

COPYRIGHT CREATING ACCESS

Collective management of copyright at the service of creators, publishers and users

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Copyright enriching education! Education enriching copyright?

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I. INTRODUCTION

1. The program indicates the topic of the seminar as follows: “Copyright enriching education, education enriching copyright.” The title of my presentation is the same, but I have put an acclamation mark after the first part: “copyright enriching education!” and a question mark after the second part: “education enriching copyright?” I have done so because the thesis of my presentation is this:

Copyright does enrich education by guaranteeing access to the necessary literary and artistic works, but education does not reciprocate yet this service in an appropriate way. In order that copyright may continue to fulfill its important tasks, it needs better support by education (and definitely needs that certain “copyleftist” ideas spread by ultra-libertarian academics be isolated, refuted and rejected).

II. HOW DOES COPYRIGHT ENRICH EDUCATION

2. It is fashionable nowadays to speak about the need to better balance copyright with public interests, including the public interests relating to education. Quite frequently, the underlining suggestion is that copyright reflects private interests, and those private interests should be balanced with certain public interests.

This kind of suggestion is totally wrong.

Copyright is an indispensable means to serve an important public interest by granting adequate incentives for the creation and dissemination of valuable works. Without copyright protection, the most fundamental condition of access to such works could not be fulfilled; namely that they be created and made available at all.

The importance of the incentive function of copyright may also be recognized on the basis of a simple, pragmatic political calculation, but it should not be forgotten that the “right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author” is also a human right of each author, as stated in Article 27(2) of the

Universal Declaration of Human Rights. And who would dare to say that the protection of human rights – not certain human rights, but all human rights – is not equally a supreme public interest?

From the viewpoint of public interests, also some broader social, economic and cultural aspects should be taken into account. It should not be forgotten, for example, that copyright-based industries and activities have growing economic importance. Thorough studies are made in ever more countries about this, which now are based on a harmonized methodology worked out by WIPO.¹ The results of these studies show 3,4,5 % and sometimes even higher contribution of such industries and activities to the GDP, to economic growth, to employment and to foreign trade. For example, in my country, Hungary such a study has just been completed and published,² which shows that, in 2002, the contribution of the core copyright industries³ to the GDP was 3.95%, and, as regards all the copyright-based industries,⁴ it amounted to higher: 6.67 %. The contribution of the core copyright-industries alone was higher than that of the textile industry (1.26%), the metallurgical and other metal-based industries (1.79%), the electricity industry (2.98), and the entire agriculture (3.68). Those who were employed in the core copyright industries represented 4.22% of all the employees, while, in the case of the employees of all the copyright-based industries, this share was 7.17%. Could it be said in a sober state of mind that it is not a major public interest to grant adequate and effective legal protection to those – authors, publishers, producers – on whom the healthy development of this important economic and social sector depends?

And, last but not least, there is still another macro-political aspect that should also be taken into consideration. Namely that, without appropriate copyright protection, national creativity decreases, in particular in developing countries and in small countries, and this, in turn, weakens and cultural diversity and undermines national identity.

3. The access to works protected by copyright for educational purposes is an important public interest, and it is also closely connected with a human right; namely with the right to education stated in Article 26(1) of the Universal Declaration of Human Rights. This important public interest should be duly balanced with the other important public interest serving as a basis for an adequate and effective copyright protection as discussed above.

¹ See “Guide on Surveying the Economic Contribution of the Copyright-based Industries,” (main author/editor: Dimiter Gantchev), 2003, Geneva, WIPO publication No. 893(E).

² The original, Hungarian version was published in July 2005 by the Hungarian Patent Office.

³ The Guide mentioned in note 1, above, defines “core copyright industries” as “industries that are wholly engaged in creation, production and manufacturing, performance, broadcast, communication and exhibition, or distribution and sales of works and other protected subject matter.”

⁴ According to the Guide mentioned in note 1, above, “copyright-based industries” include in addition to “core copyright industries,” also “interdependent copyright industries” (“industries that are engaged in production, manufacture and sale of equipment whose function is wholly or primarily to facilitate the creation, production or use of works and other protected subject matter”), “partial copyright industries” (“industries in which a portion of the activities is related to works and other protected subject matter and may involve creation, production and manufacturing, performance, broadcast, communication and exhibition or distribution and sales”), and “non-dedicated support industries” (“industries in which a portion of the activities is related to facilitating broadcast, communication, distribution or sales of works and other protected subject matter, and whose activities have not been included in the core copyright industries”).

The very concept of “balancing” excludes any one-sided approach. The question we have to ask is this: Would it be reasonable to suggest that the right balance would be just free access to works for educational purposes no matter to what extent, in what form and in what context, and that, therefore, authors and publishers should give up their copyright whenever their works are required for such purposes?

Let me answer to this question by an anecdote that an Indian publisher shared with the readers of “Copyright,” the WIPO copyright review. Dina N. Malhotra wrote about this in the October 1980 issue of the review under the title “Copyright Aspects of Publishing in Developing Countries:”

“Once Mr. Jawaharlal Nehru, the first Prime Minister of free India, was approached by a non-profit-making Trust to give them his writings free as their objective was very laudable to produce low-priced books for the masses. Mr. Nehru's reaction to this proposal was very sharp and he retorted by asking whether the paper used for these books had come free; whether printing and binding were also free and whether the personnel working in the publishing department of the Trust worked without wages. Why should the author alone, who is the soul behind the book, be exploited? This point has been dwelt upon at length because in many developing countries this wrong notion has resulted in making book-writing an unprofessional and unremunerative work, keeping away many intellectuals who could have contributed to the writing of books in a substantial manner.”⁵

Nehru was right. He understood much better what is at stake when it comes to the protection and enforcement of copyright than some of our contemporary leaders. There are certain public and private sources available to guarantee the operation of the educational system and the enjoyment of the right to education. All the other costs of the system, all the other contributions are covered by those sources. Why just one of the most important elements, the valuable intellectual content, would be supposed to be offered free of charge by their creators and by publishers who invest into its dissemination?

4. The international copyright norms have never followed extremist ideas to deny copyright protection for works needed for education, but have always taken care of what may truly be characterized as appropriate balancing of interests.

At the very first Berne Conference, in 1884, in his closing speech, Numa Droz, the Chairman of the Conference, stated as follows:

“Consideration... has to be given to the fact that limitations on absolute protection are dictated... by the public interest. The ever-growing need for mass education could never be met if there were no exceptions to the right of reproduction, which, at the same time, should not degenerate into abuses.”⁶

⁵ “Copyright,” October 1980, pp 312-313.

⁶ “*Actes de la Conférence internationale pour la protection des oeuvres littéraires et artistiques réunie à Berne du 8 au 19 septembre 1884*,” International Office, Bern, 1884, p 68.

This principle has always been duly taken into account throughout the development of international norms on copyright, at the various revisions conferences of the Berne Union, and it is equally reflected in the TRIPS Agreement and the 1996 WIPO “Internet Treaties,” the WCT and the WPPT. It is expressed in specific exceptions, such as the one provided for in Article 10(2) of the Berne Convention concerning illustrations for teaching,⁷ but the fullest expression of adequate balancing of interests is the “three-step test.” It was “invented” at the 1967 Stockholm revisions conference and originally only included in Article 9(2) of the Berne Convention on exceptions to, and limitations of, the right of reproduction, but, since then, it has been extended, by Article 13 of the TRIPS Agreement and by the two WIPO “Internet Treaties” (Article 10 of the WCT and Article 16 of the WPPT) to all economic rights. This means that exceptions and limitations may be introduced in special cases (that is, in limited cases justified by sound legal-political justifications), provided that they do not conflict with a normal exploitation of works, and that they do not unreasonably prejudice the legitimate interests of owners of rights.⁸

One could hardly deny that, on the basis of the specific exceptions provided for in the Berne Convention – and, thus, by reference, also in the TRIPS Agreement and in the WIPO “Internet Treaties” – and the “three-step test,” all the special needs of public education may be recognized and fulfilled. Thus, those who now demand some reconsideration of the international copyright norms with the purpose of better balancing “between copyright and public interests” not only forget about the fact that adequate and effective copyright protection also does serve important public interests, but they, in fact, speak about the need for balancing of a system that is already duly balanced (simply it should be adequately applied at the national level).

What could mean the idea for changing the existing balance? To remove the condition that exceptions and limitations may only be applied in special cases in the sense mentioned above? Or should exceptions and limitations allow to conflict with normal exploitation of works; that is, to undermine the market for copyright owners? Or should we accept that exceptions and limitations prejudice the legitimate interests of owners of rights not only in a reasonable way, but also in an unreasonable way? The very questions reveal the absurdity of such kinds of ideas. This would be the same as if somebody went to the playground and would tell the children happily playing on a see-saw that now he would like to “better balance” them. He may step on one side or the other side of the see-saw, but then the balancing is over, or on the middle thereof, but then everything is stopped and he just make the children unhappy.

5. The balancing of interests seems to take place appropriately also in the field of reprographic reproduction and “electrocopying” where RROs important guarantees that both the interests of the owners of rights and the educational interests may duly prevail.

⁷ It reads as follows: “It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.”

⁸ So far, two WTO panels dealing with important intellectual property disputes interpreted the elements of the “three-step test.” For the description and analysis of the findings of the two panels, *see*, Mihály Ficsor: “How Much is What? The ‘Three-step Test’ and Its Application in Two Recent WTO Dispute Settlement Cases,” RIDA, 2002, issue 192, pp 173-175.

One of the examples of this is the 2001 Information Society Directive of the European Union. I refer to Article 5(2)(a), (b) and (c) on reprographic reproduction, private copying and, as the Directive puts it, “specific acts of reproduction” made by not-for-profit, publicly accessible libraries and educational establishments, and to Article 5(5) of the Directive which make the application of all the exceptions conditional of the application of the “three-step test.” And, of course, to Article 5(3)(n)⁹ of the Directive which guarantees the fulfillment of the important functions of library and educational exceptions in a way that, at the same time, the value of copyright may also be fully maintained and respected.

The TEACH Act¹⁰ adopted in the United States is another excellent example of how the existing balance of interests may be maintained under the conditions of digital environment. And this has been achieved in respect of an important new form of education; distance education through the Internet.

III. THE NEED OF COPYRIGHT FOR SUPPORT BY EDUCATION (SO FAR NOT DULY RECOGNIZED)

6. Copyright is in a very bad, defensive PR situation. It has been attacked from many sides on the basis of theories, movements and campaigns demanding further – sometimes drastic – decrease of the level of protection of copyright. Robust and energetic response would have to be given to this load of aggressive intellectual nonsense.

It is indispensable to try to persuade the public and the politicians about the important interests related to an adequate and effective copyright system and about the unfounded and dangerous nature of the shortsighted, populists ultra-libertarian ideas. This cannot be achieved without appropriate participation of educators at all levels of education. And here still much is to be done.

However, the problem is not simply that education does not reciprocate yet what it receives from copyright. The problem is also – or we even say, mainly – the fact that there are certain institutions of high education, universities, research centers which are in the frontline of creating and spreading ideas, theories, slogans, and organizing campaigns to undermine copyright protection under the banners of “open source,” “free access” or “free culture.” They are boasting

⁹ Article 5(3)(n) reads as follows: “Member States may provide for exceptions or limitations to the rights provided for in Article 2 and 3 in the following cases:... (n) by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections.” (Article 5(2)(c) refers to “publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage.”)

¹⁰ The TEACH (“Technology, Education and Copyright Harmonization”) Act of 2002 defines the terms and conditions on which accredited, nonprofit educational institutions in the United States may use copyright-protected works in distance education, including on websites and by other digital means, without permission from the copyright owner and without payment of royalties. For this, the educational institutions must fulfill several conditions, one of the most important of them being that the transmission through the Internet should be made solely for and reception limited to students enrolled in the course. Furthermore, “downstream controls” should be instituted in the form of technological measures that reasonably prevent the retention of the works in accessible form for longer than a class session and the unauthorized further dissemination in accessible form. The provisions of the TEACH Act have been included into Sections 110 and 112 of the U.S. Copyright Act.

that they will sweep aside the “outdated” copyright system and organize a “revolution” in order to guarantee free access.

7. There are many forms and ideological justifications of these free access movements. Some of them, for example, would like to sell us the idea that the so-called cyberspace is a separate world which should remain the realm of complete freedom, where also those things should be free which so far have not been free, and rightly enough, in the “traditional” world. All this sounds very “revolutionary.” In fact, however, it is nothing else but the result of a *non sequitur* inference, one of the typical failures of the functioning of human logic.

These kinds of ideas due to their extremist, ultra(copy)leftist nature do not deserve too much discussion, but, due to the fact that the “sexy” slogans in which they are expressed may, and do, have some impact among those who do not think of the foreseeable consequences of the practical application thereof, I still have to say some words about them.

First, it should be pointed out that (this is a basic fact, but sometimes it is worthwhile also stating such facts, since otherwise people may forget about their “boring” reality) *cyberspace does not exist*. It certainly does not exist in the sense that there would be something outside our “traditional” world. Cyberspace is *a metaphor*, and when we have to regulate something, it is not the metaphor which we should regulate but the reality to which it refers. And, in this respect, the reality is that all the computers in which protected works are stored and from which they are uploaded, all the telecommunication devices necessary for transmissions through the Internet, all the computers into which such works are downloaded, all the people who operate and use the system, all the people who gain and all the people who lose as a result of unauthorized use of works may be found in this or that country; definitely in our “traditional” world. This means that the slogans according to which national laws and intergovernmental organizations do not have to do anything with this mysterious world of freedom are completely wrong. There is no reason whatsoever to give up the protection and enforcement of certain rights in the new environment that are recognized in the “traditional” world as justified (because their protection is dictated by due respect for human rights and because they are indispensable means to promote creativity as a fundamental public interest).

Second, it should also be stressed that it is not a valid argument that, even if certain regulation may be justified on the Internet, the intervention of national laws and international treaties is not necessary; everything may be settled through the application of a “*netiquette*,” a set of non-binding but voluntarily respected rules on what may be done and what should not be done on the Internet. At the beginning of the spectacular career of the Internet, when it just left its previous, embryonic “incarnation” as ARPANET, and when mainly academics and researchers used it for exchange of information and publications, a “*netiquette*” may have been truly sufficient. However, since the Internet has become a true marketplace, and pirates and certain parasitic “services” have also begun using it as a channel for massive unauthorized exploitation of works, this is obviously not the case anymore. The intervention of national laws and international treaties have become indispensable.

Third, there was also a much more reasonable argument of those who were making enthusiastic preparations for burying copyright in the digital, networked environment. Namely that, even if owners of copyright attempted to exercise their rights on the Internet, they would not

have any chance to succeed, since, when a work is uploaded on the global network, it becomes immediately available for the entire, exponentially growing Internet population; nobody is able to know where, in which way and for what purposes it is used or transmitted further. However, we know the response to this argument about the impossibility of exercising rights in the new environment; response presented in an eloquent way by the legendary Charles Clark: “the answer to the machine is in the machine.” The two WIPO “Internet Treaties,” the WCT and the WPPT, have established the necessary international norms in order that this “answer” may be efficiently applied in the form of technological protection measures and electronic rights management information, and now there are national laws and regional regulations (such as the Digital Millennium Copyright Act in the United States or the Information Society Directive in the European Union) to implement these norms adequately, also duly taken care – through appropriate legal mechanisms – of the elimination of any conflicts that may emerge between the protection of technological measures, on the one hand, and the applicability of certain exceptions, on the other hand. The unhappy “copleftist” grave-diggers who have already ordered the coffin for copyright do not want to accept that it was a wrong decision to invest into the preparation of a burial, and do not want to recognize that the anti-circumvention norms function adequately. They still keep repeating that the application and protection of technological measures are “controversial,” do not work, and are unjustified obstacles to access to works. In reality, just the contrary is true of all this.

The framework of this paper does not allow me to rehearse all the debates about this. It seems, however, necessary to mention two things. The first one is a frequent and quite telling contradiction in the argumentation of academics and researchers who are advocates of free – and in particular technological-protection-free – access on the Internet. They present quite regularly two arguments against the application and protection of such measures: first, they say that they are useless, since any protection measure is circumvented “*within a couple of minutes*” and, thus, the works that the owners of rights want to protect in this way *become freely accessible through the Internet*, and, second, such measures *are obstacles to access through the Internet*. Let us not use any adjective truly suitable to describe the level of seriousness of this kind of self-contradictory argumentation; it would hardly be appropriate to use rude words at such a meeting.

The other thing I should mention is the series of doomsday prophesies how technological protection measures and their adequate protection will eliminate the chance for benefiting from some exceptions justified by certain public interests. It is quite clear now that these have to be added to the ever growing database of failed prophesies. The results of the administrative regulation procedures in the United States are well known to everybody here. However, there are also some other examples, such as what has happened so far in my own country. In Hungary, Act CII of 2003 has completed the implementation of the Information Society Directive, and it has applied Article 6.4 of the Directive – which requires the establishment of appropriate intervention mechanism for the cases where owners of rights using technological measures do not guarantee the enjoyment of certain exceptions – through a mediation procedure that either individual beneficiaries of exceptions or their representative organizations may initiate. The Hungarian Copyright Council is competent for the mediation. The provisions on this mediation procedure entered into force on May 1, 2004. Since then, until the days of this seminar (at the end of October 2005) nearly 18 months have passed. I am the President of the Council and I would receive all the possible submissions initiating such procedures; thus, I have completely up-to-date information about the number of such submissions. Well, we know from our “copleftist” friends

that technological measures create terrible problems for the beneficiaries of certain exceptions. Thus, what do you think, how many such procedures have been initiated so far: 1.000, 100, 50? No, the truth is that – in spite of the alleged “terrible” problems – none!

8. However, there are also some other justifications that the professors and researchers advocating for “free access,” “free music,” freeeverything try to use in their campaign to deconstruct the existing well-balanced international copyright system. One of these is something which in itself – if it is applied in the context into which it fits – is a reasonable and useful initiative, but which is misinterpreted and misrepresented by some zealots. Namely, the “creative commons” licensing system.

The “creative commons” licenses are for those authors who, for some reasons, are ready to make their works available to the public without exercising their economic rights, or at least some of them. Such authors have always existed, but due to the Internet, it has become easier for them to make available their works at a low cost without the involvement of a publisher or a producer. Also, there have always been certain methods to indicate the authors’ intention not to exercise their economic rights. The “creative commons” licenses, however, offer a standardized system with easily recognizable notices for this purpose, and this is quite helpful.

It should be seen that that there are, at least, three groups of authors who, for different reasons are ready to offer free access to their works, or, at least, not to exercise certain rights.

The first and far the most decisive group is the one of academics, university professors and researchers who, in fact, have launched the “creative commons” movement. In the academic world, the income from the exercise of copyright quite frequently is of a marginal importance, if any. In that world, the reward for scholarly, scientific work, and for the publications reflecting the results thereof, is mainly the academic *status* itself; that is, the promotion in the academic rank, the reputation among peers, possible public popularity, media appearances and the fame that goes with all that. This kind of *status*, is not just a matter of glory (which, otherwise, for any human beings is in itself an important value). It goes along with a number of advantages; to begin, of course, with the salary or other payments received from the university or research institution in harmony with the *status* – academic rank, fame, popularity – achieved; but the advantages also extend, for example, to the involvement in well paying public and private projects, consultancy, invitations to various events, guest professorships, etc., etc. It is not a surprise, therefore, that academics and researcher as authors behave in quite a specific way; many of them are ready not only to allow the publication of their studies free of charge, but – first of all those, of course, who still want to reach a higher *status* – are even ready to pay the publishers of scholarly and scientific journals of good reputation for such publication. It seems quite clear that, when these academics and researchers offer their works for free use on the basis of “creative commons” licenses, they can do so because they can afford this; their creative work is subsidized from some public or private funds, or “self-subsidized” from their other resources. Therefore, they form quite an atypical group of authors who, for the reasons discussed, tend to regard copyright as a negligible economic source.

There is then the category of “vanity publishers” or “accidental authors” for whom copyright is also negligible, but for some other reasons. They do not consider themselves as professional authors, and, due to the resources derived from their “everyday activities,” they also can afford

not to exercise their economic rights. As a consequence, their relationship with copyright, in this respect, is similar to that of academics and researchers. They may use “creative commons” licenses, but perhaps they just make available their works and do not care about the rest even to the extent of using such licenses (but if they do, it is undeniable that it is an advantage for others, since, in that way, it becomes clear that the those works may be freely used).

A third group seems to be the truly new one (since academics, vanity publishers and accidental authors have always existed). This is the group of those, in particular musicians, who wish to become professional authors and/or performers (and then they do intend to exercise their economic rights), and make available their works through the Internet – now sometimes also using “creative commons” licenses – in the hope that one of them may become a success, and then, with their future products, they may enter the world of real copyright and may recoup the “investment” they have made by initial free distribution. These authors may be regarded less atypical than those belonging to the other two groups mentioned above, since, in the long run, they do care for economic rights. Nevertheless, they share a feature with the others; namely that their creative activity is subsidized or – in this case, more typically – “self-subsidized” from other resources.

Thus, the “creative commons” licenses are useful for certain atypical groups of authors, and for the users of their works. They are particularly useful in the academic world where they were “invented” and launched. Certain problems may begin, however, when the “creative commons” movement tries to extend these licenses to mainstream copyright fields where authors do care for their economic rights. The problems are partly of a legal-technical nature, and are partly major, structural ones.

Let us speak briefly about the legal-technical problems that emerge when there are attempts to transpose “creative commons” licenses to mainstream copyright fields of typical authors who, in general, do wish to exercise their rights rather than not to exercise them. I have followed recently a debate in the INDICARE¹¹ on-line journal between Péter Benjamin Tóth, a talented young Hungarian lawyer, Legal Counsel of Artisjus, the Hungarian authors society,¹² and Mia Garlick, a representative of the Creative Commons Corporation.¹³ This exchange of views has made it clear to me that there are certain conflicts between “creative commons” licenses and the collective management of rights in musical works, one of the source of the conflicts being the irrevocability of the waiver of rights under “creative commons” licenses. Perhaps, there is a chance that these conflicts may be eliminated, although it seems that, for example, the principle of irrevocability follows from the very philosophy of “creative commons”.

In any way, however, it must be a warning for the promoters of “creative commons” licenses that such problems emerge when they try to extend the application of these licenses to mainstream copyright fields. Since some zealot advocates of “creative commons” frequently use anti-producer, anti-publisher – in general, “anti-capitalist” – slogans to prove the moral and

¹¹ INDICARE = “The **I**nformed **D**ialogue about **C**onsumer **A**ceptability of **D**RM **S**olutions in **E**urope,” at <http://www.indicare.org>.

¹² Péter Benjámín Tóth: “Creative Humbug,” published on June 24, 2005, at http://www.indicare.org/tiki-read_article.php?articleID=118.

¹³ Mia Garlick: “Creative Humbug? Bah the humbug, let’s get creative!,” published on July 27, 2005, at http://www.indicare.org/tiki-read_article.php?ID=124.

human superiority represented by this “movement,” it should be seen that, in the above-mentioned case, “creative commons” are not faced with producers, publishers and others who are characterized by them as (but who usually are not) “greedy capitalists.” In this context, “creative commons” are faced with true, big and strong “communities of creators.”

The really big problem emerges, however, when some zealots try to present the “creative commons movement” what it is not or, at least, what it should not be regarded to be; namely as something “revolutionary;” as something that offers the right way to make available works on the most important market in our era, the Internet; as something noble and more ethical than exercising economic rights. And they would like to present “creative commons” as a movement that is the best guarantee for free access to culture.

9. One of the demands of the “copyleftist” movements is that thorough

impact studies should be made before any step taken in the field of international norm-setting (even if otherwise all the interests involved, all the possible advantages and disadvantages, all the risks of adopting or not-adopting certain norms are clear).

In the spirit of this, let me offer some impact studies about the application of these kinds of “free access” ideas.

I am from one of the countries of Central and Eastern Europe, Hungary, where a collectivist, incentive-free, private-property-free system was tried on us as on laboratory mice. These Soviet-type communist regimes (there are very few such regimes now, North Korea being the only fully fledged one (since, for example, the pragmatic China cannot be regarded to have such a regime anymore)), were presented and advertised in a boasting way as “free access” society, much superior and with much more promising future than what “selfish,” “greedy” capitalism may ever produce.

The nations of these countries have got some extremely useful information to share with the rest of the world, and in particular with those academics and other people who has no real experience whatsoever about such a “free access” society, but who try to sell ideas that are very similar to those already applied in practice. In Central and Eastern Europe, we do have useful information on whether free access to the results of human work, including creative work, may really produce the wonderful results, in the long run, as advertised by the ideologues and advocates of such systems.

For some years, the answer to this question was not yet obvious, but then it became clear for everybody. Very thorough impact studies were made available one after the other on how attractive such “free access” societies were. Let us refer to some of these impact studies:

“The Real October Revolution” © 1956 Hungarian nation

“Prague Spring” © 1968 Czech and Slovaks nations, as co-authors

“Poznan, Gdańsk and Solidarnosc” © 1956 – 1989 Polish nation, in a series

“The Fall of the Berlin Wall” © 1989 German nation

The advocates of “free access” are not communists, of course, in the sense that they would be ready to accept or even support the inhuman, undemocratic aspects of Soviet-type communist regimes, but they, nevertheless, promote ideas that are very much similar to the most fundamental economic and social principle on which these regimes were based and due to the application of which they failed. Namely, the utopian, collectivist ideas reflected in the principle that “everybody should work for the common good, without any special interest, according to his talents, knowledge and experience, and everybody should have free access to the common good thus produced according to his needs.”

These “free access” regimes have collapsed because they offered free access to ever less and to ever worse quality.

And nobody should think that this was just due to the non-appropriate application of the otherwise beautiful principle quoted above. It was due to the principle itself.¹⁴ This system did not work since human beings are not abstract, perfect, altruistic angels. They do need incentives in the form of personal, private advantages – remuneration, income, property, and, *horribile dictu*, even profit – in order that they be ready to create and produce using their talents, knowledge and experience as fully as possible. It is through the fulfillment of these direct, “selfish” interests that the common good may be served indirectly in the most effective way.

This is true in all sectors of human activities, and it is equally true in the field of creation, production and dissemination of works.

10. To sum up, the world of education still owes a lot to copyright. The problem is not only that educational institutions do not make the necessary efforts in order to create and increase awareness about the important public interests justifying an adequate and effective copyright protection, but also that the source of certain destructive “copyleftists” ideas may be found exactly in the world of high education, in the groups of certain shortsighted and populist academics and researchers.

Authors, performers, publishers, producers and other owners of rights should stick together in this situation in close alliance with educators – and in particular with those academicians who, on contrast with their ultra-libertarian colleagues, can see clearly the indispensable role of copyright in economic, social and cultural development – to resist the foolish “deconstructionist” campaign against the international copyright system.

Much is at stake. These “cultural revolutionists” may succeed in providing “free access” to works and objects of related rights, but in the long run, this would mean free access to old creations and, as far as new creations are concerned (with the possible exception of certain scholarly and scientific works whose authors are atypical in the sense that they usually get reward

¹⁴ See about this the well-known book of János Kornai: “Economics of Shortage,” Amsterdam: North-Holland, 1980, in which he demonstrated that chronic shortages are not the consequences of the errors committed by the officials of the communist countries in Central and Eastern Europe, but they are systematic; that is inevitable consequences of the Soviet-type communist system.

in ways other than through exercising their economic rights) free access to less and less and to worse and worse quality. A combination of some kind of “new folklore” in the form of constant imitations (as regards works and other productions not requiring substantial investment) and subsidized creations (as far as more costly productions are concerned) may emerge (in the case of the latter, with an inevitable decrease of freedom of creation and freedom of speech, since in that way, creators tend to become dependent on the taste and political position of their public or private “maecenas”). One may say that this kind of combination worked in the middle ages. It could, however, hardly be suitable to fulfill the growing requirements and rapidly changing needs of the global society in the 21st century.

With my eight grandchildren I am an interested stakeholder of future. I do not want them to be constrained to live in a society that these overly self-confident but shortsighted “free culture” advocates wish to build for them.
