Paris Accord Discussion Draft – October 20, 2009

with additional changes in yellow

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Introduction and Note About Document

The following is the draft text for the Paris Accord, as of October 20, 2009. It does not include the preamble, or any sections that may be written later to unify and cover all cluster texts.

Each section is subject to discussion and criticism in the October 23-24, 2009 Paris meeting, and is collected here to assist in that discussion. Nothing will be finalized in Paris regarding the text. There will be discussion in Paris and on the various listserves about the process to move this project forward. Before the text is moved to a more final version, there will be notices of timetables on the lists, and adequate opportunities to review every new draft.

Panel 1 - Scholarly Publishing. Authors and Readers

. The Context

1. Authors and readers of scholarly journals, monographs, books and textbooks have a common interest in the broad dissemination and wide sharing of works.
2. Authors and readers both face many challenges and opportunties regarding the traditional methods and practices of publishing scholarly works.

. Challenges

3. The concentration of ownership of scholarly publishing presents risks and dangers to authors and readers, through high prices, lack of diversity of content, inflexible contracts with authors and buyers and undue influence on discourse involving scientific, cultural, professional and political life.
4. Some published material is difficult or impossible to access, use or reuse, in the present and will be in the future, due to technological protection measures, obsolete formats and software, lack of interoperability of data formats or enabling technologies, or poor documentation, indexing or organization of data.
5. For some works, it is difficult or impossible to identify or locate right-owners,or negotiate rights from copyright owners.
6. Individuals and institutions lack the organization or incentives to collectively pool resources to finance projects that have the scale to effectively invest in the creation and dissemination of knowledge as a public good.
7. Some incentive mechanisms to stimulate investments in research and development encourage secrecy, and discourage the sharing of access of knowledge, materials and technology.
8. The suppression of scholarship that is considered objectionable, harmful, sensitive, or inconvenient to governments, large corporations or other interests can inhibit and retard scholarship, as do restrictions on the travel and participation of scientists and scholars in conferences, workshops and meetings.
9. Conflicts of interest in scholarship presents risks of misconduct, that harms both consumers and scholarship itself.

. Opportunities

10. The rapid and continual development of new information technologies creates opportunities to explore and exploit new modes of research, scholarship and collaboration that enhance the productivity of scholarship, and

expand access to works.

11. [There are potential economies and cost savings in organizing the publishing of information as a public good, than to collectively support the publishing of scholarly works under business models that restrict access to paid subscribers.]
12. There is growing interest among the public, policy makers and scholars to experiment, develop and implement new approaches to collective action, including the pooling of resources to effectively invest in the provisioning of knowledge as a public good.
13. Scholarly text and data can be interlinked into a network of information, providing a dynamic foundation for knowledge dissemination and discovery.

. Agreements between Authors and Readers

We agree with [the relevant elements of] the Agreement on Journalism and Books, including those addressing intellectual property rights, [http://www.tacd-ip.org/blog/the-paris-accord/books-journalism/] and the need to consider and support new approaches to the publishing of scholarly works. We also provide the following elaborations and additions:

Pricing of Scholarly Works

14. Authors rarely benefit from excessive prices for scholarly and scientific works. Readers never benefit from excessive prices.

Censorship

15. We oppose government imposed censorship and other restrictions on the freedom of opinion and expression; including the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Licensing of Rights

16. In licensing the rights to works for publication, authors should retain sufficient rights to use works in a variety of ways, including to provide access to scholarly works from their own personal web page, or in digital repositories, to make copies of articles for uses in the classes they teach, to use in compilations or derivative works, and the right to authorize others to make certain uses of the Article in cases where the author receives credit as author and the journal in which the article has been published is cited as the source of first publication, and the right to republish the work when a work is out of print. In some cases, these rights may come into effect at a period of time after the first publication of a work, or be limited as the geographic area or the commercial or non-commercial nature of the use. [Authors should use these rights to expand access to works for all users[, for example, under appropriate creative commons licenses.]]

Terms of Exclusive Rights

17. The public interest will be served by shorter terms of exclusive rights for scholarly works. This can be accomplished by limiting the terms of statutory rights under copyright, or through licensing practices. For many non-scholarly works, the argument for a long copyright term is based upon the expectation that authors will receive royalties to support their families. For many scholarly works, including most scholarly journals, royalties to authors are zero or negligible, and the returns to the publishers decline rapidly in time. For such works, exclusive rights that last for many years are not appropriate, and harm scholarship and society.

Out of Print or Orphaned Works

18. As noted in the agreement on Books and Journalism, copyright laws should allow authors to authorize the republishing of works that are out of print, or the republishing of works where copyright owners cannot be located. This is particularly important for scholarly works, where authors publish with the expectation that their works will be widely disseminated, recognized, cited and used, where remuneration to authors is seldom the driving interest of authors, and where scholarship suffers from limited or incomplete access to older works.

Access for persons with Reading Disabilities

19. Scholarly works are essential for education and professional development, and it is therefore particularly important that such works are available in formats that are accessible for persons with reading disabilities.

Control of Anti-Competitive Practices

20. Authors and readers agree to oppose mergers that lead to excessive concentration in the area of publishing, and agree that governments and institutions that buy scholarly works should undertake measures to curb excessive pricing of scholarly works.

Collective Action to Encourage, Stimulate and Support the Archiving and Publishing of Scholarly Works as Public Goods

21. The benefits of free access to scholarly works are well documented, appreciated and frequently experienced. There are a proliferation of promising models to support open access publishing. There is also considerable under-investment in open access publishing, compared to the social benefits. This under investment is due in part to the failure of those who benefit from open access publishing to collectively pool resources to finance projects that have the scale to effectively invest in the creation and dissemination of knowledge as a public good.
22. It is essential that authors, readers, governments, universities, libraries, funders and other institutions build strong collaborative mechanisms to support open access publishing and archiving for scholarly works.
23. Governments, philanthropic donors, and other entities that fund research should require authors to publish in open access platforms, or place works in open archives soon after the date of initial publication.
24. Public libraries and universities should be resourced by governments to spend a fraction of their budgets to support open access scholarly publishing.
25. Public libraries and universities should be resourced to spend a fraction of library and publication budgets to acquire the rights to publish electronic versions of out-of-print books and journals or other scholarly works on the Internet.
26. Trade agreements should include chapters on the global supply of public goods, including agreements to provide financial support for open access publishing, and to require open access to government funded research.

Technology, Peer Review and Transparency

27. We note the profound impact of the Internet on the conduct of scientific research and the benefits of research being shared as widely as possible. We also note the complexities of managing information resources.

Standards

28. Authors and publishers should support, use and contribute to the development of open and interoperable standards for the storage and documentation of data, including both text and numeric data.

Peer Review and Transparency

29. Publishers should provide greater transparency of policies about the peer review process, and consider greater use of non-anonymous reviewers of articles, and provide greater opportunities for other scholars to comment and annotate articles.
30. [Authors and readers agree with the code of conduct recommended by the Committee on Publication Ethics - http://publicationethics.org/]
31. Potential conflicts of interest are important, and should be disclosed by publications.

Open Source Dividends

32. There are promising proposals by several countries and scholars to set aside a faction of the rewards for successful medical R&D, as an open source dividend, to encourage the sharing of scientific and technology knowledge, including through scholarly publishing.
33. For example, in some proposals, this would including setting aside a fraction of innovation inducement prizes rewards, to be given to persons who openly share access to knowledge, materials and technology, including by publishing articles in open journals or open archives, and also to the publishers of those articles, on the condition that the journal made the article available for free immediately upon publication.

Access to Works in Developing Countries

34. Everyone benefits from expanded access to scholarly works in developing countries. Such access is necessarily

to promote development, and to ensure that researchers in developing countries have the opportunities to contribute to and benefit from scholarship in all fields. Measures that expand access in developing countries include investments to improve and ensure access to computer networks, and free or concessionary pricing for subscriber journals and other scholarly works.

Supported Norm-Setting Declarations

35. Authors, researchers and readers of scientific works express their support for the following:

    a) Association of College & Research Libraries (ACRL) Principles and Strategies for the Reform of Scholarly Communication, August 28,2003, http://www.ala.org

    b) Bethesda Statement on Open Access Publishing, June 20, 2003, http://www.earlham.edu/~peters

    c) Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities, October 22, 2003, http://www.zim.mpg.de/openaccess-berlin

    d) The Budapest Open Access Initiative,, http://www.soros.org/openaccess/read.shtml

    e) Organisation for Economic Co-operation and Development (OECD), Declaration on Access to Research Data From Public Funding, January 30, 2004, http://www.oecd.org

    f) The International Federation of Library Associations and Institutions (IFLA) Statement on Open Access to Scholarly Literature and Research Documentation, February 24, 2004. http://www.ifla.org

    g) The Salvador Declaration on Open Access: The Developing World Perspective, Salvador, Bahia, Brazil, September 20-23, 2005, http://www.icml9.org/meetings/openaccess/public/documents/declaration.htm

    h) The Bangalore National Open Access Policy for Developing Countries, Bangalore, India November 22, 2006, https://mx2.arl.org/Lists/SPARC-OAForum/Message/3479.html

    i) The Cape Town Open Education Declaration, Cape Town, South Africa, January 22, 2008, http://www.capetowndeclaration.org/

    j) The Student Statement on the Right to Research, Washington, DC May 22, 2009, http://www.righttoresearch.org/students/statement.shtml

Panel 2 - Recorded Music: Songwriters, Performers, and Listening Public

1. Authors, composers of musical works, performers on sound recordings and music fans agree that we have common interests and new opportunities to collaborate. Technology now enables more creators to distribute, and everyone to access more works, in more different ways. These new distribution mechanisms for creators and access methods for everyone should be encouraged to flourish. We aim to create an innovation environment to encourage new technologies that foster access.
2. Traditionally, differences in bargaining power have often led to unfair outcomes between creative individuals and the commercial entities that invest in, market or sell culture and knowledge goods and to many creative works being withheld from the public. This unfairness can be heightened, or mitigated, in the digital environment where everything can be made available, but where many works are not authorized to be made available.
3. Everyone benefits from a cultural and economic environment that affords ample and diverse opportunities for both amateur and professional participation in creative activities. We seek to foster an atmosphere where people can develop into professional creators and to expand economic opportunities for professional creators so that those in the creative industries have access to a middle class living.
4. In the digital context, we should create systems premised on enabling, rather than prohibiting, access to and use of creative works.
5. We need legal regimes and a variety of public and private systems that remunerate creators to support the artistic development, incomes and economic security of artists, while also enabling cultural diversity and broad access to works [at reasonable prices].

These principles and systems should:

. General Principles

a) provide reasonable protections from censorship or control by governments

b) stimulate cultural diversity and ensure the preservation and archiving of vital cultural and social heritages and its access

c) promote access to music for the broadest possible set of consumers

d) ensure that mechanisms for remunerating creators [and investors] are comprehensive, easy and convenient and foster access to and use of works, rather than creating a barrier thereto

e) foster repertoire wide access to enable new business models and permit new types of access models to develop

. Principles for Creators

a) reward the creators [and investors] in an equitable manner for their creativity and [permit reasonable returns] for investment of time and money

b) foster a diversity of revenue streams, service providers and methods of exploitation, free from excessive concentrations of ownership and gatekeepers

c) ensure that gatekeepers aren't erected to prevent or limit artists from using the distribution channels or from earning an equitable share of any direct or indirect revenue

d) foster artistic freedom and reasonable creative control over works by artists

e) ensure creators can exploit all their works, i.e., creators should be permitted to exploit their works if the copyright owner is not exploiting them, provided the creator complies with payment obligations to other parties that arise when the work is used

f) ensure that contracts between artists and businesses that wish to invest in or exploit the works are fair and provide reasonable compensation to the artists

g) ensure that [all businesses that attract customers or users through music should compensate the creators of the music used] or [anyone who exploits the works of a creator must pay an equitable remuneration to the creator for any direct or indirect value received as a result of the direct or indirect exploitation of their work]

h) [provide that the creator has the moral right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his/her honor or reputation] or [support norms that encourage accurate attribution when works are transformed, reused, or remixed, and discourage the association of creators with commercial messages without their consent]

i) permit artists to reinterpret and explore works of other artists in new musical works and sound recordings, [consistent with the original artist's moral rights and providing of equitable remuneration]

j) ensure transparent accounting and payment to creators [whose works are exploited, wherever and however the exploitation occurs]

k) [require that the artists' payments are paid from the distributor directly to the artist or the artist's collective, rather than through an intermediary such as a copyright owner (the artist collective will decide whether to permit assignments and recoupments)]

l) [provide that organizations that collect remuneration for creators have democratic governance made up of those entitled to receive the remunerations collected on the same proportional basis]

m) [limit the assignment of copyright to its exploitation in the technology available at the time of assignment or any other technology that is reasonably predicted and which is explicitly referenced in the artist's contract] or [creators should not be able to assign copyrights, only to license them] or

n) limit the length that a creator can [assign or license] his/her copyright to a maximum of 20 years (although derivative works created pursuant to such assignment and license can continue to be exploited)

o) permit opportunities to engage in [transformative uses, including homage, education,] criticism, parody and satire

p) recognize that the realization of these creator principles depends on a vibrant environment for investment in the creative industries and for innovation by technology companies

. Principles for Public Access

a) foster a diversity of types of access, free from excessive concentrations of ownership and gatekeepers

b) ensure that "orphaned," out-of print and other unexploited works can be accessed

c) [ensure that anyone who exploits the works of a creator must pay an equitable remuneration to the creator for any direct or indirect value received as a result of the direct or indirect exploitation of their work]

d) [permit the public to benefit from and reinterpret and explore works of artists, consistent with the original artist's moral rights and providing of remuneration for any direct or indirect commercial exploitation] or [permit the public to benefit from and reinterpret and explore works of artists without compensation to the creators so long as those uses [are non-commercial and] do not unreasonably interfere with the existing commercial exploitation]

e) allow consumers opportunities to access the widest possible breadth of music [regardless of wealth] [and to discover niche and obscure artists and music genres]

f) permit opportunities to engage in [transformative uses, including homage, education,] criticism, parody and satire

g) [provide seamless and interoperable access to all users, so that they can access their content wherever they are and on whatever device they choose]

h) [recognize that in the music sphere, DRM has often been detrimental to both creators and users, [and that legal restrictions on circumventing DRM have been counter-productive,] and that arrangements free from DRM should be encouraged]

i) [require that all users be advised, in an prominent and clear manner, of any and all DRM restrictions that will be placed on the works prior to purchase]

j) [provide that all users be able to access all works that are locked by DRM in the event the company goes out of business and there is no successor providing the ability to access the works]

k) require disclosure of the ways all personal information will be kept and used in a prominent and clear manner, [both prior to purchase and on a continuing basis after purchase] or [prior to purchase and prohibit changes to those policies after purchase without the consumer consent]

l) encourage solutions that are premised on enabling, rather than prohibiting, public access to and use of creative works

m) recognize that the realization of these public access principles depends on a vibrant innovation environment for technology companies [and for investment in the creative industries]

"artists" and "creators" are used interchangeably and include both performers and songwriters and anyone else who makes a creative input

"works" shall mean sound recordings, compositions and performances

Panel 3 - The Public as a Creative Community

1. The development of the digitally networked environment and information and communication technologies have afforded a wide range of new opportunities for the public to directly participate as creative individuals and communities.
2. The explosion of new publishing platforms and technologies, including web pages, listservs, weblogs, social networking sites, online audio and video, search engines, and collaborative editing and publishing tools commonly referred to as "Web 2.0", are all part of the emergence of a new and dynamic creative community that challenges the mechanisms of control embedded in older hierarchical distribution models.
3. Copyright and other Intellectual Property laws must accommodate the development of a democratic culture rather than undermine it, in order to support the opportunities for open and collaborative participation in the production and dissemination of creative works.

. Freedom to Speak and Freedom to be Heard

4. The rights of creators and their audiences must be protected and preserved, and should not be unfairly prejudiced undermined by the practices and policies of other intellectual property holders or by information

intermediaries.

5. The ability of persons to engage in anonymous speech is fundamental to freedom of expression, as well as the right to protect confidential sources.

. Intellectual Property Rights Holders

6. Creativity in the digital age extends the public's fundamental right to draw ideas from existing works and culture to also have a right to incorporate expressions be incorporated into new works.
7. Within reasonable limits, the public also has a right to incorporate expression from existing works and culture into new works.
8. These rights should not be unfairly or covertly restricted through the use of private agreements or technological means.
9. In cases where the infringement of IP rights is clearly debatable or uncertain, efforts should be made for the complaining rightsholder and the re-user of the work to resolve any disputes before taking legal action or compelling action by third parties.

. Intermediaries

10. It is equally important not only that individuals have the right to speak freely through their own creations; people must be able to hear, view, and otherwise receive this expression freely.
11. Network providers should respect the privacy of their users. This includes not intercepting or recording users' transmissions beyond the tasks necessary to ensure the operation of the network.
12. Network providers should not engage in any practices that discriminate against data based on source, content, or destination.
13. Network providers may engage in reasonable network management. To be reasonable, network management must further a critically important interest and be narrowly or carefully tailored to serve that interest.
14. The public must have the opportunity to freely use links and information location tools such as search engines to find information, and make copies necessary for the finding of that information [without prejudice to the rights of copyright holders].
15. Online service providers must behave fairly and transparently with regard to what content they will and will not host.
16. [Online service providers must not abuse market power to discriminate against hosting content.]
17. The public must be able to design new technologies and methods to expand the power of collaborative creative efforts.

Due Process

[18. *bis* No restriction may be imposed on the fundamental rights and freedoms exercised through the Internet, including freedom of expression and information, without a prior ruling by the judicial authorities.]

18. Networks and online service providers must abide by the laws of their jurisdictions, including those governing privacy, defamation, and intellectual property.
19. [Networks and online service providers should voluntarily endeavor to act upon knowledge that their services are being used to infringe others' rights.]
20. In complying with laws and voluntary policies, networks, online service providers, and other intermediaries must take steps to ensure the least amount of harm in the case of mistake or abuse of process.
21. Networks and online services also must apply principles of due process and proportionality in any private agreements they may have with potentially aggrieved parties to act upon allegations of infringement.
22. These principles should include notice to the alleged infringer, procedures for alleged infringers to contest the allegations, and a procedure to return content if it was removed through mistake, error, or abuse.

. Creator Control of Content

23. Creators should be able to freely and openly negotiate fair and competitive terms in the licensing of their works with producers, distributors, advertisers, or other intermediaries.
24. [[do the creators on the list have particular examples of per se unfair clauses they'd like to highlight?]]
25. Creators should be free to retain any of the rights in their work granted by law. Creators should also be free to waive any rights in their work allowed by law, without waiving all rights in their work.
26. Creators should be allowed to use and enforce licenses that protect interests in ensuring the promotion of a work's dissemination, adaptation, or interoperation.
27. Creators should not, however, include licensing terms that are triggered arbitrarily, or that are at odds with any other communication or understanding between them and a user as to the nature of the parties' rights in the copyright or in the fixed copy being used.

. The Public as Press

28. The public has a right to engage in reporting, commentary, criticism, and analysis of others' content, including the use of excerpts of other works.
29. Individuals must be protected from frivolous or abusive threats and lawsuits that would limit speech or the use or sharing of information, particularly in the context of commentary or criticism of important political, economic, or cultural figures or institutions.
30. Bloggers should not be liable for third parties' comments on blogs. Immunity for online publishers should be extended to individuals in similar situations. [[ss: do we want ot expand this to something broader than "bloggers?" I'm struggling with an appropriate term that would encompass the parties I'm thinking of, though. "Citizen journalists" suggests something that must be civic-minded, which I don't think is the case, for instance. Referring to blogs and comments is a useful example, but I'd think we'd want to capture all cases where the public is allowed to provide content on another's site.]]
31. The ability of persons to engage in anonymous speech is important, as well as the right to protect confidential sources.
32. Individuals must have the same right to access information and communications networks as do journalists from traditional news organizations.
33. [public use of web pages, blogs, etc for whistle blowing] [[incomplete text]]

. Access to Internet [at Events]

34. [Alternative 1]

    Open meetings, workshops, and conferences, particularly those of governmental and intergovernmental organizations, should provide online access for participants to facilitate real-time reporting by both individuals and traditional news organizations.]

35. [Alternative 2

    For [public] meetings, workshops, conferences, trade negotiations and other events, the organizers of events should provide appropriate opportunities for the public to obtain access to the Internet, either for free or at prices that are reasonable, in order to more fully participant in the event, and to communicate and publish reports, commentary and analysis of the event. Policies about Internet access at such events such be transparent and known in advance, and to the extent that there are provisions for Internet access, the public should have opportunities to participate, as an equal party to other participants.]

36. [Everyone must be able to access any content, and use any application or services of their choices on the Internet, without facing discrimination by their network operator.]

Panel 4 – Software . Software Programmers and Developers and Users of Software

Paris Accord II agreement between the public and creative communities involved in the production of software.

. Bob Jolliffe proposal (October 20, 2009)

. Context - the nature of software

1. Software consists of coded instructions which direct the operating of a computer or of a network of computers.
2. Computers take many forms including general purpose desktop, laptop and netbook devices and behind-the-scene servers. They are also found embedded in consumer devices such as mobile phones, DVD players, TV set-top boxes as well as motor vehicles, industrial equipment and supermarket checkout tills.
3. Software is not mined, farmed or manufactured. It is always a creative output of specifically skilled authors known as programmers. It is authored.
4. Programmers create software in a social context. They might be individual authors writing software for their own use or for the use of others. More typically they are socially organised, either in a voluntary collaboration organised around a common creative goal or as paid employees within the private, public or NGO sectors.
5. Software as such is neither owned or sold. Copyright laws construct a set of rights around software, such as the right to use, to copy, to inspect and to modify. It is these rights which are bought, sold, leased or given away in the form of licences. Most proprietary software licences grant the user only the right to use the software - usually, but not necessarily, for a fee. These licences have facilitated the growth of a significant software industry in many countries.
6. Free/Libre Open Source Software (FLOSS) licences grant the user the right to use, copy, inspect and modify the software, frequently with conditions attached. FLOSS has also made a significant contribution to the economy of many countries [FLOSS Impact Study, 2007, Rishab Gosh and Phillipe Aigraine, http://www.flossimpact.eu/]. The software is frequently integrated into larger software projects with little or no transaction cost e.g. FLOSS is crucial for the growth of the Internet and World Wide Web by providing essential part to these networks. Software which is available under a FLOSS licence is a public good.
7. Governments, organisations and individuals procure software licences from a wide variety of sources, both proprietary and FLOSS. The capability of different computer programs to communicate and meaningfully exchange data and services is known as interoperability. Interoperability is a necessary requirement to encourage competition. innovation and avoid vendor lock-in.
8. An important determinant of the interoperability of a program or system is its conformance to open standards for data formats and protocols. The use of open standards for public information made available by governments is necessary to ensure that the public is not burdened with the requirement to purchase software licences from particular vendors in order to access the information.

. Principles

9. Both competition and collaboration in the production of software increase quality and fairness and are good for consumers.
10. Incumbent dominant market players should not be facilitated in preventing new players and business models from emerging.
11. The granting of patents for software creations creates an atmosphere of uncertainty and risk for both consumers and creators of software which either prevents or places a tax upon new software coming to the market. The vast majority of software patent rights are owned by companies in wealthy countries. The recent trend of filing those into so-called developing countries in increasing numbers has the effect of preventing competition emerging in those countries. It is purposefully anti-developmental.
12. Governments derive their legitimacy from the public and should be wholly accountable to the public.
13. Governments have the right, and even the obligation, to base their software procurement policies on open

standards.

14. Governments have the right, and even the obligation, to favour that public money is spent in support of the production of public goods, including software, in a non-discriminatory way.

. Action Points

[todo]

------ end of Jolliffe proposed text ----------

Jean-Pierre Laisne's comments (16 oct 2009)

* Preamble to be added about software in order to answer questions such as:

- what is software (from OS to web services, from embedded systems to PC, from application to data)?

- what are the usages covered by software?

- how software is instrumental for fair access to information society?

- how software may have influence on social and civic rights (here it may be useful to insist on the role of software in the life of citizens)?

- how FLOSS may offer a sustainable answer to most of these questions (from technology and innovation to social impact and wealth creation)?

- why FLOSS should be considered as public common?

* Openness (referring to Open Source, Open Standards, Open Service, etc.) to be defined as a viable strategy for knowledge economy (software, data format, protocols, services, nnovation, etc.) This should include the issue of software patent , monopolies and the necessity for everyone to keep control (cf. Lessig's “code rules”)

* Interoperability to be acknowledged as mandatory for fairness, transparency, sovereignty and sustainable development. Acknowledge the role of Open Standards for interoperability and consequently innovation. Promote initiatives about Open Standards such as ODF consortium or NOKIA in Symbian.

* Essential FLOSS to be defined and acknowledged as Public Goods. (e.g. if Internet is considered as a utility such as electricity, water, etc., what are the tools which have to be made available to everyone without any restriction).

* Incentives and funding mechanisms to be defined for sustainable development of essential FLOSS

Aslam Raffee's comments (June 15, 2009):

From the 2006 text I can extract 5 points that I think we can use as the basis for the creation of a new text:

1) interoperability and avoiding lock-in

2) open standards

3) open document formats

4) no software patents

5) publicly funded software projects must be FOSS

Some other points that we might want to consider with growing popularity of Software as a service and cloud computing is net neutrality, and the digital divide.

Bob Jolliffe's comments (June 12, 2009):

Quite a lot has changed since 2006. Significantly I can think of (1) the approval of OOXML as an ISO standard with attendant side effects like the takeover of ISO/IEC SC34; (2) the economic "downturn"; (3) the continued opening of the scope of patentable subject matter, including the increase in software patents in developing countries; (4) the takeover of Sun by Oracle; (5) the rise of "the cloud"; (6) various significant political shifts around the world [Indian elections, South African elections, EU elections, US elections, Paraguay etc]. I suppose all of these, and more, provide the context in which we look at our "Accord".

I think I can give unqualified support, without any further discussion, to only 1, 3, 8. 11 (but I'm not sure about "Experience has shown ..") and I think 13. For the rest I would have little issues to raise and changes of emphasis to make.

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. 2006 Version of Software Text

1. Concentration of ownership and control of software operating systems and applications presents risks and dangers to programmers and users.
2. Monopolies or cartel like ownership of PC operating systems and office productivity applications harms users and programmers, and must be addressed by governments, programmers and purchasers of software.
3. Programmers of software need access to certain interface data, in order to design products that work with other products.
4. Some high quality software products, standards and protocols can and will be produced without regard to ownership or control of software code, or any expectation of remuneration or other pecuniary reward from the sale or licensing of the code. On the other hand, some important software products are unlikely to be produced without an expectation of economic rewards.
5. [Consumers agree that infringement of software applications undermines economic incentives for firms to employ programmers to develop certain new products. Programmers agree that excessive prices for software programs contribute to infringement of software copyrights. [PA comment on earlier formulation: I don't agree with the present drafting of 5. I am not in favour of infringing software copyright. In many cases, free software is the obvious solution to avoid infringing on proprietary software copyright. However, there is strictly no evidence that infringement of software copyrights by (whom? missing word in your draft) has "deterred firms from employing programmers to develop new products". In contrast, there is strong evidence that monopoly positions of installed software providers (created including by letting "illegal" copying develop to lock in users) acts as an innovation deterrent within these companies, inducing a predominantly rent-seeking behaviour and the search for innnovation that protects oligopolistic business models (DRMs for instance) instead of providing new useful functionality to users. Patent and other legal or regulatory developments that provide dominant players with weapons of massive deterrence or destruction o course reinforce this trend (as shown be Bessen, Maskin and Hunt).]]
6. Commercial software products should not be designed to lock-in users to particular vendors.
7. Business models for software development should reward programmers for making users better off, and not reward programmers or software publishers for anticompetitive and anti-consumer practices.
8. Open document formats are essential for the development of a competitive and open software industry.
9. Users and programmers should lobby large buyers of software to demand open document formats, and other measures that promote interoperability.
10. Proprietary technologies that undermine the World Wide Web should be discouraged.
11. Experience has shown that the costs of extending patent protection to software exceed the benefits.
12. For any software functionality that is essential to creative, expressive knowledge and innovation activities in today's or tomorrow's information society, there should exists, as soon as possible, at least one practical solution that is implemented as FLOSS (free/libre/open source software), and whose usage does not depend on proprietary software. [PA: The legal, standards and interoperability, competition and other points can be derived from this prerequisite. Most cannot be credibly ensured without this being fulfilled. See also number 13, which PA proposed]
13. Consumers and programmers support the legitimacy for governments or other parties to support the creation of missing components of essential FLOSS alternatives, either directly (German policy) or indirectly (research and development policy, other forms of incentives, pro-active competition policy with corrective measures based on irrevocable royalty-free non-IP constrained licenses).

Panel 5 - Films, Video and Art – Filmmakers, Artists, Actors, and the Viewing Public

1. It is vital to ensure that both content makers and consumers have unimpeded, but fair, access to communicate and engage in transactions with each other. Access to audiovisual content is essential to help ensure the public can readily obtain diverse sources of information, including cultural products.
2. The growing availability of a multi-platform digital distribution systems, such as the broadband Internet, Internet Protocol TV (IPTV), and mobile services, provides an important opportunity for both audiovisual content creators and consumers. For example, media makers can now sell content directly to consumers using broadband connections. Consumers also have the ability to view and acquire a diverse array of audiovisual content.
3. We support the following rights:
4. Audiovisual makers should be able to directly sell/distribute their products and services to all consumers, regardless of regional boundaries;
5. All broadband networks/ media service providers available to the public should readily foster such communications and transactions;
6. Audiovisual makers should have access to the full range of distribution modalities, including video on demand, switched video, and mobile networks;
7. Audiovisual makers should [respect all] [adhere to] appropriate laws and regulatory regimes[, including] [and] rules protecting privacy, advertising safeguards for minors; and human rights.
8. Audiovisual makers should [respect] [adhere to] reasonable measures including copyright law, that protect the moral and material interests of creative communities. However, these measures should not be overly burdensome, with regard to the ability of audiovisual makers to use portions of works to create new works.
9. Audiovisual makers should have access to a universal and affordable system of rights clearances, [as well as appropriate limitations and exceptions in copyright law to protect the ability to use works or portions of works without remuneration in appropriate cases];
10. Audiovisual makers should expect national governments and other governmental bodies would provide financial support and other assistance to aide the production and distribution of works;
11. Audiovisual makers should expect national governments and other governmental bodies to facilitate agreements between themselves and access providers, if needed;
12. Audiovisual makers should expect that broadcasting and computer networks receive the necessary investment to ensure state of the art, efficient, delivery of digital content to users;
13. Audiovisual makers should expect government and network providers to help ensure that digital distribution is equitably available and affordable, including to rural and low-income consumers.
14. Consumers:
15. Have the right to directly contact and acquire the multimedia/audiovisual content of their choice;
16. Their privacy should be protected and purchases protected by effective consumer standards;
17. Consumer representatives must be included as a core constituency in any deliberation involving government or government-sponsored entities related to digital distribution (such as the recent European Charter related to online film, etc);
18. Consumers should expect that networks would receive the necessary investment to ensure state of the art, efficient, delivery of digital content to them;
19. Consumers should expect government and network providers to help ensure that digital distribution is equitably available an affordable, including to rural and low-income communities;
20. Consumers benefit from cultural diversity in all aspects of broadcasting and publishing of cultural works. Mechanisms to support such diversity, including promotion for diverse languages, and minority productions are needed. States or Regional entities must consider diverse methods to support the creation and diffusion of communitarian or artistic works, from quotas to subventions for scripting, filming or diffusion and theaters.
21. Concentration of ownership of the distribution systems presents risks and dangers to both consumers and makers of audio visual works, in terms of high prices (for distribution), lack of diversity of content, and undue

influence on cultural and political life. Global concentrations of ownership of media outlets are even more risky and dangerous than concentrations of ownership of national systems. Monopolistic control over "last mile" delivery of digital content, if combined with the ability to discriminate among content providers, presents the same type of problems.

22. Creative communities and consumers oppose government imposed censorship and other restrictions on the freedom of opinion and expression; including the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
23. Both creative communities and consumers are harmed by excessive prices costs associated with the distribution and sharing of audiovisual works.
24. Consumers and makers of audiovisual works agree that broadcasting or webcasting organizations should not be given intellectual property rights in the content of audo visual works.
25. Audiovisual makers and consumers support efforts such as the 2005 Documentary Filmmakers Statement of Best Practices in Fair Use to provide guidance for the appropriate practices in using copyrighted material in documentary films.

Panel 6 - Medical Research and Development – Scientists and Consumers

. Importance of Medical R&D

1. Research and the development of new medical technologies and new approaches is necessary to address health needs.

. Priority Setting

2. Priority setting in medical R&D is a shared social responsibility [by whom? Everyone?What mechanisms/processes for priority setting should be used? How much are they driven by patient interests, epidemiology, and scientific evidence? Are they national (the source of most regulation) or global?-BB] that should be evidence-based and that should seek to maximize equitable disease prevention and treatment outcomes for all of the world's populations.
3. Market forces should be regulated and/or complemented to serve social priorities in medical R&D, including research for diseases and conditions primarily affecting so-called neglected diseases.
4. Governments should always have the freedom to determine that a drug or vaccine merits testing, the diseases for which they should be tested, and the populations to be tested, including gender, race, and age.
5. Innovation" without additional therapeutic benefit can be wasteful and present unnecessary risks and higher costs to patients.

. Market failures

. Institutions undertaking Medical R&D

6. Involvement of a number of different institutions is essential for the support of medical R&D, including government, intergovernmental, universities and research institutes [Seems important to include the most common players-BB], non-government not-for-profit and for-profit organizations.

. Access to Knowledge, the freedom to undertake research and the freedom to innovate

7. Science depends upon access to knowledge. Hoarding and secrecy of data and scientific materials must be discouraged and sharing of data and scientific materials and collaboration in medical R&D must be encouraged.
8. Researchers need timely and affordable access to scholarly journals.
9. National governments should eliminate visa restrictions that limit the ability of students to study at universities in another nation, or restrict the ability of scientists or engineers to participate in conferences or gain experience at firms in another nation [There is a problem of brain-drain in this proposal as formulated - BB].

10. The freedom to undertake research on a commercial or non-commercial basis should not be limited by patents or other intellectual property rights.

11. The freedom to further innovation should not be unduly limited by patents or other intellectual property rights. [This is awfully abstract. It might be helpful to directly mention easily negotiated access to upstream technologies including research platforms/methods. - BB]

12. Patients should freely share biological materials, and consider participation in clinical trials to test new medicines, with the expectation that new scientific advancements will be accessible to all, that clinical trials and other experiments follow appropriate ethical standards, and that the trials are reported to public databases, in order to provide for greater transparency of the scientific evidence, subject to appropriate protections of personal privacy. [I wonder if there shouldn't be a separate section for clinical trial ethics. If so, there could be discussion of access to resulting innovations, treatment of trial participants, and even perhaps more comparative testing to determine relative therapeutic efficacy. There could also be a reference to post-approval studies and the avoidance of pure marketing studies. - BB]

. Funding medical R&D

13. Sustainable sources of finance are needed to support employment in R&D organizations1, equip researchers with the tools necessary to advance science in the field of health, and develop new products and new approaches that improve health outcomes. These systems should enhance and not undermine the goal of access for all for new medical inventions.

14. Governments must ensure that the combinations of direct funding, subsidies and incentives collectively provide for adequate resources for basic, translational and incremental medical research, and the development of new and improved medicines and other technologies in order to address areas of health need and public interest. [It might be appropriate to directly discuss incentives for R&D into pediatric medicines since this is often a neglected area. - BB]

Funding Mechanisms

15. Direct government funding of all stages and phases of medical research will continue to be important.

16. When considering incentives for investments in medical R&D, new approaches are needed to address the many shortcomings of the present system.

17. There should be a greater separation of markets for innovation from the market for the products that incorporate those innovations. When possible and appropriate, the elements of the current systems of stimulating R&D through high prices for medically important products (such as market exclusivity for innovators), should be replaced with new systems that reward developers of new products [You might want to include a footnote clarifying that inventors of research platforms and early-stage inventions should share it these rewards even though you discuss funding such endeavors in para. 18 - BB] directly for improved health care outcomes. This can be most easily be accomplished when systems of public provision or private insurance [Some public funding is not insurance based - BB] exist for medicine, and when it is feasible for expert third parties to evaluate the impact of new medicines on health outcomes.

18. There is also a need to expand methods of funding projects that support open and collaborative research, the development of databases and other research tools, as well as high-risk R&D projects that are likely to be useful for follow-on innovation.

19. Intellectual property rules should not prevent experimental use of inventions or materials [This repeats para. 10 - BB], nor should they discourage or prevent investments in any field of invention [Some fields of technology might be considered against public order - BB].

20. Methods of protecting investments in clinical trials for new medicines, if any, should not prevent governments from registering generic equivalents and making medicines available at affordable prices or require unethical or unnecessary replication of human experiments.

. Recognition

21. Individuals and communities that collaborate in scientific research should receive appropriate recognition for contributions to new scientific discoveries [Who provides this recognition and does it include compensation or reward? - BB].

. Competition

22. Actual and/or potential competition to manufacture and supply medicines, vaccines and other medical technologies at efficient economies of scale is important to protect society from pricing abuses, and to ensure adequate, affordable and equitable supplies of medical products.

. Registration

[Registration logjams now approach the severity of IP logjams in terms of access to medicines - BB]

23. Medical products should be made promptly available in all countries, large and small, rich and poor, and thus incentives and more efficient procedures for follow-on registration by innovators and generic producers must be promoted.

. Transfer of Technology to Developing Countries

24. The capacity to manufacturer medicines, vaccines and other medical technologies should be promoted in developing countries through licensing, direct technology transfer and other measures.

. Transparency, and objective evidence

25. Prices, sales, and R&D costs should be transparent.
26. Testing of products should be transparent, and funded by sources that do not have incentives to distort or misrepresent findings, and which address the most useful scientific and medical questions. [If there is a new section on clinical trials/testing, this paragraph could go in that. - BB]
27. The results from clinical trials should be published in public registries.

. New Global Frameworks for Medical R&D

28. Governments must support global agreements to share in the costs of developing and evaluating new medicines.

Panel 7 - Books and Journalism . Writers, Editors and Readers

. Statement of Fundamentals

Emergence of a global, digital network capable of free, ubiquitous copies has changed the worlds of publishing forever. Laws, regulations and conventions that evolved to foster creation and dissemination of creative work in a world defined by physical copies cannot accommodate these new realities, and society must find new ways to balance competing interests and demands in these realms.

The primary competing interests are each of great significance: to support and ensure continued creation of intellectual works of significant societal value, and to ensure all citizens have unfettered access to such works for a wide variety of uses.

We believe these interests can be reconciled in ways that reward the intellectual effort of creation and also make it accessible to the widest number of consumers. Not all the existing institutions, structures or conventions of today's system will survive into tomorrow. Those that do survive will be altered and refined by the new realities. Entirely new schemes may also be required.

. Statement of critical assumptions

A. The ability of individuals to copy and freely distribute creative works they did not create does serious damage to established systems of compensating individuals for creation and can become a barrier to new works, limiting public choice.

B The ability of individuals to copy and freely distribute works they did not create likewise greatly expands the audience for such work, enriches consumers who can more easily access it and inspires creation of additional work.

. Statement of essential principles for action

We recognize several touchstone principles that need to be accommodated in any system that seeks to balance points A and B above:

1. Writers whose work is sold have a right to collect revenue from those sales.
2. The appropriation and distribution of works without permission or compensation in some cases endanger the ecosystem supporting knowledge and art.
3. All people are free to quote from, build on, and comment upon the work of others. Rules regulating such use should be liberally interpreted, with the balance tipping in favor of broad public use. People are also free to make limited copies for personal use or to share works with others in ways that do not unreasonably prejudice the material and moral interests of authors.
4. Copyright provides certain ownership rights in expression of ideas and facts, but not in the ideas or facts themselves.
5. The creation of works of significant value to society will often require expertise, experience and education not immediately available to all citizens.
6. Expression of great value to society, whether in journalism or books, may not easily attract short-term or immediate financial support in a marketplace increasingly devoted to entertainment and individual preferences.
7. In some cases, the optimal solution is to treat creative intellectual works as a public good — that is, establishing ways to reward creative individuals and creative communities, while works themselves are freely available to everyone. Developing ways to do so should be a high priority in this field.
8. In other cases, creativity will be supported primarily by the marketplace, and society has an interest in some regulation of that process, including the granting of balanced and appropriate intellectual property rights, or curbing unfair business practices, to ensure a continued flow of creativity and information in the public interest.
9. Consumers may wish to aggregate their willingness to pay for certain intellectual creations.
10. It is in the interest of consumers and creators to ensure that the creation, distribution and use of these intellectual creations is free of government censorship or restriction.
11. As traditional models of financial support for journalism and book writing erode, systems that arise to replace them will demand vigilance to guard against undue or undisclosed distortions introduced by funders, be they government, philanthropic or private.
12. Copyright law will need to change to accommodate the new ways that people access and use information, particularly in recognizing shorter time spans and the increasing importance of collaborations and re-purposing of works.
13. In general, consumers will be well served by systems that diminish the distance between creative communities and themselves, and curb monopolistic or oligopolistic abuses in the distribution of works..

Relations between authors and intermediaries

14. Within 30 years of signing a contract with a publisher or employer, the author [or her heirs] should have an opportunity to regain the rights to the work under copyright.
15. The measures to protect authors should not be overly burdensome, with regard to their ability of to use portions of works to create new works.
16. All people have a fundamental human right to access to works, to privacy, and to development.
17. Unfair contracts between authors and publishers should not enforced by courts.
18. The antitrust laws should provide space for freelance writers and freelance artists to jointly negotiate the terms and conditions of contracts for the sale of written material or graphic material created by them to publishers, in the same manner as employees may engage in collective bargaining.

Creation and term of copyrights

19. For authors, a term of copyright protection of life plus 50 years is sufficient. Longer terms undermine access to works, to the detriment of both readers and authors.

20. When consistent with the WTO TRIPS Agreement, rights under copyright and related rights should be contingent upon the registration of works.
21. Copyright laws should allow authors to authorize the republishing of works that are out of print.
22. Copyright law should allow republishing of works where copyright owners cannot be located.

Accessibility for persons with disabilities

23. The accessibility of works for persons with reading disabilities is a matter of human rights.
24. Authors and publishers should voluntarily license works, including digital XML code, to organizations that make works available to persons who are blind or have other reading disabilities.
25. The private use of assistive technologies such as text-to-speech software does not infringe rights under copyright.
26. Contracts that restrict the use of assistive technologies, such as text-to-speech, should not enforceable by courts.
27. Governments should support a WIPO Treaty for persons who have reading disabilities.
28. [Additional consensus points here, please.]