Artists Rights in a European Cultural Space

Workshop Session
During the 3rd Session of the European Cultural Parliament
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Final Report

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Executive Summary and Main Recommendations

The workshop, "Artists Rights in the European Cultural Space" has been organised by ERICarts in partnership with the ALTERNE Project at the Wimbledon School of Arts and the European Cultural Parliament in the context of its 3rd Session which took place in Genoa, December 2004. It received additional funding from the Riksbankens Jubileumsfond, Sweden.

The main purpose of the workshop was to map out and discuss the current state and developments in copyright/authors rights protection. In addition, some cases studies focussing mainly on new media art works were presented to highlight some of the recent challenges facing the existing system of rights protection and remuneration schemes.

The workshop programme is provided in *Annex 1*. It was attended by lawyers, artists working with new technologies, researchers, activists, academics and cultural managers. Biographies of speakers are provided in *Annex 2*.

Some of the main observations/recommendations made by the various speakers and participants throughout the workshop have been edited and are listed below. This is not an exhaustive list, but points to some highlights in the discussions.

1. The *present copyright system* has a long tradition and has led to some powerful legal frameworks and administrative instruments such as collecting societies. However, it provides little financial benefit to the average artist, creator or performer. It disproportionately benefits a few famous artists and major enterprises. Copyright royalties are, for most artists, not an incentive to create.

2. There are *new models* which have emerged in recent years, such as the Creative Commons, which aim to shift the balance of influence and power over regulatory and legal processes away from the economic interests of big business. Their overall aim is to give artists the tools to determine for themselves how their rights are to be assigned – for commercial and non-commercial use. Creative Commons is trying to achieve its goal by establishing a series of licenses based on national contract law.

3. Some activists have gone so far as to propose a "world without copyrights", to eliminate the privatisation of the marketplace of ideas and restore power and responsibility to the *public domain*.

4. At present, the use and exchange of artistic work is governed by law. It can not be assumed that just because an artist or producer wants to release a work into the public domain for free, they can do so. It requires an overt *act of relinquishment of rights* to release a work for free; otherwise, from a legal point of view, it is governed by the national laws and international treaties of authors rights/copyright.

5. *Artists must take responsibility* to properly inform themselves about their legal rights not only to ensure that they are properly credited for their works, but also to ensure that the larger community of e.g. artists or other users, can have access to their works and, if decided so by the artist, to reproduce them or create derivative works.

6. Artists and authors do not need to sign contracts which give away all of their rights. They are not forced to follow the existing models e.g. to sign away their rights for their life + 70

years after their death (as is usually done in publishing contracts). They can negotiate decent contracts with their associations, publishers or producers which would bring their works into the public domain in less time e.g. 10 years, if so desired. Thus, it is possible to use even the current system to better *redefine one's own legal environment.*

7. At the moment, collecting societies hold a monopoly on the collection and distribution of artists royalties. Monopolies can be properly regulated and clear rules can be developed and *transparency in the decision-making processes of collecting societies* can be enforced. They should adopt a more open approach which would enable their members to choose and use alternative models and not to force them into contractual straight jackets for the rest of their life as is the case in some countries, e.g., France. There are some interesting alternatives emerging to break the monopoly held by collecting societies; systems which do not force users to pay royalties in the way it is being done now.

8. It has been acknowledged at the European level that the management of collecting societies needs to be modernised. On the one hand, they are useful to help authors who are creating complex and mixed media works to obtain rights to use works whether it is texts, sound clips, video stills, photographs etc. It is too much work and costs too much money for an individual to clear rights which could be located around the world. They can also act as intermediaries in cases when the collection of royalties would prove difficult or impossible for the individual author (e.g. with regard to the public lending right). At the moment, there is no *European or international system or resource for artists* to approach when attempting to clear all types of rights that may be need in their productions. In many cases, artists are relying on oral or "gentlemen's agreements" which are not valid in the case they may be contested in a court of law. Written permission is essential. Otherwise it is a risk, which some are willing to take because their works are non-commercial or intended for educational purposes.

9. There is an urgent need to develop and provide resources which could assist artists in the process of informing themselves about their rights and about alternative tools which can empower them to manage/define their own rights if so decided. In this context, it was recommended that an *educational module on artists rights* be developed and distributed to arts universities across Europe. Some of this work could be done in cooperation with e.g., the Nomadic University and distributed via the Global Threads Virtual Faculty on Arts and Science. The gaming prototype / knowledge space developed by Mathias Fuchs could serve as a model for an eventual "artists rights resource centre", bringing together academics, artists, scientists and legal experts.

10. A more *open attitude towards the changing working practices of artists* and their use of new technologies is required on the part of all major actors: copyright licensing bodies, the European Commission, national law makers and professional organisations representing artists and authors.

Workshop participants agreed that this type of debate and discussion needs to continue as well as the collection of both qualitative and quantitative information such as data, case studies, court opinions/case law, etc.

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Context in Brief

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In 2003, the 2nd Session of the European Cultural Parliament passed a Resolution which called for an independent examination of "outdated legal and economic frameworks which do not necessarily meet their original objectives to recognise and remunerate creative artists for their work".

Intellectual property rights legislation has been one of the main tools public policy makers have used to define the economic relationship between creators (as authors), distributors, producers and receivers (the public) of an artistic work; the basic tenets of which are founded (in most European countries) on the principle of individual exclusive (original) authorship.

Results from a recent study[1], show that this relationship is becoming more complex as "artistic creativity in Europe is no longer exclusively a trait or talent of an individual artist", but are rather based on a collective stock of intangible assets that are accumulated, used and re-used, created and re-created by other artists, cultural producers and the creative public at large". Herein lies a dilemma between a centuries old system and more recent trends in the culture industries such as:

- *Changing working practices of independent professional artists.* Studies show that an increasing amount of artists are part of project teams which are comprised of authors, directors, producers, artists, engineers, programmers etc., who are collectively producing or are associated with a final result[2]. In this context, it is clearly very difficult to determine one "original" author. For example, most digital or multi-media works produced today are not the creation of one artist or author but are the product of many actors, sometimes even a "Gesamtkunstwerk"[3].

- *Technological progress* has also provided unprecedented opportunities to create, copy and distribute artists works in an easier and less expensive means than ever before. Estimates showing billion dollar losses to the global music industry with the introduction of MP3 technology and peer-to-peer file sharing prove the potential for radical change in the economic relationship among the main actors making up the culture value chain (artists-producers-distributors-audience).

- On the other hand, multinational culture industry companies maintain their position as *legal rights holders and managers* of works which predominate in the global marketplace. In this context, intellectual property legislation is frequently seen as a tool to protect the interests of large scale players of the culture industries and their "stars"[4]. New business and contract models to help artists obtain revenues directly – without intermediaries such as publishers, distributors or copyright licensing bodies – from the distribution of their work are being implemented (e.g. "payback for playback"). Only recently, some of the collecting

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[1] Danielle Cliche, Ritva Mitchell, Andreas Wiesand in co-operation with Ilkka Heiskanen and Luca Dal Pozzolo, *Creative Europe: On the Governance and Management of Artistic Creativity in Europe.* Arcult Media, Bonn, 2002.

[2] It has been suggested that new working practices of artists in, for example, project groups have been partly fuelled by the introduction and wide-spread use of new communication technologies as well as the new economics and practices within the Information Network Society.

[3] Traces of which can be found in some of the present day copyright laws, but mainly to the benefit of producers, e.g. in the case of cinematographic works.

[4] According to Bernhard Günter, MICA Austria, the space for experimentation and cultural innovation is disappearing in a field where 80% of the recording industry market share goes to only five multinational companies. He estimates that only 15-20% of the composers receive copyright royalties which make up more than half of their income (in a market which is fully controlled by collecting societies).

societies and their international organisations (e.g. CISAC) acknowledge and try to address this developing trend.

- Systems which empower *artists to manage their own rights* according to their own terms are steadily emerging. They are based on the principle that authors/artists should define their own conditions for granting users the right to copy, distribute or transform their work. This could take many forms from "free-use", "pay-per-use" or "rights-exchanges".

Such challenges are confronted with a persisting *incoherence in the present regimes of rights management and models of remuneration in different countries* (copyright system in the USA and the more elaborate "droit d'auteur" system in continental Europe) and *across different artistic fields, for example:*

- Compulsory licensing via copyright collecting societies in the field of *music* with a share of revenues being paid to music publishers (many of whom are associated with distributions companies);
- In the field of *film/television,* contracts are negotiated with producers/TV-stations and usually give the latter full control over the work. Most artists and other creative staff are given a fixed, "all inclusive" fee for their work;
- There is a mixed model in the *literature* field. Authors negotiate contracts with publishers according to royalty schemes determined by the number of copies sold or lump-sum payments. They also conclude agreements with collecting societies regarding some of their rights and royalties;
- There is no established model in the field of *media arts.* Such works are often classified as "collective authorship" with the "producer" holding a bundle of rights.

Distribution models for some of the royalties, collected from e.g. public lending rights organsiations, also differ from country to country, ranging from individual fees per use to lump sums and "collective" models where part of the revenues are channelled into public funding programmes administered by artists organizations or public agencies within the framework of cultural policy.

An Overview of the Main Aims of the Genoa Workshop

The purpose of this workshop was to begin mapping some of the main issues concerning intellectual property rights within the context of the current practices and conditions of artists who are working with the new technologies either as a means of distribution or as a main tool for contemporary creation.

The workshop was opened by three presentations on:
- a) Update on the latest developments in the field and on priorities of the European Union and WIPO (World Intellectual Property Organisation);
- b) The Creative Commons - a new model based on contract law giving artists and authors the possibility to determine the conditions upon which their works can be used/copied; and
- c) Imaging a world without copyright.

The second part of the workshop was a dynamic survey based on real life working practices of artists/project groups and the experiences they have in trying to either deal with the current copyright regime or in trying to implement alternative models - whether their projects are aimed at commercial and/or non-commercial exploitation. The projects deal with the interface not only of

different artistic forms (text, sounds, visual images) but of different copyright and legal instruments attached to them.

Main questions addressed were:
   a) What are the main difficulties you have encountered vis-à-vis the existing copyright system in the course of creating or distributing your work?
   b) How do you negotiate between the different forms of copyright protection over text, sounds, visual images etc.
   c) Are new models (e.g. open source, pay per use etc) emerging which better meet the needs of your work?
   d) Are there specific software and/or technological solutions which are available to help you implement these alternative models?
   e) What do you know about the user behaviour or response to new and emerging models of rights management?

The workshop was recorded. Summaries of the presentations and questions&answers are provided in the section below and are based on the printed transcripts of the session.

Summary of Presentations and Discussions

Part 1:   Laws, New Models and Other Alternatives

The Copyright System: Latest Issues and Debates[5]

Copyright was first created in the 18th century, to break a monopoly held by publishers on what would be published and to diversify the marketplace by enabling other publishers to enter. Copyright was given to the authors and not to the publishers. The intention was to make it easier for people to have access to many ideas (liberation of ideas from a monopoly stronghold).

During the last century, the balance between economic interests and liberty has been lost. Business interests and their economic lobbies (by the publishing and audiovisual industries) have captured government regulatory processes at both the national and international levels. A sign of this imbalance is the fact that copyright is not only addressed by the World Intellectual Property Organisation (WIPO), but by the World Trade Organisation (WTO), bringing intellectual property (as a tangible good) to the trade negotiating table[6]. This move was intiated by the USA and Europe to give them more power and control over the flow of intellectual capital – turning intangible rights into tangible items to be negotiated within the framework of world trade. In fact, intellectual property is considered to be the fast growing component of the national economy and represents a significant amount of the GDP in the United States.

There are some signs that this balance may be changing. TheWIPO and the EU have begun to take the voices of other stakeholders into account, namely the consumer's voice, in the development of new directives and initiatives on the protection of consumer's rights. On the other hand, the voices of civil society are becoming more organised. In October 2004, civil society submitted the *Geneva Declaration on the future of the World Intellectual Property Organisation* and declared that there is a global crisis in the governance of knowledge, technology and culture (See *Annex 3*).

Q&A

Question from Pierre Guillet de Montoux: What do we mean when we talk about consumers? Are artists considered as consumers in the sense that they use and re-use others works? The question of the "source" in the value chain of cultural production becomes important in this context. Are artists "consumers"?

Reply Susanne Capiau: No, artists are considered as "users" of pre-existing material / works. A "user" is a person who uses a work to do something else with it to e.g. to create something new with it or to make money with it. "Consumer" is passive.

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[5] This is a summary of the presentation made by *Suzanne Capiau*, lawyer, professor and director of the European Institute for Authors Rights, Brussels.

[6] In the beginning, WIPO was composed of only Western countries which colonised the developing countries. After the 60s, the membersship of WIPO diversified and was composed of both Western and developing countries; the latter obtaining more powers to restrain the wills of the Western countries and to influence decisions being made. The Western governments claimed that WIPO was no longer active or efficient in the field of intellectual property rights and therefore, American and European governments transferred the issues of intellectual property rights to the WTO where they could have more power.

Main issues on the agenda of the WIPO:
1.   Database protection. At the moment there is no international database protection for non original databases. In the EU, there is a *siu generius* right given to investors and not authors.
2.   Updating the definition of a "broadcaster" to take into consideration developments in the context of the Information Society.
3.   Updating the Rome Convention on perfomers and producers rights to include audiovisual performances. At the moment it only addresses phonographs.
4.   Protection of traditional expressions.

Main priorities being addressed by the EU:
1.   Pirarcy is one of the main priorities being addressed by the EU. New directive adopted on counterfeiting and piracy inside Europe in April 2004. The EU to implement an action plan directed to third countries (e.g. China).
2.   Governance of collecting societies. The EU has recognised that collecting societies do not have modern management systems in place. Results of recent studies commissioned by the EU show that there is a need to have a good law about the governance of collecting societies. A hearing was launched in 2004 and was closed in November 2004.
3.   Review of the aquis communitaire. Over the past 15 years, the EU has adopted several directives in the field of copyright, for example, on computers+software; rental rights; satellite and cable; extension of the term of protection to 70 years after the death of an author; neighbouring rights (rights of performers and producers); database protection; reproduction and communication right in the Information Soceity.

The most recent Information Society Directive has adopted provisions which would allow for exceptions on works to be used by the public i.e., in the public domain. Main question now is over private copying – does the public have the right to make a digital copy of a work on the Internet. In Belgium, a new decision was issued which says that the public does not have the right to copy and therefore the producer of the work may put a protective measure on a CD Rom or on a web page to prevent people from copying the works. A committee has been set up to review the Information Society Directive every three years to analyse if the social contract established in the Directive is still valid. This means that the public will be invited to make comments every few years.

Q&A

Q1 (Marcell Mars):
Whenever a user is surfing, browsing the Internet – a copy of that website is stored in a temporary directory on your local hard drive. So if we are to interpret this literally, it means that everyone who is surfing on the Internet is doing so illegally.

A1 (Suzanne Capiau):
Yes, this is correct. This was one of the points discussed by the European Committee in November 2004. A temporary reproduction is one of the exceptions in the Information Society Directive, but has not yet been implemented in the other directives. The review of the acquis communitaire will have to take this into consideration.

Q2 (Marieke van Schijndel):
How will this be supervised? It is very easy to overstep the technological protection measures e.g. a CD Rom which is protected. You do not need to break the code, but to play it in an analogue way which is

possible if you have a proper device which allows you to do so and therefore have access to the works and indeed to copy it. Technology will always be a step ahead of the laws and protection measures.

A2 (Suzanne Capiau):
The WIPO has been discussing this point, because the economic interest are so great. The WIPO treaties have adopted provisions on the protection of technical measures. Therefore when someone breaks or bypasses technical protection measures – even to access a work which is not protected anymore but is on the Internet - they are still considered a counterfeiter or pirate.

Customising Copyright: CC Licensing[7]

The Creative Commons (CC) is a global NGO[8] which addresses legal problems in the area of copyright law. It does not make any revenues and is independent of any business or government interests. It is exclusively financed by charitable organisations in the USA. It may eventually receive financing from public authorities in Europe but they have not received any money yet.

The ultimate objective of those involved in the CC is to establish a viable middle ground between stringent copyright controls and the completely unfettered use of content in the digital age. They believe that it does make some sense to regulate artistic creativity and activity and to assign rights – and who has the power to assign rights.

Recognition of very small steps being worthwhile and the gradual improvement of the existing legal framework is the guiding thought of Creative Commons. The CC is not trying to revolutionise everything or tear anything down. The idea is to build on established copyright notions – to come up with a more liberal solution and to achieve a sound approach.

Those participating in the Creative Commons do think that copyright law as it has developed since the WWII is very disquieting and is very confusing. It has become so complicated that nobody really knows what is allowed and what is not allowed and there are so many different areas of copyright law and of IP law in general. There are so many different organisations and so many different countries with different legal solutions – that it is even difficult for the specialist to gain a thorough understanding of what is going on.

Creative Commons is only concerned with one particular area of intellectual property law. IP law in general is concerned with broadly granting protection for different manifestations of the human mind, e.g. patents for scientific innovations, business trademarks which is very important in the context of counterfeit products now entering the market from China and copyright for artistic and literary creations. Creative Commons is concerned with the latter.

Main "business interests" related to parts of IP law (mainly patents) were fought out as battles in the late 90s via WIPO and the WTO. Now copyright is becoming more prominent because many industrial creations such as software development and databases (e.g. data collected within and gained via large scale scientific genetic research projects). Such data is very valuable for large multinational corporations such as pharmaceutical companies and are not covered or protected

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[7] This is a summary of the presentation made by *Roland Honekamp,* Creative Commons International.
[8] The Creative Commons has 9 full time staff located in San Franciso and Berlin. It relies on a global network of volunteers in 70 different countries which implement the Creative Commons solutions in their specific jurisdications and legal contexts. They are usually affiliated with academic institutions and/or artistic and technological institutions. The project is a world wide movement.

by patents but by copyright law (which is the purpose of the directive which the EU is proposing).

Boundaries are becoming blurred to the extent that our economy is more and more becoming a knowledge economy away from manufacturing and towards high value added services such as software creation or pharmaceutical research. Copyright is becoming more important as it is beyond what it used to be and becoming an economic tool for powerful business interests to serve their purpose. This leads us to the familiar problem in the WTO (TRIPS agreement regulating trade related aspects of intellectual property law) and in the EU which have both been captured by business interests and which needs to be avoided in the future.

Creative Commons believes that sound economics should not be confused with regulatory capture by business interests. It is not only a trade off between economics and liberty, but economic insights should drive the design of intellectual property law in general and copyright law in particular which is not necessarily synonymous with business interests.

There is a large difference between copyright law (e.g., UK and USA) and droit d'auteur in continental Europe (e.g., France and Germany). The important difference is regarding moral rights, the invisible bond that the artist has to her work. There are no moral rights in the English/American system of copyright law which covers the rights of the author but also the neighbouring rights of the producer and the performer and broadcaster; the latter is not the case in the continental system of droit d'auteur – which requires a separate neighbouring rights legislation. Creative Commons is also interested in the neighbouring rights – the rights to record a work and the rights to perform a work – as well as in the narrow definition of droit d'auteur.

Three main developments since the WWII:
- There has been an extension in the scope of copyright law beyond books, poetry and novels. Progress in the development of new technologies has enabled artists to use and come up with new tools to realise their creations (e.g. photography, films, the Internet). Over the centuries and particularly after the WWII, copyright has been broadened to encompass all of those different new aspects of artistic and literary creation. Today, more is being regulated and more is being protected.
- There is an increasing concentration of media power and business interests. Business interests are gaining control of the regulatory processes, government bureaucracies and international organisations.
- Digital rights management has emerged to enforce IPR on the one hand, and there has been the emergence of P2P networks on the other.

One of the main legal developments has been the extension of the term of protection granted to copyright holders, not only to authors but also to corporations which have commissioned works. There has been several increases over years, for example in the USA, the term of protection was the life of an author + 50 years, until 1998. This has been extended to the life of the author + 70 years. This means that there is another 20 years between 1998 and 2018 in which, in USA, no works shall enter the public domain anymore. There is no guarantee that in 2018, the same interests that lobbied to increase the term of protection will not come back to increase the term of protection to 120 years. In fact, they have done this many times. Where is the end of the line?

Creative Commons shares many similarities to the Open Access Movement in the sciences – desire to grant the public a broad access and free access to scientific research results beyond what is published in expensive academic journals. It is also similar in approach to the Open Access Software Movement and the GNU/GPL license which is widely used in open source soft-

ware. The latter is a good example of the type of power that the Creative Commons license strives for. The objective is to make digital content more widely available than is currently the case. Creative Commons believes that copyright law is particularly restrictive and not up to date with developments particularly in the digital area. At the moment it is possible to use the Internet in a particular way which copyright law currently forbids.

Creative Commons is trying to achieve its goal by establishing a series of licenses which hand back to the artists the power to determine how their rights are to be assigned. The idea is not to go all the way, i.e., that there are no rights embedded in a specific artistic or literary work but to say that copyright law itself encompasses a bundle of rights and that the artist should be given the power to keep some of these rights for themselves and to give some of them away. To give them the right to be asked in advance before someone else distributes their work.

It is important to remember that the model of copyright which prevailed until the 1970s was similar to patents. Your work could only be protected if you actively registered your work and to gain protection; otherwise the assumption would be that it is free. In the 1970s, this burden of proof shifted and now it requires an overt act of relinquishment if you do not want to hold onto your work. This situation has totally reversed itself. This is the main barrier to the wider circulation of any specific work. The main thrust is to get back to this situation which prevailed in the early 1970s, whereby, unless the artist says otherwise, you are free to use the work and not unless you are explicitly authorised to freely use the work. This is the main right which the CC encourages artists to voluntarily give away while still being credited for the work. Users can use and circulate the work as long as they reference the work being used. The difference being that they do not have to ask the artist in advance.

There are three sets of licenses[9] which one can download from the creative commons website (they were originally drafted for US law makers but are now available and valid for 12 different legal jurisdictions).

- *Human-Readable Commons Deed*: includes general elements of what the licenses are, what the user can do with any particular work. This relies on certain symbols which are very easy to understand and which are assigned by the artist e.g. you can use this work but not use it for commercial purposes – non-commercial uses, etc.

- *Lawyer-Readable Legal Code*: contracts drafted taking into account the legal codes of the jurisdiction in which the licenses are being used e.g. which may be different under French or American Law. These contracts have been constructed to be upheld in a court of law. No cases yet. Looking forward to first legal battle to test the legal validity of the licenses.

- *Machine-Readable*: Metadata attached to the licenses and which then serve search engines, and other software applications to find a specific piece of content.

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[9] It is not possible to use just parts of CC licenses. The entire license must be used for it to be valid.

There are different possibilities for artists to choose from:
- users can use the work for non-commercial purposes as long as artist is referenced;
- you can restrict commercial use or permit commercial use;
- that the work should remain as it is and can not be altered or "taken apart";
- users can modify and create derivative works;
- share like (based on open software movement) –condition means that if you do use a work and create something new and then profit from this new work than the new work must be licensed under the same conditions and share the work under the conditions which the new work has benefited from. It is a powerful license element. After a wide use and circulation of these licenses that a new conservatory of works which are much more accessible and free to use than is normally the case.

The project's success ultimately depends (i) on acceptance and use of the licences by consumers / end-users in many different localities and (ii) on the licences's enforceability in the courts. Hence, the licences must be transposed into different jurisdictions and languages. 2003-2004 data on the license selection show that 98% are using the US license and that there is not a lot of uptake data available for European licences yet – in fact many European countries only joined Creative Commons in 2004.

- ¾ of all artists using CC licenses are not permitting commercial use of their works;
- 30% of all artists prefer to keep their work intact as a whole as it is and do not permit modification;
- 70% of artists are saying that users are free to create derivative works (can take their works and use it for their own purposes and change it as you wish);
- share-a-like license are used in 50% of the cases.

The Goal is to make Creative Common licenses a global standard around the world and therefore they need to be "water-tight" and valid in all the major jurisdictions around the world. We are working to make them interoperable and mutually compatible in different jurisdictions. There are, however, a few challenges which need to be addressed:

1. The problem of language e.g. CC licenses in Germany may be considered under consumer contracts under German law. According to the case law of the German BGH, standard terms and conditions for consumer contracts (AGBs) have to be in German. The French Loi Toubon required all contracts to be drafted in French; free software licences such as the GPL are still regarded as invalid because they are in English. The principal reason for these difficulties is the European Directive on unfair terms in consumer contracts.

2. The problem of waiving moral rights because of the differences between Anglo-Saxon copyright law and continental droit d'auteur systems. Article 6 of the Berne Convention states that a global waiver of moral rights is often not possible. This gives rise to complex questions in the case of derivative works and the share-a-like licence. CC does not allow people to waive their moral rights.

3. Problem of contractual law

4. The problem of liabilities and warranties

There is also a need to come to terms with the collecting societies in the individual countries. At the moment they are very hostile to Creative Commons. In France the situation is very bad. For example, if you license even just one song with the dominant French collecting society, SACEM,

you have signed your rights away for life and no contract can get you out of this relationship. And therefore you are not free to sign licenses with CC.

Some of the current projects being pursued by the Creative Commons are:
- Science Commons – try to bring the idea (not the licenses) of CC towards the area of natural science to publish the results of large scale research projects on the Internet for free so that people working in developing countries or in under-funded laboratories would still have access to the results. This is more tricky because it involves influencing national science policy.
- Nutch powered Search Engine - CC search engine integrated into Firefox 1.0 web browser.
- CC Publisher – free storage and free publication space on the web for artists works. Not sure how long this is feasible and can be sustained.
- Large scale promotional events – benefit concert in New York City where Gilberto Gil gave a free concert as well as Gabriel Byrne. They also came up with CC-CD published in Wired magazine. The CD will serve the basis for a world wide contest to come up with new songs based on the songs published on the CC-CD.
- Collaboration with the BBC's Creative Archive – hybrid license – a large collection of works created by the BBC in the 60s, 70s and late 19th Century and make available these works on the Internet. It will be compatible with the CC license.

Q&A

Q3 (Marcell Mars):
How would hate speech be addressed under a CC license?

A3 (Roland Honekamp):
The solution developed so far is not to allow people to waive their moral rights. For example: if your works or creations are being used in hate speeches or by fascist parties (and because of the prevailing moral rights) you can file a suit against them any where. The case, however, is to be considered under the law where the infringement took place. If the infringement takes place in a country which does not have rules against, e.g. hate speech, then there is nothing you can do about the infringement. Even under international law, there is the principle of reciprocity and it is very difficult to apply international law.

Q4 (Woody Vasulka):
What is the recourse for an artist who may want to initiate a procedure or take legal action against a user of their work which has been licensed under the CC. Does the artist need to employ a lawyer or does the Creative Commons or another organisation take care of the artist and provide legal services?

A4 (Roland Honekamp):
Creative Commons is only an enabling organisation to provide tools e.g. the licenses which artists may use or not use. It is not part of the contract between the artist and the user. It does not get itself involved in the relationship between the artist and the user. It does not provide legal advice and will not help individual artists to enforce their rights.

Q5 (Andreas Wiesand):
What do you think about the fact that most artists chose the non-commercial license? What is the definition of commercial and non-commercial use?.

A5 (Roland Honekamp):
In each jurisdiction, there is a body of law that defines non-commercial use. In the UK license, non-commercial means - not primarily intended for or directed towards commercial advantage or private monetary compensation. But what if they compensate you in-kind or give you free advertising space on their network? In the end it is up to the courts to decide. The Australians and the Americans have an-

other more explicit definition of non-commercial use – not only monetary compensation or compensation in kind is commercial use but also if someone uses the work for advertising purposes and a tool to promote a product.

Q6 (Woody Vasulka):
Problem is on another level and that has to do with ethics. What we are talking about here is the post modern strategy of appropriating other people's images. Let me tell you a story. There were 10 sets of Matthew Barney's Cremaster which sold at an auction for 350,000 dollars per case of 5 CDs. These set were then sold on the open market as bootleg copies for 18 euros. This is an insane disparity between the work of an appreciated breed of collector having a totally unique piece of art, signed by the artist etc and a community of boot leggers which undermines the hierarchy of the market. Art is about a speculation of values which are continuously changing and disclaimed.

A6 (Roland Honekamp):
No matter what individual artists may or may not think, their work is still governed by law.

A6 (Andreas Wiesand):
The situation is different from what it used to be. Before things used to be free unless an artist said they are not. Today they are in a legal trap unless an artist goes through a legal procedure to get them out of the trap.

Q7 (Woody Vasulka):
On the one hand, the CC is a tool to help artists get involved. However, I do not understand or see how the CC can benefit me as an artist as a live element of my own work.

A7 (Roland Honekamp):
Surely artist should be able to make money from their works. While the CC encourages the artists to give their works away for free, they are not forcing them to do so. One example of a strategy: if you are an unknown musician and you do not want to negotiate with the recording industry right now from a position of weakness. You can circulate some of your works under a CC license to build up your reputation and once you become well known – you can hide away some of your better songs and could seek to publish them commercially – not under CC licenses – and then you can be in a better position to negotiate a contract with a record producer. The second way of making money using a CC license is to give your works away for free and then ask people to make donations. Another concern, that an artist needs a large corpus of works to be inspired by and to work with is the very objective of the CC to create a parallel digital universe or stock of assets which would allow users and artists to do things which they are not normally allowed to do and it should enrich the capabilities of individual artists and the creative process as a whole.

Q8 (Marcell Mars):
Artists as well as all other persons are already in the legal system and no one can go out of that no matter what kind of licenses are available. CC is trying to focus on and make legally valid the sharing of ideas and works. However, one warning: to change the use and reference to the relationship between the CC licences and the "open source movement". GNU, for example, was never created as an anti-commercial exercise, at the heart of the GNU was "freedom of speech". The open source initiative from 1997 which said that it is more appropriate to target the business sector because when you say "free software" especially in the English language, they think that it is not "good" because it is for "free". On the whole software scene, there is now an ideological struggle between the open software movement and the free software movement. Therefore he thinks that it is better to refer to the free software movement to try and break this ideological hold on the word "free". If CC continues to use the terminology "open source" there could be the perception that its aims are more closely tied to the business sector - and I would advise to reference the free software movement instead (open source took this name because they had the goal to sell free software as a methodology for creating better software for the market and not software because of freedom of speech).

Q9 (Danielle Cliche):
We have been talking all the time about individual artists but what about collective authorship and multidisciplinary works?

A9 (Roland Honekamp):
Collective works can be covered under a CC license which covers all different types of works e.g. text, sound etc.

A9 (Susanne Capiau):
Audiovisual works are considered a collaborative work. The producer is the author of a collective work. All the authors associations fight against this concept. Authors have no rights or remuneration at all in this definition. They are employed on contracts and artists just have to make sure that they make good contracts.

Q10 (Andreas Wiesand):
For what reason do artists and authors sign contracts which give away all of their rights? It should be the individual responsibility of the artist to negotiate, as much as possible, specific contracts that serve their needs with those who want to use their work, e.g. publishers. Artists and publishers are not forced to use the existing models (e.g. terms of protection for one's life + 70 years); they could go around it through contracts and negotiate for example, a duration of 10 years instead. Thus it is possible to use the system to redefine the current situation. The main problem is the existing standard model contracts, many of which do not cover the individual needs.

A10 (Roland Honekamp):
Yes, I totally agree with Andreas. How come we consistently find ourselves in the situation where the artist has no rights? There must be something happening in between. The CC can provide a tool in which the author can circumvent those that are responsible for bringing us into this situation. However, it is also the responsibility of the artist to inform themselves about the law and about their rights and would have to enter into decent negotiations.

Imagining a World Without Copyright[10]

I want to present a different perspective – a thought experiment which helps us to think outside of the frameworks which we are used to. Copyright is so embedded in almost everything we do that it is very difficult to think differently about it. Joost Smiers and I are working on this – a way to think differently about an alternative to copyright and to imagine the strategic implications of such alternatives. We want to raise some questions about issues which we all seem to take for granted. However real change requires small, baby steps and will not happen all at once.

I will talk about copyright in a general sense and not specifically related to new media. As change will need to take place on a larger level which can eventually impact all forms of creative work. Big changes will need first to take place in the fields of publishing and film rather than new media.

Several authors have presented analysis of the problems inherent in the present copyright system but most observations do not address the fundamental question which Joost Smiers and I believe is so important. If copyright is inherently unjust – what could come in its place to guarantee that artists can receive financial compensation for their work. How can we prevent creativity from being completely privatised?

Two main observations:

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[10] This is a summary of the presentation made by ***Marieke van Schijndel***.

1. The present copyright system pays little attention or provides little benefit to the average artist, creator or performer. It disproportionately benefits a few famous artists and major enterprises. Copyright royalties are not an incentive for artists to create.

2. Development of public domain of creativity and knowledge. Artists should be able to dive into the public domain to find a supply of ideas and artistic materials they can build on. This space is closed when artistic materials from the past and the present fall into private hands. Privatisation of the marketplace of ideas slows down scientific progress and diminishes the opportunities for creation of new products and artistic works.

Based on these observations, and the fact that artists are not creatures of boundless original thoughts and ideas, but build upon the ideas and works of those that have gone before them as well as contemporaries, we can only conclude that the present copyright system is unsustainable and inherently unjust.

The current draw back of the alternative models which have emerged in recent times, e.g. Creative Commons, is that they stay within the framework of copyright or private ownership of creative work. Not all of them put cultural entrepreneurship centre stage. Economic aspects of copyright are necessary to think about. Authors and artists have always tried to find an audience which will consume as well as enjoy their products and ideas. Artists, producers and patrons are entrepreneurs with a risk prone mentality and are involved in competition. Our model does not make the division between commercial and non commercial culture – rather it considers everyone involved as entrepreneurs whether or not they want to make a profit on it. They are always operating in a commercial sphere. The initiative to create can come from someone who commissions a piece of work (a patron), from one or several artists or authors, or from a producer. In all cases there is a person or institution which makes itself responsible and accountable for creating or performing a certain artistic work. Being responsible and accountable requires undertaking a broad range of activities to give the artistic project momentum – as well as the financial risks. The initiator is then the entrepreneur who bears the risks in a similar manner to other entrepreneurs. In our model it is not the artist or the author who is assuming this risk – but the entrepreneur – whether he or she is a producer, a collection of artists or a patron.

We have outlined 3 main phases in our model (we are still working on defining the connections between them):

1.   The Market:

The main goal is to distance our selves from the current system of copyright. The protective corral of property rights that is artificially erected around a creative work will disappear. The work will have to be marketed from the moment of its release onwards. The entrepreneur has a competitive advantage by creating or performing a work. They have the first mover advantage to collect revenues. They have lead time over possible competitors, to screen the market and to receive a decent price or return on their investment. It would take time for copies to be made of designs or performances. Cultural entrepreneurs would be given a temporary monopoly of lead time to establish new products in the market. Digitalisation however can obviously reduce the "lead time monopoly". Many entrepreneurs can create advantages in many different ways, e.g. live direct contact which generates incredible value. Many people would be willing to pay for something that they could also get for free because they would know that the money would be going directly to the artist and they would then create more works which the people would like. Competitive advantage is at the core of our model. There could be more room to manoeuvre for a variety of cultural entrepreneurs and cultural products because there would be a level playing

field; the latter meaning that everything will be part of the public domain, everyone will be allowed to use it and commercially exploit it – there will no longer be private ownership.

2.   Temporary protective usufruct
Sometimes the realisation of a certain work requires a lot of money, large up-front investment e.g. writing a large book or producing a film. This means that there could be a lot of risk and uncertainty. There is also the risk of market failure. Competitive markets may not always function the way they should. Some state intervention may be required. In such an environment, we could imagine a temporary protective usufruct for the "investor", the "entrepreneur" who is offered a temporary protection to harvest the fruits from his/her work. No private property emerges as is the case under the current copyright system. Usufruct means that you have the right to exploit the property of someone else and bear the fruits of that property as if that property really belongs to you. Under the present system of law, you can only obtain usufruct if someone who owns something gives it to you. In this new model, if creative works exists only in the public domain – its ownership is shared among all in the society and belongs to the commons. The artistic works, performance or production enters the public domain (or in fact never left the public domain from the very beginning). Whoever obtains the temporary protective usufruct has been given it from the public domain. The term of protection we envisage is no more than one year. In fact, the life of many works is about one year: e.g. books go out of production after one year, many films have a commercial life of about one year, etc. The period of "one year" is something which needs more investigation – it may be too short or too long for certain artistic disciplines.

3.   Subsidies
It could be that the market lacks the resilience to finance a certain type of artistic work – but that this type of work or form of expression is still necessary. In this case, we feel that the governments should intervene and subsidise the creation, performance and diffusion of such work. In this case, when public funding is involved, the work should enter the public domain immediately and not be given the possibility to obtain a temporary protective usufrucht.

There are differences between a one year temporary protective usufrucht and the current term of protection defined under the copyright system. First, under the current property rights regime, the protective shield of copyright becomes fixed to a particular piece of work by definition. This is not the case in our system. In our approach, we first let market processes take their course which could then be followed by a limited form of protection. There is no private intellectual property. Artistic works are a public good in every possible way, ownership is held by the commons – which could grant a temporary protective usufrucht in special cases.

Under the current system of copyright, creative adaptation is considered illegal and wrong as defined by the courts. In our approach, creative adaptation is applauded and encouraged. On the other hand, we are not encouraging plagiarism, misrepresentation or mutilation of works – that someone could steal another person's work and attach their name to it. However, we think that the "lazy thief" will receive his or her fair penalty in the court of public opinion. There is no real need for a legal system to do this work. Creative adaptation – namely the respectful use of a work of art is granted for use in the public domain.

It will take us a while to let go of a system of copyright – to make a mental and economic transition. If we accept this proposed model or another one – the field of cultural production would change dramatically. Cultural products would change – just as they did when the copyright system was introduced in the beginning. What is at stake is 1) respect for the public domain of creativity and knowledge production 2) the economic consequences for the artists and the cultural entrepreneur. Our main concern is to provide the cultural entrepreneurs (artist, producer,

patron) with a decent income – sufficient possibilities to bring their work in all its diversity to many audiences.

Q&A

Q11 (Woody Vasulka):
There is a difference between a profession in art and a life in art. Art always lives and renews itself by opportunity.

A11 (Don Foresta):
We do not need to envisage a new world we just need to look at history and what the role of the artist has been and what it is today in order to see how varied it has been and how much it has changed. Within contemporary modern society, we do not know what the role of the artist is anymore. The artist has no real function in the society anymore that is recognised bureaucratically. When we have this situation then how can we think about putting a value on it? Questions which are really important are much broader and fundamental: What does the society expect from the artist and how does the artist interface with society. We do not know how to "live" the process of art anymore. We have commodified this process in order to deal with it in a bureaucratic fashion. Governments subsidise arts they are obliged to commodify it in order to make it fit into their annual budgets. So we are falling into their game. There is a resistance to falling into their game. This means we will continue to give our works away.

Q12 (Roland Honekamp):
I would like to make a comment regarding plagiarism. Your model puts trust in the proper functioning of the market in each and every area, especially in the area of giving appropriate credit to the author for their works. I would rather like to base the discussion on a preliminary right of an author to be credited for their work and to be associated with that work. By changing the term of protection from 70 years to 1 year would not take away the temporary monopoly hold. Soon there would be corporations paying artists for a short term in order to gain personal advantage and will have to create even more efficient marketing machines – they will strive to perfect the art of marketing. Marketing in this model becomes the key. Domination by a few players would still exist. There is a danger that we would enter a system where the individual artist has to prove that he or she is the author of a work rather than the other way around. It poses an ethical problem for me. If this point is removed from your theory than essentially what you are proposing is a system where the markets to do more work than they are doing now and hence reduce the terms of protection which I would agree with. However, I would not severe the relationship between author and work.

A12 (Marieke van Schijndel)
Creative adaptation is at the heart of the model. We are advocating a model which rejects moral rights and gives the power to the public to formulate an opinion and to criticise and make judgements on the creative adaptation of a work. Respect becomes key – but is not used at the moment.

Q13 (Suzanne Capiau):
But then it becomes the law of the jungle and there will be no protection against stealing other peoples works which is so easy to do.

A13 (Wood Vasulka):
I disagree. Sometimes, you can not use other people's works at all – it does not fit. That is art. Anything that can be used easily is actually useless and is not art. Art is what is elevated above what is useful. The further you get from reality or from its use, the better the art is. This is my private opinion. My art is not available for commercial purposes because it is useless in the market. I would give it to them – no problem. I have come from a society where they tell you that you are an artist – you do not tell them that you are an artist. It is the first time that I have understood what the Americans are all about and about the "profession of artist". You are naked if you declare yourself an artist because you have nothing to wear. This is what happened to Paik. He was the greatest artist on earth. But then he lost his clothes. Everyone

thinks that they are a good artist. You have to continually test yourself against the society. You may receive the proof that you are an artist from one person who you trust and with whom you engage in a dialogue. You have to know who you are and the rest will come. It could be that you are an artist temporarily. Ideas run out or shift and your life changes. It is all transcendental. You have to continuously test this all your life. You can not just pretend that you are an artist. It is not a commodity.

Q14 (Ritva Mitchell):
How would this temporary protection of only one year improve the situation? If you are only in the market and have the rights for one year I see that it could become worse. You would have to work extremely hard to get all the profit from your work within one year. It is very difficult.

A14 (Roland Honekamp):
You would have to divert resources to become ever more efficient in marketing those items which are already available and then there is nothing that they can rely on. Eventually they would have to focus even fewer marketing resources on fewer products and only those that would attract the most profits (e.g. large recording companies to focus on the top 2% of their commercial works and the rest would totally be left to the way side). There would be less resources for the production of works themselves and there would be an impoverishment of works.

A14 (Marieke van Schijndel):
You can not abolish copyright and put a system like this in place and keep the concentration of power in the hands of a few major corporations. Better regulations regarding mergers are needed as well as better arguments towards cultural diversity. Such arguments are needed to convince politicians to change regulations so that economic aspects are not the most important but that the cultural aspects are the most important.

A14 (Marcell Mars):
There are no such politicians. I believe that we can find our solutions in the technology. Inventions which help us to go around the system of patents etc., and develop new products to empower consumers and to distribute products which would more easily reach the consumer.

A14 (Roland Honekamp):
My prediction of what could happen if the term of protection was lowered from the current status to one year, for example, on films. There would be no more movie starts. In the first year there would be massive advertising and ticket prices to see the movie would go up. In the next 2-4 years, the audience would remember it as a "new film" and there would be a massive proliferation of cinemas because after one year they would not have to pay for the rights of the film and just simply show the film. There would be a huge competition between cinemas and television stations as broadcasters could also show this film in the second year also at no cost. There could be over investment in cinema infrastructure. As the investment would need to be recouped within one year instead of over 80 years, there would be less overall average investment per film. So, there would be less attempts to produce blockbusters and the huge salaries given to movie stars would be considerably less than what they are now. It would be an interesting study to analysis the percentage of overall revenues that are generated per blockbuster that are made in the first 12 months after its release.

Part 2:	Case Studies

EGOBOO BITS[11]

EGOBOO Bits is a digital publishing label which publishes creative works under GNU/GPL well known in the free software community. It is a project run by the Multimedia Institute in Zagreb.You can download everything from our website for free – from the point of view of free speech – you can freely speak, copy, modify, play the works in public. The only condition is that if you republish derivate works you must do so under the same conditions as you originally found them.

EGOBOO Bits was established in 2001. It has gathered a local community of more than 25 artists (musicians, video artists, theoreticians and free software developers). More than 50 releases are available on the website (music, video and text – 3GigaBytes of space) including 50 hours of free speech music. There are video clips and video art works, texts by theoreticians on the free software phenomenon and philosophy as an inspiration and perhaps a possible model for wider cultural production.

Anyone can join the community and publish works with EGOBOO Bits after you do two things: First, you must choose to publish work under GNU/GPL. Secondly, you have to write a few pages about the work itself and the author using the publishing software Tam Tam developed by the Multimedia Institute (public content management system that anyone can edit text or upload text to the Internet). Recently there was an artist who just appeared on the website on his own. He created his own web page and uploaded his music on his own. This was our proof that the software is useful and easy to use.

Do it yourself CDs are also offered by EGOBOO Bits as official releases. Artists provide cover CD cover designs. EGOBOO Bits releases these CDs and distribute them. We are trying to produce 100 copies (first edition) and are looking for an efficient technology to help publish the works. We do not engaged in any aesthetical judgements about who and which works get published or not.

Gettho booties – GNU girl power – is taking part in the project and their first album is now being produced. They have become quite popular on the new media scene and have been playing in many cities around the region (Zagreb, Ljubljana, Graz) and have been part of the Transmediale festival.

EGOBOO Bits is being recognised as an artistic project and is being presented at different media festivals, for example, the Ars Electronica and the Transmediale Festivals. It has become part of the group exhibition of Croatian artists being presented at these festivals and have been selected by curators to be part of this group.

It is quite unique in the world that a piece of "free music" was number one on the major national TV music pop chart for one week. In addition, an EGOBOO Bits artist – "no name, no fame" – made several number ones hits on the most popular radio station in Zagreb. He won the best new artist in 2004. He is the oldest artists on EGOBOO Bits, he is 36 years old.

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[11] This is a summary of the presentation made by *Marcell Mars*, Multimedia Institute Zagreb.

No EGOBOO Bits artists can make their living out of publishing or selling their own music, videos or other artistic works. No electronic music or video artist is making a living out of selling their own creative work on the market in Croatia. There are only a few artists which regularly play or tour in clubs – the only reason why they are able to do this is because they are proactive and enthusiastic about performing and are driven to make their own promotion and they contact the clubs directly. Otherwise it would not be possible. In Croatia, there are no organisers of live gigs, except a few new media curators which support the copyleft philosophy behind EGOBOO Bits. The decision to show these works is based on the solidarity that the curators have with EGOBOO Bits and not because of any aesthestic decision to play music which the audience may or may not like.

There is no money in the whole thing. So why are we doing this? We are amateurs, proud amateurs which love what we are doing. The whole project is alive because the people in the organisation have a strong belief and there is a strong theoretical foundation and background of those participating in EGOBOO Bits. The nature of the creative production is collective. For a long period of time there has been a great power struggle over the tools of production. The market is not our reference. We prefer to talk about artists freedom. We find that GNU/GPL was the answer for us in 2001 as it reflected what we were already doing - allowing anyone to be free to use our artistic work. We were at least trying to avoid the power struggle by defining ourselves as producers and giving the consumers responsibility to also be producers. The problem with the GNU/GPL as a reference to our system of values was that it was not legally valid or binding even though we knew that no one was interested to use our music and that there would be no reason for us to go to the courts. However, in 2002, we switched to the Creative Commons. The CC offered us the "attribution" element that was missing from GNU/GPL. This is in fact what EGOBOO Bits artists really wanted – to be recognised for their work. We are happy about the Creative Commons and that it is so easy to obtain and use the licenses. It helps us to make our own solutions to solve problems from the point of view of our own value system.

Electronic Archiving on the Network[12]

Since 1969, Steina and I have been collecting material which has resulted in an archive made up of papers, dissertations, articles, films, etc which documents the work done by the first generation of video artists in the 60s. We were approached by the Daniel Langlois Foundation (Montreal) to show them our archive. They offered us 50,000 dollars for all the papers and an additional 15,000 dollars for the video tapes.

I did not want to part with the collection as I really did not know what we really had. It was a collection which grew but was not really revisited, catalogued etc., over the years. So we let the Foundation have the papers, but we wanted to have the electronic rights to every piece of information. We then spent over two years scanning everything. It was a terrible and hard work. In the end we had a database of information of 30,000 pages of information, some movies etc. All scans were transferred to the Internet on a website, but we soon realised that this was not the best way to transfer large amount of information.

I was offered a job at the Centre for Art and Media (ZKM), in Karlshue, Germany from an old friend, Peter Weibel, who is now the director of ZKM. The job was to put together an exhibition of works from his archive as well as from other artists from Buffalo, New York. All of us who started our work in the 60s are now searching for cultural real estate. At ZKM, I was able to put everything in better shape into a real archive of files in pdf and tif format and to develop a search engine. The archive grew to include 1700 hours of video, 1000 slides etc and is now sub-divided into three different parts: Other Artists Archive (around 300 video tapes of rare material), the Gerry O'Grady Archive (material from the media studies programme in Buffalo) and the Wasulka Archive. Peter Cornwall – co director at ZKM – was working on digitising video in a non compressed format so you can reproduce a work which is an uncompromised master, like the original. This reproduction can then be put online with no frames or restrictions. It is a new technique for the reproduction of classic works. They are now in crisis because of the enormous amount of electricity required to reproduce these tapes and eventually produce an archive.

I then went to Prague and discussed a funding proposal being made to the EU by Pavel Smetana which was based on the Wasulka Archive model. There are several partners from Germany, Czech, the Netherlands, Poland, etc., involved and which formed a "curatorial network". The proposal was successful and we received 1.2 million euros for our project, "Open Archiving System with Internet Sharing". The main activities of the project are:

- to test, prove and describe methods of digitalisation and signal restoration;
- to develop a set of rules for media preservation;
- to produce training material, etc.

I am creating an interdisciplinary team of curators, theorists, artists and experts in new media technologies to define data types and formats which can preserve substantial quantities and qualities of electronic arts. It will help us to specify the rules of data manipulation, determine categorisations, to test and evaluate the complexity of preserving electronic works.

If you use moving images there are particular types of information which need to be attached to it in order for the image to travel around the network and to be used in a curatorial sense. This means that the image is numbered, framed, and indexable and includes information on the author/source. All agreements need to be clear and be made in advance otherwise it would be too difficult to track everything once it is realised onto the network. We need to develop protocols and indexes.

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[12] This is a summary of the presentation made by *Woody Vasulka*.

The Polish partners in the project recognised that they need to define a system of metadata structures under recognised standards, in order to prepare the process of integrating and modifying existing databases. All the hard ware and access has to be tailored to the capacities of scholars and curators. This has to been done with a human interface so that scholars and curators would want to work with the archive – these people are their "clients". We need to define and make every effort to meet the needs of our clients in order for our project to be successful. In order to use the system they need real information to work with. Without it, the whole project will fail.

People think that the Internet is powerful enough to transmit moving images in their intended and original form. This is not true. It is not powerful enough to transmit and archive electronic arts. Networks, e.g. academic or scientific networks, have much greater capacities because of their high speed broad bandwidth networks which allow you to do things like multicasting. But first we wanted to find out what were the legal conditions under which these educational networks have been organised and financed. We found out that there is heavy involvement from the banks and other private sectors and that compromises have already been made to suit their commercial interests. We hired lawyers to examine all the agreements between the governments, the educational institutions and the private sector, to find out why the broad bandwidth network is being eaten up by commercial use. Technology specialists do not consider that academic networks really exist even so they may on paper – this is an urban mythology. They believe that the Net is dead and has collapsed because the commercial interests have become so powerful within the system that it has now compromised the entire network. Technological hierarchy lost their minds.

There is no content on the high speed broad bandwidth network – with the exception of a few films. For example, the Czechs have a network with multicasting capabilities but there are only 6 programmes on the network (half of them were produced as science documentaries). There is a huge promo programme about a system donated by Bill Gates which is brilliantly broadcast in real time; but it is only a promo for the technology. There are endless amount of seminars on security broadcast over the network. Everyone is afraid that if the artists get into the network system they will compromise it. We need to get back to the bandwidth. Our strategy is to provide content through the Archive system.

There is an enormous amount of data waiting to be processed and we need a team of 3-4 people to produce an interface with the network and to make the curatorial work a reality. However, we need to put the archive on a high speed broad bandwidth network. There is no intention to compromise the work being transmitted or broadcast. If it is not transmitted over the network, we will only have access to postage stamp size images. Real artists want the receiver to receive the quality of images as originally produced and transmitted. We need a laboratory to compare the images being sent and being received to ensure that they are not being compromised. Banks and other commercial interests are using frames on the network which is distorting the images and compromising the work. We have to always check to make sure that the original work is not compromised – that nothing is missing in the sound, performance. This is not art, but it is important.

Q&A

Q15 (Danielle Cliche):
Whose works are being scanned into the archive? Do you have permission from these people to put their works into an electronic database and in an archive to be transmitted over the network?

A15 (Woody Vsulka):
They are from ourselves, our friends, students dissertation etc. It was not forced sharing. It was a small family where we exchanged as much information as possible. There is another problem with video – the earliest tapes need a lot of cleaning. It is really a work a love.

Q16 (Suzanne Capiau):
Is this already accessible online?

A16 (Woody Vsulka):
We have two shelves in cyber space where some of the material is housed. I can give you the passwords where you can see it. They are available as tif, jpegs, bit map. They are not sequential or organised or processed by the scholars. This is a three year project.

Q17 (Suzanne Capiau):
Under what conditions do you give the passwords?

A17 (Woody Vsulka):
If you are a scholar or curator you can register and then you get a password. I really do not like this limitation but it seems to be necessary at the moment. When you have a lot of material and you bring it to a big institution, they suddenly look at the material differently. Not that they would be nasty enough to claim ownership. But for them it is a potential. Suddenly you understand that you are not free anymore and you can not make your own decisions, e.g. to send it all for free. I have to set up a clandestein operation just in order to be able to maintain my own right on my own work. The Institution is now responsible for negotiating with each individual artist about the use of their tapes. We will try to convince these artists to give up their rights in the same way that I did and to put their work into the archive just to be able to build a body of content. This will help us to convince the system that we need help to maintain high speed broad bandwidth network. I would like to call it a high speed broad bandwidth curatorial or scholarship network, rather than an academic network.

Q18 (Marcell Mars):
Under what conditions will this work be accessible to be used by others. Are the works registered under a licence scheme of some kind? How will the work contained in the archive be accessible to other artists to other people who want to investigate and use the work – not just to academic researchers? How can it benefit the larger artistic community? The point is that if the question of access is not made crystal clear; than the archive will not be open for others outside a closed circle to use. If the conditions are clear under a clear license then it will be easier. It is important that you care about declaring whether something is open or closed. If we can not have access to it, than it is a narcissistic project.

A18 (Suzanne Capiau):
He has videos, photos text, and other materials which he has copied and reproduced in a database. Therefore he is using the right of reproduction. But he does not have a paper from the author which gives him clear authorisation. In some cases he has it from the artists' estate. All the material is fixed on a computer. The material is not yet accessible to those outside of the "network".

Q19 (Don Foresta):
When this project goes public and is launched online, does Woody need to have a paper telling people that the work is being made available for free.

A19 (Suzanne Capiau):
Yes, this is very important – otherwise it is not free.

Managing Rights in a Multi-Platform, Mixed Reality Project[13]

I first came across "rights" problems when I started developing games. I did not have these problems when I was a composer. It was much easier because I had my royalties and an agency to collect these royalties which they paid to me at the end of each year.

Then I had a project to build a computer game based on the exhibitions in ten Viennese museums. The idea was to show the game in the museums when the project was finished. The museums agreed but said that I would need to ask the producer of the computer game whether I am allowed to do that.

I approached the producer of the computer game (EPIC Mega Games) and described the project. I explained that I did not have a license to use the software, but that it was going to be a project made available in the museums for free and that we were not planning to make any money. In other words, it was not a commercial product. The software company said "no problem" and that we did not have to pay for the license.

Eventually we decided that we wanted to produce a limited number of copies of the game on CD Rom (e.g. 200 copies) and asked the producer again if we were allowed to do so. The software company said "great" now you can pay us for the license which costs 100,000 dollars. In the end we decided not to produce and sell the CD Rom, but just to show the project in a public space.

Things became much more complicated later on when I started creating more complex games which incorporated music, text and images of living persons. One of the recent projects I did with Don Foresta and the Global Threads Virtual Faculty was to build a space around one of the lecturers, the famous composer, Jean-Claude Risset. His lecture was transmitted via Access Grid, and was seen in 8 different cities in Europe and North America. Even though we worked with many cameras connected to his hands to show his hand movements and another one connected to his face, another one showing him from a distance, it was still like watching TV. We wanted to create something more interactive and decided to make a game with Jean-Claude Risset as the main character. We remodelled him as a figure in the game which would walk through a knowledge space filled with his sounds, his compositions, his voice and pictures of his friends which he took during the 60s. We sent a photographer to Marseille and he took photographs of Jean-Claude Risset in various poses which we could use in the game.

In the second phase of building the game, there were a few more people involved. I am the main designer. I worked with a "modeller" who made the 3D model, a "texture", "sound engineer" etc. We used a game engine which is like an operating system similar to e.g., Windows XP.

We obtained several works of Jean-Claude Risset from the Internet, for example, we downloaded images of him, MP3 clips of his music, excerpts from some lecturers, etc. At the moment, I have a "gentlemen's agreement", an oral agreement with Jean-Claude Risset to be allowed to build the game in the first place. It is not a written legal agreement. However, Jean-Claude Risset himself could not have given me the rights to reproduce the score used in the game, or to the music which is being played.

We want to create many more knowledge spaces with other important persons such as Don Foresta, Woody Vasulka, Peter Weibel or Lori Anderson in order to give people access to various

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[13] This is a summary of the presentation made by *Mathias Fuchs*.

elements of themselves such as their live voices. We want the user to be able to control the speed at which they receive information, in other words, to enable them to stop and repeat certain sequences or images.

Q&A

Q20 (Mathias Fuchs)
I have two questions which I would like to address to the lawyers here:
a) if I have such a complicated work which incorporates texts, visuals, sounds, a person's face, the way a person dresses, the shape of their body etc., which of these aspects do I need to ask for permission to use or reproduce?
b) If I want to license this work under a CC license and make it available for free download – what additionally would I need to do?

A20 (Roland Honekamp):
You need to determine under which legal regime and in which country you would like to proceed and then the question would be is this a collective work similar to a film?

Q21 (Suzanne Capiau):
The work needs to be qualified first. Is it an audiovisual work or a software work?

A21 (Mathias Fuchs):
It is not one or the other. It is all of that. I wrote and I own the code. However, I think it is more of a traditional multimedia work.

A21 (Suzanne Capiau):
Every court has its own interpretation of what kind of work this would be. There is no European standard or qualification for these types of works.

A21 (Roland Honekamp):
First Mathias as producer needs to gather together written permission from the different authors whose works are being used in this game (not oral permission) – they would need to transfer these rights to Mathias personally as the author of the collective work. Mathias would be the keeper of all the rights as author of this work and then you can go ahead and licence the entire work (which is the bundle of rights he has collected) in the public domain using a CC license on that particular website which offers the user to download this work. When using the CC license you declare that you validly hold the bundle of rights to that work. If you do not hold these rights, and you end up in an argument with one of those persons, they would indeed have a legal case to sue you.

Q22 (Suzanne Capiau):
Who is the producer of the work?

A22 (Don Foresta):
The producer is MARCEL – it is a UK Charity. The game was produced with a grant from the Arts Council of England. It was broadcast over the MARCEL network which is located in the UK. Therefore this is to be considered under UK law. What Mathias did was take the materials from that particular broadcast made over the MARCEL network. Under a project called ALTERNE, funded by the European Commission, he built this knowledge space prototype of Jean-Claude Risset. The EU money went to the Wimbledon School of Arts who sub-contracted Mathias to do the work.

A22 (Roland Honekamp):
Except for the problem of classifying the work, there is nothing new about this except that it is a very complex contractual structure which may be encountered at anytime in history. The only loophole is how to classify the type of work which Mathias has produced. Is it an audiovisual work or a software product?

A22 (Suzanne Capiau):
This is not a new problem. But it is indeed a problem which has not been solved on the European level. It is a matter for the individual courts to decide what type of work it is.

Q23 (Danielle Cliche):
There are many artists who want to put their works out into the public domain to be used for free. However, they also have a responsibility toward the user to ensure that their works are legally "free for user and reproduction". It is important to clear these rights in order to release the works to be used for free under a CC license, for example. Artists also have a role and responsibility to ensure that there is openness and access to their works if they intend for it to be so. This is not something that can be taken for granted.

A23 (Mathias Fuchs):
In the gaming scene, no one goes through the process of clearing rights because it would take too long and the games would never be finished; especially in complex games. All gaming artists use images from coca cola or from BMW.

A23 (Suzanne Capiau):
If the work is classified as software, all the rights belong to the employer.

A23 (Woody Vasulka):
In fact we could come to a crisis where our work is impaired. If we had always thought in these terms, nothing would have happened in culture as I know it. Now there is a whole dispute about who gets the credits, who gets paid for the credits, people taking credits away from others – it is very difficult.

Q24 (Andreas Wiesand):
Mathias problem is more common than we think. Can we agree that there needs to be an urgent call to find a better and easier way to handle the re-production of images, sounds, text in certain works intended for scientific, cultural or educational purposes? It is an urgent problem which must be resolved.

A24 (Suzanne Capiau):
You are talking about an exception to the established rights. In fact this was discussed in the context of the EU Directive for the Information Society. There were difficult debates in the European Parliament. At the moment the Directive includes a list of exceptions which each member state may implement at the national level. However, these exceptions are not harmonised across the European Union. You have to consult national law to find out what are the conditions, rights and obligations. For example, in Belgium, producers of projects with educational aims have to pay a license fee. In France, there is no license fee to be paid, but the producer has to ask for and acquire permission from the rights holders in advance of using the images, texts, etc in their educational product.

Q25 (Don Foresta):
When we are in the network, there is no jurisdiction or country. There are persons from 10 countries who could be working together at the same time to produce a collective work. So does the producer have to check with each legal jurisdiction before hand? Who is the producer in this space?

A25 (Suzanne Capiau):
The problem is that there is no license for works produced in a digital environment at the European level. Some collecting societies in France tried to create an Internet license. I don't know whether it is really working.

Q26 (Roland Honekamp):
So what should the lawyers give as pragmatic advice? If the work is for non-commercial or artistic purposes and if it is so complicated, would we suggest to just go ahead with it – particularly regarding the scores of the music because it is not hurting the revenue base of the publishing houses which is publishing those scores. You can only be sued for damages if you are taking revenues away or damaging the works.

Just make sure that there are some written agreements from the participants to give you the rights e.g. from the photographer. Then consider your work under the UK law. If there is a law suit you still have some kind of a sound basis and the judge would probably rule in your favour. This is just common sense. However there is a risk. You can always argue that there are exceptions, argue with the "fair-dealing" doctrine in the UK. It is very complex. However, if you make millions from selling this game then of course you are going to attract problems.

A26 (Andreas Wiesand):
Of course, this was not an official legal advice!

A26 (Mathias Fuchs):
Yes, but the "pain station" was not a commercial product and we were still sued by SONY.

A26 (Suzanne Capiau):
You were sued because it was "offending" to them. There was a case in France whereby a collecting society wanted money for the reproduction of a picture found in a catalogue that was for sale. They won and then they had to change the law to make an exception.

Q25 (Andreas Wiesand):
I would like to just mention a project which our Institute has been involved in since the mid 90s - the "Learning from History" project on holocaust education. Much of what was collected for this project such as films, images and music scores was protected under very different regimes and time periods (films for a shorter time period and music scores or some of the photographs under a much longer time period). Annette Brinkmann from our Institute (ZfKf) had to go through the process of registering everything and looking up every single rights holder. To have any type of public conflict would have been unbearable, especially given the topic. Including the design and technical features, it cost around 1 million Euro to realise the project and it took 3 years before everything was prepared and rights cleared so that it could go online. I am well aware of these problems – but it should not be like that – it should be much simpler. Not everyone can spend so much money and time to clear all these rights.

A25 (Mathias Fuchs):
I can appreciate this experience and I would like to flag the issue so that we can think together how to address this problem. Of course, we would welcome a much easier model.

A25 (Woody Vasulka):
Don't think – just do! Otherwise nothing would get done at all. There would be too many excuses that we don't have the rights. If the work is exceptional, some people may let it go in the end. We can not legalise everything. If we put law at the centre of the artistic community, it will destroy it!

MARCEL Network and the ALTERNE Project[14]

MARCEL is a permanent broadband interactive network and web site dedicated to artistic, educational and cultural experimentation, exchange between art and science and collaboration between art and industry. The planned MARCEL portal site will give participants access to and allow them to post information on relevant art projects, educational programmes, research, events, pertinent information in many categories, on-line collaboration, and partnerships. The Marcel website opens with a painting by Marcel Duchamp which is hanging in the Museum of Modern Art in New York. I was contacted by the estate of Marcel Duchamp to find out exactly what his intention was with the painting. In the end everything worked out.

I want to talk to you about another project called ALTERNE which is being funded by the EU. It is a 30 month project in which several artistic tools are being built for the high bandwidth network. The project is now coming to an end. The various tools that we have developed will be turned over to the network so that artists can continue to use them. This means that we have a rights question regarding how we distribute these tools and under what conditions.

The project which Mathias just told you about is one of the artistic tools being created within the Alterne project. As we heard we could face a complex rights situation with this project.

There is a link to the Marcel project via the Global Threads Virtual Faculty for arts and science. Global Threads is an online faculty bringing together an artist and a scientist each month to talk about a particular topic e.g. the next lecture will be on the role of the observer. Our plan is to do this every month. The knowledge space that Mathias showed us is one of the presentation envelopes. We wanted to have more than a screen with a talking head and to provide a lot more resources to the students. The idea is once a lecturer comes through the virtual or knowledge space, a great deal more resources will be available to the audience and that the lecturer can use these resources as supporting information during their lecturer. Once the talk is over, it is archived and released over the Marcel Network. We use the multi-casting platform, Access Grid and it is available for free. The tools will be offered for free as it is paid with public money from the European Commission. We believe that projects paid with public money should be available for free within the public domain.

There are many technical developments which are ahead of legal developments. One of the problems with the structure of the funding system in Europe is that it is mainly national. Therefore if you want funding for a network project it is very difficult. National governments or funding agencies will only fund their national part and do not contribute to a larger Europe wide or international initiative. This is also reflected in the legal situation which makes it very complicated for us.

Q&A

Q26 (Marcell Mars):
What can we do now? I would like to suggest that there is an international distribution of Creative Commons licences and that they should target public libraries and culture clubs with a public interface so that open access can be guaranteed. We have to move beyond the situation that everything is run out of a small office from someone's home or basement. We can not just fight on the local level within our communities especially because the main argument from the collecting societies is there is no harmonisation of laws across Europe. This is a strong argument especially in a small country like Croatia. When something is happening outside of the country on the international level it makes the argument stronger at

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home. The Creative Commons came about at the right time for us to empower ourselves on the local level – because it is an international movement it is easier for us to have acceptance for it at home. Before CC came along our only reference was to the free software community – but those guys are just hackers. What we needed is for organised bodies like CC and others to question the monopolies held by the collecting societies.

We have a big problem in Croatia. You can not give away your creative works for free because the collecting societies will move in and charge the organisers which allowed these free works to be played or displayed. We did draw up contracts to be signed between the organiser and the CC artist which has chosen to give away his/her rights. However, two papers are needed. One is the contract and the second is a notification and copy of the contract to be sent before the performance to the collecting society, including all details about the performance. None of the independent clubs want this situation because the collecting societies will charge them a lot of money. There is a matrix of prices which the club owner negotiates with the collecting society (and hopefully lowers the price). It is a risk if an independent club owner were to announce that e.g., from now on, their programme will consist of 50% free music. In this case, they would not have to pay any money to the collecting societies but would pay the artist directly. This would put the club owner in a bad negotiating position with the collecting society on the other 50% commercial music being played in their club in order to compensate for the loss of revenues due to their free music programme. I do not know how it is in other countries, but in Croatia, the members of the collecting societies are also organising concerts – so there is a conflict of interest – this is mainly taking place outside of Zagreb. There are a lot of people who are being blackmailed. It is a big problem for the society. We are lucky that there is still a grey area for the EGOBOO bits artists to play, out of the range of interest of the collecting societies.

A26 (Suzanne Capiau):
There is only one collecting society per genre of arts – one for performing arts, one for authors' rights etc. They hold a monopoly on the collection of revenues. The laws across Europe support this monopoly framework. There is an intention to include a new provision in the EU Directive that would authorise the author to choose where they want to register their work with any collecting society any where in Europe (e.g. in their own country or in another country) which would raise the competition among the collecting societies. The problem is that the collecting societies put pressure on the authors to give them all of their rights. It all depends on the conditions outlined in the contracts.

Q27 (Marieke van Schijndel):
If you can register your rights anywhere in Europe, how would the bureaucracy work? How would people know where you are registered?

A27 (Suzanne Capiau):
There is an agreement among the collecting societies in Europe and they exchange documentation. Each work is registered with a collecting society. This documentation is maintained and updated by each collecting society and they exchange this information in order to collect the royalties on such works performed outside of their country. They have to pay the collecting societies in the other countries. So they know exactly what is going on . They try to eliminate the competition between them.

A27 (Ursa Chitrakar):
However, there is competition between the different collecting societies. For example, the German GEMA is working much better and is better organised than the collecting society in Slovenia. Therefore Slovenian musicians will probably go to the German GEMA and ask them to handle all their rights. At the moment, GEMA only collects royalties for Slovenian artists on performances made in Germany and then pays to the Slovenian collecting society who then pays the artists. It would be in the interest of the Slovenian artists to be paid directly from the GEMA.

Q29 (Marcell Mars):
What about the fact that all collecting societies have similar contracts and hold a similar monopoly. They calculate their prices based on the amount of members they have. How can authors influence the way that collecting societies work?

A29 (Ursa Chitrakar):
We have a similar problem in Slovenia. For example, the biggest importer of blank tapes and CDs was also the director of the collecting society.

A29 (Marcell Mars):
The collecting societies can not really protect the interests of everyone on the market because successful artists have different interests and strategies to promote themselves than unsuccessful artists or newcomers. It is not possible to successfully protect all of their interests because they are in competition with each other. There are very different ideological approaches to how to protect the interests of artists.

Q30 (Ritva Mitchell):
Who is on the board of the collecting societies in Croatia?

A30 (Marcell Mars):
A few lawyers and a few representatives of the music industry which are making a lot of money.

Q31 (Ritva Mitchell)
Are there no artists on the board?

A31 (Marcell Mars):
No. There are only a few artists which are getting the big money. There is no space which is free of interests. We need other collecting societies which also represent the interests of the independent scene. They are excluded at the moment. It is only the most successful artists from the mainstream pop music or representatives of the industry which are well represented by the collecting society. The independent scene has a hard time to articulate themselves. Collecting societies in Croatia are now forced to pay money for international rights. A lot of the music played in Croatia is by MTV pop stars which they have not had to pay for in the past. Now there is a lot of pressure for them to pay and they do not want to give the money to the international collecting societies. This is the type of competition which is emerging. They need to protect the interests of the local music scene and of the local musicians which they have not really done so far.

A31 (Ritva Mitchell):
There are some collecting societies, e.g., the Finnish collecting society which has made agreements with other countries not to send the money back on royalties collected in their country.

A31 (Suzanne Capiau)
In Belgium there is a discussion to increase the amount of money that the local artists receive.

Q32 (Don Foresta):
What is it like for other fields?

A32 (Ursa Chitrakar):
In principle it is similar. The difference is whether or not there is a collecting society set up to collect royalties for all different art sectors. A law to set up collecting societies was passed in Slovenia in 1995, but it is not being implemented. There is no organisation set up to collect royalties, e.g., for the media or for visual artists. Artists themselves do not have an interest to have these bodies set up because they see how the collecting societies for other artistic sectors function and how they do not provide adequate benefits for the artists. On the other hand, they think that they do not need collecting societies anymore because there are new possibilities such as the Creative Commons. The fact that the 1995 law has not yet been implemented is a sign that the law should be changed.

A32 (Marcell Mars):
Creative Commons can not help with this problem. The question of the collecting societies is particular for the music field because of the technologies. So for example, the collecting societies can collect a lot of money from music being played in any public space, for examples, at the hairdressers, in taxis, in hotel bars etc wherever you have a radio and music is being played. However, the small businesses making up

the service industry is now getting angry and feel that they are being black mailed because of the high prices they have to pay to the collecting societies. They are trying to set up an organisation that can negotiate with the collecting societies as a collective organisation.

We are trying to come up with some ideas which would provide alternative systems for collecting royalties. We do not want to have a system where people are forced to pay royalties in the way it is being done now. One idea which we came up with and which will be implemented in the coming weeks is to collect money from the users directly. We have created some post cards which you can buy at the kiosk or in libraries. On the postcards is information about the artists, their picture and a small text about CC artists, EGOBOO bits. We include a small plastic cover for the CDs and labels for CDs. Buyers can send these post cards to their friends. The web address of where they can down load the music for free is included on the post card. The receiver can burn their own CD for free and use the CD covers provided by the post card. This is a campaign to help support and promote the idea of CC artists and to show the "audience" how they can support this approach and how to provide direct support to the musicians who they like. They money generated by the postcards is given directly to the artists.

Q33 (Andreas Wiesand):
We are not here to debate the internal problems of collecting societies. We can recommend that there should be clear rules and transparency in collecting societies, for which examples are known. As well, we should further study, whether the monopolies held by collecting societies are still needed in the digital age. Obvious contradictions are now frequently being discussed, e.g. between collecting societies, digital rights management or individual artists initiatives to collect their own money or to prevent copies being made. Because of the new technologies available today, at least part of this can happen without collecting societies. They were needed in former times, but to what extent are they still needed today?

A33 (Suzanne Capiau):
Collecting societies are still needed to have contact with the author. You as a producer or artist are not able to ask to every author whether you have the right to put different pieces of work into a complex piece such as the one Mathias showed us and to put it on the Internet – it is impossible. There needs to be one point of reference where we can turn to, to ask for the right to use a work whether it be texts, sound, visual images etc. It is too much work to run around and try to clear all rights with individual authors which could be located around the world. This was a similar problem which was faced when preparing the new EU Directive for satellite and cable transmission. In each country there is one society which is able to give the authorisation for all the works transmitted by cable and satellite. There is a guarantee that each author will receive a minimum payment. It is a practical way to address this issue.

Q34 (Andreas Wiesand):
Our issue is not how the big money is shifted from cable companies to "someone" but how to address the case of how artists survive in the digital age.

A34 (Suzanne Capiau):
It is not just the problem of the individual artist but the problem of producing works – new type of works with different types of material – text, sound, visual images – that comes from everywhere – from the Internet and from elsewhere. Are you going to pay each individual author for every piece of work on your own. It is not possible. So perhaps you don't pay. But then you have to invent a new economic model to enable artists to earn a living or you have to pay a company or collecting society to pay the author.

Q35 (Andreas Wiesand):
But the vast majority among artists do not earn much money from the collecting society. Research and experience show, that most of them could not live from these royalties anyway. If I was an artist, I would rather see that people pay me directly or make a contract with me directly.

A35 (Roland Honekamp):
It depends on the demand for the work. Particularly in the field of music you need some sort of collecting society because the transaction costs are too high economically and they won't broadcast the songs at all. So in the case of music, the digital age does not change the need for collecting societies at all. The position of the Creative Commons regarding collecting societies is not that they are monopolies. Monopolies

can be properly regulated, even the monopolies held by collecting societies. What we want is for collecting societies to be open to alternative models. Not to imprison artists and force them into a contractual straight jacket for the rest of their life. We want authors to have the right to chose e.g. that some songs can be marketed on a commercial basis via a collecting society but that artists can also retain their right for other songs to market on their own or to be given away for free. This is a freedom which authors do not have today especially under certain legal jurisdictions e.g., France.

A35 (Andreas Wiesand):
However, if we really want to be paid for the work we are doing, we have to find better solutions. Even only a minority of composers can live from the royalties they receive from the compulsory system of licences, which is based on commercial and not on artistic values or on the time spent for creative work. I do not know many examples of visual artists who can live from the money they receive from collecting societies. Sure it is important that there is transparency in decision-making processes and in the organisation of collecting societies. But let's also be realistic. I am not arguing against the fact they it is useful to have bodies to collect royalties on, for example, photocopies which no one would be able to track anyway. My point is that if we accept the fact that they can not provide adequate remuneration for a greater part of the professional artists they are representing, then it is simply not correct to identify our copyright and collecting laws as the "work law of the creators", as is frequently done. In addition, one could question the fact that, in many contries, these collecting societies have a lot of political and financial power to lobby and to determine the way copyright is handled. Often, this power is just delegated to them by others who are too weak or unwilling to address contract and social issues of those working creatively in the arts and media fields. Of course, things may be different in Finland…

Q36 (Suzanne Capiau):
How is it in Finland?

A36 (Ritva Mitchell):
The collecting society for music in Finland collects royalties and gives the money to the living composers. But when they collect money derived from music played in the public space (e.g. in taxis, bars, restaurants etc) the royalties are given to two societies run entirely by artists. Artists can apply for grants from these societies to do their work. So the money which is collected from the public space is given to fund projects for young musicians or young performers to help finance their studies, travel, etc. They can also receive short term working grants. These grants are not given on the basis of "success". As regards the multimedia artists, there is one collecting society which collects money from blank cassettes (money from consumers). This money is given to the promotion centre for the audiovisual arts. It is a body made up entirely of artists and then they give money to multimedia projects.

A36 (Marcell Mars):
I am really happy that you have this system in Finland. But this is not the situation in Croatia. If there was such an international system in place it would be easier for us to be able to point to it and have it also in Croatia. Our reality is that there is an establishment which is almost impossible for us to fight on our own. That is the brutal reality of the market forces in Croatia. There is no other field where you have NGOs which are protecting the most successful. It is not logical. It would take more proactive work from the Ministry to ensure transparency and to make the data available about who is receiving how much money.

Copyright and the Public Space

Egle Rakauskaite presented her recent production (2004), "My address is neither house nor street, my address is a shopping centre" which incorporate video, photography and sound. It was filmed in several large supermarkets and is based on the idea that we are all actors produced by surveillance. Egle is filming shoppers hiding their favourite products in places only known to them in different isles and shelves in the supermarket. The camera is hidden inside the store. This piece shows how as consumers "we become the observer and observed, the transported and confined, the dioramic and the panoptic subject" (Anne Friedberg).

Q37 (Egle Rakauskaite):
My main question is whether there are significant rights questions to be addressed in such types of productions. For example, do I need to obtain written permission from the persons in the video whose images are recorded with hidden cameras?

A37 (Suzanne Capiau):
The appropriate area of the law which refers to your work is that of "personality rights" which gives each person the right to their own image, body, voice and likeness and to not allow it to be exploited without permission. This also applies to persons being filmed in public spaces. Of course it may be quite difficult to gather together permission from everyone who may be filmed and therefore this aspect is difficult to enforce. On the other hand, people generally do not like to have their image in a video and then rebroadcast even if it is only for educational purposes or to be shown in an exhibition so written permission may be difficult to obtain.
The law also says that you do not need to ask permission in the case that it is not possible to ask permission. The courts would look at a case and try to balance the right of the public to be informed vs the personality right and to question whether it is useful for society. There are various cases, for example, the French case of the photographer who took a portrait of a man in the underground.
Personality rights also include the right to one's privacy.

ANNEX 1

Artists Rights in a European Cultural Space

Workshop Programme

Palazzo Ducale
2nd floor, Room "Società di Letture e Conversazioni Scientifiche"
Piazza Matteotti 9
Genova, Italy

This workshop has been organised by the European Institute for Comparative Cultural Research (ERICarts) in partnership with the European Cultural Parliament and the Wimbledon School of Arts (London) and is supported by the Riksbankens Jubileumsfond (Stockholm).

Suzanne Capiau, Lawyer and Director of the European Institute for Copyright will participate as the workshop's legal resource person

Organisers/Workshop Chairs: Andreas Wiesand and Danielle Cliche (ERICarts)

Friday 3rd December 2004

17h10:   **Workshop Presentation in Plenary Session of the ECP**
- *Andreas Wiesand*, Executive Director, ERICarts

18h30:   Reception, City Hall

Saturday 4th December 2004

10h00   **"Models, Laws and Alternatives"**
- *Suzanne Capiau* "Latest Debates and Discussion in EU and WIPO"
- *Roland Honekamp*, "Customising Copyright: CC Licensing"
- *Marieke van Schijndel*, "Imagining a World Without Copyright: the USUFRUCT Model"

   Discussion, Questions and Audience Participation

13h00   Lunch together with European Cultural Parliament

14h30   **"Case Studies and Comments"**
- *Woody Vasulka*, "Public Domain as a Market for Electronic Art"
- *Mathias Fuchs*, "Managing Rights in Multi-Platform, Mixed Reality Projects"
- *Marcell Mars*, "EGOBOO.bits Project: From the GNU-GPL to CC License"
- *Don Foresta*, "MARCEL as an Expression of the Creative Commons"
- *Egle Rakauskaite,* Video Artist, Lithuania[15]

16h15   Coffee Break

18h00   Reception followed by visit at the Villa Pallavicino

Sunday 5th December 2004

09h00   **Unanswered Questions and Planning a European Transnational Dialogue 2005-2006**

12h30   Presentation of Main Conclusion and Recommendations in ECP Plenary

13h30   Lunch

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[15] **Saturday 4th December 09h00, viewing of video by Eglė Rakauskaitė "*My America*. 2003"**.
After having travelled to the Mecca of most new emigrants, America, Egle Rakauskaite examines issues most popular among the emigrants: the care of seriously ill, handicapped people, and records this on video tape. The artist questions the myth of dreams, infinite possibilities, the country of ultimate Western welfare by revealing the suppressed, unadvertised aspects of its economical and social structure.

ANNEX 2

Artists Rights in a European Cultural Space: Workshop Session
3-5 December 2004
Genoa, Italy

Speakers/Presenters/Organisers

Suzanne Capiau (suzanne.capiau@belgacom.net)
is a lawyer in Brussels. She teaches audiovisual rights at the Université libre de Bruxelles and Internet and multi-media rights at the University of Metz. Suzanne is the author of several reference works on authors rights and neighbouring rights; in particular a CD-Rom "Authors rights and neighbouring rights in Europe" published by the European Institute for Authors Rights, of which she is the Director. She is also an expert on the Belgian "status of the artist" legislation and has done a lot of comparative work on this issue. She has actively participated in several Belgian legal initiatives related to the status of the artist; a social provision which she worked on was adopted in 2003.

Danielle Cliche (cliche@ericarts.org)
is the research co-ordinator for the European Institute for Comparative Cultural Research (ERICarts). She studied communication theory, culture and international comparative politics at the University of Ottawa, Canada. Since the early 90s, she has carried out a wide range of international comparative research studies and has published/co-authored several books and reports in the fields of culture and communication. These research projects have been undertaken on behalf of the Canadian Federal Department of Communications (Ottawa), the Arts Council of Finland (Helsinki), the Council of Europe's Task Force on Culture and Development, the International Institute for Communications (London) and the World Bank. Since joining ERICarts in the late 90s, she has been responsible for managing large transnational comparative research projects with teams of academic researchers, artists, policy makers and cultural managers in over 40 countries. She is a member of the Souillac Group on Arts, Industry and Innovation, the MARCEL Network and on the Board of the Balkankult Foundation.

Don Foresta (don@donforesta.net)
Don Foresta is a research artist and theoretician in art using new technologies as creative tools. He is a specialist in art and science whose principal work in the field, "Mondes Multiples", will soon be published in a second edition in English. He is a Senior Research Fellow at the Wimbledon School of Art in London and professor at the Ecole Nationale Supèrieure d'Arts - Paris/Cergy. He has been working for over 20 years in developing the network as an artistic tool and is presently building a permanent high band-width network, MARCEL, for artistic, educational and cultural experimentation <www.mmmarcel.org>. He began the network while invited artist/professor at the National Studio of Contemporary Art, Le Fresnoy, Lille France. It now has 80 confirmed members 25 of whom are connected permanently over a multicasting platform. His first on-line exchange in 1981 was between the Center for Advanced Visual Studies at MIT where he was a fellow and the American Center in Paris where he was director of the Media Art program. He was a commissioner to the 42nd Venice Biennial in 1986 where he built one of the first computer networks between artists, an effort he has expanded as the technology has grown. Foresta holds a doctorate degree from the Sorbonne in Information Science. He has both US and French nationalities and was named "Chevalier" of the Order of Arts and Lettres by the French Ministry of Culture.

Mathias Fuchs (m.fuchs@salford.ac.uk)
is a game artist, musician and member of the MARCEL network. He is currently Programme Leader in MA Creative Technology, Salford University, Greater Manchester and former Guest Professor at Sibelius Academy, Helsinki Finland and former Lecturer at Universität für Angewandte Kunst in Wien Austria.
For more information see: http://creativetechnology.salford.ac.uk/fuchs/art/fluID/fluID.html

Roland Honekamp (roland@creativecommons.org)
Roland Honekamp joined Creative Commons in March 2004, where he is helping to internationalize the innovative CC licensing system. Previously, Roland served several years in various functions in the Internet industry. He holds degrees from the University of Oxford, England, and from the London School of Economics.
Creative Commons is a global nonprofit that offers a flexible copyright for creative work. Creative Commons offers a free set of legal licences which artists and scientists can use to share their work with others. These licences are currently available in all major EU countries, the US and Japan. Other countries are scheduled to follow soon. By offering its licenses Creative Commons is trying to get away from the notion of "All Rights Reserved" towards the more progressive one of "Some Rights Reserved". For more information see: http://www.creativecommons.org

Ritva Mitchell (ritva.mitchell@cupore.fi)
is the director of research of the Finnish Foundation for Cultural Policy Research and the President of the Board of Governors of the European Institute for Comparative Cultural Research (ERICarts). She is political scientist who has specialised in cultural research over the past 30 years. She has worked as a researcher at the University of Helsinki, research manager and head of research at the Arts Council of Finland, and programme advisor at the Council of Europe. Furthermore she has worked as an expert for the Finnish Minister of Education and Culture, Nordic Council of Ministers, UNESCO, the EU and a number of governments in Europe and Asia. She has authored and edited books and written numerous articles on arts administration, cultural development and cultural policies and lectured at different Finnish and European universities in cultural studies, particularly on European cultural policies and European integration. Ritva sits on several advisory boards including Nordic Baltic Platform, International Intelligence on Culture, and the Fondazione Fitzcarraldo. She has been the president of CIRCLE and of the Orientation Board for the European Diploma in Cultural Management.

Egle Rakauskaite (erakauskaite@hotmail.com)
is always interested in the natural duration of the process- she often creates performances and video art, even objects often transform in time. Time is not only the necessary condition for the development of action, but also an important structural element of the image. The artist's continuous projects mature, often change and finally transfigure completely. In her most recent works Gariunai, 2002, Days of being pathetic: Diary reading in English, 2002, My America, 2003, Driving Petrovitch, 2004, and most recent video-sound installation My address is neither house nor street, my address is a shopping centre, 2004, the dimension of time is gradually turning from abstract into specific, the process acquires the shape of flowing reality. Her camera records not just others, but the companions of E. Rakauskaitė's flow of life. The artists work has been presented at the International Istanbul Biennial in 1997, the 48th international Venice Biennial, National Center for Contemporary Arts, Moscow; Tallin Art Hall, Tallin; Kiasma, Helsinki; „Zachęta" Gallery of Contemporary Art, Warsaw; Central Exhibition Hall "Manezh", St. Petersburg; Frankfurter Kunstverein, Frankfurt/Main; National Museum, Copenhagen; National Museum of Contemporary Art, Athens; Galerie im Taxispalais, Innsbruck; Museum of Contemporary Art Ludwig Museum, Budapest; Hamburger Bahnhof, Berlin; Kunstmuseum Bonn; Deutsches Historisches Museum Unter den Linden, Berlin; Municipal Art Museum, Reykjavik; Renaissance Society, Chicago; The Contemporary Art Museum, St. Louis; TATE, London.

Nenad Romic *aka Marcell Mars* (m@rcell.net)
is one of the founders of the Multimedia Institute - mi2 + net.culture club mam in Zagreb. He initiated several projects like EGOBOO.bits - GNU GPL publishing label & TamTam online collaborative plat-form. He produced or/and curated mi2 annual exhibitions, "I'm still alive" 2001 and <re:Con> 2002. He is one of the coordinators of Otokultivataor - summer camp, advocate of free software, system/network admin & advanced Linux user. Currently works on editing the GNU Pauk reader dealing with the free software phenomenon within the larger cultural context.
EGOBOO.bits is a digital publishing project & production collective dealing with the free software de-velopment, sound production and mediatheory. It is a project by the Multimedia Institute and net.culture centre MaMa from Zagreb, Croatia. The lowest common denominator of the entire EGOBOO.bits pro-duction is GNU General Public Licence, also known as copyleft. Copyleft implies that all intellectual products (software, music, lyrics, ideas...) published under GNU General Public Licence are commons. Music published under these terms on the EGOBOO.bits label can be freely distributed, used and modi-fied by others as long as its derivates remain under the same conditions. EGOBOO.bits is bringing to-gether some of the most appreciated electronic music artists in Croatia. These are: aesqe, blashko, darko fritz, labosh, pajo, plazmatick, qwerty, zvukbroda. The music production is run by the participating members and music CDs are usually designed, burned and distributed by artists themselves. CDs can be downloaded from the EGOBOO.bits web-site, bartered or obtained directly at a minimum production price.
For more information see:
http://www.gnupauk.org/EnglishGnuSpectrum/EgoBooBitsEng
http://tamtam.mi2.hr/EgobooBits/BooRefleksija/BooReflection
http://www.gnupauk.org/DiskusiJa/PrijedloZi/BothDevilAndGnu

Marieke van Schijndel (m.vanschijndel@mondriaanfoundation.nl)
is policy advisor and has worked for various cultural organisations in the Netherlands. Last year she re-ceived her Master of Business Administration from the John Molson School of Business (Canada). Be-sides working for the Mondriaan Foundation, an organisation that provided financial support for visual art, design and heritage projects in the Netherlands and abroad, she is an independent scholar in the field of copyright and arts management.

Woody Vasulka (vasulka@vasulka.org)
After producing a pioneering body of tapes in collaboration with Steina in the early 1970s, Woody Vasulka has investigated the narrative, syntactical and metaphorical potential of electronic imaging. His development of an expressive image-language began as a rigorous deconstruction of the materiality of the electronic signal, and has evolved to the application of imaging codes and digital manipulation to narra-tive strategies. For more information see: http://www.vasulka.org

Andreas Wiesand (wiesand@ericarts.org)
is the Founder and Director of the Centre for Cultural Research/Zentrum für Kulturforschung and is the Executive Director of the European Institute for Comparative Cultural Research (ERICarts). He was trained in broadcasting (SWF) and completed his doctoral studies in politics, communication and sociol-ogy at Berlin and Hamburg Universities. He is the author, co-authors or responsible editor of over 50 books and publications on issues related to: political, economic, or legal questions in the arts, literature and media fields; empirical studies on national, European and international cultural development and problems with cultural anthropology. He is professor of arts administration at the State College for Music and Theatre in Hamburg and lectures also in many other institutions throughout Europe. Prof. Dr. Wie-sand has served as chairman of the board of the copyright licensing society "Bild Kunst" (Visual Arts/Film), as Honorary Secretary General of the German Arts Council, vice-president of the German Society for Cultural Policy, on the founding board of the European cultural policy network "CIRCLE" and on the board of Deutsche Welle (German overseas Radio/TV).