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Copyright 2010: The Future of Copyright [2008] *EIPR* 43

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2006 marked the 30th anniversary of the US *Copyright Act 1976*,¹ 2008 marks the 40th anniversary of the Australian *Copyright Act 1968*² and 2010 marks the 300th anniversary of the Statute of Anne. There is no doubt that concepts about how to manage, control and share knowledge, culture and creativity existed in societies well before 1709/10³ but it is the Statute of Anne that is the symbolic birthplace of what we know as modern copyright law.⁴

¹ The previous statutes at the federal level were the *Act of 31 May 1790* (further statutes introduced new subject matter and expanded the scope and term of protection in 1802, 1819, 1831, 1834, 1846, 1855, 1856, 1859, 1861, 1865, 1867, 1870, 1873, 1874, 1879, 1882, 1891, 1893, 1895, 1897, 1904 and 1905) and the *Copyright Act 1909*. See: B Kaplan, *An Unhurried View of Copyright* (1966) Columbia University Press NY, 25-26, 38-39.

² The previous statutes at the federal level were the *Copyright Act 1905* and the *Copyright Act 1912* For further discussion of these acts of parliament see: B Atkinson, *The True History of Copyright* (2007) Sydney University Press Sydney

³ R Versteeg, "The Roman Law Roots of Copyright" (2000) 59 *Maryland Law Review* 522; P.E. Geller, "Copyright History and the Future: What's Culture Got To Do With It?" (2000) *Journal of Copyright Society of the USA* 209, 210-215; M. Barambah and A. Kukoyi, 'Protocols for the Use of Indigenous Cultural Material' in *Going Digital 2000: Legal Issues for E-Commerce, Software and the Internet*, A. Fitzgerald, B. Fitzgerald, C. Cifuentes and P. Cook (eds) (Sydney, Prospect Media, 2000), 133.

⁴ P. Samuelson, "Copyright and Freedom of Expression in Historical Perspective" (2003) 10 *J. Intell. Prop. L.* 319 at 324; B Kaplan, *An Unhurried View of Copyright* (1966); R. Patterson, *Copyright in Historical Perspective* (1968) Columbia University Press NY; S Ricketson and C Creswell *The Law of Intellectual Property: Part II Copyright and Neighbouring Rights*, Ch 3. documenting the numerous copyright statutes to follow on from the Statute of Anne in the UK at [3.230] ff, [3.280],

As we enter an era of unprecedented knowledge and cultural production and dissemination we are challenged to reconsider the fundamentals of copyright law and how it serves the needs of life, liberty and economy in the 21st century. More radical proposals advocate the abolition of any legislative and regulatory regime in order to leave the trading (both commercial and non commercial) of ideas to other mechanisms such as politics, the market or social networks. More moderate reforms – within the framework of the current regime – have been the centre of discussion at Professor Hugh Hansen’s Fordham International Intellectual Property Conference (2007), a specialist workshop run by Professor Pamela Samuelson in July 2007 in Napa Valley⁵ and will be further discussed at a world congress proposed by creative economy guru and Adelphi Charter⁶ figurehead John Howkins⁷ to celebrate or commiserate the Statute of Anne in 2010.

The New Landscape

The way in which culture is represented, reproduced and communicated to the world has vastly changed. We live in an era where any person of any age can email, blog, podcast, make entries in Wikipedia⁸ or upload a home crafted or user generated video to YouTube⁹ in the blink of an eye to a world wide audience of hundreds of millions of people. This is driven by an incredible capacity to search

[3.370]. On the origins of modern copyright elsewhere in Europe see: G Davies, *Copyright and the Public Interest* 2nd ed (2002) Thomson London, Ch 3.

⁵ See further: P. Samuelson, “Preliminary Thoughts on Copyright Reform” forthcoming (2007) *Utah Law Review*

<http://people.ischool.berkeley.edu/~pam/papers.html>

⁶ Royal Society for the encouragement of Arts, Manufactures & Commerce (RSA), *Adelphi Charter on Creativity, Innovation and Intellectual Property* <<http://www.adelphicharter.org>>

⁷ J Howkins, *The Creative Economy: How People Make Money from Ideas* (2001) Penguin, London.

⁸ <www.wikipedia.com>

⁹ <www.youtube.com>

the world wide web through search engines such as Google,¹⁰ Yahoo¹¹ and Baidu.¹² Creativity and sharing have taken on incredible new dimensions.

The Social Network¹³

The centre point of this Web 2.0¹⁴ style activity is the “social network” – a space for making friends and sharing knowledge and creativity.¹⁵ The social network is epitomised by well known spaces such as MySpace,¹⁶ Facebook,¹⁷ Flickr¹⁸ and YouTube¹⁹ but is also evident in the millions of blogs, live chat rooms and wikis that exist throughout the Internet world.

Within the social network people create things in and provide thoughts from their bedrooms, studies, lounge rooms, cafes and offices and communicate them via the network to the outside world. Sharing amongst participants within the social network tends to be on a non commercial basis. In fact that seems to be the unwritten norm underpinning activity within the social network environment – non commercial use by each other is permitted.

¹⁰ <www.google.com>

¹¹ <www.yahoo.com>

¹² ,www.baidu.com>

¹³ See generally: “Social Network” in *Wikipedia* http://en.wikipedia.org/wiki/Social_network; “Social Network Service” in *Wikipedia* <http://en.wikipedia.org/wiki/Social_network_service>

¹⁴ On this concept see: T O’Reilly, *What is Web 2.0* <http://www.oreillynet.com/pub/a/oreilly/tim/news/2005/09/30/what-is-web-20.html>

¹⁵ See generally: Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedom* (2006) New Haven: Yale University Press http://www.benkler.org/Benkler_Wealth_Of_Networks.pdf at 22 July 2006.

¹⁶ <www.myspace.com>

¹⁷ <www.facebook.com>

¹⁸ <www.flickr.com>

¹⁹ <www.youtube.com>

However once the material created and distributed through the social network is deposited into or utilised within a commercial domain or enterprise for financial reward then this norm subsides and compensation may be sought. Likewise material utilised or distributed by the social network that is taken from the commercial domain or network, e.g. Hollywood, under current law, will need to be fair use, licensed and/or paid for. More so, the social network is underpinned by a technological platform and the provider of such platforms will often seek “revenue” through advertising and subscription fees. These commercial platform operators such as Google (Youtube), Yahoo (Flickr) and News Corporation (MySpace) are some of the largest corporations in the world and they are profiting handsomely off the social network. It remains unclear to what extent they should be sharing profits with the creatives of the social network (which sites like Revver²⁰ do) or where commercially released material has been utilised how much they should be paying the commercial sector from where it is sourced e.g. Hollywood – the substance of the issue being litigated in *Viacom v YouTube and Google*.²¹

²⁰ <www.revver.com>

²¹ *Viacom International Inc., v YouTube, Inc.*, (S.D. NY., filed 13/3/2007) The Viacom complaint is here

www.paidcontent.org/audio/viacomtubesuit.pdf and the Youtube and Google response is here <http://news.com.com/pdf/ne/2007/070430_Google_Viacom.pdf>

For a debate between their respective lawyers see:

<http://theutubeblog.com/2007/04/15/viacom-v-youtubegoogle-their-lawyers-debate-lawsuit>

A critical issue in this litigation will be the application of the *Digital Millennium Copyright Act 1998 (DMCA)* so called “safe harbours” for intermediaries: see further *Perfect 10 Inc v CCBill LLC* (9th Cir, 2007)

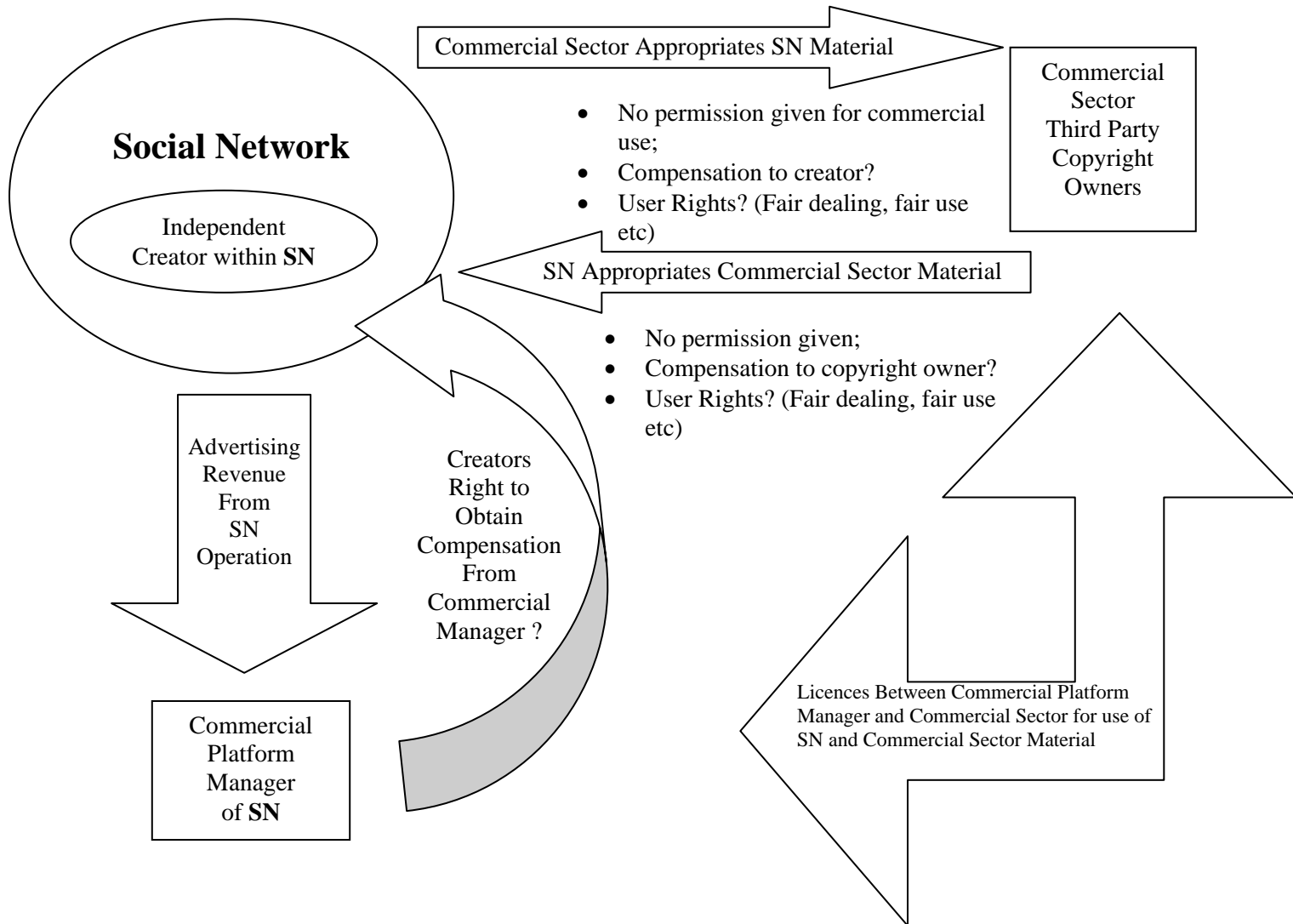
[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/08468E0D5E386A2F882572AC0077AD1A/\\$file/0457143.pdf](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/08468E0D5E386A2F882572AC0077AD1A/$file/0457143.pdf) ; L Lessig “Make Way for Copyright Chaos” *New York Times*

18 March 2007

<http://www.nytimes.com/2007/03/18/opinion/18lessig.html?ex=1331870400&en=a376e7886d4bcf62&ei=5088&partner=rssnyt>

See also *Tur v. YouTube, Inc.*, No. 06-04436 (C.D. Cal., filed 14/7/2006) - *Tur v. YouTube*, No 06-4436 (C.D. Cal. summary judgment cross-motions based on s 512 (c) denied June 20, 2007); *The Football Association Premier League Ltd v. YouTube*,

The following diagram highlights these complex new relationships between the non commercial and commercial domains.



This large scale implementation of social activity along with the commercial consumption of entertainment in an online digital world where reproduction and communication is both ubiquitous and automated by use brings the need for a fundamental rethinking of copyright law.

Eleven Points for 2010

The following are eleven points that (at very least) should be examined or taken into consideration in any copyright reform agenda. An agenda that one would hope will be well under way by 2010. For every day we stand entrenched in the legacy models of the past we are denying the opportunity of the future.

The Law

1. **International treaties:** Do they reflect the needs of the networked information society we now live in? How will the access to knowledge and development agenda currently before the World Intellectual Property Organisation (WIPO) change the way these treaties are drafted? By 2004, WIPO was facing increasing demands from developing countries for intellectual property regimes to reflect a more appropriate balancing of interests, to better serve health, education and culture. These demands are summarised in the *Draft Access to Knowledge Treaty* (2005).²² At the first meeting of WIPO's Provisional Committee on Proposals Related to a Development Agenda (PCDA) in February 2006, the participants listed a total of 111 proposals for strengthening the focus on

²² *Draft Access to Knowledge Treaty* (2005)
<<http://www.access2knowledge.org/cs/a2k>>.

development in WIPO's work. At the third session of the PCDA, held in Geneva in February 2007, participants agreed on an initial set of proposals for inclusion in the final list of proposals to be recommended to the 2007 WIPO General Assembly. The recommendations are clustered under six headings relating to WIPO's work in the areas of technical assistance and capacity building; norm-setting, flexibilities, public policy and public domain; technology transfer, information and communication technologies (ICT) and access to knowledge; assessment, evaluation and impact studies; institutional matters including mandate and governance and certain other issues.²³

2. Subject Matter, Exclusive rights and Ownership:

Has the digital era transformed the existing exclusive rights of the copyright owner into something too broad and all encompassing? Is there scope for the development of an attribution only copyright (attribution being the only enforceable exclusive right) within the social network where non commercial reuse is the underlying principle? Who is an author in the interactive and iterative wiki blog based user generated world which we now inhabit?²⁴ To what extent does changing the scope of the exclusive rights fall outside the Berne Convention's "three

²³ See World Intellectual Property Organisation (WIPO), "Member States Make Significant Headway in Work on a WIPO Development Agenda", Press Release 2007/478, 26 February 2007: http://www.wipo.int/pressroom/en/articles/2007/article_0011.html; W New, "In A 'Major Achievement', WIPO Negotiators Create New Development Mandate" 18 June 2007, <<http://www.ip-watch.org/weblog/index.php?p=656&res=1024&print=0>>

²⁴ See Erez Reuveni, 'Authorship in the Age of Conducer', (2007) 54 *Journal of the Copyright Society of the U.S.A.*, 286.

step test”?²⁵ Should copyright subject matter be narrowed or extended to include, for example, “webcasting”?²⁶ Should it require fixation?²⁷ Do ownership rights carry any sense of obligation to the “information environment”?²⁸ What should we do with traditional cultural expression (TCE) and other indigenous cultural issues?²⁹

3. User rights or limitations: To what extent should user rights continue to be seen as subservient to owner rights?³⁰ What new user rights are needed

²⁵ *Berne Convention for the Protection of Literary and Artistic Works 1886*, Art 9(2) provides: “It shall be a matter for legislation in the countries of the (Berne) Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.” See also Art. 10, *WIPO Copyright Treaty 1996 (WCT)*, Art. 16, *WIPO Performances and Phonograms Treaty 1996 (WPPT)*, Art 13, *Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS)*

²⁶ See the proposed *WIPO Broadcasting Treaty*; WIPO “Negotiators Narrow Focus in Talks on a Broadcasting Treaty” Press Release 2007/473 (22 January 2007) <http://www.wipo.int/pressroom/en/articles/2007/article_0003.htm> ; EFF “Briefing Paper on Proposed WIPO Broadcasting Treaty, Second Special Session of SCCR” (18 June, 2007) <http://www.eff.org/IP/WIPO/broadcasting_treaty/EFF_wipo_briefing_paper_062007.pdf>

²⁷ P Samuelson, “Preliminary Thoughts on Copyright Reform” forthcoming (2007) *Utah Law Review* <http://people.ischool.berkeley.edu/~pam/papers.html>

²⁸ J Boyle, “A Politics of Intellectual Property: Environmentalism For the Net?” <<http://www.law.duke.edu/boylesite/Intprop.htm>>

²⁹ WIPO, *Draft Provisions on the Protection of Traditional Cultural Expressions/Folklore and Traditional Knowledge* www.wipo.int/tk/en/consultations/draft_provisions/draft_provisions.html ; B Fitzgerald and S Hedge “Traditional Cultural Expression and the Internet World” in C Antons (ed.) *Traditional Knowledge, Traditional Cultural Expression and Intellectual Property in South East Asia* (2007) Kluwer Netherlands

³⁰ Consider: *CCH Canadian Ltd. v. Law Society of Upper Canada* 2004 SCC 13 [2004] 1 S.C.R. 339; (2004), 236 D.L.R. (4th) 395

for this new environment?³¹ For example, there is a growing need to sensibly articulate the right to engage in transformative reuse of copyright material in international and national laws.³²

4. **Crown, government or publicly funded copyright:** In countries where government or publicly funded copyright exists there should be close consideration given to expressly allowing broad rights, of at very least, non commercial dissemination and reuse.³³

<http://www.canlii.org/en/ca/scc/doc/2004/2004scc13/2004scc13.html> ; J Cohen “The Place of the User in Copyright Law” (2005) 74 *Fordham L. Rev.* 347

³¹ Consider: *Authors Guild v Google Print Library Project*:

<<http://www.boingboing.net/images/AuthorsGuildGoogleComplaint1.pdf>> *McGraw-Hill Companies Inc, Pearson Education Inc, Penguin Group (USA) Inc, Simon & Schuster Inc and John Wiley & Sons Inc v Google Inc*:

<http://www.boingboing.net/2005/10/19/google_sued_by_assoc.html> J Band, “The Authors Guild v The Google Print Library Project”

<<http://www.llrx.com/features/googleprint.htm>>;

³² See: *Gowers Review of Intellectual Property* (2006) http://www.hm-treasury.gov.uk/media/6/E/pbr06_gowers_report_755.pdf at 67-68 ; *Perfect 10 Inc v Amazon Com Inc* 487 F.3d 701 (9th Cir, 2007)

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/DE8297F56287C0BC882572DC007DACC6/\\$file/0655405.pdf](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/DE8297F56287C0BC882572DC007DACC6/$file/0655405.pdf)

³³ See generally: B Fitzgerald, A Fitzgerald, G. Middleton, YF Lim and T Beale, *Internet and E Commerce Law: Technology, Law and Policy* (2007) Thomson Sydney, Chapter 4; Intrallect Ltd (E Barker and C Duncan) and AHRC Research Centre (A Guadamuz, J Hatcher and C Waelde), *The Common Information Environment and Creative Commons*, Final Report (10 October 2005), Ch 3.6: <http://www.intrallect.com/cie-study> ; B Fitzgerald, A Fitzgerald, M Perry, S Kiel-Chisholm, E Driscoll, D Thampapillai and J Coates, *Creating a Legal Framework for Copyright Management of Open Access within the Australia Academic and Research Sector* (OAK Law Report No 1, August 2006): <http://www.oaklaw.qut.edu.au> (accessed 5 March 2007); Queensland Spatial Information Council (QSIC), *Government Information and Open Content Licensing: An Access and Use Strategy* (2006)

<<http://www.qsic.qld.gov.au/qsic/QSIC.nsf/CPByUNID/BFDC06236FADB6814A25727B0013C7EE>>

5. **Non Commercial Use:** How far should we be allowed to reuse material for designated non commercial purposes?³⁴ How does non commercial distribution occur in a world which allows such good quality and broad scale distribution – doesn't it all impact on the commercial return? Is sharing in a social network really non commercial – don't major corporations benefit financially from this and what price should they pay? Is non commercial use an issue of more closely defining exclusive rights which do not at present distinguish between commercial and non commercial uses or an issue for exceptions, limitations or user rights?
6. **Intermediary liability:** Today we have a plethora of intermediaries, yet the “safe harbours” were designed in an era where ISPs were the dominant intermediary. As we now have so many different levels of intermediary the whole landscape of liability for the messenger needs to be reviewed.³⁵ In doing so the concept of “notice and take down” (as embodied in the *Digital Millennium Copyright Act* 1998 (DMCA)) or “notice and notice”, as a form of copyright compliance needs to be more closely considered.
7. **Secondary, authorisation or contributory liability:** The more we expand this type of liability the more we risk chilling diversity of opportunity and innovation: see Justice Stephen Breyer of the US

³⁴ J Litman, *Digital Copyright* (2001) Prometheus Books Amherst NY., Ch 12.

³⁵ M Lemley, “Rationalising Internet Safe Harbours” Stanford Public Law Working Paper, No. 979836 (2007).

<http://www.law.stanford.edu/publications/details/3657/Rationalizing%20Internet%20Safe%20Harbors> ; Brian Fitzgerald, Damien O'Brien and Anne Fitzgerald, “Search Engine Liability for Copyright Infringement” in Amanda Spink and Michael Zimmer, Eds. *Web Searching: Interdisciplinary Perspectives*. (2008) Springer, Dordrecht.

Supreme Court in *Grokster*.³⁶ We need to closely assess the scope and role of legislation in this regard and ask whether this is an activity where the market would be the better point of regulation as in Schumpeterian terms innovation is fundamentally about how the market reshapes itself through new ways of doing things.³⁷

The Context

8. **Licensing Models:** We also need to encourage and devise new licensing models to fit the technologies – Apple iTunes (direct licensing),³⁸ NOANK Media (ISP level licensing)³⁹ and Creative Commons (open licensing)⁴⁰ provide recent examples. Never again should we allow everyday people to be put in the position of facing criminal charges because industry has been unwilling to provide new business models.⁴¹ The notion of compulsory licensing and collective administration of copyright will also be implicated in this discussion.⁴²

³⁶ *MGM Studios Inc v Grokster Ltd* 545 US 913 (2005).

³⁷ J. Schumpeter, *Capitalism, Socialism and Democracy* (1942)

³⁸ < www.apple.com/itunes >

³⁹ <www.noankmedia.com>

⁴⁰ <creativecommons.org> ; Lawrence Lessig, *Free Culture : How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (2004) New York: Penguin Press <<http://www.free-culture.cc/freeculture.pdf>>; B Fitzgerald, J. Coates, and SM Lewis (eds.) *Open Content Licensing: Cultivating the Creative Commons* (2007) Sydney University Press <<http://eprints.qut.edu.au/archive/00006677>>

⁴¹ Consider: W Fisher, *Promises to Keep: Technology, Law and the Future of Entertainment* (Stanford University Press, Palo Alto, 2004); N Netanel, “Impose a Non Commercial Use Levy to Allow Free P2P File Sharing” (2003) 17 *Harvard Journal of Law and Technology* 1.

⁴² Consider the recent activities of the European Commission in relation to CISAC: “Statement of Objections to the International Confederation of Societies of Authors and Composers (CISAC) and its EEA members” MEMO/06/63 (07/02/2006)

9. **New Business Models:** As part of the way of solving copyright issues in the digital environment and moving with the technology, commerce must explore new business models that facilitate access in the name of creativity and knowledge. In some instances, by allowing broader access we open up more social and economic opportunity – downstream multipliers that are otherwise choked by revenue seeking too early in the process. In the words of Varian and Shapiro from *Information Rules* we need to “maximise value not protection”.⁴³
10. **Creator Utopia:** The rise of the user generated phenomenon has led some to suggest that the copyright law of the future might be more effectively utilised by creators. In the last 300 years the copyright regime while built around the romantic notion of the author has largely facilitated the wealth of the commercialising agents such as publishers, movie studios and recording companies. Will this change as a result of any new found independence of and distribution/communication networks for 21st century authors?
11. **World Trade and Politics:** There can be little doubt that the dominance of the US led “pay for every use” “maximalist” view of copyright has been seriously questioned. Countries like India and

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/63&format=HTML&aged=1&language=EN&guiLanguage=en> ; “Commission market tests commitments from CISAC and 18 EEA collecting societies concerning reciprocal representation contracts” IP/07/829 (14/06/2007)
<<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/829&type=HTML&aged=0&language=EN&guiLanguage=en>>

⁴³ Carl Shapiro and Hal Varian, *Information Rules: A Strategic Guide to the Network Economy* (1999) Boston, Mass: Harvard Business School Press, 4;

Brazil are challenging the status quo and the role China will play in influencing the new contours of copyright cannot be underestimated. It seems inevitable that China as the country with the largest number of internet users – over 100 million – will learn how to harness the power of We-Media before many others. It is no surprise that in late 2007 the subject of copyright is a matter of contention between the hegemonic forces of the US and China before the World Trade Organisation (WTO).⁴⁴

⁴⁴ Dispute DS362 (10 April 2007), USA (complainant) against China - *Measures Affecting the Protection and Enforcement of Intellectual Property Rights* http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds362_e.htm; Dispute DS363 (10 April 2007), USA (complainant) against China— *Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products* http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds363_e.htm

Conclusion

The forgoing discussion highlights some⁴⁵ of the key areas that need to be considered in any process of copyright reform. In my view by 2010 we should be moving beyond the limited conceptual framework of copyright to a legal framework that looks more closely at the relationships any individual or entity has with information, knowledge, culture or creativity. A crude name would be Information or Cultural Relationship Law. By focussing on the information or cultural resource and how we nurture and allocate it for social and economic good we open up the politics and economy of the rights to access, reuse and communicate information, knowledge, culture or creativity.

The momentum in this process will not only be driven by the members of the new online social network and communities but also by the mega access corporations

⁴⁵ Many others issues could be raised, e.g., the length of copyright term, the scope and rationale for moral rights, the criminalisation of copyright infringement, the intersection of copyright and contract/licensing, digital rights management and technological protection measures and proposals for registration and simplification: see *Eldred v Ashcroft* 537 US 186 (2003); *Golan v Gonzales* 501 F. 3d 1179 (10 Cir. 2007); *Chan Nai Ming v HHSAR* (Court of Final Appeal, Hong Kong Special Administrative Region, 18 May 2007);

Stevens v Kabushiki Kaisha Sony Computer Entertainment [2005] HCA 58

<http://www.austlii.edu.au/au/cases/cth/HCA/2005/58.html> ;

P Samuelson, "Preliminary Thoughts on Copyright Reform" forthcoming (2007) *Utah Law Review* <http://people.ischool.berkeley.edu/~pam/papers.html> ; Lawrence Lessig, *Free Culture : How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (2004) New York: Penguin Press <<http://www.free-culture.cc/freeculture.pdf>> ; P.E. Geller, "Copyright History and the Future: What's Culture Got To Do With It?" (2000) *Journal of Copyright Society of the USA* 209, 235ff.; B Fitzgerald et. al, *Internet and E Commerce Law: Technology, Law and Policy* (2007) Thomson Sydney, Chapter 4; K Giles, "Mind the Gap: Parody and Moral Rights" (2005) 18 *AIPLB* 69; W Fisher, "Property and Contract on the Internet" (1999) 73 *Chicago-Kent Law Review* 1203; Copyright Law Review Committee, *Simplification of the Copyright Act: Part 2* (1999): <http://www.clrc.gov.au/agd/www/Clrhome.nsf/HeadingPagesDisplay/Past+Inquiries?OpenDocument> ; Z. Chafee, "Reflections on the Law of Copyright" Parts I and II (1945) 45 *Columbia Law Review* 503 and 719.

that underpin this new space. These access corporations – such as Google, Yahoo – work on a business model in which the more access to content that is available the wealthier they become. While the *Viacom v YouTube and Google* case may only be the first iteration of the political dynamic at play we are seeing a fundamental reshaping of copyright politics. No longer is the access or user or development agenda being championed solely by people or entities that are seen as the less powerful challengers or outsiders, but now it is being championed by heavy hitting mainstream US based western corporations.

In short, the future of copyright provides a dynamic and challenging topic for discussion and action as we move towards 2010.

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Brian is a well-known Intellectual Property and Information Technology/Internet lawyer who has pioneered the teaching of Internet/Cyber Law in Australia. He holds postgraduate law degrees from Oxford University and Harvard Law School. Brian has published articles on Intellectual Property and Internet Law in Australia, the United States, Europe, Nepal, India, Canada and Japan and his latest (co-authored) books are *Cyberlaw: Cases and Materials on the Internet, Digital Intellectual Property and E Commerce* (2002); *Jurisdiction and the Internet* (2004); *Intellectual Property in Principle* (2004); *Internet and Ecommerce Law* (2007). Over the past five years Brian has delivered seminars on Information Technology, Internet and Intellectual Property law in Australia, Canada, China, Brazil, New Zealand, USA, Nepal, India, Japan, Malaysia, Singapore, Norway and the Netherlands. In October 1999 Brian delivered the Seventh Annual Tenzer Lecture - Software as Discourse: The Power of

Intellectual Property in Digital Architecture - at Cardozo Law School in New York. Through the first half of 2001 Brian was a Visiting Professor at Santa Clara University Law School in Silicon Valley in the USA. In January 2003 Brian delivered lectures in India and Nepal and in February 2003 was invited as part of a distinguished panel of three to debate the Theoretical Underpinning of Intellectual Property Law at University of Western Ontario in London, Canada. During 2005 Brian presented talks in Germany, India and China and was a Visiting Professor in the Oxford University Internet Institute's Summer Doctoral Program in Beijing in July 2005. In 2006 he was nominated by DEST to attend and present as an Australian expert an OECD Workshop on Research Use of Patents held in May 2006 in Spain and in February 2006 was invited as international expert to present at an OECD Workshop on Open Educational Resources in Sweden. In 2006 Brian was also invited to speak at the Fordham University International Intellectual Property Conference in New York and the Access to Knowledge (A2K) Conference at Yale University Law School in April 2006.

Brian is also a Chief Investigator and Program Leader for Law in the ARC Centre of Excellence on Creative Industries and Innovation and Project Leader for the DEST funded Open Access to Knowledge Law Project – OAK Law Project, looking at legal protocols for open access to the Australian research sector. His current projects include work on intellectual property issues across the areas of Copyright, Digital Content and the Internet, Copyright and the Creative Industries in China, Open Content Licensing and the Creative Commons, Free and Open Source Software, Research Use of Patents, Science Commons, e-Research, Licensing of Digital Entertainment and Anti-Circumvention Law. Brian is a Project Leader for Creative Commons in Australia. He has organised numerous conferences on Internet Law in Australia, is a regular speaker at international and national conferences and has made a number of significant submissions to government in the area of Internet and IP Law.

From 1998-2002 Brian was Head of the School of Law and Justice at Southern Cross University in New South Wales, Australia. From January 2002-January 2007 he was Head of the School of Law at QUT in Brisbane. In 2007 Brian was appointed as one of QUT's specialist Research Professors to lead the further development of the university's research particularly in the area of Intellectual Property and Internet Law.