

Industry Agenda

Norms and Values in Digital Media Shaping Solutions for a New Era

In collaboration with McKinsey & Company

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Abstract

Governments, businesses and private citizens across the globe are only beginning to understand the profound implications of living in a hyperconnected world. Policies and practices developed in an analogue world are clearly inadequate, and every day there are attempts to write new rules, or challenge existing ones, that relate to privacy, freedom of expression, intellectual property protection and national security. Those who are doing the writing and challenging – principally governments and policy-makers, businesses and trade groups, groups acting on behalf of private citizens and sometimes individual citizens themselves – face immense challenges. Digital media and information often traverse national boundaries; they know no border. But organizations operating across borders must recognize that the users of that information, and their governments, often have different cultural norms and expectations. And those norms themselves are changing as “digital natives” come of age and challenge old orthodoxies. Further, digital technology continues to evolve, making it ever more difficult for anyone to control or regulate the manner and flow of information. As a result, virtually all societies are struggling to balance the interrelated and often opposing interests of governments, businesses and citizens across and within national boundaries.

The purpose of this report is not to provide answers or policy recommendations – at this early stage of the game that would be premature. The purpose is rather to help the major stakeholders – governments and policy-makers,¹ businesses and private citizens – better understand the impact of actions to date: what has worked, what has not, and why some actions have had unintended consequences. The goal is to frame different options so that the stakeholders may see a better path towards their respective and collective interests.

From research, workshops, interviews and case analyses conducted globally over the last year, four overarching observations can be highlighted about the ways in which governments, businesses and citizens have sought to advance and protect their interests in recent years.

This report represents aggregate views gleaned from surveys, research and interviews and does not represent the individual position of any company involved in the project.

¹ The term “government” here refers to governmental bodies, policy-makers and international non-governmental organizations that behave like governmental bodies or policy-makers, except when it becomes necessary to specify those sub-actors of “government” that have divergent intent.

1. Government actions to enforce intellectual property or consumer privacy laws continue to meet with mixed success, and the costs often exceed the benefits. The research indicates that many efforts implemented by governments are not financially sustainable, although the results vary widely by country. For example, in some countries “warning models” have proven to be effective while in others they have not. Governments may benefit more by collaborating with businesses and citizens to better understand what policies may be most effective.
2. Open development and greater industry collaboration are essential for protecting intellectual property, so that artists and rights owners are fairly compensated while also making their work widely available. Business stakeholders – from content creators, aggregators, and distributors, to rights holders and industry associations – often have disparate and competing interests. The research indicates that more common use and adoption of open-source architectures holds broad benefits for industry and consumers. However, even seemingly “open” technology architectures are often shepherded by companies whose economic interests run counter to true openness, which discourages content creators from embracing those values. The solution is wider adoption of even more open architectures than exist today.
3. Protecting consumer privacy and related individual rights is feasible, but the burden falls on digital publishers, data providers and advertisers, and may come at the expense of short-term commercial interests. Consumers want to manage their personal digital data, yet many do not know to what extent industry mines that data for commercial or government purposes. The research indicates that businesses – digital publishers, advertisers and companies that gather personal data and track consumer behaviour – are in the best position to protect individual data. A common platform, one that informs users about what data is taken from them and for what purpose, may facilitate understanding. Some envision a digital “magna carta”, instituted in collaboration with governments, businesses and citizens, that serves to empower consumers to make informed decisions.
4. Governments must clarify the tension and trade-offs, and the commensurate risks, between efforts to protect privacy and freedom of expression. Citizens vigorously protect their rights to produce content and to freedom of expression, but may underestimate or fail to anticipate the impact on government interests. For evidence, look no further than the recent anti-Islamic movie “Innocence of Muslims,” and the violence in the Muslim world following its posting to YouTube. Digital content can circulate globally in an instant, and its impact on the citizenry and on national security is almost as immediate. More and better information may help citizens act with greater awareness of potential consequences.



Overview

Today's hyperconnected world presents new opportunities for people to learn from each other than ever before. It also raises concerns about balancing the differing expectations and interests of governments, businesses, citizens and communities about digital content – its access, consumption and sharing. In recent years, these stakeholders have taken independent actions to protect their interests, with mixed results. Clearly the nature and ease of transferability of digital content implies the need for a more consistent and integrated stakeholder approach that acknowledges these divergent interests.

Accordingly, the World Economic Forum's "Norms and Values in Digital Media" project aims to propose a framework of principles to inform discussion and policymaking in a context relevant to today's hyperconnected world. This progress report has three goals:

- To describe the various stakeholder interests at issue.
- To explore the intent and impact of actions taken by governments, businesses and citizens regarding digital media and information.
- To identify the key success factors that will help each stakeholder group to achieve their aims, such as preserving national security, ensuring individual privacy and freedom of expression, and protecting intellectual property rights.

The Digital World's "Web" of Stakeholder Interests, Influences, and Regional and Cultural Norms

Of the many factors complicating the movement to design a global framework for digital media, the most challenging are the disparate expectations and interests among the primary stakeholders.

Figure 1 summarizes the interests of different stakeholders, the levers to advance each of these interests and some cases in which those levers have been applied. Through a year-long examination, the project sought to evaluate not only whether these actions achieved their desired effects but also whether they had unintended consequences for other stakeholders.

Figure 1: "Stakeholder Interests Framework"



In this context, it is clear that potentially conflicting interests exist, even within each stakeholder group. Governments typically want to support innovation but also must enforce national security and copyright laws. Businesses want to offer easy availability of products and services, but their existence depends on receiving adequate compensation. Private citizens' twin desires for freedom of expression and for privacy are often at odds. Adding to the complexity, various cultures and countries clearly assign different weightings and prioritizations to these interests. In the US, for example, some citizens may be inclined to believe that the right to post an incendiary video such as the Innocence of Muslims trumps any potential national security interests. Yet in many countries, such a video would never have seen the light of day, and its very production would have been a crime. These standards continue to evolve, but as participants in the World Economic Forum's June 2012 Istanbul Workshop noted, the trade-off between freedom of speech on the one hand, and security, content credibility and privacy on the other, is almost universal. Other common trade-offs include privacy versus personal security, and intellectual property protection versus freedom of expression, innovation and creativity.

Without a doubt, digitization is having an immense and positive impact in many places. Based on recent research conducted by the McKinsey Global Institute, Internet-related consumption and expenditure is now bigger than agriculture or energy. The Internet today connects about 2 billion people worldwide and, on average, contributes 3.4% to GDP in the 13 countries² covered by the research – an amount the size of Spain or Canada in terms of GDP and growing at a rate faster than that of Brazil. The Internet brings innovation and efficiency through the ability to reach customers and users regardless of geographic boundaries; facilitates the co-creation of ideas, products, services, knowledge and content by creators anywhere; and is responsible for the open and self-organizing nature of the innovations themselves.

Participants in the Forum's June 2012 Brussels Workshop also identified several trends that make global standards for digital media necessary but difficult to develop. These factors include:

- **Digital media creation and usage have vast differences across the globe:** While it is easy to think of the Internet as a single, monolithic channel, it is seldom experienced in the same way from market to market. Connection speeds, access channels between mobile and computer systems, and relative costs all shape online and digital experiences.
- **Norms vary widely across regions and evolve rapidly:** Over 50% of users surveyed in China, for example, prefer to receive targeted ads based on personal Internet activity, while only 20% to 30% of Europeans want to see such ads. McKinsey's iConsumer survey³ underscores the rapid changes in norms and perceptions across countries and regions, and the wide range of opinions on issues such as the right to online anonymity, targeted online advertising, and the extent to which Web access itself is a right or a service.
- **The pace of innovation poses challenges for regulators:** The rapid pace of innovation generally exceeds every stakeholder's ability to anticipate how quickly innovations will be adopted, and how they will be used individually. As one participant in the Forum's Istanbul Workshop observed, the uprisings in the Arab world showed the limitations of draconian measures against social media. When the Egyptian regime shut down telecommunications, it was technologically unable to block some mobile channels that agitated for revolution. "Regulation must

be nuanced," the participant noted, "taking into account both national security and the right of civilians to express themselves freely and facilitate business." With the swift adoption of mobile and social media globally, the challenge of keeping pace with innovation will only become more difficult. Note, for example:

- In Europe, mobile penetration has outstripped the use of personal computing (PC) devices, with 600 million smartphones and tablets shipped, as against 400 million PCs, in 2012. The Middle East and Africa are also seeing surges in mobile usage: penetration is over 80% in the Middle East while Africa has become the fastest-growing mobile market in the world such that today, mobile accounts for approximately 90% of all telephone connections in the North African region, compared with 63% in 2004.⁴
- Social media shows even more explosive growth. Across Europe, Middle East and Africa (EMEA), social media has become an essential source of information and an indispensable tool for communication that has largely supplanted conventional media and news sources. In Europe, social networks caused a 23% drop in time spent talking on landlines, a 17% drop in short messaging service (SMS) traffic, and an 11% drop in e-mail. In the Middle East, the number of people using social media increased from 95 million to 114 million from January 2011 to March 2012, and citizens spent more time on social websites than on news portals – on average 340 minutes a month in January 2011 as against 401 minutes in March 2012.⁵

These trends underscore how citizens are increasingly "living" online, and using public forums on-the-go to post opinions, provide personal information and share content. The quick pace of adoption raises new questions about how much privacy users can expect when using the Internet, and which laws govern freedom of expression of provocative content. As mobile devices increasingly become the tools of choice for accessing the Internet, security and privacy concerns are getting amplified.⁶ How best to prosecute those who infringe on others' intellectual property rights also remains a top concern for governments, businesses and citizens.

The levers of influence that each stakeholder group holds for advancing and protecting its interests, whether educational, regulatory, legal or for protest, are also in a constant state of evolution. Despite some differences of opinion, most participants at the Forum's Regional Workshops agreed that more education on the rights and risks of digital media use is needed. A theme from the Forum's Istanbul Workshop was that people – particularly younger people – need to better understand the implications of accessing content and posting information online. The research indicates that almost 50% of younger people (13- to 34-year-olds) around the world use social networks, and some believe they would be at a disadvantage socially or professionally if they did not use them (Figure 2).

² See McKinsey Global Institute report entitled "Internet matters: The Net's sweeping impact on growth, jobs, and prosperity". The 13 countries include all G8 countries plus Brazil, China, India, South Korea and Sweden.

³ Please visit project website for full McKinsey iConsumer Survey results: <http://reports.weforum.org/norms-values-digital-media/>

⁴ Source: Dubai Press Club, 2009

⁵ Source: McKinsey iConsumer Survey

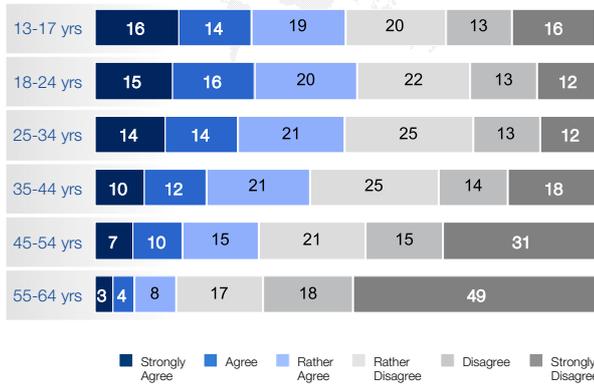
⁶ Source: Georgia Tech Institute Study "Most mobile web browsers unsafe"

Figure 2: “Demographic Reactions to Social Media”

Source: McKinsey iConsumer survey

How strongly do you agree or disagree with the following statements?

“Constantly updating each other on the details of our daily lives is something my friends and I enjoy”



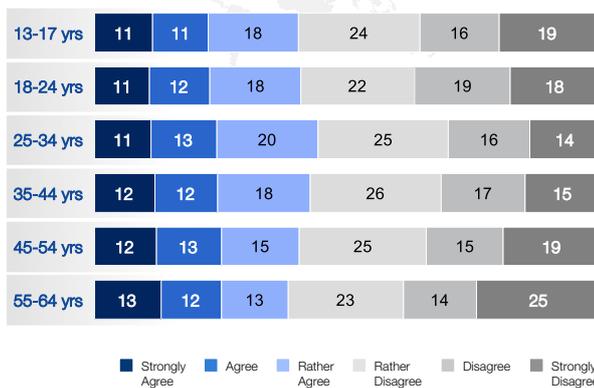
In addition to youth and inexperience as drivers of the voluntary surrender of information on online forums, one participant noted that most citizens in the Middle East are probably not aware of personal data extraction by companies such as Google and Facebook, and McKinsey research confirms this for some regions. The research found that 30%-40% of citizens of all ages in the United States (US), United Kingdom, Russian Federation, Germany, Spain, Netherlands, France, Poland, Italy, China and Brazil generally do not know what personal information about them is available online (Figure 3).⁷

Figure 3: “Demographic Reactions to Data Privacy”

Source: McKinsey iConsumer survey

How strongly do you agree or disagree with the following statements?

“I really don't know how much of my personal information is available to other people online”



⁷ Source: McKinsey iConsumer Survey

The Modest Success of Stakeholder Actions to Protect or Advance Interests

From “three strikes” laws to citizen boycotts and technology innovations, approaches to governing or shaping digital media use have met with mixed success. They have, however, increased awareness of and engagement with the issues at hand.

All stakeholders have attempted to protect and advance their interests. In proposing principles to guide global decision-making, it is useful to evaluate these actions by looking at the original intent and actual impact. This section summarizes notable actions taken by members of each group, but is by no means exhaustive.

A. Governments Take the Lead in Bringing Order to the Digital Universe

Governments and regulatory bodies have made the most visible attempts to address the disparate and at times conflicting rights and interests of the primary stakeholders. Among these, legislation supported by businesses and rights holders is prominent, as are laws designed to protect minors or prevent the dissemination of illegal material such as child pornography. There are, of course, differences in approach across regions. Participants in the Forum’s April 2012 Puerto Vallarta Workshop concurred that existing laws in Latin America do not adequately address copyright and piracy issues. They also said an important step towards reforming laws may lie in reconciling traditional “fair use” provisions with the realities of the digital age.

The US Digital Millennium Copyright Act of 1998 (DMCA) was among the first attempts to allocate rights and responsibilities related to the use of digital media. The DMCA included a mechanism for rights owners to ask online service providers (OSPs) to issue “takedown” notices to alleged infringers of copyright. However, these provisions often fed anti-competitive behaviour, or were simply impracticable. A search engine in US estimated that more than half of the takedown notices it received under the DMCA (57%) were sent by businesses targeting competitors, and over a third of notices (37%) were not valid copyright claims.⁸ Thus, while the intent of the DMCA to provide a “safe harbour” for OSPs was sound, the results were mixed.

Other governments have learned from the DMCA experience and have retooled their regulatory frameworks for the digital age. Their efforts have included:

1. “Three strikes” laws adopted to enforce copyright in the online environment, and to provide a more cost-effective way to uphold valid copyright claims. Such laws require that three notices be sent to infringers before legal action is initiated.
 - France’s Hadopi Law (Creation and Internet Law) of 2009: The Hadopi law was intended as a means to protect intellectual property rights in online environments. Under the law, the rights owner identifies the infringement and informs Hadopi (a government bureau named after the law). Hadopi then verifies the infringement and contacts the Internet service provider (ISP) to identify the Internet protocol (IP) address owner. After verification, the first of potentially three warning messages is sent to the IP-address owner. The Hadopi law appears to have had a positive impact by reducing piracy and increasing legal downloads in France to an extent (Figure 4).⁹

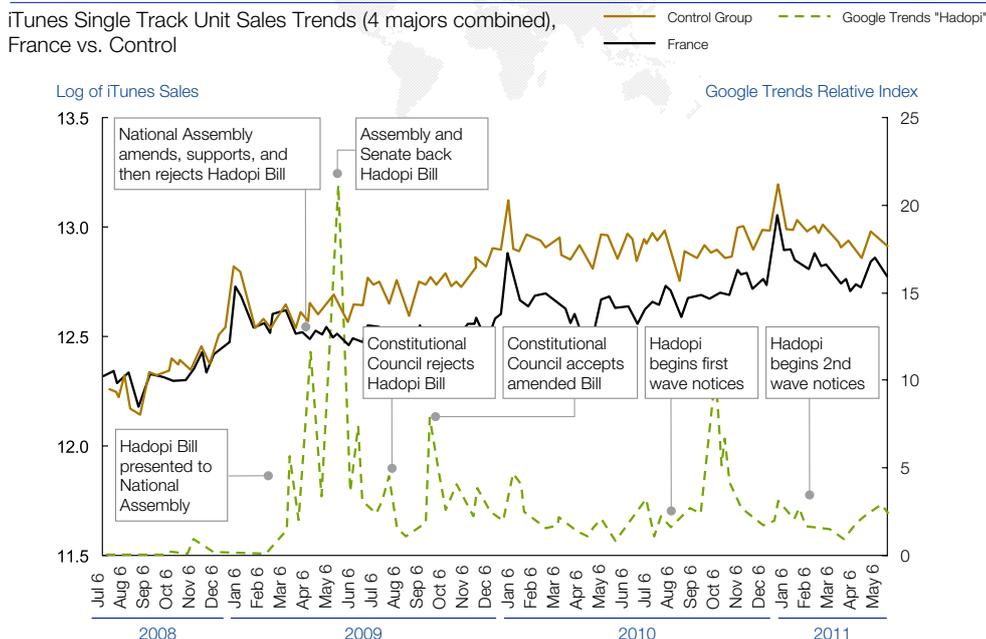
⁸ Source: New Zealand PC World

⁹ The effect of Graduated Response Anti-Piracy Laws on Music Sales, research by Carnegie Mellon, Michael D. Smith

Figure 4: HADOPI Succeeds in Increasing Legal Downloads

Source: http://papers.ssm.com/sol3/papers.cfm?abstract_id=1989240, based on research by Carnegie Mellon

Impact observed – Carnegie Research shows 25% higher growth in revenue from iTunes sales in France vs. other EU benchmarks (control group)



- New Zealand’s Copyright Infringing File Sharing Amendment Act of 2011: New Zealand’s act differs from the Hadopi law in several important ways. Rights owners pay a fee to ISPs to investigate each claim of infringement as well as to the government if litigation ensues. They also make the ultimate decision to proceed with a copyright enforcement action. If no action is taken, any previous notices against the alleged

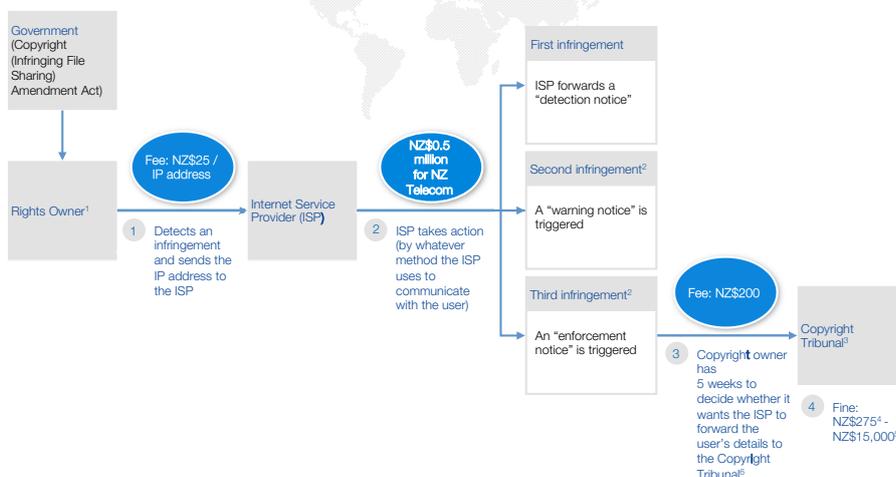
infringer are voided. Finally, the copyright tribunal can impose stiff penalties on the guilty of up to NZ\$ 15,000. Figure 4 details the notice and enforcement process under the New Zealand law (Figure 5).¹⁰

¹⁰ BBC, 2012

Figure 5: New Zealand’s “Three Strikes” Law Seeks to Distribute the Costs of Enforcement Actions across Rights Owners, ISPs and Infringers

Source: Copyright (Infringing File Sharing) Amendment Act 2011; 3strikes.net.nz; Press

The rights owner initiates the process of detecting the pirating users



1 A copyright owner or a person acting as agent for one or more copyright owners
 2 Between 28 days and 9 months later
 3 A review of the legislation will take place in 2013; including an assessment whether to allow district courts to suspend an internet account for up to 6 months
 4 Reimbursement to the rights holder
 5 This excludes the process to challenge a notice
 6 If no action is taken, users will be back on a clean slate of “zero strikes”

Both of these three strikes laws have had some short-term success in decreasing illegal downloads, but the long-term impact is uncertain given limited use and enforcement due to high administrative costs, costs to claimants and rejection by consumer associations and the Internet community at large. The future of Hadopi, in particular, is uncertain as the enforcement commission may have its funding reduced dramatically as a result of the government's ongoing austerity measures. Further, Hadopi only targets peer-to-peer (P2P) downloading and no other types of practices such as streaming and direct downloading from commercial "illegal" sites.

The Recording Industry Association of New Zealand (RIANZ) reports that illegal downloads have now plateaued after dropping; the government claims that over 60% of P2P service users now refrain from copyright-infringing activities, but that leaves nearly 40% who continue to act illegally. As of mid-2012, only three users had received a final third strike enforcement notice under the New Zealand law, and all three notices had lapsed with no action taken.

Stiff penalties have not been imposed under either law, which may impair their deterrent function and make self-funding impractical. Costs of enforcement remain high: some ISPs claim that the cost of issuing notifications needs to be reduced to a few cents per claim (compared to the current US\$ 25 imposed by New Zealand) before it makes financial sense to pursue claims.

2. Increased monitoring of online activity by governments to limit access to inflammatory content, identify political dissenters, or disrupt organized protests that might present challenges to national security or stability. Five examples stand out:

- **Content bans in China:** China and foreign search engines have an ongoing disagreement about the government's monitoring of e-mail and search traffic. China bans certain content and blocks access to some websites, while an Internet police force confronts and even arrests those suspected of violating the bans. Such government actions to protect national security generally come at the expense of citizens' freedom of expression and companies' market participation. Consumers may not always be aware of the monitoring, however. When asked if they agreed with the statement "I am very careful about what I do or say on the Internet," more than 70% of respondents in India agreed, while only 43% of respondents in China agreed.¹¹ The US-based search engine, Google, decided to shut down its mainland China operations in 2010 rather than comply with laws requiring censorship of searches or government requests to reveal e-mail user or blogger identities. Chinese-originated search engines adhere to the policies, and major Chinese players, including Tencent, Baidu.com, and Sohu.com outperform Google (page views are approximately 260,000, 240,000, 230,000 vs 100,000 respectively as of April 2012)¹², even though Google dominates the page view ranks in most other countries.
- **Monitoring in the United Kingdom:** In the wake of riots in 2010, the United Kingdom government announced plans to increase surveillance of social media and e-mail traffic to identify and quell terrorist and illegal activity. Some countries, such as Morocco and Tunisia, have set up public entities to control and regulate personal data on the Web.¹³
- **E-mail routing in India:** Participants in the Forum's November 2012 New Delhi Workshop cited some examples of wrangling between government monitors and Internet

companies. The government requires Internet portals to have a physical location on Indian soil through the "IT Rules 2011." Foreign companies that offer e-mail services, including Yahoo! and Google, are now expected to route e-mails via local servers. For the moment, Yahoo! is routing e-mails via servers based in India only for online accounts registered in India. E-mail addresses for accounts registered abroad are routed through overseas servers so that Indian security services cannot inspect them without a country-to-country request.¹⁴

- **Content bans in India:** Additionally, participants at the Forum's New Delhi Workshop discussed the balance between national security and preserving freedom of expression for their citizens. The IT Rules 2011 require the removal of any content deemed "defamatory", "hateful", "harmful to minors", or that "infringes copyright". This has turned technical intermediaries into Web censorship police informants. The Internet and Mobile Association of India (IAMAI) argues that the regulations are impeding India's social network development. As an outcome of this act, in August 2012, the Indian government blocked more than 300 specific uniform resource locators (URLs), including the domains of Facebook, Twitter, YouTube, BlogSpot, Wikipedia, and *The Times of India*.
- **Right to data portability/right to be forgotten in the EU:** The EU's Data Protection Regulation, adopted by the EU Commission in January 2012, gives citizens a "right to data portability" when they leave one site to join another. Also, the Regulation establishes a "right to be forgotten", which mandates that people should have the right for their data to be deleted by a site if there is no legitimate grounds for retaining it. Crucially, the regulation requires informed consent (i.e. an affirmative opt-in by individuals) before commercial services can process data stored in digital files. Compliance with the EU's proposal for a General Data Protection Regulation would cost the United Kingdom between £100 million and £360 million a year.¹⁵

3. Education efforts and awareness campaigns. In addition to regulating the protection of copyrights, some governments have undertaken extensive education campaigns to reduce piracy and raise awareness of legal issues.

- **US National Crime Prevention Council (NCPC) efforts:** This initiative, launched in late 2011, focuses on all aspects of intellectual property theft, from counterfeit consumer goods and pharmaceuticals to illegal downloads and other pirated media. The campaign equates intellectual property theft to stealing and connects it to such illegal activities as child labour, drug trafficking and violence. The campaign has been criticised by some as sensationalistic, but supporters in both government and business cite the need to educate citizens about the economic and human impact of IP theft.
- **Intellectual Property Rights National Awareness in Saudi Arabia:** In the Middle East, cross-industry organizations such as the Arabian Anti-Piracy Alliance (AAA) support initiatives to deal with piracy at the local government level. In March 2012, ministers in Saudi Arabia prohibited ISPs and data centres from offering services to subscribers and PC users without first reviewing the applicant's programme licences as a preventive move against dealing with users of unauthorized or copyright-infringing computer programs.¹⁶

¹¹ Norms and Values in Digital Media survey, ComScore/World Economic Forum, September 2012

¹² ComScore database

¹³ The "Comission de contrôle de protection des données personnelles" in Morocco and the "Instance nationale de protection des données à caractère personnel" in Tunisia

¹⁴ Internet Enemies 2012 – Reporters Without Borders

¹⁵ United Kingdom Parliamentary Under-Secretary of State, Ministry of Justice

¹⁶ MENA FN, 2012 - <http://www.menafn.com/menafn/1093497236/Saudi-Authorities-step-up-antipiracy-drive>

4. The World Conference on International Telecommunications (WCIT) convened in December 2012 to review the International Telecommunications Regulations (ITRs), which date from 1988. This landmark conference reviewed current ITRs, which serve as binding global treaties designed to facilitate international linkage of information and communication services, and ensure their efficiency and widespread public usefulness and availability. Other topics discussed were whether global legislation is needed with respect to monitoring activities on the Web (an area where countries have widely divergent views) and Internet data privacy issues.

It is interesting to note the dearth of government action taken to foster innovation compared with the frequency of actions taken to regulate or restrict it. Many of the participants at the Forum's regional workshops noted the existence of a "digital divide" between countries and even between affluent and non-affluent people within the same country. Governments have a clear interest in technology innovation, as participants in the Forum's Puerto Vallarta Workshop noted, and recommended that governments should partner with the private sector and businesses, and create economic incentives to improve infrastructure and access to digital content.

B. Businesses Attempt to Maximize Availability and Revenue

Media organizations – content creators, distributors, rights holders and associations – have also taken numerous steps to address issues related to privacy, intellectual property and piracy, and freedom of expression. Media companies walk a fine line between needing to maximize exposure and access to content for revenue generation, and vigorously defending intellectual property rights. Rupert Murdoch in 2009 famously referred to Google and other search engines as "content kleptomaniacs". Today, newspaper companies facing trouble want to put legal pressure on what they see as parasitic news aggregators. In November 2012, politicians in Germany were to vote on extending copyright protection to excerpted articles appearing in search engine results, thus enabling publishers to collect payment for them.¹⁷

In some respects, actions by trade groups and individual companies have added a layer of regulation to complement government actions. Some notable actions are described in the following section.

Business model and technology innovations

- **UltraViolet:** The film industry has been the primary supporter of this wholesale platform, which allows users to pay once for content such as movies, and then play the content on any UltraViolet-capable device. Six users can share an account, with a cap of 12 devices per account. The objective is to take away the desire to make illegal copies of digital media by allowing users to share content across devices and take the friction out of watching movies on digital equipment. UltraViolet attracted more than 750,000 households in its first three months, although initially there were only 19 titles available. As of July 2012, UltraViolet surpassed 4 million household accounts.
- **Spotify and Pandora:** Spotify is a subscription-based music streaming service that requires users to pay for monthly access to an ever-expanding library of music. Compensation for downloads is negotiated between Spotify and rights owners. Pandora is also a personalized mobile music and Internet service that combines social media as well, allowing users to share songs or playlists. Pandora relies more on advertising revenue than on paid subscriptions.
- **Piano Media:** Based in Slovakia, Piano Media protects intellectual property rights for the news media by enabling publishers to monetize selected Web content. Readers receive unlimited access to all participating publications, similar to cable-TV package distribution, for a flat fee. Digital reader payments are split between publications according to where a digital reader enrolls in the Piano Media system, how much time is spent on each publisher's site, and the type of content consumed. The model has been successful in Slovakia and Slovenia, and the company plans to expand to other European countries. Founded in 2011, it has received US\$ 3 million in funding from Cisco and Monogram Ventures. In Slovakia and Poland, Piano Media partners with eight major publishers, and in Poland they have a tie-up with seven major publishers for a total of 42 brands and publications.
- **YouTube's Content ID:** In an effort to protect copyright holders, Google and YouTube launched a Content ID system that allows rights holders to upload the videos and music they own to a central "fingerprint" database. A copyright verification tool can then assist copyright owners in searching for infringing material. There are currently over 25,000 rights holders participating in the programme including online media content providers such as Lions Gate, Electronic Arts, Universal Music, Time Warner, Viacom, Disney and CBS. When owners identify infringing material, they can exclude it, allow the content to reside on YouTube for promotional purposes, or license the content for share in revenue gained through advertising. Alleged infringers can dispute the finding as well. There are more than 8 million reference files in the Content ID database, making it one of the most comprehensive in the world, and over a third of YouTube's total monetized views come from Content ID. However, a lack of copyright verification procedures continues to be a stumbling block. YouTube Content ID routinely generates mismatches and allows fraudsters who do not own copyrights to position themselves on the service as if they do hold rights, leading to unresolved disagreements and blocking of content. Content ID is also incapable of recognizing fair use content such as parodies.
- **Content protection/digital rights management (DRM) mechanisms:** DRM protocols are used by hardware manufacturers, publishers, copyright holders and individuals to limit the after-sale use of digital content and devices to protect against intellectual property theft. Examples of DRM activities include restricted licensing agreements, limited installing activations and encryption. Some consumer rights advocates believe that the widespread use of DRM deprives buyers of some value because unilateral changes to DRM mechanisms or devices post-sale can prevent access to content. Nonetheless, DRMs have legal support. The World Intellectual Property Organization (WIPO) Copyright Treaty set the first Digital Rights Management (and other copyright management technology) Act in 1996, and obligates WIPO parties to provide legal protection and remedies for circumvention of DRM technology. The provisions have been incorporated in the US under the Digital Millennium Copyright Act (DMCA), and in the EU by the EU Copyright Directive. However, according to "The Impact of DRM technology in P2P age," a thesis presented to the Graduate School of Clemson University, "Countries with higher DRM penetration are not shown to have higher increase in music sales."
- **Twitter country-by-country takedown notifications:** The Twitter country-by-country takedown system focuses on eliminating specific words or tweets based on local country or regional court decisions. In Germany, for instance, any tweets containing the word "Nazi" are automatically flagged and not shown in German IP address users' tweet logs. The same term will, however, appear in tweets in other countries where the word is not an infringement. This evolution in Twitter's takedown approach is highlighted in a recent online article, which poses

¹⁷ *The Economist*, 2012, www.economist.com/news/international/21565928-newspapers-woes-grow-some-are-lobbying-politicians-make-google-pay-news-it

the hypothetical example of Twitter receiving “a court order to take down a tweet that is defamatory to Atatürk – which is illegal under Turkish law.” In the past, Twitter’s only option for complying with such an order would have been to effect a global takedown of such tweets. Today, however, with current technology and algorithms, “Twitter has the capability to take down the tweet for people with IP addresses that indicate that they are in Turkey and leave it up everywhere else.”¹⁸ This new approach fits the current context of diverse digital media acceptance and cultural differences across countries and regions.

Subscription services such as UltraViolet and Spotify especially are gaining traction, which shows that citizens and consumers will pay for content and gravitate towards easy-to-use, legal platforms. UltraViolet, with more than 4 million household accounts, has the backing of 30 companies that signed on as UltraViolet licensees and the cooperation of retailers such as Wal-Mart and Amazon. Technological limitations, such as the inability to play files in iTunes or download to an iPad, as well as complex sign-up procedures, need to be addressed. YouTube’s Content ID, despite hiccups, is used by most leading content providers as a matter of course.

Other technology innovations or policy changes are more fluid, and some have also had the effect of improving the quality of digital communication without infringing on citizens’ rights or copyrights. For example, Facebook’s comment tool helps users to self-police content and promote high-quality discussions by minimizing “trolls” or commercial elements. Technology companies frequently help each other improve services and content as well. Once TechCrunch implemented Facebook comments for user IDs and real names appeared, the total number of Facebook comments plummeted 42%, and the quality of posts improved (when measured as an average increase of 36% in “likes” per post).

Awareness Campaigns

- **Association-led –Music Matters campaign:** Music Matters is an educational campaign launched in the United Kingdom in 2010 to change attitudes to music piracy and uncompensated file-sharing. The campaign enjoys the backing of Spotify, retailers Amazon, HMV and Tesco, and some artists. The campaign is ongoing and involves stakeholders across the media value chain, but tangible and measurable impact of the initiative has not been reported.
- **Company-led campaigns:** This is a joint initiative from Sony Music and Modelo Brewery, which offers free and legal downloadable music through www.siguemusica.com. To gain access, users enter a code found in Corona bottle caps. The purpose of the campaign is to educate users on legal ways to access music and help them avoid using illegal downloads. Corona Music advertises on popular radio stations, on the Internet and on music-dedicated TV channels. During its first 6 months, the website registered over 9 million downloads and 13 million online visitors. Another company-led campaign is Google’s “Dashboard.” It answers the question, “What does Google store in a person’s account?” by summarizing and aggregating data for every Google product the person uses, and provides direct links for easier control of personal settings and data.

Litigation

- Both class-action lawsuits and inter-industry lawsuits have been used as vehicles to try to clarify the rights and responsibilities of rights holders, service providers and citizens regarding use

of digital media. There is a distinction between actions that target legal entities and services and that target individuals. Litigation is costly and time-consuming for participants and other affected parties, which puts it at odds with the relentless pace of innovation in digital media. Three actions bear mention:

- The Recording Industry Association of America (RIAA) filed a class-action lawsuit in 2003 to enforce copyright protection and discourage infringement aimed at users of P2P sharing services. Citizens and individual rights groups such as the Electronic Frontier Foundation and Students for Free Culture criticized the lawsuit. More importantly, there is no evidence that the lawsuit was effective, as the number of P2P users grew between 2003 and 2005. The litigation was ultimately discontinued after RIAA said it believed it had made its point.
- The second wave of litigation was launched in early 2012, when executives of “cyberlocker” Mega-Upload were arrested and their offices raided in connection with a widespread copyright infringement investigation brought by the US government and supported by the MPAA and other groups. The investigation has spawned similar actions, and the case is currently working its way through the courts.
- Viacom filed a lawsuit against Google and YouTube in 2007, alleging brazen copyright infringement as the sites allow users to upload and view copyrighted material owned by Viacom. More specifically, Viacom claimed that YouTube’s strategy was to “engage in, promote, and induce” ongoing infringement, and that YouTube had deliberately built up a library of infringing works in order to increase the site’s traffic (and advertising revenue). The suit is in its fifth year and may result in two different interpretations of the DMCA’s safe harbour provisions – a discordance that may ultimately be resolved by the US Supreme Court. Google has secured the support of tech businesses and non-profits (eBay, Facebook, Yahoo!, Human Rights Watch and Consumers Union all filed amicus briefs) while Viacom’s position is supported by media firms and content creators (the United Kingdom’s Premier League, the Associated Press, Gannett Co., the National Football League, and musicians Garth Brooks, Sting and the Eagles). In April 2012, the US Court of Appeals for the Second Circuit reinstated and remanded Viacom’s US\$ 1 billion lawsuit against YouTube for direct and secondary copyright infringement.

Amnesty Programmes

- Related to mass litigation was an RIAA-backed “amnesty” programme called “Clean Slate” where people who self-identified themselves as using illegal downloads would be granted a clean slate and not subjected to litigation. However, only 1,108 people signed up for amnesty, and the Clean Slate programme itself was criticized as a fraudulent business practice that required relinquishment of privacy rights. It was discontinued after RIAA concluded that public awareness about the illegality of downloading infringing materials had increased sufficiently.

It is clear from the research conducted that the breadth of actions taken by businesses shows a serious and genuine interest in addressing the shortcomings or absence of suitable and workable approaches to act against digital media use. As the creators, distributors and owners of digital content, businesses may be the easiest to engage in any process designed to establish a sustainable structure. This subject was covered in the Forum’s October 2012 New York Workshop, where participants also debated whether greater transparency of money flows among ad agencies and brands is the key factor in reducing piracy and protecting intellectual property. An initiative to reduce piracy by discouraging ad agencies from leveraging illegal websites that contain pirated material could deliver substantial impact.

¹⁸ Electronic Frontier Foundation 2012, <https://www.eff.org/deeplinks/2012/01/what-does-twitter%E2%80%99s-country-country-takedown-system-mean-freedom-expression>

C. Citizens' Actions Aim to Protect Privacy and Freedom of Expression

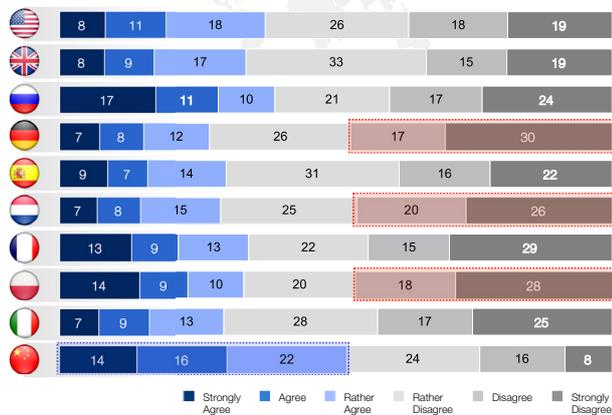
Individuals across the globe are engaged in online advocacy to ensure personal privacy and preserve access to information and freedom of expression. Norms vary widely in terms of expectations and knowledge. For example, McKinsey surveys found that while a majority of Chinese citizens indicated that they do not really know how much of their personal information is available online, German, Dutch and Polish respondents claimed to have a better understanding (Figure 6).

Figure 6: Regional Variances in Knowing What Personal Information Is Available Online

Source: McKinsey iConsumer survey

How strongly do you agree or disagree with the following statements?

"I really don't know how much of my personal information is available to other people online"



The tactics consistently available to individuals or citizen groups are demonstrations, protests and boycotts that draw attention to issues and rally others to their cause. They are, perhaps, among the most difficult levers to use, but they have the advantage of generating media coverage. Concern about individual privacy and freedom of expression continues to grow as more digital data is collected. Five efforts reflect the power of citizens to impact digital media actions:

1. **Protests against Google StreetView service:** German citizens became concerned about their homes being charted and photographed by Google, seeing it as a breach of privacy. While German courts ruled in March 2011 that the StreetView service itself was legal, German authorities reached an agreement with Google allowing citizens to opt out of having their house pictured (photos of their houses would be blurred). Yet, only 2.89% of the almost 8.5 million households in the 20 featured cities opted out, and some that originally opposed having their property photographed now want their homes included in the service.
2. **Rejection of Anti-Counterfeiting and Trade Agreement in EU:** Although supported by the media and entertainment industry, the Anti-Counterfeiting and Trade Agreement (ACTA) was ultimately voted down by the EU Parliament in June 2012. Well-organized citizen protests focused attention on how ACTA could infringe on fundamental rights including free speech. The ACTA defeat may ultimately deprive the EU of increased trade that could have injected up to €19 billion into the EU economy, according to research conducted by Frontier Economics.

3. **The rise of self-sustaining copyright models such as Creative Commons:** The non-profit Creative Commons has introduced a model to support the use of copyrighted material in a collaborative, non-adversarial way by allowing rights owners to post and select the terms of use of copyrighted material ranging from academic research to artistic creation. The group's website offers over 250 million CC-licensed items, and users include organizations as varied as the White House, pharmaceutical giant GSK (which made a trove of malarial research available), and Flickr, which allowed the use of photo archives.
4. **Hacking:** Blatantly illegal activities such as "hacktivist" attacks on government and corporate websites could also be considered citizen-centric actions, although they have failed to change copyright or social policies. Cases such as the hacking of Sony and the Japanese government websites by the organization "Anonymous," for instance, did not have the intended effect – Sony continues to prohibit open-source development on PlayStation 3 (PS3) devices and the Japanese government intends to implement stricter intellectual property laws in late 2012. While organized hacking will certainly continue, its impact and support is limited.
5. **Citizens filing cases against companies:** One of the first civil proceedings against companies took place in India in December 2011. It concerned 21 Internet firms (including Google, Yahoo! and Facebook) that were accused of hosting "offensive" content.¹⁹ An individual, Mufti Aizaz Arshad Kazmi, initiated the suit on the grounds that these companies hosted content disrespectful towards religious beliefs. The Indian affiliates of Google and Facebook complied with the Indian court's injunctions and removed the offending content from their domains. However, Google argued that controlling or filtering the massive number of documents passing through its servers would be impossible.

Participants at the Forum's Brussels Workshop noted that as far as property rights are concerned, norms related to digital content have evolved such that the meaning of "owning" and "using" are blurring. Participants debated whether citizens have absolute rights over property in a world where the definition of what constitutes "property" is in flux. They agreed that businesses may need to adjust operating models, given the extent to which digital media supply chains have transformed.

Clearly, a tremendous amount of time and effort is being spent by stakeholders, working independently or together, to address the issues raised by the use of digital media. It was noted at the Forum's Puerto Vallarta Workshop that none of the primary stakeholder groups has come up with a definitive way to balance the promotion of dialogue by granting anonymity and maintaining civility, with the imposition of accountability on those who use online anonymity to spread inaccurate, often malicious, information. Most participants agreed that any global framework established to understand digital media use would need to reflect the interests of the primary stakeholders, include a significant educational component, and factor in the lessons learned from the efforts of governments, businesses and citizens.

¹⁹ The Times of India Group; Reporters Without Borders

Lessons to Apply in Developing Global Standards

Although the approaches and impact of actions taken by governments, businesses and citizens to shape digital media use vary considerably, they are nonetheless instructive in developing global standards. Some actions have worked well to advance those interests, and others have proved problematic:

- **Government actions continue to meet with mixed success:** Regulations and laws to enforce intellectual property can work, but have not always met with success. As noted by a participant at the Forum's Puerto Vallarta Workshop, few jurisdictions specifically differentiate between violations of intellectual property laws for individual consumption as against commercial use – a lack of distinction that poses a real concern. Actions such as surveillance or censorship to protect national security have fared better, but often impinge heavily on individual rights and the ability of companies to maximize their commercial potential.
- **Business innovations do build awareness and are gaining credence with content creators, distributors and owners:** New services such as UltraViolet, Spotify and YouTube's Content ID have strong participation despite flaws. Litigation, whether initiated by the government, commercial competitors or citizen groups, is often time consuming and costly.
- **Citizen-led actions are most effective in protecting privacy, but can undercut innovation and economic growth:** Boycotts and protests are effective in blocking laws or drawing attention to seemingly unfair practices that impinge on citizens' primary interests of freedom of expression and privacy, and do so quickly, as proved in the Google Germany StreetView case. However, most of these actions are reactive, and not focused on advancing proactive change. In some circumstances, citizen protests have had the unintended or uncontrollable consequences of freezing innovation or undermining economic growth, as in case of the ACTA defeat in Europe.²⁰

Clearly, divergent but legitimate stakeholder interests – from protecting national security through aggressive censorship to allowing full freedom of expression for citizens and the risks that such freedoms inevitably bring – can rarely be balanced. Yet, developing a framework that helps articulate, if not quantify and prioritize, these interests as well as the most frequent trade-offs would constitute a step forward. At the very least it could provide the foundation for further discussion and, in some countries and regions, serve as the basis on which a more structured trade-off mechanism could be developed.

From research, interviews and case analyses conducted over the past year, four over-arching observations can be made about the ways in which governments, businesses, and citizens have sought to advance and protect their interests in recent years:

1. **Government actions, whether to protect intellectual property rights or individual privacy, have enjoyed a modicum of success, but often at near-prohibitive costs.** Indeed, a number of government efforts have proved to be financially unsustainable. Intensified collaboration with other stakeholder groups could lead less exorbitant solutions that drive similar – or better – results.
2. **Protection of intellectual property rights, and fair compensation for artists' and rights holders' content, hinges on open development and stronger collaboration with industry.** Truly open architectures – those not at cross-purposes with the companies operating them – could greatly benefit businesses and consumers, alike. Some exist today, but more universal adoption is essential for a "virtuous" online ecosystem to thrive.
3. **The onus is on digital publishers, data providers, and advertisers to protect consumer privacy and other individual rights, and they may need to forgo short-term profits in the process.** Consumers today have, at best, an incomplete picture of the type and extent of data mined by business, and even their own government. Our research indicates that certain industry sectors, in collaboration with government and the public, are best positioned to create a common platform which could, in time, lead to a digital "magna carta," empowering consumers to make better-informed decisions.
4. **It behooves governments to improve the public's understanding of the trade-offs and risks inherent in rights to privacy and freedom of expression.** The conundrum of how to balance the national security and foreign policy interests of a nation-state with its citizens' right to free speech is a constant trade-off. Today, though, we live in a world where digital content created in one place can instantly be accessed from anywhere else, with similarly instant reactions. Governments simply must do a better job of improving public awareness about the impact of their actions.

²⁰ Source: ACTA Facts

Looking Forward: Proposed Steps for Phase 2 (2013)

Phase 2 of the project will entail deeper and more dynamic engagement with stakeholders. Pilots will be conducted in one or two selected countries to develop a more detailed understanding of how the issues raised here could be addressed. The activities in Phase 2 may also include a bottom-up approach that will draw individuals into helping co-design the project via social media outreach. The initiatives proposed for Phase 2 include:

1. **Engaging targeted stakeholders and influencers:** Launch a rolling global engagement campaign in conjunction with respective Forum regional meetings, and leverage major global events to drive sustained impact over 12 months. Steps could include:
 - A. Identifying target audiences to share the research with, including policy-makers and law-makers, media, entertainment and information companies, university professors and civil groups.
 - B. Developing and executing engagement plans for each target audience (e.g. time, location and format). This will include documenting and synthesizing insights, as was done in the Phase 1 regional workshops.
 - C. C. Engaging a subgroup of stakeholders and influencers to further disseminate the report from Phase 1, particularly in countries that could host a pilot.
2. **Conduct Country Pilots:** Follow the global launch of the engagement plan with one or two country-level pilots that test and gather learnings through tailored whitepapers and research.
 - A. Select host countries based on need, level of engagement and perceived impact of collaboration.
 - B. Share research from Phase 1 with stakeholders in pilot countries, including representatives from governments, businesses and the general public. This will enable a deeper understanding of the issues specific to the pilot countries.
 - C. Collaborate with a country-specific task force composed of government, businesses and civil society representatives.

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<http://reports.weforum.org/norms-values-digital-media/>

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