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“Old Europe” and the Power of a Knowledge-based Society or The Battle to Define the Digital Word

Only yesterday the Vienna "Kurier", one of the players in the Austrian yellow press (incidentally, founded by US forces in August 1945) referred to the new debates at the Frankfurt book fair under the headline: "The Battle to Define the Digital Word." The background story, however, is not brand-new: It elaborates on the print.google.com project and the Yahoo open content alliance. The gist is clear enough however: Europe is again just reacting to a new business-driven initiative from the US which journalists tend to summarize as a new battle in the digital era. My original title therefore remains valid, and casts light on the whole issue of the different approaches to digitalization of academic content in Europe and in the US.

As you know, the rather traditional perception of "old Europe" was reinvented in 2003 by US Secretary of Defence Rumsfeld, when he referred to Germany and France as representing "old Europe," who refused to participate in the US-driven crusade in Iraq, but this did not really matter even in European affairs since NATO's expansion in recent years means that "the center of gravity is shifting to the east". From the perspective of values and perceptions this statement encompasses more than geo strategic and military matters and actually implies a fundamental perception of Europe lagging behind in innovation and modernity and simply reacting to US-driven moves (either by absorption, transformation or counter-models). One must admit that in the field of digital access, investment in research and technology innovation this is true.

Today and tomorrow we shall hear and discuss a broad variety of models and studies as well as concrete case-studies focussing on the impact of the digital revolution on the dissemination of knowledge – which in many cases has also to include the new process of creation as a result of the technological changes and developments.

I shall limit my own paper to the political and social implications of control over intellectual property rights and the effects both on the dissemination of academic research results and the impact on the cultural memories of societies.

The conflict of interests and values between Europe and the US is in my opinion widening: It has come increasingly into the public eye since the end of the Cold War (though it certainly started earlier). This is a logical result of the efforts of the European Union to act not just as a weak economic giant, but to interfere in global politics. Therefore the recent conflict resulting from a new commercial strategy by google – the google library project – (we shall hear more inside views from Mr. David Ferriero on Saturday morning) expresses a growing confrontation as the need and pressures of the cold war transatlantic alliance fade away.

After first indications by google print and google scholar, google announced between October and December 2004 the development and implementation of the large-scale Google Library Project meaning that 15 Million books of several US libraries would be digitalized, ignoring the copyright of the authors by at least publishing an abstract from the digitalized version (and linking this version with Amazon, provided that the book was on sale (either in stock or as a used book)). As most of you know, this highly problematic legal approach and pending law suits

have in the meantime blocked the digitalization of books and journals still within the range of copyright protection. (The potential economic value for the author and copyright-holder as well as the publishers overrules the existing legal structures in this field from the point of view of google and some legal experts.)

Here – by the way – we see a clear conflict of interests between economic lobbies (based on creation by an individual, who, however, in most cases does not profit materially anymore) and the fair use of the works since a longer period of time has passed and the author/artist does not earn any royalties directly. In the field of science in Europe – for example in Austria like in all other countries in Europe - the public has invested quite a lot of money in the education and training of academics and even pay their monthly salaries and finance the infrastructure used by academics. If the university teacher or researcher decides to publish an article in the internet, since he never received an honorarium for his contribution to a journal, he is breaking the law.

Let me therefore again refer to google print and a contribution which I wrote for Contemporary Austrian Studies...

<http://print.google.com/>

Only short pieces bits to indicate that the volume will be sold...but the whole issue has already been digitalized and stored somewhere to be used like a “hidden mailbox” when the books are not available anymore on the market – I presume with the permission of the copyright-holder – or 70 years after my death. In the meantime, google print is building up a huge content archive with money from the advertisements and then in two generations will have the unlimited right to charge everyone – including the heirs of the author – to get access to what in former enlightened times was in public domain in the public libraries.

In the case of the transaction press, a free digital version of my article on Bruno Kreisky and US presidents would cost 100 US Dollars and more. The costs for editing and publications for the volume as such have already been covered. I would have the same problem in Austria, maybe the fee would not be as high as in the US or Great Britain.

At the same time google print is building up a huge e-mail list – as you can when I try to search Alfred Pfoer...I have to register....

There is a strong need to restructure the publishing value chain including the interests of the public, as well as the interests of the authors and the publishing industry since – especially in Europe – the content industry in academia is still primarily funded by the taxpayers.

In the EU – as I shall show later – the debate about digitalisation of the European heritage has started a new debate about reforming the copyright regulations – but still this could at the same time result in extending the economic interests in exploiting the rights obtained from the copyright holder eg. by the publisher of a book.

Recently in the US (2003), the Supreme Court backed the decision of US Congress of 1998 to extend the copyright time span from 50 to 70 years after the death of the author/artist and in the case of companies the new deadline is 95 years. This decision protected – among others – the interests of US entertainment lobbies since in 2003 the global icon of Mickey Mouse would have been free for public and general commercial use.

To return to my example of the google – EU conflict, the European resistance, gathered around French protests – the French minister of culture Renaud Donnedieu de Vabres proclaiming that “Google is not the end of history”. The primary argument at the beginning of this French-initiated debate was not that google did not really care in the early stage about intellectual property rights but argued that the digitalisation is free of costs and creates a market for the authors and they can ask to be taken out of the internet. The main fear in France centred on the future, a fear that only books in English – from the Anglo-Saxon world – would be read and would permanently define European culture, history and thus European identity (which by the way is so far primarily driven by national identities). In the case of my own publications you can see that only my contributions in US and British journals and anthologies are digitalised, although they cover only 10 percent of my publications (my four books in German are completely excluded).

Definitionsmacht über Geschichte und Kultur – Power to define history and culture – has become a strong argument in the European reaction since the digital society of the future will be – to a large extent – perceived only on the basis of content presented in the internet. Jean-Noel Jeanneney, director of the French National Library, therefore expressed in "Le Monde" the fear that only the US (by implication the British “agent” in Europe) will decide on the „image of the world for future generations“. On September 29, 2005 Viviane Reding, EU Commission for Information Society and Media decreed a new digitalization initiative. More than 2.5 billion books and newspapers and magazines in EU libraries and millions of hours of Video and film should be made available in the internet – for all and free of charge.

This seems to be – at a first glance – a quite different policy as compared with previous efforts of the EU to push the knowledge society. The primary push-factor in the EU was – and in many cases still is – a knowledge-based economy which needs a knowledge-based society, but a society strongly influenced and framed by alleged and concrete economic needs.

The last funding call for e-content for example was limited to commercial use only meaning that public money from the EU was used to digitalize content – including goods in public domain – and close the digital access to this digital content – except for an access fee, meaning that public content was closed with at least 50% funding from public sources.

This – and Petra Dorfstätter checked this for me yesterday – will change this approach slightly in the new call of the e-content plus program, but again the EU Commission is primarily focussing on overcoming technological, cultural and language barriers and is not aiming at open access to digital content stakeholders. You will not find clear cut references here – even in the field of public cultural institutions like archives, libraries and museums.

The google initiative – in the original version - deprives the author of his/her rights to decide about the use of a publication; the decisive factors are economic.

This conflict about the google initiative is a conflict that we find throughout the debates about copyrights and the rights of the publishers, the interests of the information distributors vis à vis the interests and rights of the creators and the rights of the public concerning fair use of content.

On the one hand, we observe a growing tendency towards commodification of knowledge repositories. The Internet is not “for free” any more when it comes to hardcore content of high academic level including the potential of application options for the economy. Archives and Databases are increasingly turned into commercialised products. Huge archives, e.g. of photographs, have been collected and combined (e.g. by Bill Gates <http://pro.corbis.com/default.aspx>). In 2001 allegedly 3 Million visitors per month

In 1995 Corbis owned by Microsoft bought the Bettman Archiv with 16.5 Million images and took over in 1999 Sygma with 40 Million images.

http://www.hyperorg.com/blogger/mtarchive/2004_02.html

Even in the realm of science and research, big commercial players control access to information resources. A large number of images are provided by museums which are in the public domain, but only in a few cases does the public have access to the images in the internet – here in the case of corbis we can at least view them but the rights managed have been turned over partly by the Albertina – a state-owned traditional art museum – to corbis (and how much will be the return benefit for the Albertina and thus for the Austrian public and taxpayers who are the patrons of the museum?). As you might know, Bill gates is not the only player in the field – just refer to Getty Communication and other “Bankers in Image Communication”

On the other hand, a forceful development is gaining ground under the guise of open access – see for example the Open Archive Initiative (www.openarchives.org). Initiatives inside and outside academia ask for free and unlimited access to the cultural heritage of our societies (e.g. BioMedCentral and PloS in the life sciences, ELSSS in economics, the Berlin Declaration and Budapest Initiative for Open Access, ECHO project, DOAJ, etc.). As the digital media allow authors and creators to appeal to their audiences directly, many of authors try to store their works in the internet. Still a key problem from the point of view of scientific standards is that only a few of these institutionalized repositories or journals have a peer review system similar to that of sophisticated academic journals.

The project of the Demokratiezentrum in cooperation with the Vienna Business University and Academy of Science – you will hear presentations of both partners, Mr. Wiebe and Mr. Nentwich – our project explicitly addresses this tension between commodification and open access. It focuses on the importance of digital archives which constitute one important group of resources and at the same time are potential products of Creative Industries. These archives may fulfil functions similar to those of traditional knowledge repositories like their paper counterparts: the classical libraries and archives – but – if accessible through the internet with world wide use (provided that the language barriers will be overcome, which is not more than a technological problem for automatic translation software, but still today it is a problem – except maybe from Spanish into English).

Policy-makers clearly realize – e.g. on the OECD level and within the UN – that free access to publicly funded research is essential for increasing participation of so-called civil society in connecting science to innovation.

But – and this is a big but -- when we analyse the OECD commitments, the principle of openness – the “interests of open access to research data...are limited by “restriction of access in some instances to protect social, scientific, and economic interests”.

Will the various open initiatives – eg. open source software, open access to research and scholarship and open science – treat intellectual property rights as public goods?

John Willinsky argues that the publishing economy of scholarly journals is dominated by a rather perverse property relation, where the last investor in the research production chain – consisting

of university, researcher, funding agency, and publisher – owns the resulting work outright through a very small investment in relation to the work's overall cost and value”.

On the other hand, a look back into the history of science shows that science in Europe and in democratic systems is more open than in the past. But at the same time – despite the expansion of technical formal access to the Internet the access to really hot and innovative data and content tends to be much more limited than it was in the past and to involve increasing costs factors. Never before in history has science been pushed so hard and intensively by economic factors. Since we are in Vienna let me cite the economist Joseph Schumpeter (who by the way despite his academic skills was an unsuccessful banker and went bankrupt): He stated that innovation is linked with “creative destruction”. Will in the long run digital knowledge and content be reduced by extension of copyright laws and license agreements and thus be limited by “digital rights agreements” to be used by a small group of economic strong players in the various fields.

Even today for example the University of Vienna is – concerning the broad and unlimited access of all students and faculty – a country on the South side of the digital divide – compared with US Universities (both private and large state universities) – because it does not provide unlimited access to expensive data collections. Certainly individual institutes and faculty have access in their field, but at the same time unlimited digital access. At the same time Austria ranks within the top ten of the richest countries within the OECD (per capita). Here a renegotiation of the allocation of financial resources has to take place and so change the investment strategies of libraries.

It would be naïve to believe that the commercialization of important content through online use will disappear – on the contrary, this sector will expand. It would be important – in addition to the various models between open access and creative commons – to develop strategies to open up free access (here the Elizabeth and Felix Rohatyn Electronic Information Center within the New York Public Library is an interesting example. Rohatyn, a refugee from the Nazi period in Austria and his wife led the fundraising efforts to create a strong public-private partnership in financing access to expensive databases. At first glance, this approach is wholly different, compared with the open access approach and the need for free academic journals in the New York Public Library (Science, Industry and Business Library). The Elizabeth and Felix Rohatyn Electronic Information Center offers free electronic access to 150+ electronic information databases and 11,000+ electronic journals, at no extra charge, on 72 computer workstations.

When we talk about open access it is important to think about new strategies to grant at least limited public access for the public too.

Apart from the Wikipedia movement, the open source movement is however at a very early stage of developing a “commons-based peer production” by using the open source sector and creating scientific cooperation based on open access and free participation to create new content.

Within both the US and the EU, the expertise of Richard Florida, economist and information policy expert, shows that creative innovation is not only a critical factor in economic growth, but that innovation is facilitated by a strong and persistent policy of openness and decentralized global structures. Both in the US and in Australia there is a persistent debate about fair use, a legal platform for granting access and reuse of copyright material under certain preconditions.

This I think should be an important approach in the European debate too, since especially in Europe a large extent of the copyright content is broadly publicly funded. Today for example Austrian research-funding organizations have a tendency to absorb the license rights from their researchers although more than 90% of the budget of these institutions is paid by the Austrian taxpayers and state revenues (including public funds from the provincial and city governments).

When talking about a modern democratic society we tend to limit our references to a free market economy, the rule of law and the fundamental rights such as freedom of the press and freedom of speech. At the same time we in Austria have a fundamental right of academic freedom Art 17 STGG of 1867 which seems to be permanently overruled by license agreements. I am well aware of the misuse of academic freedom, at the same time this dominance of the market orientation seems to be turning into a structural problem, especially when most of the research costs are paid by the public. Legal experts and lawyers in particular today have a tendency to over regulate and thus on the one hand leave the copyright with the author, but define the time and framework of the publication of his research excluding the fact that most of the research is paid by public funds.

I do very much hope that the google initiative and the debates created by this commercial move will further push the international and European debate back to the importance of knowledge within the public domain, open for all. At the same time new forms of research models enlarge the production of new content – open and accessible to all who have the skills and instruments to get into the internet. Therefore education and hardware/software initiatives are still important. In front of our meeting room we have one of the very few open internet facilities in Vienna. This is a good symbol for the importance of concrete efforts to increase the access to the internet and thus broaden the user groups.

But, as I have already tried to outline, I fear that there is a strong trend on the one hand to broaden the internet use – since they are seen a potential consumers in the global economy – while on the other hand, the truly sophisticated content, crucial to further education and innovation, is hidden behind the wall of pay by click access only. Maybe a return to the principles of the enlightenment which in the long run pushed and socially regulated the industrial revolution of the 19th century might help to renegotiate and thus reduce the negative effects of the digital revolution.