

Commission on Intellectual Property Rights

CONFERENCE

***“HOW INTELLECTUAL PROPERTY RIGHTS COULD WORK
BETTER FOR DEVELOPING COUNTRIES AND POOR
PEOPLE”***

**TRANSCRIPT
Session 4: Copyright**

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SESSION 4: Copyright in Developing Countries

John Barton: Chair, Chair of the IPR Commission

This final session today will be dealing with issues surrounding copyrights. In our travels in the Commission we've been finding that prices for computer programmes in the developing world are often just as high as they are in the developed world, with no concept of differential pricing that we found. The analogue of differential pricing is a higher rate of copying. We see scientific literature and scientific data moving to the Internet. This can provide wonderful access for what will be the terms of distribution. How will data protection legislation, like that here in Europe, affect the developing world? We see digital content providers in both the video and audio areas increasingly seeking to protect their material through technological means such as encryption and then seeking to protect those technological protections by legislation like the US Digital Millennium Copyright Act. How will this affect the developing world? What position should the developing countries take when they are asked to enact a DMCA. These issues extend beyond the cultural area where they restrict access to cultural materials. We have an excellent panel to help us with these issues. Let me introduce our first panellist, Dianne Daley. She is a partner of Foga, Daley and Company, Attorneys at Law in Kingston, Jamaica. She has served as Legal Director and Head of the Jamaican Government's Copyright Unit and she is the Executive Director designate for the Jamaican IP Office.

Diane Daley: Foga, Daley and Co., Attorneys at Law, Jamaica

My topic is basically giving a Caribbean perspective to copyright issues in the new millennium. I will start by saying that copyright in developing countries is by no mean homogenous but there are commonalities, particularly among Caribbean countries. One key commonality is the fact that most Caribbean policies have favoured copyright protection in general and they are all small developing economies and these countries have modernised and nationalised their copyright legislation over the past two decades basically bringing up to date some early twentieth century laws that we inherited from the UK. The major policy premise for Caribbean countries is that copyright is critical to the development of local cultural industries. Such protection stimulates creativity and innovation offering the possibility of revenue generation. Of all the different forms of IPRs, we see copyright as the most positive and as offering us a potential comparative advantage. At the same time, Caribbean countries are embracing the information age and that was just a statement from our Prime Minister in Jamaica, which links the knowledge based society to social and economic development and his sentiments are echoed throughout the Caribbean looking at it in a very positive light. However, copyright laws have not moved at a fast enough pace in the countries to address the issues that have now arisen on account of the information age. **Slide:** The merits and threats of the information for developing countries and in particular the Caribbean. How the copyright system has been working for right holders in these countries and how these countries should be tackling the issues that are now presented by the new millennium. I think it is widely acknowledged that the information age has presented both threats and merits. In terms of merits, copyright is a main contender because copyright is essential to the

protection of content and content is said to be the king of the information age. So we have to grapple with these new copyright issues if we are to fully maximise the merits and the benefits of the information age. Some of those merits in the eyes of Caribbean economies are that the Internet, the information age, will promote better access to information, education will be able to reach more remote areas. There are the opportunities for export of cultural products and by this I am referring to even the digital delivery of music products and it will also facilitate entry into global markets, business growth and expansion and ultimately economic growth and development. It is viewed as levelling the playing field for Caribbean economies in the area, cultural industries and, in particular, the music industry as music is uniquely adaptable to digital environment. Other merits are reduction of costs, reduction of overheads and reduction of costs association with traditional publisher and producer roles. That is one of the highlights that developing countries are looking at. In terms of threats, I think Caribbean countries have also acknowledged the threat of the so-called digital divide and that is not just a North South divide. That is also a divide among countries of the sub region of the Caribbean. There has also been a lot of dialogue and discussion about the conflict of IPRs with access to information and the fact that IPRs put a price, a premium, on access to information. Other threats to copyright are that the ease of access to copyright content on the Internet threatens the copyright owners ability to earn from on-line exploitation. Internet is a cheaper medium for pirates and Internet also strengthens the justification of the consumer for having the content free of charge. For Caribbean countries the merits are far more readily apparent than the threats. As a result, our countries tend to focus more on using these new technologies rather than establishing a proper and regulatory framework for use and access. In terms of the copyright experience in Caribbean countries, most copyright laws have been recently updated based on the TRIPS agreement standards. The copyright system, and there is a difference between the law and the actual system that supports the law, those systems are only now becoming operational, so that modalities that were subject to the passage of regulations or the existence of administrative structures such as collecting societies, those are just coming on stream. As a result, a large portion of local rights holders are not yet "logged in" to any national royalty collection agency and focusing on this, just because for our countries and for most countries, when you think about copyright, apart from the whole culture and personality rights that have been promoted, we are thinking about money as a bottom line and how to extract the revenue from exploitation. Whereas we are just now getting into these modules of collective administration to get royalties, the Internet is making some of these modules redundant so we are catching up but not fast enough. In the traditional collecting society regimes, much of the revenues collected from collective management are still destined to developing countries. In my knowledge there are no net inflows yet of revenue through music collectives and that seems to be a concern in particular for Jamaica because music is our most hopeful commodity and you wonder why, since we consume so much of our local music and much of our local music is consumed abroad, why it is that there is still a net outflow to collecting societies abroad for foreign repertoire. Another aspect is that most stakeholders, copyright owner groups are loosely organised and this impedes their effectiveness and participation in lobby and this has resulted in an over dependence on governments to intervene and sort out your copyright issues and industry problems. Although copyright consciousness is growing and there is overall public awareness on the part of rights holders, piracy is still prevalent again among consumers and this

may be due to low rights enforcement. There is a reluctance to use the system to enforce rights. Piracy is also a fact among creators and that has a lot to do with the traditional business practices of just using samples of different works without a proper rights clearance method. In terms of the Internet experience it is acknowledged, and copyright owners in our countries are concerned about the fact, that there are threats to piracy and infringement of their rights over the Internet and the fact is that, although the laws are updated, they are not yet Internet ready and so they do not serve as a significant impediment to wanton use of the Internet and the liability of ISPs is not a live issue. Some of the reasons are that for the Internet we do not have a developed legal and regulatory framework in the Caribbean as yet. Another key point is that the Caribbean Internet , ISP, is really an access provider, not really providing a range of services like America online. The underdeveloped landscape, without Internet ready IP laws, there is little deterrent to piracy on the Internet, especially within the actual countries. Only a few of the countries in the Caribbean have acceded to the WIPO so-called Internet Treaties, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Other laws affecting the Internet are being developed only piecemeal. Regarding Digital Divide, the Caribbean countries are moving progressively to bridge the Digital Divide each at its own pace. Looking at other factors which contribute to the digital divide, there have been measures to deal with access to computers and computer software for example. In Jamaica we have dropped all of the taxes and duties on computers and computer software. However, in the Caribbean, in general, significant levels of software piracy still point to cost as an impediment. There is the whole telecommunications platform and many Caribbean countries have been liberalising their telecom sector so that access to telecommunications infrastructure will be broadened. The other problem is that even though many of our business enterprises are going on the Internet now, there is a lack of knowledge of how to use these Internet tools appropriately to maximise the benefits of e-commerce and so there is a lot of brochure-ware as opposed to a commercially active presence on the web. There is not much vigilance in terms of acquiring IPRs to cover the global spectrum or in defending those rights. The way forward is a focus on copyright. There are many other factors that are involved in this process. One of the ways forward that we have been looking at is improving the copyright law and also improving the copyright system. One of the ways that the Caribbean countries have been approaching it is through implementation of the WIPO Internet Treaties. The second aspect of that is really revisiting the exceptions to copyright infringement. In the earlier talks on patents someone suggested that one way of benefiting poor countries is to limit protection. Duration is something that has to be considered but not only the duration of the rights but in terms of exceptions to those rights. In terms of improvement to the system, there has to be come increased participation in the policy process and also developing some rights management systems that are applicable to the digital environment and increasing the copyright awareness generally. I assume that most of us are familiar with the WIPO Internet Treaties and I wish to add that all Caribbean authors and artists have the view that they stand to benefit from the implementation of the WIPO Treaties, because they have increased protection and there is also increased protection in particular for performers of musical works. In Jamaica everybody is an aspiring Bob Marley. That is the aspiration. In terms of implementing these treaties, although it is important we do know, and we have some input from our librarians, that the WIPO Treaty Compliance Laws will have an impact on custodians of corporate material. I would just flag the

issue of database protection here because that could be even more restrictive based on the fact that a lot of the information in the databases is originating abroad. Of course, consumers of copyright material might have to pay more for access. Revisiting exceptions to infringement. We have been talking a great deal about balance and this is one of the ways to ensure that there is balance, even in this digital age and that is to look at the exceptions that now exist, the traditional ones like fair dealing, exceptions for libraries and archives, exceptions for public purposes. In our copyright laws we have not yet changed for application to the digital media and so that has to be done and some of those exceptions might need to be broadened. We might not be successful in getting an open-ended model for fair dealing exceptions as Australia had tried to do but was shot down by the copyright owners. We can achieve a balance. As I said before, participation in the policy development process is also critical. Regarding the development of electronic rights management systems, I made the point that they should be workable in a digital environment, they should be non-discriminatory across borders and they should fully integrate creators and performers from developing countries. We are outside of the system, so royalties don't come back to us as they should. I think that the information age has presented IPRs with formidable challenges and in particular the copyrights system, but also opportunities for small developing economies, like ours, to leapfrog in development. IPRs must be safeguarded to promote legitimate e-commerce and to provide an incentive. A delicate balance must be achieved between rights and access so that the law does not place an undue burden on users and custodians of copyright material. Finally, as developing economies grapple with the issues of the new millennium, we must seek to develop solutions that encourage use of digital technologies, promote access to information, while preserving the right of copyrights owners. This has to be not only a regional approach but also a global approach, because as someone from the Inter American Development Bank said "Political will is the difference between digital divide and a digital opportunity" and we would have to think that that political will would have to be an international political will to help us to leapfrog in development through these new technologies. Thank you.

John Barton

Our second speaker is Denise Nicholson, a Copyright Services Librarian, at the University of the Witwatersrand in Johannesburg, which is responsible for the Copyright Services Office, The Central Copyright Fund, Copyright Clearances and provides a copyright advisory service. She is a member of the International Federation of Library Associations Committee on Copyright and other legal matters and is appointed to the Advisory Board.

Denise Nicholson: University of the Witwatersrand, South Africa

I wish to thank the Commission for inviting me to do this talk today. How are lecturers supposed to carry out their teaching functions when it is such a hassle to get permission? Trying to do the noble thing a lecturer at my institution recently applied for permission to copy ten pages of music for ten students. That shouldn't be a tall order. Well after the rights holder demanded cash upfront and laid down various conditions, his lecture was delayed and in the end he had to use alternative

material. Would you be surprised if he didn't bother next time? Similarly a choirmaster applied for permission to copy a few songs for thirty boys. When he was quoted the equivalent of £62 per boy he decided to copy them anyway. His attitude was that the need for cultural development in this country far outweighed the commercial interests of a multimillion a year publisher who would not have had a sale anyway, because the price of the original was excessive. Just two of many examples. Copyright restrictions cause even bigger problems in the southern African development community SADC of which South Africa is a member. Copyright laws and priorities differ considerably. For some wars, famine, illiteracy and disease are far more pressing issues than copyright. Vast differences in infrastructure and resources make sharing of information and co-ordination of educational projects extremely difficult. Currently, copyright restrictions are hampering the regional educational project for the functionally illiterate. Before being able to implement the project, the following factors have to be resolved. Lack of infrastructure and funding for copyright clearance in most of these countries, use of multimedia depends on availability of electricity and to the communications infrastructure. If copyright fees are too high or permission is refused, alternative material will have to be used. Clearance of multiple copies, translations and adaptations will be problematic. Bilateral or multilateral agreements will be necessary because of different copyright laws and protocols and while these hurdles delay the process, there are people out there waiting to be educated. South Africa has a copyright act last amended in 1997 and regulations which have limited exemptions for education based on the American Classroom guideline. It has also signed various international treaties including the WIPO and TRIPS Agreements. Due to pressure from rights owners to tighten the laws, the Government published draft regulations in 1998 and proposals to amend the Copyright Act in 2000. These amendments addressed print media only. Unfortunately, they were very restrictive towards education. Apart from eroding fair use and withdrawing virtually all current exemptions for education, the proposed amendments failed to address the needs of the disabled and the illiterate, as well as distance education and digital technology. As a result, the educational sector lobbied Government and the more controversial amendments were subsequently withdrawn. While stakeholders continued to debate issues of around print media, electronic copyright is not being addressed at all, which leaves South Africa lagging behind developed countries. This slide shows a squatter camp outside Johannesburg, a typical home environment for thousands of South Africans living in urban areas. However, more than half the population live in rural areas with limited housing and schooling. South Africa has two very different dimensions. First world and Third World. In the First World dimension, there is a sophisticated infrastructure with advanced technologies, where IP issues are being addressed. Unfortunately, this dimension is overshadowed by the Third World dimension, where a third of the population live below the poverty lines. Illiteracy, including functional illiteracy, is a serious problem. Unemployment is high. Communities can barely afford food and clothing, let alone pay for books and copyright royalties. Oral communication remains a main source of information in rural areas, but the print medium is essential for advancement to literacy and education. Rural schools, libraries and resource centres are poorly resourced. Falling exchange rates and higher prices make the acquisition of textbooks and other reading material almost impossible. Photostatted material provides an alternative. So what does copyright mean to the rural child who sits under a tree or in a ramshackle building because he has no classroom, or to the illiterate, unemployed adult who depends on literacy trainers to provide him with

information. Copyright is as foreign to them as a fresh slice of bread, running water, electric lights, a new book or a computer. Yet, without knowing it, copyright has a serious impact on their lives. It determines exactly what education and information they can have depending on their financial status. Access to information is restricted by illiteracy, various socio economic factors as well as lack of funds and infrastructure to apply for permission and, of course, copyright laws themselves. Literacy teachers are often the only source of information, but copyright laws restrict them from making copies for these communities outside the classroom situation. Urban squatters may attend Government schools and use public libraries. However, without a fixed address, they cannot borrow material and so they depend on photocopies. Copyright fees are unaffordable. South Africa has eleven official languages. Imagine the problems when translations are needed for teaching purposes. Perhaps too many restrictions encourage non-compliance. Tragically, the lack of access to information and education has been a major factor in the spread of HIV/AIDS. In such a devastating pandemic, surely the nursing sister who needs to disseminate copies of vital information to health workers should be exempted from having to apply for permission and pay royalties. The need to distribute essential information for the public good surely outweighs commercial interests. Adult life expectancy has reduced to 47 years in the Sub-Saharan region and is expected to drop even further. Extension of the copyright term beyond 50 years should not be considered. Access to information would be restricted even more and information would never enter the public domain. Most tertiary institutions in South Africa are creators, consumers and publishers of copyrights and uphold the concept of copyrights. However, most of these students cannot afford textbooks and depend on financial aid to pay their fees. The print medium often photocopied is the main source of information provided to students. Electronic resources are limited and copyright literacy levels are low. Most tertiary libraries are under resourced and have had to join consortia to share print and electronic resources. Many have had to cancel journals and purchase less books because of budget cuts, falling exchange rates, high prices and VAT. Some libraries have not been able to buy new books for several years. They have had to resort to photocopied extracts of material on short loan. This is a contentious issue which needs to be addressed in copyright law as students cannot be expected to buy whole books or subscribe to journals just to use extracts for short-term projects. Government documents and other public domain material are not easily accessible. Currently, there is a vigorous debate over the extent to which publishers are adding value to these, example law reports, and charging full copyright fees. For the disabled, the legislation has no provisions for conversion into alternate formats. An example is Brail or audiotapes. Should the disabled really be expected to apply for conversion every time they need to access information? Copyright clearance currently restricts institutions from providing necessary information to their students, as royalties are too high and procedures cumbersome. Budgetary restraints determine what material will be used and quite often alternative material has to be substituted. Transactional licenses are most common as a blanket license excludes various works, including electronic, and is felt to be too expensive. Our rights organisation is aggressively marketing the blanket license and has obtained mandates from many publishers who previously waived or reduced fees for educational purposes. Electronic licensing tends to be covered by contract law rather than copyright law. Copyright issues and fees are address in the contracts and copyright clearance is not necessary. Digital technology has created an explosion of information in the First World dimension of South Africa. Commerce

and some areas of education have been revolutionised. However, the high cost of equipment, networking and maintenance still hamper the educational process. Without adequate bandwidth and telecommunications infrastructure, what is the use of digital technology? It is said that the world becomes a stage if one has access to a computer. Unfortunately, this does not apply to millions of South Africans who do not have access to a telephone, never mind a computer. Sub-Saharan Africa has fewer telephones than Manhattan or Tokyo, so what use is a dial-up modem or the Internet for that matter. If people cannot even access the print media, how can digital technology and electronic copyright possibly make a difference? Technology is advancing at such a rate that the digital information divide continues to widen. Whilst developed countries are addressing electronic copyright issues the needs of developing countries have yet to be addressed in the print media. In conclusion, there has to be a balance between the just demands of rights owners and consumers. To create a culture of reading in developing countries, copyright laws must take into account the need for eradication of illiteracy and massification of education. They must also address distance education, multilingualism and the needs of the disabled. Literacy is the key to an untapped market for publishers. Neutering education today will provide tomorrow's readers and authors. After all, if one remains illiterate, how will one ever read and understand the copyright law. Appropriate copyright exemptions and perhaps cheaper licensing will provide the means to get there. Thank you for listening.

John Barton

Thank you very much. Let me introduce Professor Paul David. He is a Professor of both the All Souls College, Oxford and is my colleague at Stanford although he is in the Economics Department. He has been a leading economist both in Economic History and particularly in the Economics of Technology. He's consulted with the groups in many government agencies, UNCTAD, The World Bank, OECD and the Economic Commission of the European Union.

Paul David: Universities of Oxford and Stanford

I am grateful to the Commission for inviting me to appear here, particularly since this has been a wonderfully informative set of discussions. I feel I have learned a great deal. The title of this very short presentation alludes to the American poet, Robert Frost's Ode to Individuals, which celebrates the stone fences that distinguish the rural landscape of upland New England. Good fences make good neighbours. Perhaps it is so, where the resource involved his land unto which the livestock from neighbouring farms may wander without fences and therefore graze on and destroy the provender of the animals already pastured there. But is it so, also, when one scientist pours over the data gathered by another? Simple consideration of the economics of public goods and the public goods nature of information tells us that such is not the case. Information is not like forage, depleted for use and consumption. Datasets are not subject to being overgrazed but, instead, are likely to be enriched and rendered more accurate and more fully documented the more researchers are allowed to comb through them. It is by means of wide and open

disclosure and sceptical efforts to replicate novel research findings that scientific communities collectively build bodies of reliable knowledge. There is good reason for hesitating to embrace private property rights as a universal panacea, for that is a system of resource application that has been found to work well, when it does work well, only in the domain of conventional commodities, commodities which are exhausted in the process of use and cannot be simultaneously enjoyed by many. This is not a new idea. In 1813, Thomas Jefferson in a letter to a Baltimore inventor, Isaac MacPherson, pointed out that it was provident nature that had made ideas like fire instantly expansible over space without lessening the intensity at any point. He who lights his candle like mine – Jefferson - gains illumination without darkening me. Ideas are then are like fire rather than like coal. The implications of that are quite far reaching. In the realm of knowledge and information, and information is the output of scientific activity as well the necessary input into further discoveries and invention, an overly literal application of the metaphor property emphasising the desirability of socially enforced rights to exclude trespassers or to alienate commodities by means of exchange may lead to its perverse economic policies, particularly in the field of scientific and technological research. By its very nature, the alternative to proprietary research, i.e the system backed up by IPR protections for copyright patent, is the pursuit of open science. This requires the patronage from the external resources, either from grant and contract funding or for those who are publicly or personally engaged or from both. The central problems facing researchers in the developing countries are routed in a lack of adequate material resources to pursue their work in the effective open mode of cooperation of scientists throughout the world. Thus it is tempting for them and for their governments to think of embracing proprietary research as a solution to the income constraints under which they presently labour. The same thought will occur quite naturally to those who wish to help these less advantaged colleagues. After all, this course of self-help in meeting the rising costs of modern scientific research demonstratively has proved attractive to the administrators of many far better endowed universities and public institutions in the West and the industrially advanced countries who find themselves financially constrained, and also to individual researchers there, who see it as a means of further advancing both their work and by better equipping their laboratories and incidentally advancing their material standard of living. In the developed countries, this course has provided, at best, only a small margin of incremental research support, averaging 8-10% among research universities in the United States. Yet in some fields, particularly in the live sciences where the share of funding from the industrial sources approach is 25% at leading institutions, the commercialisation movement is perceptively encroaching upon the culture of academic research and challenging the ethos of collaborative open science. Consequently, we must worry that by applying the same remedy to a mend the economic disabilities of open science in the developing countries would have more profound trans-formative effects and might, in the end, result in further isolation of researchers there from the remaining sources of cooperative exchange with publicly supported colleagues and institutions elsewhere. This is a very real problem in the changes that are taking place in the global system of IPRs and the responses that that is beginning to evoke. It is true that in the Private Property Rights system we have a readily prescribed potentially potent cure for the condition of impoverished open science that people claim property rights and charge for it. Unfortunately, this is a cure in which the patient dies. We really have to think of something better to do. I now want to take you through one or two further points and emphasise in this that there are two

regimes for the conduct of scientific investigation. Open science, proprietary research. Neither represents a perfect solution. The problem for science and technology policy in the developing world and the developed world is to maintain a balance between the two, because together they are complementary. Open science has a logic that supports rapid advance in the stock of reliable knowledge. It elicits disclosure, disclosure is a mechanism through which priority is claimed, the reward system is attached to verified claims of priority, and disclosure advances the speed with which a validation of claims proceeds. It puts new information in the hands of the community as a whole because there is no reason to believe that the individual discoverer of a particular property, or the developer of a particular new research tool, knows all the possible ramifications or the range of applications for it. By referring to the community to establish reputation he also directs individuals' attention to solving problems that are helpful to other scientists at large. It is a system which obliges people to give away what they learn. Consequently, they cannot extract any rights for it. So this is a system that cannot survive by itself. It must exist in a symbiotic relationship with another system which is able to capture enough of surplus from other sources to support this activity. The nature of information is such that, unless some means of restricting access to the use of information is provided, one cannot derive or appropriate any of the material benefits. The proprietary research system solves that problem. It is this, in some sense, which lies at the core of the economic logic of IPRs. It is a bargain and a clever social contrivance to elicit disclosure because secrecy is far more inefficient as a system through this disclosure, so that the knowledge can be put into a common domain of ideas. In exchange for disclosure there is a grant of exclusivity in the commercial and other uses. IPRs have some other uses as well as the effecting of the social bargain involving disclosure. In the realm of copyright there is the stabilisation of creative material, i.e. moral rights to the control of texts so that attribution is not mistaken, so that there is not misappropriation of claims to creative achievements. It is quite possible to separate the moral claims and the stabilisation of moral claim without conferring exclusive rights to exploit. The point that underlies this entire talk is that the balance between the two systems of open science, which requires the maintenance of a common knowledge domain, and proprietary knowledge which involves the modification and restriction of utilisation of that domain, has been disturbed by a whole series of trends, which I think people are familiar with. I want to consider some of the implications of these changes. I want to touch on one, because this is a session focused particularly on copyright rather than patent, I wedged into the copyright section sui generis protection and particular legal protection of databases which has been afforded under the European Directive of 11 March 1996. This is a piece of legislation about which people know surprisingly little. It has very far-reaching implications. Fundamentally, it reaches most of the conventions that exist with regard to copyright. It makes no provisions for fair use for educational research purposes, except where it can be shown that the use is purely illustrative and in no way damages or could damage the commercial interests of the copyright holder. It permits legal protection for non-copyrightable material, which is placed in a database. A database can be virtually anything. It doesn't have to be electronic. A database is any collection of facts under this law. Every time any feature of the database such as its formatting, search engines or content is altered, the rights to the material in the database are renewed for another fifteen years, so it gives you a means of indefinite protection. There are no provisions that limit the right of a database owner who has imbedded in a database publicly produced data, such as

satellite images or remote sensing information which is essentially nonreplicable, there is no limit on their ability to charge anything they want for it, so there is no possibility of competition policy being invoked on the view that this is exploitation of use of exploitation monopoly. This challenges then one of the fundamental collective legacies of accumulative scientific research, the development of databases. We are in an era now where, through the use of electronic media and through advance research routines, it is possible to create a very extensive link to databases which generate a discovery space, a space in which bio informatics is increasingly exploited to do sophisticated data mining to actually discover relationships. This is an important research tool for many groups and it is one that would, otherwise in the absence of these restrictions, continue to expand. The few bits of experience we have with the privatisation of public knowledge suggests that the transfer of these kinds of monopoly rights lead to enormous increases in the prices charged for access because there are specialised commercial uses, as in the case of satellite images in which the costs of the given land set image was increased from \$400 to \$4,000 an image, overnight, when the control of these passed into the hands of a private company. Consequently, this is a very diverse issue. It is an issue which, because of the features of the European law had certain reciprocity features, again, violating national treaty conventions in copyright, set in motion legislative movement which is still going on in the United States. At present, the good news is that the United States has not followed the EU into this morass. On the other hand, the existence of a now split regime has meant that a number of attempts to create new information databases, particularly in bio informatics, has been frustrated because the essential features of these databases is to link the existing knowledge base. Since much of the knowledge base is in, for example, the National Centre for Biotechnology Information in the United States some efforts by the European Bio Informatics Group to build new databases have been blocked because it violates policy. The way to go in this is not for the US to harmonise up but rather for national implementation to reinsert fair use, research and education exclusions into the database and to think about the various means of either public licensing or buyout of information by public agencies to protect the public domain.

Chris Zeilinski: Health Information for Development

I was a participant in the workshop that was held a month ago by the Commission on this topic. I wanted to clarify some of the issues relating to the concept Essential Information that is mentioned in your background information. Information is not a monolith, and yet is considered as such under copyright law. One doesn't distinguish types of information. Equally there is no access right to information under any regime I am aware of. Considering that made me look at the way essential drugs were treated. If you look at the definitions of essential drugs in the WHO declarations on the subject, there is actually an identified access right. Humans have a right to access drugs and medicines that are essential for their development. I wondered if there wasn't scope to extend that to information whether there is a right of access to information that is essential to human development. One of the points that was made in the background documentation is that one has to be careful not to stress that there is essential information, suggesting also that that would be somehow distinguished from nonessential information. That isn't the point. The point is that the notion that there is some information that humans need in order to

develop and adapt information has an access right perhaps is the one that I wanted to put forward. People suggested this might be difficult to define and yet in the 1971 Paris Revision to the Berne Convention that was attempted. The Paris Revisions grant the right to developing countries to translate and republish under statutory license if necessary information that is considered important for educational purposes. So there is an attempt at a definition there. The Paris Revisions didn't get anywhere, of course, and they were not very successful. However, I think there is a groundswell right now where this idea is becoming more relevant and, in particular, there is a draft Convention on Multilingualism and Open Access in Cyberspace, is the title, which UNESCO is working through, which does contain elements of essential information. I would welcome seeing this in the recommendations of the Commission if that is considered suitable. There is a practical side to this in the various open access initiatives that we are witnessing, particularly in the last two years where academic and scholarly information is being made available to developing countries either for free or under very favourable terms in a cooperative activity between the rights holders and the library and music community which essentially, I think, is based on the concept of essential information.

Peter Drahos: Australian National University

I have a comment on Dianne Daley's presentation. She said at the beginning of her presentation that the citizens of the Caribbean had embraced copyright law and seen its many advantages. While that may be true, I think it is worth adding an historical footnote here about the Caribbean came to have copyright law. In the early 1980's most Caribbean states did not have copyright law, but they did have a very good microwave system, which they used to broadcast American movies. Now, we are not obliged to pay licences because they didn't have copyright law. At the behest of the American Motion Picture Association, Congress passed legislation called the Caribbean Basin Initiative 1983 which included Section 232, subsections 1,2 and 3 conditionalities which offered the Caribbean states duty free trading privileges in the US market, but conditional upon the adoption of copyright. Within the space of two years, almost every Caribbean state acquired copyright law, and US lawyers drafted all of this law because Caribbean states did not have any copyright expertise. So we have a very interesting example of a wholesale international transplant of copyright institutions in a remarkably short space of time. I was interested in your observations, Dianne, that you apparently still remain net losers in the area of musical royalty flows, an area where, as you mentioned, you had the comparative advantage of Bob Marley. I would also be interested, following on from Denise's extremely interesting presentation, about what impact this had had on textbooks in the Caribbean. I suppose there is a moral here which is that when a state or a group states embrace an institution from another state a certain sort of inertia is set up where it becomes difficult to contemplate more efficient institutional arrangements such as, for example, the free software movement which, in a way, makes the link between copyright and software protection much more problematic.

David Bramley: WHO

Each of the speakers this afternoon mentioned the link between copyright holders and the charge for using copyright protected material. The experience of the organisation I work for uses copyright actually for a different purpose. WHO is a publisher. We produce about 500 or 600 books or reports each year. We have 100,000 pages on our website. We have a lot of content. Although we sell it to some people in developed countries, because that's how you reach those markets, we actually give it away more often than we sell it. Why we exercise copyright, however, and we don't put it in the public domain, we have a fairly sophisticated licensing procedure, is actually to protect the integrity and accuracy of our information. It may not be important to a commercial company that may only want the money, but to WHO the fact that our guidelines on the treatment of a particular disease are formally released, we publish them but if someone else wants to republish them its done under a license which says you don't change these you use only the references to generic drugs, things like that, is quite important to us so that people can rely on the information they receive from us. It also enables us, if we are licensing on the Internet, to withdraw that information when it becomes out-of-date and when a new version is available. Unfortunately, on the Internet I have found material on breastfeeding, for instance, which we issued well over ten years ago and which is now out of date because it doesn't mention HIV transmission but is still circulating on a Canadian Website as WHO's guidelines. There are other reasons as well. By putting information in the public domain you just abandon it in a sense. We are able by licensing to follow up our target audiences. We are following up who receives the information. We are able to get feedback. So copyright has another aspect, though I quite agree that may not be the one that's mostly used by society.

Milton Lore: London School of Economics

This is about open archive systems and open content. To put things in context, there is only 9.4% of the world population is attached to the Internet. Of these, more than 50% are living in developed nations. There is an increasing trend towards the digitisation of educational resources. In a country such as India, where I come from, these are not affordable and places such as educational institutions and public libraries in the cities used to have print material which could normally be shared by more that one person now reduced because of the digitisation of online resources thanks to the login and password method. Could there be an initiative with regard to open archive systems which would help developing nations to access more and more educational materials. As the moment, some journals are available only online and they are not available in print form. People in developing nations, especially students and research communities are highly deprived of this information. One suggestion could be that a country could be subscribed to particular resources especially resources such as CABI on physics, chemistry and biology. It is available but at extremely unaffordable prices and they can restrict the number of users. They can monitor the kind of users so that all the research institution students can have access to these materials.

Maureen Duffy: British Copyright Council

I wish to put in an element that has been lost. We have been talking about copyright but, of course, copyright is initially author's right and author's right is one of the universal human rights according to the Universal Declaration on Human Rights. It maybe that we are approaching a point where, indeed, one size does not fit all, where we should be looking at author's right, at copyright, at corporate right, at Traditional Knowledge right and sui generis rights for dealing with other areas. I think that this may, indeed, be the way that we should be thinking of going. Author's right is the right of the creator vested in the natural person and it includes the moral right, which I was glad to hear being brought into the discussion. The moral right of paternity, which is vested in the author, is absolutely crucial for the consumer, not only for the author. The moral right of paternity is the guarantee of integrity that tells the consumer that what he or she is getting is the real thing. In the next round, I agree as Professor John Barton said this morning, this is perhaps not the round for it but I would like to flag up that I hope the next round will come soon and that it will begin to address the further problems and including the importance of author's right, particularly to the creators of developing countries.

John Lindsay: Kingston University

The Information for Development Forum was formed about 20 years ago to consider the issue of information and development. I must admit we have never had this number of people at a meeting, so I think I might brand this meeting as one in the series of The Information for Development Forum and, in turn, that means that you could have a 20 years history to the Commission that might be useful. One of the problems that beggars us, is that we have at least nine meanings of the word "information." When people use the word, we don't know which of those words they are meaning. It is interesting the way the chunking and clumping has been done by the Commission into the eight topics that we seem to be dealing with here. There seems to me to be something really quite strikingly missing in the whole of the structure, because if we are going to talk about anything at all we have to name it. And if we are going to have a communal knowledge of a thing, it has to have a record. The structure of that record and the content of that record then becomes what we classically understood as being information of which the archetype is the bibliographic record. So, when you structure your bibliographic records, you are building on a knowledge base that involves from the machine-readable record, through to the Anglo-American cataloguing rules, through to the duodecimal classification system, a set of structures that are developed over really a very long period of time. Then, as the new technology comes on, we develop from the record structure the concept of metadata, we then have the concept of the electronic governance interoperability framework which produces the concept of the subject, the service and the identifier and these are all going to require the structures that are inherited from the concept of the bibliographic record. Paul David referred to the real danger and damage in the database protocol from the European Union. It seems to me that that has to be systematically and structurally fought and in order to ensure that we stop the enclosure movement of what is core to the communal knowledge of society, we have to ensure that the concept of the bibliographic record extended into

electronic data and the structures of the content of the bibliographic record are made into international public goods. That argument has to be made very loudly.

Peter Thompson: World Press Centre

We have two big historic changes that we have muddled up at the moment, which is the digital revolution that has already made it inevitable that the poorest villages in the poorest countries on earth will be using IT within a generation. That is absolutely unavoidable given the increasing rate of growth in the technical power of the technology and declining costs and given that one copy of networked information can serve every digital device. Given those two things, it is inevitable for all the world's public information to be instantly accessible to everybody rich and poor in the lifetimes of just about everybody in this room. One of the problems that I have had with how to address myself to the Commission is how do you raise such a big question? Is the whole development literature actually looking at the question of how would you organise the available public information and public knowledge direct from the PCs and other devices on which it is generated, put it together as superior information about what is happening and what is available such that there is equal access for all IT users to the available public information and public knowledge. This doesn't require any changes to IPR but it is a different context from the context in which this discussion is going.

Funkazi Koraye-Crooks: Africa Bureau for Cooperation for Development, WIPO

I came here today because I saw the wonderful title, "How Intellectual Property Rights **could** work better for developing countries" thereby giving me the premise that we presume that in some parts of the Middle East the copyright laws are not working as well as they should. I would like to plead with the Commission to take timeout to speak to those who actually work in the developing nations right now and let them share with you what are the current problems and obstacles that the people in those countries currently face. I'll give you one simple example. I work specifically with the music industry. The whole concept and the various principles of copyright to a large proportion of the music industry, in Africa, Kenya, Tanzania, Zambia, Malawi, Nigeria, Ghana, I could go on forever, is alien. The idea of what is a publisher is still an alien concept. I was in Nairobi last year talking to the musicians, the stakeholders who were trying to assist them in developing a music industry and using the copyright law that was present under TRIPS to say, "Listen, you can become a profitable group as an industry, but let us be aware of what IPRs are." After a few minutes we found out very simply that the idea of what is an assignment as opposed to a licensee was nonexistent for many of the musicians and the authors over there. In Malawi you have a Government that has actually committed to trying to develop a music industry in Malawi. Unfortunately, Malawi does not possess one single cassette manufacturing plant. Therefore, every piece of music in Malawi is imported into the country. The problem the Malawian Government explained was that the copyright laws says "national treatment now because of TRIPS." This means that international repertoire belonging to the majors, such as Michael Jackson, should be given the same sort of protection as the local Malawian artist. What is the problem? There is no licensee subsidiary presence of any of the international right holders for

all those works in Malawi. So the Government has said that if we are trying to clear out piracy in this country, we can do it for our own local artists. We can't do it for the international artists. How, therefore, do we create a vacuum that no one will fill. Write, for example, to the record companies. See what they can do? In the past the structured recording industry had a great presence in Africa so they actually helped with the infrastructure building in the music industry, providing the protection and the mechanisms required between the artists who, basically, is a talented creator. He doesn't know what a contract is, he doesn't want to know who will manage his rights, who'd play the music, who'd pay his rights and I just found, that now, the majors tend not to be in Africa for various reasons. As a result, as Dianne Daley actually indicated, a lot of that role has been placed on the governments, on the government who, with all due respect to them, don't understand how in principle to actually implement these laws. If we do really want to make progression in the least developing countries in Africa, we need to currently understand why they are having those problems today. Last year we were invited to a meeting with the World Bank, because the World Bank had decided that poverty reduction could be achieved by the development of the music industry. They were going to pick six countries in Africa and they were going to pour money into these six countries into the music industry for the purpose of poverty reduction. I'm not sure how they picked the six countries. The meeting lasted a day and a half and I was aghast on the one hand, but pleased on the other hand, because they had managed to gather the IBMs of this world and others who offered to pour in a million and a half dollars in six countries in Africa into the music industry. According to IBM they would provide new technology that would, in their words, "Leapfrog and close the digital divide between African and the developed nations. They would put in new technology so all an artist needs to do is to walk in, record his music, and once it gets put up onto the net he would get his royalties." I tried to share with him that most of those countries have no light, until today, so how they were going to get electricity for the purposes of running these fancy things was neither here nor there. There has been a lot of theory today, but if we are to take this step forward we need to try and understand the practical problems facing most of the developing nations.

Dianne Daley

I just wanted to endorse what Maureen Duffy and Funkazi Koraye-Crooks said, but I wanted to just correct also the history of the Caribbean and copyright laws. As former British Colonies, we had copyright laws from the 1911 and in Jamaica, in particular, and the larger countries that place a lot of emphasis on music, Jamaican musicians and performers started their dialogue about updating the copyright law just after they became independent. I have to admit that the whole advent of the TRIPS Agreement did influence the process and countries moved much faster with updating their copyright laws but to say that debates in Parliament were against copyright is wrong, they were in favour of copyright and Jamaican musicians were always pushing it. Whether or not they understand the full implications of a copyright law is debateable, but they certainly embraced that copyright philosophy and the information age. As for US lawyers drafting our laws, that is something that most of the Caribbean countries totally resisted. We basically relied on our own legal draftsmen and they were required to run this in line with complying with the TRIPS Agreement. Certainly, we were not influenced by the US. What we would love to

happen, in the area of broadcasting and cable, is that there should be some consideration given for the fact that we are in the footprint of the US satellite and so we do receive cable programmes and that has been an issue between Caribbean economies and the US to see how we can best arrange licensing scenarios to enable us to legally receive these programmes. This is an issue that still needs to be sorted out.

Denise Nicholson

A point about authors' rights. Copyright was created to protect the author, but essentially it is now the publishers who are being protected, not the authors. Developing countries do not want to be marginalized, but we do need to have our uniqueness recognised in any global negotiations and agreements. We should be able to use the good parts of developed countries' legislation and recognise the bad parts instead of them being imposed on us. In South Africa we have a tendency from the publishing industry to keep saying we have got to be like America and the UK, and we say we are not America, we are not the UK, we are unique and we have different problems and we need to have some legislation that addresses that.

Paul David

One of the things that has been brought out in the discussion is that copyright serves a multiplicity of functions. The inherited system of copyright imposes on the way in which these functions are fulfilled, a set of restrictions that may be perverse in their operation. Copyright was not historically created to protect authors. Copyright grew out of the system of privileges which was to protect publishers. Copyright is the right to copy. That I came to be extended through a theory embodied in 1791 to entrench legislation as part of a natural right of office is part of a tradition which doesn't exist in Anglo-Saxon and common law countries. It is for those countries part of a bargain for society. That it serves a function of protecting the moral rights of authors is undoubtedly true. The question then is, "Does that also couple with the right to collect royalty." If you argue that there is a rationale for collecting royalties in that you are trying to elicit disclosure, then you have to look at the application of copyright as it exists, for example, in its extension to the protection of software. This is flagrantly an abuse of that bargain because in software copyright it used to be the case that you had to reveal the machine code, you don't have to reveal the source code, now you don't even have to deposit the entire machine code. A fragment of the machine code is sufficient. There is no disclosure from a functional viewpoint in that bargain. It is simply a way of claiming revenues and, indeed, there is nothing that actually protects the original writer of the code. A notion which has a certain aura and ethos in some circumstances has been extended to many, many things which are now protected by copyright. There the main function that they perform is to provide a source of revenue. If a distributed goal of obtaining revenue for worthy recipients is the objective then one has to think of the penalties which are exacted because the workings of this monopoly restrict the access of people to the relative information. So, from an economist's viewpoint you want to ask, if we are going to give people the special protections of a monopoly what is it that we are getting in exchange from a societal viewpoint. By trying to keep that in focus one can address

lots of the issues that have been raised with regard to protection of Traditional Knowledge. It is interesting and important to ask what is the goal that we are trying to achieve. If we are trying to elicit disclosure of TK then you want to make sure that the nature of the rights that you are creating does not create access barriers to that knowledge. This applies *a fortiori* in the application of both patent and copyright protection and database protection to those areas where there is a common social good in the exchange of information which is used to produce more information. If that is a shared human enterprise then we want to exempt that activity from the force of copyright and patent protection.