

1st Regional Dialogue for Educators on implications of the copyright for education

Intellectual property and its relationship to development

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Thank you very much for that introduction, Marcos.

So, I am here from Seattle. I want to thank Luis Villarroel very much. I am very pleased to be working with him on this important project and I have been enjoying my first visit to this country. And I've learned so much here. Coming from Seattle, which is the land of Amazon, Microsoft and Starbucks, I feel like I am coming from the "axis of evil" (smile) into your world. I hope you bear with me because I am bringing friendly greetings.

So, my interest in this area comes from two different directions. One is thinking about the mandate or goal or purpose of intellectual property. Someone yesterday asked whether it is true that intellectual property stimulates innovation and there was some discussion about that. And that is the most important question that we can be thinking about. I am trying to re-think intellectual property purpose in light of human development goals, such as access to health, and access to education. I'm positive that those goals should be just as important, and taken just as seriously as the innovation mandate. So part of my theme today is to place intellectual property within the human development framework. The other theme, though, is about multicultural education. And preparing for this talk made me very introspective and reflective about my own experiences in teaching classes, in working with people of different diversities, in being a member of an ethnic or racial minority in my country. All of these different things come together to inform my experience and my presentation today.

So, with respect to intellectual property and its relationship to development: These maps I find very beautiful. They are licensed under a Creative Commons license. This map looks distorted because it shows land mass relative to the actual population in various countries. India, for example, is in yellow, China is in bright green, Japan, which is territorially a very small country, is a quite large purple, a land mass on the right. Two things: one is that you can use [the map], you can find it on the Internet, licensed under Creative Commons, but then interestingly enough the map is licensed under an attribution license. [So, second,] I have to say, when I show this slide that it is copyrighted by Mark Newman and the Sheffield Group, which is an interesting contradiction in some ways.

(The map is upside down)??? [I'm not sure about this – I don't think so. mc]

Interestingly enough . . . the transition from the first map to the second is so startling. Right? This map shows again the world [but] relative to the royalties and license fees earned through intellectual property. And all of this data is based on the UN Development Program 2004 report. So you see that intellectual property provides a form of what Tina Rosen of the New York Times calls reverse foreign aid. The money is flowing into the rich countries from the poor countries. Of course a lot of the money that you see represented by the huge United States land mass is from royalties paid within the United States, as well as between Europe and the United States. But there is quite a bit flowing again from

the south to the north. And so from an access to education, or an access to knowledge perspective, that suggests a policy, that is, a copyright policy, of trying to encourage local production, of trying to stimulate local publication and local knowledge systems, so that you can minimize that type of [royalty] flow.

Here we have another map which shows research and development spending: Again a vast asymmetry with respect to that. And I think that's important to remind us that the formal system or the formal law of intellectual property is really based on a number of assumptions. One of them is that there is a very, very developed research and development [R&D] infrastructure. But to reach that infrastructure, to achieve it, there has to be first education. There has to be a pipeline from education for all, the access to primary education all the way up to the tertiary schools, universities and the research institutes, before we can even address the question of patents.

Jeffrey Sachs [Professor and Director of The Earth Institute at Columbia University in New York City] has estimated that the top ten innovating countries represent over ninety percent of worldwide patents. And they also represent fourteen percent of the world's population. So there is a huge asymmetry globally with respect to knowledge production in the formal intellectual property sense.

Here [in this map] is primary education enrolment. The good news is that at least with respect to Latin America the enrolment is fairly proportionate to the land mass. But here [in this next slide] is the primary education spending. Again good news from a Latin American perspective: There doesn't seem to be under-spending relative to the number of students. You see that the United States spends a lot of money; in fact it accounts for almost thirty percent of worldwide spending on primary education. That doesn't necessarily mean, though, that we have good education[al outcome] in the United States, specifically good multicultural education. We spend a lot of money, we are a rich country, but we don't [always] get a lot of quality. Again this suggests that resource-poor and relatively resource-rich countries may not have advantages or disadvantages relative to each other as we might suspect, but perhaps rich countries are just as disadvantaged despite all our resources.

Here [in this map] are university enrolments, or . . . a pipeline into the knowledge economy. So what does this all have to do with multicultural education? I thank our first two speakers; I've learned so much from both of you. Thank you for sharing your perspectives. And I am just going to touch on some of the things you just mentioned, because I think you really explored the subject so well. We need to think about traditional knowledge and traditional cultural expression as challenges to copyright, as challenges to our copyright norms, but not in the adversarial sense. They raise questions about how we should accommodate all of these different kinds of goals, right? So in a formal copyright sense these traditional knowledge systems don't quite fit. [For example, w]e have to think about collective ownership as opposed to individual ownership. We have to think about whether or not the works are actually fixed or written down as opposed to oral. But I don't think these are real problems; these are not things that are insurmountable. They are things that should be driven by the right to self-determination and I think that is something that both our previous speakers talked about.

What I am going to focus on is the idea of creating new content and remixing content to address multicultural education needs. And I know that the word "content" may not be a

happy word for some people in this room. But when I use the term “content” I am really talking about the production of materials for education. Content is an easier way of saying that. So when I think about creating multicultural educational materials, I think a lot about critical analysis. You can’t create this kind of material without rethinking how the majority has created our world, has constructed our world. So many of the copyright incentives should be rethought in terms of how do they promote criticism, how do they promote commentary, how do they promote even parody and satire, you know, making fun of the dominant assumptions about minority groups, right? And so the same kinds of questions, though, apply to this type of critical analysis as apply to any kind of educational material. And we talked about this yesterday at length. Should we adopt an open model? Should we adopt an open model, or a closed model? What kinds of exceptions or limitations might promote criticism? And then, of course, the issue of freedom of expression: Much of this [content] can be subversive. At least at first [it can] challenge the accepted political norms, and so there has to be room [for free speech]. This is where copyright and its relationship to free speech really comes into play, right? We also have to think about in this context—how do we create culturally appropriate narratives: Not just criticizing what already exists, but also creating our own realities, our own social realities? So, here is the part that I think poses a lot of challenges for copyright. And we talked about this a lot as well yesterday.

How do we remix, how do we create new educational materials? I was very, very, very happy to hear the presentation yesterday by Graciela and Mónica, because they were talking about these learning objects, learning modules and putting them together with other learning modules. I can see the potential already for remixing to create multiculturally relevant content. And the one thing that I would say with respect to this is that it’s not just books, right? We are talking at this point about multimedia, the XO computer and there is a real need as well for translations, of course, for the minority groups. One thing I would add to what our previous speakers have already told us about this: It’s obvious that we need to create content in all of these different languages, but as I think about multicultural education I think also about educating the majority groups and not just including the minority groups. So when I teach my race and law class, it’s so important that my white students understand their own privileges, [and] for my white students, and for students of different ethnic and racial background to understand each other’s experiences, right? And so that calls not just for translation into other languages, but it calls for content that really addresses the underlying assumptions of the prevailing or dominant narratives.

So [regarding] the copyright issues as we discussed yesterday, Jonathan mentioned this bundle of rights. These are all mandatory under [the] Berne [Convention]: the adaptation right or modification right, the translation right, the performance right, these all belong to the authors. We can also talk about this bundle of exceptions. There are all these types of exceptions that might help us to create or remix the content, but they are very varied and diverse. So I won’t go into all of the details here but just to mention that. And we have to always keep in mind the fine line between preservation and exploitation. On the right-hand side [of this slide] is a remixing of some music from the Solomon Islands, beautiful music done by a French group Deep Forest. When I first heard this music in the Washington DC Reagan National Airport, I had to buy it right away. But in fact it is based on the UNESCO recording, on the left-hand side [of the slide]. And the question on whether the benefits were shared with the appropriate group is a really huge question. So, we constantly have to be aware of that.

[On this slide] is a book that I recommend to anyone in this room. It won the National Book

Award last year in the young adult category. I can see a teacher in high school assigning this book to his or her students. This book is written by an American Indian from Washington State, which is where I come from; his name is Sherman Alexie, and he is extraordinarily funny. But I use this book as an example of the limitations of our law, if we were to use US law to try to disseminate this book in a very wide variety of classrooms including in Indian reservations, which have very few textbooks. He in fact writes in this book—he tells the story of how he got off the reservation. He left his family, he left the reservation because he opened a book one day in school and it had his mother's name in the book. And he got so angry [about how old the book was] that he threw the book at his teacher and hit the teacher. So, it's still a problem. If we wanted to use the TEACH Act or the other exceptions in our US Copyright Law to disseminate this book, what would we come up with? Well, the TEACH Act is not going to be much help, because under that Act, under that exception, basically the teacher is limited to displaying parts of the work comparable to that displayed in a typical classroom. So over the computer you could maybe display one or two pages – something that you might be reading out loud. The TEACH Act does not cover translation. So this is written in English, and if we wanted to include Latina/Latino students in Eastern Washington, you cannot translate this book under the TEACH Act. There may be a fair use exception to allow you to copy more than that, but it's not clear. We talked about that yesterday. So the bottom line here is that these exceptions and limitations really do not help us in a very tangible way to promote access to the knowledge contained within this book.

Here is another example, one of my favorites. Those of you who grew up like me in North America in the [nineteen] seventies or eighties, or the sixties even, learned how to read with this book – [Dick and Jane]. You can see, however that these two children do not look anything like me, right? We were all kind of rare [compared to] this idea of the perfect family (three children and a dog, live in a middle-class white neighborhood). And so this book on the left-hand side [of the slide] is an interesting parody that came out a couple of years ago. It's called "Yiddish with Dick and Jane". And it makes fun of this whole dominant family model that we all learned to read with. And [it] also teaches people Yiddish, right? There was a copyright dispute between these two parties and the interesting thing for me is that under US law if something is a parody, if something makes fun of the original work, you know, in a critical kind of way, but a funny kind of way, there is much stronger argument for exceptions under our fair use option. So, that's one thing in terms of possible recommendations, that parody and satire be given this p[rominence.]

I have to conclude now. But, you can see that the exceptions don't necessarily cover [every]thing. With respect to the books that I just showed you, there may be some very limited exceptions under the TEACH Act: Distance education, for performance and display, or broadcasting, which are part of the bundle of rights. There may be other exceptions under our fair use option and especially if they are funny or are parodies, for reproduction or translation. But it's not solid, it's not clear. And so I think we all have to think more deeply about all of these challenges with respect to multicultural educational materials.

This is my last slide, I promise. So, Paul yesterday showed a quadrant of different kinds of public domain materials. Here I just want to show how materials may be protected or not protected: By copyright, which is on the right top, by licensing or contract law, which is in the right bottom, by technology, which is on the left bottom and then all of the rest, which would be called public domain materials. And this is where Paul had his very detailed schematic. But the things in red are the things that are available, [and] the things in black

are the things that are not available easily. And you can see it's a mix and match, right?

So part of our job, part of our challenge and part of our collective project here, perhaps [our] collective authorship, is to come up with more rationality, I think, more predictability, so that we can all work on creating more educational materials.

Thank you very much.