



OUR DIGITAL FUTURE:

A CROWDSOURCED
AGENDA FOR FREE
EXPRESSION

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ACKNOWLEDGEMENTS

“Our Digital Future” was a multi-platform initiative launched in July 2012. It was only possible because of the involvement and support of countless groups and individuals around the world. While they are far too numerous to mention individually, our agenda builds upon the grassroots and public policy initiatives that have created such a compelling case for the need for copyright reforms. We’ve tried our best to give that body of work consideration during this process.

We are, in particular, indebted to the contributions of the Our Fair Deal coalition members, whose expert input has helped shape our crowdsourcing project as well as our final report. We owe special thanks to Article 19’s “Principles on Freedom of Expression and Copyright in the Digital Age” and the Authors Alliance’s “Principles and Proposals for Copyright Reform,” which helped us craft more concrete policy proposals that can translate the wishes of our community into law.

We also thank peer reviewers who provided critical, in-depth comments and suggestions, which served to strengthen the quality and overall presentation of our agenda. Any shortcomings or oversights are in spite, not because, of their generous contributions, and are entirely the responsibility of the authors.

Lastly, the pro-Internet community has always been at the heart of this project. This report is primarily based on the invaluable input of the 40,079 people who participated in our drag-and-drop tool to crowdsource a vision for sharing and creativity online, and the energy of over 300,000 people around the world who have used OpenMedia as a platform for action on free expression. Their concern for their rights to share and create in the digital age is the driving force behind our work – so, to our community, thank you so much <3



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EXECUTIVE SUMMARY

AN AGENDA FOR FREE EXPRESSION THAT RESPECTS CREATORS, AND EMBRACES DEMOCRACY

At its best, the Internet encourages us to share, use our creativity, and express ourselves freely. It fosters the same key experiences that help us preserve our imaginations and our capacity to learn as we grow from children into adults. What we've heard from the hundreds of thousands of Internet users worldwide who have participated in OpenMedia's projects is that the Internet has the power to bring people together around these common learning experiences and shared values. This includes both those who want to share, and those who want to create – the Internet provides us all with new ways to exercise our right to freedom of expression. As Chris, an OpenMedia Internet Voice participant from Sweden, states: "On the Internet, free expression, creativity, education, public discourse and debate thrive like never before...The people of the world finally have a voice."¹

Supporters like Chris inspired us to create "Our Digital Future," an initiative to amplify and unite the voices of Internet users who are seeking new ways to protect and nourish creativity, sharing, and free expression online. Beginning in July 2012, when we launched our first online action against anti-Internet provisions in the Trans-Pacific Partnership (TPP) agreement, OpenMedia has been rallying people worldwide to fight Internet censorship. When we asked our community in March 2013 how to best continue this work on free expression, reddit user HouseGray exemplified the feedback we were receiving: "[A]ttempts to

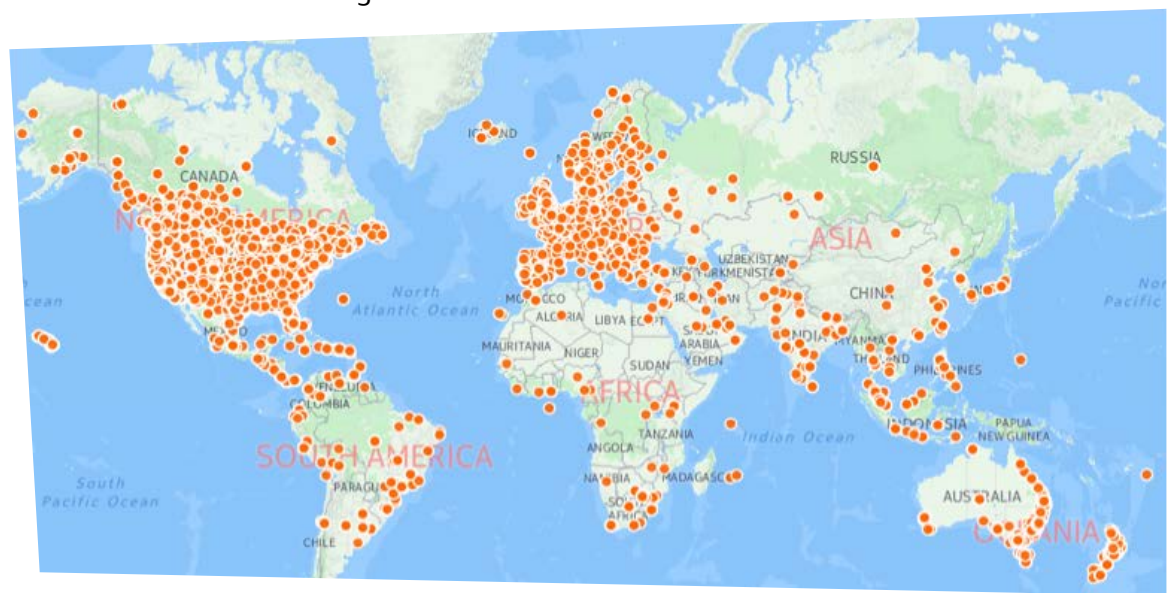
legalize restrictions on the Internet will continue ceaselessly until laws are passed that guarantee freedoms...lobbying for laws that cement Internet freedoms and rights [will] be the only solution that will work long-term."² Guided by this type of community input, we designed a consultation process with multiple stakeholder groups to decide what these pro-Internet laws might look like.

After a process design phase that saw input from Internet users, civil society and community organizations, and impacted businesses,³ in October 2013 we launched our interactive drag-and-

drop tool. Our intensive outreach work surrounding this tool – which took participants through a set of 9 questions about copyright law in the digital age – brought together over 40,000 Internet users in less than a year to crowdsource a new vision for free expression.⁴ Overall, our work on free expression has engaged over 300,000⁵ eager Internet users all over the world through multiple platforms.

The 40,079 participants in our crowdsourcing tool, who came from an impressive 155 countries around the world [Image 1], felt urgency to craft a plan for a fair deal for users and creators. They

Image 1: Participants in our drag-and-drop crowdsourcing tool, by anonymized IP address



- 1 "Internet Voices" come from the approximately 30,000 people who have used OpenMedia's "Internet Voice Tool" (found at openmedia.org/facetoface) or OpenMedia's social media platforms to submit comments to the TPP negotiators. We quote these OpenMedia supporters throughout the report to bring more attention to the lived experiences of Internet users with copyright and free expression. See the chapter on "The Process" for more information about the "Internet Voice Tool" and the hundreds of thousands of people worldwide who have spoken out for free expression.
- 2 http://www.reddit.com/r/IAmA/comments/1ajboq/we_are_internet_freedom_advocates_and_online/c8xxkil
- 3 See "The Process" for more information on our consultation process.
- 4 See "Appendix: Methodology" for full results for the drag-and-drop crowdsourcing tool.
- 5 Total numbers from all OpenMedia actions on free expression include: <http://stopthetrap.net> - 112,145 signatures, <http://ourfairdeal.org> - 19,694 signatures, <https://openmedia.org/froman> - 22,867 signatures, <https://openmedia.org/censorship> - 141,130 signatures, <https://stopthesecrecy.net> - 161,026 signatures, <https://openmedia.org/expression> - 62,670 signatures, <https://openmedia.org/letter> - 912 supporters, who used our Letter to the Editor tool, <https://openmedia.org/facetoface> - 29,041 participants (with duplicate actions removed, the number of unique supporters is ~316,000)
- 6 Other notable examples of attempts to use copyright policy to censor the Internet include the U.S. Stop Online Piracy Act (SOPA), a bill pushed through by lobbyists who sought to criminalize alleged copyright infringement, force ISPs to block websites suspected of promoting online sharing, and even ban companies from conducting business with "blacklisted" websites. (<http://www.theglobeandmail.com/technology/tech-news/sopas-most-frightening-flaw-is-the-future-it-predicts/article1358850/?page=all>) Iterations of the Anti-Counterfeiting Trade Agreement (ACTA), an international intellectual property agreement, also included provisions which seek criminal charges for copyright infringement.
- 7 <https://openmedia.ca/blog/huffington-post-openmedia-op-ed-tpps-internet-trap>
- 8 <http://www.ustr.gov/about-us/press-office/press-releases/2013/april/joint-statement-tpp-ministers>
- 9 <https://stopthesecrecy.net/>
- 10 <https://openmedia.ca/blog/antarctica-vietnam-global-internet-users-are-creating-vision-our-digital-future>

felt this urgency in light of some of the worrying copyright and IP provisions being proposed in several regions,⁶ and in international agreements such as the Trans-Pacific Partnership (TPP)⁷ – a multinational trade agreement involving 12 countries in the Asia-Pacific Region, which account for nearly 40 percent of global GDP and about one-third of all world trade.⁸ Participants in our crowdsourcing initiative also joined over 3,000,000 supporters of diverse international civil society organizations who have expressed grave concerns about secrecy and censorship in the TPP.⁹

INTERNET VOICE*

"On the Internet, free expression, creativity, education, public discourse and debate thrive like never before – The people of the world finally have a voice."

– Chris, Sweden

*"Internet Voices" come from the over 30,000 people who have used OpenMedia's Internet Voice Tool (found at openmedia.org/facetoface) or OpenMedia's social media platforms to submit comments to the TPP negotiators. We quote these OpenMedia supporters throughout the report to bring more attention to the lived experiences of Internet users with copyright and free expression. See the chapter on "The Process" for more information about the Internet Voice Tool and the hundreds of thousands of people worldwide who have spoken out for free expression.

THREE KEY RECOMMENDATIONS

While media conglomerate interventions in copyright and intellectual property law have envisioned (and sometimes created) regimes where the needs of these conglomerates trump the possibilities of the open Internet, our crowdsourcing participants envision a regime where both sharing and creativity flourish. From their input, and the many other elements of the “Our Digital Future” process, we’ve distilled three key recommendations:

1.

RESPECT CREATORS

Participants in our crowdsourcing process indicated strong support for those in the creative industries – a significant majority (67 percent) wanted to see creators receive at least 75 percent of the revenue from their work, and an amazing 89.2 percent of respondents noted that we should always give credit to the creator of a work when sharing.¹¹ Given the strong beliefs of our community, our first recommendation focuses on the need to respect creators. We outline ways to respect creators by ensuring they have access to: new ways to share their work; to fair use/fair dealing; to any compensation resulting from copyright infringement; and finally, to a rich public domain. By first ensuring creators have access to the tools they need to create and share in the digital age, we can design a copyright regime that serves the needs of 21st century knowledge and culture creators.

2.

PRIORITIZE FREE EXPRESSION

When asked to rank a list of six priorities for copyright laws in the digital age, the majority of participants in our crowdsourcing process (i.e. 26,894 out of 40,079) selected “Protecting Free Expression” as their first priority. As such, in this report, to prioritize free expression we propose an agenda for copyright with four components: prevent censorship; protect fair use and fair dealing; promote access and affordability; and create clear rules to govern the sharing of knowledge and culture online.

3.

EMBRACE DEMOCRATIC PROCESSES

The results of our crowdsourcing process were clear: over 72 percent of respondents wanted to see copyright laws created through “a participatory multi-stakeholder process...that includes Internet users, creators, and copyright law experts.” We therefore strongly recommend that political leaders abandon closed-door processes like the Trans-Pacific Partnership (TPP), and instead focus on designing participatory, democratic and transparent forums for the creation of copyright laws that can keep pace with our rapidly changing technology and culture.

We believe that by fostering the key elements of free expression in the digital age outlined above, we can truly unlock the potential of the open Internet to democratize knowledge and culture. There are undeniable challenges that come with a rapid shift to a new medium of expression; but what we’ve found is that, in contrast to stereotypes, Internet users are very respectful of the unique needs of creators and knowledge producers in the digital world.

As digital technology is increasingly a driving force in the way we interact as a society, copyright rules will play a more fundamental role in our lives. Making rules that are fair, easily understood by everyday Internet users, and created with the input and approval of the many groups and people whose lives will be directly affected, is the best way to ensure that the digital future belongs to all of us.


¹¹ See “Appendix: Methodology” for full results for the drag-and-drop crowdsourcing tool.

OUR POLICY AGENDA

The following are the concrete policy proposals of the “Our Digital Future” project.¹² The full report gives more plain-language explanations of how these policies would work, and the impact they (or their absence) could have on everyday Internet use. We also encourage readers to consult the glossary at the back of this report for further demystification of terms used here.

1. No forced disconnections from the Internet for copyright violations; no three-strikes rules that could harm culture and knowledge creators, and everyday Internet users.
2. Protection for safe harbours, like those in Section 230 of the US Communications Decency Act, that allow creators to access new audiences / no intermediary liability for infringing content disseminated by third parties.
3. Notice-and-notice systems for preventing infringement, like that created by Canada’s Bill C-11, as opposed to notice-and-takedown systems.
4. Promotion and protection of Creative Commons – in takedown systems, no takedowns without adequate consideration of users’ rights and due process, and penalties for false infringement claims.
5. Clear process for creators to dedicate their works to the public domain.
6. Broad protections for fair use/fair dealing – in takedown systems, copyright holders required to take fair use/fair dealing provisions into consideration when issuing takedown notices.
7. Fair use/fair dealing exceptions for transformative commercial remixes; copyright exemptions for amateur and non-commercial remixes.
8. Reasonable, civil (not criminal) penalties for sharing copyrighted materials – civil liability geared towards compensation for culture and knowledge creators (i.e. warnings and fines, tied to reasonable copyright terms as in point 9).
9. Copyright terms focused on compensating creators during their lifetime, and enriching the public domain at their death.
10. No criminal penalties for DRM circumvention; no penalties for DRM circumvention to allow legal uses of content (i.e. circumvention of regional zone access protection); ensure vision-impaired Internet users are not prohibited from creating or format shifting their content.
11. Clear, simple copyright rules, designed to be accessible to the people they are intended to serve.
12. Copyright rules created through an open, transparent & democratic process.

¹² See “Appendix: Methodology” for full results for the drag-and-drop crowdsourcing tool.

A person is holding a whiteboard with both hands. The whiteboard has a handwritten message in black marker. The person is wearing a dark-colored top with a lace collar and a bright yellow sticky note on their chest. The background is dark, and there is a whiteboard visible behind the one being held.

WE'RE SORRY,
THE CONTENT
YOU REQUESTED
CANNOT BE
VIEWED IN
YOUR AREA.

THREE KEY RECOM MEND ATIONS

RESPECT
CREATORS

PRIORITIZE FREE
EXPRESSION

EMBRACE
DEMOCRATIC
PROCESSES





RECOMMENDATION ONE:

RESPECT CREATORS

We believe in respect for artists. Having a fair and flexible copyright system means that artists can make a living off their work, while users have the freedom to share, collaborate and create online. Copyright rules should therefore support platforms, business models, and alternative licensing systems – like Creative Commons – that give content creators greater control over distribution, while also encouraging citizens’ rights to share with others. Copyright law should balance fair compensation with ensuring that artists have access to the content they need to remix and build new works.



EVIDENCE SHOWS THAT AS USERS SHARE AND CONNECT MORE DIRECTLY WITH CREATORS, THE POSSIBILITY FOR GRASSROOTS FINANCING AND DISTRIBUTION OF CULTURAL AND KNOWLEDGE PRODUCTION GROWS.”

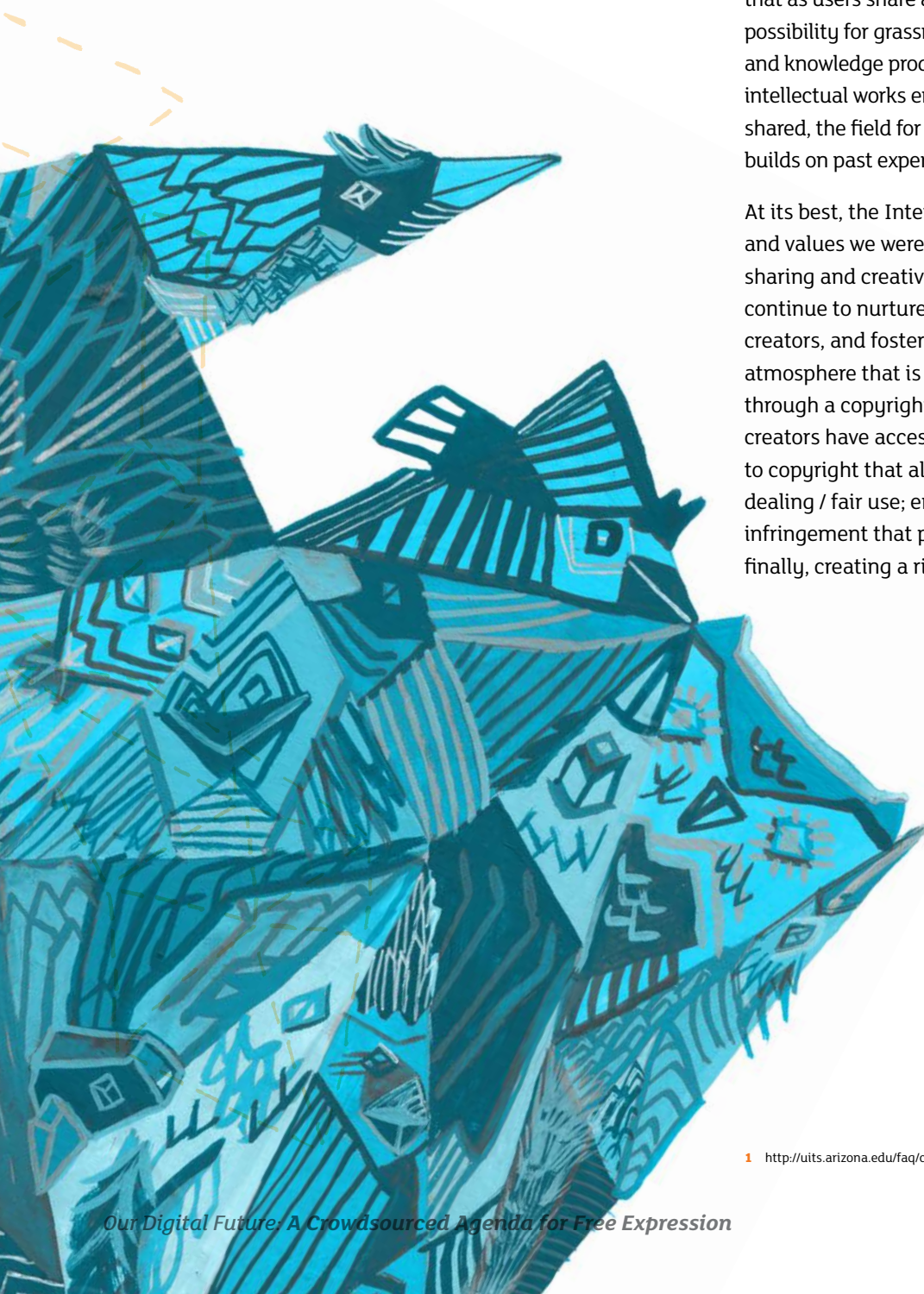


In order to fully unleash the possibilities of the open Internet, there are two things digital policy must foster: the potential for Internet users to share and remix knowledge and culture quickly and easily on a global scale; and the potential for creators to access livelihoods not controlled by gatekeepers, the Big Media companies that have traditionally monopolized financing and distribution. These gatekeepers have the ability to create “winner-take-all” economies dominated by a few big celebrities in the creative and knowledge production fields.

By contrast, the Internet allows for a much greater range of amateur and emerging artists to reach large audiences. While we are often led to believe that in the digital age, sharing and creativity are diametrically opposed, the right approach to copyright understands that these two things can be mutually reinforcing. Unfortunately, Big Media gatekeepers and their lobbying organizations, like the Motion Picture Association of America (MPAA) and the Recording Industry Association of America (RIAA),¹ have had a disproportionate influence over copyright policy in recent years, and have pushed forward the idea that Internet users pose an existential threat to creators and creative industries. But, as we explore here, evidence shows that as users share and connect more directly with creators, the possibility for grassroots financing and distribution of cultural and knowledge production grows. Similarly, as creative and intellectual works enter the public domain and can be freely shared, the field for cultural and knowledge production that builds on past experience and tradition gets infinitely richer.

At its best, the Internet helps us return to the experiences and values we were likely encouraged to have as children: sharing and creativity. Our first recommendation is that we continue to nurture these values and experiences by respecting creators, and fostering a sharing-first culture that creates an atmosphere that is conducive to creativity. We can do this through a copyright agenda with four components: ensuring creators have access to new platforms; promoting approaches to copyright that allow creators broad scope for sharing and fair dealing / fair use; ensuring reasonable penalties for copyright infringement that prioritize compensation for creators; and finally, creating a rich public domain.

¹ <http://uits.arizona.edu/faq/copyright/who-are-mpaa-and-riaa-are-they-spying-me>





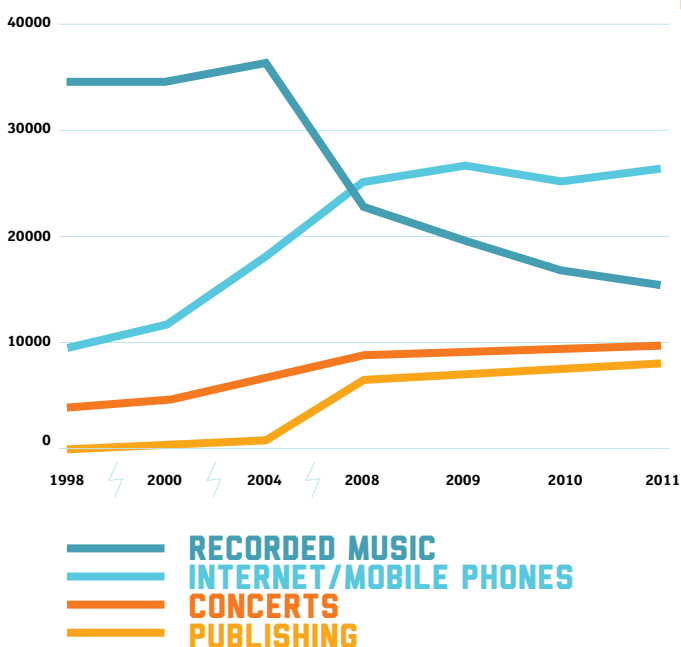
CREATIVE INDUSTRIES, TECHNOLOGICAL INNOVATION, AND THE SHIFT TO ONLINE DISTRIBUTION

Past experience with technological innovation demonstrates the need to take industry claims about the harms caused by innovation with a grain of salt – one of the best examples comes from the 1980s, when there was a coordinated effort by the film industry to have the VCR prohibited. Then-head of the MPAA, Jack Valenti, told a House of Representatives Subcommittee: “I say to you that the VCR is to the American film producer and the American public as the Boston strangler is to the woman home alone.”² As Forbes magazine points out, “Of course, home video (and later DVD) went on to become a hugely profitable delivery channel for movie studios. Far from decimating the industry, it grew profits, especially for studios like Disney with valuable back catalogs. It just goes to show, disruptive technologies can have different effects than you expect.”³

Now that more than a decade has passed since the shift to online music, studies have emerged challenging industry claims about the threat of this shift: piracy does not “kill” the industry and the negative impacts reported are either unfounded or exaggerated. A ground-breaking study by the London School of Economics (LSE) discovered three important counter-points to the music industry’s reactions to the online shift: 1) that though lobbying organizations claimed otherwise, the music industry was doing reasonably well, and that much of their data was misleading; 2) that declining sales of recorded music should be explained not just by file-sharing but also by decreasing disposable household incomes for leisure products and other shifts in patterns of

FIGURE 1

TRENDS IN REVENUES OF THE MUSIC INDUSTRY, USD MILLION (CURRENT)



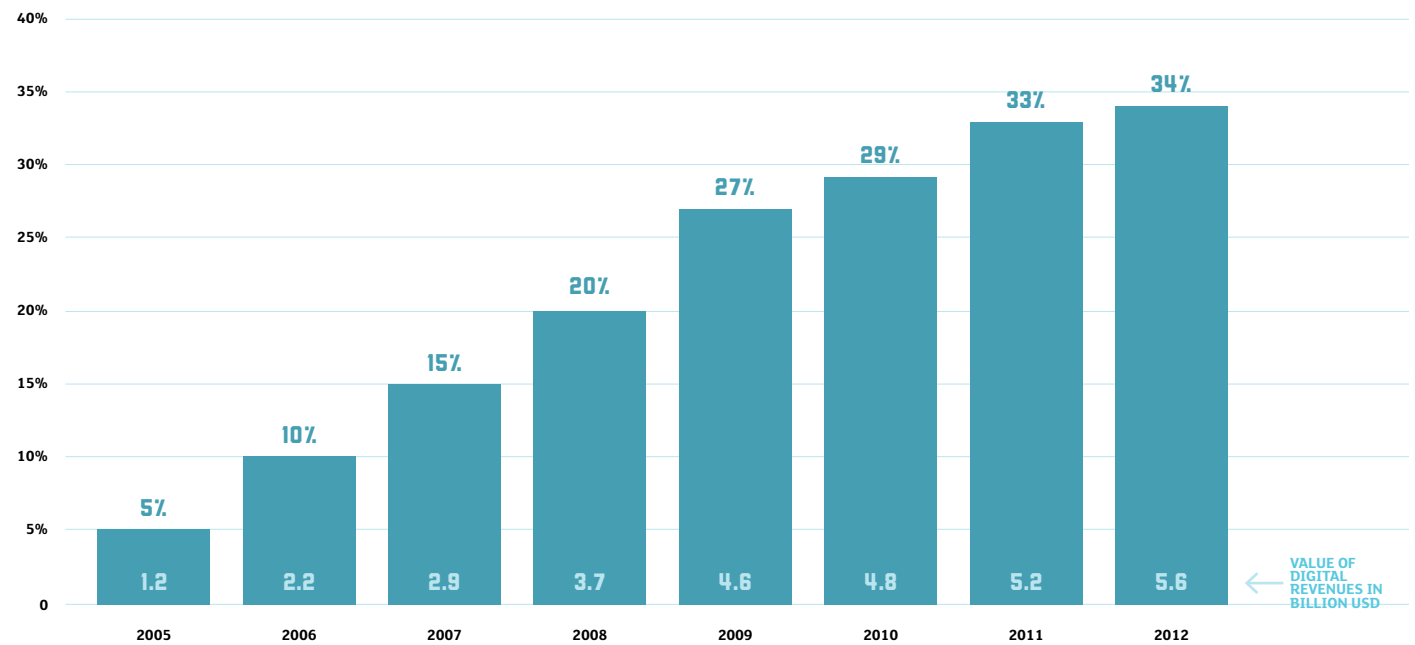
SOURCE: “Copyright & Creation: A Case for Promoting Inclusive Online Sharing,” by Bart Cammaerts et. al., lse.ac.uk

music consumption; and 3) that increasing revenue from live performances and growing digital revenue, including from streaming services, were offsetting the declining sales of recorded music (Figure 1).⁴

Not only do streaming services bring in increased income for the industry (suggesting that if the music industry had adapted to the digital environment earlier, rather than

investing in lobbying to protect a dying business model, record companies could have enjoyed much earlier growth in the sector)⁵ these services also seem to help curb piracy quite dramatically.⁶ And the real effects of piracy are open to a very lively debate: a 2013 report by the European Commission showed that piracy did not displace legal music purchases in digital format, and that the majority of music consumed illegally would not have been consumed if it was not freely available.⁷

DIGITAL REVENUE AS A PERCENTAGE OF TOTAL REVENUES FROM RECORDED MUSIC USD (CURRENT)



SOURCE: "Copyright & Creation: A Case for Promoting Inclusive Online Sharing," by Bart Cammaerts et. al., lse.ac.uk

We also know that most creative industries are doing quite well: despite the MPAA's claims about the devastation of online piracy, Hollywood achieved record-breaking global box office revenues of US\$35 billion in 2012, a 6 percent increase over 2011. Though revenue from DVDs declined in the decade from 2001 to 2010, total global revenue increased by 5 percent.⁸

Similarly, in the publishing industry, though revenues from print book sales have declined, increased sales of eBooks have offset this, and despite the alarm about the "end of the book," the rate of industry growth is not declining.⁹

The music industry, which has been hardest hit in terms of decline in traditional revenues (Figure 1) demonstrates not only growth in revenues from live performance, but also strong growth in digital revenues (Figure 2). These now account for more than a third of global music industry revenues and helped the music industry increase revenue

year over year between 2011 and 2012, the first time since 1999 that industry revenue has grown.¹⁰ This growth has been predicated on innovations that deliver content to users in a format that is easy and desirable to them, something the older Big Media companies have neglected while instead focusing on efforts to suppress technological advances and protect their out-dated business models.¹¹

² <http://uits.arizona.edu/faq/copyright/who-are-mpaa-and-riaa-are-they-spying-me>

³ <http://www.forbes.com/sites/joshbarro/2012/01/18/thirty-years-before-sopa-mpaa-feared-the-vcr/>

⁴ <http://www.lse.ac.uk/media@lse/documents/MPP/LSE-MPP-Policy-Brief-9-Copyright-and-Creation.pdf> p.5

⁵ <http://www.lse.ac.uk/media@lse/documents/MPP/LSE-MPP-Policy-Brief-9-Copyright-and-Creation.pdf> p.5

⁶ <http://www.telegraph.co.uk/technology/news/10187400/Spotify-and-Netflix-curb-music-and-film-piracy.html>

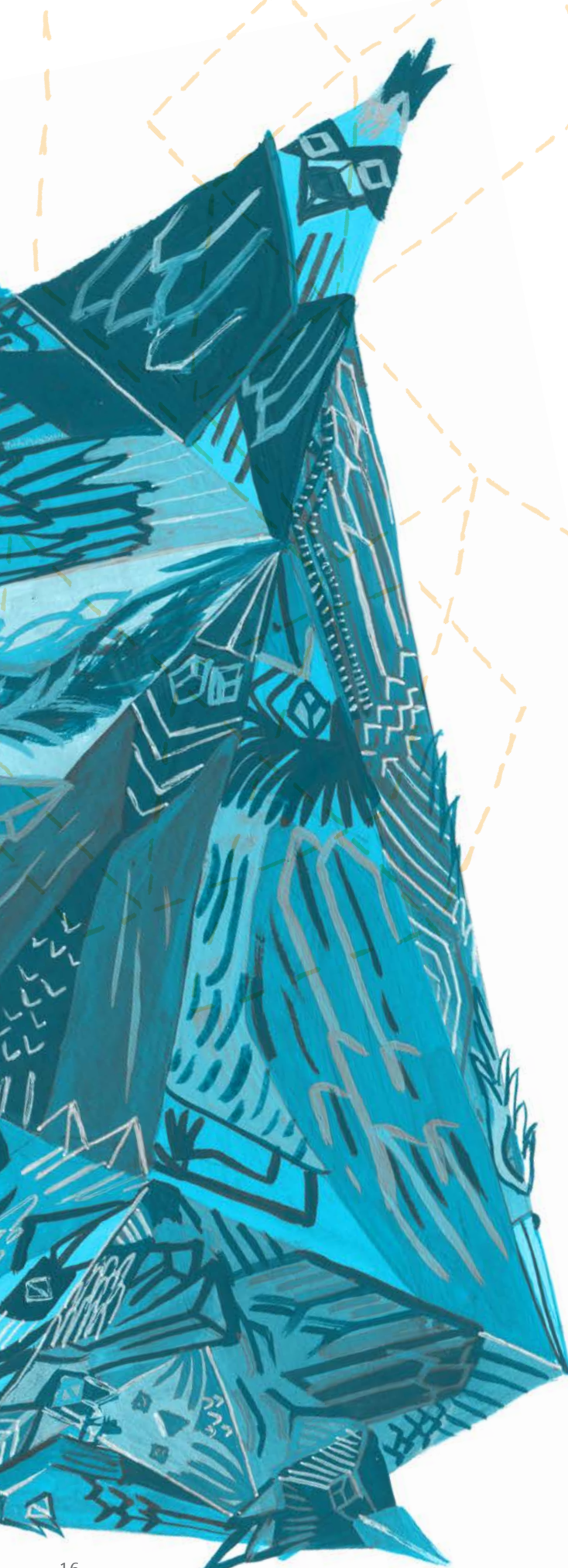
⁷ <http://ftp.jrc.es/EURdoc/JRC79605.pdf> p.2

⁸ <http://www.lse.ac.uk/media@lse/documents/MPP/LSE-MPP-Policy-Brief-9-Copyright-and-Creation.pdf>

⁹ <http://www.lse.ac.uk/media@lse/documents/MPP/LSE-MPP-Policy-Brief-9-Copyright-and-Creation.pdf>

¹⁰ <http://www.theverge.com/2013/2/26/4031912/music-industry-grew-revenue-for-first-time-since-1999>

¹¹ <http://eprints.lse.ac.uk/33905/1/LEMPBPBrief1.pdf>



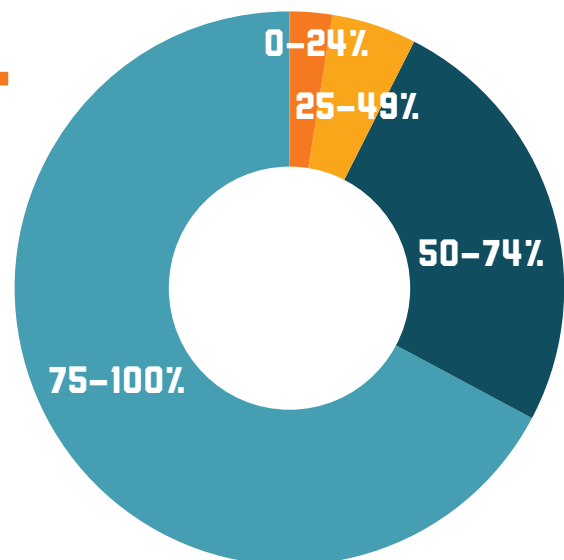
RESPECT FOR CREATORS 1: ENSURE CREATORS CAN ACCESS NEW WAYS TO SHARE THEIR WORK

The growth forecast for digital music revenues is all the more reason to ensure we get the business model for online music services right – that is, we ensure that it harnesses the possibilities of the open Internet for easier sharing and more creativity. Though labels are fighting a rearguard action that focuses on an “Internet users versus artists” frame, what we’ve found in the “Our Digital Future” process is that Internet users are very invested in respecting creators. In fact, Internet users who participated in our crowdsourcing process would very much like to see creators get a greater share of the revenue generated by their work:

Q. WHEN I DOWNLOAD MUSIC, I WANT THE FOLLOWING PERCENTAGE OF REVENUE TO GO TO THE ARTIST.

FIGURE 3

A.



0–24% of the revenue.

2.5%

25–49% of the revenue.

5%

50–74% of the revenue.

25.5%

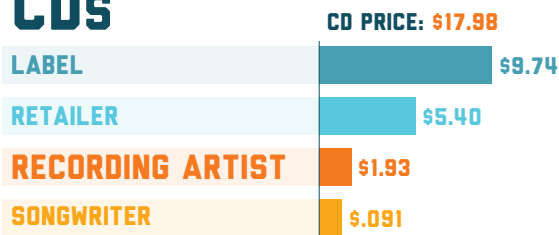
75–100% of the revenue.

67%

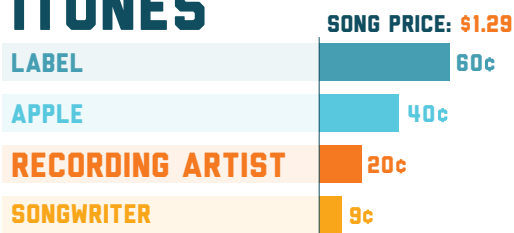
Overall, 92.5 percent of respondents to a question about how much digital music revenue should go to the artist, believe that at least 50 percent of the revenue should go directly to the artist; 67 percent wanted to see more than three-quarters of the revenue go directly to the artist. The “Our Digital Future” process provides evidence that Internet users believe in a business and revenue model where artists and content creators are fairly compensated.

DISTRIBUTION OF REVENUE FROM MUSIC SALES

CDs



ITUNES



SUBSCRIPTION SERVICES (SPOTIFY, MOG, RDIO)



*Recording artist gets 38¢ and splits that money half and half with record label, depending on their contract.

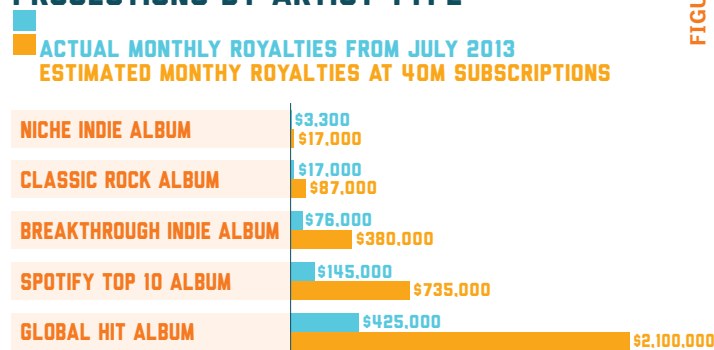
We also see new possibilities for creators to benefit in the digital environment, and insist that copyright law should protect those possibilities. According to research done by Rolling Stone magazine, distribution through CDs or the iTunes store should both result in about the same royalties to the artist – a typical record contract gives the artist approximately 16 percent of sales.¹² However, in the offline market, labels have been cutting into artist's royalties for years, "with deductions marked 'free goods' (usually 10 percent of the artist's royalty) and 'packaging' (usually 25 percent)" dropping the royalty down to about 11 percent.¹³ These deductions don't apply to digital sales – so there is reason to believe that in the iTunes store an artist inches closer to the revenue-split ratio our crowdsourcing participants would like to see. Though in this scenario, the label still takes the majority of the revenue: out of the \$1.29 paid for a song, "a grand total of 60 cents goes to Sony to pay for marketing, publicity, videos, executive salaries and obviously, profit."¹⁴ And this is all assuming that the artist has paid off their debt to the record label for expenses like videos, tour support, etc.

FIGURE 4

SOURCE: "The New Economics of the Music Industry," by Steve Knopper, October 25th, 2011, rollingstone.com

By contrast, though there are very legitimate concerns about the small amount of royalties per play¹⁵ on a streaming service like Spotify, the amount of royalties paid to the artist relative to the label looks closer to what our crowdsourcing participants wanted (Figure 4). And as the plays accumulate so does the revenue to the artist. Spotify also aims to grow the amount it gives to both niche and breakthrough indie bands, creating new sources of revenue for artists that may have had a hard time competing in the pre-digital era (Figure 5).

SPOTIFY REVENUES AND PROJECTIONS BY ARTIST TYPE



SOURCE: "How is Spotify contributing to the music business?" spotify.com

FIGURE 5

As Rolling Stone points out, the artists that do the best in terms of the percentage of revenue that they can keep, are those who choose to go without a label:

*"Of course, many artists don't want to share nearly half of their revenues with a major label like Sony, which is essentially a middleman. Before the Internet, and stuff like ProTools, an artist had to sign with a label even to be heard. That's obviously no longer true. Today, an artist can pay a service like TuneCore to be included in the iTunes Store. At that point, after Apple takes its cut, the entire 90 cents goes to the artist."*¹⁶

Distribution channels like iTunes, or the even more open platform (in that users can upload their videos directly) YouTube, are creating new possibilities for artists to eschew labels and keep more of their revenues for themselves. Rolling Stone cites the case of "video kings" OK Go, who chose to split with their longtime label EMI. The band's blog announcing the departure reads: "OK Go has struck out on its own. The band has left the EMI family of corporations to form their own enterprise, a homemade upstart called Paracadute [...]"

¹² <http://www.rollingstone.com/music/news/the-new-economics-of-the-music-industry-20111025#ixzz393yh311V> p.2

¹³ *ibid.*, p.5

¹⁴ *ibid.*, p.2

¹⁵ <http://www.businessinsider.com/what-spotify-pays-artists-for-songs-in-royalties-2013-12>

¹⁶ <http://www.rollingstone.com/music/news/the-new-economics-of-the-music-industry-20111025#page=2>

Paracadute is really just a way for the boys to continue doing what they've always done. Which is whatever they want. Being OK Go just got a little bit easier.”¹⁷ This also leaves the band much better positioned to bring in significant revenue from their YouTube videos. Rolling Stone quotes Eric Garland, the CEO of an online metrics company, who claims: “I know individual artists who make tens of thousands of dollars a month on YouTube [...] And I know of individual artists who make more money on an individual basis from YouTube than they do from iTunes.”¹⁸

Online platforms not only allow artists to cut out the label middlemen – they have also allowed for experiments in letting fans set their own price for content. Lead singer Thom Yorke of the UK band Radiohead found that making their album “In Rainbows” available for whatever fans believed to be appropriate actually increased sales: “In terms of digital income, we’ve made more money out of this record than out of all the other Radiohead albums put together, forever — in terms of anything on the Net. And that’s nuts.”¹⁹ Other big name entertainers to start using technology to their advantage include comedian Louis C.K., who made his comedy special available for stream and download for just US \$5, in an experiment he considered a huge success:

“As of Today, we’ve sold over 110,000 copies for a total of over \$500,000. Minus some money for PayPal charges etc, I have a profit around \$200,000 (after taxes \$75.58). This is less than I would have been paid by a large company to simply perform the show and let them sell it to you, but they would have charged you about \$20 for the video. They would have given you an encrypted and regionally restricted video of limited value, and they would have owned your private information for their own use. They would have withheld international availability indefinitely. This way, you only paid \$5, you can use the video any way you want, and you can watch it in Dublin, whatever the city is in Belgium, or Dubai. I got paid nice, and I still own the video (as do you). You never have to join anything, and you never have to hear from us again.”²⁰

In both these cases, there was still significant file-sharing and unpaid downloading of these works – but the artists considered them a success regardless.²¹ Online crowdfunding platforms like Kickstarter have also allowed artists like Amanda Palmer – an advocate of alternative, more negotiated and consensual compensation arrangements between artists and fans²² – to vastly exceed targets for funding projects like records, books, and tours.²³ And as business models in the music industry

change, particularly as live performance revenue increases (see Figure 1 in this chapter), many artists may find that the benefits of increased exposure from free sharing of their work outweigh the costs of foregone revenue from digital sales – as did Counting Crows, who released their album for free via BitTorrent, commenting: “It’s not just about getting music to the people who would buy it anyway – even though that is, of course, very good – the hardest thing to do is make new fans.”²⁴

This is not to claim that the current digital era is perfect – direct distribution to fans and crowdfunding are much easier for celebrity artists with name recognition value, while emerging artists still struggle. As Nicolas Suzor and Dan Hunter point out, “Since the 1990s the copyright system has been made more and more onerous – but most artists haven’t been getting any richer.”²⁵ In Australia, for example, the majority of people who identify as professional artists make less than A\$10,000 per year from their primary creative activity.²⁶ Alternative proposals like a Creative Contribution,²⁷ or a basic income,²⁸ are worthy of serious consideration to overcome the challenge of financial security for artists – a challenge that long precedes the digital age.

The important thing to keep in mind when considering the online era is that we don’t know what the business models of the future will look like: as Amanda Palmer says “The truth is there is no next model. Show me 1,000 talented musicians, each with a unique style and personality, and I’ll show you 1,000 ways to make a career in music... there is no longer an off-the-shelf solution.”²⁹ The uncertainty surrounding future business models, and the possibilities of the open Internet to bring the creative industries closer to what our crowdsourcing participants wanted (i.e. a majority of revenue going to artists) lead us to draw two conclusions with regards to copyright and free expression: that real protection for safe harbours is needed, and that “three-strikes” style copyright policy will be harmful to creators.

“Safe harbours” are online service providers, such as YouTube, which under the US Communications Decency Act’s (CDA) Section 230³⁰ are exempt from liability for copyright infringements by third parties who use their services. They are often used by emerging artists that don’t yet have access to distribution channels like television and radio – safe harbours provide the artist with a way of reaching audiences that would have been impossible in the pre-digital era. Protections for safe harbours like those outlined in CDA Section 230 are therefore crucial. Current copyright regimes, however, compromise these safe harbours by permitting dragnet-style takedowns of content, which often sweep up legitimate uses and reuses



of content by artists, and disable their access to crucial audiences, as we will explore further in the next section.

The crucial nature of Internet access to artists in a digital era also highlights the folly of three-strikes rules, where repeat copyright infringers would have their Internet access disabled. Given the possibility for unknowing infringement, for false infringement claims, and the reality of copyright protections that seem overly broad and detrimental to the sharing of knowledge and culture, we strongly recommend against three-strikes rules. Less than 2 percent of our crowdsourcing participants agreed that users should be disconnected from the Internet for copyright infringement.³¹

Given the results of the “Our Digital Future” project, we support London-based human rights organization Article 19’s Principle 8 on free expression and copyright in a digital age: “Disconnection from access to the Internet on grounds of copyright is always a disproportionate restriction on the right to freedom of expression.”³² In countries like France where three-strikes policy has been tried, it has ultimately been seen as overly expensive, bureaucratic, and ineffective, and has been abandoned in favour of relatively small fines instead.³³ Unfortunately, however, leaked drafts of the TPP suggest that the chapter on intellectual property would seek to impose three-strikes rules on the 12 countries currently negotiating the agreement.³⁴ Because three-strikes rules are just as likely to target creators as they are to target regular Internet users, and remove them from what is increasingly a crucial means of making a living as an emerging artist, these rules should be rejected in favour of civil liability that focuses on compensating creators (see the section “Respect for Creators 3” in this chapter for further discussion of this issue).

INTERNET VOICE



“I want to be able to dictate the terms of my own work; not hand everything over to a publisher [...] I don’t want [fans] to have to worry about their [fan fiction] sites or stories being taken down simply because publishers get hurt over money they’re not making on something that was my intellectual work to begin with. These laws were originally put in place to protect the rights of the artist, yet in these days, it’s only the producers/publishers/etc. that benefit.”

– LaTora Prince

¹⁷ <http://okgo.net/2010/03/10/onwards-and-upwards/>

¹⁸ <http://www.rollingstone.com/music/news/the-new-economics-of-the-music-industry-20111025?page=3>

¹⁹ http://archive.wired.com/entertainment/music/magazine/16-01/ff_yorke?currentPage=all

²⁰ <https://buy.louisck.net/news/a-statement-from-louis-c-k>

²¹ <http://www.nme.com/blogs/nme-blogs/did-radioheads-in-rainbows-honesty-box-actually-damage-the-music-industry>

²² http://www.ted.com/talks/amanda_palmer_the_art_of_asking

²³ <https://www.kickstarter.com/projects/amandapalmer/amanda-palmer-the-new-record-art-book-and-tour>

²⁴ <http://mashable.com/2012/05/14/counting-crows/>

²⁵ <http://theconversation.com/why-australians-should-back-turnbull-in-the-stoush-over-copyright-30198>

²⁶ <http://theconversation.com/why-australians-should-back-turnbull-in-the-stoush-over-copyright-30198>

²⁷ <http://www.oapen.org/search?identifier=409602;keyword=Aigrain> p. 76

²⁸ <http://www.basicincomeireland.com/if-you-do-artistic-or-creative-work.html>

²⁹ <http://www.nme.com/blogs/nme-blogs/did-radioheads-in-rainbows-honesty-box-actually-damage-the-music-industry>

³⁰ <https://www.eff.org/issues/cda230>

³¹ See “Respect for Creators 3: Ensure Reasonable Penalties for Copyright Infringement – Those that Prioritize Compensation for Creators” in this chapter for further results from this question.

³² <http://www.article19.org/data/files/medialibrary/3716/13-04-23-right-to-share-EN.pdf>
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2380522 (layperson’s summary: <http://arstechnica.com/tech-policy/2014/01/study-of-french-three-strikes-piracy-law-finds-no-deterrent-effect/>)

³⁴ <http://tppinfo.org/resources/whats-in-the-tpp/>

RESPECT FOR CREATORS 2:

PROMOTE APPROACHES TO COPYRIGHT THAT ALLOW CREATORS BROAD SCOPE FOR SHARING AND FAIR USE/FAIR DEALING

BOX 1: CREATIVE COMMONS LICENSES

Creative Commons (CC) is a non-profit organization that creates its own licenses to provide a more balanced approach to copyright. By creating flexible licenses, CC gives content creators and users more freedom when it comes to sharing and remixing works. The licenses serve as a positive alternative to current copyright rules, which focus on punishing acts of sharing, as opposed to supporting online collaboration. By using CC licenses,³⁵ you, as a creator of content, can make it clear that you would like to be acknowledged, and communicate ways you would like the public to reuse your work – you can choose to permit derivatives and commercial uses, and can insist that any reuses of your work are also themselves CC licensed. Not only do these licenses let Internet users know what rights the creator has given them, they also encourage innovative knowledge reproduction and distribution, making our online culture richer and more interactive.

As noted above, changing business models mean that sharing work freely is often desirable for knowledge and culture creators - hence the rapid growth in the use of Creative Commons licenses, from 50 million in 2006 to over 450 million in 2011.³⁶ While Creative Commons licenses allow for a great degree of customization and flexibility (see Box 1), the fundamental component of all the licenses is attribution, or giving credit for the original creation.

This was also a principle of sharing online that the participants in “Our Digital Future” strongly supported – 89.2

percent of 9,020 respondents to the question in our drag-and-drop tool said that when using the content of others online, we should always give credit to the creator of the work.³⁷ As the Authors Alliance, which represents the interests of authors who favour accessibility and dissemination, notes, attribution serves not only the author’s or creator’s interest, “but also the reading public’s interest in knowing whose works they are consuming and society’s interest in an accurate record of the intellectual heritage of humankind.”³⁸ Yet again, we see evidence that Internet users want this kind of healthy culture of sharing – the majority of users in our crowdsourcing process want to ensure that creators receive credit.

One challenge with regards to Creative Commons and current copyright law is that notice-and-takedown regimes often rely on automation: many copyright holders use catch-all style systems, such as YouTube’s ContentID (see Box 2) or the MPAA’s list of infringing terms, that result in creators who use Creative Commons having their works summarily removed from the Internet, and from their largest potential audience. For example, popular (and now defunct) torrent site isoHunt was forced to use a site-wide keyword filter provided by the MPAA, which included word combinations like “The Kingdom” and “The Heat.”³⁹ Along with copyrighted works, this filter

blocked content from independent artists like musician Elliot Wallace and film-maker Brian Taylor, whose CC licensed works triggered the overly broad & generic keyword filters. To quote Taylor: “My original material being blocked in the US hurts my chances of: being discovered, making money, making more art.”⁴⁰ Companies like Microsoft use similar automated systems to send takedown notices to Google, removing links to their open source competitor OpenOffice,⁴¹ blocking access to one of the only real alternatives to their expensive software.

The scope of these types of claims is mind-boggling: Google receives requests to remove tens of millions of URLs *each month*.⁴² Even well-known Internet freedom and free expression advocates Corey Doctorow and Lawrence Lessig have been the targets of this kind of system. In Doctorow’s case, his novel “Homeland” was ordered taken down from Google by Fox, the copyright holder of a television show also called “Homeland.” Doctorow noted: “The DMCA makes it easy to carelessly censor the Internet, and makes it hard to get redress for this kind of perjurious, depraved indifference”.⁴³

BOX 2: YOUTUBE’S CONTENTID SYSTEM

Due to the US DMCA’s notice and takedown rules, YouTube has been forced to put in place a ContentID system – a technology that scans videos for copyrighted content using reference files (movies, songs, etc) and then allows rightholders to issue notices to either takedown, claim or block the allegedly offending content. As a result, users can have their videos removed even for having a song playing softly in the background that was picked up by the ContentID software. ContentID also makes no exceptions for fair use or fair dealing. As Ashkan Karbasfrooshan, owner of a popular YouTube channel called WatchModo that was targeted by an illegitimate takedown notice writes: “Having just been given access to ContentID to protect our own videos from copyright infringement, it was instantly clear once I logged in why there are so many false alarms. I personally feel that ContentID adds an impersonal element of anonymity that has led to a lack of common sense and civility. A robot can brand us as a rogue operation with no due process.”⁴⁴ The system appears to be the result of Youtube obeying the problematic notice-and-takedown law, but like other copyright rules, it has the effect of censoring legal expression and content.

The proliferation of dubious copyright claims is not just catching Creative Commons licensed works in a dragnet, it is also sweeping up other legitimate instances of shared copyrighted works, such as those protected under fair dealing or fair use. In Lessig’s case, one of his lectures was removed from YouTube after a takedown notice from Liberation Music, regarding clips of the song “Lisztomania” of which Liberation is the copyright holder. As the Electronic Frontier Foundation (EFF), which represented Lessig in the lawsuit he filed against Liberation, explains, this was a “classic example of fair use, [as] the clips were used to highlight emerging styles of cultural communication on the Internet.”⁴⁵ Liberation Music settled with Lessig for an undisclosed amount, and also revealed their takedown system: they had allowed a single employee to use YouTube’s automatic ContentID system to start the takedown process, and then to threaten a lawsuit when Lessig challenged the takedown. The employee did not have a legal background, and did not actually review Lessig’s video before threatening a lawsuit.⁴⁶ Liberation agreed to change this policy to include human review and fair use considerations, but clearly it is not reasonable to expect Internet users to take every single rights holder to court to force them to adopt what may be only a moderately better system.

This is yet another strong piece of evidence that notice-and-notice style copyright regimes are much more respectful of creators. In a powerful article titled “Why I No Longer Give Away My Music for Free,” digital musician Bob Ostertag notes:

“It is strongly in the interest of the big corporate labels to over-detect rather than under-detect. The result is a system in which the interest of the handful of superstars of the world in not missing out on a penny of their millions in royalties trumps the interest of the vast majority of musicians in getting their music heard.”⁴⁷

³⁵ <https://creativecommons.org/licenses/>

³⁶ <http://www.lse.ac.uk/media@lse/documents/MPP/LSE-MPP-Policy-Brief-9-Copyright-and-Creation.pdf>, p. 9

³⁷ See “Appendix: Methodology” for full results from this question.

³⁸ <http://www.authorsalliance.org/principles-and-proposals-for-copyright-reform/principle-1/>

³⁹ <https://torrentfreak.com/mpaas-court-ordered-piracy-filter-censors-many-legitimate-files-130915/>

⁴⁰ <https://torrentfreak.com/mpaa-filter-censors-legit-torrent-files-on-isohunt-120406/>

⁴¹ <https://www.techdirt.com/articles/20130814/17501024181/microsoft-uses-dmca-to-block-many-links-to-competing-open-office.shtml>

⁴² <http://www.google.com/transparencyreport/removals/copyright/?hl=en>

⁴³ <http://boingboing.net/2013/04/22/fox-sends-fraudulent-takedown.html>

⁴⁴ <http://www.tubefilter.com/2013/12/23/youtube-contentid-reflects-reality/>

⁴⁵ <https://www.eff.org/cases/lawrence-lessig-v-liberation-music>

⁴⁶ <https://www.eff.org/press/releases/lawrence-lessig-settles-fair-use-lawsuit-over-phoenix-music-snippets>

⁴⁷ <http://onthecommons.org/magazine/why-i-no-longer-give-away-my-music#sthash.BwFNp14l.dpuf>

⁴⁸ <http://onthecommons.org/magazine/why-i-no-longer-give-away-my-music>

Ostertag, who makes his income off of concerts and was licensing his recorded work under Creative Commons in order to reach new audiences, cites numerous instances of “netbots,” or automated takedown systems, unjustly removing the content of musicians who are “trying unsuccessfully to give away their music for free.”⁴⁸ As he observes, these musicians have few resources, in terms of time or money, to fight unjustified takedown notices. The problem with putting in place an automated takedown procedure is, first, that these systems do not differentiate between true copyright infringement versus fair dealing, fair use or Creative Commons-licensed works that incidentally resemble copyrighted works. Second, these systems place an unfair burden on emerging artists to fight takedown notices and, as Ostertag notes, are a disincentive to using the Creative Commons.

As Article 19 states in its principles on copyright and free expression: “Measures such as Creative Commons, whereby creators waive some of their rights in their works, allow greater access to culture for the wider public and should therefore be promoted.”⁴⁹ Given the value of Creative Commons, and the harm that automated takedown procedures are doing to the creators who employ it (and/or fair use/fair dealing) the “Our Digital Future” project strongly favours notice-and-notice over notice-and-takedown. In light of the effectiveness of notice-and-notice systems⁵⁰ (see Recommendation Two for a fuller discussion), the evidence clearly shows that they are superior to notice-and-takedown – particularly when takedown procedures rely on the impersonal, anonymous automated systems described here.

RESPECT FOR CREATORS 3:

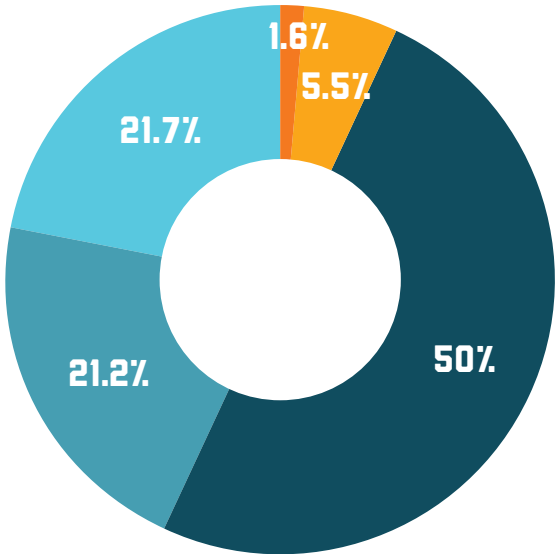
ENSURE REASONABLE PENALTIES FOR COPYRIGHT INFRINGEMENT – THOSE THAT PRIORITIZE COMPENSATION FOR CREATORS

When asked about penalties for copyright infringement, a majority of respondents to the question in the “Our Digital Future” tool (i.e. 71.2 percent of 10,245) selected either payment of a small fine (50 percent) or a warning and instruction about the laws surrounding copyright (21.2 percent). Less than 8 percent selected harsher penalties, like disconnection from the Internet (1.6 percent) or a fine ranging from \$250 to \$15,000 (5.5 percent). These results suggest that Internet users favour copyright regulations that emphasize education and compensatory damages – most Internet users we engaged are in favour of consequences for copyright infringement (including warnings or notices that, as we will demonstrate in Recommendation Two of

Q. IF I DOWNLOAD COPYRIGHTED SONGS WITHOUT PERMISSION, THE PENALTY SHOULD BE:

FIGURE 3

A.



A Court should be able to issue a fine and order that I be disconnected from the Internet. (France's "HADOPI" Law)	1.6%
A Tribunal should issue me a fine, ranging from \$250 to \$15,000. (New Zealand's Copyright "Infringing File Sharing" Amendment Act)	5.5%
Payment of a fine equivalent to the cost of purchasing the song	50%
A warning, and instruction about the laws surrounding copyright	21.2%
No penalty	21.7%

⁴⁹ <http://www.article19.org/data/files/medialibrary/3716/13-04-23-right-to-share-EN.pdf>

⁵⁰ <http://www.michaelgeist.ca/2011/03/effectiveness-of-notice-and-notice/>



this report, are effective at preventing repeat infringement). But, unsurprisingly, they would like to forego unnecessarily punitive systems in favour of reasonable penalties.

Though we've focused in this chapter mainly on the needs of creators in the cultural industries - i.e. musicians, film-makers, etc. – the detrimental effects of copyright policy on knowledge creation are also strong cause for sober second thought before pushing ahead with excessively punitive copyright regimes, like that envisioned in the TPP. In 2013, in response to the suicide of Internet freedom advocate Aaron Swartz,⁵¹ hundreds of academic authors published over 1,500 links to their own copyright-protected material, in an awareness-raising act of civil disobedience.⁵² The fact that these authors were opening themselves up to penalties for copyright infringement highlighted the ways in which the current copyright system for digitized materials does not serve knowledge creators, who often do not retain a license or rights to share their own works.⁵³ In fact, these creators must then pay archives simply to access the material that they produced.⁵⁴ The disjunct between the creator and the rights-holder, who are often not the same person or entity, provides yet further justification for eschewing highly punitive systems – these could punish creators, like academic authors, for sharing their own work.

As the Authors Alliance argues, these types of authors, and others who write not just for pay but also to make their work available to the broadest possible audiences, have not been well served by misguided efforts to strengthen copyright. These efforts have not resulted in meaningful financial returns to most authors, and have “unacceptably compromis[ed] the preservation of our own intellectual legacies and our ability to tap our collective cultural heritage.”⁵⁵ We therefore join with our crowdsourcing participants in insisting that there be reasonable penalties for sharing copyrighted materials – this means civil, not criminal, liability, and civil liability geared towards compensation for culture and knowledge creators, not Big Media companies.

We can see clearly in the case of academic publishing that copyright regimes are not designed with penalties that compensate creators in mind. In fact, as with three-strikes rules and automated takedown systems, creators can become the targets of copyright infringement penalties that unnecessarily impede the sharing of knowledge and culture. As Philippe Aigrain points out, “the effect of the recent evolution of copyright law, in the real world, is to concentrate power not in the hands of authors and artists, but in those of the stock owners of copyright.”⁵⁶

Insisting that penalties should prioritize revenue for creators also has clear implications for copyright terms, as copyrights that extend beyond the life of the creator clearly have no impact on the compensation the creator receives. Therefore, as we will argue in the next section, these should be abolished in favour of a richer public domain of cultural works for creators to reference and remix. As participants in the “Our Digital Future” project suggested, a copyright regime that respects creators will be one that prioritizes reasonable penalties for infringement combined with maximal freedom to share, and to participate in creating an increasingly global digital culture.

INTERNET VOICE



“Free expression is the glory of the Internet and the right of the people. As an author, I have a website with extracts of my books marked copyright. That’s enough. We display our work for people to see. If someone chooses to disregard this, they are outnumbered by the many who honour the system. No decisions of this magnitude should be negotiated secretly, nor should access be denied to the Internet. It is unreasonable to expect service providers to censor content and remove websites. Please listen to the people.”

– June Birch, United Kingdom

⁴⁹ <http://www.article19.org/data/files/medialibrary/3716/13-04-23-right-to-share-EN.pdf>

⁵⁰ <http://www.michaelgeist.ca/2011/03/effectiveness-of-notice-and-notice/>

⁵¹ <http://www.forbes.com/sites/walterpavlo/2013/01/14/aaron-swartz-hacker-case-ends-with-suicide/>

⁵² http://www.huffingtonpost.com/2013/01/13/academics-tweet-tribute-aaron-swartz_n_2468272.html

⁵³ <http://www.authorsalliance.org/principles-and-proposals-for-copyright-reform/>

⁵⁴ <http://techcrunch.com/2013/01/13/pdf-tribute/>

⁵⁵ <http://www.authorsalliance.org/principles-and-proposals-for-copyright-reform/>

⁵⁶ <http://www.oapen.org/search?identifier=409602;keyword=Aigrain> p. 74



RESPECT FOR CREATORS 4: FAVOUR A RICH PUBLIC DOMAIN OVER A LIMITED ONE

When asked how long copyright terms should last, the majority of respondents to the question in “Our Digital Future” indicated that they do not want copyright to last beyond the death of the creator, with the majority at 53.3 percent indicating they believe copyright should last either 10 years (28.7 percent) or until the death of the creator (24.6 percent).⁵⁷ Only 15 percent of respondents voted for a copyright term beyond the death of the creator, and less than 4 percent voted for the term length proposed in leaked drafts of the TPP or longer (i.e. the death of the creator plus 70 years).⁵⁸

By voting for shorter copyright terms, the participants in “Our Digital Future” are voting for a richer public domain. The public domain is comprised of works that are not restricted by copyright and do not require a license or fee to use. Works can enter the public domain automatically because they are not copyrightable, can be designated in the public domain because they are being used under fair dealing/fair use provisions, can become part of the public domain because the copyright term has expired, or can be made public domain by the creator/rights holder. As the Authors Alliance points out, the public domain maximizes the potential for creators’ works to be accessible - therefore, the process for dedicating works to the public domain should be easy and clear.⁵⁹

The public domain is important not just because it allows creators to reach audiences – it also creates a vast store of works that creators can freely draw from and reuse. Whether works we likely consider as part of our common cultural heritage or folk tradition are in the public domain or not can have a very significant impact on creators. For example, for those in the English-speaking TPP countries, we can feel the realism of a film or television show where characters sing “Happy Birthday” at a birthday party - and the unreality of a scene in which they sing anything else. Yet in order to represent this everyday reality, creators currently need to pay royalties to Warner Brothers, which collects over US \$2 million per year from a disputed claim to the copyright on the song.⁶⁰ The existence of a public domain for cultural works like “Happy Birthday” has a significant impact on the ability of creators to reference and reuse works without incurring significant additional production costs, or running the risk of harsh penalties for copyright infringement.

INTERNET VOICE



“I want the rights of users to be protected. Format shifting of content should be protected by law. There should also be requirements to disclose when the major portion of content being sold is public domain.”

– David

The ability for creators to affordably represent, reference and remix our culture is not the only reason to support a rich public domain; worryingly, without provisions where works automatically enter the public domain after a reasonable time limit, the vast majority of recorded 20th century culture is lost as “orphan works,” and will likely be entirely inaccessible to creators.⁶¹ The majority of books, for example, go out of print shortly after their original publication, and are long forgotten by the time they enter the public domain – they will likely never be re-printed, and the limited copies in circulation will be difficult or impossible to access.⁶² For many other works, the copyright owner cannot be found, and/or their date of death is unknown, so uncertainty over their copyright status means they will never enter the public domain, in a regime where publishers, archivists, scholars, etc. are fearful of being held liable for copyright infringement of up to \$150,000.⁶³ As the Authors Alliance notes, “the specter of such crippling liability can chill even non-infringing and socially beneficial acts of authorship, dissemination, archiving, and curation” – yet another reason to ensure reasonable penalties for copyright infringement.⁶⁴

The scale of the orphan works problem, and the diminishment of publicly accessible culture, have led dedicated advocates of the public domain like Mark Akrigg, the founder of Project Gutenberg Canada, which preserves and makes available public domain ebooks, to raise the alarm about the risks of the TPP and the proposed copyright term extensions in the leaked drafts.⁶⁵

Participants in the “Our Digital Future” project join with librarians, archivists, scholars and others in rejecting exceedingly long copyright terms. Copyright terms have steadily increased in length since the creation of copyright; when copyright was first established in Britain with the Statute of Anne, it lasted just fourteen years.⁶⁶ The first efforts to extend it by the booksellers were rejected on the grounds that they would make the public into “slaves” of the publishing industry, and lock up knowledge and science in “cobweb chains.”⁶⁷ In this report, we join with the majority of our crowdsourcing participants in seeking copyright protection that focuses on livelihoods and protections for creators – and ends with their death. This strikes the appropriate balance between the needs of individual creators for compensation for their work, and the needs of the creative sector as a whole for cultural goods that are not locked away from the public.



THE EXISTENCE OF A PUBLIC DOMAIN FOR CULTURAL WORKS LIKE “HAPPY BIRTHDAY” HAS A SIGNIFICANT IMPACT ON THE ABILITY OF CREATORS TO REFERENCE AND REUSE WORKS WITHOUT INCURRING SIGNIFICANT ADDITIONAL PRODUCTION COSTS, OR RUNNING THE RISK OF HARSH PENALTIES FOR COPYRIGHT INFRINGEMENT.”

⁵⁷ For full results from this question, see “Appendix: Methodology”

⁵⁸ <https://www.eff.org/issues/tpp>

⁵⁹ This is a challenge in US copyright law <http://www.authorsalliance.org/principles-and-proposals-for-copyright-reform/principle-1/>. An opt-out rather than opt-in model for copyright would be one approach to solving this problem: <http://www.law-democracy.org/live/wp-content/uploads/2013/07/Final-Copyright-Paper.pdf> p.35

⁶⁰ <http://abcnews.go.com/WN/story?id=5413561>

⁶¹ <https://web.law.duke.edu/cspd/orphanworks.html>

⁶² http://gutenberg.ca/documents/Mark_Akrigg_Bill_C-32_brief.pdf

⁶³ <https://web.law.duke.edu/cspd/orphanworks.html> and <http://www.ala.org/advocacy/copyright/orphan>

⁶⁴ <http://www.authorsalliance.org/principles-and-proposals-for-copyright-reform/principle-4/>

⁶⁵ <http://www.gutenberg.ca/documents/tpp-comment-markakrigg-120212.html>

⁶⁶ <http://www.copyrighthistory.com/anne.html>

⁶⁷ http://en.wikipedia.org/wiki/Common_law_copyright

RECOMMENDATION TWO:

PRIORITIZE FREE EXPRESSION

The results of our crowdsourcing project demonstrate that participants value the principle of free expression above all other priorities for copyright. Copyright rules must safeguard freedom of expression online. There are four components to preserving free expression: preventing censorship; protecting fair use and/or fair dealing; promoting access and affordability; and creating clear and simple rules to govern the sharing of knowledge and culture online.

BOX 1: WHAT IS FREE EXPRESSION?

In defining free expression for the purposes of the “Our Digital Future” project, we were inspired by Article 19 of The Universal Declaration of Human Rights: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”¹

Given the increasing importance of the Internet as a primary medium for free expression, the United Nations Human Rights Council, along with more than 80 co-sponsoring states, in June 2014 adopted a resolution on the Internet and Human Rights. This resolution “recognises that the global and open nature of the Internet is a driving force in accelerating progress towards development, including the implementation of the right to education. It also calls upon states to address the digital divide and to promote digital literacy and access to information on the Internet.”² It recognizes that the same rights that people have offline, particularly freedom of expression, also apply online. Our work on the “Our Digital Future” project seeks to actualize these rights. With this goal, we are supporting a growing global coalition of experts, civil society advocates, and everyday Internet users who see online free expression as a crucial civil liberties issue.

PRIORITIZE FREE EXPRESSION 1: PREVENT CENSORSHIP

In our drag-and-drop tool, our first question asked participants to rank a set of 6 priorities: 1) protecting free expression; 2) clear and simple rules; 3) rules made democratically; 4) compensation for creators and artists; 5) privacy safeguards; 6) and protection for media conglomerates. Participants were instructed to rank their priorities in ascending order, with 1 indicating the highest priority and 6 representing the lowest priority.

When asked to rank the six priorities, a clear majority (67 percent) chose “protecting free expression” as the highest priority with 26,894 votes out of 40,079.³ These supporters join 141,111 signees of “Stop Internet Censorship,” a targeted action to world leaders and decision makers with authority over the TPP, asking them to protect the rights of all people to access the Internet (see Box 2).

These thousands of citizen-advocates have good reason to be concerned about the priority placed on free expression in the design of our copyright laws. In the most extreme cases, copyright law can have such chilling and punitive effects on free expression that it acts as a form of censorship. Unfortunately, as we will explore further in this section, cases

BOX 2: SAY NO TO INTERNET CENSORSHIP: ACTION TEXT

Dear Heads of State:

1. Protect the right of everyone to access the Internet in their daily lives.
2. Do not force ISPs to act as “internet police” monitoring our Internet use, censoring content, and removing whole websites.
3. Preserve the democratic rights of sovereign countries to draft their own copyright laws.

with extreme, unintended consequences are becoming more and more common under copyright regimes like the takedown provisions of the US Digital Millennium Copyright Act (DMCA), the original incarnation of France’s HADOPI Law⁴ or Finland’s Lex Karpela,⁵ or that envisioned in leaked drafts of the TPP.⁶

¹ <http://www.un.org/en/documents/udhr/>

² <http://www.article19.org/resources.php/resource/37602/en/unhrc-rejects-attempts-to-dilute-internet-freedoms>

³ See “Appendix: Methodology” for full results for Question 1.

⁴ <http://www.bbc.com/news/technology-19597429>

⁵ <http://rt.com/news/police-copyright-child-laptop-690/>

⁶ <https://www.eff.org/issues/tpp>

Because of the nature of notice-and-takedown regimes, (as seen in the United States, the United Kingdom, Australia, and Singapore, among others) where content hosts must remove content immediately upon receipt of a notice from a purported copyright holder to protect themselves from legal action, and there are few to no consequences in practice for false notices, copyright holders can easily use weak or non-existent copyright claims to silence political speech that wouldn't otherwise be as vulnerable to censorship. For example, NBC Universal removed a viral clip of U.S. Senator Elizabeth Warren shutting down a CNBC co-anchor,⁷ and deleted an Obama campaign video because of a copyright complaint.⁸ Multiple news networks such as CBS News, the Christian Broadcast Network, and Fox News launched DMCA notices on John McCain's presidential campaign ads in 2008,⁹ while BMG Management Group used a DMCA claim to take down a campaign video for presidential candidate Mitt Romney, in which President Obama sings a few bars of "Let's Stay Together."¹⁰ These were not singular examples; in fact, in 2010, the Centre for Democracy and Technology produced a white paper detailing the threats that "meritless copyright claims" from both sides posed to online political speech during the 2008 US presidential election.¹¹ Such abuses are certainly not limited to the American context: a recent example from South America saw several Ecuadorian officials targeting documentaries, tweets, and search results that include images of those officials for illegitimate takedowns.¹²

INTERNET VOICE



"On the Internet, free expression, creativity, education, public discourse and debate thrive like never before. The courts of the United States are already acknowledging that patent reform is needed. Copyright laws are also in desperate need of reform. The big companies scream infringement when none is intended. Do not simply hand the Internet to multinational corporations and lawyers. The people of the world finally have a voice."

— Chris Snyder, Sweden

In another worrying example of censorship of political discourse, voting software company Diebold used cease-and-desist letters and the DMCA to force grassroots activists to take down leaked internal documents from the company.¹³ These documents included "statements that appear to suggest many continuing security problems with the software that runs the system, and last-minute software changes that, by law, are generally not allowed after election authorities have certified the software for an election."¹⁴ Diebold was using a dubious copyright claim to try to silence public debate about voting, and cover up evidence of its own malfeasance.

Among the accused activists were two college students who were unwilling to be silenced. In partnership with the Electronic Frontier Foundation (an Internet freedom advocacy group and Fair Deal coalition partner), they successfully sued Diebold, which was ordered to pay damages (the software company paid \$125,000).¹⁵ Unfortunately, the Diebold case is the exception that proves the rule: most fraudulent copyright claims will never result in penalties for the offending rights holder. In a presentation for a US House of Representatives Subcommittee, Paul Sieminski, General Counsel for Automattic, a blogging platform with 48 million websites attracting approximately 400 million visitors and 13.1 billion page views each month, discussed Automattic's own efforts to hold fraudulent copyright claimants accountable, telling subcommittee members:

"While there are statutory damages for copyright infringement (even if very minor) there are no similar damages, or clear penalties of any kind, for submitting a fraudulent DMCA notice. The lawsuits that we filed represent the only recourse for abuse of the DMCA takedown process. The lawsuits were expensive to bring, time consuming to prosecute, and promise very little in the way of compensation in return. We brought these lawsuits, alongside our users, to protect their important free speech rights and send the message that abuse of the DMCA process has consequences (at least on WordPress.com)."



THE ABUSES OF COPYRIGHT POLICY FOR THE PURPOSES OF CENSORSHIP ARE TOO NUMEROUS TO LIST HERE, AND ARE NOT JUST LIMITED TO POLITICAL SPEECH – THEY EXTEND EVEN TO DELETING OPINIONS, FEEDBACK, REVIEWS, CRITICISM, OR OPINIONS THE COMPLAINANT SIMPLY DOESN'T LIKE.”

Cases like these are extremely rare, and I'm confident in saying that the users would not have the time, resources or sophistication to bring the suits on their own. The DMCA system gives copyright holders a powerful and easy-to-use weapon: the unilateral right to issue a takedown notice that a website operator (like Automattic) must honor or risk legal liability. The system works so long as copyright owners use this power in good faith. But too often they don't.”¹⁶

As Sieminski pointed out, Automattic has 251 staff including only one lawyer, and a team of seven people just to respond to DMCA takedown notices, of which they received 825 in the month preceding Sieminski's testimony.¹⁷

Misused DMCA notices to Automattic included but were not limited to: a physician demanding removal of newspaper excerpts by falsely claiming to be a representative of the newspaper; an international corporation seeking removal of images of company documents posted by a whistleblower; a frequent submitter of DMCA notices seeking removal of a screenshot of an online discussion criticizing him for submitting overreaching DMCA notices;¹⁸ and, most disturbingly, a scam in which someone tried to undermine the work of science journalists by copying their work, backdating it, and claiming copyright in order to take down the original content.¹⁹ Automattic also made headlines when Straight Pride issued a takedown notice for an interview posted on Automattic's blogging platform Wordpress.com,

in which Straight Pride, a heterosexual pride organization, spoke favourably about Russian President Vladimir Putin's crackdown on gay rights.²⁰

Clearly, participants in the “Our Digital Future” project have every right to be worried about free expression: the abuses of copyright policy for the purposes of censorship are too numerous to list here, and are not just limited to political speech – they extend even to deleting opinions, feedback, reviews, criticism, or opinions the complainant simply doesn't like.²¹ When, as Paul Sieminski points out, the targets of a takedown notice can only protect their free expression rights through recourse to the criminal justice system, which requires significant time and resources, the threat to freedom of expression is grave and urgent. Far from allowing this copyright censorship to spread via the TPP (Box 3), we need to take immediate action to protect free expression and limit copyright abuses.

⁷ <http://gawker.com/nbc-censors-video-of-elizabeth-warren-taking-cnbc-to-th-837411782>

⁸ <https://www.eff.org/takedowns/nbc-issues-takedown-viral-obama-ad>

⁹ https://www.cdt.org/files/pdfs/copyright_takedowns.pdf

¹⁰ <http://www.project-disco.org/intellectual-property/052313observations-on-dmca-reform-and-notice-takedown-abuse/>

¹¹ https://www.cdt.org/files/pdfs/copyright_takedowns.pdf

¹² <https://www.eff.org/deeplinks/2014/05/state-censorship-copyright-spanish-firm-abuses-DMCA>

¹³ <http://www.nytimes.com/2003/11/03/business/media/03secure.html?src=pm&pagewanted=2>

¹⁴ <http://www.nytimes.com/2003/11/03/business/media/03secure.html?src=pm&pagewanted=1>

¹⁵ <https://www.eff.org/press/archives/2004/09/30>

¹⁶ http://judiciary.house.gov/_cache/files/b343eabe-0bf1-44e9-8c85-b3478892b8e1/031314-testimony---sieminski.pdf

¹⁷ http://judiciary.house.gov/_cache/files/b343eabe-0bf1-44e9-8c85-b3478892b8e1/031314-testimony---sieminski.pdf, p.2

¹⁸ http://judiciary.house.gov/_cache/files/b343eabe-0bf1-44e9-8c85-b3478892b8e1/031314-testimony---sieminski.pdf, p.4

¹⁹ <https://torrentfreak.com/time-to-punish-dmca-takedown-abusers-wordpress-owners-say-140313/>

²⁰ <http://www.theguardian.com/technology/2013/aug/13/wordpress-straight-pride-uk>

²¹ <https://openmedia.ca/blog/five-ways-extreme-copyright-rules-can-be-used-censor-internet>

BOX 3:

INTERNET SERVICE PROVIDERS AND THE TRANS-PACIFIC PARTNERSHIP AGREEMENT

“The [leaked] draft chapter of the Trans-Pacific Partnership Agreement on Intellectual Property insists that signatories provide legal incentives for Internet Service Providers (ISPs) to privately enforce copyright protection rules. The TPP wants service providers to undertake the financial and administrative burdens of becoming copyright cops, serving a copyright maximalist agenda while disregarding the consequences for Internet freedom and innovation.

TPP article 16.3 mandates a system of ISP liability that goes beyond the US Digital Millennium Copyright Act (DMCA) standards and US case law. In sum, the TPP pushes a framework beyond ACTA and possibly the spirit of the DMCA, since it opens the doors for:

- Three-strikes policies and laws that require Internet intermediaries to terminate their users’ Internet access on repeat allegations of copyright infringement
- Requirements for Internet intermediaries to filter all Internet communications for potentially copyright-infringing material
- ISP obligations to block access to websites that allegedly infringe or facilitate copyright infringement
- Efforts to force intermediaries to disclose the identities of their customers to IP rightsholders on an allegation of copyright infringement.”

From “TPP Creates Legal Incentives For ISPs To Police The Internet. What Is At Risk? Your Rights” by Kurt Opsahl and Carolina Rossini, August 24, 2012, eff.org

“The leak of the Trans Pacific Partnership intellectual property chapter generated global coverage as full access to the proposed text provided a wake-up call on U.S. demands and the clear opposition from many TPP countries. [...] ISP liability in the TPP is shaping up to be a battle between Canada and the U.S., with countries lining up either in favour of a general notification obligation (Canada) or a notice-and-takedown system with the prospect of terminating subscriber Internet access and content blocking (U.S.).”

From “The Trans Pacific Partnership IP Chapter Leaks: The Battle Over Internet Service Provider Liability” by Michael Geist, November 13, 2013, michaelgeist.ca

Fortunately, notice-and-notice regimes like the one formalized in Canada through Bill C-11, which requires that online service providers notify subscribers when a potential rights holder has submitted a notice claiming copyright infringement,²² have proven to be effective at preventing repeat copyright violations. Under the notice-and-notice system, in 2006 the Business Software Alliance sent out 60,000 notices and reported they have been “most effective.”²³ The Entertainment Software Association of Canada reported in 2010 that 71 percent of notice recipients do not reinfringe.²⁴ Internet service provider (ISP) Rogers noted in 2011 that only five percent of subscribers receive notice, and that 68 percent stop infringing after only one notice, 89 percent after two notices.²⁵ As Professor Michael Geist, the Canada Research Chair in Internet and E-commerce Law, notes: “If there are a couple of outliers in the population – the Rogers data showed about 1 in 800,000 at the extreme end of the spectrum of several dozen notices to a single household – there is absolutely nothing to stop the rights holder from taking legal action against those individuals. There is no need to threaten tens of thousands with cutting off Internet access, when rights holders are perfectly capable of taking action against the (literally) handful of people that repeatedly infringe at the extreme end of the scale.”²⁶

Given the effectiveness of notice and notice, and the reality that copyright laws are being used as a new censorship tool, the consensus of experts and civil rights advocates in the Fair Deal coalition is that notice-and-notice regimes better protect the interests of Internet users. In an open letter to Ministers and lawmakers of TPP negotiating countries, the coalition has called either for the wider implementation of notice-and-notice regimes, or judicial involvement in the takedown system, to ensure the application of due process.²⁷

Attention to due process, privacy rights, and the presumption of innocence are essential to prevent censorship in the name of copyright law. Allowing rights holders an unfettered ability to take down material on a whim encourages abuse of the law; such a regime is detrimental to the health and vitality of global public discourse.



PRIORITIZE FREE EXPRESSION 2:

PROTECT FAIR USE AND/OR FAIR DEALING

Participants in the “Our Digital Future” crowdsourcing project were also strong believers in a range of rights to re-use and modify aspects of a creative work. The majority of our respondents – 84.8 percent of 9,020 – agreed that users should “be able to create parodies, remixes and fan fiction without having to break the law and face penalties.” A similar number – 86.2 percent – agreed users should “be able to excerpt from works to share commentaries and reviews without fear of legal penalties.”²⁸

Copyright laws typically protect these rights through provisions like fair dealing (Canada, the UK, Australia, New Zealand, Singapore) or fair use (the US, Poland, and South Korea) (see Box 4). Unfortunately, the Internet community has a very legitimate cause to be coming together to speak out about the importance of these rights at this time, as takedown notices are also used to remove content that should be protected under fair use or fair dealing. For example, in June 2013 the Church of Scientology forced a domain registrar and website host to take down cheerupwillsmith.com, a parody site that used satire to make fun of the Church, its relationship to the actor Will Smith, and its alleged control over its members.²⁹ The website was pulled down without challenge, despite the fact that it had no commercial purpose and was clearly permitted within the fair use doctrine.³⁰

BOX 4: FAIR DEALING VERSUS FAIR USE

Under the fair dealing system (found in Canada and the United Kingdom), use of a work must fall into a specific category of purpose for the exception to apply, such as education, parody, research, news, or criticism. Only once the use qualifies for one of these categories does the analysis move on to decide if it was actually fair, through a six-factor test. If an instance of copying cannot fit into one of the set out categories, then it is not exempt under fair dealing.

By contrast, fair use (such as in the United States and Israel) does not require fitting the use into an explicit category before analyzing its fairness. While U.S. copyright law also sets out categories, or purposes, they are listed as mere examples of fair use, not its boundaries. Courts may add any other purpose they see fit, if they find that the use is fair. This leads to much greater flexibility than fair dealing offers, though some argue that Canadian courts’ increasingly expansive approach to fair dealing has shifted its system towards the open-ended model of fair use.³¹

²² <http://www.entertainmentmedialawsignal.com/?s=notice+and+notice>

²³ <https://www.eff.org/document/notice-difference-canadas-notice-and-notice-rules-michael-geist-presentation-tpp-experts>

²⁴ <https://www.eff.org/document/notice-difference-canadas-notice-and-notice-rules-michael-geist-presentation-tpp-experts>

²⁵ <http://www.michaelgeist.ca/2011/03/effectiveness-of-notice-and-notice/>

²⁶ <http://www.michaelgeist.ca/2011/03/effectiveness-of-notice-and-notice/>

²⁷ <https://openmedia.ca/sites/openmedia.ca/files/OM%20Liability%20Letter%20PDF.pdf>

²⁸ See “Appendix: Methodology” for full results for this question.

²⁹ <https://www.eff.org/deeplinks/2013/06/church-scientology-lands-takedown-hall-shame>

³⁰ https://openmedia.ca/sites/openmedia.ca/files/isliability_letter_print-fnl-9july2014.pdf

³¹ http://www.press.uottawa.ca/sites/default/files/9780776620848_5.pdf



EVEN CANADIAN-BASED ENTITIES THAT MIGHT OTHERWISE BE UNDER A NOTICE-AND-NOTICE REGIME HAVE ATTEMPTED TO CENSOR PARODIES AND OTHER CONTENT THAT OFFENDS THEIR SENSIBILITIES.”

Because of the dominance of US-based distribution channels like YouTube, even Canadian-based entities that might otherwise be under a notice-and-notice regime have attempted to censor parodies and other content that offends their sensibilities. In two examples related to the highly politically charged issue of oil sands development, Tourism Alberta used Canadian law firm Dentons (which also represents energy company Enbridge) to deliver a takedown notice directed at a parody video that spoofed a vacation to Alberta to visit the oil sands.³² Canadian-headquartered energy company Encana also used the DMCA to file a takedown notice directed at an audio file of one of its executives swearing. In this case, however, the owner of the hosting company Chirbit refused by citing fair use provisions.^{33 34}

These examples point not only to the importance of modifying notice-and-takedown regimes (and preventing their proliferation) but also to the importance of protection for fair use and fair dealing. Fair use and fair dealing need to be given a broad scope within the domain of copyright, as they are intended to protect an incredibly wide range of crucial modes of cultural expression (everything from satire to private study). For this reason, copyright holders should be required to consider fair use before sending takedown notices.³⁵ Given the results of the “Our Digital Future” crowdsourcing process, we join London-based human rights organization Article 19 in supporting their sixth principle on free expression and copyright in the digital age:

*Limitations and exceptions to copyright, especially fair dealing, should be interpreted broadly so as to give greater protection to the right to freedom of expression...Creative and transformative uses of original works subject to copyright should benefit from broad protection under the fair dealing exception to copyright.*³⁶

This need for a broad interpretation of exceptions to copyright extends to the unique case of remixes. We follow Harvard Law Professor Lawrence Lessig, and the implication of the clear majority of responses to the question in our crowdsourcing process, in asserting that amateur and non-commercial uses of work for remixes and mash-ups should be exempted from the scope of rights granted by copyright – not simply covered under fair use.³⁷ Commercial remixes or mash-ups that are “highly transformative”³⁸ and do not impact upon the primary market of the copyright owner should also be permitted under fair use or fair dealing.³⁹ In many cases, remixes are of a completely different genre and style than their source material, and thus do not cause Internet users to forego consumption and purchase of the original. In fact, they may help the creator of the original work to reach new audiences, and therefore new markets.

INTERNET VOICE



“Sharing is caring – not piracy. We must reject copyright censorship and profiteering for almost the entirety of human history ‘ideas were free’, but the growing dominance of the ‘market economy’ – where our intellectual ideas are bought & sold as ‘products’ – has resulted in greedy monopolies, stifled creativity, innovation, impeded progress, censorship and other terrible consequences. Our draconian system of patent & copyright laws don’t acknowledge the derivative nature of creativity.”

– Frances



Cultural creators are always participating in the vast legacy of creative work that has come before them. Original works are enriched by allusion, homage and reference to works from the past; therefore, it is important to leave as much room as possible within copyright law for fair use and fair dealing that protects creators (an issue we explored in our first recommendation, Respect Creators). Outside of the creative uses of copyright material, fair use and fair dealing rights are also essential elements of free expression, given that they afford protection for such politically and socially important modes of discourse as critique, parody and education. Provisions that allow for fair use/fair dealing of copyright works, interpreted broadly,⁴⁰ are the correct approach to protecting the rights of content creators without harming free expression.

³² http://www.huffingtonpost.ca/steve-horn/alberta-oilsands-dentons-youtube-satire-big-oil_b_3768661.html

³³ <https://www.chillingeffects.org/weather.cgi?WeatherID=718/>

³⁴ <http://www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/encana-wants-embarrassing-audio-file-erased-from-the-internet/article8919607/>

³⁵ <https://www.eff.org/deeplinks/2008/08/judge-rules-content-owners-must-consider-fair-use>

³⁶ <http://www.article19.org/data/files/medialibrary/3716/13-04-23-right-to-share-EN.pdf>

³⁷ <http://www.scribd.com/doc/47089238/Remix> p. 254

³⁸ “Transformative use refers to the use of existing expression as an input into the creative process, resulting in the creation of new expression that, while still embodying elements of the original work, is original in its own right. This type of creativity is beneficial for society and should be encouraged. Individuals should have the ability to express themselves, and participate in the interpretation of their culture.” <http://nic.suzor.net/wp-content/uploads/2010/12/2006-Suzor-Transformative-Use.pdf> p. 1

³⁹ Or see the US court’s interpretation of transformative work: “whether the new work ‘merely supersedes the objects’ of the original creation, or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message.” <http://supreme.justia.com/cases/federal/us/510/569/case.html>

⁴⁰ <http://eprints.qut.edu.au/4239/1/4239.pdf> p. 4

⁴⁰ As Canada and American courts have been doing. See <http://fairduty.wordpress.com/resources/notable-supreme-court-decisions/> and <http://fairduty.wordpress.com/2014/06/15/second-circuit-stays-on-message/>

PRIORITIZE FREE EXPRESSION 3: PROMOTE ACCESS AND AFFORDABILITY

Free expression, according to the Universal Declaration on Human Rights, includes the right to “seek, receive and impart information and ideas through any media” (see Box 1 in this chapter, page 27). Increasingly, all around the world, the Internet is becoming the primary medium where people from diverse backgrounds share information.⁴¹ Internet access, and access to digital technologies, is therefore increasingly a free expression concern. Beyond the extremely important issue of the global digital divide,⁴² certain approaches to copyright law negatively impact the ability of specific populations, like the vision impaired, to access the Internet, and are therefore harmful to their free expression rights. These include the crucial issues of digital locks and intermediary liability; in order to prioritize free expression, we must take affordability and access concerns particularly seriously in regards to these two issues.

DIGITAL LOCKS

Article 11 of the World Intellectual Property Organization’s (WIPO) 1996 Copyright Treaty (which is in force in 9 of the 12 TPP negotiating countries) contains a provision for legal protection against the circumvention of technological protection measures (TPMs). TPMs are part of digital rights management (DRM), types of technologies that can “lock” a file, sometimes restricting or preventing any attempt to convert or transfer files. TPMs can help content companies control how citizens use the content and digital devices they

own. From the content companies’ perspective, a “single file” understanding of content means customers must purchase multiple versions of a file if they wish to access it in different formats. This “one use single file” deviates dramatically from most users’ understanding of media commodities - users see themselves as buying the content (i.e. the song, the book) not the single file. Were you to purchase a CD, you certainly would not think that you needed two copies in order to play it on the devices in your home and in your car.

Given the possibility of the open Internet to make knowledge and culture more affordable and easy to access, requiring people to pay and purchase more than they would have for the non-digital versions is a clear step backwards, not forwards to a future where free expression flourishes.



INTERNET VOICE

“I moved from the UK to Canada five years ago and I’m forced to choose a location in order to access digital media on my devices, yet certain content is not always available ‘in my region’ (i.e. BBC programs, iTunes purchases). Since I don’t want to lose access to the media I’ve previously bought, I keep my devices registered to the UK. As such, I don’t buy much digital content. Considering how ultra-mobile people and their devices are, it’s time we scrapped regional and device-related restrictions so we can experience any media, regardless of our location, region or devices.”

– Marten

INTERNET VOICE



“As a part of the special needs community, I want to be able to continue sharing resources with others without the fear of sanctions – as a community we are often isolated and without the Internet, we would be even more so.”

– Monica



More seriously, without significant exceptions made for persons with perceptual disabilities,⁴³ digital locks can make it nearly impossible and illegal for the vision impaired to convert digital files into audio format, or do other kinds of format shifting required for accessibility reasons (see Image 1). Enlightened policy would see incentives for new titles to be made available in accessible formats, at the point of publication.⁴⁴ The status quo sees the interests of Big Media companies elevated above those of vision impaired users; vision impaired users must not be prohibited from creating or format shifting their own content. Media files cater to individuals without any disability – as our society becomes an information society, we cannot let individuals with accessibility concerns become even further marginalized.



CREDIT: Copy/South Research Group <http://eprints.rclis.org/7563/>

Unfortunately, the “one use single file” approach to copyright law with minimal exceptions would likely be widely institutionalized by the TPP. Leaked drafts from February 2011 show that the TPP would push stricter anti-circumvention policies than those found in either the WIPO Copyright Treaty or the US DMCA, including liability for circumvention even if it did not involve copyright infringement (i.e. if the digital lock

was broken in order to facilitate a fair use of the content), and mandatory prison sentences for criminal anticircumvention violations.⁴⁵ If the TPP goes through in its present form, vision impaired people everywhere could suffer a great loss to their free expression rights in our digital society.

With our drag-and-drop tool, we asked citizens what kind of liberties they should have when it comes to accessing and altering content that they have purchased in a digital format. The results indicate a strong belief in a high degree of flexibility and individualization.

When asked about their expectations after purchasing content (i.e. music, ebooks, movies) online, less than 10 percent of 9,059 respondents selected options that did not include the possibility of modifications for special needs, and only 0.7 percent agreed that content should only be used on the device used to purchase it. The highest percentage, at 51.7 percent, selected “I expect to be able to use it on any device I own, modify it for my special needs, & share it with friends as I would a physical copy,” while 17.4 percent selected “I expect to be able to modify it in any way I see fit, and make it available for free to anyone online, as long as nobody profits from it.” These results suggest that participants in our crowdsourcing process firmly believe that Internet users should have the right to tailor and customize content to their own, unique needs, and are against a single “copy” understanding of content.

The overwhelming majority (i.e. 69.2 percent) of respondents to our crowdsourcing question believe that paying for content means being able to share and modify the content to their needs. We therefore join Article 19 by supporting their 12th principle on free expression and copyright in the digital age: “The criminalisation of circumvention of digital rights management software is an unjustified restriction on freedom of expression and should be abolished”. There should also be no penalties for DRM circumvention to allow legal uses of content (i.e. circumvention of regional zone access protection). We also stand with experts, small businesses, Internet freedom advocates and other online innovators in supporting the goal of the FixTheDMCA.org campaign, supporting a repeal of the anti-circumvention clause in the DMCA.

⁴¹ <http://www.internetworldstats.com/stats.htm>

⁴² <http://blogs.wsj.com/digits/2014/04/23/global-digital-divide-worsens-report-says/>; Note also that copyright laws have differential impacts on those in the Global North and those in the Global South. A full examination of this question is beyond the scope of this report, but see The copy/south dossier: issues in the economics, politics, and ideology of copyright in the global south, 2006 Copy/South Research Group, <http://eprints.rclis.org/7563/> for groundbreaking work on these issues.

⁴³ Like those proposed in the Marrakesh Treaty, which some TPP negotiating countries, including the United States, have signed: <http://www.worldblindunion.org/english/news/Pages/The-Treaty-of-Marrakesh.aspx>

⁴⁴ *ibid.*

⁴⁵ <https://www.publicknowledge.org/news-blog/blogs/tpp-deep-dive-copyright-and-digital-locks>



INTERMEDIARY LIABILITY

The issue of intermediary (including ISP) liability brings up another concern related to ease of Internet access: the affordability of Internet services. ISP liability refers to the potential for ISPs to be responsible for the copyright-infringing behaviour of their customers (see Box 3 in this Chapter), and possibly made to pay damages to the rights holders, or buy insurance to protect them from such occurrences. This is the type of system proposed in a discussion paper in July 2014 by Australia's Attorney General George Brandis,⁴⁷ and found in leaked drafts of the TPP,⁴⁸ despite the fact that there is little evidence that these systems work to reduce infringement.⁴⁹

In the case that these rules are implemented, ISPs would inevitably pass these costs onto their customers, thereby making the Internet more expensive for everyone.⁵⁰ Of the 9,386 respondents to a question posed in our crowdsourcing process about responsibility for copyright enforcement, only 11.3 percent believed ISPs should be the ones responsible – the majority believed that either law enforcement officials (35.1 percent) or the copyright holders themselves (48.1 percent) should be responsible.⁵¹ In other words, our respondents do not believe in ISP liability – they don't want ISPs to become de facto copyright police. Similarly, respondents did not believe ISPs should be forced to share our private data: only 1.9 percent of those who answered the germane question (9,567 respondents) in our drag-and-drop tool believed ISPs should share user information with any copyright holder who asks for it. Most respondents believed that court orders or judicial authorization should be necessary (72.3 percent), or that ISPs should not share our information at all.⁵²

Like the question of DRM and digital locks, we need to take Internet users' perspectives seriously, particularly since limiting liability for Internet service providers and other intermediaries is an accessibility concern. Many low-income communities still struggle to get or maintain access to the Internet,⁵³ particularly in countries where the Internet service market is very concentrated. A report for Industry Canada from 2011 found that “many of the smaller ISPs would be out of business ‘within the hour’ or ‘immediately’ if they were held liable to cover the costs of copyright infringement at rates proposed by some of the content industry players (in this specific case, rates proposed by the Society of Composers, Authors and Music Publishers of Canada).⁵⁴ The same report recognized that the lower administrative costs of notice-and-notice as compared to notice-and-takedown were a positive implication of the former system. We therefore have even more reason to support a notice-and-notice-style system, and to stand with Article 19 in their 10th principle for free expression and copyright in a digital age: “Intermediaries which provide services, such as providing access, or searching for, or the transmission or caching of information, should not be liable for infringing content disseminated by third parties using those services.”⁵⁵

PRIORITIZE FREE EXPRESSION 4: CLEAR AND SIMPLE RULES

Finally, all of the above rights to fair use, fair dealing, recourse in the case of illegitimate notices or takedowns, format shifting, and more, depend on Internet users having a clear understanding of the rules surrounding copyright. Prioritizing free expression means making free expression rights clear; it is therefore no surprise that the second most important priority for the respondents to the first question in our consultation was clear and simple rules.⁵⁶ What this tells us is that Internet users want intellectual property and copyright rules to be written in a manner that is clear and accessible. Citizens cannot exercise their rights if they can't understand them. As the Authors Alliance notes, creators have a particular interest in clear rules – current copyright laws often make it difficult for creators to understand which rights they are giving up and which rights they are retaining when they enter into agreements with publishers or other institutions.⁵⁷

INTERNET VOICE

“I would like to get rid of the current copyright law(s); they are so convoluted that the ordinary citizen and even librarians who follow the law are unable to understand it. We need to start over on copyright.”

– Paul

More often than not, copyright laws and rules are written in a highly legal or technical manner that most people are not familiar with. This means that presently, the interpretation of copyright rules is the near-exclusive domain of legal experts. Crucial decisions such as how long a work should be considered copyrighted before it has entered the public domain, whether an instance of alleged copyright violation qualifies as fair use or fair dealing, or what kind of punishment is reasonable for real

violations are often left for litigators and judges to decide. Even Universal Music, the Motion Picture Association of America (MPAA) and the Record Industry Association of America (RIAA) have insisted that fair use determinations are so challenging it is impossible to take them into consideration before issuing takedown notices.⁵⁸ Clear, simple copyright rules would help ensure everyone has an opportunity to understand their legal rights – and remove the excuse for not considering fair use rights that are so crucial to free expression. We suggest that policy-makers write and communicate laws in a clear, concise manner, designed to be accessible to the people they are meant to serve. A straightforward approach to copyright will help create empowered and educated citizens of the Internet, who understand how to share, give credit, and exercise their free expression rights.

INTERNET VOICE

“I would love to browse around the Internet without worrying about significant grey areas that give license for a vindictive prosecutor or district attorney to build a case to unjustly manufacture me into a criminal. There need to be clear black-and-white rules about what will and what will not get you in hot water.”

– Damon

⁴⁶ <http://www.article19.org/data/files/medialibrary/3716/13-04-23-right-to-share-EN.pdf> p.18

⁴⁷ <https://www.techdirt.com/articles/20140725/07082528003/australian-government-proposes-new-copyright-law-basically-hollywoods-wishlist.shtml>

⁴⁸ <http://www.michaelgeist.ca/2013/11/tpp-leak-isp-liability/>

⁴⁹ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2322516

⁵⁰ <http://theconversation.com/brandis-leaked-anti-piracy-proposal-is-unrealistic-29709> or <http://cyber.law.harvard.edu/property99/liability/main.html>

⁵¹ See “Appendix 1: Methodology” for full results for Question 1.

⁵² See “Appendix 1: Methodology” for full results for the crowdsourcing tool.

⁵³ See <https://openmedia.ca/blog/our-digital-divide-only-62-low-income-households-have-internet-access> or <http://www.theguardian.com/money/us-money-blog/2014/jan/26/internet-luxury-low-income-americans>

⁵⁴ <http://www.ic.gc.ca/eic/site/ippd-dppi.nsf/eng/ip01090.html>

⁵⁵ <http://www.article19.org/data/files/medialibrary/3716/13-04-23-right-to-share-EN.pdf> p. 16

⁵⁶ See “Appendix 1: Methodology” for full results for Question 1.

⁵⁷ <http://www.authorsalliance.org/principles-and-proposals-for-copyright-reform/principle-1/>

⁵⁸ <https://www.eff.org/deeplinks/2013/12/service-providers-remix-artists-filmmakers-and-public-interest-groups-support-eff>

RECOMMENDATION THREE: EMBRACE DEMOCRATIC PROCESSES

Citizens, particularly young people, are increasingly questioning the legitimacy and effectiveness of traditional models of governance and hierarchical processes of decision-making.¹ Representative democracies have been undermined by the presence of large lobbying groups, funneling money into the system through political backchannels, or overt mechanisms of influence like Super PACs.² Elections are often marred with campaign finance or voter suppression scandals.³ While young people are engaging in social change campaigns and local community activities en masse, they are turning off politics and elections in record numbers.⁴ The discrepancy appears to point not to apathy as some suggest, but rather to a perceived lack of authentic and effective means of expression through official democratic institutions.

As our democratic institutions appear to be eroding under the influence of powerful interest groups, public confidence in the very ideals of democracy is eroding as well. To further undermine democratic will, many important decisions are being laundered through international trade agreements carried out in near total secrecy [Box 1].⁵ A new method of

decision-making befitting the era of participation is sorely needed. Fortunately, the Internet provides us with many tools to create a more participatory style of democracy – including the drag-and-drop crowdsourcing tool that we used for the “Our Digital Future” project.

BOX 1:

DEMOCRACY AND THE TRANS-PACIFIC PARTNERSHIP AGREEMENT

The manner in which the TPP negotiations have been carried out is of great concern to people around the world. Held behind closed doors, the negotiating process is so secretive that, the public notwithstanding, even elected representatives are not allowed to access the text, let alone discuss it. Civil society groups are excluded from the process; meetings are continually held in secret with last-minute logistical changes.⁶ In Canada, MPs are calling out for the government to release the text,⁷ while in the US, several Congress members have voiced strong concerns about the total lack of transparency.^{8,9} Other TPP countries – New Zealand and Malaysia – have also spoken out.¹⁰ The information we have about the TPP text comes solely from leaked drafts of the text published by WikiLeaks.¹¹

The reason for this is unfortunately clear: the measures put forth by industry lobbyists are a lightning rod for opposition by civil society. It is unlikely that a democratic process would result in such a contentious trade agreement, or allow for the tremendous waste of resources spent in negotiating a deal that will likely be rejected by the public in many of the countries involved.

- 1 <http://www.theguardian.com/commentisfree/2011/nov/20/peter-beaumont-democracy-in-crisis>
- 2 <http://www.vox.com/cards/super-pacs-and-dark-money/what-are-super-pacs>
- 3 <http://www.cbc.ca/news/politics/5-political-dirty-tricks-we-learned-from-the-robocalls-trial-1.2669924>
- 4 http://civicyouth.org/research/products/Measuring_Youth_Voter_Turnout.pdf
- 5 <https://openmedia.org/censorship>
- 6 <http://www.theglobeandmail.com/news/politics/tories-deny-shifting-trans-pacific-partnership-talks-to-ottawa-to-stymie-protests/article19458945/>
- 7 <http://www.cbc.ca/news/politics/tpp-trade-talks-too-secret-ndp-mp-don-davies-says-1.2703010>
- 8 <https://www.techdirt.com/articles/20120523/11415519051/wyden-to-obama-hollywood-shouldnt-know-more-about-tpp-than-congress.shtml>
- 9 <http://www.bloomberg.com/news/2013-10-03/democrats-balk-at-obama-s-fast-track-push-on-pacific-trade-talks.html>
- 10 <http://www.scoop.co.nz/stories/PO1402/S00272/nz-should-follow-malaysia-lead-in-releasing-tppa-text.htm>
- 11 <https://wikileaks.org/tpp/>

As part of our crowdsourcing process, we asked participants a specific question about how they would like to see copyright law decided.¹² A sizeable majority (72.3 percent) of 9,475 respondents agreed that their country should “Design copyright laws by following Finland’s example, launching a participatory multi-stakeholder process that involves the general public, including Internet users and creators as well as copyright law experts.” These respondents are inspired by Finland’s Common Sense in Copyright law proposal, a crowdsourced policy put forward to the Finnish government by over 1,100 people who submitted comments, contributions or votes via Google docs to collaboratively write a new draft copyright law.¹³ In sharp contrast, less than one percent (56/9,475) of respondents supported the idea that their country should: “Design copyright laws by conforming to international trade agreements, like the Trans-Pacific Partnership (TPP), that have been decided by trade representatives and industry, with limited public consultation,” (see Box 1).

Given the overwhelming results of our crowdsourcing process, we strongly recommend that policy makers formulate copyright policy in a public, democratic forum, with a transparent decision-making process that includes active input from a diversity of stakeholders, and with the general public in the driver’s seat. The crowdsourcing process we aimed to model offers a decentralized and more participatory way of making decisions, and our results reveal a sharp contrast between the desires of citizens, innovators and entrepreneurs compared with TPP bureaucrats and industry lobbyists. As in Finland, our experiments in crowdsourcing are in their infancy – all the more reason to embrace these experiments as learning opportunities, as the Finnish government has done.¹⁴

Despite its novelty, crowdsourcing has much to recommend it as a legitimate alternative to closed-door decision-making – it harnesses the possibility of the open Internet to engage people all over the world in low-barrier, interactive, transparent processes. There will be design challenges, controversies, and problems with the representativeness of the participants; but we should keep in mind, as an important point of comparison, that there are no shortage of these flaws with elections even after hundreds of years of experimentation. To quote one of our Internet Voice participants, Sean:

“I want a platform where citizens can vote on specifically worded issues, and vote on amendments to the specific wording. Popular decisions brought to lawmakers and become policy. A democracy that keeps up with communications technology.”

A democracy that keeps up with technology would be one that works with digital trends – not against them (see Box 2). Rulemaking processes can now take advantage of the public participation made possible by new technology... and hopefully, revitalize faith in democracy in the process.

INTERNET VOICE



“I want a platform where citizens can vote on specifically worded issues, and vote on amendments to the specific wording. Popular decisions brought to lawmakers and become policy. A democracy that keeps up with communications technology.”

– Sean, Canada

BOX 2:

INNOVATIONS IN DEMOCRACY

Though in their infancy, experiments with technology for democratic decision-making show what might lie beyond the horizon of representative democracy. In countries around the world, activists, software companies and political parties are using the Internet to envision a more participatory democratic system:

- In Germany, Austria, Italy, Switzerland and Brazil, Pirate Parties have used Liquid Feedback, software for political decision-making, to prepare conventions and design policy platforms. A unique feature of Liquid Feedback is its capability to allow delegated voting (“liquid democracy”) to take into account the knowledge disparity between citizens on diverse policy issues.¹⁵
- In Argentina, Internet Party co-founders have created DemocracyOS, a web-based open-source platform for voting and political debate. Party candidates have committed to voting based on the will of DemocracyOS users, and to introduce legislation based on user suggestions rather than the wishes of industry lobbyists.¹⁶ The software has also been used in Tunisia, where activists built their own installation to allow citizens to comment on the country’s new constitution.¹⁷

- In New Zealand, the Internet Party provides both a Policy Forum and a Policy Incubator on its website (<https://internet.org.nz/>) allowing all members to help shape party policies.
- In Spain, Wadobo software has created Agora Ciudadana, a social website that allows anyone to create or join a virtual agora – a discussion forum with elections through either direct vote or delegation. Juan Baldoví, an MP with the Spanish Green Party Compromís-Equo, used the website to crowdsource his vote on a transparency bill, saying he hoped to “open the voters’ eyes to another way of practising democracy, and bring them closer to their politicians.”¹⁸

As Argentine Internet Party co-founder Pia Mancini says, “We need to start thinking about whether systems that were developed in the 18th century, and fully implemented in the 20th century, make sense in a 21st-century societal context.”¹⁹ Given the limitations of representative democracy – even after centuries of experimentation – the burgeoning potential for technology to help us iterate our way to a more inclusive, inspiring system is reason for hope.

¹² See Appendix 1 for full results from this question.

¹³ <http://www.pcworld.com/article/2045006/crowdsourced-finnish-copyright-bill-headed-to-parliament.html>

¹⁴ “But most importantly, with each subsequent initiative, the Finnish government has learned a great deal and put that knowledge into optimizing the next program. In fact, their projects often double as research so that in addition to improving government, they improve their understanding of the public” <http://www.innovationexcellence.com/blog/2014/07/10/crowdsourcing-a-lesson-from-finland/#sthash.r0PvbJvm.dpuf>

¹⁵ <http://en.wikipedia.org/wiki/LiquidFeedback>

¹⁶ <http://www.theatlantic.com/international/archive/2014/07/designing-an-operating-system-for-democracy/374526/>

¹⁷ <http://techpresident.com/news/weogv/24799/can-internet-help-build-democracy-tunisia>

¹⁸ http://www.theguardian.com/world/2013/sep/11/juan-baldovi-spain-transparency-bill?CMP=tw_tgu%20en%20the%20guardian

¹⁹ <http://www.theatlantic.com/international/archive/2014/07/designing-an-operating-system-for-democracy/374526/>



THE PROCESS: CREATING A CROWDSOURCED AGENDA TOGETHER



OpenMedia is a community-led organization. Our operational style is inspired by the open participation in culture and commerce enabled by the Internet, and we strive to crowdsource wherever we can (see Box 1). Our grassroots community is embedded deep in the DNA of our organization and regularly inspires us to push our work further than we could have imagined on our own.¹

When asked for feedback on the campaign to stop Internet censorship in the TPP, the pro-Internet community strongly emphasized the need to create and sustain an international movement that will fight for Internet freedom at the highest levels of political decision-making.² This feedback led us to help develop the Our Fair Deal network of 39 organizations from eight countries – including two thirds of the countries negotiating the TPP – that represent the interests of Internet users, schools, universities, artists, libraries and archives, consumers, information technology firms, and Internet businesses.

Beyond building a trans-pacific partnership of our own, we also launched our own decision-making process via “Our Digital Future.” This initiative comes directly from the Internet community, who, during an OpenMedia online consultation, expressed the desire to collaboratively craft a plan for a positive digital future that will protect and uphold our individual and collective digital rights.³ In the spirit of the open Internet, we decided to develop our plan through a process that contrasts strongly with the undemocratic nature of the TPP. We’ve crowdsourced an open, transparent and collaborative alternative to closed-door decision-making. In this section, we describe how we did this, working with groups around the world in a multi-year project.

The response to “Our Digital Future” was fantastic. So far, an astounding 3 million+ people from around the world have participated in global actions to speak out against secrecy and censorship in the TPP, over 316,000 people have spoken out about TPP copyright censorship through OpenMedia alone, and over 40,000 people around the world participated specifically in our crowdsourcing project by using our drag-and-drop tool [Image 1].⁴ One of the greatest successes of this project was the creation of a global, pro-Internet community

who we hope will continue to play an integral role in defining the open Internet. And we hope that decision-makers will recognize that this community has much to offer in helping us understand not only how we harness the possibilities of the open Internet to nourish a global culture of sharing and creativity, but also how we revitalize our democracy in the process.

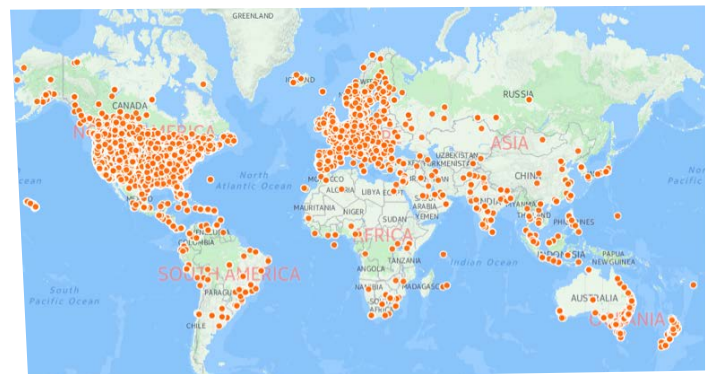


Image 1: Participants in our drag-and-drop crowdsourcing tool, by anonymized IP address

BOX 1:

WHAT IS CROWDSOURCING?

“But crowdsourced volunteering activities are going far beyond coding or simple information sharing. Today, crowdsourcing is used to create and increase collective knowledge, community building, collective creativity and innovation, crowdfunding, and civic engagement.”

– Bott and Young⁵

Crowdsourcing is the process of problem solving by seeking solutions through an open and public platform and in particular, through web-based technologies. Crowdsourcing comes from the technology sector, where it has been applied as a novel method of generating creative solutions; civil society groups and governments are only beginning to recognize that the public and web-based nature of crowdsourcing means it has potential applications for participatory democracy, and could be a new means of drafting public policy.⁶

Like most serious experiments with using technology to transform democracy, crowdsourcing is in its nascent stages. As a result, there are many questions surrounding the effectiveness of crowdsourcing at creating practical and inclusive public policy. Crowdsourcing experiments will encounter problems with the clarity, accuracy or representativeness of the input they obtain, and will need to seize these experiments as learning opportunities – they closely resemble the flaws we find in our current representative democratic processes, such as elections and regulatory hearings. As well, many of the social inequalities and exclusions that exist offline exist online as well – in some cases, they are even more pronounced.⁷

Nonetheless, we firmly believe in the potential of the Internet to revolutionize democratic decision-making, and that it is up to us to harness it. When it comes to the Internet and the age old matter of who gets what, where and when, it is important that those who will most feel the impact of decisions be in the driver's seat rather than unelected bureaucrats and lobbyists. This is precisely why we believe that when making laws that will greatly shape the future of sharing and creativity online, the first step should be to experiment with new forms of decision-making, such as crowdsourcing, that allow Internet users to inform law-makers about the real impacts that different approaches will have on their daily digital lives. By carrying out this experiment in crowdsourcing, we offer lawmakers insights into the expertise of the Internet community, the values that they hope will guide the evolution of our online culture, and their aspirations for our digital future.

1 <https://openmedia.ca/operate>

2 <https://openmedia.ca/blog/internet-smart-wisdom-crowd-and-threat-internet-freedom-secretive-trade-agreements>

3 www.reddit.com/r/IAmA/comments/1ajboq/we_are_internet_freedom_advocates_and_online/c8y14jj

4 see Appendix 1 for full results from the drag-and-drop tool

5 <http://fletcher.tufts.edu/Praxis/~media/Fletcher/Microsites/praxis/xxvii/4BottYoungCrowdsourcing.pdf>

6 http://cdlrl.stanford.edu/publications/crowdsourcing_for_democracy_new_era_in_policymaking/

7 <http://www.weforum.org/news/global-information-technology-report-highlights-lack-progress-bridging-new-digital-divide>

SPOTLIGHT: KEY ONLINE CAMPAIGNS IN THE FIGHTS AGAINST THE TPP

StopTheTrap.net

In July of 2012, in advance of the 13th round of TPP negotiations in San Diego, OpenMedia and partners launched our first online action to fight damaging IP provisions proposed in a leaked draft of the TPP. Internet users from around the world joined us in endorsing the following statement: “I call on the governments involved in the TPP to make the process transparent, accountable, and open to public participation and to all interested stakeholders.”⁸

On July 7th, 2012, members of the StopTheTrap.net Coalition arrived in person to the negotiations in San Diego and delivered over 90,000 signatures – clocking in at over 1000 pages – to the USTR chief negotiator.⁹

As of the publication of this report, over 135,000 people have signed on to the StopTheTrap campaign.



Image 2: Members of the StopTheTrap.net Coalition deliver 90,000 signatures to the USTR chief negotiator.

OpenMedia.org/Froman

In May of 2013, immediately following Michael Froman’s appointment as the United States’ chief negotiator to the TPP, OpenMedia launched a campaign in partnership with Demand Progress, calling on Froman to uphold the rights of Internet users everywhere.¹⁰

Nearly 23,000 people signed on to the statement demanding that Froman, “Please respect our right to privacy and free expression online. We want you to publicly commit to remove all proposals in the Trans-Pacific Partnership that would criminalize or otherwise restrict use of the Internet.”

StopFastTrack.com

In January of 2014, working with American Internet freedom group Fight For The Future and nearly 100 other partner organizations, we helped over 600,000 Americans tell Congress to stop Fast Track legislation that would have rammed through the TPP’s Internet censorship plan without debate. Together, Internet users stopped the legislation dead in its tracks.¹¹

StopTheSecrecy.net

Our next step in engaging citizens to protect free expression and fight the Trans-Pacific Partnership focused on reframing the fight to encompass broader issues, via our Say No to Internet Censorship campaign in September of 2013, and in April 2014 through StopTheSecrecy.net [Image 3].^{12 13} Collectively with the online actions of all our coalition partners, over 3 million people in 155 countries have spoken out against secrecy in the TPP.



Image 3: A projection on key buildings in Washington shows the number of Internet users worldwide who signed on to a campaign to end the secrecy of TPP negotiations and let citizens into the process.

OpenMedia.org/Expression

In our efforts to engage with Internet users, we also organized a follow-up campaign focusing on intermediary liability concerns and implored citizens from across the globe to step up once again to speak out against the Internet censorship plan in the TPP.¹⁴ In partnership with Corporate Accountability International, Free Press, and Fight for the Future, the action launched on July 10, 2014 [Image 4], just as Chief Negotiators were stepping in to lock in problematic intermediary liability provisions, and garnered more than 60,000 sign-ons in less than a week.

As of this publication, over 316,000 citizens have raised their voices online using OpenMedia as a platform, inspired by citizen comments and concerns, and calling for fair copyright rules to be included in the TPP.



Image 4: OpenMedia supporters unveil our banner during TPP negotiations in Ottawa, Canada in July 2014

⁸ <http://stopthetrap.net>

⁹ <https://openmedia.ca/news/large-petition-against-tpp-s-internet-trap-hand-delivered-negotiations-san-diego>

¹⁰ <https://openmedia.org/froman>

¹¹ <https://openmedia.org/blog/fast-tracking-tpp-please-internet-has-spoken>

¹² <https://openmedia.org/censorship>

¹³ <https://stopthesecrecy.net/>

¹⁴ <https://openmedia.org/expression>

FROM FORMING OUR OWN TRANS-PACIFIC PARTNERSHIP TO BUILDING A GLOBAL PRO-INTERNET COMMUNITY

LAUNCHING “OUR DIGITAL FUTURE”

For the 17th round of TPP negotiations in Lima, Peru in May 2013, OpenMedia joined with coalition partners to organize distributed events taking place in Canada,¹⁵ New Zealand,¹⁶ and on the ground outside the negotiations.¹⁷ In Canada, OpenMedia.ca organized a “Copyright Cabaret” in Vancouver. The event featured a diverse mix of web innovators, Internet freedom advocates, and renowned experts (including speakers Geof Glass, Martha Rans, Eric Ashdown, Kimberly Baker and Kirby Ferguson). We used this event to engage the public in the launch of “Our Digital Future,” a participatory conversation about how copyright laws impact sharing and creativity online. The public dialogue at these events helped shape the “Our Digital Future” recommendations, and the subsequent Listening Tour (see below).

Throughout the event, the audience was encouraged to interact in multiple ways: wearing nametags labeled with their twitter handles rather than first names; sitting in clustered group tables rather than single file and equipped with pens and cards for questions and comments; contributing cardboard tombstones to an “Innovation Graveyard” of online services that might be harmed by Internet censorship; being invited on stage for a reverse Q&A session; and being photographed at an interactive photo booth holding up their wishes for copyright on a mini-whiteboard [Image 5]. By creating multiple opportunities for input, OpenMedia aimed to empower event participants to see themselves as copyright experts already – that is, to see copyright as not so much legal jargon but as a tangible aspect of their daily lives.

Drawing an audience of over 150 people, the event sparked insightful feedback from participants. Most importantly, it brought together engaged and curious Internet users in a brainstorm fueled by timely, practical input from experts, and helped set the tone for the subsequent Listening Tour.

¹⁵ <https://openmedia.ca/blog/freshmedia%E2%80%99s-remixthis-copyright-cabaret-pictorial-look-back>

¹⁶ <http://blindfoundation.org.nz/members/member-news/latest-news-2/invitation-to-fair-deal-campaign-public-event>

¹⁷ <https://openmedia.org/blog/internet-freedom-groups-organize-lima-peru-face-tpps-threats>



INTERNET VOICE

“I think when it comes to fighting legislation or trade agreements that would negatively impact privacy or access to information on the Internet, we must recognize that our biggest strength is community. In our case, the online community. We can clearly see this if we look at the SOPA blackout, StopSpying.ca, and virtually any other campaigns for affecting legislation. The success of these efforts have always rested on two things: The ability to spread awareness and the ability for the public to present a united front. So when we ask “how do we stop current and future anti-Internet trade agreements?” to me the answer seems to be that we must build community. A global Internet activist community open to the public.”

– reddit user, March 2013 AMA



Image 5: A participant in “ReMix This: A Copyright Cabaret” displays a whiteboard

THE FAIR DEAL COALITION

As part of the cabaret, OpenMedia announced the launch of OurFairDeal.org, and a coalition which has grown steadily to include 46 prominent innovative technology companies and civil society groups from countries participating in the TPP.¹⁸ Integral to our work on pushing for fair copyright laws, many of these organizations assisted with our crowdsourcing process. The coalition puts forward a positive policy agenda for copyright, and provides a place for citizens – over 19,000 so far – to sign on to a statement calling on decision-makers to stand up for accessible copyright:

“Please reject copyright proposals that restrict the open Internet, access to knowledge, economic opportunity and our fundamental rights.”

The web presence at Our Fair Deal.org acts as an educational resource and clearing house for member material [Image 6]. To facilitate information and strategy sharing, joint letters and outreach collaboration, OpenMedia hosts several mailing lists and regular conference calls.

Since its launch in the spring of 2013 the Fair Deal Network has led several initiatives, including meetings with TPP negotiators in several countries, distributed events,¹⁹ and leading international press outreach.^{20 21 22}

In 2013, the Fair Deal coalition sent elected government officials in TPP negotiating countries a letter outlining our concerns and priorities for copyright policy.²³ The letter was greeted with a positive response in several countries, including Canada where TPP negotiators have been holding the line on several key provisions like those pertaining to intermediary liability.²⁴

A year later, in advance of the informal July round of TPP negotiations in Ottawa, Canada, OpenMedia put out two letters together with the Fair Deal Coalition and led by the Electronic Frontier Foundation, outlining the concerns of Internet entrepreneurs and civil society organizations about the Intellectual Property provisions in the TPP, as revealed in leaked drafts.^{25 26 27}

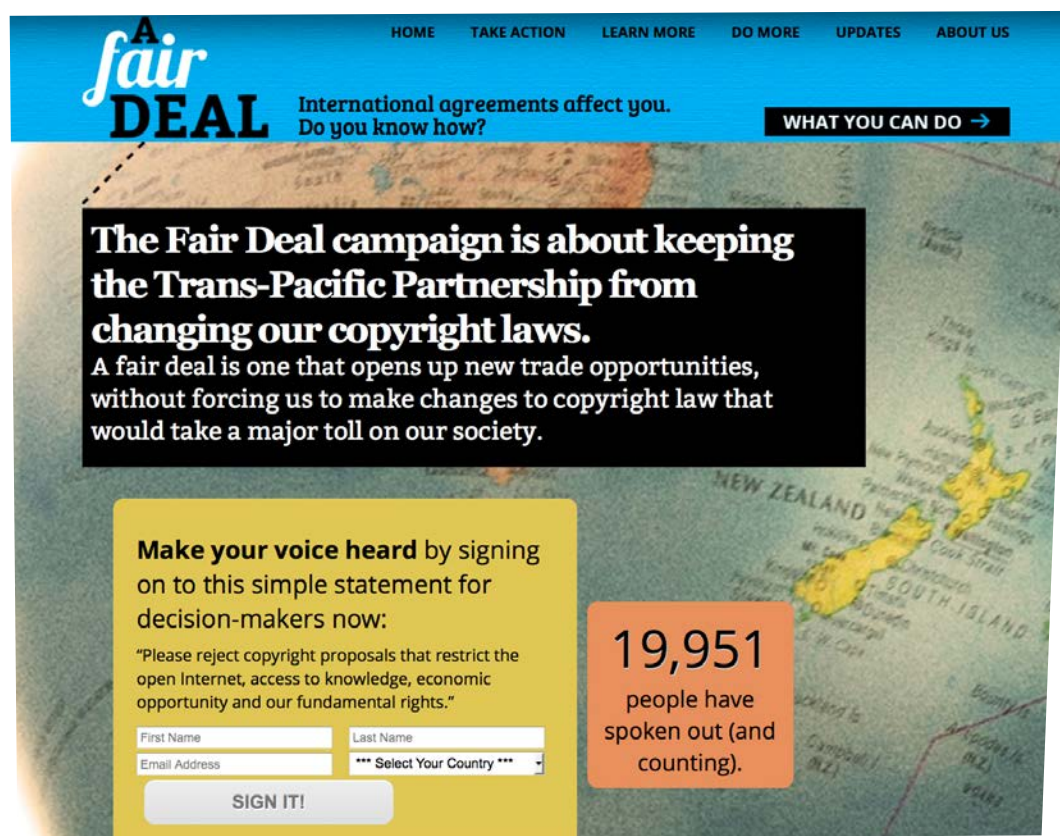


Image 6: The Fair Deal coalition website at ourfairdeal.org

¹⁸ FairDeal coalition members include: Affinity Bridge, Article 19, Australian Digital Alliance, Australian Library & Information Association, Association for Progressive Communications (APC), Internet NZ, BCFIPA, The Canadian Internet Policy and Public Interest Clinic (CIPPIC), Consumers International, Consumer NZ, Council of Canadians, Creative Freedom, Demand Progress, Derechos Digitales, Electronic Frontiers Australia, Electronic Frontiers Foundation (EFF), Engine.is, Fight for the Future, FreePress, Gen Why Media, Hiperderecho, Library & Information Association of New Zealand Aotearoa, Movements for the Internet Active Users, NZRise, NZOSS, OpenMedia.org, Public Citizen, Public Knowledge, Royal New Zealand Foundation of the Blind, Scoop, Tech Liberty NZ, TechDirt, Tuanzi, Tucows, and TradeMe.

¹⁹ <https://openmedia.ca/blog/freshmedia%E2%80%99s-remixthis-copyright-cabaret-pictorial-look-back>

²⁰ <https://soundcloud.com/letstalkaboutitradio/nafta-on-steroids-stopping-the>

²¹ <http://www.scoop.co.nz/stories/HL1404/S00225/tpp-50-orgs-28mil-people-in-stop-the-secrecy-campaign.htm>

²² <http://www.cnet.com/news/say-no-to-internet-censorship-petition-nears-100k-signatures/>

²³ [https://openmedia.ca/sites/openmedia.ca/files/FairDealwikileaksletter%20\(1\).pdf](https://openmedia.ca/sites/openmedia.ca/files/FairDealwikileaksletter%20(1).pdf)

²⁴ <http://www.michaelgeist.ca/2013/11/tpp-leak-isp-liability/>

²⁵ <https://wikileaks.org/tpp>

²⁶ https://openmedia.org/sites/default/files/copyrightterm_tppletter_print-fnl_0.pdf

²⁷ https://openmedia.org/sites/default/files/ispliability_letter_print-fnl-9july2014_0.pdf

BOX 2:

INTERNET VOICE TOOL

Our Internet Voice Tool is an open web form that gives Internet users the opportunity to let decision-makers (particularly those responsible for the TPP) and the world know what kind of digital future they want [Image 7].

The design of the tool has at times allowed individuals to endorse a pre-written statement²⁸ but also always provided the opportunity to write personalized comments. The option for personalized comments allows individuals to speak freely about their concerns, giving them a chance to express themselves in their own words. We analyzed key words, phrases and themes – along with conceptual links and relationships between words and phrases – from the comments to help inform the questions in our drag-and-drop tool, as well as our policy recommendations.

In keeping with our mandate to center citizens in government processes, we've also brought comments directly from users of the Internet Voice Tool into the TPP negotiations. In our first iteration of the tool, we worked with the Citizen Trade Campaign to project citizen comments inside the meeting space of the TPP round in Leesburg, Virginia, USA, in September 2012.²⁹

In the December 2012 round of TPP negotiations in Auckland, NZ, OpenMedia Executive Director Steve Anderson, attended the round equipped with thousands of comments from the Internet Voice tool and social media, and presented an iPad streaming user comments to negotiators.^{30 31}

In February 2014, Steve delivered a presentation to the Canadian Parliament's Standing Committee on International Trade regarding the TPP.³² Comments from our Internet Voice tool were combined with a social media crowdsourcing effort through Facebook,³³ Twitter, Google+,³⁴ and the OpenMedia website to shape the presentation.³⁵

For the July 2014 round of TPP negotiations in Ottawa, Canada, OpenMedia sent Reilly Yeo, our Community Engagement Specialist, to deliver comments from nearly 20,000 individuals [Image 8].³⁶ In a brief presentation to negotiators, Yeo drew attention to past engagement strategies by OpenMedia and the Fair Deal coalition, and directly delivered comments touching on five key themes emerging from citizen input: protecting free expression, respecting the democratic process, limiting the influence of Big Media, opposing secrecy and protecting the digital commons.



Image 8: Screenshot of a selection of the Internet voice tool responses given at OpenMedia.ca's *Face2Face with Internet Censorship*.



Image 9: OpenMedia's Community Engagement Specialist, Reilly Yeo, gives a presentation to TPP IP negotiators at a luncheon organized by the Our Fair Deal Coalition.

OTHER IN-PERSON EVENTS REVIEWED AS PART OF OUR CONSULTATION:

A. Debate: will the TPP will harm Asia's growing digital economies

In July 2013, 40 participants at the 18th round of TPP negotiations in Kota Kinabalu, Malaysia, joined webcast participants from around the world, coming together to participate in debating the proposition that the TPP “will harm Asia’s growing digital economies.”³⁷

Organised by Consumers International and Digital News Asia, with the support of the Our Fair Deal Coalition, the debate was designed to explore the claims about the supposed positive and negative effects that the TPP would actually have on Asian economies and the citizens whom those economies serve.

B. NZ Digital Rights Camp

OpenMedia Executive Director, Steve Anderson, also participated in a Digital Rights Camp, which took place December 1-2, 2012 at the Auckland University of Law. Co-organized by EFF (Electronic Frontier Foundation) and KEI (Knowledge Ecology International), each participating country presented essential information and resources on the state of copyright in their respective countries, as well as addressed key challenges and threats the TPP poses to national copyright legislation. Representing Canada, Anderson presented on how the TPP would severely undermine Canada’s Copyright Modernization Act of 2011.

This forum allowed leading experts on Intellectual Property and citizen mobilization³⁸ to collectively identify and establish international copyright proposals that would protect matters of national sovereignty, free speech, and democratic decision-making processes. The Digital Rights Camp presentations and dialogues helped instruct our recommendations.

What concern would you raise with a TPP decision-maker if they were standing in front of you? Internet censorship? Privacy? New Internet costs? Lack of democracy?

Add your comment now.

First Name *

Last Name *

Email *

Country *

- Select -

Postal/Zip Code *

Comment *

[Insert your comment here].

Image 7: OpenMedia's Internet Voice tool, launched to gather citizen comments and input to TPP negotiations.

LISTENING TOUR

In order to collect input from diverse voices, after the Copyright Cabaret and in addition to our ongoing work with the Internet Voice tool [Box 2], OpenMedia spent the summer of 2013 consulting with creators and content users from a variety of communities, industry sectors, and cultural groups.³⁹ We conducted a listening tour to inform and gather input from these stakeholders about how proposed copyright changes in the TPP would impact their day-to-day online activities. Following preliminary research, and leads from email inquiries and cold calls, we connected with a large network of copyright experts from several countries – scholars, legal professionals, & policy experts – as well as innovators, entrepreneurs, and community groups to discuss how IP provisions in international trade agreements and other legal instruments could impact our society.

We held consultation calls, each approximately 1.5 hours in length, with groups of participants as well as one-on-one calls and in-person meetings with many people. In addition, OpenMedia Executive Director Steve Anderson traveled to Silicon Valley and San Francisco in June 2013 to capture input from leading tech innovators, non-profit service providers, and digital rights groups. These consultations, plus content analysis of the comments submitted using the Internet Voice tool [Box 2] helped us to shape the questions we asked in our drag-and-drop tool, which, as we describe below, has enabled more than 40,000 people to crowdsource an agenda for free expression in the digital age.



²⁸ We deserve a #FairDeal – the Internet should support innovation, access to knowledge and economic opportunity. I don't want my digital future to be decided in secret #openTPP

²⁹ <https://openmedia.ca/blog/open-tpp-campaign-turns-heads-negotiations>

³⁰ <https://openmedia.ca/blog/what-i-told-those-behind-biggest-threat-internet-freedom-trans-pacific-partnership>

³¹ <https://openmedia.ca/blog/report-back-inside-tpps-internet-trap>

³² <https://openmedia.ca/sites/openmedia.ca/files/TPPcommitteepresentation.pdf>

³³ <https://www.facebook.com/photo.php?fbid=10152209932429759&set=p.10152209932429759&type=1&theater>

³⁴ <https://plus.google.com/+OpenMediaCanada/posts/ZJSRvkkBE8V>

³⁵ <https://openmedia.ca/blog/tellsteve>

³⁶ <https://openmedia.ca/blog/making-them-listen-bringing-19000-voices-secretive-tpp-negotiations>

²⁷ <http://a2knetwork.org/debate-tpp-will-harm-asias-growing-digital-economies>

²⁸ Participating organizations included: EngageMedia (AUS), Public Citizen (US), EFF (US), Australian Digital Alliance (AUS), Derechos Digitales (CHL), Creative Freedom Foundation (NZ), University of Auckland (NZ), Consumers International (MYS), Electronic Frontiers Australia (AUS), Creative Commons Mexico (MEX), APC (NZ), KEI (US), MIAU (JPN), Digital Policy Group (AUS), Head of the Singapore Book Council (SGP), Third World Network (Geneva), OpenMedia (CAN), Internet NZ (NZ), Viet Tan (VNM), CC Japan (JPN).

DRAG-AND-DROP CROWDSOURCING TOOL

The drag-and-drop tool, launched in October of 2013, formed the foundation for our analysis of Internet users' perspectives on copyright, and allowed us to come up with the three recommendations outlined in this report, as well as the more specific policy agenda in the Executive Summary of this report.

How would you rank the priorities below if you were developing copyright laws?
Drag the items below to rank them in order of priority from top to bottom.

Copyright priorities:

- 1 Protecting free expression
- 2 Clear and simple rules
- 3 Rules made democratically
- 4 Compensation for creators & artists
- 5 Protection for media conglomerates
- 6 Privacy Safeguards

First name:

Last name:

Your email address:

Country:

OpenMedia will protect your privacy, and keep you informed about this campaign and others. And OpenMedia's privacy policy here.

Image 10: OpenMedia's drag-and-drop crowdsourcing tool for copyright law

In creating our drag-and-drop crowdsourcing tool, we aimed to gather information about the ways in which copyright and conceptions of intellectual property factor into the daily lives of citizens around the world. The tool consisted of nine questions, designed to gauge where individuals stand when it comes to multiple issues related to copyright law.⁴⁰ We wanted our questions to be representative of a wider, more holistic approach to the implications of copyright than that pursued by media conglomerates and their lobbying organizations – we sought an approach that was informed by many diverse groups who have different aspirations for sharing and creativity online. (See “Appendix: Methodology” for more details on the analysis of results from the drag-and-drop tool; for more on the groups involved in the consultation process, see the “Listening Tour” section above and footnote 38.)

We designed our questions so that they would lead to answers from participants that reflect real-life examples of the ways that Internet users interact with information and culture online. Once the tool was designed and launched, we conducted outreach in multiple ways (including numerous emails to OpenMedia's list of over 700,000 supporters) to give Internet users the chance to participate, and ensure a sizeable “crowd” behind our crowdsourcing, as described below.

INTERNET VOICE



“A free and open internet is the utmost importance in this era of rapidly evolving tech, science and culture. Controlling and monitoring it as described by the TPP opens the door to abuses, censorship and a reduction of the global cooperation that we've spent the last 100 years growing towards (albeit slowly and tumultuously).”

– Jeff

YOUR DIGITAL FUTURE

Evolution of a movement



From the ultra-secretive Trans-Pacific Partnership (TPP) to a crowdsourced alternative plan for how we can share and collaborate online



See the full infographic at :

OPENMEDIA.CA/TPPFIGHTBACK

INTERNET TOWN HALL

On November 28, 2013, as part of our outreach to engage people with the drag-and-drop crowdsourcing tool, we hosted an Internet Town Hall. The town hall helped to educate our Canadian supporters on copyright in an open and interactive forum, and give our supporters a chance to ask their questions about free expression and the TPP.

We promoted the town hall online through our website and through social media on our Facebook and Twitter accounts. Hosting the town hall on Google Hangouts allowed the event to be advertised on Google's Hangouts page and garnered interest through Google's own web traffic. We also sent targeted outreach emails to our Canadian supporters who had already engaged in at least one copyright-related action. People were encouraged to participate before the event and to submit questions through Twitter and our website, and at start time, we had already received about 150 comments and questions about our town hall and copyright.

Internet users were drawn in by the chance to talk about copyright in a comprehensive manner, and our participatory format allowed individuals to submit personal and detailed questions on international and Canadian copyright regulations.

Given that the townhall was particularly focused to a Canadian audience, it is unsurprising that the overwhelming majority of views - i.e. 88 percent - came from Canada. But, since copyright is a global issue, we also had significant international viewership, with 5.7 percent (27 views) coming from the United States, and about 3-4 views from the following countries: the UK, Costa Rica, New Zealand, Mexico, Japan, Sweden and Australia.



Image 11: OpenMedia staff Josh and Thanh host an Internet Town Hall

OTHER SOCIAL MEDIA ENGAGEMENT

Meet citizens where they are at – that's the rule we follow at OpenMedia. Beyond the town hall, during our two-year process, we also provided citizens with a variety of options to engage with the project using social media and blogs, including: viral-ready share images, infographics, videos, embeddable online tools, and blog posts updating citizens on the progress of the project to define a digital future that works for all of us.

Our multimedia and interactive outreach efforts helped increase engagement with our crowdsourcing process. For example, our share image asking citizens to donate to buy an ad in the Washington Post aimed at U.S. Trade Representative Michael Froman reached an audience of 20,000 people. Our TPP infographic generated over 1,000 shares and likes on Facebook.

Help shape a strong, positive
vision for copyright that
works for the 21st century.

SHARE YOUR VISION!

VISIT OPENMEDIA.ORG/CROWDSOURCE

LIFE *under the* TPP
 → HOW WILL IT AFFECT YOU? ←

Am I a criminal?
 LAW ENFORCEMENT *could* SEIZE YOUR COMPUTER AND EVEN SEND YOU TO JAIL for minor copyright infringement.

the TPP could lead to EXCESSIVE copyright terms.

Copyrighted works would not reach the public domain until 70 years after the creator's death.

If you transfer your DVDs to digital, you could get fined up to \$10,000.
Does that sound like a Fair Deal to you?

THE TPP COULD KICK YOU OFF THE INTERNET.

COPYRIGHT POLICE
 It will force Internet providers to act as copyright cops, monitoring your everyday Internet use and even blocking entire websites.
'You and your whole family could be kicked off the Internet just for being accused of breaking copyright.'

Learn more at OpenMedia.org/Censorship

"We are millions, so listen up."

-Christy

OpenMedia.org/FaceToFace

Aside from our Internet Town Hall, we also participated in online events hosted by other groups like Electronic Frontiers Australia, which hosted a panel on Intellectual Property and copyright issues, run by leading academic commentator, Dr. Rimmer.^{41 42}

We also helped organize two Reddit question-and-answer sessions to increase online participation in our TPP campaigns and outreach efforts.^{43 44} Over 4,000 people joined our two Reddit crowdsourcing appeals regarding the threats and dangers the TPP poses to Internet freedom. Both events were highly engaging, and participants provided us with key insights on the everyday implications of copyright censorship proposals.

Throughout the process of engaging citizens online through social media, OpenMedia helped to activate thousands of people who gave feedback and asked questions that helped us identify emerging themes and core concerns about copyright, eventually feeding into the recommendations we have laid out in this report.

I Helped Build Our DIGITAL FUTURE
 OpenMedia.org/
 CrowdSource

Over 19,000 comments
 against
 TPP Internet censorship

Thanks for speaking out
 OpenMedia.org/FaceToFace

over 50,000
 have signed on to
SAVE FREE EXPRESSION
 ADD YOUR NAME AT OPENMEDIA.ORG/EXPRESSION

THEY'RE DOING THIS IN SECRET.

TPP

Shine a light on their secrecy.
 Join us at StopTheSecrecy.net

³⁹ Organizations we consulted with include: Ragged Edge Community Network, The Victoria FreeNet, Vancouver Community Network, the Inuit Broadband Development Corporation, Creative Commons Canada, Clinique juridique des artistes de Montréal, the First Nations Technology Council, BC Libraries Cooperative, The First Mile Project, SFU School of Communications, Project Gutenberg, NetSquared, the Northern Voice Conference, KNet (Keewaytinook Okimakanak), Precursor Productions, Electronic Frontiers Foundation, the Australian Digital Alliance, InternetNZ, Consumers International, CIPPIC, Public Citizen, Tucows, Twitter, Wikimedia Foundation, MIAU, TUANZ, Royal NZ Foundation for the Blind, Creative Freedom Foundation, Consumer and NZ Rise (*Note that organizations listed here have provided input but have not necessarily endorsed our recommendations)

⁴⁰ <https://openmedia.org/crowdsourcing>

⁴¹ <https://www.efa.org.au/2014/01/22/speak-out-2-rimmer/>

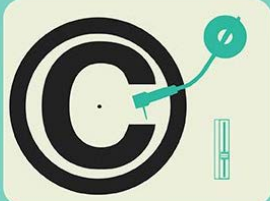
⁴² <https://twitter.com/search?q=%23efaspeakout&src=hash>

⁴³ http://www.reddit.com/r/IAMA/comments/1204gt/we_are_internet_freedom_advocates_experts_and

⁴⁴ <https://openmedia.ca/blog/lets-come-plan-stop-international-agreements-restricting-internet-freedom>

ANNOUNCING THE FRESH MEDIA REVIVAL!

REMix This!
A COPYRIGHT CABARET

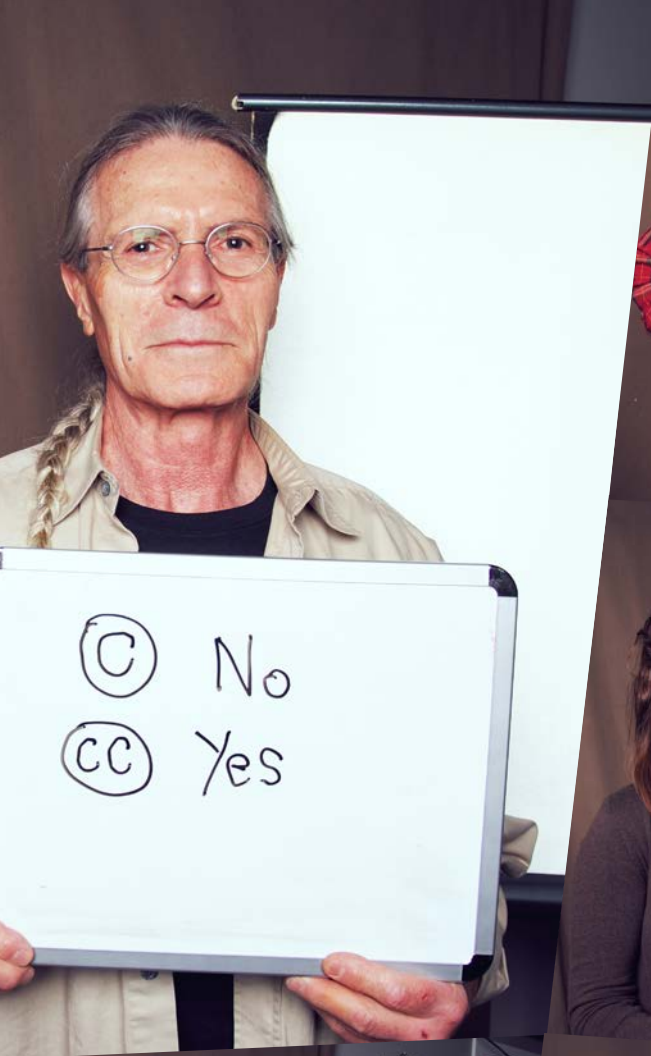


MAY 16TH

A
MULTI-MEDIA
COMMUNITY
CONVERSATION
ON COPYRIGHT
WITH ARTISTS,
POLICY EXPERTS
AND YOU!

[HTTP://REMIXTHIS.EVENTBRITE.COM](http://remixthis.eventbrite.com) #REMIXTHIS
RSVP AND STAY TUNED FOR THE SPEAKERS LIST





CONCLUSION

When it comes to government decisions that will affect all of us, OpenMedia doesn't just want a seat at the table – instead, we actively work to put citizens at the center of government decision-making, and our own decision-making as an organization. In order to include as broad a community as possible in the conversation about copyright laws, we came up with several online engagement tools and strategies that were as simple and user-friendly as possible. We were motivated by the belief that copyright should be an everyday issue, one that can be understood based on its impact on our daily lived experiences with the Internet and other technologies.

The “Our Digital Future” consultation included a range of activities, platforms and tools. Over two years we connected with citizens and other stakeholders using several social media platforms, online petition tools, our

‘Internet Voice’ tool and crowdsourcing drag-and-drop tool, a multi-country listening tour and the hosting or review of several interactive in-person events, policy letters, and a real-time online townhall. Working with several partners we also sought to connect our process directly with decision-makers to increase our impact and to inspire greater participation – we know that one of the best ways to engage citizens is to show how their input is being brought before decision-makers.

Our approach engaged a diverse range of stakeholders from those who only use the Internet to check their email, to web entrepreneurs, to software developers. Copyright should be determined by all of us, not just a select few with extensive legal expertise, who are overwhelmingly hired by entrenched interests. After all, the Internet is our shared public platform – all those who use it should be engaged in key decisions that will shape its future. Through “Our Digital Future,” we’ve experimented with a more inclusive policy-making process – these are seeds that our political institutions now need to tend and water, so they can flourish into a healthy, living democracy that supports sharing, creativity and free expression.

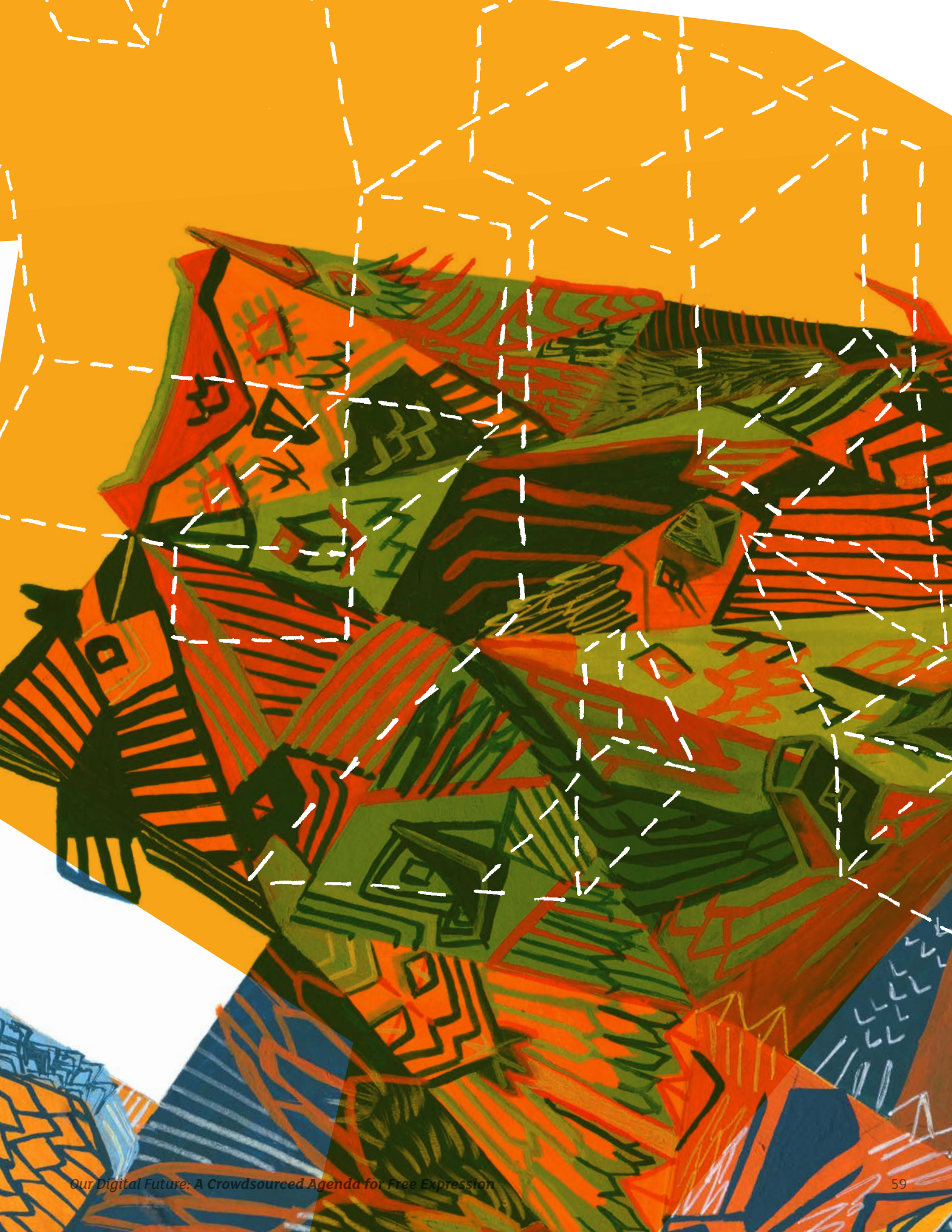
INTERNET VOICE



“On the Internet, free expression, creativity, education, public discourse and debate thrive like never before. The courts of the United States are already acknowledging that patent reform is needed. Copyright laws are also in desperate need of reform. The big companies scream infringement when none is intended. Do not simply hand the Internet to multinational corporations and lawyers. The people of the world finally have a voice.”

– Chris, Sweden





GLOSSARY

COPYRIGHT

Copyright and related rights are a set of exclusive rights over creative works, including the right to copy a work, a performance or a sound recording.

COPYRIGHT HOLDER

An individual or an organization that is the owner of the rights pertaining to works.

COPYRIGHT INFRINGEMENT

Violating copyright terms through unauthorized use of a work protected under copyright.

DIGITAL LOCKS

Digital locks are technological barriers placed on copyrighted digital content--such as passwords or encryption--to prevent users from accessing or copying content without permission. See also "DRM".

DMCA

Digital Millennium Copyright Act: primary piece of digital copyright legislation in the United States. Most known for two controversial aspects: "anti-circumvention" provisions, which criminalize certain ways of accessing digital copyrighted content; and "safe harbour" provisions, which grant immunity from financial liability to online service providers, under certain conditions, if their users or subscribers are found to have infringed copyright. See also "Notice-and-takedown" and "Safe harbour".

DRM

"Digital rights management" refers to the kinds of technologies that control what a user can or cannot do with digital content and devices after they have already bought them, usually for anti-piracy purposes but sometimes beyond (such as splitting up DVD markets). This kind of technology is usually built into the content or the device itself, whether as a digital lock or part of the software or hardware. DRM technologies not only prevent copying, but they can also control accessing, viewing, printing, modifying, or executing content, even for legal or non-infringing purposes. See also "Digital locks".

FAIR DEAL COALITION

A group of individuals and organizations working in Internet policy, art, information technology, and law, focused on reaching a fair deal for all countries in the Trans-Pacific Partnership. A fair deal would open up trade opportunities without forcing copyright and other intellectual property law changes harmful to each country's digital future.

FAIR DEALING

Under Canadian copyright law, fair dealing refers to uses of works that are not considered copyright infringement, or are exempt from copyright liability. This includes uses related to activities such as research, private study, education, parody, satire, criticism, reviews, or news reporting. Fair dealing exists in various forms in Australia, New Zealand, Singapore, India, South Africa, and the United Kingdom. Its counterpart in the United States is known as "fair use".

FAIR USE

Fair use is a provision within copyright law in the United States whereby individuals may legally use a copyrighted work without permission, for any purpose that a court considers "fair" according to a codified test of fairness. Example purposes include commentary, search engines, criticism, parody, news reporting, research, teaching, library archiving, and scholarship.

FORMAT SHIFTING

Format shifting is the conversion of works from one format into another to enable access on a new platform. Examples might include converting a print book to DAISY format or ripping a song from a CD and converting it to another file type so you can listen to it on your iPod.

HADOPI LAW

A French anti-piracy law by the Haute Autorité pour la Diffusion des œuvres et la Protection des droits d'auteur sur Internet in France, also known as the Creation and Internet Law, introduced in 2009 by President Sarkozy. The law implemented a "three strikes" regime: after receiving three warnings, users accused of copyright infringement would have their Internet disconnected. The penalty was changed to fines rather than loss of Internet access after major controversy and a decision by the Constitutional Council of France (its highest court) declaring Internet access a basic human right.

INTERNET VOICE TOOL

An online tool that OpenMedia launched to gather citizens' views on the kind of fair digital future you envision. OpenMedia brings comments submitted through this tool directly to those who have the power to influence and change the course of TPP negotiations. Find it at <https://openmedia.org/face2face>.

INTERMEDIARY OR ISP LIABILITY

Intermediary or ISP liability refers to the fact that an online intermediary (such as Wordpress or eBay) or ISP could be found legally responsible for copyright infringement. This is a major issue in copyright law around the world, as it is usually not the intermediaries or ISPs themselves who are infringing copyright, but their users or subscribers. However, copyright owners may sue intermediaries and ISPs (rather than individual users) due to their higher visibility and deeper pockets.

ISP

Internet Service Provider: a company that provides individuals and businesses with access to the Internet.

NOTICE-AND-NOTICE

The “made in Canada” copyright claim system applied to user-driven websites and to. Under notice-and-notice, a copyright owner notifies the website or ISPs, telling them that a user may have uploaded copyright-infringing content. The intermediary or ISP then forwards that notice to the user, and can only release the user’s identity with a court order. This prevents non-infringing content from being automatically taken down due to invalid copyright claims.

NOTICE-AND-TAKEDOWN

The copyright claim system applied to online intermediaries and ISPs in the United States. Under notice-and-takedown, once an intermediary or ISP receives notice that a user may have uploaded copyright-infringing content, the service provider must “remove or disable access to” the content as soon as possible, or risk being sued themselves for copyright infringement. See also “DMCA”.

PUBLIC DOMAIN

Works considered part of the public domain are not under copyright protection, and are thus openly available for the public to share and use.

REMIX

A remix is a song that someone has modified, mixed, blended, sampled, spliced, or cut up, perhaps with other songs or parts of songs, and generally recreated to produce a new version with a distinctly different sound from the original.

SAFE HARBOUR

A zone of protection surrounding ISPs and online intermediaries (user-driven websites) in the United States, in the event one of their users is caught or suspected of infringing copyright. Under the Digital Millennium Copyright Act (DMCA), if an ISP has acted immediately upon being notified to take down allegedly infringing content, then they cannot be financially liable to the copyright owner for infringement or for having anything to do with that infringement. See also “DMCA”.

TECHNOLOGICAL PROTECTION MEASURES (TPMS)

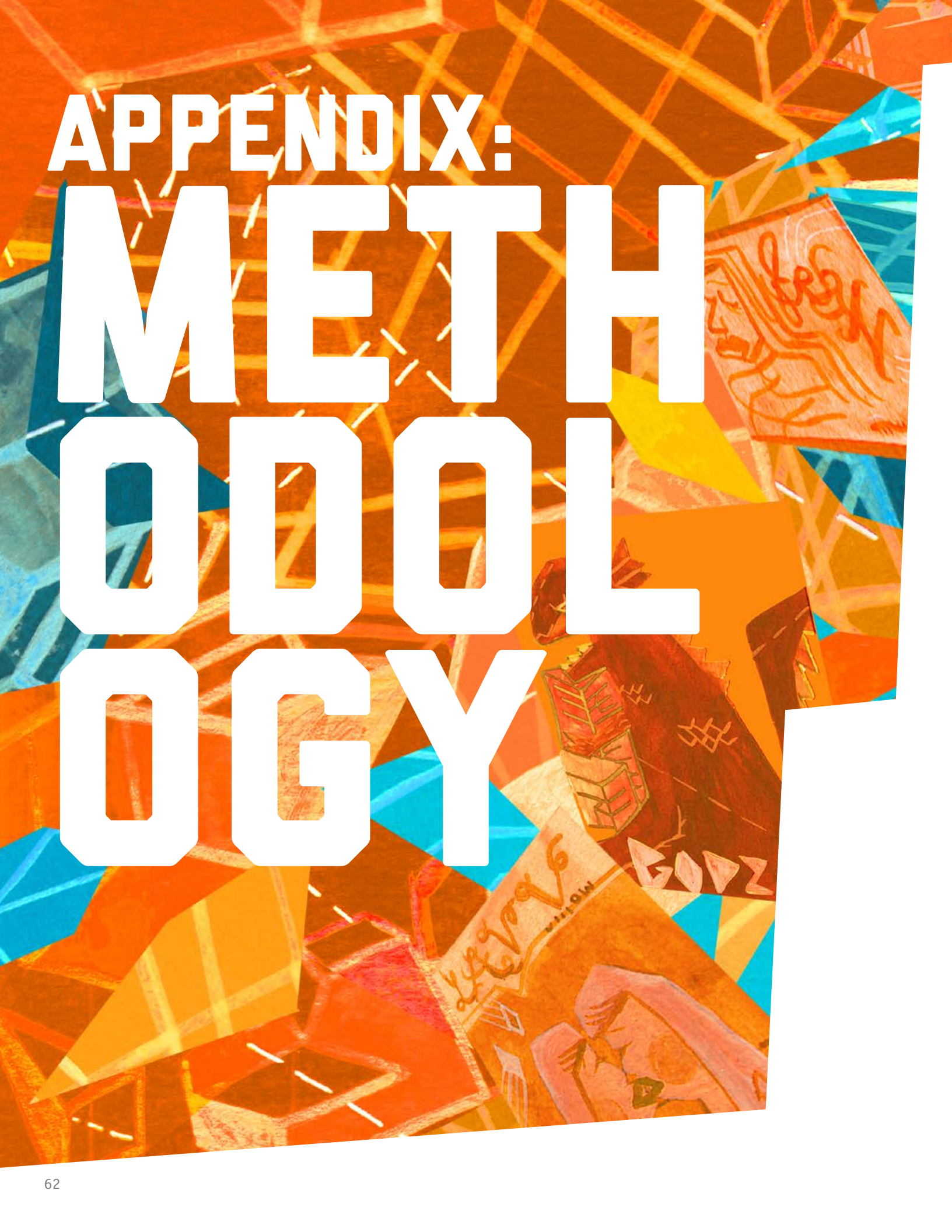
Technological protection measures include any type of technology that prevents people from accessing or copying digital content in any way they like. For example, TPMs could block you from ripping files off a CD in order to convert them to play on your iPod. See also “DRM”.

THREE-STRIKES RULES

Also known as a “graduated response”, three-strikes rules target online file-sharers for copyright infringement, through a warning system that leads to various consequences. Generally, the user will receive two warnings that they have been accused of copyright infringement. If they receive a third, consequences around the world include: being taken to court or a special copyright tribunal, heavy fines, forced release of the user’s identity so they may be personally sued, their name put on a copyright blacklist, throttled or lost Internet connection, and account suspension.

TPP

The Trans-Pacific Partnership (TPP) is a multilateral free trade agreement being negotiated between 12 countries: the United States, Japan, Australia, Peru, Malaysia, Vietnam, New Zealand, Chile, Singapore, Canada, Mexico, and Brunei.



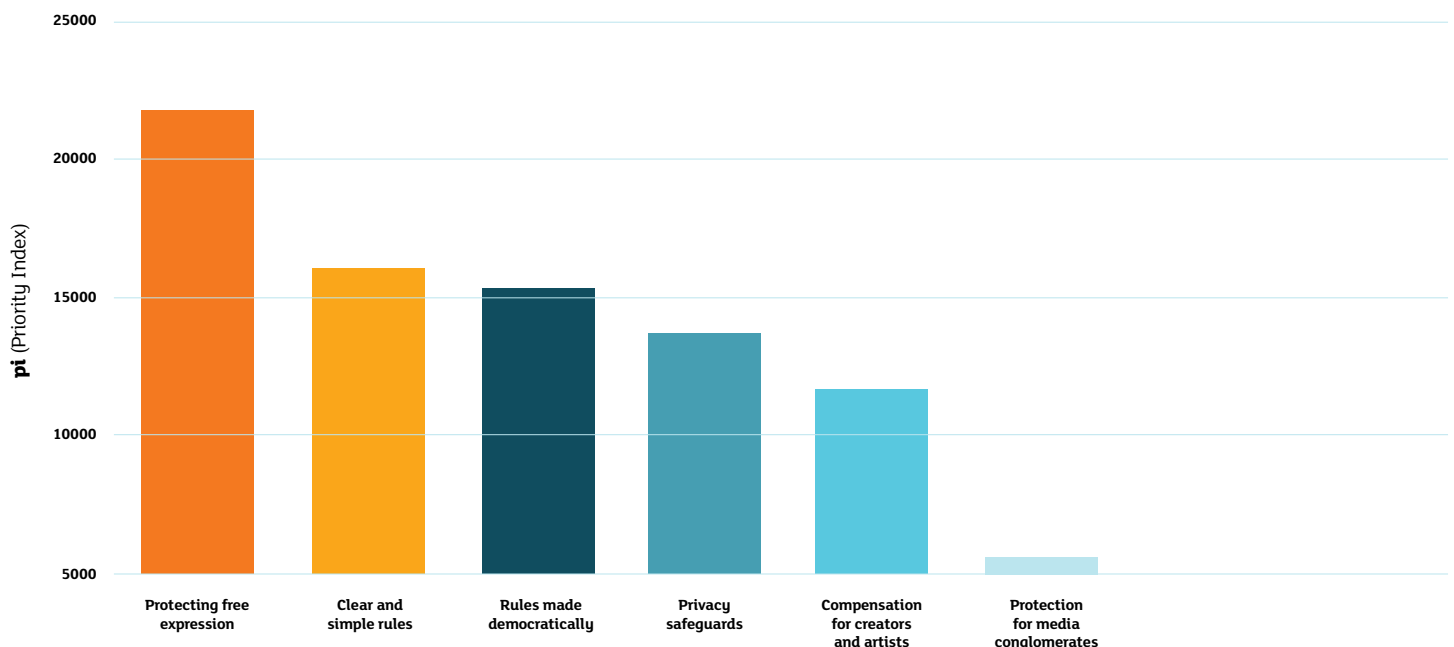
APPENDIX: METH ODOLOGY

STRATEGY + RESEARCH DESIGN

The drag-and-drop tool questions were shaped by input from a diverse group of voices, each with a vested interest in seeing fair and balanced copyright rules for the 21st century. After analysing comments submitted to our Internet Voice tool,¹ our reddit AMA in March 2013,² and our “RemixThis!” copyright cabaret launch event in May 2013 (with speakers Geof Glass, Martha Rans, Eric Ashdown, Kimberly Baker and Kirby Ferguson and active participation from an audience of 150),³ we then invited organizations to participate in one- to two-hour consultations (held either one-on-one or in groups) throughout the summer of 2013. We reached out to organizations and individuals from five target groups, each with different aspirations for sharing and creativity online: low-income advocacy organizations and non-profit ISPs; copyright experts; rural and community economic development organizations; online innovators and “new media” groups; and aboriginal and First Nations communities.⁴

We aimed to gather information about the ways in which copyright and conceptions of intellectual property factor into the daily lives of citizens around the world. We also consulted prior work on copyright policy, such as Article 19’s “Principles on Freedom of Expression and Copyright in the Digital Age” and the Authors Alliance’s “Principles and Proposals for Copyright Reform”. These consultations helped us isolate the core issues we wanted to address, and to draft an initial survey with 10 questions. The survey was then circulated to experts in the Fair Deal coalition, refined based on their input (mainly to better differentiate user preferences for varying policy instruments), and shortened (a question about notice versus takedown of blogs was dropped because it was unclear). Web development challenges with the creation of the online tool also necessitated small design changes, like switching the copyright term question from a slider to radio buttons.

Q1. AGGREGATE PRIORITY RANKINGS



RESULTS

The final survey comprises nine questions, the first of which asks participants to rank six key principles of copyright policy in terms of priority. Submissions from the total of 40,079 respondents revealed the following priority rankings of the key principles in the development of copyright policy:

1. Protecting free expression
2. Clear and simple rules
3. Rules made democratically
4. Privacy safeguards
5. Compensation for creators & artists
6. Protection for media conglomerates

In determining the aggregate rankings, each priority level (1-6) was assigned a corresponding numerical value, ranging from 0.6 for Level 1 to 0.1 for Level 6. Submissions from the survey respondents were then evaluated according to this scale, leading to a cumulative priority index (pi) for each principle. The following bar chart (Graph 1) indicates the aggregate priority rankings for the respective principles of copyright policy.

The survey participants were then asked a set of questions pertaining to various aspects of copyright policy. Following is the breakdown of answers for each question. A total number of respondents (n) to each question is also indicated.

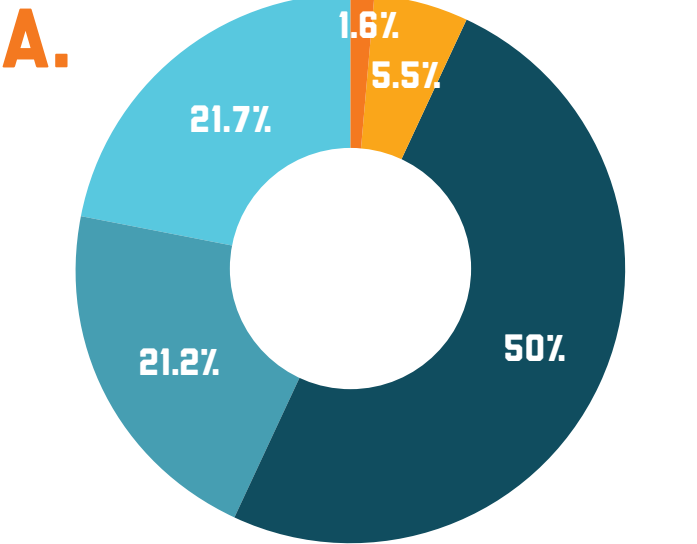
¹ See Box 2 in the section on “The Process” for a full description of the Internet Voice tool

² http://www.reddit.com/r/IAmA/comments/1ajboq/we_are_internet_freedom_advocates_and_online/c8xxkil

³ See the section on “The Process” for a full description of the RemixThis! event

⁴ See the section on “The Process” for a full list of groups consulted.

Q2. IF I DOWNLOAD COPYRIGHTED SONGS WITHOUT PERMISSION, THE PENALTY SHOULD BE:



n = 10,245

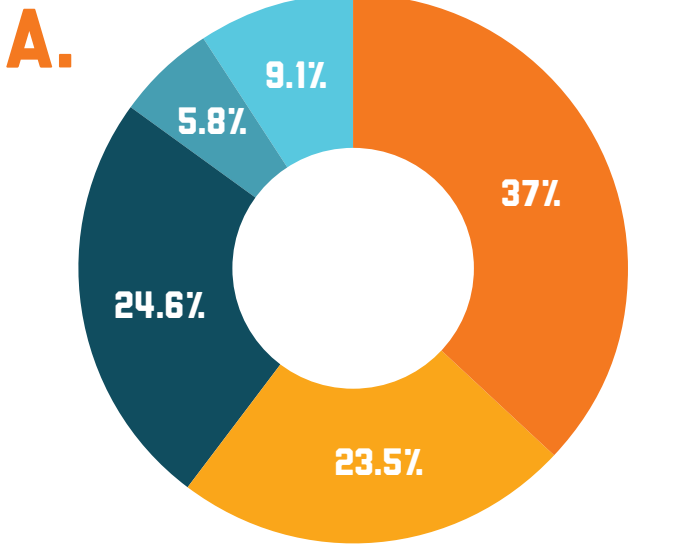
A Court should be able to issue a fine and order that I be disconnected from the Internet. (France's "HADOPI" Law)	1.6%
A Tribunal should issue me a fine, ranging from \$250 to \$15,000. (New Zealand's Copyright "Infringing File Sharing" Amendment Act)	5.5%
Payment of a fine equivalent to the cost of purchasing the song	50%
A warning, and instruction about the laws surrounding copyright	21.2%
No penalty	21.7%

DATA COLLECTION + ANALYSIS

By making the survey widely available, individuals who were interested in participating in the process were able to do so without being contacted with a direct email ask. In the end, there were 40,079 unique respondents to the survey, a majority of which were existing supporters of OpenMedia. Respondents to the survey also shared the tool through social media, thereby introducing elements of chain referral sampling into our total sample population. In total, 3,503 respondents (8.7 percent of the total sample) were recruited by respondents to the survey through social media.

The data collection period spanned from October 25th, 2013 to August 1st, 2014, after which the results were analyzed using free, open-source software (LibreOffice, PPSP, and MySQL). Answers to multiple choice questions were evaluated against the total number of respondents to the given question, as opposed to the total number of answers for the given question. Furthermore, answers to some enumerable questions were grouped together to help identify key themes in the survey's results.

Q3. HOW MANY YEARS SHOULD COPYRIGHT LAST?



n = 10,194

0–10 Years	37%
25–100 Years	23.5%
Until the death of the creator	24.6%
0–10 years after the death of the creator	5.8%
25–100 years after the death of the creator	9.1%

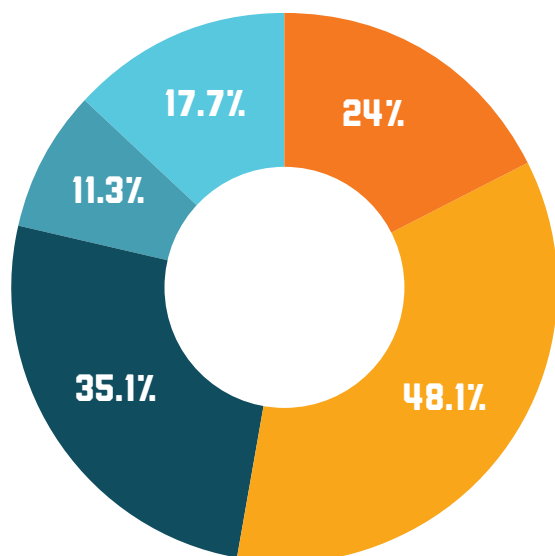
LIMITATIONS OF OUR METHODOLOGY

Due to the respondents having the option to exit the survey at any time, without responding to each question, there were varying levels of participation in responding to each section of the drag-and-drop tool. Question 1 of the tool, which asked participants to rank a set of six priorities, received responses from the total 40,079 respondents, as it required a response from users before they could proceed. Other questions received varying numbers of responses, as detailed above and noted throughout the text of the report.

The sole demographic information collected by the survey pertained to the respondent's country, with a total of 155 countries represented in the final sample population, so our sense of the limitations with regards to demographics is speculative. Aside from the limitations of a voluntary response bias introduced by our sampling method, the absence of an alternative mode of offline data collection likely further limited our sample population to users affluent enough to have easy access to the Internet, who were therefore able to use the web-based tool.

Q4. WHICH BODY(IES) SHOULD BE RESPONSIBLE FOR ENFORCING COPYRIGHT RULES? (CHECK ALL THAT APPLY)

A.



n = 9,386

Note: Participants could check more than one box, so the total may add up to more than 100%

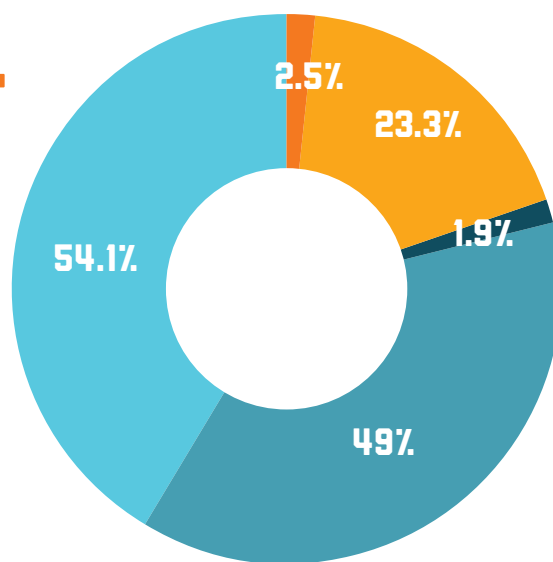
A new national government agency	24%
Copyright holders	48.1%
Police and judges	35.1%
Internet Service Providers, with new technologies installed on their networks	11.3%
None	17.7%

Age demographics may have also played a role in influencing participation. Assuming the survey participants' demographics are similar to those of OpenMedia's Facebook community, many individuals between 24-64 years of age are interested in the project, but those willing to get involved in actual discussion tend to be in the 35 – 45+ age group.

One major limitation of the project and survey was the lack of multilingual content, and therefore the lack of discussion and involvement from the full range of non-English-speaking Internet users. There are 12 countries presently negotiating the TPP, only four of which have a majority of English-speaking residents, and our tool was only available in English. Additionally, in those countries with English-speaking majorities, there are also sizeable communities speaking a language other than English. This lack is particularly limiting because it overlooks a large demographic of Internet users who would be subject to changes to copyright law under the TPP, but due to resource constraints we were unable to consult them with a multilingual version of the tool.

Q5. MY INTERNET SERVICE PROVIDER SHOULD BE PERMITTED TO SHARE INFORMATION ABOUT WHO I AM AND WHAT I DOWNLOAD WITH (CHECK ALL THAT APPLY).

A.

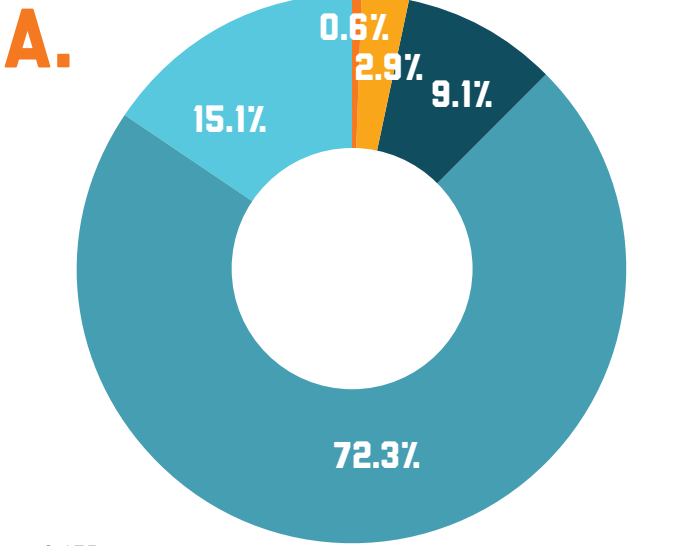


n = 9,567

Note: Participants could check more than one box, so the total may add up to more than 100%

Any copyright holder that makes a request (i.e. publishing company, production company)	2.5%
A copyright holder but only after a court order	23.3%
Law enforcement authorities at their discretion	1.9%
Law enforcement authorities but only after a judge deems that I've broken the law	49%
No-one – ISPs should not share my information	54.1%

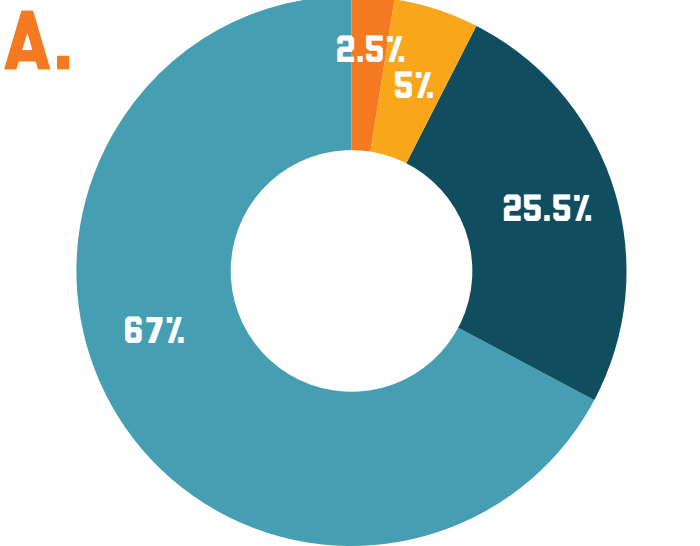
Q6. FINLAND IS SET TO VOTE ON A NEW CROWDSOURCED COPYRIGHT LAW CREATED BY OVER 1100 PEOPLE IN COLLABORATION WITH VOLUNTEER COPYRIGHT LAWYERS. MY COUNTRY SHOULD:



n = 9,475

Design copyright laws by conforming to international trade agreements, like the Trans-Pacific Partnership (TPP), that have been decided by trade representatives and industry, with limited public consultation	0.6%
Design copyright laws in the same way that other laws are designed – through the legislative process, by elected representatives and committees	2.9%
Design copyright laws through the legislative process, with extensive public consultation	9.1%
Design copyright laws by following Finland's example, launching a participatory multi-stakeholder process that involves the general public, including Internet users & creators as well as copyright law experts	72.3%
Do away with copyright law entirely	15.1%

Q7. WHEN I DOWNLOAD MUSIC, I WANT THE FOLLOWING PERCENTAGE OF REVENUE TO GO TO THE ARTIST:

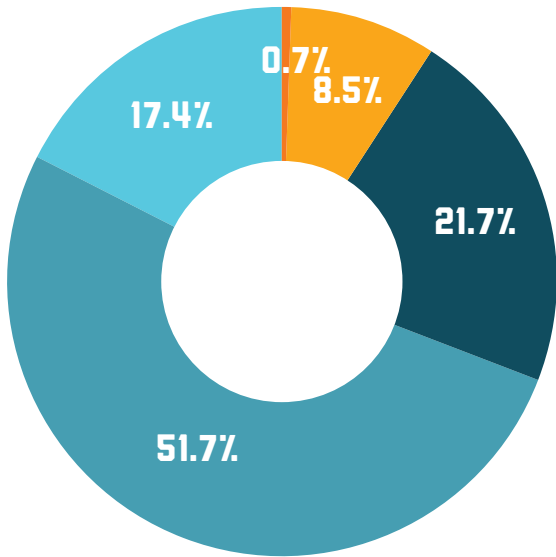


n = 7,961

0–24%	2.5%
25–49%	5%
50–74%	25.5%
75–100%	67%

Q8. WHEN I BUY CONTENT (I.E. MUSIC, EBOOKS, MOVIES) ONLINE, I EXPECT TO BE ABLE TO:

A.

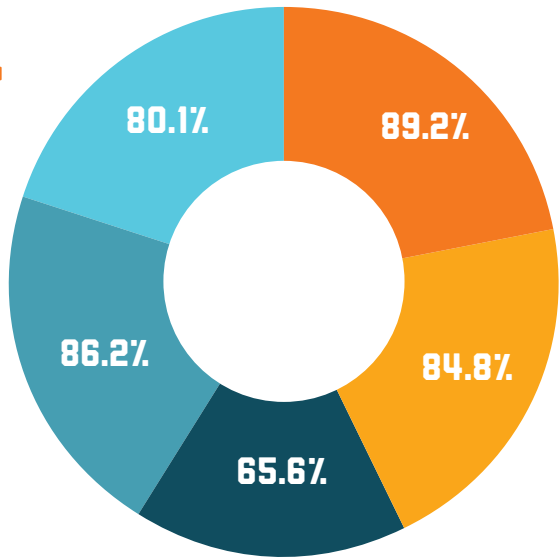


n = 9,059

Use it only on the device I used to purchase it	0.7%
Use it on any device	8.5%
Use it on any device and modify it if necessary for any special needs I have (i.e. using software that can convert text into speech for the blind)	21.7%
Use it on any device I own, modify it for my special needs, & share it with friends as I would a physical copy	51.7%
Modify it in any way I see fit, and make it available for free to anyone online, as long as nobody profits from it	17.4%

Q9. WHEN USING THE CONTENT OF OTHERS ONLINE WE SHOULD: (CHECK ALL THAT APPLY)

A.



n = 9,020

Note: Participants could check more than one box, so the total may add up to more than 100%

Always give credit to the creator of the work when sharing	89.2%
Be able to create parodies, remixes and fan fiction without having to break the law and face penalties	84.8%
Have free access to content so long as we do not profit from the original work	65.6%
Be able to excerpt from works to share commentaries and review without fear of legal penalties	86.2%
Be sure that the majority of our payments goes directly to compensating the creator(s) of the work	80.1%

