PROMOTING PRINCIPLES WHICH ENCOURAGE INNOVATION AND PARTICIPATION

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I am writing to request that the IGF take active steps to ensure that the interests of community and individuals is well represented in the development of Internet Governance. Please actively support and progress the principles outlined in the Adelphi Charter.

The internet enables people to share information freely, this provides great opportunities for us all. Some parties are aiming to establish right of way with those opportunities.

People around the world who have not traditionally needed to lobby to have fair use and fair dealing rights to access information are at a disadvantage because the groups which have access to the international treaty process have been investing heavily in progressing their perspective.

As a result of this process there has been a shift in the copyright system which puts emphasis on the control side of the balance. Where previously copyright protections were a special consideration or exception to generic access rights, now we are requesting generic access rights as exemptions to copyright.

Groups which have had control of information previously, because we could not previously share it directly, are responding to our ability to share peer to peer with laws to secure their position as holders of information rights. It has been primarily distributors of information who have been adjusting these laws in their own interests. The DMCA lobby have successfully lobbied to have their perspective on digital rights implemented around the world as a prerequisite of trade negotiations with the United States.

This means that fair use and fair dealing are now required to apply to be exempted from a copyright state, where as previously copyright was seen as an exception or special case to a default set of access rights. The new DMCA Digital Millenium Copyright Act also allows, through use of TPM's the copyright holder to limit other technologies which interact with the copyrighted product.

This is effectively putting a fence around other people's copyright and freedoms rather than being a defense of the copyrighted content only. It is also very likely that TPMs will stand between legitimate users of technology as a block, but will be of no effect in deterring large scale copyright infringement.

The practice of responding to well resourced business lobby groups, and of tying issues of intellectual freedom and communication to trading treaties is fundamentally disruptive of both the process of representative decision making and is also creating legal frameworks which lock the possible uses of technology into constraints which suit pre-internet business models. These frameworks provide subjective benefits for their proponents while hobbling both the fulsome exploration of the potential for existing technologies as well as threatening those who would develop new technologies for working with information. In particular any use of exclusive rights to restrict development and use of technologies which enable sharing and interconnectivity I feel are short sighted and counterproductive.

Both in written scope and actual use the DMCA/DRM/TPM suite of 'protections' has proven itself to be primarily a method of monopolising markets, threatening independent academic research, creating a threatening and uncertain environment for new entrants and independent innovators, and overall has dramatically reduced the essential value of digital information in comparison to pre-digital paper based alternatives.

While it is true that file sharing illegally is possible using the internet.
Legal peer to peer file sharing and collaborative development are also possible and provide great opportunities such as the development of Wikipedia, sharing of source for open source development using bitstream, incorporating mixes of music into new sounds.

While it is true that format shifting applications can be used to pull copyright material from closed formats for illegal purposes, they can also be used to rescue content from broken or out of date digital packaging, they can be used to mix sounds from different file formats into a new musical composition, they can be used to speak a written file for accessibility purposes.

While it is true that in many US Western movies chairs are largely used to knock other cowboys out, they are also useful. We recognise that a chair does not need to be banned. Despite this the US business lobby is demanding that the world restrict development of technologies to only those products which cannot be used in an illegal fashion. We need to recognise that banning the development of technologies can only ever restrict lawful development and invention because those who aim to break the law in the first place will not be taking notice.

There is an exemption for this banning which highlights the prejudiced nature of its basis.
If a technology generates sufficient commercial benefit it is not considered an illegal technology.
The problem with this is that any new technology will not have a market at the time of development, any technology developed for community or even personal benefit should not be illegal because it does not make money. It highlights the illogical nature of the law and also clearly demonstrates that it was written for existing large business interests at the expense of all other participants.

The internet also makes information newly accessible for publishers and distributors.
The internet provides these groups with more access to the buyer's personal equipment, systems, data and conversations which then has extensive implications for basic rights with information.
We have already seen two examples where companies have effectively cracked the boxes of their customers. These groups which lobby for absolute privacy for their products, even at the expense of critical systems and risk to life, are demanding that no one else has any at all.

The UN Internet Governance Forum is an opportunity to step back from the push and shove of those who are most vocal in their own interests, and to re-secure a fundamental commitment to shared resources and information, to a belief that we are all able to benefit from a system where information is both accessible and can be interacted with and where more players can participate in moving us forward. This does need to be a tangible act of commitment. It needs to be real and effective. The DMCA operates on this international level. It is difficult for the wider public to represent their concerns at the level of a UN forum. A search of the internet itself on the acronym DMCA would return a body of response to this kind of legislation, but it is the professional business lobbyists who will be able to be present at the UN, in the same way that it is the business lobbyists who are at the USFTA negotiations.

I am asking that the Forum of Internet Governance respond directly to the DMCA.
Use this forum to recognise the problems associated with restriction of digital information to a few large existing players and support actively the development of an alternative which protects the principles of the Adelphi Charter, such as the "A2K" Access to Knowledge treaty. Please reestablish a system for fair use which can not be progressively eroded by arm twisting trade treaties. Secure the right to critique and investigate technologies for researchers, developers and owners of software products.

People who have bought computers and software products should not be beholden to their purveyors post-purchase. There is no value for the consumers in this. It can only be achieved by massive shifts in peoples' rights with information, to make people uncertain tenants of equipment and systems which they have invested in.

Many groups are concerned about the current legal situation and are talking about these issues. Artists, musicians, authors and scientists and people who create with information have not traditionally had a strong voice in these negotiations as their rights were often expected to be represented by other organisations. The internet provides an opportunity for these groups to find ways which they can directly manage and license their work. The internet has proven to be a vital and diverse environment for people to communicate, develop and explore. This international asset needs to be something we share. It works best that way. It has more potential that way. The forum of internet governance needs to be able to identify those patterns which benefit us all long term, and sort those from the proposals which protect specific people. Those proposals which benefit specific people should only be able to do so where they do not cost everyone else their freedom to participate on an equal basis.

Copyright regulation will profoundly shape the evolution of internet-based business models. These laws are being drafted to effectively outlaw models of distribution and sharing which are emerging as a natural response to the new opportunities provided by the internet. These are seen as a threat specifically because the proponents have interests and business models which are based offline. Not enough attention is being placed on the way that copyright is being used to restrict the opportunities of future entrepreneurs to develop new services and products in the digital economy. Similarly the increasing and unnecessary polarisation of access to copyright materials will create an uncertainty in consumer markets and will dampen the possibilities of consumer/user-led forms of innovation.

Please take active steps to ensure that the interests of the internet community of today and of tomorrow are provided with an open and inclusive legal framework within which to create communicate and do business. Please support A2K and actively debunk the DMCA and affiliated legal anomalies. The forum is in a strong position to appreciate the implications of these laws and with a focus on good internet governance in the interests of internet based communities and businesses will need to be prepared to tackle these groups who fear what they do not understand.

http://www.adelphicharter.org/
http://www.cptech.org/a2k/

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