as a private international lawyer it creates mayhem and I can tolerate it, you can ignore it but if people want to enforce their rights you can end up in very difficult, complex litigation which I don’t think is in the interest of anyone if you look at the sums of funding available you do not really want to spend ten times as much on litigation.

In that respect, I think there is also another interesting debate maybe somewhat on the side but I should pick it up because he has mentioned it, what do we do with DRMs? They are still being proposed as a solution and I think in this particular context we should really start thinking of where we go with DR’s and exceptions. If you allow DRMs to lock up content beyond the reach of exceptions and limitations, beyond the duration of copyright, then we have very a different picture. If you say well DRMs are there to enforce copyright, they should then take into account any limitations and exceptions. There are loads of those technical issues and practical issues but I think that there is a whole range of things to be debated.

So maybe in conclusion what I could say – and I think that is where Jens and I agree - yes we need a rather wide ranging debate as loads of issues need to be discussed. We can’t really just say well: let’s have a provision on orphan works, let’s have a single provision on archiving and that will do the trick. I think we need a somewhat more wide-ranging debate. Maybe as he said, the only way to have it is to do it sector by sector rather than trying to do it across the board. When I prepared my presentation which will follow shortly what you really find is that all of these provisions are so vague; they touch upon your area but they don’t really provide the solution, which no doubt is because they have to apply across the board. So maybe what is needed is tailor-made solutions. Even then, I am not entirely optimistic that within the time frame that is reasonable we will get any agreement. It seems to me the interests are simply very different: people want to see content available, on the other hand, rights holders do want to get paid for it, creators do want to get paid for it and I don’t
immediately see how you can reconcile these two. I think we might have to have a somewhat longer debate and eventually my suggestion is that as in some other areas, we will be pushed by technology and by the demands of society, where really we need to find solution where at present we have very different views. As long as to see a compromise I think we risk as a society of taking certain expectations that there are people who just do not care anymore about the system. That would not be good solution for copyright or for content provision on the internet, if we just go into legal vacuum where people do not bother, you cannot sue everyone all the time. And it clearly may also be that at that stage people will start to be a bit more reasonable and a compromise might be possible, at least I think I can dream about that solution. Thank you.

LJ Jacob invites comments and questions from the audience; debate follows.