

## DIY<sup>1</sup> Databasing!

### Technical and Legal Aspects of Free Access to Information in so-called "Information Society"

The discussion surrounding free access to information—or rather the limitation thereof—has been going on for quite a while in the "Information Age." The launch of tools like PodCasting, the online hype of recent months, or DAB/DVB<sup>2</sup> are technical developments that are in the process of making the long-discussed concept of "on-demand" a reality. From the Free Media perspective, the most important items on the agenda are the analyses of a technical issue and, as far as the impact of new copyright regulations on the Internet is concerned, of a legal matter: to what extent will we be able to implement freedom of opinion both actively and passively (i.e. access to information, digital rights management (DRM)<sup>3</sup>) in the so-called Information Age? To the same extent as we have in the recent past, or to an unlimited extent as has been conjured up so frequently?

Audio-on-demand is an idea that has been discussed since the mid-'90s. Right now, with the emergence of PodCasting, it is the subject of an initial wave of hype that has swept beyond the tight circle of online freaks. From a technical point of view, this is a plug-'n'-play solution developed for weblogs that resembles RSS: as soon as the MP3 player is hooked up to the computer, the stations that the user subscribes to are automatically loaded. With the aid of a subscription service, listeners don't ever have to miss their favorite shows because they're available at any time on the subscriber's MP3 player. PodCasting (or whichever software one uses) is thus an ideal service for special-interest programs such as those currently being produced on Free Radio. Free Radio stations don't offer programming that totally conforms to a single format; instead, they broadcast an extremely wide variety of individually tailored shows back-to-back. Thus, keeping the same listeners tuned in the entire broadcasting day is not a primary aim. Free Radio stations are optimally prepared for this new development. Extensive swapping of programming is already going on among Free Radio stations via databases these networks operate themselves,<sup>4</sup> so an on-demand service is actually the next logical step.

At the same time, terrestrial digital radio has now begun to establish itself in the US, and digital audio broadcasting, an EU-financed standard that had already been pronounced dead, has recently been celebrating its British-led resurrection. This provides improved reception quality and makes possible supplemental services like audio-on-demand independent of cable hook-ups; furthermore, reception is available over a much wider area, and mobile reception is enhanced by the widest possible range of bands, which cannot currently be matched by UMTS or wireless LANs. For Free Media, this is an attractive development.

Broadcasters in the US are utilizing the IBOC<sup>5</sup> procedure that loads an additional digital signal onto the existing analog AM/FM signal, whereas DAB seems nevertheless to have established itself in Europe. DAB makes use of a totally different frequency band than AM/FM—the L-band. Its coordination for Europe was worked out at the CEPT Planning Conference<sup>6</sup> in Maastricht in 2002. Here, five programs are placed onto a single frequency and broadcast via multiplexer (a multicaster that brings the various different programs and broadcast services onto one frequency). This technique is an expensive, complex procedure and presupposes broadcasting programs over a very broad reception area.

This raises a number of existential questions for Free Radio stations and community radio stations. How are they to manage the considerable additional costs? Will it even be possible for free programming to find an affordable place in the sun alongside public broadcasting companies and commercial stations? Isn't the signal propagation process spread over a far too extensive

area—for instance, for small community radio stations that have to share programming segments with other stations? Finally, won't the individual Free Radio stations lose their technical autonomy when they're forced to become the fee-paying service recipients of large, commercial multiplex operators? And what happens to the FM/AM band that has been used for analog broadcasting up to now?

What's called for here is active media policy. After all, we must proceed from the assumption that digitization ought to contribute to greater diversity of opinion and that technical inadequacies cannot be permitted to determine the media landscape. Must-carry regulations<sup>7</sup> or technical alternatives<sup>8</sup> like Digital Radio Mondial (DRM)<sup>9</sup> have to ensure the future existence of Free Radio stations.

Closely connected with the technical possibilities of terrestrial digitization is content management, technically implemented as a rule by means of online databases. In dealing with content, technological hybridization and network linkage have given rise to unprecedented possibilities of information gathering via access to enormous quantities of information in real time as well as due to totally new possibilities of information processing by means of techniques such as copy & paste, looping and pitching.

In the meantime, these technical developments have also elicited a response in the form of legal rulings. Beginning with the WIPO Conference in 1996<sup>10</sup> and rulemaking by the European Union, an intellectual property regime is being implemented that is designed to protect the certainly justifiable interests of the authors of content on the Internet to an equal extent to what has been accorded heretofore to other forms of content duplication. De facto, however, the aims of these guidelines go far beyond this and actually effectuate more stringently construed property rights. For example, the foremost consequence of protection of digital rights management systems implemented by EU info-guidelines<sup>11</sup> and the Digital Millennium Copyright Act<sup>12</sup> is to drastically restrict the possibilities of using information. The suppression and/or complete abolition<sup>13</sup> of the free usage of works<sup>14</sup> resulting from these regulations as well as strict rules with respect to the newly-created right to make works available for use have completed the job.

Meanwhile, it is now a distinct possibility that the only way to access back issues of a magazine is to pay a fee to use an online archive, since libraries are keeping fewer and fewer hard copies of magazines in storage. The free usage of a work, which has up to now allowed users to make a copy of an article in a library (whereby payment for the copy is considered remuneration for the use) or to at least read it free of charge (in order to at least be able to determine the article's suitability to the user's purposes), is thus no longer applicable. And if the particular magazine happens to be a scientific journal, even a single issue of which costs an arm and a leg, then the right to freely quote limited passages from an article therein falls by the wayside as well for all users who don't enjoy access privileges. This constitutes a massive restriction on both the access to information as well as the possibilities of processing it, and this in spite of the fact that these very same users, as tax-paying citizens, subsidized both the research that was done and the subsequent publication of the findings.<sup>15</sup>

All in all, these developments represent a questionable intrusion upon active and passive freedom of information as well as the imposition of massive restrictions upon human creative potential. After all, artists and scientists never invent everything from scratch all by themselves; rather, they build upon published results and previous creations—by Einstein, Madonna or whomever.

This brings us to the basic principles of intellectual property law. This instrument has been created to provide for remuneration for creative services and to offer economic incentives for investment in creativity as an expression of society's interest in progress. But it is precisely this incentive to creativity that is thwarted by the massive restrictions upon access to information

and the processing of it mentioned above. Moreover, this “creative brake” particularly empowers the control function inherent in it.

Here as well, we face the question of alternatives. How, for example, can free usage of literary or scientific works with respect to DRMs be legally anchored in national law (as is the case in the Federal Republic of Germany though not yet in the Republic of Austria<sup>16</sup>)? How can alliances of interests in the fields of art and culture, science<sup>17</sup> and the (free) media be formed and launched as active initiatives working on behalf of the free reproduction of knowledge in the interest of the general good of society (such as the Creative Archive Licence Group<sup>18</sup> in the UK)? What alternatives are there to an overall system based upon DRM that calls into question—at least as far as the Internet is concerned—the current system of so-called collecting societies<sup>19</sup>? In this context, there must also be a discussion of these collecting societies’ cultural policy mission of redistributing their receipts by means of social and cultural subsidy measures and to thereby also stimulate new creativity.

One of the possible alternatives that would act both to protect the interests of the creators of intellectual property as well as to advance society’s interest in free access to information would be the introduction of a “content flat rate” as proposed by the Electronic Frontier Foundation<sup>20</sup> and Volker Grassmuck.<sup>21</sup> Analogous to the small additional fee imposed on the sale of blank CDs, this would entail collecting a bandwidth-based monthly charge from each Internet user and distributing the receipts in accordance with usage statistics and the cultural policy mission of the collecting societies.

In light of the trends outlined here, Radio FRO is holding the “DIY Databasing!” conference as a means of making a fruitful contribution to the debate about free access to information. It cannot be the political aim of policymaking meant to protect the rights of the creators of intellectual property to cave in to pressure from the entertainment industry and, for instance, to place the entirety of scientific scholarship<sup>22</sup> at the mercy of commercialization and thereby to further exacerbate the concentration of wealth among fewer and fewer hands.<sup>23</sup> The basic principles of our Information Society must by all means be free and unhindered access to information and the freedom to process it further within reasonable limits and framework conditions. Thus, Radio FRO interprets the “DIY Databasing!” title in both an actionist and a politically activist sense: as a call for people to take action on their own, to create realities through their own structures, and to get actively involved in the discussion!

This project has been subsidized by the KUPF Innovation Fund 2005.



- 1 DIY stands for "do it yourself."
- 2 DAB/DVB stands for digital audio broadcasting / digital video broadcasting, systems for terrestrial (i.e. reception via antenna) digital radio/TV.
- 3 DRM systems are technical arrangements that prevent or make it possible to control access to a work or the copying of it.
- 4 E.g. the Cultural Broadcasting Archive (<http://cba.fro.at>) maintained by the Freie Radios Österreich or [www.freie-radios.net](http://www.freie-radios.net) of Freie Radios in Deutschland.
- 5 IBOC = In Band on Channel
- 6 European Conference of Postal and Telecommunications Administrations, <http://www.cept.org>
- 7 Must-carry: multiplex operators are required by law to broadcast at least one non-commercial program in accordance with specified conditions in each of their station's reception areas.
- 8 Cf. "EUREKA! A Solution for Small-Scale Digital Radio," a study by the Dutch Association of Local Radio Stations on the subject of DAB and alternatives to it, at <http://www.olonprogrammabank.nl/publiek/200501753.html> (a summary in English begins on p. 37.)
- 9 DRM: Digital Radio Mondial, a multicasting procedure that resembles IBOC in that it supplements its analog signal with a digital one.
- 10 WIPO: World Intellectual Property Organization, <http://www.wipo.int>
- 11 Guideline 2001/29/EG of the European Parliament and the Council on Harmonization in Special Aspects of Copyright and Related Trademark Rights in Information Society  
[http://www.europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=DE&numdoc=32001L0029&model=guichett](http://www.europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=DE&numdoc=32001L0029&model=guichett)
- 12 Digital Millennium Copyright Act, <http://www.copyright.gov>
- 13 Also see Christine Wildpaner, "The U.S. Digital Millennium Copyright Act. A Challenge for Fair Use in the Digital Age," Vienna 2004
- 14 Rights of free usage of works are limitations on copyright in the interest of educational, scientific as well as private use.
- 15 A whole list documenting the consequences of DRMs has been compiled by the Electronic Frontier Foundation: *Unintended Consequences: Five Years under the DMCA*, [http://www.eff.org/IP/DMCA/20030103\\_dmca\\_consequences.pdf](http://www.eff.org/IP/DMCA/20030103_dmca_consequences.pdf)
- 16 It must be added that under the current legal conditions in Austria the free use of works is indirectly permitted in conjunction with DRMs, since bypassing DRMs is only prohibited in the case of a copyright infringement; since copyright does not apply to a free use of works, it is permissible to bypass DRMs, for instance for private copies. An interpretation conforming to the guidelines, however, would probably require the application of the limited catalogue of exceptions of the InforRl. Whether this interpretation would hold up in court remains to be seen. Cf. Michel Walter in Urheberrechtsgesetz UrhGNov 2003, S 167f. Å§90c 8.
- 17 See, for example, <http://science.creativecommons.org/>
- 18 <http://creativearchive.bbc.co.uk/>
- 19 A guideline designed to regulate collecting societies' rights to exploit intellectual property is currently being prepared in the EU. The commission has long been examining ways to eliminate monopoly-like structures and to make possible competition, at least among the collecting societies themselves. A communiqué of the Commission is all that has been released to date; a proposed guideline is expected in the fall. See [http://www.europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=de&numdoc=52004DC0261&model=guichett](http://www.europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=de&numdoc=52004DC0261&model=guichett)
- 20 Electronic Frontier Foundation: "A Better Way Forward: Voluntary Collective Licensing of Music File Sharing," Let the Music Play White Paper, at [http://www.eff.org/share/?f=collective\\_lic\\_wp.html](http://www.eff.org/share/?f=collective_lic_wp.html)
- 21 Volker Grassmuck: "Alternative Kompensationssysteme," in *Fjff-Kommunikation 4/04*, [http://rayserv.upb.de/fjff/veroeffentlichungen/articles/20044\\_Grassmuck](http://rayserv.upb.de/fjff/veroeffentlichungen/articles/20044_Grassmuck)
- 22 Also see Action Alliance "Copyright for Education and Science" at <http://www.urheberrechtsbuendnis.de>
- 23 See "Digital Rights Management: A Failure in the Developed World, a Danger to the Developing World" at [http://www.eff.org/IP/DRM/drm\\_paper.pdf](http://www.eff.org/IP/DRM/drm_paper.pdf)