

Fight for your Right to File-Share

Content Flatrate, not Copyright War

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21C3

28 December 2004, Berlin

Two Ways to Freedom

- voluntary: free-licensing one's own works : the Commons
- non-voluntary: a general framework of statutory guarantees of freedoms of usage : the Public Domain

Larry Lessig: "Us now, them soon."

Individual and legal licenses are complementary.
GPL, CC etc. leave out the issue of remuneration.
Freedom of modification unlikely in legal license.

Copyright Law

- Legal default: creations are property.
- Freedom takes an additional effort.

Freedom in Copyright Law

in general:

protection of property AND the common interest (Art. 14 GG)

in copyright:

protection of intellectual property AND exemptions

Freedom in Copyright Law

- Limitations: 50/70 years after the death of the author => PD. Ideas, facts, text of laws and other public decrees.
- Exceptions: uses without permission by the rights holder for certain beneficiaries: education, science, press, disabled persons. For everyone: quotations, private copying for non-commercial purposes.
- Reservations and conditions: compulsory license (for musical recordings), mandatory collective management of an exclusive right (cable retransmission).

Freedom in Copyright Law

- Minimum mandatory exceptions (WIPO)
- Codifying user rights and development rights (WIPO development agenda)

“In order to tap into the development potential offered by the digital environment, it is important to bear in mind the relevance of open access models for the promotion of innovation and creativity. In this regard, WIPO should consider undertaking activities with a view to exploring the promise held by open collaborative projects to develop public goods, as exemplified by the Human Genome Project and Open Source Software.”

Towards a Treaty on Access to Knowledge and Technology.

Alternatives

- Innovation doesn't require monopoly rights, just on the contrary (Boldin/Levine)
- From property to liability (Calabresi & Malamed; Jerome Reichman)
- Universal Basic Income (Philippe van Parijs)
- Separating industry politics and knowledge politics.

P2P Filesharing

- Up to 80% of backbone traffic since 2003.
- Growing continuously, undeterred by awareness campaigns or criminal and civil sanctions.
- Availability of works is solved by user-based distribution. The lack of compensation for creators, the criminalization of users and the dangers of DRM are the problems that need solving.

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From property to liability:

Reducing the exclusive making available right {in p2p networks} to a remuneration right subject to {mandatory} collective management.

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- Neil Netanel: Noncommercial Use Levy
- William Fisher: Tax administered by the Copyright Office, ultimately: income tax ("Promises to Keep")
- Larry Lessig: Compensation without Control
- Jim Griffin: mandatory licensing to p2p services
- Bennett Lincoff: A Full, Fair And Feasible Solution to the Dilemma of Online Music Licensing
- James Love: The Blur/Banff Proposal: user choice of where their levies go
- Peter Eckersley: Virtual Markets for Virtual Goods
- Raymond Shih Ray Ku: Digital Recording Act
- Dean Baker: The Artistic Freedom Voucher
- Berlin Declaration on Collectively Managed Online Rights, 21 June 2004

ACS: License

- categories of works
 - beneficiaries / purpose
 - privileged uses (copying, making available, modification?)
 - tariffs
-
- Statutory license
 - Mandatory collective management (von Lewinski)
 - Voluntary license (EFF)

ACS: License

Statutory license needs to pass the Three-Step Test:

1. certain special cases
2. which do not conflict with a normal exploitation of the work and
3. do not unreasonably prejudice the legitimate interests of the author.

Irrelevant in case of compulsory or voluntary license

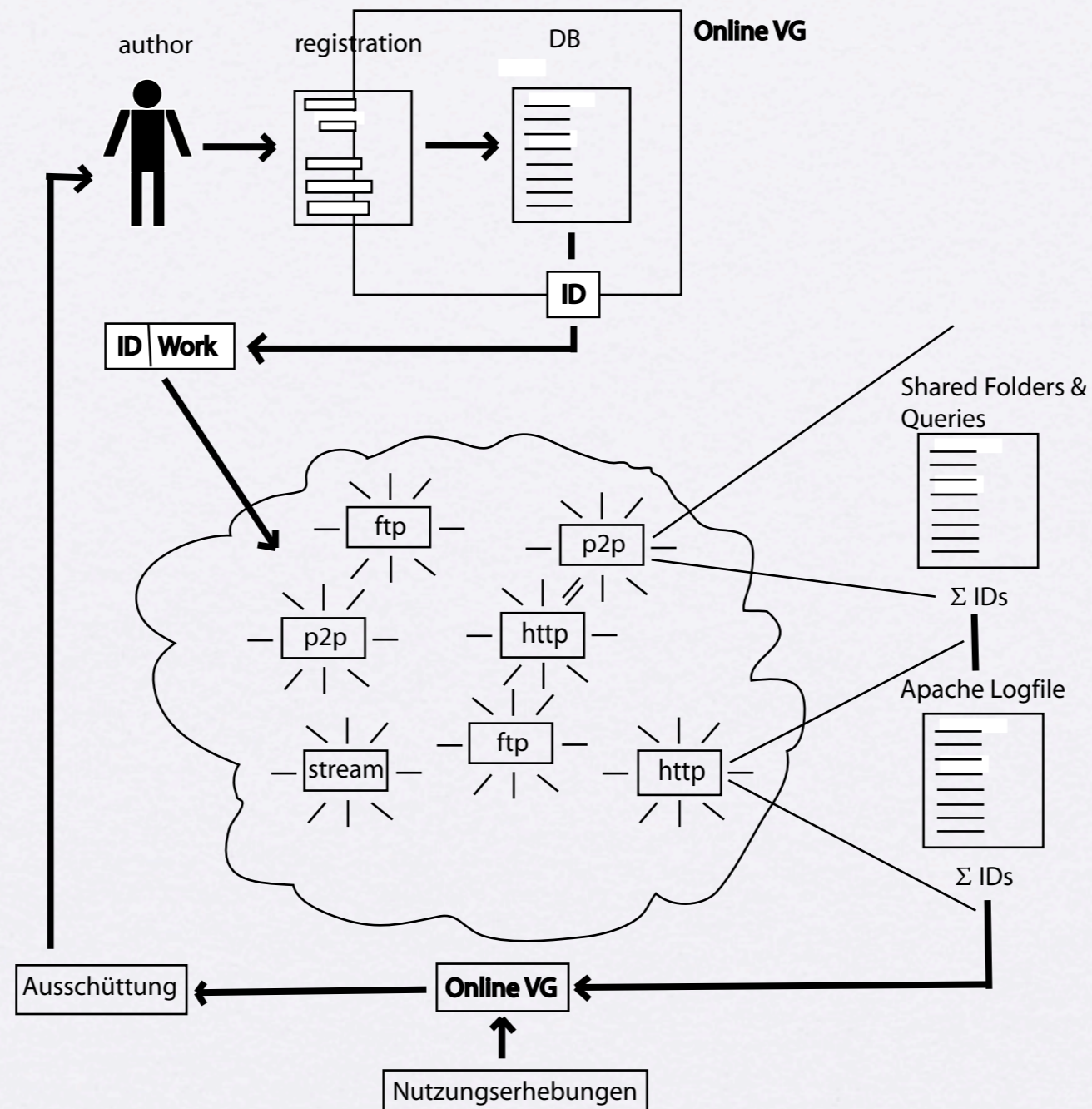
ACS: Paying in

- as flatly and therefore as anonymously as possible
(Lionel Sobel: ISPs as Digital Retailers: compulsory licensing, but rights holders set wholesale price)
- mandatory or voluntary
- added to price of products and services the value of which is enhanced by free circulation of works.
- 5\$ / month / broadband access (Fisher)
20% losses of music industry + 5% of film industry =
2,3 Mrd. \$ / broadband users = 5\$

ACS: Paying out

- Reporting obligation by providers = download numbers
+ user sampling =>
- Online Collecting Agency =>
- Pay-out to members (authors, performers, publishers, labels, MSPs...?)

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ACS: Counting

- plug-in for p2p servants
- proxy

ACS: Business Models

From products to services
added value (bottled water)

- Services for creatives
Music lessons, production, PR, tour organization...
- Services for users
genre collections, live-streams, web-radio...
- Services for exploiters
film music, advertizing...

Costs of DRM <-> ACS

R&D

standardization

infrastructure

distributed: billions of end-user devices

centralized: key management, renewal & revocation

enforcement: prosecution

weapons race

R&D (marking)

infrastructure

distributed: download reporting

centralized: Online-CS

enforcement: reporting, gaming

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„The online transmission right, collectively administered, and subject to a statutory license, is the best model for music rights administration in the digital age; it is a full, fair and feasible solution to the dilemma of online music licensing. If implemented, it will allow an online music marketplace to flourish.“

(Bennett Lincoff, former Director of Legal Affairs for New Media at ASCAP)

Open Questions

Drawing the Line between:

- work categories
- territories
- global a la Kyoto, without the U.S.
- levy paid / not paid

Open Questions

- gaming
- leadership aristocracies in collecting society (e-democracy)
- social-democratic appeasement

Next Steps

- wide consensus to go for it.
- studies, conferences, hearings
- EU draft directive on collective management expected in spring
- <http://contentflatrate.org>
<http://fairsharing.de>

Thank you

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