

Francis Gurry Closing Keynote
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Key highlight: Gurry says, “We need to ensure as we go forward, and as technological change occurs increasingly rapidly, that the policy mission of intellectual property as a balancing mechanism for the various interests in and around the act of creation, we have to make sure that that policy mechanism is neutral to technology, and neutral to the business models built on technology. This is I think one of the primary tasks that public policymakers have. The purpose of copyright is not to influence the technological possibilities for creative expression, nor the business models that are built upon those technological possibilities, nor is it the role of copyright to preserve business models that are established on obsolete but moribund technologies. The role of copyright is to play a neutral role in relation to technology and business models built upon technology, and to extract some value from cultural exchanges and cultural uses of cultural property to return to the creators.”

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Gurry Keynote:

Let me express my gratitude to the Internet Society for giving me the opportunity to be able to participate in this colloquium, and in particular share the podium in this last session, and congratulate the Internet Society on achieving its 20 years, and on the fantastic work that I think it has done to, if I may say, socialize the Internet.

Let me congratulate also my two fellow panelists, Mitchell [Baker] and Vint [Cerf], on being inducted into the Internet Hall of Fame last night. I must say this was an extremely moving ceremony, a *pageant* of historical figures really. It was quite extraordinary to see the pioneers of the Internet and the developers of the Internet.

I'm going to say a few words in this session about one of the great challenges the Internet faces, and that is the question of intellectual property or rights and obligations in respect of the creative works that the Internet makes available in such an unprecedented way. Of course, content is one of the reasons, or creative works is one of the great social uses of the Internet, and one of the reasons why we all want the Internet.

Let me recall a story of Henry Thoreau in the 19th century, halfway through the 19th century, when the telegraph was invented. He said they are building a telegraph from Texas to Maine, but it may be that Texas and Maine have nothing to say to each other.

So that is just to recall that it's not just the technology that is important, it is the social use of the technology, and in particular in this instance the availability of creative works which is so important.

Let me start by saying something about how we can look at intellectual property, because it's in itself the subject of some controversy.

I would like to quote in this regard Yochai Benkler from one of his TED talks on the economics of the open source or open source economics, in which he says, the next time you read in a newspaper -- and already the metaphor is out of date -- but next time you read in a newspaper about an intellectual property decision, it is not about something small and technical. It is about the way in which information, knowledge and culture are produced and distributed.

That's an extremely important context, of course. And in that important context, I would encourage you to think of intellectual property as a balancing mechanism for all of the often-competing rights and equities that occur in and around the act of creation or innovation. That I think is the mission in life of intellectual property. It is not something for these interests or for those interests. It is a mechanism for *reconciling* these interests and those interests. Now, that task of balancing all the competing interests that occur in and around the act of creation and the distribution of creative works is of course, in the Internet world, no longer a unidimensional task among a few or small number of actors, as it once may have been for the composition of music or for the performance of a piece of music at the beginning of the 20th century; because, of course, the Internet has radically altered the number of creators that are out there.

It's radically altered the availability of the previous repertoire or historical record of creation. It's radically altered the size and the location of the potential market. It's indeed the world that we are talking about. And it's radically altered the technology and the cost of the performance and recording of creative works.

In consequence of that, the mission of intellectual property is now a multi-dimensional task that involves the whole world. And that, I would suggest, is why we saw in the course of the last 12 months Wikipedia blacked out for 24 hours as a consequence of the SOPA and the PIPA, the Stop Online Piracy Act and intellectual property acts that were introduced into the United States Congress; it is why we saw Anonymous, the [hacker] group, attacking Web sites of the FBI and Department of Justice over the Anti-Counterfeiting Trade Agreement, ACTA; it is why we saw multiple discussions and demonstrations around the world and in various parliaments about the anti-counterfeiting trade agreement; and it's why we see that intellectual property and Internet are becoming part even of presidential election campaigns.

So on this, what I would like to say to you I think is that these political tensions are here to stay. I think we should look at them as a normal part of democratic life in the Internet world and in the digital world. What we have to do, I think, is to learn how to manage those tensions in a better way.

It's absolutely normal that in a knowledge economy and in an information economy, where you have around the world some \$1.2 trillion invested in the generation of new knowledge each year, in research and development each year, when you have more and more people connected to the Internet through a variety of platforms and devices, when you have more and more creative works migrating to the Internet, what we find is that intellectual property is becoming increasingly a source of competitive positioning between enterprises, between industries and between countries or nations.

And there will be political tension over property rights in relation to knowledge and culture. And

I think as a first point we have to learn how to manage these better, because they are here to stay. And it's a normal part of democratic life.

Let me now turn if I may to the big issue, if you like, which is the great migration of creative content. If we look out over the Serengeti plain of culture, we see this, these herds of wildebeest, packets of content, if you like, or creative works, migrating from the analog space to the more hospitable climes of the digital environment. And this great migration is something that I don't think we can ever underestimate the importance of. It is extraordinarily important. I think, if I may say, it amounts to the re-expression of our culture. It is similar to the transition from a carbon-based economy to a carbon-free or carbon-neutral economy. It is something in which, a transition in which everything is being re-expressed.

When we look at the enormity of that transition, I think it is not surprising that the subject also of intellectual property is not an easy one. Where are we in this situation, in this transition? That is of course an extremely complex question. I would like to make just three comments about it, if I may.

First of all, I think we need to remember that we have cause to celebrate here with the democratization of knowledge and culture. We are not looking at a problem. We are looking at something that is an extremely positive development.

But secondly, I think that we need to ensure as we go forward, and as technological change occurs increasingly rapidly, that the policy mission of intellectual property as a balancing mechanism for the various interests in and around the act of creation, we have to make sure that that policy mechanism is neutral to technology, and neutral to the business models built on technology. This is I think one of the primary tasks that public policymakers have.

The purpose of copyright is not to influence the technological possibilities for creative expression, nor the business models that are built upon those technological possibilities, nor is it the role of copyright to preserve business models that are established on obsolete but moribund technologies.

The role of copyright is to play a neutral role in relation to technology and business models built upon technology, and to extract some value from cultural exchanges and cultural uses of cultural property to return to the creators.

My final comment, I think, we should set ourselves an objective here in the intellectual property world, which is an easy objective to say, but a much more difficult one to accomplish. And I think the objective should be that we should aim to make it as easy to get creative works or content legally on the Internet as it is to get them illegally. We know that it's very easy to get them illegally. But we should aim, I think, to make it possible to get creative works legally, just as easily as we can get them illegally. Now, that is easily said, but it is a massive task, because again, and I'm speaking a lot about re-expressions, but it involves the re-expression of the business architecture that existed for the territorial world of analog content, and the re-expression of that business architecture in a simple, efficient global digital marketplace.

We know that we are on that track, but we are a long way away from achieving it. There are all sorts of unevennesses that exist in the legal, the law of the global digital marketplace and in the

infrastructure of the global digital marketplace.

There are many elements that need to be considered here. I would like to mention just one that I think has been mentioned this morning by Vint Cerf in the session on intellectual property and innovation and the Internet. That is the question of registration.

The international legal system for copyright, the Bern convention, is built upon the basis of no formalities for copyright protection. You get copyright protection automatically. I think that while it is unlikely that we can revisit that principle, since it's embedded in an international convention that is adhered to by over 170 countries - it's unlikely that we can do that - but what we can have is voluntary registration systems, and we can encourage the use of voluntary registration systems. I think that this is an element of infrastructure that is absolutely indispensable for building the global digital marketplace, to find out, to be able to find out easily who owns the rights and who controls the rights in relation to different pieces of creative content.

I'm going to make only one more comment, if I may, on this very complex set of questions; and that is to mention one of the great, of course, features, one of the most beautiful features of the Internet is the enlargement that it has facilitated in the participation in creation of cultural works. It has enabled *anyone* really to become an author and a publisher, and it has enabled anyone to be a composer or to be a performer or musician. And this enlargement of participation is, of course, a very special feature and a very valuable feature of the Internet.

But with it comes a fundamental challenge to our notions of author and authenticity upon which the copyright system is built.

Again, it's a very complex question. And I can't go into all of the various dimensions of this question, which are extremely rich. But I would like to mention just one element of it, and that is user-generated content, or mash-ups if you like, as one form of user-generated content.

It is an extremely serious issue, an extremely contemporary issue. It is under consideration by the federal government in Australia, for example. It is under consideration under copyright legislation in Canada. It is under consideration in a number of other countries around the world. I would like to emphasize the importance of this issue, because if we are going to maintain respect for the institution of intellectual property as a balancing mechanism for all of the interests that occur in and around the act of creation, which I certainly hope we will do, and if we are going to take advantage of the multiple possibilities and the rich possibilities to which the Internet gives rise, then we are going to have to find a way to address this particular question.

One of the ways that we might be able to address it in the future, I've been speaking entirely informally, in an entirely exploratory manner, is to draw a distinction between market and nonmarket situations or between commercial and noncommercial situations. And intellectual property actually works on the basis of market and commercial situations, not on the basis of private and noncommercial uses.

This is a very important possible distinction for intellectual property going into the future, because it also involves, for example, if you magnify it out, a distinction between markets in the

world in which there are rich and paying consumers, and markets in the world in which there are poor and consumers who are unable to pay.

It is a distinction I think that can have a lot of merit in looking at the way in which we go forward in balancing the equities in relation to intellectual property.

Thank you very much.