

June 17, 2006 DRAFT

Working Discussion draft for: The Paris Accord

The following is the draft text as of June 17, 2006, for a proposed "Paris Accord" between creative communities and the public. This text will be discussed at a TACD meeting in Paris on June 19-20. Discussions about the text are also taking place online at: <http://lists.essential.org/mailman/listinfo/a2k>.

The point of the Paris Accord is to establish an agreement between creative communities and the public, that includes recognition of (and suggestions for improvising) (1) access to, and (2) income for, the knowledge goods produced by creative communities.

This text is far from final. It reflects bottom-up suggestions and comments from a number of different persons, does not have a consistent editorial style, there is no consensus on the substantive proposals, some sections are place holders, and it is often presented in relatively bloodless prose. It is however useful to see what has been proposed, and to find out where we need to go, and I think it is an excellent start. jl

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Preamble

There has not been much work yet on the introduction/preamble, which was going to be done after there was some agreement on the substantive portions. It may or may not reference other documents like the Geneva Declaration on the Future of the World Intellectual Property Organization (2004), the Adelphi Charter on creativity, innovation and intellectual property (2005) or various other declarations and statements.

Medical Research and Development

1. Research and development is a necessary and valued component of the health care system.
2. A number of different institutions are essential for the support of medical R&D, including government, intergovernmental, non-government not-for-profit and for-profit organizations.
3. The systems for supporting research and development of new drugs should ensure sustainable sources of finance that support employment in R&D organizations, but also should not undermine the goal of access for all for new medical inventions. [TF: I'm not sure why we should be "supporting employment in R&D organizations." Suppose, for instance, that we concluded that malaria research could be conducted more effectively and efficiently by university labs than by private drug companies. Should we be troubled by the fact that, shifting funding from the latter to the former would put some research scientists out of work?]

4. Systems for stimulating R&D should address areas of greatest health need and public interest. [TF: When does "the public interest" diverge from the "areas of greatest health need"? Perhaps when pursuit of a pure utilitarian criterion would neglect the victims of rare diseases (the orphan drug problem)? If that's the only circumstance, I suggest that we spell it out. Are there others?]
5. Separation of markets for innovation and products that incorporate those innovations. When possible and appropriate, the elements of the current systems of stimulating R&D through high prices for [essential] medical products (through such measures as market exclusivity for innovators), should be replaced with new systems that reward developers of new products directly for improved health care outcomes. This can be easily accomplished when systems of public or private insurance exist for medicine, and when it is feasible to estimate the impact of new medicines on health outcomes.
6. There is also a need to expand methods of funding projects that support open research, the development of databases and other research tools, as well as high-risk R&D projects that are likely to be useful for follow-on innovation.
7. Science depends upon access to knowledge. Hoarding of data and materials must be discouraged.
8. Intellectual property rules should not prevent experimental use of inventions or materials, nor should they discourage or prevent investments in any field of invention.
9. National governments should eliminate visa restrictions that limit the ability of students to study at universities in another nation, or restrict the ability of scientists or engineers to participate in conferences or gain experience at firms in another nation.
10. Methods of protecting investments in clinical trials for new medicines should not prevent governments from making medicines available at affordable prices or require unethical or unnecessary replication of human experiments.
11. Individuals and communities that collaborate in scientific research should receive appropriate recognition for contributions to new scientific discoveries.
12. Governments must support global agreements to share in the costs of evaluating new medicines. Such testing should be transparent, and funded by sources that do not have incentives to distort or misrepresent findings, and which address the most useful scientific and medical questions. [TF: Could we add that governments should assert and exercise the power to select the drugs that merit testing and the diseases for which they should be tested? The purpose of such a provision would be to avoid outrages like that discussed in The Guardian today, in which the British version of the FDA is powerless to determine whether small doses of Avastin are effective in dealing with a common source of blindness, because the maker and patent holder (Genentech) refuses to apply for a license to use Avastin on blindness. Why? Because Genentech hopes to make much more money by licensing a closely related drug, Lucentis, for blindness.]
13. Patients should freely share biological materials, and consider participation in clinical trials to test new medicines, with the expectation that new scientific advancements will be accessible to all, that clinical trials and other experiments follow appropriate ethical standards, and that the trials are reported to public databases, in order to provide for greater transparency of the scientific evidence, subject to appropriate protections of personal privacy.

Software

1. Concentration of ownership and control of software operating systems and applications presents risks and dangers to programmers and users.

2. Monopolies or cartel like ownership of PC operating systems and office productivity applications harms users and programmers, and must be addressed by governments, programmers and purchasers of software.
3. Programmers of software need access to certain interface data, in order to design products that work with other products.
4. Some high quality software products, standards and protocols can and will be produced without regard to ownership or control of software code, or any expectation of remuneration or other pecuniary reward from the sale or licensing of the code. On the other hand, some important software products are unlikely to be produced without an expectation of economic rewards.
5. [Consumers agree that infringement of software applications undermines economic incentives for firms to employ programmers to develop certain new products. Programmers agree that excessive prices for software programs contribute to infringement of software copyrights. [PA comment on earlier formulation: I don't agree with the present drafting of 5. I am not in favour of infringing software copyright. In many cases, free software is the obvious solution to avoid infringing on proprietary software copyright. However, there is strictly no evidence that infringement of software copyrights by (whom? missing word in your draft) has "deterred firms from employing programmers to develop new products". In contrast, there is strong evidence that monopoly positions of installed software providers (created including by letting "illegal" copying develop to lock in users) acts as an innovation deterrent within these companies, inducing a predominantly rent-seeking behaviour and the search for innnovation that protects oligopolistic business models (DRMs for instance) instead of providing new useful functionality to users. Patent and other legal or regulatory developments that provide dominant players with weapons of massive deterrence or destruction o course reinforce this trend (as shown be Bessen, Maskin and Hunt).]]
6. Commercial software products should not be designed to lock-in users to particular vendors.
7. Business models for software development should reward programmers for making users better off, and not reward programmers or software publishers for anticompetitive and anti-consumer practices.
8. Open document formats are essential for the development of a competitive and open software industry.
9. Users and programmers should lobby large buyers of software to demand open document formats, and other measures that promote interoperability.
10. Proprietary technologies that undermine the World Wide Web should be discouraged.
11. Experience has shown that the costs of extending patent protection to software exceed the benefits.
12. For any software functionality that is essential to creative, expressive knowledge and innovation activities in today's or tomorrow's information society, there should exist, as soon as possible, at least one practical solution that is implemented as FLOSS (free/libre/open source software), and whose usage does not depend on proprietary software. [PA: The legal, standards and interoperability, competition and other points can be derived from this prerequisite. Most cannot be credibly ensured without this being fulfilled. See also number 13, which PA proposed]
13. Consumers and programmers support the legitimacy for governments or other parties to support the creation of missing components of essential FLOSS alternatives, either directly (German policy) or indirectly (research and development policy, other forms of incentives, pro-active competition policy with corrective measures based on irrevocable royalty-free non-IP constrained licenses).

The Public as Creative Community

1. The development of the Internet and other computing, audio, video and information technologies have opened up a wide range of new opportunities for the public to directly participate as creative individuals and communities.
2. Many of the most widely viewed web sites are those that point to, showcase or host works that are created and made available for free by the public.
3. The explosion of web pages, listserves, personal weblogs and other new publishing platforms and technologies, such as search engines and collaborative editing and publishing tools, are part of the rise of a new and dynamic creative community that will change society, and challenge older publishing models.
4. Intellectual property rules must be evaluated to determine if or how copyright and other norms will accommodate and these developments, in order to support rather than undermine the opportunities for more democratic, open and collaborative participation in the production and disseminations of creative works.
5. It is essential that the public have the opportunity to freely use world wide web hypertext links and other tools to point to information, and to make copies and use excerpts of other published works, in order to engage in criticism, commentary and analysis, and to design new technologies and methods to expand the power of collaborative creative efforts.
6. These rights should not be undermined by DRM measures.
7. The ability of persons to engage in anonymous speech is important, as well as the right to protect confidential sources.
8. Bloggers must be protected from frivolous or abusive threats and lawsuits by copyright owners, or others that assert limits of speech or the use or sharing of information, particularly in the context of reviews or criticisms of important political, economic or cultural figures or institutions.
9. Bloggers should not be liable for third parties' comments on blogs. Immunity for online publishers should be extended to the public when engaged in that activity..
10. Bloggers must have the same right to access to blog from public events as to journalists from traditional news organizations.
11. The ability of the public to use web pages, blog, listserves and other platforms to address issues relating to whistle blowing . . .
12. All workshops and conferences should provide open wifi-connections for participants.

Films, Video and Art - Filmmakers, Artists, Actors, and the Viewing Public

1. It is vital to ensure that both content makers and consumers have unimpeded, but fair, access to communicate and engage in transactions with each other. Access to audiovisual content is essential to help ensure the public can readily obtain diverse sources of information, including cultural products.
2. The growing availability of a multiplatform digital distribution systems, such as the broadband Internet, Internet Protocol TV (IPTV), and mobile services, provides an important opportunity for both audiovisual content creators and consumers. For example, media makers can now sell content directly to consumers using broadband connections. Consumers also have the ability to view and acquire a diverse array of audiovisual content.
3. We support the following rights:

4. Audiovisual makers should be able to directly sell/distribute their products and services to all consumers, regardless of regional boundaries;
5. All broadband networks/ media service providers available to the public should readily foster such communications and transactions;
6. Audiovisual makers should have access to the full range of distribution modalities, including video on demand, switched video, and mobile networks;
7. Audiovisual makers should [respect all] [adhere to] appropriate laws and regulatory regimes[, including] [and] rules protecting privacy, advertising safeguards for minors; and human rights.
8. Audiovisual makers should [respect] [adhere to] reasonable measures including copyright law, that protect the moral and material interests of creative communities. However, these measures should not be overly burdensome, with regard to the ability of audiovisual makers to use portions of works to create new works.
9. Audiovisual makers should have access to a universal and affordable system of rights clearances, [as well as appropriate limitations and exceptions in copyright law to protect the ability to use works or portions of works without remuneration in appropriate cases];
10. Audiovisual makers should expect national governments and other governmental bodies would provide financial support and other assistance to aide the production and distribution of works;
11. Audiovisual makers should expect national governments and other governmental bodies to facilitate agreements between themselves and access providers, if needed;
12. Audiovisual makers should expect that broadcasting and computer networks receive the necessary investment to ensure state of the art, efficient, delivery of digital content to users;
13. Audiovisual makers should expect government and network providers to help ensure that digital distribution is equitably available and affordable, including to rural and low-income consumers.
14. Consumers:
15. Have the right to directly contact and acquire the multimedia/audiovisual content of their choice;
16. Their privacy should be protected and purchases protected by effective consumer standards;
17. Consumer representatives must be included as a core constituency in any deliberation involving government or government-sponsored entities related to digital distribution (such as the recent European Charter related to online film, etc);
18. Consumers should expect that networks would receive the necessary investment to ensure state of the art, efficient, delivery of digital content to them;
19. Consumers should expect government and network providers to help ensure that digital distribution is equitably available an affordable, including to rural and low-income communities;
20. Consumers benefit from cultural diversity in all aspects of broadcasting and publishing of cultural works. Mechanisms to support such diversity, including promotion for diverse languages, and minority productions are needed. States or Regional entities must consider diverse methods to support the creation and diffusion of communitarian or artistic works, from quotas to subventions for scripting, filming or diffusion and theaters.

21. Concentration of ownership of the distribution systems presents risks and dangers to both consumers and makers of audio visual works, in terms of high prices (for distribution), lack of diversity of content, and undue influence on cultural and political life. Global concentrations of ownership of media outlets are even more risky and dangerous than concentrations of ownership of national systems. Monopolistic control over "last mile" delivery of digital content, if combined with the ability to discriminate among content providers, presents the same type of problems.
22. Creative communities and consumers oppose government imposed censorship and other restrictions on the freedom of opinion and expression; including the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
23. Both creative communities and consumers are harmed by excessive prices costs associated with the distribution and sharing of audiovisual works.
24. Consumers and makers of audiovisual works agree that broadcasting or webcasting organizations should not be given intellectual property rights in the content of audio visual works.
25. Audiovisual makers and consumers support efforts such as the 2005 Documentary Filmmakers Statement of Best Practices in Fair Use to provide guidance for the appropriate practices in using copyrighted material in documentary films.

Recorded Music: Songwriters, Performers, and Listening Public

1. Authors, composers and performers of musical works, and consumers agree that we have common interests and new opportunities to collaborate. Enormous differences in bargaining power currently lead to unfair outcomes between creative individuals users and the commercial entities that sell culture and knowledge goods.
2. We need legal regimes and public and private systems that support the [incomes] [livelihoods] [economic security] of artists and determine the access to works. These legal regimes and systems should:
 3. provide protections from censorship or control by governments,
 4. provide for a diversity of distribution channels, free from excessive concentrations of ownership;
 5. foster artistic freedom and creative control over works by artists,
 6. protect artists from unfair contract between artists and music publishers;
 7. permit artists to benefit from and reinterpret and explore works of other artists, while giving appropriate credit;
 8. allow consumers opportunities to discover new artists and music genres;
 9. lower the amount of money being spend on the distribution of works, at the expense of artists and consumers;
 10. provide access to works that area older, and not necessarily the best known;
 11. provide opportunities for consumers to engage in criticism;
 12. commentary and promotion of works they enjoy, provide measures to overcome technological or other means that restrict access that harms creators, libraries, educational, institutions, archives and persons with disabilities, and undermine privacy and freedom;

13. Permit measures that provide essential information about creative goods and allow the creator to be identified, provided any data produced is not linked to individual consumer purchases/access;
14. Provide quick and easy means of redress to consumers.

Proposal on DRM

Short form:

1. The use of digital technology is changing the production, distribution, and use of content. Not only can users access and copy content, they can also manipulate works to create entirely new products. Creators can bypass traditional intermediaries and have direct contact with the public.
2. At the same time, in the digital environment it is easier to control access to content. Encryption methods and other similar techniques are used to block access or to monitor the use that a person makes of such content.
3. We oppose technological and other measures that restrict access to knowledge goods, harm creators, libraries, educational institutions, archives and persons with disabilities, and undermine privacy and freedom. Such measures should not be granted legal protection.
4. We support measures that provide essential information about creative goods and allow the creator to be identified, provided any data produced is not linked to individual consumer purchases/access.
5. We consider that current redress systems for consumers are inadequate and that new approaches are needed which are quick and easy to use, with meaningful sanctions for wrongdoing.

Long form:

1. The use of digital technology is changing the production, distribution, and use of content. Not only can users access and copy content, they can also manipulate works to create entirely new products. Creators can bypass traditional intermediaries and have direct contact with the public.
2. At the same time, in the digital environment it is easier to control access to content. Encryption methods and other similar techniques are used to block access or to monitor the use that a person makes of such content. In the digital environment Rights Management Information (RMI) (definition: need one e.g. but ask Nick! which identifies the artist and can be used to track usage) and Technical Protection Measures (TPM) (e.g. which act as locks and can block copying or usage on non-authorized equipment) are used by intermediaries to unreasonably restrict legitimate use by the public without the consent or involvement of the creators or the public on the contrary, usually over the strong objections of both.
3. There is a clear failure of the marketplace to provide implementations of these technologies that are constructive, interoperable, reasonable, and equitable. For example [RMI can be used constructively, by helping the development of systems to equitably remunerate creators and rights-holders based upon actual uses of cultural goods in the digital environment, provided such usage data is not used to track individual usage. Despite repeated calls for a rethink of the current uses of these technologies by the consumer movement, creators themselves, and even independent phonogram producers, the abuse of these technologies continues. Creators and Consumers agree on the following principles and believe that they should be given the force of law in any part of the world where RMI and TPMs are themselves the subject of legal protection:
4. RMI should only be given legal protection only if:
5. The RMI is used to provide information, not as the basis for a TPM, is accurate, and anonymous (?) only receive the privilege of legal protection if they cannot:

- a. Prohibit, or limit, access and/or use which is lawful with respect to the works and/or performances being protected,
 - b. Prohibit, or limit, access and uses which would be possible and/or permitted when the same materials are acquired in physical form,
 - c. Be deployed without the active, informed consent of the creators and relevant rights-holders, or without successfully passing through the testing process referenced below;
 - d. Fail to work (interoperate) on all devices and/or platforms like personal computers, mobile communications devices, and consumer electronics which might reasonably be used by the public. In particular, interoperability must not:
 - i. prevent the author/artist from making works or performances available under any licence terms he or she wishes;
 - ii. Restrict the freedom of software developers to disclose and licence under any terms whatever the source code which helps achieve interoperability;}}
 - iii. Fail to comply with data protection rules or privacy rights generally,
 - e. Prevent access and use, or make access and use difficult, to anything that is in the public domain
6. The extent and nature of any limitations these technologies may impose on the user should be clearly visible on any product or service so that the members of the public may make informed choices;
 7. We believe that an essential component of giving legal effect to the above is the following:
 8. A regulatory regime that requires advance registration, and testing of new TPMs by an independent agency to ensure that they comply with the rules governing their use as outlined above, both when released and at any further time. No TPM which fails to pass through the testing regime should be used in the marketplace; [(Keep in brackets do not like this idea but others might), successfully passing the tests should allow the vendor of the TPM to display a mark that makes clear that the TPM has been approved and certified, giving the public, and the creative community, confidence that the TPM is both within the law and follows the rules]
 9. As a safeguard there should be in addition be a legal right to remove a TPM or circumvent it if it breaches the above principles,
 10. The public and the creative individual or community must have access to quick, cheap and transparent redress systems to use against the vendors and/or suppliers of TPMs, to remedy any breaches of the above principles. Such systems must also have the power to impose sanctions that are sufficient to form a deterrent to future infringements.

Scholarly Publishing: Authors and Readers

1. Authors and readers of scholarly and scientific works have a common interest in the broad dissemination and wide sharing of works.
2. Concentration of ownership of scholarly and scientific publishing presents risks and dangers to authors and readers, in terms of high prices, lack of diversity of content, and undue influence on discourse involving scientific, cultural, professional and political life.
3. Authors and readers of scholarly and scientific works oppose government imposed censorship and other restrictions on the freedom of opinion and expression; including the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
4. Authors and readers are are harmed by excessive prices for scholarly and scientific works.

5. Acknowledging the profound impact the Internet has on the conduct of scientific research and the benefits of research being shared as widely as possible, authors and readers of scholarly and scientific works and consumers agree that:
6. Authors should retain the right to make their work available in a non-commercial open digital archive on the World Wide Web [such as the National Institutes of Health's PubMed Central or an institution's open digital archive] or to make copies of their article for use in the classes they teach.
7. Authors should retain:
8. The rights to reproduce, distribute, publicly perform, and publicly display the Article in any medium for non-commercial purposes;
9. the right to prepare derivative works from the Article; and
10. the right to authorize others to make any non-commercial use of the Article so long as the author receives credit as author and the journal in which the Article has been published is cited as the source of first publication of the Article.
11. Authors/Researchers funded by governments should submit an electronic version of their final, peer-reviewed manuscript to a publicly available online archive upon acceptance for publication in a journal.
12. Authors, researchers and readers of scientific works express their support for the following:
 - a. Association of College & Research Libraries (ACRL) Principles and Strategies for the Reform of Scholarly Communication, August 28, 2003, <http://www.ala.org>
 - b. Bethesda Statement on Open Access Publishing, June 20, 2003, <http://www.earlham.edu/~peters>
 - c. Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities, October 22, 2003, <http://www.zim.mpg.de/openaccess-berlin>
 - d. The Budapest Open Access Initiative, <http://www.soros.org/openaccess/read.shtml>
 - e. Organisation for Economic Co-operation and Development (OECD), Declaration on Access to Research Data From Public Funding, January 30, 2004, <http://www.oecd.org>
 - f. The International Federation of Library Associations and Institutions (IFLA) Statement on Open Access to Scholarly Literature and Research Documentation, February 24, 2004. <http://www.ifla.org>
13. Authors, researchers and readers of scholarly and scientific works call upon governments, professional societies, publishers and others to explore new business models, public subsidies and private incentives to support professional editing and publishing services that do not rely upon high prices for access to works.