# TACD

TRANS ATLANTIC CONSUMER DIALOGUE

DIALOGUE TRANSATLANTIQUE DES CONSOMMATEURS

# New relations between creative communities and consumers

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## Executive summary

Consumers and creative communities must forge a new alliance to resolve problems raised by the new digital environment. That was the dominant message from this two-day TACD conference, focussed on the draft content of the Paris Accord.

Main subjects for discussion were: music and video recordings, with particular respect to private copying; the direction of medical research; threats to Free Software; and the future for academic publishing.

As regards the copying of music, it was generally agreed that the public's right to access and the artist's right to fair reward could be satisfied by a system of global licensing, for which the public was ready to pay. The Digital Rights Management (DRM) approach was generally opposed, amid concern that this, along with other upcoming legislation was threatening the freedoms of the Internet.

Pharmaceutical research, it was agreed, should be redirected towards areas of greatest need – not areas of greatest profit. The neglected diseases of the developing world were a particular concern. It was proposed that national governments should contribute to medical research costs on a compulsory basis.

In medicine and software alike, patents were now seen as obstacles to progress, and suggestions were made for limiting them. The copyright system too was challenged.

In the tightly controlled world of academic publishing, there was support for an Internet-based Open Access system that promised to improve distribution with no loss of quality.

In all areas, there was concern for the special interests of less developed regions whose people are mainly the recipients of creative output, not the creators.

The conference agreed that the Paris Accord should be shortened, opening with a statement of core principles, then presenting those principles in the context of each key subject area. It was hoped to produce a statement of core principles by July 2006, and detailed subject sections by June of the following year.

# DAY ONE – MONDAY JUNE 19, 2006

In her welcome to the conference, **Benedicte Federspiel (Danish Consumer Council)** expressed her support for TACD, particularly the highly successful TACD Intellectual Property (IP) Working Group. With generous support from the Rockefeller and MacArthur Foundations and the Open Society Institute, this group was leading the way in matters of direct relevance to today's internet-aware consumers. It was fortunate to have the support of the Consumer Project on Technology, led by James Love, a relentless enthusiast in this field whose efforts had done much to further adoption of the WIPO Development Agenda.

Introducing the conference, **James Love (Consumer Project on Technology)** outlined the idea behind the meeting and tried to clarify some of the confusion surrounding the Paris Accord. TACD had held many meetings focused on consumer and public issues arising from the provision of access to knowledge goods (in such fields as medicine, scholarly publishing, software, music, entertainment, etc). He stressed however that the people who create these works are entitled to an income. Hence the conflict we see today between, on the one hand, the need to make a living and secure an income and, on the other, the need to provide access. The idea of the meeting was that consumers and creative communities should be allies not enemies. This new relationship was the focus of the Paris Accord, a document still very much in its infancy and consisting of comments and suggestions by consumers and expert panellists alike (representing a wide range of disciplines, from medicine through music, film and scholarly publishing). Their proposals, submitted via the Internet prior to the meeting, provided the basis for the draft text of the Accord (available in English and French at www.cptech.org/a2k/pa/). The idea of the present meeting was to discuss these proposals, suggest changes and consider ways of building on the new relationship between consumers and creative communities. The time taken to finalise the text of the Paris Accord would depend on how well both sides understood each other's requirements. Panellists were encouraged to discuss their participation at the present meeting within the context of the Accord and its presentation and wording.

## Panel 1 - Setting the context

**Alain Bazot (President of the French consumer organisation, l'Union Fédérale des Consommateurs – Que Choisir)** focused on the new challenges facing consumer organisations in France in the context of the digital environment. He invited delegates to consider a number of issues, ranging from the changing relationship between consumers and creative workers to the advantages of global licensing.

The digital environment modified traditionally-held positions, of consumers on the one hand and content producers on the other – every user was now a potential content producer – blogs and Wikipedia being good examples. In France the debate on authors' rights (French copyright law) had provided an opportunity to shake up traditional differences. Specifically, it had led to a new way of thinking about the transition from the physical world – where the relationship between artist and audience is indirect – to the digital world – where that relationship is immediate. UFC Que Choisir and other consumer and civil society organisations had been at the forefront of these debates. At issue was the long-awaited revision of the 2001 European directive on copyright and related rights in the information society. This had led to an alliance between consumer organisations and 15 creative organisations which aimed to show that the so-called conflict of interests between the two sides was in fact entirely artificial. The findings of a recent survey on Internet users conducted by the University of Paris show that consumers are overwhelmingly sympathetic to the case for fair remuneration. He emphasized the central role played by private copying and the adverse effects of Digital Rights Management (DRM). The aim of the alliance was to promote flexible legislation, based on the idea that private copying played an essential and

rightful role within a digital universe that was built on copying. The protection supplied by rigid technical measures, and DRM in particular, though much championed by the European Commission, made no sense in the context of the digital environment. DRM threatened the whole concept of interoperability and free software that has its place alongside proprietary software. French deputies would be discussing the problem of interoperability in the next 2/3 days. The prospect of this new legislation had meanwhile fostered debate on alternative forms of remuneration for creative workers. There was now a consensus in favour of global licences, not as the sole means of remuneration but as a complementary instrument for use within the digital environment.

The context for this meeting was set by **Leonardo Cervera Navas (DG Internal Market, European Commission)** focusing on those issues of particular interest to him on a professional and personal level. Delegates were urged to note his email address and provide him with factual feedback. He stressed that the Commission's involvement in this debate would not necessarily lead to policy proposals since the issues at hand would be decided by political leaders and service providers.

Issues of particular interest included the following, although Navas stressed that the list was by no means exhaustive:

1. The impact of the 1997 Directive on Copyright and Related Rights in the Information Society. The Commission was planning a report on the impact of the Directive in terms of its response to the challenges of the information society. Participants were invited to send evidence of any benefits and most particularly any costs or problems arising from the Directive.
2. The relevance of the Directive, as presently worded, to the new digital environment. Had new conflicts or legal concepts come to light since 1997 (when the Directive came into force) that should now be taken into account?
3. The efficiency of exceptions to copyright in Europe. Were such exceptions sufficiently organised, or did they require some redefinition to suit the digital environment?
4. The role of digital libraries, and scholarly publishing in particular, in giving access to knowledge while respecting the interests of rights-holders.
5. The application of legislation to orphan works (following the US example). How might the US debate be translated to Europe, given that the US and European situations were not directly comparable.
6. Technical protection measures (TPMs), particularly in relation to abuse.
7. Updating expectations in the digital world. Expectations relating to the off-line world were largely misplaced in the digital world, and this was one of the major problems for today's users of digital technology.

Public consultation was essential on all these points and Navas stressed that he welcomed discussions in the course of this two-day conference.

**Jorgen Blomqvist (WIPO, with special responsibility for copyright)** emphasised that the copyright system was intended to serve the interests of creative communities and consumers alike. He stressed that discussions within WIPO had always sought to balance the requirements of all stakeholders. He agreed with James Love that, in the context of the present debate, creative communities and consumers did have interests in common. It was after all the basic premise of copyright law that creative workers needed the widest possible audience, and consumers wanted the widest possible access. Creative workers expected to be paid for what they did, and consumers were entirely accustomed to pay for intellectual goods. Creative workers and consumers were not however the only parties in this debate. Copyright law was also concerned with the rights of publishers, a group with a heavy financial stake in creative works and one of the first to lose out to pirate sales. The laws they had obtained, from the original Berne Convention to the bulk of national legislation, had all the same failed to establish any 'sacred rule' relating to

publishing. Author-publisher contracts were based on consumer law and as such designed to protect the rights of the author, as the 'individual consumer', against the predations of the powerful and often very resourceful publisher, or 'vendor'. In recent years, other producers had established a more effective position within the copyright system that had been flexible enough to absorb these new business models.

All of this had to be considered against the backdrop of ongoing discussions at WIPO that today were focused on protecting the rights of broadcasting organisations and updating the rights of producers. This was a highly political issue, particularly since consumer and user interests were now much more strongly represented at WIPO proceedings. Having finalised the question of rights, the next stage would be to consider the limitations and exceptions to those rights. Here again, the copyright system had always sought to uphold a balance of rights: those of the copyright holder and those of other groups.

**Sasha Wunsch Vincent (OECD)** spoke about content creation, access and distribution, from an OECD standpoint. Events like this one helped to put the issue on the policy-makers' map, he said – an essential first step, given the sensitive nature of the issue at international and national level. Views from all quarters were necessary to achieve the proper balance, enabling the OECD to provide independent analysis. He reiterated the call for factual evidence to inform the work of the policy-makers. He also pointed out that unlike WIPO and the European Commission, the OECD was not directly responsible for the framing of legislation. Its task was to make recommendations that would feed into legislative action at national and international level – a role that was more analytical and less political.

The recommendations on broadband development issued by the OECD in 2004 had supplied the basis for a number of on-going projects. These were currently focused on two main themes – the digital economy and consumer policy issues – but would later include a horizontal project linking patent issues with questions relating to medicine, music, films, research, etc. The OECD was inclined to treat consumer policy as a self-contained issue. Mr Wunsch preferred to regard it as a dimension that spread across a number of debates, and urged participants to suggest ways in which consumers might contribute to present discussions. He also called on them to keep a watch on on-going projects and apply them to their own work at national and international level.

**Ahmed Abdel Latif (Egyptian Ministry of Foreign Affairs)** focused on global norms and rules, and their effect on creativity and innovation. Commenting on the importance of the present meeting, he highlighted some of the key points at issue:

1. The proliferation of rules and norms over the past 20 years: the challenge today was to implement global rules at the national level while also seeking to influence them at the international level.
2. The need to make a very clear distinction between creativity and intellectual property. The latter was an important tool to promote creativity but it was only one of the tools available, and by no means an end in itself. There was a growing awareness that the IP system no longer fulfilled its mandate in this respect and could even hinder the dissemination of knowledge. The WIPO Development Agenda, launched two years ago by 14 developing countries, aimed to restore IP to its intended role as a tool – not an end in itself.
3. The inappropriateness of the 'one-size fits all approach' in the specific context of the digital environment. This approach reflected the lack of engagement of many stakeholders and could not possibly account for conditions in countries at very different levels of economic and technological development.

For developing and developed countries alike, it was vital to reconcile the objectives of paragraphs 1 and 2 of the Universal Declaration of Human Rights. Originally these two paragraphs were quite separate and it had taken a major political decision to make them

consecutive. The intention had been to show that the protection of the material and the moral interests of authors went hand in hand with the sharing of knowledge and access to information. That message was still relevant and needed to be heard today.

**Discussion** focussed on DRM and fact-based evidence. Asked whether WIPO specifically supported the criminalisation of the breach of DRM systems, Mr Blomqvist replied that WIPO would stick to the wording of the treaty, which required adequate, effective legal protection but did not indicate whether the breach of DRM should be criminal or not. Commenting on fact-based evidence, Peter Jenner (International Music Managers' Forum) pointed out that since this was inevitably historical it was very hard to suggest what evidence there could be for future possibilities. He added that this issue was exaggerated by the fact that economics focused on what could be measured. The availability of data depended very much on whether information was measurable and who was doing the measurements. In the case of IP, producers had hijacked the arguments in the treaty because they had had the resources to measure themselves in the past. Alain Bazot replied that to defend one's case one needed expert opinion. But on which side did the burden of proof lie? Contrary to popular opinion, for instance, there was no demonstrable link between downloading and the loss of record sales. This had been clearly shown by the findings of the study carried out by Nanterre University, Paris. All too often, he suggested, the burden of proof lay with professionals when the evidence they provided was in no way substantiated. Returning to fact-based evidence, Mr Wunsch agreed with Mr Jenner that not everything was measurable. In practice, however, 'fact-based evidence' could be taken to mean consumer complaints, for instance, or issues arising from DRM that might relate to disclosure issues of relevance to a report on DRM. He added that an OECD study on the relationship between file-sharing and music had found the arguments to be very one-sided. Input from consumer organisations in particular had been conspicuous by its absence. To compensate for this imbalance, the OECD had invited input from university institutions. Suzie Turnbull invited the OECD to undertake an analysis of the economic impact of lack of interoperability on developing economies and economies in general with particular reference to consumer segments. Such an analysis, she suggested, would be easy to model and particularly applicable to the negotiations on DRM.

## Panel 2 - Development of new medicines – scientists and patients: new ideas for financing the costs of R&D

**Tim Hubbard (Wellcome Sanger Institute)** spoke of the problems arising from the present system of financing R&D for new medicines. The market today was biased towards the development of drugs that sold well, as opposed to drugs for neglected diseases. From the scientific point of view, a marketing monopoly that relied on IPR (Intellectual Property Rights) was an obstacle to research. The system was also highly inefficient –only 10% of sales income was spent on R&D. Generic drug production was much cheaper but forbidden for as long as the present monopoly pricing structure remained in place. Hopeful changes included PPP (Public-Private Partnerships), a form of research funding that did not depend on market support. Speaking for the scientific community, Dr Hubbard supported the idea that the market should be split into sales-based activities based on generics and directly-funded activities that supported research. A treaty would make it compulsory for all countries to contribute a minimum of 0.1% of their GDP to R&D in medicine – which is no more nor less than most countries currently spend in this area. The scope of such a treaty (all R&D, or just R&D for neglected diseases) was a current debate for many organisations including the WHO and the Commission for Intellectual Property.

Efficient mechanisms were essential if a system of direct funding for innovation were to provide a viable alternative to the marketing monopoly. In the case of the human genome project, the race between public and private interests had stimulated thinking about the possibilities of public

funding. It had been suggested, for instance, that companies might fund Open Access Data – because the more people analyse a body of data, the more valuable it becomes. Two business reports funded by the Wellcome Trust provided ample 'fact-based' evidence that Open Access publishing might save 30% on publishing costs for governments. The human genome project had shown that the open publication of data was a valuable framework for competition. By guaranteeing transparency, it facilitated evaluation by funding agencies and encouraged much greater efficiency.

**Nicoleta Dentico** represented **DNDi (Drugs for Neglected Diseases)**, a PDP (Product Development Partnership) whose primary objective is to deliver 6-8 new treatments by 2014 for a restricted portfolio of diseases: leishmaniasis, sleeping sickness, Chagas' disease and malaria. A considerably developed R&D programme currently included some 20 projects. Deploring the absence of any real 'pharmaceutical blanket' for neglected diseases, Dr Dentico pointed to the current decline in overall drug production of which only 1.3% targeted diseases suffered by 11% of the population. The influence of PDPs like DNDi meant there were now 63 projects in the R&D pipeline with a focus on poverty-related diseases but not all of these would bear fruit, due to the attrition rate in drug R&D, the focus on break-through products and inadequate funding.

DNDi favoured a needs-driven agenda at the micro and macro levels. This implied an ongoing identification of needs and R&D opportunities, new incentives for innovation and, most importantly, recognition of the indivisibility of health priorities. It was vital to devise new incentives aimed at involving industry and the private sector. New policies might also be required to stimulate innovation. In terms of delivery, regulatory authorities were a key factor for R&D associations like DNDi.

Within this overall context, PDPs could provide useful models for action. Of particular relevance were two tools developed by DNDi: a policy committed to R&D as a public good; and the FACT project (fixed-dose artemisinin-based combination therapy), a collaborative initiative involving academic, public and private partners in developing and developed countries alike. This had produced the first antimalarial specifically formulated for paediatric use. Thanks to the DNDi negotiating process, the drugs produced by FACT were covered by patent-free agreements and would be available for generic production all over the world.

In conclusion, Dr Dentico commented on the new WHO resolution on essential R&D. An inter-governmental working group had been set up to devise a plan for the establishment of new R&D policies, with two years to achieve a new multilateral treaty on essential health innovation. An ambitious goal to be sure, she said, but one which would provide valuable momentum.

**Ellen 't Hoen (Médecins Sans Frontières)** talked about a 'new drug development paradigm'. It was becoming increasingly obvious that the patenting system was not the efficient engine for innovation that it was claimed to be. She noted in particular that most of the vaccines in use today had been developed without IP systems in place; also that the WHO Commission on Intellectual Property, Innovation and Public Health (CIPIH) had concluded that there was no evidence that the TRIPS Agreement in developing countries would boost R&D for pharmaceuticals for those diseases most prevalent in the developing world. Of the 1,550 new chemical products released in 1975-2004, only 1% targeted tropical or parasitical diseases. And that ratio had remained the same despite the implementation of IP law.

There was in any case a global problem in health R&D, where more was being spent but outcome had declined dramatically, and less than half of new products were therapeutically superior to those previously available. Pharmaceutical patenting moreover hampered follow-on innovation.

Signs of positive change included the revival of the essential medicines concept first developed by the WHO in the 1970s, and Dr Hoen urged greater government commitment to R&D and more

detailed business planning. Product development had to be based on what was needed – not what was technologically possible or commercially attractive. Governments should play a key role in this process because it was plainly not acceptable that those most in need should be denied access to essential medicines.

**James Love (Consumer Project on Technology)** focused on the background to Recommendation No 5 of the draft text of the Paris Accord: 'making a distinction between markets for innovation and the products that incorporate those innovations'. Access to medicines was a logical inclusion to CPTech's programme on Access to Knowledge projects. The neglected diseases problem was a primary example of a market approach that measured the value of an invention according to the capacity of patients to pay. He cited the example of diabetes where seven of the 10 countries with the highest rate of diabetes were in the developing world. In the USA too, the prohibitive cost of medication was an obstacle to treatment efficacy.

Recommendation No 5 of the Paris Accord seeks to redress these problems. The patient would pay the price of the generic product and the rewards for invention would not be connected to product price. The rewards for the R&D community would be based on patient outcomes. Money could be made available through new mechanisms such as prize funds for medical innovation that did not rely on a marketing monopoly. In developing countries, high prices could not possibly provide incentives for innovation since the people living in those countries could not afford to pay them. The WHO had proposed a voluntary pooling of patents: licensing developing countries to produce patented drugs in return for reasonable, modest royalties. Where the patents in that pool were important to developing countries, there would be financial rewards from prize funds. One way or another, high drug prices did not need to be tied to R&D incentives. If that idea could be moved forward in the Paris Accord, said Mr Love, it would change the world for the next 100 years, serving the interests of consumers and scientific communities alike.

Ensuing **discussion** raised questions about the role of clinical trials and the potential structure of a new rewards-based system for essential R&D in medicine. Participants and speakers alike repeated the importance of greater government involvement in this new process. Health, said Dr Dentico, was too serious an issue to leave in the hands of the pharmaceutical companies alone. Government participation was essential to ensure that health innovation was needs-driven. Clinical trials carried out in India, for instance, had reflected marketing opportunities in North America and Europe – not the health needs of the Indian people. One of the advantages of a new, rewards-based system was that efficacy would be equated with life expectancy – measurable data not speculative gain. Clearly, the countries that marketed the most drugs would also contribute the most. But a zero rate for countries such as India and China would probably deprive them of any influence in such a system. Instead, Mr Love suggested that their contribution should be proportional to their GDP. For diseases such as malaria, contributions should be compulsory from all countries, even those at no risk from the disease.

## Panel 3 - Software: the future of the Free Software Movement

**Harald Alvestrand** is a former Cisco Fellow, now working for Google, but spoke here from a personal perspective. Patents, he said, though originally intended to boost innovation, were also highly exclusive (much more so than copyright) because they gave the holder the right to exclude the use of part of the public commons. He said patents should only be justified if they increased the value to society of what was once public.

Too many patents stifled innovation, notably 'submarine' patents that surfaced after a long period hidden. These inhibited inventors. He recommended limiting those domains eligible for patenting - starting with software - shortening patent life and facilitating the withdrawal of patents. To limit problems of innocent patent infringement, he recommended mechanisms such as the US Patent

Office's policy of publishing a limited number of patent applications within several months of filing. In general, he wanted more of the burden shifted from the inventor to the patent holder. The proliferation of patents today, he said, had reached unhealthy proportions.

**Susy Struble (Sun Microsystems)** stressed the importance of IT standards for interoperability, which was the core of Sun's business. She believed that IT standards were heading for a crash. IT standards had become overburdened with patents, fragmenting the market and inhibiting innovation, to the detriment of all parties. She agreed that many patents were counter-productive. Sun's efforts to negotiate change with the standards organisations had met with limited success because the standards on the interfaces required for interoperability were highly lucrative. Sun was deeply concerned that the companies who controlled those standards also controlled the direction of the market. This, said Ms Struble, was bad for business and consumers alike.

Ms Struble urged that the Paris Accord should include a recommendation on open standards. This had been the focus of Sun's work at EU level around the software patents directive. All parties should insist on standards that were open in every sense of the word: in terms of creation and management (democratic, participative); characteristics; and most importantly freedom of use. The technology required for interoperability should be an 'intellectual property-free zone'. Interoperability, stressed Ms Struble, was the key to innovation. Open systems products promoted the principle of 'fair use'. The more open the standard, the more likely it was to address a public need. Consumer organisations should be involved in the standard-setting process from the outset.

**Frédéric Couchet (Free Software Foundation, France)** said he believed in the long-term success of free software, because it respected four essential freedoms: of use, modification, redistribution and operation (largely Internet-based). Free software was the product of cooperation between users and producers. It owed its development to the Internet, as the provider of a network for free software producers and as the channel that made free software available for public use. The Internet had also freed users to modify and change software. Free software met the needs of businesses and consumers alike, and that would assure its future.

The greatest danger was legislation driven by the owners of proprietary software that created artificial barriers – such as software patents and DRM measures – restricting software use. Against this, he cited France's highly successful Deception by Design Campaign that brought together the producers and users of free software with hardware producers and artists, in pursuit of a system that would respect user freedom and freedom of competition. Mr Couchet urged delegates to consider similar campaigns. In the context of the Paris Accord, Mr Couchet emphasised the importance of defining basic freedoms in relation to content, and suggested that economic models applied to free software might be adapted to other areas such as content production. He urged delegates to fight DRM measures and dominant market positions, and to lobby for a law on interoperability.

Follow-up **discussion** focused on the conflict between DRM measures and interoperability, and on the role of consumer organisations in furthering openness. Susy Struble agreed that DRMs were "anathema" to interoperability but stressed that they were nevertheless essential in certain areas. Sun was looking at ways of tying rights to user identity rather than a device. Consumers could help in this process by understanding the barriers to openness. The role of consumer organisations was to raise awareness about alternatives to Microsoft, closed-source programs and 'dot-com' communications. They could also lobby banks to start using open-source programs such as Firefox. Frédéric Couchet urged consumers to do all they could to overcome the monopolistic hold of proprietary software. He stressed that free software did come with support, and this would grow as demand grew. Harald Alvestrand was asked about Google's algorithm and position on ranking. The algorithm, he said, was indeed secret but not patented (because that would compromise its secrecy). He denied that Google accepted money in return for ranking –

website listings were entirely based on popularity. He also defended Google's entry into China: the organisation had 'generated more interest in human rights in China by going in than by staying out'.

## Panel 4 - The public as a creative community: the rise of blogging, amateur video making, music production and its effect on notions of ownership, the control of creative works and the public good.

Setting the context for discussion, **Valérie Peugot (Vecam)** said that the information society had entered 'the age of expression'. New creative modes (eg bloggers, podcasts, social networking sites such as CyWorld and My Space) were now an established and significant social trend. Institutionalised expression had given way to public expression, paving the way for a new way of thinking. The famous 'digital divide' was showing its true face: the challenge for computer users was not access to the Internet but how to process information and, especially, turn it to good use.

There was a risk however that this would lead to a fragmented information society that would discriminate against those unable to participate. There was also a danger of blurring the distinction between public and private life. Consumers as 'creators' would have to reconcile their desire to publicize with their wish to protect their rights as individual consumers. Ms Peugeot urged consumer organisations to consider solutions to this impending 'schizophrenia'.
She also warned against confusing cooperation with sharing, the former being more socially necessary. Tools for cooperation could never replace human intelligence. Human cooperation was essential for consensus-building. Ms Peugot criticised the use of freely created initiatives for commercial ends, sometimes justified but sometimes no more than the exploitation of collective spaces that had been created for other purposes. Overall, the fundamental time-space relationship had changed. The place of production was no longer the factory or the office but the entire planet. Factory or office hours had been replaced by the spontaneity of the Internet. This created a need for new forms of socialising and solidarity that would guarantee freedom and equitable development, hand in hand with individual cooperation.

**Jean-Baptiste Soufron (Wikimedia Foundation)** said new opportunities for public participation in creative activity were under threat. Copyright law had progressed from a logic designed for control to a logic that favoured innovation. But today that innovation was threatened by DRM, jeopardizing the future of the Internet's non-commercial user community (eg Wikipedia, free software-based servers and others). DRM measures were incompatible with the concept of the public as author, because that brought into play public rights not author rights. Now it was public rights that should prevail over those of the author.

Copyright law, which was originally a system of political censorship, had been progressively modified by limitations founded on fundamental democratic liberties. These limitations were legal rights, not exceptions, on which had been built enterprises such as Walt Disney and more recently Wikipedia. Subjecting them to DRM was a violation of public rights. DRM threatened the growth of the public domain – eg in France, the Appeal Court now charged users to consult rulings on its website which were formerly available free of charge. Such instances would utterly defeat the purpose of producing public data in the first place. It was important that consumers should understand the bigger picture: DRM was threatening to expel consumers from a society they knew into one that they did not. It was time to rethink the general description of copyright law and come up with a coherent and relevant new model.

**Cenk Uygur (The Young Turks)** said that the Internet was now in a 'golden age', especially in terms of the interaction between consumers and professionals. Here society had moved models, opening up opportunities that simply did not exist before. Thinking of his own early experience in

the world of television, he noted how today's technology made it possible for any Internet user to launch their own 'show' at vastly less expense and with no management constraints – choice for the consumer was accordingly that much greater (eg The Huffington Post as an outlet for 'leftist' thinking). Writers could now become famous entirely on their own merits, irrespective of their connections.

The Internet was 'a great, great free market', but this would soon end because the very neutrality of the Internet was under threat. Major corporations like AT&T and Verizon were lobbying Congress for the right to control where users went on the Internet, how fast they got there and how much they paid for the service. Mr Uygur urged participants to act immediately to uphold the principles of net neutrality in forthcoming telecom legislation. He also pointed out, however, that were Internet freedom to be written out of US law, it would open up enormous opportunities in European countries.

Follow-up **discussion** stressed the value of diversity in broadcast media, so as to guarantee a diversity of information. The Internet was only one manifestation of society's appetite for the mass appropriation of collective intelligence. Conventional TV programmes such as 60 Minutes, for instance, were testament to the continuing public demand for broadcast journalism. Creative Internet channels might be a liberation from conventional TV, but they were also narrower, more specialized forums, at risk of 'tribalisation'.

## Panel 5 - Films, video and art – film-makers, artists, actors and the viewing public: How best to support the livelihoods of film and video artists? Do current copyright regimes make it too hard to create documentaries or other works that remix other works?

**Sarah Andrew (artist and lawyer)** described herself as a specialist in freedom of speech issues, particularly those arising from copyright activities. She focused on the subject of artistic appropriation and its rightful role as an established form of creativity – a tradition sometimes termed 'cultural discourse' but also deemed an act of theft. The Paris Accord should bridge this linguistic schism between an act of theft and an act of cultural understanding. It had to devise some new determining factor relating to acts of artistic appropriation. The problem with the Creative Commons was that it provided for appropriation only on condition that no commercial use was intended. She stressed the urgency of the issue in light of the bill currently before the UK Parliament that would effectively criminalize 'Fair Dealing'. Initially introduced to allow criticism of literature, the provisions regarding 'Fair Dealing' had later been expanded to cover music and media. The amended provisions ruled that appropriative use of a cultural, copyrighted artefact was legal provided such appropriation was necessary to understand the artefact within a given cultural context. DRM measures, warned Ms Andrew, directly jeopardized such legitimate use because they threatened to deprive consumers of access to online images to which they were entitled by virtue of the Fair Dealing principle. The main issue was not access itself but the way that access was used. The Paris Accord should confirm that right of access was absolute. UK provisions regarding data protection and privacy were a possible model here. The Paris Accord had to recognize the impending threat posed by DRM measures to freedom of expression and freedom of speech.

**Prayas Abhinav (new media artist)** introduced himself as an artist who made his living working with a variety of creative media. He presented an overview of strategies for collaboration between creative artists and audiences, outlining models that he regarded as appropriate in the Indian context. Examples included suggestions for fundraising, the pooling of resources (equipment, skills, services etc), the provision of accommodation (for film and video artists) and the setting up of support networks. Almost all of the foundations that supported film-making in India (eg the

Public Service Broadcasting Trust and the National Film Development Corporation) protected their productions under restrictive copyrights, sometimes shared with creators and sometimes exclusive. He noted that very few Indian films were available online or in other open archives. More open discussion with audiences might lead to a broader understanding of commercial opportunities, encouraging support for the release of new works.

**Gordon Quinn (Kartemquin Films)** focused on the U.S. doctrine of 'Fair Use'. Over the past 20 years, the consolidation of rights within large corporations meant that documentary film-makers who used Fair Use were increasingly open to intimidation and threats of legal action. An overly rigid approach to copyright compliance was now a direct impingement on creative practice.

The Documentary Film-maker's Statement of Best Practices in Fair Use served to clarify reasonable application of the 'Fair Use' doctrine, explaining its application in a range of situations commonly experienced by documentary film-makers: 1 – using copyrighted material as the object of social, political or cultural critique. 2 - quoting copyrighted works of popular culture to illustrate an argument or point. 3 - capturing copyrighted media content in the process of filming. 4 - using copyrighted material in a historical sequence.

It was essential, he said, that consumers should understand how much had been ruled out by the abuse of the Fair Use doctrine in the U.S. – eg the song 'Happy Birthday', copyrighted by two 'litigious' old ladies in Arizona who rarely allowed unlicensed use of their material. The problem was not widely publicized, partly because those who depended on Fair Use did not want to attract attention, and also because Fair Use claims were rarely challenged in court (lawyers knew the law and didn't want to risk a legal precedent by losing).

**Dominick Luquer (International Federation of Actors – FIA)** focused on issues affecting performers. For performers all over the world the realities were harsh, said Mr Luquer. Theirs was an 'unrecognized profession' with no bargaining clout within the industry. Performers were highly productive, but the financial rewards were poor and job security was largely unheard of. Most actors were forced to 'fake' freelance contracts for full-time posts, so avoiding state welfare and social charges. Great stars were very much the exception.

The challenge today was to guarantee the livelihood of video artists within a trade that denied them negotiating rights. Performers had to pull together to defend their professional interests, and they had to understand their rights, particularly their IP rights. Authors' rights, whether exclusive or non-exclusive, were important tools that helped performers survive within their trade. In particular, they were a guarantee of income 'between jobs'. Today, however, authors' rights were increasingly superseded by copyright rules and this raised the need for a code of good practice covering authors' rights. Mr Luquer urged advocates for development to campaign for this at international level. It was time that performers obtained recognition for certain basic rights that the industry still denied them.

Further **discussion** focused on the unsuitability of the copyright system as a means of protecting artistic productions, and explored other ways in which artists might be remunerated for re-use of their work. James Love suggested a 're-use' charge on new works that used fragments of other productions, so avoiding copyright clearance problems. Sarah Andrew warned that artists could 'not have their cake and eat it': they could not ask for absolute access to material but refuse it to their own works. Gordon Quinn noted that the remuneration issue was difficult because it threatened to undermine certain legal protections. He welcomed the Paris Accord's exploration of the moral rights of authors/film-makers in terms of their responsibility towards the subjects in their films. Copyright was not an appropriate way of enforcing that responsibility. New structures were required to protect the moral and ethical viability of works.

# DAY TWO – TUESDAY JUNE 20

## Panel 6 - Recorded music: songwriters, performers, and listening public – How to maintain the livelihoods of songwriters and musicians while giving the public access to recorded works.

**Peter Jenner (International Music Managers' Forum)** is a professional manager with 40 years' experience in the music business. In that time, he said, the business had undergone a technological revolution but its raison d'être – making money – remained the same. Musicians wanted to create and communicate but they also had to make a living. Peer-to-peer networks denied them that right by avoiding music royalty fees. Traditionally, musicians had enjoyed mechanical royalties from record sales and performance royalties from commercial/public performance of their material. Today, in the context of the Internet, the distinction between 'performance' and 'mechanical' no longer applied and had been replaced by the two issues of access (eg listening to the radio) and ownership (buying a CD or record). Any future system of licensing, said the speaker, would have to remunerate artists in proportion to the number of plays. He favoured blanket licensing, based on a fixed monthly charge for access to music, though he noted that such a system would raise DRM issues.

If every subscriber in the world paid $100 a year for access to music, this would equal the value of current music retail sales. Seen in those terms, the music industry had vastly more to gain from embracing the new technology, rather than insisting as it did now on payment for individual downloads.

**Jenny Toomey (Future of Music Coalition)** considered the challenges and opportunities for artists in a new, open Internet marketplace. The Internet had promised artists an environment free of the constraints found in conventional media (commercial radio, major distribution, etc). Its viability in those terms was now directly threatened by U.S. conflict over net neutrality. Artists had to preserve a genuinely open Net and avoid what she called 'Internet Payola'. There was now an opportunity to create new structures which artists would readily adopt because the current system did not have their interests at heart. The Creative Commons (CC) platform could be the basis for an entire marketplace where copyrighted materials would circulate in a more open manner. The challenge for policy-makers today was to devise a commercial structure that could overlay the CC platform, ensuring artists were justly rewarded for their efforts. A system of voluntary licensing was a key aspect of that structure.

**Neil Leyton (Fading Ways Music)** noted that the Creative Commons system offered a choice of licences, allowing artists to place conditions on the use of their copyrights. The Performance Rights Organisation (PRO) was opposed to CC licensing because it was not compatible with some of their membership agreements. Mr Leyton rejected that claim, arguing that with minor changes to the wording of those agreements CC non-commercial licences could become compatible provided there was good will on the part of the societies involved.

His own independent record label used CC licensing both to protect fans from lawsuits and to help them share in music. The bulk of income came from 50/50 deals with artists who wanted to retain control of the work they put out – proof that artists could make money outside the four current streams of rights. It was his hope that any future system (such as global licensing) would be administered by a new, artist-run PRO agency that was outside the realm of the entertainment industry. The artist's need for remuneration could be reconciled with the consumer's need for access. Improving access was essential to build a fan base that wanted ownership. The fan support packages offered by Fading Ways were a good example of a new business model that went hand in hand with the CC concept.

**Aziz Ridouan** is the founder of the **Audionautes ('Audiosurfers')**, an association providing legal assistance to those in France accused of illegally downloading music. Audionautes has won a number of cases by invoking the private copying rule.

Artists, he said, deserved a just reward for their efforts, and consumers needed the right to download without risk of prosecution. Global licensing fulfilled both of those requirements. Fines, on the other hand, were likely to prejudice the interests of artists and consumers alike. In particular, they threatened to drive increasing numbers of Web users towards encrypted peer-to-peer networks, which would make it difficult in the future to persuade them to adopt legal downloading sources. The music industry had so far conspicuously failed to provide Internet users with any viable alternative to so-called 'illegal' downloading. What was needed were solutions similar to those adopted by other medias (eg Canal Play in France, or ABC and Fox in the US, for video downloads). The services offered by Sony Music, meanwhile, were not attractive to Web users because they provided no interoperability. There might be other solutions long-term, but global licensing might meanwhile solve the present dilemma. It was important to keep all options open.

**Christian Paul (Member / Deputé of the French Parliament)** spoke about France's December 2005 debate on the new digital culture. Copyright had been at the heart of it, and global licensing had won the majority vote, being seen as a realistic, feasible solution to the demands of the new digital environment. The fact that the government was now trying to back-track in no way diminished the importance of this crucial first step towards a legalised system of file-sharing. It was significant, for instance, that people now referred to 'downloading' in preference to 'piracy'. Mr Paul hoped that the text of the law on piracy currently before the French Assembly would make progress on interoperability, and improve the exceptions to copyright provided for teachers, researchers and the disabled. The proposed law was hotly contested since the issue as a whole was enormously controversial and there were many interested parties.

The first main issue was the question of Net neutrality and how to uphold the three tenets of neutrality (neutrality of networks, neutrality of data format and the principle of user confidentiality). The second was how to support the artistic community by improving understanding of the new cultural and economic models. People had a right to know what to expect from the new digital environment in terms of its future effect on the economics of creation. Global licensing was one of many approaches designed to guarantee that the Internet contributed to the financing and distribution of cultural artefacts. The mechanics of that process were as yet unclear but the debate in France had marked a turning-point in the continuing struggle for a more open digital environment.

Ensuing **discussion** focused on the new economic model for music downloading and sharing in line with new media (Internet and independent labels). Mr Jenner said sites such as 'MyMp3.com' showed potential for charging users. Users were prepared to pay, but not to big corporations. Industry might accept global licensing as the only available route out of present problems. Mr Paul said file-sharing was irreversible; governments would surely exploit this source of revenue; and global licensing had to be compulsory, and based on Internet access. Another speaker urged that global licensing should give artists the fair deal that current statutory licences did not (ie share the revenue fairly among all artists) while remaining sufficiently attractive to the most successful. Mr Leyton pointed out that this further reinforced the need for an artist-run scheme. Mr Aziz noted that a French survey showed that 75% of people were in favour of global licensing and prepared to pay a fixed monthly charge.

Suggestions regarding the potential structure and administration of global licensing included a framework where funding was split equally between creation, research and public services. Another was a compulsory system that was operated by competitive intermediaries chosen by the consumer. Unlike in the conventional retail model, remuneration would not necessarily be linked

to downloads. Mr Paul said that the question of how to distribute the funds from global licensing had technological and democratic implications, being dependent on the one hand on a system of traceability and Internet traffic monitoring; and on the other on a properly elected distribution agency.

**Video Link with musician Martyn Ware (Human League, Heaven 17, Illustrious)**
Mr Ware concentrated on IP issues saying that the current constructs for Intellectual Property were not serving the interests of the artistic community. Technology was now putting artists' interests at risk and jeopardizing the quality of their work. New technology favoured distributors at the expense of artists - eg iTunes where low overheads had not produced a better deal for artists.

Turning to DRM, Mr Ware said that this was 'excellent' in terms of consumer information but did not necessarily serve the needs of artists. He urged pressure groups to settle their differences and reach a much-needed consensus on DRM. It was vital not to perpetuate past iniquities such as unfair contracts that flouted artists' rights. Heaven 17, for instance, despite their enormously successful career (5-6 million albums) had taken 25 years to recoup money owed to them.

Mr Ware concluded by stressing the cultural significance of music as an international language and driving force. He said it was important never to forget that the product at issue in this debate – art – was entirely created by artists. Artistic production was clearly suffering under the present system and it would continue to suffer until artists received a more equitable reward.

In the ensuing **discussion**, Mr Ware agreed that artists should be protected from unfair contracts but thought standard global terms for artists were in practice unlikely. He said there was definitely support for a new system, and speeding up payment for artists would be a major step forwards. However, most artists were not 'technically engaged' and tended to leave such questions to their management. All that artists really wanted was to make music and get paid for it.

## Panel 7 - Scholarly Publishing: Authors and readers. Does the current system of scholarly publishing serve the interests of authors and readers? If not, what can be done about it?

**Hervé le Crosnier (Cfeditions**) noted the different issues at stake here, relating to a highly specialized community operating within a document-based information circuit. Typically, university-funded researchers published with no expectation of payment. Peer review was a key element of this process: the more an article was used, quoted, applied and built-upon, the better for research and the author's career prospects. It was in the publisher's interest to manage and also promote that process by placing articles in top-ranked journals. Publishers aimed to keep the market as stable as possible with repeat sales of the same item (through subscriptions to reviews and through the copyright system). The problem was the concentrated nature of the sector, dominated by a few major worldwide publishers making equally enormous profits (up to 40% of turnover). This was partly due to their highly captive market and partly because the buyer was not the reader but a public-funded library, obliged to provide access free of charge to such works, and to preserve them. Pricing was accordingly not subject to normal market pressures.

Publishers would want to maintain that status quo in the digital environment, but this was unlikely with Open Access that made digital content freely available online, to readers and libraries alike. The concept proposes that scholarly articles are posted in open archives where they can be consulted and modified by peers. A technical distribution infrastructure would provide free access to scientific works catalogued in institutions worldwide.

Examples elsewhere on the Internet showed that Open Access could be made to work without sacrificing the advantages offered by off-line journals (notably peer review and ranking). Libraries were key players in this Access to Knowledge movement that, if successful, would set a valuable precedent for other publishing sectors.

**Jean-Claude Guedon (University of Montreal)** did not think the 'one size fits all' approach would work in the highly specialized scientific publishing sector. In this area, there was no conflict between producer and consumer because the creator/author was also the consumer/reader. The publishers served as go-betweens. Scientific publishers had gained a footing by transforming the process of peer review, replacing the subjective evaluations of an old-boy network with a more thorough, objective examination. New intermediaries were emerging, but the sector was dominated by big business interests – commercial 'interlopers' who reaped lucrative profits by effectively taxing governments (since most research articles depended on public funding). Subscribers to Brains Research, for instance, paid approximately $22,000 pa for a single review. Being the only ones with the resources to publish new reviews, these corporations also decided what scientific fields were worth developing in communications terms. The result was a system that was costly, obstructive to the circulation of information and, worse still, likely to distort the flow of that information.

The Open Access Movement had methods of evaluation that would improve the present ranking methodology. This was essential for two reasons. First, because the scientific community was highly competitive and, second, because the current ranking process served more as a 'passport' into that community than as a method of quality control – witness all of the recent research fiascos, most notably South Korea's stem-cell scandal. Open Access was an opportunity to create open archives with their own systems of evaluation that would complement the conventional peer-review process – one model might be the Guide Michelin.

In the field of human and social sciences, 75% of all publications to date were no longer in print but remained under copyright. Of the remaining 25%, 16% were in the public domain and 9% were under copyright but available from libraries. Mr Guedon urged that, in the specific case of state-funded monographs, the Paris Accord should rule that when these works were no longer available from libraries, the rights should revert to the author who should then agree to make them freely available through Open Access.

**Philippe Aigrain (Sopinspace)** spoke on the basis of his work for the Euroscience Working Group on Open Access (Euroscience is a European NGO for scientists and science-policy professionals). Some OA supporters favoured 'pure' OA archiving (with no change in published journals). Some saw OA archiving as a means to develop new publishing models, including new ways of funding publishing organisations. This approach had a bearing on the structure of the scientific community itself, and the question of who should retain control of certain key parameters (reputation, recognition and the definition of sub-fields) – the scientific community or the publishers of scientific journals?

It was a basic 'law', said M. Aigrain, that any community that focused solely on its own autonomous interests would surely lose that autonomy. Those who argued for a pure OA archiving policy claimed that scientific publications were strictly for the scientists working in that particular specialised area – which was a self-fulfilling prophecy. Experience showed, on the other hand, that OA journals led to a change in readership and, ultimately, in the way those journals were written. It altered the composition and boundaries of those specialised scientific communities. It encouraged scientists to read papers on research in other disciplines, and this was particularly important for those scientific debates with a wider social significance. Scientists were naturally rigorous in their scrutiny of work in their own fields. But if they never ventured beyond those fields, they could not be expected to apply that same rigour to the statements of scientists in other areas.

The risk that non-specialised readers might fail to understand the relevance of the findings in a research paper was less important than the risk of specialised scientists not understanding the context surrounding their own field – which was a relatively common occurrence. It was plain, in any case, that a pure OA archiving policy would not produce the better understanding of new approaches and findings that was now required. A good example for the future was the Plos One Project, a pioneering system for the publication and creative use of scientific and medical knowledge.

Following discussion considered the conflict between conventional methods of ranking and a more open system of scientific publishing. Open Access, eg the Plos One Project, could make research results available to a wider public (teachers, politicians, NGOs, etc). It was necessary first to identify promising approaches and define guiding principles (eg the need to keep down transaction costs) to protect the flow of scientific exchange; then make a comparative analysis of parallel possibilities. An example cited was 'Cielo', a public-funded, joint Latin American, Spanish and Portuguese project that currently accounted for more than 300 OA scientific journals. 'Cielo' was designed to integrate with the international body of peer-reviewed scientific and scholarly research articles, as represented by systems such as the Science Citation Index (SCI).

## Panel 8 - Additional discussions about the Paris Accord

**Benoit Machuel from the International Federation of Musicians** (representing musicians' unions in 70 countries worldwide) noted that most IFM members were self-employed with no written contract, no guarantee of income and little or no social security benefits. In certain countries, royalties from private copying had come to represent a major source of income. Performing artists were concerned that a rigidly DRM-controlled environment would rule out private copying exceptions. DRM was expected to restrict the use of copyright, especially private copying – more worrying because most artists were bound by unfair contract terms that forced them to assign their rights to producers. If royalties from private copying were now to be sacrificed to DRM, earnings from contracts could never replace this income. In the battle for control of rights launched by producers, performing artists stood to be the losers. The IFM therefore aimed to strengthen its relationship with other stakeholders, and consumer organisations in particular. Mr Machuel proposed an alternative vision of RMI (Rights Management Information) based on an identification of artist rights holders and the pursuit of their rights to remuneration, and the protection of consumer privacy and right to copy an original work.

**Terry Fisher (Harvard Law School)** began by suggesting modifications to the Paris Accord:

I) A statement of core principles up-front (eg innovators should be compensated in proportion to the social values of their creations).
II) Rewording Key Principle No 4 of Access to Medicine: 'Systems for compensating R&D should address areas of greatest health need irrespective of the wealth of victims of disease, taking due account of the needs of those subject to rare illness.'
III) Simplifying the Software and Recorded Music sections so as to avoid much of the present detail and highlight key issues such as the need for interoperability, legal systems that sustain fair competition, and fair remuneration for artists.

The speaker then outlined a pilot project in line with the spirit of the Paris Accord. Launched two months ago by Harvard's Berkman Centre for Internet and Society, the new scheme was based on a tax and royalty system similar to the one recently pioneered in France. It had been introduced with some success to a variety of jurisdictions, first in China, then in Canada, Brazil and Scandinavia. Structurally, the new system functioned as a non-profit, wholesale cooperative for the exchange of digital recordings, made over to the system by the artists. Their recordings

were deposited by content providers (existing copyright holders and intermediaries such as music publishers, film studios, record companies, etc) then distributed by access providers (broadband suppliers, mobile phone providers, universities and individual firms). The subscribers were members of the public who shared works through peer-to-peer networks and obtained licences. Their behaviour was tracked so as to monitor the frequency of use of particular works. Members paid their access providers who in turned paid the cooperative, 85% of the proceeds going to the content owners and 15% to the company that operated the system (which might be a profit-making enterprise in each jurisdiction). To address the moral rights issue, the licences at the foundation of this new regime came in two forms, one with a higher rate of return for artists who assigned all reproductive rights to the cooperative (including, in particular, the right to prepare derivative work).

**Molly Beutz (Human Rights Advocate with Yale Law School)** noted three main ways in which human rights were relevant to the relationship between consumer and creator that was the focus of the Paris Accord:
1 As the right of artists to participate in cultural life and profit from their work.
2 As a means of obtaining other rights (eg R&D to protect the right to health) or limiting intrusive rights (eg surveillance or tracking rights).
3 As ends in and of themselves.

The right to participate in culture was particularly important since it included the critical procedural right to participate in the definition, preparation and implementation of policies on culture – a vital aspect of the transparency represented by the Paris Accord. The use of the human rights discourse in this context was not without risk, particularly since it gave emphasis to individual legal rights within particular states (rather than across boundaries). But it did hold a number of interesting advantages, not least of which was its value as a rhetorical tool in awareness-raising campaigns, and its reliance on the principle of universality. Ms Beutz recommended exploring some of the strategies employed by human rights advocates to achieve change.

**Volker Grassmuck (Humboldt University)** spoke for civil society group privatkopie.net, established to lobby the German government in favour of retaining the private copying exception in digital media. He recommended that the Paris Accord should explore three avenues of discussion: I) the emerging 'Droit d'Auteur' and 'Copyright Law' divide; 2) the role of publishing associations as collective management organisations; 3) the implementation of a 'competitive' global licensing system with compensation restricted to content not covered by DRM.

On Point No 1, the speaker quoted an extract from the Digital Rights Management Report by the All Party Internet Group in the UK. This showed that 'Droit d'Auteur' countries were far more sympathetic to the flat-rate compensation solution than countries under copyright law (eg the UK and U.S.). Studies showed however that the new system could be made to work within the framework of international copyright law and this point should be highlighted in the Paris Accord. On Point No 2, the speaker recommended the establishment of an artist-consumer alliance to persuade publishers to adapt to the on-line world and find new ways of allocating funds to artists. On Point No 3, given that DRM was inevitable, the speaker said a policy of excluding DRM-protected content from revenue under the global licensing system was essential to offer a competitive alternative.

**Ashraf Patel (Open Society Initiative)** spoke about the Paris Accord from the perspective of the developing world, particularly southern countries. The views expressed, he said, were those of an outsider from a country that hoped one day to follow the example set by the TACD and other consumer groups represented at the conference. He appealed for ideas and support to begin to develop the capacity of civil society in Africa and Southern Africa in particular where, he said, the challenges were essentially structural. Quoting an extract from the Open Society Initiative's recently launched publication 'Open Space', he described how poverty and disease denied

access to the digital environment.

Many of the issues on IP rights under debate at the conference were an everyday reality for developing countries, especially the poorer countries. The discourse in the developing world was fundamentally different since it revolved around questions of structure and infrastructure. He noted that there was no proper public health system in southern Africa and that the African continent as a whole paid seven times more for Internet access than any other continent in the world. The speaker recommended that the Paris Accord should include a statement in support of knowledge-sharing activities with consumers in the developing world, and the promotion of a greater diversity of language on the Net.

**Felix Stalder (Openflows Networks)** agreed with Terry Fisher that the Paris Accord attempted to cover too many points – far better to focus on certain key principles and show how they could be made to work within each of the areas in question. Two main principles had emerged from discussions: 1) the innovators' right to be recognized, morally and economically, for their work; 2) the public's right to access those works free of charge and, equally important, re-use them. The right to re-use was particularly important in the non-Western world where people were usually recipients of knowledge rather than producers.

Reconciling these objectives meant finding ways of financing innovation in the first instance without controlling the right to copy those innovations. As explained by earlier speaker James Love, the two were not mutually exclusive. A vibrant medical R&D sector could be entirely compatible with a vibrant generic-drug manufacturing sector. Open access and the right to re-use did not necessarily exclude recognition or remuneration for innovators. Controlling the right to copy, on the other hand, did lead to monopolistic practices (especially in the field of medicine), rigid user-control strategies such as DRM and loss of creativity and diversity.

The Paris Accord should highlight such principles and provide evidence of their practical application - which would vary from area to area. The principles themselves were overarching, said Mr Stalder, but the strategies required were quite specific depending on the area in question.

Final speaker **Nick Ashton-Hart (Former Executive Director, IMMF)** also gave special emphasis to the definition of a set of general principles. He suggested adding half a dozen overriding principles per thematic area, with a strong preamble. Ideally, this should be achieved within the year so as to 'prosecute a joint programme of action', striking 'hard, fast and often'. The Accord had to be written in persuasive language so as to communicate equally with individual artists and the public at large. Artists were reluctant to fight for change, for fear of losing what little they had. The Paris Accord had to win their commitment. This could provide the basis for future work on the thematic areas together with suggestions for specific programmes of joint action and lobbying at international level. It was essential for the creative community as a whole to state its case before governments, making it plain that it did not want 'something for nothing'. A coalition of consumers and artists would prove that point.

Speed, concluded Mr Ashton-Hart, was of the essence because Europe was now close to implementing a number of important new initiatives. The conference had provided welcome evidence of a real meeting of minds between consumers and artists, providing all the impetus required to act without delay.

In the **discussion** that followed, Terry Fisher responded to a number of questions relating to the pilot licensing system and other connected issues. These are summarised as follows:

- How would the new system prevent the misuse of personal information? The pilot project, like any usage-based, government or privately operated licensing system, needed to monitor the rate of consumption of individual works. Misuse of that information might be prevented by obtaining opt-in consent prior to data collection; and by destroying data as

soon as possible after collection (currently the subject of fierce debate in the U.S.).

- Would the new system replace traditional channels? Not formally but perhaps in the long term, if it proved more efficient in terms of providing consumers with access to entertainment, and producers with efficient distribution and compensation mechanisms.
- Would subscribers need to use a dedicated ISP? Yes.
- How might it deal with the legal ambiguity of private non-commercial copying, which is not removed by Creative Commons licences? Solution could be a proactive or retroactive up-front licensing system; or an internal liability rule for compulsory licence holders that would give original owners half of the proceeds from the sale of derivative works that were originally copied for non-commercial purposes.
- How does the pilot scheme differ from systems such as iTunes? iTunes applies DRM and functions à la carte. The pilot system is DRM-free and is based on a long-term relationship with an intermediary that provides the subscriber with Internet access and access to the world of entertainment. In this form of relationship, DRM is not necessary.
- How might the new system decriminalise the burning of music onto CDs, especially for the poor in developing countries? The new scheme would limit access only so far as necessary to give artists fair compensation. But 'burns' as well as usage would have to be monitored – not to prevent copying, only to ensure that artists were compensated for that form of distribution.

Mr Fisher rejected the idea that it was within the scope of the Paris Accord to resolve the issues arising from the division between countries under Droit d'Auteur or Copyright regimes. Asked about how human rights legislation might be used in practice to resolve litigation in this area, Ms Beutz agreed that the environmental movement was a good analogy, demonstrating the potential of the human rights discourse to stimulate strategic action. Key arguments might include the principle of indivisibility and interdependence (the rights of the creator cannot be understood without also understanding the rights of the consumer and vice-versa); and the non-discrimination principle (people all over the world, regardless of the north-south divide, have a right to access).

## Panel 9 - Reflections and next steps

The speakers on this panel were:
Cornelia Kutterer (BEUC), Jill Johnstone (National Consumer Council), Ahmed Abdel Latif (Egyptian Ministry of Foreign Affairs), Philippe Aigrain (Sopinspace), Vera Franz (Open Society Institute) and Jeff Chester (Center for Digital Democracy). The moderators were James Love (Consumer Project on Technology) and Alwin Sixma (Consumentenbond).

Speakers Latif and Aigrain both agreed that the effects of the current crisis in global regulation were not to be underestimated and it was essential to lobby ahead of legislation. One possibility was to try and identify, then lobby, an international body of judiciary so as to create awareness of the diversity of issues to be taken into account by legislation. All agreed on the need for consumers and creators to seek mutually beneficial new approaches towards creativity and innovation. At international level, the campaign should look to make inroads into organisations such as UNESCO, WTO and WIPO. Mr Chester called for a global advocacy approach to counter the negative influence of advertising and marketing, and represent the interests of independent multi-media makers. Otherwise the power of the new technology would be used entirely for the promotion of consumption, not social awareness.

**Next steps**

- The Accord should be shorter and more succinct.
- The substance of the Accord should be intensely practical. To that end, assistance might be sought from a web-based collaborative platform, such as Sopinspace.

- It should begin with a statement of core principles, followed by specific sections on each of the areas at issue showing how those principles apply in practice.
- The solutions and strategies suggested in the Accord should be workable and supported by solid arguments.
- Each subject section should be quite specific, so as to address decision makers in that particular field. This was felt to be particularly important at European level where each section would be dealt with by a different directorate.
- Smaller working groups should be appointed to work on each subject section and identify the relevant decision-makers.
- For the sake of credibility, any proposals should acknowledge the problems entailed.
- The IP rights that the Accord proposes should be pitched at a reasonable level – and therefore difficult to challenge on reasonable grounds.
- The Accord must take a position on DRM: either to oppose them outright, or to propose improvements.

**Timeframe**

All agreed on the need for quick action, digital media now being a focus of political attention in Europe and North America. James Love warned that such processes took time (cf the Geneva Declaration, Access to Knowledge Treaty and Medical R&D Treaty). It was for the TACD to approve the future programme of work, but he thought it possible to produce a statement of core principles by July 2006, and detailed subject sections by June 2007. There would be ample time meanwhile for interested parties to make suggestions.

# New Relationships Between Creative Communities and Consumers

### Paris 19-20, 2006

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| Guiomar | Cano Alonso | UNESCO |
| Guiton | Séverine | Université de Caen |
| Halloran | Jean | Consumers Union |
| Hoen | Ellen | Médecins Sans Frontières |
| Hubbard | Tim | Wellcome Trust |
| Im | Kathy | MacArthur Foundation |
| Jenner | Peter | International Music Managers' Forum |
| Johnstone | Jill | National Consumer Council |
| Karpatkin | Rhoda | Consumers Union |
| Karsenty | Jean-Paul | Centre national de la recherche scientifique (CNRS) |
| Kekeleki | Evangelia | KEPKA |
| Kobayashi | Yasuhiro | UNESCO |
| Kratz | Laurent | Jamendo |
| Kutterer | Cornelia | European Consumers Organisation (BEUC) |
| Labadie | Francine | Ministère de la Jeunesse, des Sports et de la Vie associative |
| Le Crosnier | Hervé | Cféditons |
| Levy | Jessica | University of North Carolina |
| Leyton | Neil | Fading Ways Music |
| Lipsyc | Carole | ADREVA |
| Love | James | Consumer Project on Technology |
| Luquer | Dominick | Federation Internationale des Acteurs |
| Machuel | Benoit | International Federation of Musicians (FIM) |
| Magnan | Nathalie | Ecole Nationale des Beaux-Arts de Dijon |
| Mahé | Eric-Marc | Sun Microsystems |
| Mathon | Claire | Littératures Pirates |
| Mhiripiri | Nhamo | Writer |
| Mierzwinski | Ed | US Public Interest Research Group |
| Millot | Glen | Fondation Sciences Citoyennes |
| Moullier | Bertrand | NARVAL Media |
| Nuttall | FX | CISAC International Confederation of Societies of Authors and Composers |
| Ouma | Marisella | Queen Mary Intellectual Property Research Institute |
| Parade | Michèle | French Department of Culture/ Jeunesse et Sports |
| Patel | Ashraf | Open Society Initiative South Africa |
| Paul | Christian | Assemblée Nationale de la République Francaise |
| Pavlik | Karel | Consumers Defence Association of Czech Republic |
| Pénet | Ludovic | APRIL (Association pour la Promotion et la Recherche en Informatique Libre) |
| Peugeot | Valerie | VECAM |
| Pickering | Bridget | The Producers Alliance |
| Pinto | Elisabeth | UFC - Que Choisir |
| Presutto | Marco | Consumers International |

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|---|---|---|
| Quinn | Gordon | Kartemquin Films |
| Rastetter | Yvon | Ars Aperta |
| Renaud | Pascal | Institut de Recherche pour le développement |
| Ress | Manon | Consumer Project on Technology |
| Ridouan | Aziz | Audionautes |
| Rogé | Joelle | World Intellectual Property Organization |
| Rosi | Mauro | UNESCO |
| Royer | Philippe | K/Shaping |
| Rozenholc | Anita | AFNET (Association Francophone des Utilisateurs du Net) |
| Said Hassane | Mohamed | |
| Schmitt | Philippe | Avocat / Lawyer |
| Seulliet | Eric | e-Mergences |
| Silbergeld | Mark | Consumer Federation of America |
| Sixma | Alwin | Consumentenbond |
| Soufron | Jean-Baptiste | Wikimedia Foundation |
| Sourane | Mohamed | ServeU SARL |
| Stalder | Felix | Openflows |
| Struble | Susy | Sun Microsystems |
| Surbeck | Jack | SEIC |
| Sylvan | Louise | ACCC |
| Takahashi | Yoshiaki | OECD |
| Tarvainen | Tapani | Electronic Frontier Finland (EFFI) |
| Tirou | Rémy | Centre Régional des Musiques Actuelles |
| Toomey | Jenny | The Future of Music Coalition |
| Tyabji | Nico | Quaker United Nations Office (QUNO) |
| Uygur | Cenk | The Young Turks |
| van der Velde | Machiel | Consumentenbond |
| Vincent | Jean | Avocat à la Cour (Independant lawyer) |
| Wallis | Ben | Consumers International |
| Ware | Martyn | Illustrious |
| Wright | Ann | Consumers Union |
| Wunsch-Vincent | Sacha | OECD |
| Zimmerman | Jeremie | Aegis Corp |