

Abstract prepared for:
ESSHRA International Conference Berne, Switzerland 12-13 June 2007
Towards a Knowledge Society: Is Knowledge a Public Good?
Dynamics of Knowledge Production and Distribution

Legal Framework towards a Fair Global Knowledge Distribution

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I. Knowledge as a Global Public Good

The idea that access to Knowledge should be open to all has become a truism¹: If regulation has allowed for excludability of some returns of knowledge – with instruments such as trade secrets, patents and copyrights – the very nature of knowledge as a public good is not altered; knowledge in itself remains non-rival in consumption and non-excludable².

Furthermore, knowledge is a global public good, meaning that its benefits are not limited geographically. That some knowledge particular to a country, like weather, geography or even law, might be more valued by people living in that state, does not affect the universal nature of knowledge itself³.

This has strong regulatory implications: First, it means that regulation has to secure through an appropriate framework that the efficient production and equitable use of knowledge is at the same time encouraged and not impeded⁴. Second, it gives a rationale for international collective cooperative actions and public support required to overcome the disparities in the distribution of knowledge and ICT at the global level.

These assumptions give a new dimension to the contentious issue of the function of law in the “cyber-space”⁵: A paramount role of legal frameworks is to support the establishment of a fair and equitable knowledge distribution. The potential dynamic and positive effects of regulation shouldn’t be overlooked in discussions around the Knowledge Society. From this perspective, the legal measures in place can be assessed and further steps recommended.

II. Backing a Fair Knowledge Distribution

Given the increasing volume of information in circulation, one should strive to develop an efficient Knowledge circulation process, heading towards an informational ecology and contributing to a reasonable resources management. Measures addressing content protection and measures dealing with infrastructure issues can be distinguished.

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¹ ROLF H. WEBER, Zugang zu Wissensbeständen, in Medienwissenschaft Schweiz 2/2002, pp. 8-14, p. 8 with references; see notably LAWRENCE LESSIG, The Future of Ideas – The Fate of the Commons in a Connected World, New York 2001.

² JOSEPH E. STIGLIZ, Knowledge As a Global Public Good, in: Inge Kaul/Isabelle Grunberg/Martin A. Stern (eds.), Global Public Goods – International Cooperation in the 21st Century, Oxford 1999, pp. 308-325, pp.309-310.

³ STIGLIZ, (n. 2), p. 310-311.

⁴ WEBER (n. 1), p. 8.

⁵ See ROLF H. WEBER, Towards a Legal Framework for the Information Society, Zürich/Basel/Genf 2003, pp.64-69.

a. Content

The basic idea of legal content protection is that no one would create quality and worthy codified Knowledge if their idea, investments and work wouldn't be granted an appropriate legal protection and thus a commercial value. Databank protection, copyrights and patents are along these lines potential legal means. However, technical evolution has enabled the development of private mechanisms, like software based trusted system or even click-on licenses, achieving sometimes further protection than legal mechanisms do. These private instruments might hamper a fair knowledge distribution and are sometimes legally arguable. The legislator must thus deal with these concerns, designing a system providing for effective knowledge production incentive and at the same time clearly preventing excessive private contractual or technical protection.

b. Infrastructure

Law must also play its part when it comes to the organization of the information infrastructure. In this respect, unfair competition law and antitrust law have an important role; particularly when an information broker is in a market dominant position or if information brokers reach an agreement about the modalities of access to information. Key phrases in these cases are for instance: non-discriminating access, open access to technical standards, renunciation of exclusivity agreements.

III. Aiming at a Fair Global Knowledge Distribution

Early in the globalization process, it became apparent that, as information flows were increasing, the setting up of a world information and communication order was indispensable. With respect to the building of a fair and global knowledge distribution, two paramount aspects can be put forward by dealing separately with the "content" and the "container": First, concerns related to the informational content can be evidenced by the recent issue of cultural diversity; second, the established concerns of the "digital divide" in its narrow meaning of technical divide, takes a salient significance in the context of a fair distribution system.

a. Cultural Diversity

Framing, on the one hand, the interest of having a free flow of information which allows to share the own culture with others and, on the other hand, the interest of preserving the domestic cultural identity seemed necessary⁶. The consequences of the new imbalances between rich and poor countries in ICT on cultural and social heritage were therefore recognized in the early hours of globalization: The need to protect and foster cultural diversity in this respect was taken seriously.

The international awareness of general regulatory needs resulted in the issuance by the UNESCO of the McBride-Report "Many Voices One World" in 1980⁷ that acknowledged the existence of imbalances and disparities between countries in the communication field, as well as the need to issue far-reaching national and international policies addressing not only financial support but also cultural independence and diversity⁸.

⁶ ROLF H. WEBER, Cultural Diversity and International Trade – Taking Stock and Looking Ahead, forthcoming.

⁷ Many Voices One World, Report of the McBride Commission, Paris 1980, <http://unesdoc.unesco.org/images/0004/000400/040066eb.pdf>; see ROLF H. WEBER, From "Many Voices One World" to "Information Society", CRi 2004, p. 97.

⁸ McBride-Report (n. 7), pp. 133-134.

In the following decade political upheavals hampered further progress in the establishment of a new communication and information framework⁹. Nonetheless, several documents dealing with cultural concerns were issued, eventually resulting in the adoption of a legally binding Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Diversity Convention) followed in October 2005¹⁰.

b. Digital Divide

Internationally, few question the importance of digital inclusion for reshaping the global flow of investment, goods and services; it makes little doubt that ICT provides key inputs for economic development, contributes to a large extent to productivity growth, private and public sector development. Consequently, the main concern arising is that the dictum “to them that hath shall be given” will concretize, as is generally the case with investment patterns: High-income countries may then be in a position to pull way ahead; some middle-income states may be able to manage themselves a profitable place in niche markets, for instance, by providing cheaper services and manufacturing; whereas, the poorer countries, tangled up in debts, health problems and lack of knowledge, will join the e-economy decades later and may, in the long term, ultimately fail to catch up¹¹.

The social stakes of global digital inclusion are widespread. Thus endeavours to achieve a global knowledge distribution could serve multiple functions in the development process: With ICT as an effective development tool, one can hold out much hope of ameliorating and eventually overcoming endemic problems of poverty. It could indeed help with problems linked to food, health, education, social inclusion and democracy¹².

There is, however, another fundamental side of knowledge distribution, other than its potential to help developing countries “leapfrog” stages of development¹³: Because ICT and Internet have achieved a special salience for capacity building, empowerment, governance, social participation, scientific research, information sharing, cultural creations and learning opportunities, they have created a new expression platform that has become essential to social participation. Therefore, the fundamental human right of freedom of expression and information¹⁴ – guaranteed by Article 19 of the Universal Declaration of Human rights, Article 19 of the International Covenant on Civil and Political Rights (Pact II) and Article 10 of the European Convention on Human Rights (ECHR) – cannot find a global fulfilment if more than half of the world population is deprived of access to a global platform of expression and information. It is the very core of the concept of Knowledge Society that is compromised by unequal access to infrastructure and content¹⁵. Knowledge distribution issues can thus rightly be seen as a “premise” to human rights¹⁶.

The legal framework that addresses global knowledge distribution is still under construction, as international awareness has only recently awakened political concerns on a global scale. From the mid nineties on, the OECD, the UN and the UNESCO have observed this deepening North-South divide in the ICT field and highlighted the negative impacts and problems of these disparities in the distribution of ICT¹⁷;

⁹ In the mid eighties the United States and Great Britain cancelled their membership in UNESCO, which left the UNESCO with the main task, in such institutional and financial difficulties, of finding sufficient means for its own survival (WEBER (n. 7), p. 98).

¹⁰ Text accessible in UNESCO doc. 33 C/84 Prov, 20th October 2005, <http://unesdoc.unesco.org/images/0014/001429/142919e.pdf>.

¹¹ PIPPA NORRIS, *Digital Divide : Civic Engagement, Information Poverty, and the Internet Worldwide*, Cambridge 2001, p. 5.

¹² NORRIS (n. 11), pp. 8-9.

¹³ NORRIS (n. 11), p. 7.

¹⁴ UNESCO, *World Report: Towards Knowledge Societies*, Paris 2005, p. 38.

¹⁵ UNESCO (n. 14), p. 27.

¹⁶ Article 1 of the WSIS Geneva Declaration of principles.

¹⁷ See, among other publications, the biannual OECD Communications Outlook, the annual UNDP Human Development Report, the UNESCO World Communication Report 1999-2000.

other governmental organisations like the World Bank, the European Union and the G-8 have looked into the problem of the digital divide¹⁸. Furthermore, making ICT accessible to all is part of the eight Millennium Development Goals of the UN Millennium Declaration¹⁹. Discussions on the digital divide saw a concrete upturn at the occasion of the first World International Summit of the Information Society (WSIS), when Senegal President Abdoulaye Wade launched the idea of a Digital Solidarity Fund, which was fulfilled on the 14th of March with the inauguration of the Global Digital Solidarity Fund (DSF) in Geneva.

IV. Paths to the Future

The global and critical nature of knowledge distribution issues invites the realization of a legal framework on a global level, requiring forceful international agreements and strong cooperation. Alongside international action, the enactment of regional or national policies should also be considered to strengthen the building of a global Knowledge Society.

¹⁸ See notably the G-8 Okinawa Charter on Global Information Society of July 23rd, 2000.

¹⁹ UN, Resolution A/RES/55/2 adopted by the General Assembly on September 18th, 2000.