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**iComp Seminar: IP Issues and their Impact on Internet Commerce
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**Contribution to Panel Discussion:
Cross Industry Initiatives to Resolve Copyright Issues.
ACAP (Automated Content Access Protocol)
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Before I start talking about initiatives to address copyright issues of the future, I thought it might be worth casting our minds back a few years to some copyright issues of the past.

Let us go back to a moment in time when the reproduction and distribution of content suddenly became exponentially easier than it had been previously.

A time when a recent technology revolution had dramatically expanded the potential audience for created works.

A time when the controllers of the technology took on a new role, acting as intermediary between authors, the creators and readers.

And a time when public policy was needed to increase and democratise access to knowledge - by encouraging creation, publication and wide distribution.

Could be the last few years, I hope you're thinking... the internet dramatically changing the landscape and the emergence of search engines - suddenly capable of connecting any internet user with all the knowledge published online.

But the time I'm thinking about is not a few years ago, but 300 years ago - The period after the invention of the printing press.

By allowing the people with the new, high-volume, mechanised means of copying – the printers with their printing presses – to make all the money proved to be bad news for the people who created the works.

With spookily modern echoes, the outcomes were perverse and indeed undesirable. Counterfeit copies made it impossible for authors to reap the rewards of their work. People were discouraged from disseminating knowledge and creativity – in fact they

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were incentivised to hoard their knowledge and learning – effectively to keep it secret.

The new technology was making a few people very rich, but it was failing to fulfil its potential to enrich the individuals in society, and society as a whole.

So in 1710 a new law was introduced. It was the first “copyright” law – the “Statute of Anne”.

Its full name pretty much explained what it was about.

“An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or purchasers of such Copies...”.

It described its purpose as the encouragement of learning, the prevention of piracy and the “encouragement of learned men to compose and write useful books”.

Public policy in 1710, it seems, had a lot in common with public policy now. Democratising, sharing and distributing knowledge and creativity as far and wide as possible was seen to bring myriad benefits to society - not least literacy. Not dissimilar to the push for the take-up of the internet to help drive computer literacy from the 1990s on

Before the Statute of Anne, lots of people might be able to read what you had written, but you would struggle to get paid for it.

The knowledge that they were spiritually or culturally enriching the lives of others might have been enough for some authors.

But most people who work, particularly if their work is important and popular, are quite keen on a bit of financial enrichment in return.

And even if they’re not in it for the money, like many Open Source contributors and Creative Commons today, they probably don’t want someone else getting rich from all their hard work.

So even the most liberal approach to content distribution and sharing, requires some rules to ensure it stays fair – which is how Creative Commons works.

But, I digress. Back to 1710 just for a moment longer.....

The Statute of Anne established a culture of authorship based on the simple principle that the people who invest the time, intellectual effort, creativity and money in new works should also be the beneficiaries.

So the law created a real market, in which everyone who contributed value – including the printers, distributors and retailers – could also receive a fair reward.

Exactly the same principle underpins copyright to this day.

And what an incredible success it has been. And what a big impact it has had on the bottom line of the world economy: in the average OECD country, between 5 and 6 **percent of GDP** comes from the creative industries. And over 11 percent in the US.

It has led not to a restriction of content but an explosion of it, an unstoppable, constant sharing of ideas and tidal waves of choice for consumers.

Copyright law, as well as being stunningly successful, has also been skilfully adapted over time to deal with Innovations like photocopiers and tape recorders.

So why is the internet so challenging. Just like printing presses before, it is a new technology which has made it exponentially easier and cheaper to copy and distribute content. So far so good.

This leap in technology has created a role and opportunity for new players – notably search engines - to help distribute content and help users find the stuff they want. So much further, so much – on the face of it – better.

BUT unfortunately, as before, new players have ended up doing what copyright law was created to avoid... benefiting from the access they control to the fruits of everyone else's labour without sharing the value it creates.

In a way it's a bit odd, because unlike in 1710, copyright exists already to prevent this from happening,

The internet was born as a brave new world, and old rules which seemed out of place were just ignored. The internet was formed around the image of its creators rather than the structures already in place in the so-called real world, so Copyright law, or more importantly its practical application in this new field, has so far failed to keep up with this brave new online world.

And so we are left with what Eric Schmidt, Google's CEO, recently described as a "cesspool" internet, full of "false information" and where – he says, quote: "the evidence is not good" for publishers.

If the "evidence is not good" for our future it is not because we don't have good content, or we're not finding the audience, it's because we're not finding the income.

In practice no rules, not even the most ultra-open Creative Commons rules, can work if there is a dysfunction in the market.

Unsurprisingly, many content owners have declined to participate fully in this new world because, just as in 1710, while it may be obvious that there is a huge new audience it is, for most publishers, impossible to generate enough income to sustain the continued investment in creating content and releasing it online.

Worse, publishing online can compromise non-internet revenues from the same content.

So, much of the best content remains off the internet, and much of the content that is released online by "traditional" publishers is there because it is either subsidised by

their print businesses or highly perishable – like newspapers – or put there by, or in response to, the growth in piracy – like music and movies.

What the internet badly needs is a real market and the fact that we don't have this market is what has led to Schmidt's online cesspool.

And his bafflement at how to solve it is rather baffling to publishers when we have given him a solution on a platter. All he needs to do is take it.

We couldn't agree with him more when he says he wants trusted brands to come to the rescue of the stagnant internet but the owners of these brands need a motive, they have to be able thrive to survive which is why we have to make copyright work online.

Which, you will be glad to hear, leads me to some suggestions about how to address the issues.

The question is not about the principles of copyright, which have been well proven time and time again. It is simply about the mechanisms that it uses in this bigger faster internet world.

The introduction to this section of today's programme helpfully summarises the answer

- Ethical business practices;
- Technological developments;
- and an intelligent legislative framework.

Ethical business practices sound like a simple thing, almost a given in the modern world.

Ethical business practices demand a commitment to the spirit and letter of the law in the interests of free and fair markets and all stakeholders, creating an ethical partnership.

The technological issues are, strangely, easier.

The European Publishers Council, along with the World Association of Newspapers, the International Publishers Association realised a few years ago that we had a pressing need for practical solutions to the copyright problems online.

Against a backdrop of copyright lawsuits against search engines all over the world, and the mitigating pleas of search engines that it wasn't practical for them to read the 10,000 word legal terms and conditions posted on our websites, we set about finding a technical solution to what the search engines told us was a technical problem.

Our three organisations, with a coalition of what is now hundreds of companies and organisations including search engines, have collaborated on one important innovation, called the Automated Content Access Protocol or ACAP.

ACAP addresses one of the key technical challenges thrown up by the internet – how to translate 10,000 words of legalese on websites into something the machines – like the robots used by search engines – can understand, so that publishers will have the confidence to make more and more content available online

We wanted to keep things simple, and to work with the way the internet and search engines work. So ACAP is, at the moment, an extension of an existing, informal protocol for giving instructions to “robots” which crawl our websites today.

This existing protocol – with the geeky name of the Robots Exclusion Protocol or robots.txt – has been around for a very long time but doesn’t do what we need it to do. Because it was invented to stop or slow down crawling when bandwidth, capacity was scarce, it was designed to say yes robots come into my site, or no stay away until I have more capacity. But content owners don’t want to say just yes or no, or exclude their content from indexes.

So ACAP isn’t about keeping stuff off the internet, or out of search engines. It is about content owners having control over what happens to their content before, during and after indexing.

It’s about allowing new models to emerge and finding new ways to bring more content to more people, more ways of taking advantage of the scale of the internet, about allowing the technology to drive creativity and vice versa. It is about a technological partnership, creating new, balanced, markets and the next great leap forward in access to knowledge.

So, at the request of the search engines – and specifically Google – ACAP right now takes the form of what they already know – through a simple extension of their Robots *Exclusion* Protocol. A sort of “Robots *Control* Protocol”, I suppose you could say. This means it is easy for search engines, and websites, to implement and reverses the “implied consent” model.

And it seems to have struck a chord.

ACAP has been implemented on hundreds, possibly thousands of major websites now; with many more to come in well over 40 countries around the world with unprecedented support and participation from a huge range of large and small organisations. It has been described more than once as a win-win solution by Commissioner Viviane Reding and members of her team, as well as by national regulators and politicians.

This is because ACAP has been created and funded in a completely open way, led by the content industry and open to all. It is available freely for anyone to use. It continues to be developed and updated, to evolve with the ever-changing internet and works for text, images, music and film.

ACAP allows anyone to implement the business model of their choice for their content – including Creative Commons-style “some rights reserved” models, completely free models, paid-for or ad-funded models and as many others as a combination of imagination and demand can devise.

Yet ACAP remains unimplemented by any major search engine which is disappointing since we have made it so easy for them -using their chosen technology, which is simple to use and non-proprietary. And don't forget, all ACAP does is translate old world legalese into new world simple internet language which machines can interpret automatically.

I sincerely hope this doesn't prevail for long and I hope that the leaders in search will live up to the demands of leadership and show the way – for their own industry, for the countless other new aggregators online and for the publishers who lack the confidence to allow their content into the “cesspool” internet of today.

If this happens then it is my profound hope that the “intelligent legislative framework” won't need much work at all because there is nothing wrong with copyright law as it stands today.

The internet calls for intelligent tools, which work the way the internet works. ACAP is the first of those tools, and is a huge leap of faith and cooperation by the content industries in the belief that both ethical and technological partnerships can flourish without recourse to using the courts to enforce copyright, because law suits - as well as being clunky and expensive, also create losers as well as winners – and can't force more content onto the internet.

An intelligent legal framework facilitates the creation of a market in which the basic rules of supply and demand, innovation and investment, creation and consumption can prevail.

Enforcement should be for exceptions, for deliberate and flagrant breaches, and the market should work cooperatively to minimise them.

We know what a thriving creative sector can look like, and we know how a simple concept, carefully implemented, can support and nurture it.

It is vital, not just for those businesses, not just for our national and international economies, not just for the internet, but also for society and the continued creation and dissemination of knowledge and culture, that we make copyright work properly on the internet.

We know how to do it, and we have done much of the hard work.

So I call upon all the stakeholders, big and small, to work with us, together, to breathe new life into this online ecosystem. The content industries have, in good faith and in a spirit of openness and cooperation, developed a part – a large part – of the foundation we all need.

It is now up to others, particularly the search engines who are the leaders and the keystone of so much online, to engage fully and urgently to help us get the job done.

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