A series of 6 conferences presented by the ITU Strategy and Policy Unit

#4. Information wants to be free

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Information Wants to be Free

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Visions of the Information Society

Two Pillars of the "Information Society"

Critical roles for information across societies:

I.   Promoting creativity and innovation in intellectual endeavor

II. Building and sustaining social/political interaction and institutions

Each has accumulated a huge body of law and norms, in all societies.

I: Creativity in Ideas

Ideas are not widgets!
- Infinite reproducibility, and virtual indestructability
- Each user gains at no loss to another
- Easily Disseminated
- Incrementally built on previous ideas

So society must devise a means to:
- Reward and thus encourage creativity;
- Maximum dissemination for wide use (public domain).

Form reflects society's organising principle.

Intellectual Property Rights:

The Balance Struck in Copyright:

➲ The incentive:
- Exclusive right to 'owner' for a fixed period to use the information for commercial gain;

➲ The social return:
- Entry into the public domain without delay;
- Access for non-commercial use ('fair-use' or 'fair trading') until then.

Evolution of Copyright

Key features:

- Narrow application: books, maps, plays, art without derivative rights

- Initially slow to catch gather pace

- Designed to further national interests, discriminating against other countries.

Second Trade-Off

A second balance was struck, on harmonising internationally. This balanced national benefit from:

➲ Foreigners having similar rights and non-discrimination, against

➲ Retaining national protection and different levels of rights.

Leading to the Berne and later Conventions

II: The Public Sphere & Information Rights

Role of information in building effective & equitable social and political institutions

- Information rights underpin all other freedoms and rights;

- Different societies did (or did'nt) do this differently.

Represenative Democracy and the Public Sphere

The People's Contract with their Representatives:

➲ Small number decide on behalf of all, for a period;

➲ Provide ongoing access to rationale for decisions;

➲ Ongoing and continual renewal of mandate, based on rationality of decisions.

The **public sphere** is the arena where that mandate is constrantly exercised and renewed, or not.

Features of the Public Sphere: Information as the Common Coin

Based on *reasoning;* undistorted by *Bias*. This is secured by :

- Plurality of information sources and interactions;

- Transparency, access, and freedom to communicate;

- Reliance on reliability, depth, integrity, honesty of information;

- Access to public domain and copyright material.

Early Evolution of Public Sphere

Accumulation at national level:

➲ Freedom of speech, freedom of the press;

➲ Media diversity and plurality of content secured by regulation (regulated private sector vs. public service);

➲ Freedom of Information laws;

➲ Protection for the public domain.

The Balance upset in mid 20th C I: Copyright and Technology

Technology 'turbo-charges' information:
Opportunities and challenges for copyright.

- Creation of new media: television, video, Internet;
- Hugely increased dissemination potential;
- Better quality and content transfer between media (convergence, digitisation);

But:

- Unauthorised copying hugely boosted.

'Copyright Industries' Go Global

- Enormous growth in global reach, output and value of copyright content;

- Emergence of global multi-media corporations;

- Dominance of USA and Europe in newly global markets.

Governance and Regulation

- Ever lengthening copyright protection;
- From UNCTAD/WIPO to WTO/TRIPS:
  1. More uniform regimes;
  2. More ameneable to power brokering;
  3. Greatly enhanced enforcement.
- The Bandwagon: Software and databases come aboard.
- The Internet: Access restrictions.

New Hopes, New Fears
II: Public Sphere in late 20th C

Phase 1: Growth in Communication Rights

➡ Internationalisation of information rights

➡ Decline in political controls

Phase 2: Growth of Media Commercialisation

➡ Private sector media model spreads

➡ Public service model liberalised

➡ Fewer, larger media outlets

Public Sphere: Governance

➲ Failure to agree satellite distribution leading to free for all.

➲ Culture becomes ruled by commerce: The move to WTO, and struggle over the audio-visual sector.

➲ Growing imbalance in enforcement: trade versus rights.

➲ The Internet: A powerful tool under threat.

Where we Stand: I: Copyright

Public Domain Denied:

- On balance, uniform regime does not support an industry in developing countries;
- Restricts scientific research and education;
- 'Fair-Use' threatened by move to digital:
  - Practical obstacles to accessing encrypted content
  - Move to a contractual basis for access
  - Signatories to WIPO Copytright Treaty under bilateral pressures

New Copyright Areas

Database *sui generis* protection:

➲ Rising cost of research use (no 'fair use')

➲ Risks creating a new and dangerous model

Software:

➲ High cost of most useful packages in developing countries

➲ 'Timebomb' of unauthorised use.

The Balancing Act Collapses

➲ Balance between public domain and reward for creative effort collapses as copyright becomes a corporate asset, in perpetuity.

➲ Balance between gain from international agreements, and from national variations, is upset as uniformity is unilaterally imposed.

Where we Stand II: Public Sphere

➲ Commercialisation of media lead to focus on most lucrative content. Diversity suffers.

➲ Corporate growth and cross-ownership reduce plurality of media sources.

➲ Evidence of emerging collusion between political powers and private media.

➲ Digital (and other) information & communication rights eroded under 'war on terrorism'.

When Copyright meets Public Sphere: Moving to a Zero Sum game

- ➲ Copyright so bloated that information for the Public Sphere is denied or distorted;
- ➲ Copyright cases are eating into 'fair use', and undermining cultural creativity.

Proposals for WSIS

Making a start on long term issues

- A Review of Copyright with a view to re-alligning with its social objective

- A Declaration on the Public Sphere and Information Rights, as a first step towards a Treaty.

Immediate Actions:

1. Promote alternatives to copyright, in software and elsewhere
2. Enhance transparency and accountability of governance
3. Monitor and tackle media concentration
4. Support community and independent media
5. An investment fund for the public sphere by e.g. taxing commercial satellite spectrum
6. Monitor and tackle information surveillance