

Panel 3 - The Public as a Creative Community.

The Public as a Creative Community

1. The development of the digitally networked environment and of information and communication technologies afford an unprecedented range of new opportunities for the public to directly participate as creative individuals and communities in the information society.
2. The proliferation of new publishing platforms and technologies, including - web pages, listservs, weblogs, social networks, multimedia online, search engines, virtual worlds, distributed computing, wikis, and other collaborative editing and publishing tools - popularly referred to collectively as “Web 2.0,” are the tools that enable the emergence of a dynamic creative community, but which also challenge the mechanisms of control over information flows embedded in older hierarchical distribution models.
3. The collaborative production of knowledge is essential to the public as a creative community and serves as a new social infrastructure where motivation and reward includes reputational benefits, social interaction, cultural exchange, and other incentives in addition to monetary compensation.

Freedom of Expression: to Speak, to Listen, and to be Heard

4. The freedom of expression of creators and their audiences as a community must be protected and preserved, and should not be subject to negotiation by the practices and policies of information intermediaries and major intellectual property holders without transparency and participation by the public.
5. The ability of persons to engage in anonymous speech and the right to read anonymously are fundamental to freedom of expression, and the right to protect confidential sources is essential to journalistic investigation.

Intellectual Property Rights

6. Creativity in the information society constitutes the public’s right to engage ideas by making transformative use of existing expressions as the fundamental building blocks of culture in the digital age.
7. The evolution of copyright and technological progress should accommodate the development of a democratic culture rather than undermine it, in order to promote participation in culture and in the production and dissemination of creative works.
8. Terms of service of information intermediaries should provide clear and conspicuous notice of policies regarding the assignment of intellectual property rights of user

generated contents hosted by the online service. Information intermediaries should offer the user a choice of licenses, including alternatives such as Creative Commons licenses.

9. The right to access and use creative works should not be unfairly or covertly restricted through the use of private agreements or technological protection measures, and should be subject to contractual negotiation or fair circumvention.

10. Copyright owners must evaluate the extent to which copyrighted materials are employed for purposes of comment, criticism, reporting, parody, satire, or scholarship, or as the raw material for other kinds of creative and transformative works before requesting removal of material

11. Technologies that enable individuals to engage in substantial non-infringing access and use of creative works should not be prohibited by copyright and related rights because of their potential for illegal uses.

Creator Control of Content

12. 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.

13. 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.

14. Creators should be allowed to use and enforce licenses that protect interests in ensuring the promotion of a work's dissemination, adaptation, or interoperation.

15. 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.

Information Intermediaries

16. Information intermediaries as corporate entities or as individuals should not be subject to civil or criminal liability for the activity of the users on its network, except for under those legal regimes where a notice and takedown system is instituted as an option for safe harbor from liability.

17. Information location tools and indexes may make intermediary and transitory copies in the operation of their services in order to make information accessible to the public.

18. Individual users should be able to transfer their personal data and their user

generated content from one service to another competitive service without encountering technical obstacles, legal constraints, or contractual restrictions prior to termination of service.

Network Neutrality

19. Information intermediaries must not engage in any practices that discriminate against data based on source, content, or destination without a prior ruling by the judicial authorities, save when public security is threatened. Reasonable network management is only permissible if it furthers a critically important interest and is narrowly and carefully tailored to serve that interest.

20. Information intermediaries must behave fairly and transparently with regard to what content will not be hosted; and must not abuse their market power by discriminating against hosting content for anti-competitive or speech restrictive reasons.

Privacy

21. Information intermediaries should respect the privacy of their users, and must not intercept or record users' transmissions beyond those administrative tasks necessary to ensure the operation of the network or service.

22. Services hosting personal information and user generated content should not retain a person's data longer than is necessary to provide their services and must delete the information after administering the closing of an account or subscription.

23. Customer information should not be used for commercial purposes and shall not be sold or transferred to another entity without clear and conspicuous notice at the time of transfer.

24. Information intermediaries must not transfer personal data or user generated content to the government without a specified warrant, issued with probable cause and reasonable suspicion.

25. Information intermediaries should protect personal information and user generated content when enabling access to its services by third parties. There should be no access to such data without the prior consent of the user; the data should be effectively anonymized; the initial license to which the user agreed should apply to all subsequent transfers of the data.

26. Information intermediaries should not be mandated to disclose to customer information to complainants upon allegation of infringement in civil or criminal cases without a subpoena.

Due Process

27. Information intermediaries should implement dispute settlement mechanisms that preserve an individual's right to be adequately notified of allegations of infringement, procedures for alleged infringers to contest the allegations, and a procedure to return content if it was removed through mistake, error, or abuse.

28. The use of filtering technology should not be used to automatically remove, prevent the uploading of, or block access to content unless the filtering mechanism is able to verify that the content has previously been removed.

29. Dispute settlement procedures must ensure that counter-notice and put-back policies are upheld and that an impartial person or panel makes the final decision over contested removal of material.

30. Networks and online services 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.

31. 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.

The Public as Press

32. The public has a right to engage in reporting, commentary, criticism, and analysis of others' content, including the use of excerpts of other works.

33. Individuals must be protected from frivolous or abusive threats and lawsuits that would limit or chill 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.

34. Bloggers and other online publishers should not be liable for third parties' comments on their pages. Immunity for online publishers should be extended to individuals in similar situations.

35. Individuals should have the same right to access to public information and attend public events with the same rights as mainstream media,

36. Individuals should be protected from employment termination or retaliation when they publish information online about the harmful activities of their employers for the public good.

Access to Internet at Events

37. [Alternative I
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.]

38. [Alternative 2

For 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 participate 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.]