

COMMUNIA

International Conference on the Public Domain in the Digital Age

Louvain-la-Neuve, 30th June 2008
Mark Isherwood

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General background

Project Objectives (1)

- ▶ To estimate the number of works in the public domain in the EU for published works, such as literary or artistic works, music and audiovisual material
- ▶ To calculate approximately the levels and ways of use of the public domain material and to highlight the main users in the above mentioned sectors
 - ▶ For example identify what is the number and percentage of public domain material that national libraries and national archives hold amongst their collections

Project Objectives (2)

- ▶ To estimate the current economic value of public domain works and estimate the value of the works that in the next 10-20 years are to be released into the public domain and determine any change in its value whilst under copyright and once it is on the public domain
 - ▶ Analyse the consequences of applying different sets of criteria aiming at extending or shrinking the public domain describing the different potential scenarios through a sensitivity analysis

Project Objectives (3)

- ▶ To identify and analyse the current practices for re-use of public domain content held by European cultural institutions and assess their capacity to implement the principles for re-use as established in the Public Sector Information (PSI) Directive
- ▶ To identify and analyse current available mechanisms for voluntary sharing of content and to ascertain the pro's and cons of each mechanism, highlighting the degree of use of the most successful ones and their impact based on relevant indicators

Project Partners (1)

- ▶ Rob Davies, MDR Partners (UK)
- ▶ Martin Katuscak, Slovak National Library
- ▶ Luiss Guido Carli University, Faculty of Law (Italy):
 - ▶ Emanuela Arezzo
 - ▶ Gustavo Ghidini
- ▶ Rufus Pollock, Mead Fellow in Economics at Emmanuel College, Cambridge (UK)
- ▶ Rightscom Limited (UK):
 - ▶ Mark Isherwood
 - ▶ Hugh Look
 - ▶ Sue Sparks

Project Partners (2)

- ▶ Tom Rivers, Rivers Consultancy (UK)
- ▶ Paul Stepan, Austrian Society for Cultural Economics and Policy Studies (Austria)
- ▶ Paul Torremans, University of Nottingham, Faculty of Law (UK)
- ▶ Mikko Välimäki, Turre Legal (Finland)

General points

- ▶ *Exact* delineation of “public domain” would be a major task
 - ▶ Even post-harmonisation
 - ▶ Undertaken some legal “parameterisation”
- ▶ Our delineation of PD uses simple algorithms
 - ▶ e.g. all works of authors who died before 1937
 - ▶ e.g. all sound recordings released before 1957
- ▶ Seeking to obtain general quantitative estimates
 - ▶ No one has done this before!!

Some of the issues

The public domain (1)

- ▶ Public domain material
 - ▶ Has a considerable potential for re-use
 - ▶ The potential to stimulate further development of the information society

- ▶ Addressing policy issues
 - ▶ That build on public domain material (e.g. digital libraries) or
 - ▶ That have an impact on the public domain (e.g. discussions on intellectual property instruments)

The public domain (2)

- ▶ Need to more clearly distinguish between information
 - ▶ That is freely available for use or reuse from
 - ▶ Material that is not, to increase legal certainty for users

- ▶ Many believe that the public domain is and has been under some pressure
 - ▶ Extension of term of protection (70 years)
 - ▶ Other discussions focussed on the expansion of intellectual property rights

Public sector information (1)

- ▶ PSI Directive (December 2003) Article 2: certain types of content exempted
 - ▶ Documents held by cultural institutions
 - ▶ Museums, libraries, archives etc.
- ▶ Some see exemption as counter to broad direction of Directive
- ▶ Cultural institutions' PSI is seen as catalyst for growth and jobs
 - ▶ 2004 study: 5m+ people in cultural sector (3.1% of total workforce)

Public sector information (2)

- ▶ Digitisation projects under PPP
 - ▶ Generally considered an economic good
 - ▶ Are these in keeping with Article 10 and 11 (non-discrimination and prohibition of exclusive arrangements)?
- ▶ Given cultural information the same as other PSI
 - ▶ For practical, social and economic reasons
- ▶ What distinguishes one from the other?
- ▶ Should additional steps, if any, be taken?

Voluntary sharing schemes

- ▶ International conventions grant copyright automatically
 - ▶ Explicit prior permission from author required for use
- ▶ How can authors make creations easily available for use?
- ▶ Authors can
 - ▶ Waive all their rights and assign the material to the public domain, or
 - ▶ Keep some of the rights and make creations available under certain conditions

Methodologies

Size (1)

- ▶ Size is principally a counting exercise
- ▶ Assuming data exists and *is available*.....!!
- ▶ Each primary category of protected work considered differently
 - ▶ Textual works, musical works, sound recordings, audio-visual works etc.
- ▶ Some further distinguishing may be necessary
 - ▶ Textual works: books, journals, newspapers
 - ▶ Too early to determine if this is necessary

Size (2)

- ▶ Data availability will vary considerably
- ▶ Statistical sampling techniques use to estimate number of works in PD
- ▶ Data gathering going on now
- ▶ Analysis due to start late July
- ▶ Will be an iterative process

Use (1)

- ▶ Preliminary distinction between use and re-use
 - ▶ Use = work exploited in its original form
 - > e.g. re-print of Charles Dickens with no editorial contribution
 - ▶ Re-use = creation of a new work
 - > e.g. music “sampling”
 - ▶ All creations do not fit neatly into the above definitions!

- ▶ Some data from PSI work
 - ▶ But also simple usage such as book lending figures

- ▶ Case studies

- ▶ Possible questionnaire on educational use

Use – music case studies

- ▶ Pre-1957 sound recordings
 - ▶ Sales information for recordings released in 1953 by comparing
 - > For the period up to 31st December 2003 and
 - > For the period from 1st January 2004
 - ▶ Number of new releases of pre-1957 recordings (pricing and sales)

- ▶ “Term Directive composers”
 - ▶ How many new recordings of Elgar, Delius, Holst...
 - > For the period to implementation of term directive and
 - > For the period after implementation of term directive

Value of the public domain (1)

▶ Value means here “the social value”

Value derived by
user
(its employment or
enjoyment) – Cost of
producing the
goods

Value of the public domain (2)

- ▶ Goods with an associated price

User value
(value to user
– price paid)

or

Commercial
value
(Price – cost of
production)

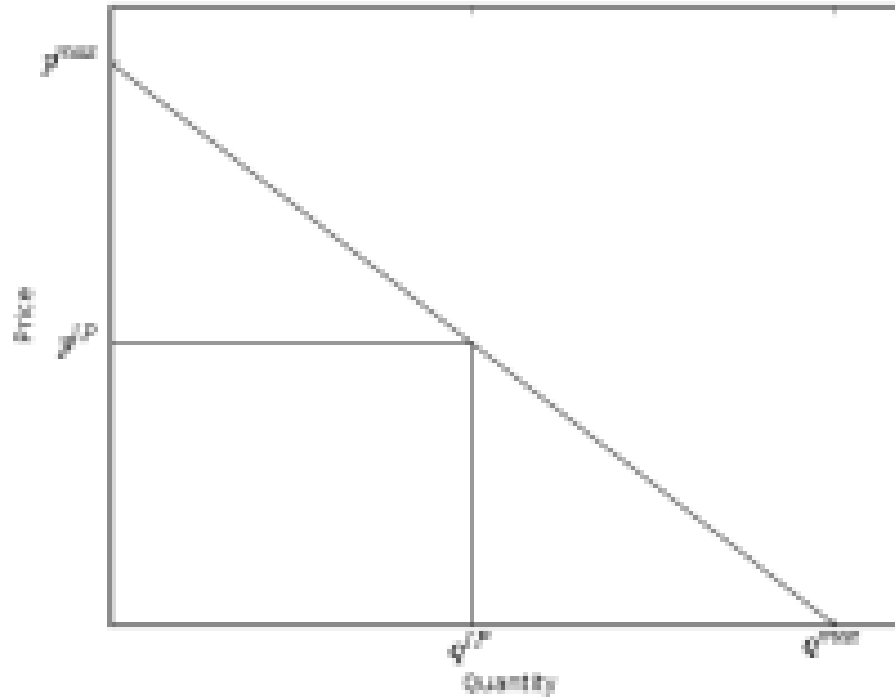
- ▶ Value is quite different from price

Value – an example

- ▶ A novel
 - ▶ In copyright sold for £10
 - ▶ Out of copyright sold for £5
- ▶ The reduction in value is not £5!!
 - ▶ Just that the price has dropped
- ▶ Consumer who valued novel at £15
 - ▶ In copyright gains £5 in value
 - ▶ Out of copyright gains £10 in value
- ▶ Consumer who valued novel at £8
 - ▶ In copyright, did not buy
 - ▶ Out of copyright gains £3 in value

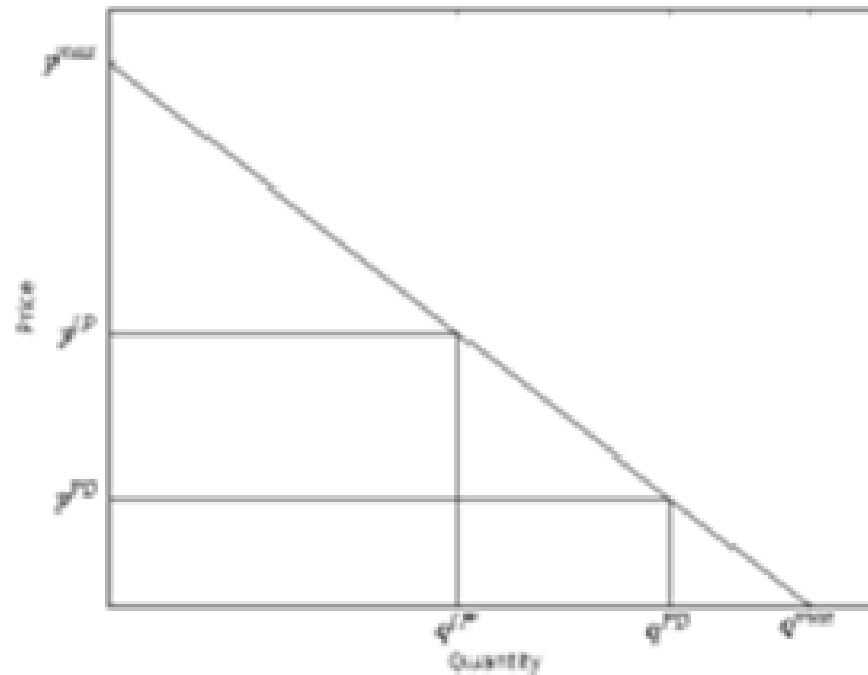
Valuing a work (1)

- ▶ Value of a work is value to each user summed across those who gain access (at that price)
- ▶ Value equal to gross surplus (up to q^{ip}) minus cost of production



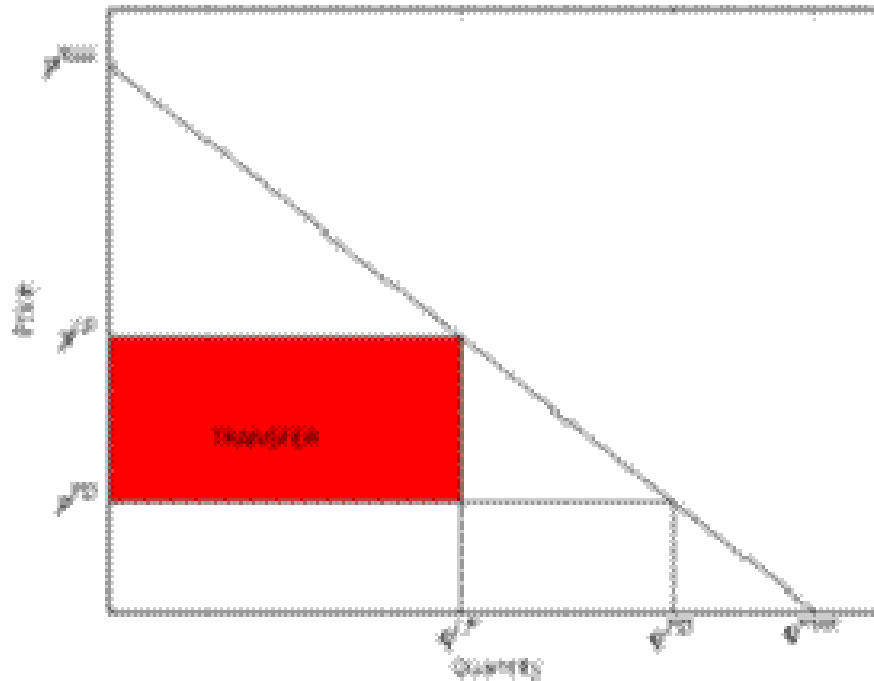
Value of a work (2)

- ▶ Our interest is in value of public domain
- ▶ Price expected to drop (p^{pd}) producing greater sales (q^{pd})



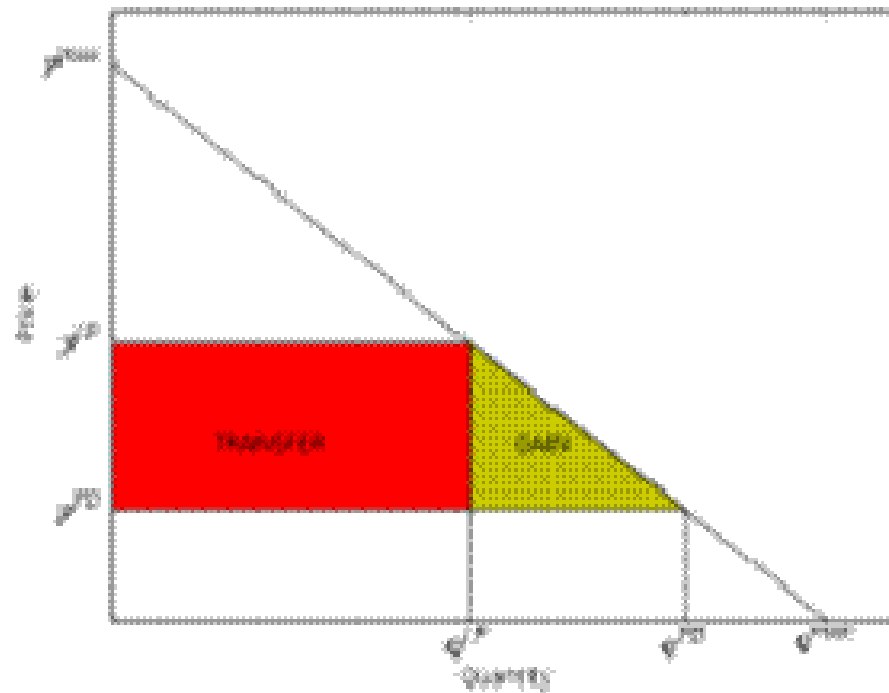
Value of a work (3)

- ▶ Two effects: (1) transfer of value from current owner of exclusive right



Value of a work (4)

- ▶ Two effects: (2) gain in value as new users obtain access to the work



Value of all works

- ▶ Value of public domain is gain from greater access
- ▶ Strictly should also take into account
 - ▶ Reduction in production of work arising from income lost by IP owner (ignored)
 - ▶ PD allows greater re-use (examined in case studies)
- ▶ Next step is to aggregate value of all works!!
- ▶ Focus down on a few key types of works and extrapolate.....

Re-use by cultural institutions (1)

- ▶ Questionnaire compiled
 - ▶ National libraries, museums, archivists
 - ▶ Also for “demand-side”: publishers in particular
- ▶ E-mailed to over 100 institutions
- ▶ Followed by 20 telephone interviews
- ▶ Face to face interviews
 - ▶ Two in each of four cities
 - ▶ Probably London, Paris, Berlin and Warsaw

Re-use by cultural institutions (2)

- ▶ Questionnaire covers:
 - ▶ Understanding of the Directive
 - ▶ Benefits and barriers of being brought into Directive
 - ▶ Mechanisms and reasons for charging
 - ▶ Level of use
 - ▶ Types of licences
 - ▶ Nature of PPP arrangements
 - ▶ Types of content available
 - ▶ Nature of infrastructure to support re-use

Voluntary sharing schemes (1)

- ▶ No criteria for inclusion in study
- ▶ Seeking to measure affect in opening up content for use and re-use
- ▶ Allow readers to make their own decisions
- ▶ Identify principles of the licences
 - ▶ The ways they can be used
 - ▶ How defined and governed
 - ▶ Constraints (e.g. territoriality, limits on certain content types)

Voluntary sharing schemes (2)

- ▶ Some attempt to calculate scale
 - ▶ Empirical information from suitable search engines
 - ▶ Governing bodies (where relevant)
- ▶ Case studies
- ▶ Some attempt to identify economic impact
 - ▶ Identify areas where impact might be seen
 - ▶ Will serve to point to areas for future data collection

Data!!!....

...is the key

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Data requirements (1)

- ▶ Clear definition of nature and type of data required
- ▶ “Open ended” requests will fail
- ▶ Requirements for project partners collected
- ▶ Consolidated into “instruction manual”
- ▶ Identified commercial data aggregators
 - ▶ UK Official Chart
 - ▶ Nielsen Booktrack data

Data requirements (2)

- ▶ Data gathering is in progress
- ▶ Mainly with obvious sources such as national libraries etc.
- ▶ Early indications are that data exists that could be valuable
- ▶ Three issues
 - ▶ Are owners prepared to provide it?
 - ▶ Is it in an electronic form that is useable?
 - ▶ Is there sufficient to make *estimates* viable?
- ▶ No answers to those at the moment.....

A plea!!!

Any suggestions for data sources or any actual data gratefully received

mark.isherwood@rightscom.com

Thank you

Q & A

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