

Amsterdam, 19 March 2005

Dear friends and colleagues, members of the Research Network on New Directions in Copyright Law, and participants in its conferences and workshops,

If I am right, we are in the middle of the three year period that has been given to us to find our way in the confusion that presently exists about copyright. This is the right moment for an assessment of our activities.

When Fiona invited me to be a member of the research network I felt honoured: a political scientist who may enter the “bulwark” of copyright scholars. However, I did know that Fiona liked to break down some of its walls. Looking backwards, I think that I felt attracted by two words in the title of the network: *new directions*. After more than one year I realise that there are three other words in the title as well: *in copyright law*. More and more I get the feeling that this title is a *contradictio in terminis*, and does not provide enough of a challenge.

Most of the papers and debates stay at the level of the observation that there is going something terribly wrong with copyright that is, from the viewpoint of human rights and access to the tools of communication, not justifiable. If someone does a step further, then the solution is in the direction of more respect for fair use, the public domain and the artists wherever they live on this planet. I would say, those solutions are not *new* directions but rather *old* directions: let's go back to the past, under the implicit supposition that copyright was a good system somewhere in the middle of the twentieth century. The more I think about it, the more I am convinced that there are in the field of copyright no new directions to imagine (and this is the *contradictio in terminis*); in any case I did not hear them.

One may claim of course that it would be a good thing for artists and the public domain if we would go back to the past, to the old directions. But then, it is necessary to speak about strategies how to do this. How would it be possible, not only to stop the “brand name bullies” (to use the title of the new book by David Bollier), but also to force them to give up most of their conglomerated rights. But then, our conferences would be more about strategies than about inventing what has been invented already, like fair use. To be honest, I doubt whether there is a way back to the past in the twenty first century where the digitization and the claims of non-Western countries have put the question of appropriation and monopolistic exclusivity in a completely new perspective.

Indeed, I felt attracted by the two words “new directions”. As a political scientist I am amazed that the bulwark of copyright stays so sacrosanct, also with people who are engaged and who know that copyright is in serious trouble and probably not repairable. In many academic disciplines, it is not unusual to test the waters outside the existing paradigms. Why I am writing this midterm letter? I will try to avoid that I am in the network one of the few fools who is allowed to say from time to time that there might exist also a solution outside the paradigm of the existing copyright system. We all know that the complete system of intellectual property rights is a tool in the private appropriation of most of our sources of knowledge and creativity. There is not so much time to loose to turn this tide.

Therefore, I propose that we are more courageous, in thinking about alternatives for the present copyright system, and/or in inventing strategies how to go back to the middle of the twentieth century. Having said this, I like to stress that I enjoy to be a member of this research network, I appreciate very much the discussions and the papers, and I am grateful to Fiona and Valerie for all they are doing to make our “discussion group” a possibility.

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