

Securing Our Rights to Public Knowledge, Creativity and Freedom of Expression

*A summary report on the first in a three-part series of
funder briefings entitled DEMOCRACY AT STAKE?
CURRENT ISSUES IN ELECTRONIC MEDIA POLICY
AND THE FUTURE OF THE PUBLIC SPHERE*

*Organized by **Grantmakers in Film and
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Hosted at the Ford Foundation

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About This Report

How do public policies shape the form and content of our media? How does media consolidation influence what we see, hear, and read? How do copyright laws limit access to information? How should public resources like the radio frequency spectrum—better known as the airwaves—be allocated to ensure the constitutional right to free speech?

These were some of the issues at the heart of *Democracy at Stake?—Current Issues in Electronic Media Policy and the Future of the Public Sphere*, a three-part series of funder briefings organized by Grantmakers in Film and Electronic Media’s Working Group on Electronic Media Policy in partnership with a diverse array of grantmaker affinity groups to introduce colleagues in the foundation community to the dynamic and cutting edge field of electronic media policy. The series, which took place in winter 2005 at the Ford Foundation, brought together media reform groups, activists, researchers, and leading policy thinkers, spotlighting media reform and media justice work around three pivotal policy issues:

- **“Securing Our Rights to Public Knowledge, Creativity and Freedom of Expression” (January 7, 2005)** examined how copyright and technology policy are impeding the free flow of information, artistic creativity and innovation, highlighting interventions by media policy advocacy groups to protect the public domain.
- **“The Role of Grassroots Organizing in Challenging Media Consolidation” (February 25, 2005)** presented a compelling and cohesive picture of media policy activism and grassroots organizing. Panelists discussed the decisive role media activists and organizers have played in recent policy victories and outlined the challenges they now face in their effort to uphold the public interest in upcoming policy battles.
- **“The Future of the Public Airwaves as a Common Asset and a Public Good: Implications for the Future of Broadcasting and Community Development in the U.S.” (March 11, 2005)** focused on the transition to digital broadcasting and the role that advocacy groups are playing in securing the public interest in the digital age. It also showcased innovative uses of radio spectrum (“the airwaves”) such as wireless technologies, low power FM radio, and other community-driven programming that is bringing connectivity to rural and disadvantaged

communities.

These are hotly contested public policy issues, and the ways in which they are resolved in the coming years will have profound implications for democracy. The following report summarizes the lively and informative proceedings from the January 7th briefing on copyright and technology policy. It is the first of three briefing reports from this series. By documenting the debate around the vital issues raised at these funder briefings, the reports aim to advance learning among grantmaker colleagues and spur further support for the important policy work that is occurring in this field.

Introduction

The free flow of ideas and information is the wellspring of an open society. Democracy is rooted in the informed consent of the governed. Likewise, economic innovation, creative expression, and cultural production increasingly depend on the ability to adapt, transform, and build upon the ideas of others. Yet over the past thirty years the regime of intellectual property law and copyright has slowly but steadily constricted the free flow of information to the point where free expression and innovation are imperiled as never before. Consider:

- Due to the exorbitant cost of re-licensing the archival footage, music, and photographs that appear in “Eyes on the Prize,” Henry Hampton’s seminal history of the civil rights movement, the documentary series is no longer available in stores and can't be shown on television or released on DVD.
- Over the past few years, the satellite TV company Direct TV sent over 170,000 letters threatening legal action against people who had bought “smartcards,” a technology that secures computer networks and enables user-based identification—but which can also be used to pirate Direct TV signals. The letters threatened to sue smartcard buyers unless they settled for \$3,500, even though Direct TV had no proof that the recipients were actually pirating the signal. For Direct TV lawyers, possession of technology was proof enough of guilt.
- In 1997, Mattel, the maker of the Barbie doll, sent a spate of cease-and-desist letters to fan clubs, publications, web sites, and Internet service providers claiming that Barbie collectors, fans, and critics were all infringing on the company’s copyright.

On January 7, 2005, Grantmakers in Film and Electronic Media’s Working Group on Electronic Media Policy organized a funder briefing at the Ford Foundation to discuss the expansion of intellectual property rights and control over the public’s access to information flows, knowledge, and cultural production in the emerging global knowledge economy. Co-sponsored with the Funders Network on Trade and Globalization, the New York Regional Association of Grantmakers, and Grantmakers in the Arts, the half-day briefing was organized around panel discussions featuring sixteen artists, scholars, and media policy advocates, all of whom are working to protect and expand the public’s right to free expression, knowledge, and creativity. This paper is a synopsis of those discussions. It attempts to capture the distinctive voices of the panelists and to tell their stories while also placing those stories in a broader context.

Alison Bernstein, Ford Foundation vice president for the Knowledge Creativity, and Freedom Program, welcomed attendees by invoking the words of social critic Susan Sontag, inviting them “interrogate” the meaning of “our rights” in the briefing’s title. The question of rights, Bernstein said, was animated by four competing issues—plagiarism, protection, privacy, and pluralism. Plagiarism and copyright law mean different things in the United States than they do in a country like Nigeria, she observed, where Nobel Laureate Wole Soyinka has few meaningful rights to his work. Conversely, is it possible to reconcile the democratic principles ascribed to the broadcast media here in the United States with the tactics media corporations consistently use to control images and ideas through copyright law? Bernstein voiced concern about the danger current media trends portend for pluralism, yet she also cautioned against the impulse to see these complex issues as black and white. “I think it’s very important for us to not see this as a clash between right and wrong, but rather as a contest between competing rights.”

Echoing Bernstein’s call for open-minded debate, Margaret Wilkerson, director of the Ford Foundation’s Media, Arts, and Culture Unit, nevertheless underscored the urgency of the issues at hand. “Despite the fact that intellectual property rights are pervasive in arts, culture, and media fields, the underlying policy issues are often not on the radar screen of the non-profit sector, nor those of us who fund the non-profit sector.” Although copyright and intellectual property law can seem like an impossibly complicated and treacherous terrain inhabited by powerful corporate interests, Wilkerson encouraged funders to get involved. “The for-profit sector increasingly dictates terms that nonprofits have to live by,” she said. “The relationship between these two has been kind of like a forced marriage. And definitely not an egalitarian one.”

In his opening remarks, Bill Ivey, director of the Curb Center for Art, Enterprise, and Public Policy at Vanderbilt University, outlined how copyright and intellectual property law have curtailed creativity and limited freedom of expression. In the current legal, cultural, and political climate, Ivey argued, cultural policy has taken a back seat to the economic interests of corporations that produce cultural products. Nevertheless, Ivey sketched out a hopeful vision for reform, arguing that advocates from the nonprofit sector need to join with men and women of integrity and vision in the for-profit sector to create a reform movement that can “support free expression, secure open communication, and protect our freedoms.”

The first panel offered first-hand accounts of how restrictive copyright policies affect artists, filmmakers, musicians, and scholars. Filmmaker Jeffrey Tuchman illustrated how financial and time

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burdens of securing rights clearance for copyrighted material—film footage, music clips, still photos—has created a creative bottleneck for documentary filmmakers. Next, music critic Rick Karr outlined how copyright restrictions have choked off new musical voices and forms—at the very moment when digital technologies made the proliferation of those voices and forms possible. Still, as art curator and copyright activist Carrie McLaren argued, the insistence on gaining copyright clearance for every piece of music, video, or visual imagery is as much a matter of habit and fear as legal precedent. But as communications scholar Joseph Turow showed in his presentation on copyright law and the academy, the habits and practice of copyright crackdown have had chilling effects on academic freedom.

But what would a positive vision of copyright and intellectual property law look like—and how might a reform movement take shape? The second panel examined strategies for reclaiming the public domain and righting the balance between copyright and the public interest. Pollster John Russonello argued that advocates need to reframe the public debate over copyright as a question of individual rights and simple fairness. Gigi Sohn, president of Public Knowledge, illustrated how a small group of policy advocates and “technogeeks” are laying the legislative and regulatory groundwork for a broader reform movement, while Shari Steele, executive director of the Electronic Frontier Foundation, outlined the legal strategies advocates have used—from legal analysis to litigation—to fight copyright crackdown and the steady erosion of the public interest. Next, James Love,

Intellectual Property and Copyright: Basic Terms and Concepts

Copyright—A personal monopoly on an original writing, song, piece of art, or a group of any of those, for 70 years after the death of the creator.

Copyright Terms and the Constitution—Article 1, Section 8 of the United States Constitution explicitly grants Congress the power “to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” The central concepts are: a) Congress may—but is not obliged to—grant exclusive rights; b) that those rights are for a limited time; and c) that the goal of these protections are to promote science and the arts. When the first copyright law was enacted in 1789, copyrights were fourteen years, renewable for another fourteen years. Over the years, the term of copyright restrictions has been extended to seventy years beyond the life of an author, and ninety-five years for a corporate copyright holder.

Patents—A form of personal property that provides the owner with the right, for a period of twenty years from the date of filing, to exclude others from making, using, selling, offering for sale, or importing into the United States the invention described in the patent claims.

Public Domain—A space where intellectual property protection does not apply. When copyrights and patents expire, innovations and creative works fall into the public domain. Once there, anyone can use the material without permission and without paying a licensing fee. As the principal repository of humanity’s shared cultural, scientific, and creative heritage, the public domain is the catalyst and wellspring for creativity and innovation.

Commons—A place, real or virtual, that is not privately owned. Natural commons include the oceans and the atmosphere. Information commons hold the shared history of our cultures—myths, folksongs, works of art. The resources of the information commons are unique because, unlike resources in a physical commons, ideas can’t be depleted, polluted, or despoiled.

director of the Consumer Project on Technology, sketched out the global policy interventions activists have advocated. Finally, Christophe Aguiton, a renowned software developer and activist, outlined the ways in which civil society activists are beginning to combine open source software and open source politics.

Derivative Works—A new work that incorporates elements of an already existing work. Adaptations, translations, and modifications can all be derivative works. The new work as a whole can be copyrighted, but only those aspects that are not a part of the original are protected.

Fair Use—An exemption to copyright monopoly intended to protect free speech and the common-sense use of copyrighted material. Common-sense uses include commentary, research, and education. Fair use is what allows someone to comment on a copyrighted newspaper article, film, or book. Fair use allows a researcher to quote her sources without paying a licensing fee. Fair use is the legal basis that allows the owner of a VCR to tape his favorite television show and watch it later.

Source: Adapted from Public Knowledge, “A Beginner Guide to the Key Concepts”
<http://www.publicknowledge.org/resources/introductions>

What’s At Stake: Copyright, Economics, Free Expression, and Cultural Policy in the United States

In opening remarks, Bill Ivey, director of the Curb Center for Art, Enterprise, and Public Policy at Vanderbilt University, outlined how copyright and intellectual property law, the foundation of America’s cultural system, have tilted away from the public interest. Over the past fifty years, laws and public policies that were designed to foster free expression and spur innovation have instead been used, primarily by media corporations, to restrict speech and choke off creativity. Nevertheless, Ivey argued, the prospects for reform look hopeful. Digital technologies have thoroughly disrupted the current foundations of copyright law, opening up opportunities for reform. Furthermore, copyright issues don’t break neatly into ideological camps, thus heightening chances for a broad-based reform movement. The challenge now, he noted, is to build that movement.

When Bill Ivey was head of the Country Music Foundation (CMF), the Country Music Hall of Fame in Nashville, Tennessee, which is run by CMF, mounted an exhibit on Hank Williams, one of the giants of country music. As part of the exhibit, there was a digital access point where, as visitors were listening to a Williams tune, they could touch a video screen and learn more about the recording session—when it had been produced, who the session players were, what the dates were, and so on. A few days after the exhibit opened, Williams’s publisher, Acuff-Rose, sent a letter demanding that the museum acquire a synchronization license since the songs had been synchronized to text on a computer hard drive, just as a filmmaker synchronizes songs to moving images. The museum’s board refused even though the publisher offered the license for a mere dollar. This was a question of fair use, the board claimed, and they would take the case to the Supreme Court, if necessary. Acuff-Rose quietly dropped the issue.

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At the same time the Williams brouhaha was unfolding, CMF was investing \$50,000 to secure a global trademark for the name “Country Music Hall of Fame and Museum”—and threatening to sue the Florida Country Music Hall of Fame for trademark infringement.

“My point is this,” Ivey said. “We are simultaneously the exploiters and the exploited in the world of intellectual property. We are always operating in shades of gray, rarely in black and white.” And yet the prevailing sense among briefing participants, Ivey noted, was one of profound concern, a feeling that media and creative expression, our arts and communications system, are tilting away from the public interest to some degree. “Your intuition and experience combine to tell you that something is seriously out of whack,” Ivey said. As for his own view, he continued, “I’ve become increasingly convinced that our cultural system no longer serves the public interest.”

What *has* gone wrong? And what’s at stake?

Ivey laid out a stark assessment. On one hand, cultural policy in the United States is hopelessly incoherent. Legislative and regulatory authority over media ownership, copyright, patents, and intellectual property are scattered among scores of federal agencies and Congressional committees—from the FCC to the Judiciary and Commerce committees—few of which have any cultural mandate. In the past twenty-five years, he noted, the term of copyright was extended twenty-five years, the Digital Millennium Copyright Act criminalized file sharing, and ownership restrictions on commercial media were lifted, leading to massive consolidation in broadcasting, radio, and television. “For at least the past decade, cultural policy has often been little more than what I would call road-kill along the highway to economically efficient, minimally regulated cultural industries,” he said.

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On the other hand, interventions aimed at cultural policy and the arts have focused almost exclusively on the nonprofit sector. Grantmakers and cultural producers have spent the past fifty years trying to expand fine arts—dance, theater, visual arts, music—throughout the nation. In the meantime, however, those who care about the arts, communication, and creative expression have been “sufficiently distracted to allow legislators, regulators, arts, and media industries to significantly modify our cultural system without even a nod on their part toward the public interest.”

Intellectual property (IP) law and copyright have been the cudgels with which corporations and legislators formed cultural policy. “Intellectual property as we live it today is really a product of the twentieth century,” Ivey said. “It’s not about individual creators, but

rather about government-protected revenue streams attached to the exploitation of intangible corporate assets.” Moreover, these attempts to maximize revenue have profound implications for creativity, freedom, and expression. “It’s these attempts to maximize IP revenue streams that often limit risk, restrict content, constrain creativity, and impose de facto censorship, undermining freedom and the public purpose.”

Consider just one example. In 1974, Ivey was helping to produce country and folk albums for New World Records, a nonprofit record company. The plan was to give free albums to public radio stations and public libraries in celebration of the 1976 bicentennial. The idea, he said, was to get historical tracks for free—no mechanical payments to publishers, no license fees to record labels. And it proved an impossible task. RCA refused to grant a license for Elvis Presley songs, likewise for Loretta Lynn’s label. So Ivey was forced to create an overview of America’s musical heritage without two of its leading figures. The result, he said, was “America’s cultural heritage viewed through the gap-toothed smirk of intellectual property protection.”

Despite these formidable obstacles, Ivey was hopeful about the prospects for reform. For starters, he noted, the digital revolution is still transforming arts and communication systems, meaning the policy framework is still pliable. Just as important, intellectual property issues do not break evenly along neat ideological or partisan lines. “You have John McCain and Patrick Leahy on the same sides of issues,” he said, adding, “It’s not a Democrat versus Republican set of issues.” On the other hand, he continued, the window of opportunity is narrow. “We know that in five or six or seven years, copyright will have been extended again, the movement of movies, music and money on the Internet will all be worked out, and we’ll have a locked-down cultural system that we’ll just have to live with for the next fifty or seventy-five years or longer.”

So what steps should advocates of a freer, more open system of copyright and intellectual property take? Ivey outlined three key interventions:

- Advocates should work directly with for-profit cultural industries and with legislators and regulators. The commercial arts industry is filled with men and women of integrity and vision. The challenge is to work with them before corporate interests solidify cultural policy and copyright for the twenty-first century.
- The nonprofit arts and cultural sector must lead by example, pushing back against the expanding IP footprint. Funders could require that works they fund move immediately into the cultural commons.
- Advocates and funders alike need to define the public interest in

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With these steps, Ivey concluded, grantmakers, artists, and advocates have an opportunity to “rethink our definition of culture and re-imagine our grantmaking strategy in order to nurture expression, secure open communication, and protect our freedoms.”

Copyright Crackdown: How Intellectual Property Law Narrows Creativity and Curtails Intellectual Freedom

Given the arcane technical and policy issues surrounding intellectual property and copyright, it's often difficult to get a sense of how these issues play out in the world. How do copyright restrictions affect how films get made and distributed in the digital age? How do licensing fees shape popular music? How does fear of legal action erode academic freedom and curtail intellectual inquiry? Four panelists from different fields discussed how copyright crackdown affects their practice. Laurie Racine, president of the Center for the Public Domain, moderated the discussion.

Copyright Clearance: The Filmmakers' Bottleneck

Copyright clearance has cast a long shadow of irony over Jeffrey Tuchman's career as a documentary filmmaker. Thanks to relatively cheap digital technology, Tuchman now owns his means of production. With a digital camera and editing software, he can shoot and edit a film on a shoestring budget. Distribution is easier, too. When Tuchman started making documentaries twenty-five years ago, PBS was his sole venue. Now, distribution channels are everywhere: DVD's, cable networks, Netflix, and the Internet. "Not only is it easier for me to make what I want to make, it's easier for me to find someone who will get out what I make," he said.

And yet it is in many ways harder to make a film today than it was twenty-five years ago. "There's this bottleneck," Tuchman said. "And that bottleneck is copyrights." When Tuchman started working, copyright clearance for archival material—film clips, still photos, music—represented about five percent of his costs. Today they are twenty-five to fifty percent. What's more, because each copyright must be negotiated independently, the final product is governed by the lowest rights term. "It's like Mission Impossible: this tape will self-destruct in seven years."

Next, Tuchman screened a short segment from his latest documentary about the civil rights movement. Here was living history—archival footage of African-American children being attacked by Bull Connor's dogs and fire hoses in Birmingham in 1963—interspersed with contemporary interviews of the graying veterans of that struggle. These were the images that shocked the conscience of a nation and led directly to the 1964 Voting Rights Act, and as Tuchman cut back and forth between the interviews and the footage, you could see both the pride and the fear playing on veterans' faces as they recalled their experiences.

When the lights came up, Tuchman sketched out his dilemma. The film we just saw, he explained, was commissioned by the History

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Channel, which did not own the copyright to the archival material. And while he personally might choose to use some of the clips under the fair use copyright exemption, History Channel's lawyers would never go for it. "This is material which, for all intents and purposes, is in the public domain, except that some corporate archive has decided that it owns the rights to it," Tuchman said. It's a chilling example of corporate self-censorship. "The network that commissioned this piece won't permit me to do that"—claim fair use. "That's because their lawyers are not comfortable defending that." And so it may be that because some corporation owns the rights to the images of brutality, struggle, and human courage that were on display in Birmingham that day forty-two years ago, this addition to the historical record of the civil rights movement may never get the public viewing it deserves—and America's historical memory will be poorer because of it.

Technology Liberates, Copyright Incarcerates: Copyright and Musical Freedom

For those wishing to understand both the promise and the peril of digital technology in the music industry, the evolution of hip hop offers an instructive example. A parable even, said Rick Karr, the musician, producer, writer, and host of TechnoPop, a forthcoming documentary series and book project. Back in 1974, when hip hop emerged in the South Bronx and Harlem, it cost an average of \$10,000 to make a record. You needed to get studio musicians, hire an engineer, and rent studio time. And if you wanted to distribute your record, you had to persuade a radio deejay to play it.

Hip hop, Karr noted, threw a wrench in the works. "What is hip hop musically?" Karr asked. "As [folk/hip hop musician] Beck summarized it, hip hop is two turntables and a microphone." Hip hop artists didn't need the instruments and the musicians. They sampled music, remixed it, recorded it, and distributed it to their friends. "It was—and you may have heard this phrase—a peer-to-peer distribution network," Karr said. Thanks to digital technologies, the cost of owning a recording studio has fallen fifty-fold, from \$100,000 in 1974 to about \$2,000 today. Simply put, digital technology has revolutionized the production and distribution of music over the past thirty years.

Yet at the very time when technology has made possible the proliferation of musical voices, expanding copyright restrictions are choking them off. Karr pointed to a pair of court cases from the late 1980s and early 1990s as avatars of a new, restrictive copyright environment. In the first case, Gilbert O'Sullivan sued hip hop artist Biz Markie for reconstructing and using part of O'Sullivan's hit "Alone Again, (Naturally)." In the second case, the art-prankster group Negativland mixed vocal tracks of deejay Casey Kasem with samples from the rock band U2, prompting a lawsuit by U2's label,

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Island Records. (Ironically, the members of U2 condemned the suit, but the record company owned the copyright, and Island's lawyers pushed forward anyway.) As a result of these two cases, copyright clearance is now the industry standard. "Copyright has extended and expanded and bloated to the point where now, suddenly these guys with their two turntables and a microphone can't put any records on that turntable unless they have permission in advance."

Moreover, the issue isn't just about commercial pop music—it's about music as a cultural dialogue. "Hip hop is folk music writ large for the electronic age," Karr said, pointing to the fact that hip hop has made its way into the *favelas* of Brazil and the *kampungs* of Indonesia, where musicians and deejays sample songs and talk to each other in music. "If this form of expression gets choked off, we have lost something important," he continued. "Music is the canary in the coal mine. It was the first form of cultural expression that technology set free." And it is the ground upon which struggle over ideas, expression, and freedom elsewhere—in film and the written word—is being fought.

Illegal Art: Artists Pushing the Boundaries of Fair Use

As the curator of Illegal Art, a website and traveling exhibition of art that run afoul of copyright law, Carrie McLaren has made a career of pushing the boundaries of intellectual property law and interrogating the meaning of fair use. In her presentation, McLaren put up three sketches by the Canadian artist Diana Thorneycroft. The first showed Mickey Mouse, head agog, with a noose around his neck; the second, Goofy with his hands bound in front of him; the third, Barney Rubble supine in a pool of blood. Was this willful copyright infringement or a commentary on the relationship between cartoon violence and real violence? Thorneycroft could not have made her cultural commentary without using pop culture icons—and yet her gallery, fearing a lawsuit, refused to show her work. Another slide showed a quilt by Ai Kajimi: Spiderman surrounded by a swirling vortex of flowers, animals, and assorted pan-Asian psychedelic imagery—a temple, zinnias, butterflies. Was this an embodiment of cultural syncretism, or bald-faced infringement? Is Spiderman the sole property of Marvel Comics, or does the image belong as well to the artist's memory and personal history?

In most cases, McLaren noted, corporations are loath to go after fine artists—but not always. Photographer Tom Forsythe spent two years defending his satirical "Food Chain Barbie" photo series in federal court. Mattel claimed the series, which featured Barbie dolls naked in a blender, wrapped in a tortilla, and frying on a wok, was a trademark violation. Forsythe claimed it was constitutionally protected speech. A U.S. Circuit Court in California eventually dismissed the case, but not until Forsythe had wracked up over

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\$200,000 in legal fees—a steep price to pay for free speech. Mattel’s lead attorney, meanwhile, boasted that she practices law as “deterrence.”

All of these uses, McLaren said, fall under the fair use exemption to copyright protection. Yet the fair use exemption, McLaren argued, is in danger of atrophying from lack of use. Part of what *Illegal Art* does is to educate artists about fair use, and encourage them to use it. “So much of this environment that we’re talking about is based less on actual laws than on habit,” she said. “There’s no law that says a documentary filmmaker has to clear every single clip that’s in their film. But clearing every clip has become the habit in the industry, the habit in television. If we get out of the habit of recognizing fair use then we’re in serious danger.” Fair use, like any other constitutional right, is something citizens must actively exercise if it is to have any value.

Knowledge Held Hostage: How Copyright Law Has Narrowed Intellectual Inquiry

A few years ago, Joseph Turow, a professor at the University of Pennsylvania’s Annenberg School for Communications, was working with the Robert Wood Johnson Foundation to produce a CD-ROM for first year medical students about how television medical dramas influence the practice of real-world medicine. Though it was for nonprofit, non-commercial use, the licensing fees were astronomical. The several minutes of footage Turow licensed cost \$17,500, including \$6,000 for a few minutes of a 1962 “Ben Casey” episode. “Negotiating this was a riot,” Turow recalled. “When I talked to the guy at Viacom and told him this is free, this is academic, this is going to be given for free to medical students, and foundations are supporting it, he said, ‘I don’t care. The academic market may be our next big market.’” But what does it mean when corporate profits take precedence over ideas, knowledge, and learning—especially when there is no direct commercial use? How does the current copyright regime threaten academic freedom and intellectual inquiry?

What does it mean when corporate profits take precedence over ideas, knowledge, and learning—especially when there is no direct commercial use?

These are the questions Turow has been wrestling with lately, and he has emerged fearful for the very future of scholarship. “I honestly believe that if the situation regarding fair use continues as it is, the ability of academics in many fields to challenge people to think creatively about their world, and to even think about social justice and how to present ideas about it, will be so paralyzed as to be nearly useless,” he said. Other examples verged on the absurd. A university refuses to accept a PhD thesis with music attached to it because the music didn’t have copyright clearance. A dance troupe at the University of Texas dances in silence because the dancers couldn’t contact the copyright holders of the music they wanted to accompany the piece. An online journal of media and politics wants

to discuss an interview between Tom Brokaw and President Bush—only the interview is copyrighted by NBC so it can't be posted online without copyright clearance.

The world of ideas exists in a digital platform. “You can't talk about ideas today without talking about television, radio, music, and interviews that show up in this media,” Turow said. The problem is that people are scared. “Robert Wood Johnson did not want to go the route of fair use with me. They said, pay the money. Most academics can't afford to pay, and that's why I'm very concerned with the future of academic scholarship.”

Reform Strategies: How Media Policy Advocates Are Working to Reclaim the Public Domain

Despite formidable obstacles, a small but vigorous constituency comprising technologists, public interest organizations, civil libertarians, grassroots organizers, and consumer advocates has emerged to challenge the prevailing regime of intellectual property law. For most of the past decade, they have been fighting a rear-guard battle against wealthy and politically influential corporate interests who wish to expand the scope and influence of intellectual property and copyrights. But the tide is beginning to turn, as evinced by the growing public concern over media reform and related issues. Independent scholar and author David Bollier guided discussion among five panelists, who outlined effective strategies and innovative approaches to policy change.

Individual Rights and Freedom of Expression: Reframing Public Debate About Copyright and Intellectual Property Issues

How should public interest advocates frame issues of copyright and intellectual property so they resonate with the core values of the American people? What language inspires people to action? What are the principles upon which advocates might build a constituency for reform? These are the questions John Russonello's Washington-based research firm, Belden, Russonello & Stewart, investigated for “Defending Your Right to Read, Listen and Experience in the Digital Age,” an April 2004 focus group analysis and message development brief for the Digital Future Coalition. In presenting the findings, Russonello outlined both the promise and the pitfalls of issue advocacy in this emerging field.

First, he cautioned, any communication strategy is about two things—information and values. Information matters, he went on, but values—“a core set of beliefs that underlie all attitudes and

So where should advocates find their message? First, change the frame from copyright loss to individual rights. “Ours should be a campaign about individual rights and the value of freedom of expression,” he said. Who is Big Brother to tell you your MP3 player is illegal, what you can watch with TiVo, whether you can copy a magazine article you bought online?

behaviors on every issue”—drive how people see the world, what they believe, and how they behave. Responsibility, honesty, fairness, work, spirituality: these are Americans’ core values. And while they at times contradict one another they nevertheless set the terms of debate. Moreover, he cautioned, “You can’t change people’s values. Don’t try. Just try and understand their values, respect them, and look for commonality.”

As for the struggle over intellectual property rights in the digital age, the news is mixed. Russonello’s firm conducted a series of focus groups around the country and found that from a values-based perspective, the advocates of restricted digital rights have a huge head start. “Their message is easy to convey,” Russonello said, referring to the debate over file-sharing on the Internet. “It’s wrong to steal. That’s as old as Moses.” This message is buttressed by the public’s one-sided view of copyright law. “They think the copyright laws are there to protect artists,” not corporate profits. Furthermore, since the Internet has developed as an open network with relatively few controls over information, people can’t conceive of being locked out of the Internet, or how copyright restrictions might actually limit what they see, read, and hear. Conversely, the argument that open access has a social benefit simply doesn’t resonate. People see digital rights as an issue of personal freedom, a perspective that won’t change.

So where should advocates find their message? First, change the frame from copyright loss to individual rights. “Ours should be a campaign about individual rights and the value of freedom of expression,” he said. Who is Big Brother to tell you your MP3 player is illegal, what you can watch with TiVo, whether you can copy a magazine article you bought online? Second, “describe how current politics diverge from tradition and violate personal use or fair use.” Underscore that media giants want to make illegal what has always been legal—and make the case with simple examples. Make it clear that they are the ones asking for the exemption to the law. “Turn around the ownership scheme and use it to advocate for fairness.” And finally, remind people that there are industry-based solutions. With the right examples, he continued, “the public interest position enjoys a huge advantage when it appeals to the values of freedom on this issue”—though it’s harder to get there.

Creating a Constituency for Reform: Legislative and Regulatory Tactics

For the past three years, Public Knowledge, the public interest law organization Gigi Sohn founded, has been fighting a rear-guard battle against what she calls “the content industries”—Hollywood, the recording companies, and large book publishers—who have been pursuing two approaches to expanding copyright law. “The first are attempts to limit the open nature of digital technologies

“If you want to do something affirmative, if you want to roll back some of the bad

through government-mandated copy protection,” Sohn said—essentially telling consumers what machines they can play a CD or DVD on. The second approach is strengthening copyright through legislative and regulatory mechanisms, like increasing penalties for using peer-to-peer networks, or eliminating online privacy protections. The content industries have also tried to expand liability for copyright infringement, making it legal to sue the manufactures and financiers of technologies that induce or facilitate copyright violations. “It’s all about control of the means of distribution. And it’s all about control of content,” Sohn said.

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-Gigi Sohn

What challenges do advocates face? For starters, issues of copyright and intellectual property are both highly technical and highly legalistic. “And that’s a lethal combination,” she said. Second, the constituency for reform is small, limited mostly to artists and “techno-geeks,” as Sohn called the small but vocal community of policy and technology aficionados who care about these issues. This constituency has been sufficient for holding the line, but it is not enough to turn the tide. “If you want to do something affirmative, if you want to roll back some of the bad stuff that’s happened over the last twenty-five to thirty years, you’re going to need more than 100,000 angry geeks.”

Despite recent history, Sohn sees hope for the future of digital rights. She and her allies have used an aggressive communications strategy, staying in constant touch with legislators and the media, to become the mouse that roared. “You have to have daily contact with the press,” she said, adding that conferences and briefings are crucial tools for keeping the media engaged with these arcane issues. The long-term challenge, however, is to build a broader grassroots coalition for reform—a constituency that includes civil and economic libertarians, technology manufacturers and venture capitalists (commercial interests who would be liable for damages if the content industry had their way), and most importantly, consumers. “If you have a simple message that says to people, ‘You are going to lose something, you are going to get sued, your TiVo is not going to work, and your iPod is illegal’—that’s a very, very powerful message.”

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Balancing the Scale: Legal Challenges to Copyright Encroachment

While organizing and advocacy are important tools for the long term, litigation and legal policy work are indispensable tools for here and now. As executive director of the Electronic Frontier Foundation (EFF), one of the field’s leading public interest organizations, Shari Steele has been at the forefront of nearly all of the seminal legal challenges to restrictive digital copyrights. Steele laid out three main strategies EFF has used over the years: legal analysis, threat of litigation, and impact litigation.

Among the three, legal analysis is the most widely used strategy. For example, when DJ Danger Mouse released the Gray Album—a mash up of The Beatles’ White Album with rapper Jay-Z’s Black Album—he touched off a firestorm of controversy. Critics and fans praised the album for its smooth synthesis of rock and rap, but EMI, the copyright holder for the White Album’s master tapes, took a dimmer view. They sent Danger Mouse a cease-and-desist order, which he complied with. But Illegal Art and other activist sites posted the album on the Internet, where it spread like wildfire. As the case grew more complicated and contentious—EMI threatened Illegal Art, as did Sony/ATV which held publishing rights to the Lennon/McCartney compositions—EFF’s legal analysis persuaded the music companies to back down. (Among other things, EFF pointed out that since there was no copyright protection for sound recordings before 1972, the rights to the White Album could not be infringed upon.) “In many cases, we simply provide information to people so they understand what their legal rights are—and that tends to go a really long way,” Steele said.

“In many cases, we simply provide information to people so they understand what their legal rights are—and that tends to go a really long way,”
-Shari Steele

In other cases, the threat of litigation is sufficient. During the recent presidential campaign, Jibjab.com released “This Land,” a flash animation video set to the tune of Woody Guthrie’s “This Land is Your Land.” When Ludlow Music, the assignee of Guthrie’s rights threatened legal action against Jibjab, its Internet service provider, and the ISP’s bandwidth provider, EFF filed a declaratory judgment on Jibjab’s behalf, and took the additional step threatening to sue Ludlow for copyright misuse. Ludlow quickly settled the case by granting a permanent free license to Jibjab, but not before EFF discovered in the course of its research that Guthrie’s song had fallen into the public domain. Ludlow had not properly re-registered the copyright, a misstep EFF promptly announced to the world.

Copyright has to do with books, scientific information, access to drugs, internal corporate documents, government information—but all these collateral issues get caught up in the debate over file sharing.

Of course, some cases need to be litigated. In the fall of 2003, Diebold, Inc., a leading manufacturer of electronic voting machines, sent out cease-and-desist letters to a pair of Swarthmore College students and their Internet service providers, after the students published emails and snippets of an online discussion in which Diebold employees candidly discussed flaws in their electronic voting systems. The company claimed that the internal documents contained copyrighted material—and that publishing them violated the Digital Millennium Copyright Act (DMCA). Citing fair use, EFF eventually got Diebold to back down—but then took the additional step of suing the company for deliberately making a false claim of copyright infringement, which was itself a violation of DMCA. Deluged by bad press, Diebold quietly settled the case. “This was the first successful use of this particular section of the DMCA, so it was a big precedent,” Steele said.

Access and Livelihood: Reforming Global Intellectual Policy

Law

Yet intellectual property is a global issue, and U.S.-based reformers need to think about the issues in a global context. As James Love, director of the Consumer Project on Technology, noted, the United States is already using international bodies like the World Trade Organization and the World Intellectual Property Organization to urge developing countries to adopt intellectual property laws based on the American model. But developing countries and their allies in the NGO community are beginning to push back. Unfortunately, Love observed, the public debate has been framed in conceptually and ideologically narrow terms. “The problem here is that rock and roll is driving policy,” Love said. Copyright has to do with books, scientific information, access to drugs, internal corporate documents, government information—but all these issues get caught up in the debate over file sharing. “How do you remind people that there is a lot of collateral damage outside of the music area?” he asked.

“We need to combine the idea that there’s access to the work, with the idea that there’s a livelihood for the people who create the work.”

-James Love

One of the countercharges defenders of the current copyright regime level against reformers is that they don’t have a positive vision of what a better rights system might look like. In a recent interview, for example, Microsoft Chairman Bill Gates called critics of the current intellectual property laws “modern-day sort of communists.” And while it would be easy to laugh off such neo-red baiting, Love urged would-be reformers to wrestle with the underlying premise. “We take very seriously the economic problem for the people who are the creators of the work or the producers of the work,” Love said. “We need to combine the idea that there’s *access* to the work, with the idea that there’s a *livelihood* for the people who create the work.” Reformers, he cautioned, have to think about protecting access to ideas and information but also the livelihoods of the people who produce them.

Love points to the debate over drug patents as a possible model. In 1998, Doctors Without Borders approached the Consumer Project on Technology to collaborate in a campaign on pharmaceutical patents in poor countries. “They said, ‘It’s about access to medicine,’” Love recalled. “I said, ‘No, no. It’s more complicated than that.’” It has to do with research and development, economics, patents, the marketing and advertising of drugs. In the end, Love said, the message was simple—access to medicine—even if the underlying system was complicated. “But we didn’t really contest the idea that it cost money to develop drugs. There had to be some business model for funding innovation. We said that’s part of the deal too. It’s both. It’s about R&D, but it’s also about access to medicine.” But in the realm of public opinion, in the framing of the debate, the terms were simple. To oppose the campaign, Love said,

“you had to be opposed to access to medicine”—a politically and morally untenable position.

Love urged reformers of intellectual property law to think similarly. “Now there’s this idea of an ‘access to knowledge’ campaign, where we have I think a very high moral ground, but also a pragmatic interest in things people can kind of understand.” Yet once advocates have claimed the high ground, Love warned, they will have to defend it by developing new economic models to support innovation and remuneration as well as the open exchange of information.

Using the Logic of the Bazaar: Intellectual Property and Global Civil Society

As a software developer for France Télécom, the French equivalent of Bell Labs, Christophe Aguiton has been at the forefront of technological innovation using open source software. As an activist in what he described as the “global justice movement,” Aguiton has tried to use technology to help create a more just, equitable, and sustainable world. The “free software” movement, as open source is also called, is based on the idea that software developers release not only the finished product—a database program, a web browser, an operating system—but also the underlying code that created it. Using what is known as a general public license, anyone may use, improve, or transform the code, so long as the “new” product remains in the public domain as well. Having thousands of minds working on a program, Aguiton explained, leads to better software. “You have fewer viruses. You have fewer bugs in the free license software than in [copyrighted software]. That’s the first thing.”

As an economic model, Aguiton noted, open source software works according to “the logic of the bazaar more than the cathedral.” In the cathedral model, power and authority are centralized and codified by a canon of intellectual property law. You must genuflect before the pontiff and recite the catechism if you want to participate. But the bazaar works according to “the logic of small projects.” No one owns the bazaar, but there you will find the cobbler, the fishmonger, the fruit vendor—all of whom collectively serve the greater good. “And that really changes the rules,” Aguiton said. “If you look at the free software itself—Linux [an operating system] or Firefox [a web browser], or whatever—they are now the main competitors for big corporations like Microsoft.” With better product delivered at zero cost, the economics of open source software shift to services and support.

But what is most exciting about the free software movement is the common ground it shares with the global justice movement. At the end of January 2005, Aguiton said, when over 100,000 activists from around the world will gather in Porto Alegre, Brazil, they will do so

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But what is most exciting about the free software movement is the common ground it

as a self-organizing network of individuals with common interests, shared values, and overlapping skills—the logic of the bazaar. In formulating alternatives to corporate-dominated globalization, the World Social Forum is essentially open-source politics. And in Aguiton’s view, it is crucial that the advocates of intellectual property reform tap into the energy of the global justice movement. “If we want to have global evolution of the public opinion, if we want to convince our friends in the U.S. or Europe or whatever, we have to have the energy of the peace and global justice movement, and we have to have better linkages between these two processes.”

*shares with the
global justice
movement.*

Using the logic of small projects, Aguiton has taken on a practical problem at the nexus of global justice and technology, namely how to provide translation services for activists from over 100 countries speaking scores of different languages. Working with Babels, a network of professional and volunteer interpreters, Aguiton and several colleagues developed Nomad, a set of digital tools that allowed Babels to provide low-cost translations to participants at the World Social Forum. Nomad also allowed Babels to stream proceedings over the web and to create a searchable digital archive. Individual translations carry copyright licenses from Creative Commons, an alternative copyright regime created by Stanford Law Professor Lawrence Lessig that allows rights holders to designate specific, non-commercial uses. But the archive and the underlying technology are free and open. “If we mix this kind of generic tool with a big archive of free content [anywhere in the world],” Aguiton said. “There is a big potential in all this technology and all these tools that are coming from the free software and from the free content process.”

**Conclusion: Towards a Vision of Public Knowledge,
Creativity, and Free Expression**

What will become of the information commons that constitute our shared cultural, artistic, and intellectual heritage if prevailing trends in copyright and intellectual property continue unabated? If pharmaceutical companies don't have to publish their private drug studies, how can other scientists verify efficacy, not to mention build on their knowledge? If broadcast flags on digital television signals prohibit citizens from copying and re-broadcasting committee hearings or congressional debate, how can we have an informed debate on crucial public issues? What will become of cultural and political commentary, satire, and historical memory if artists and filmmakers are too timid to exercise their rights to fair use?

But what would an alternative vision of copyright look like? And how might a constituency capable of realizing that vision take shape? As John Russonello pointed out, the language of the debate is, in many respects, of equal importance to the substance of the debate. The language of reform needs to be the language of individual rights and personal expression. *Why should the government or Big Media control how I listen to music, watch a film, read a book?* Citizens will respond, but they need to see more concrete examples like those presented here—*how copyright crackdown affects the films they see, the music they hear, the ideas they have access to.* As Bill Ivey, Gigi Sohn, and Shari Steele all pointed out, the ideological lines of the debate are still fluid and a constituency for reform is beginning to take shape.

The stakes are high. After all, where would rock and roll be without the blues musicians who came before them? The Beats without Walt Whitman? Cubism without the influence of African art? Disney films without Mother Goose? All of these drew on the rich wellspring of ideas in the public domain. Unless we regain the balance between licenses, copyrights, patents, and the public domain, we run the risk of stifling economic innovation, scientific progress, artistic expression—and perhaps even the practice of democracy itself.

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Securing Our Rights to Public Knowledge, Creativity and Freedom of Expression

The first in a three-part series of funder briefings entitled

DEMOCRACY AT STAKE? CURRENT ISSUES IN ELECTRONIC MEDIA POLICY AND THE
FUTURE OF THE PUBLIC SPHERE

Organized by Grantmakers in Film and Electronic Media's Working Group on Electronic Media Policy and co-sponsored with Funders Network on Trade and Globalization; Grantmakers in the Arts; and the New York Regional Association of Grantmakers.

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Speakers Biographies

Christophe Aguiton (Paris, France) is a researcher and developer for France Télécom, specializing in "innovations ascendantes" (bottom up innovations), free software, blogs, and the emergence of networks. Aguiton is a founder of the union Solidaires Unitaires Democratiques, which emerged from France Télécom, the Syndicat National de Chemin de Fer and other the communication unions within the Confederation Francaise Democratique du Travail. A founder of the anti-unemployment movement AC!, and of the Association for the Taxation of Financial Transactions for the Aid of Citizens, Aguiton is also a member of the International Council of the World Social Forum, and has helped guide the forum's work since its inception in 2001. Aguiton is co-founder of Babels (<http://www.babels.org>), a network of volunteer interpreters that has emerged out of the World Social Forum process, and of Nomad (<http://www.apo33.org/babels>), an international network of people committed to putting essential communication technologies into the public domain.

Alison R. Bernstein (New York, NY) was appointed the Ford Foundation's Vice President for the Knowledge, Creativity and Freedom Program (KC&F) in 1996. She joined the Foundation in 1982 as a Program Officer and subsequently served as Director of the Education and Culture Program from 1992-1996. A former Associate Dean of Faculty at Princeton University, Bernstein is the author of *American Indians and World War II: Towards a New Era in Indian Affairs* (University of Oklahoma Press, 1991; paperback, 1999); with Virginia B. Smith, *The Impersonal Campus* (Jossey-Bass, 1979) and, with Jacklyn Cock, *Melting Pots and Rainbow Nations: Conversations on Difference in the U.S. and South Africa* (University of Illinois Press, 2002). Bernstein has published articles in the Teachers College Record, Signs: A Journal on Women and Culture, The Chronicle of Higher Education, and Tikun on issues related to students; transfer from community colleges to four-year institutions, access to higher education for women and minorities, diversity on campus, and the impact of women's studies. She was also an Executive Editor of Change Magazine, and currently serves on the Board of Advisors of the National Museum of American History, Smithsonian Institution, and as Presidential Advisory Board Member on Tribal Colleges and Universities. Bernstein graduated from Vassar College, and received a Ph.D. and an M.A. in history from Columbia University.

David Bollier, (Amherst, MA) is an independent strategist, journalist and consultant with a varied public-interest portfolio (<http://www.bollier.org>). Much of his work revolves around progressive public policy, digital media and the commons. Bollier is co-founder and board member of Public Knowledge, a public-interest advocacy organization that represents the public's stake in copyright, digital technology and Internet issues. He is a Senior Fellow at the Norman Lear Center at the USC Annenberg Center for Communication, where he heads the Creativity, Commerce & Culture project, and a Fellow at the Tomales Bay Institute, a think tank devoted to the commons. Much of Bollier's recent work has been focused on developing a new analysis and language for reclaiming the commons, a project that began with his 2003 book, *Silent Theft: The Private Plunder of Our Common Wealth* (Routledge). He has written a number of essays and reports about the commons, and recently launched an Internet portal, On the Commons (<http://www.onthecommons.org>) hosted by the Tomales Bay Institute. Bollier is the author of a forthcoming book, *Brand-Name Bullies and Their Quest to Own and Control Culture* (John Wiley & Sons), a collection of stories about outrageous extensions of intellectual property law.

David Haas (Philadelphia, PA) is chair of the steering committee of Grantmakers in Film and Electronic Media (www.gfem.org), an association of grantmakers committed to advancing the field of media arts and public interest media funding, and which serves as home of the Working Group on Electronic Media Policy. In addition, Haas serves as board chair of the William Penn Foundation, a regional grantmaker focusing on the greater Philadelphia area, and as a Trustee of the Phoebe Haas Charitable Trust "B", which supports a range of 501(c)3 charitable organizations, including media projects. From 1989 to 1997, Haas worked as coordinator of the Philadelphia Independent Film/Video Association (PIFVA), a service organization for independent film, video and audio makers based in the greater Philadelphia area.

Bill Ivey (Nashville, TN) is the Director of the Curb Center for Art, Enterprise, and Public Policy at Vanderbilt University (<http://www.vanderbilt.edu/curbcenter>), an arts policy research center with offices in Nashville, Tennessee and Washington, D.C., as well as the Director of the Center's Arts Industries Policy Forum. Ivey also serves as Facilitator for Leadership Music, a music industry professional development program, and chairs the board of the National Recording Preservation Foundation, a federally-chartered foundation affiliated with the Library of Congress. From May, 1998 through September, 2001, Ivey served in the Clinton-Gore Administration as the seventh Chairman of the National Endowment for the Arts, a federal cultural agency. Prior to government service, Ivey was director of the Country Music Foundation in Nashville, Tennessee. Ivey was twice elected board chairman of the National Academy of Recording Arts and Sciences. He holds degrees in History, Folklore, and Ethnomusicology, as well as honorary doctorates from the University of Michigan, Michigan Technological University, Wayne State University, and Indiana University. Ivey is a four-time Grammy Award nominee (Best Album Notes category), and is the author of numerous articles on cultural policy, folk, and popular music.

Rick Karr (Brooklyn, NY), is writer and host of *Technopop: How Technology Makes and Un-Makes Popular Music*, a forthcoming television documentary series and book project (<http://www.technopop.org>). He is currently on leave from National Public Radio News, where he has been a Cultural Correspondent since 1999. Karr is an adjunct professor at the Columbia University Graduate School of Journalism and began writing **TechnoPop** as

a book-length history during a 2004 residency at the MacDowell Colony in Peterborough, NH. Over the past five years, Karr has been reporting on culture and technology for NPR from New York and working as a correspondent to the PBS show *NOW with Bill Moyers*. In 1998 and 1999, he hosted the NPR music and culture magazine show *Anthem*. Prior to that, he was a general assignment reporter at NPR's Chicago bureau. Rick has written about culture, technology, and pop music for *New Musical Express*, *Sounds*, and *Stereo Review*. Rick is a longtime musician, record producer, recording engineer, and songwriter.

Becky Lentz (New York, NY) is Program Officer for electronic media policy at the Ford Foundation. In that capacity, Lentz directs a 3-year initiative called "Reclaiming the Public Interest in Electronic Media Policy in the U.S." that focuses on seeding the development of a 'field' of sustainable institutions, organizations, coalitions, and networks that can advance the public interest over the long term. The initiative seeks to nurture the evolution of a diverse interdependent cluster of organizations serving key functions in this new field, from legal and regulatory work to organizing, research, strategic communications, and monitoring/watchdog activities. As a practitioner, advocate, and academic, Lentz brings to Ford more than 20 years of combined experience in the information services industry, state and local government, the nonprofit sector, and most recently in academia. As a grantmaker, she is a member of the steering committee of Grantmakers in Film and Electronic Media and chairs its newly-formed working group on Electronic Media Policy.

James Love (Washington, D.C.) is Director of the Consumer Project on Technology (CPTech). CPTech (<http://www.cptech.org>) is active in a number of issue areas, including intellectual property, telecommunications, privacy and electronic commerce, plus a variety of projects relating to antitrust enforcement and policy. Since 1991, Love has been active in issues involving health care and intellectual property. He also works on various e-commerce projects, including those relating to new institutions or systems to deal with cross border issues, including the proposed Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters.

Carrie McLaren (Brooklyn, NY), is editor and publisher of Stay Free!, a magazine of media and consumer culture (<http://www.stayfreemagazine.org>). She is also organizer and curator of *Illegal Art: Freedom of Expression in the Corporate Age* (<http://www.illegal-art.org>), an exhibit of nearly 70 works in diverse media that push the legal fringes of intellectual property in our corporate age. Previously McLaren was a producer and the Director of Advertising at Matador Records.

Laurie Racine (New York, NY) is a Senior Fellow at the Norman Lear Center. She is currently President of two non-profit corporations and co-director of the Lear Center's Creativity, Commerce & Culture project. Racine is the President of the Center for the Public Domain (<http://www.centerforthepublicdomain.org>), a private foundation endowed by the founders of Red Hat, Inc. devoted to exploring the balance between intellectual property rights and freely reusable knowledge that is the basis of our cultural and scientific heritage. During her tenure, she co-founded Public Knowledge, a Washington, D.C., based public interest group that is working to sustain a vibrant information commons. She is also President of Doc Arts, Inc., which produces the Full Frame, formerly DoubleTake, Documentary Film Festival in Durham, North Carolina. Prior to joining the Center for the Public Domain, Racine was the Director of the Health Sector Management Program in the Fuqua School of Business at Duke University.

John Russonello (Washington, D.C) is a principal at Belden, Russonello & Stewart (<http://www.brspoll.com>). Since 1988, Russonello has conducted research and developed message strategies for political candidates, and many non-profit organizations and associations. As a researcher and writer, he is much sought after for research-based strategic advice, message development, and communications planning. Russonello's research, writing, and consulting have helped organizations involved in environmental, civil rights, education, and other social change issues to listen to the public and communicate in new ways to advance their goals. Before joining Belden, Russonello & Stewart, Russonello had a political consulting practice and was press secretary and speechwriter for House Judiciary Committee Chairman Peter Rodino. He received a BA, cum laude with honors in political science, from Drew University.

Gigi Sohn (Washington, D.C.) is the President and Co-Founder of Public Knowledge (<http://www.publicknowledge.org>), a nonprofit organization that addresses the public's stake in the convergence of communications policy and intellectual property law. Sohn previously served as a Project Specialist in the Ford Foundation's Media, Arts and Culture unit. In that capacity, she developed the strategic vision and oversaw grantmaking for the Foundation's first-ever media policy and technology portfolio. Prior to joining the Ford Foundation, Sohn served as Executive Director of the Media Access Project (MAP), a Washington, DC based public interest telecommunications law firm that represents citizens' rights before the Federal Communications Commission and the courts. In recognition of her work at MAP, President Clinton appointed Sohn to serve as a member of his Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters ("Gore Commission") in October 1997. In that same year, she was selected by the American Lawyer magazine as one of the leading public sector lawyers in the country under the age of 45. Sohn holds a B.S. in Broadcasting and Film, Summa Cum Laude, from the Boston University College of Communication and a J.D. from the University of Pennsylvania Law School.

Shari Steele (San Francisco, CA) is the Executive Director of the Electronic Frontier Foundation (EFF), the premier civil liberties organization of the online computer world. She comes back to EFF (<http://www.eff.org>) after co-founding another nonprofit organization called Bridges.org, which works to ensure sound technology policy in developing nations. For nearly eight years, Steele was Director of Legal Services for EFF. Steele advised individuals and attorneys on issues such as freedom of speech on the Internet and privacy of electronic mail. Steele has written amicus briefs and participated on the legal teams on several precedent-setting cases for electronic communications, including ACLU v. Reno II (the case now pending before the 3rd Circuit Court of Appeals challenging the Child Online Protection Act), and Bernstein v. Department of Justice, (where the export control laws on encryption were found to be unconstitutional). Steele has spoken about civil liberties law in newly emerging technologies on the CBS Evening News with Dan Rather, C-SPAN's Washington Journal, The Today Show, CNN, the BBC, and National Public Radio's Morning Edition, All Things Considered and the Diane Rhems Show.

Joseph Turow (Philadelphia, PA), is Robert Lewis Professor of Communication at the University of Pennsylvania's Annenberg School for Communication and Director of the Information and Society division of the Annenberg Public Policy Center. He is the author of more than 50 articles and 8 books on mass media industries. His continuing work on

the internet and the family and the internet and information privacy has received a great deal of attention from the popular press as well as the research community. Turow has written about media in the popular press, including *American Demographics* magazine and *The Los Angeles Times*. His research has received financial support from the Robert Wood Johnson Foundation, the Kaiser Family Foundation, Federal Communications Communication, and National Endowment for the Humanities, among others. The winner of a number of conference-paper and book awards, he was a Chancellor's Distinguished Lecturer at LSU during Spring 2000.

Jeffrey Tuchman (New York, NY), is an award-winning documentary producer and director, and founder of Documania Films (<http://www.documaniafilms.com>), a New York City-based independent documentary production company. Tuchman has over 30 films to his credit which have aired on A&E, PBS, ABC, Discovery/TLC, Court TV, CBS, MSNBC and HBO among others. During the past two decades, Tuchman has made documentaries on issues as far-ranging as AIDS policy, Teen Gambling, and the HMO crisis, and characters as diverse as a polygamist in Utah dying of cancer, a sixteen year-old heroin addict, and a White House photographer. He holds a faculty appointment at the Columbia University graduate school of Journalism where he teaches documentary filmmaking.

Margaret B. Wilkerson (New York, NY) is Director of Media, Arts and Culture at the Ford Foundation and is responsible for the Foundation's global programs in these fields. She is also Professor Emerita at the University of California at Berkeley. In 1998 she joined the Ford Foundation as a Program Officer in Education, Knowledge and Religion. At Berkeley, she served as Director/Chair of the interdisciplinary Graduate Group in Dramatic Art, Chair of the Department of African American Studies, and Director of the Center for the Study, Education and Advancement of Women. Under her leadership, two new doctoral programs were developed and approved—in dramatic art and African American Studies. She received her M.A. and Ph.D. in dramatic art from Berkeley. Her research interests are the historical and cultural dimensions of theater; her book, *9 Plays by Black Women*, was the first anthology of its kind. She is currently completing a literary biography of the playwright Lorraine Hansberry using, among other sources, Hansberry's private unpublished papers. Margaret has published articles on women in American theater, American theater history, women and work, and educational equity.

About GFEM

Grantmakers in Film and Electronic Media (GFEM) is an association of grantmakers committed to advancing the field of media arts and public interest media funding. As an affinity group of the Council on Foundations, GFEM serves as a resource for grantmakers who fund media programming, infrastructure and policy, as well as those who employ media to further their program goals. GFEM members have a broad range of interests and approaches, but share the view that moving image media is a vital form of human expression, communication and creativity, and plays a key role in building public will and shaping civil society. GFEM seeks to increase the amount and effectiveness of media funding by foundations and other funders; to increase the use of media in grantmakers' and grantees' work; and to raise the broader foundation community's understanding of current media policy and trends, as they affect funders' work and the larger grantmaking community. (www.gfem.org)

GFEM's **Working Group on Electronic Media Policy** brings together funders with a commitment to building and sharing knowledge about issues in media policy, as well as to work collectively toward advancing the media policy community as a whole.

About the Author

Neil F. Carlson is a writer and consultant working at the nexus of strategic communications and knowledge management. Neil specializes in producing thoughtful, engaging, well-crafted products—articles, reports, white papers, case studies, and conference and symposium reportage—that help clients shape opinions, tell their stories, and leave their mark. In his knowledge management practice, Neil draws on his background in journalism and organizational development to deliver evaluations that are rigorous, timely, and useful, helping clients to inform practice and improve performance.

A contributing editor to the urban affairs magazine *City Limits*, Neil's freelance work has appeared in *Tompaine.com*, *Strategic Finance*, *The San Jose Mercury News*, *Ford Foundation Report*, *Business Ethics*, *Washington Flyer*, *eWork.com* and *Worth.com*. His consulting clients include the Ford, Rockefeller, Edna McConnell Clark, and Wallace foundations; Local Initiatives Support Corporation; and the Association for Neighborhood Housing Development.