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1. The BBC's public service mission has led it to create a media production culture for Britain. Today, that culture stands to explode in into a Creative Nation where ordinary Britons can reap new benefits from the fallow resources in the Corporation's archive. The BBC Creative Archive project is the purest and most exciting exercise of its remit to date, and it should be enshrined in its new Charter.

A Remix Culture for England

2. The BBC's "Building public value: Renewing the BBC for a digital world" contains a recommendation to enshrine a BBC "Creative Archive" in the new Charter³, such an Archive to ultimately consist of the whole of the BBC's extant

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² Electronic Frontier Foundation (EFF) is the best-established technology-focused civil liberties group in the world, with more than 13,000 dues-paying members and over 50,000 mailing-list subscribers. EFF's key courtroom and policy victories have in past safeguarded the rights of the public to communicate in private by means of strong cryptography tools and to have their electronic communications protected by the same due-process rights that apply to postal mail and telephone calls. Today, EFF is at the front of the policy debate on the future of digital media, providing legal counsel to technology projects, personal video recorder vendors, and P2P software makers. We participate in standard-setting efforts at the Copy Protection Technical Working Group, OASIS, and the Digital Video Broadcast Forum, and in treaty-setting processes regarding broadcast rights at the United Nations' World Intellectual Property Organisation (WIPO). EFF's members come from all over the world, and EFF supports the efforts of groups in the UK such as FIPR, CDR and FFII to uphold civil liberties values in technology policy, law and standards.

³ See page 63, "The BBC Creative Archive will establish a pool of high-quality content which can be legally drawn on by collectors, enthusiasts, artists, musicians, students, teachers and many others, who can search and use this material non-commercially. And

archive of radio and television programming, placed online under a license that permits and encourages noncommercial redistribution and reuse of this material.

3. Were the Creative Archive to come to pass, it would have a profound effect on the future of British cultural identity; on the future of new media technology; and on the disastrous P2P wars. It would be a truly 21st Century realisation of the Reithian values for the Corporation, a duty served to the license paying public and to Britain.
4. The BBC's many public service remits over the decades have been crucial to Britain's media health, but none have been so far-reaching as the fostering of a British media industry. The Corporation's commissioning and broadcasting of English programming of the highest quality has created a truly British form of television, distinct from American, Continental and Commonwealth TV.
5. Britain's influence on the world's television is wildly disproportionate to the actual population of Britons, and the BBC is the reason for it.
6. This has two salutary effects at home: first, it ensures that native and transplanted Britons have ready access to programming that is in tune with British values and sensibilities; secondly, Britain's influence on the rest of the world makes *all* television just a little British, so that even when a Briton watches foreign programming, the odds are that the writer, director and producer were all influenced by Britain's world-class television.
7. Television today is being supplanted by interactivity. Today, children increasingly use PVRs to time-shift their favorite programming, and spend the rest of their TV-time playing games, including multiplayer games. They engage in file-sharing, and as they get a little older, they begin to play with their media, remixing and recutting it.

where exciting new works and products are made using this material, we will showcase them on BBC services.

"Initially we will release factual material, beginning with extracts from natural history programmes. As demand grows, we are committed to extending the Creative Archive across all areas of our output.

"We are developing this unique initiative in partnership with other major public and commercial audio-visual collections in the UK, including leading museums and libraries. Our ambition is to help establish a common resource which will extend the public's access while protecting the commercial rights of intellectual property owners."

8. It's the dawn of a "creative nation" -- a Britain which, like many other countries around the globe, makes use of the new tools to actively participate in media, a nation of recasters and reworkers, folk artists and appreciators of folk art.
9. The raw material of that creative nation need not be British. Substantial parts of it will not be: Britain is a land of many cultures, and the fusion of the art and culture of other lands is a progressive step in Britain's ongoing multiculturalism.
10. But what if *none* of the materials of this new British folk culture is, indeed, British? What if the creative nation relies upon material from abroad as the raw ingredients for the popular new medium?
11. It may be that the majority of today's Britons will continue to be the audience for others' creations rather than creators in their own right, but will the cultural norms and ideas embedded in those creations be British or American or European or Asian?
12. The evidence to date suggests that remixers rely on a mix of factors when selecting their materials: a fragment's recognisability, aesthetic properties and fit in the overall piece are important, but just as important is the availability of the fragment: how easy it is to lay hands on.
13. The world's media companies are running away from remix culture, locking up their media in increasingly baroque copy-restriction schemes that aim to block playful, sticky-fingered artists from appropriating an image, a beat, a phrase. The works of the commercial entertainment world grow ever less-available to remixers.
14. But not the BBC -- while the private sector strives to keep its material away from remixers, the BBC proposes to do the opposite.
15. The Creative Archive project will take the very essence of British popular culture -- the material that the United Kingdom spent billions of pounds on in order to entertain, educate and inform itself -- and give it to Britons to extend, to make their own, to interweave with the stories they tell and hear.

Other benefits from the Archive

16. A Creative Archive does more than serve the creative nation. It is also an incalculable boon to scholarship and to the British institutions of scholarship.
17. For example, a publicly available Archive could be mined to track, over time, the portrayal of women, of visible minorities, of children -- of every segment of society, through time.

18. The Archival news and other factual programming could serve as the basis for educational units in our schools and as input for studies into shifting cultural attitudes.
19. From tracing the changes in accent over time to watching the shifts in UK vocabulary⁴, the value of the Creative Archive in enabling Britain to better-understand itself cannot be overstated.
20. Likewise, the tools and techniques developed in the course of mounting and making the Archive available will undoubtedly produce IT infrastructure of use to other British institutions. The British Library is presently embarking upon an ambitious project to archive and then make available millions of British Websites⁵; the Creative Archive's content-management, content-distribution and licensing scheme can all be used as the basis for the Library's archive (what's more, this would ensure interoperability and a familiar interface between the two projects). The Arts Council, Open University and local Councils all stand to benefit likewise.

The Archive complements the private sector

21. Today, there is increasing scrutiny of BBC spending in an effort to identify areas in which the BBC has found itself to be competing with the private sector.
22. In this area, there can be no question that the Creative Archive is working to complement the efforts of the private sector, from broadband companies (who will benefit from increased custom as the trade in legal-but-outsized files picks up) to other broadcasters (who will find their entries into the world of remixing eased by the BBC's work in fostering a public remix culture).

The Archive benefits UK creators

23. The Archive's remit will be to make work available solely for noncommercial exploitation. As others⁶ have discovered, this noncommercial exploitation is, in

⁴ The The International Corpus of English (ICE) project at University College London (<http://www.ucl.ac.uk/english-usage/ice/>) already undertakes this research with written works to the great benefit of scholars around the world

⁵ See the BBC's "British Library archives websites" at <http://news.bbc.co.uk/1/hi/entertainment/arts/3231483.stm>

⁶ Rick Prelinger, curator of one of the world's largest commercial film archives has used "open" licenses from the Creative Commons to good commercial result, something he details in a letter to the DCMS reproduced at <http://lists.essential.org/pipermail/creative-friends/2004-July/000071.html>

effect, a gigantic and clever series of advertisements for the commercial rights to the works.

24. The audience of commercial license-takers -- DVD publishers, international distributors, filmmakers, soundtrack publishers, advertisement producers, and so forth -- have their pick of a nearly bottomless supply of cultural material to license. When remixers make popular, creative, noncommercial new uses from the works that the BBC has commissioned, it takes them out of the BBC's opaque vault and makes them visible to the world's license-takers. Moreover, the best of these creations has the effect of showcasing the value of these wares, creating an "upgrade pitch" for the works they are composed of.

The Archive benefits public service broadcasters the world round

25. Around the world, the BBC is acknowledged as the gold standard for public service broadcasting -- this is why America's National Public Radio (NPR) syndicates BBC international news rather than producing its own. It's not just NPR, either: all over the world, public service broadcasters look to NPR to set the bar for public service performance.
26. In creating the first Archive of its kind, the BBC proves the case for such a project to the Canadian Broadcasting Corporation, the Australian Broadcasting Corporation, Deutsche Welle, Radio France, and all the other broadcasters around the world who seek to promote national identity through public spending.
27. Should these broadcasters adopt similar projects, its even possible to imagine a quid-pro-quo arrangement with the BBC, in which the BBC's material is made available to, say, Canadians in return for the CBC's material being made available to Britons.
28. This has the potential to be the best of all possible outcomes, for it poses the possibility of the license fee being used to buy Britons access to the whole world's public service programming, not just the BBC's.

The P2P Wars

29. The P2P wars -- the fights over peer-to-peer file-swapping tools -- worsen every day. The legal attacks on P2P users -- which, in the US, has led to the spectacle of OAPs and underprivileged schoolchildren having their life's savings confiscated

for downloading music⁷ -- have not slowed down the growth of P2P networks. Indeed, P2P remains the fastest-adopted technology ever.⁸

30. Creators' and rights-holder organisations' initial response to the growth of P2P was fear and anger, and this was expressed in a rhetoric of theft -- "If you download, you're stealing" -- without even a nod to the culture and communications elements of the copyright debate that makes the infringement of intellectual property very different from theft of non-metaphorical property in the real world.
31. Predictably, calling customers thieves did nothing to solve the problem. The next resort of rights-holders was the use of "Digital Rights Management" (DRM) technologies, which indiscriminately restrict what the lawful owners of digital copies of music, books and movies may do with their property. Luckily, none of these DRM technologies actually work very well, so Britons and others with a little tech savvy are able to defeat them -- this is what you do when you buy a DVD player in the High Street and take it home and look up the code to turn off the region-restrictions built into it.
32. This led to the inevitable reply salvo: a series of worldwide "anticircumvention" laws⁹ that ban the dissemination of information on how to break DRM systems, regardless of the purpose of such dissemination. Distinguished academic engineers from Princeton University have been threatened with legal action if they present on the weaknesses of DRM systems at learned conferences¹⁰, and the FBI jailed a researcher for presenting on the same subject at a technology conference in Las Vegas¹¹.
33. Protecting DRM not only demands the criminalisation of certain maths, it also sets up a world where the manufacturer of a virtual "record" gets to tell his customer whose record-player she may use to listen to it, and gets to specify every feature that said player will and won't have. This is because DRM systems contain proprietary secrets and patents whose licensing is conditioned on certain features

⁷ See CNN's "12-year-old settles music swap lawsuit" at <http://www.cnn.com/2003/TECH/internet/09/09/music.swap.settlement/>

⁸ See, for example, "P2P Usage Trends, July 2003 - March 2004" at <http://www.digitalmusicnews.com/data/040904bigchampagne>

⁹ For details on the WIPO Copyright Treaty's "anticircumvention provisions" see "Technological Measures for Protection of Copyright And Related Rights on the Internet -- Present and Future Technologies" at http://www.wipo.org/copyright/en/meetings/2001/cr_rio/doc/cr_rio_01_5.doc

¹⁰ See EFF's files on "Felten v. RIAA," a legal effort in support of Princeton professor Ed Felten and his research team, at http://www.eff.org/IP/DMCA/Felten_v_RIAA/

¹¹ See EFF's Frequently Asked Questions file on the "US v. ElcomSoft & Sklyarov" case, which arose from this incident, at http://www.eff.org/IP/DMCA/US_v_Elcomsoft/us_v_sklyarov_faq.html

being present and others being absent in licensed devices. These licensing schemes are the reason that your PC's DVD drive can't be easily used to copy your movies to your hard-drive (contrast this with the way that your PC can readily move music from your CD collection to your hard-drive) -- that feature has been banned by the organisation that controls DVD-player licensing and no amount of customer demand will sway them into authorising such a scheme.¹²

34. It must be repeated here than none of this is doing anything to slow the growth of the P2P networks. None of it is putting one penny in the pocket of an artist. Worst of all, none of it is responsive to the public clamour for the digital delivery of cultural material over P2P networks.

The BBC and the P2P Wars

35. This sort of technological Gordian knot is par for the course. Ever since the printing press, the incumbent creative industries have responded to new technologies for copying and distributing works with fear and anger, even though ultimately these technologies -- phonograms, radios, jukeboxes, cable television, and VCRs -- have created a bigger industry with more money on the table for more players.¹³
36. Part of the BBC's remit is to fill those voids that the market, for whatever reason, is unable or unwilling to fill. In doing so, the BBC can prove out the viability of an advanced service or technology -- such as the BBC's Red Button interactive television services -- and sow a field that the private sector can later reap.
37. In the P2P wars, we have a true marketplace catastrophe in the offing. Britons -- indeed, media "consumers" the world over -- are no longer content to consume the programming made available to them at the appointed hour. Rather, they demand higher levels of interactivity, beginning with the simple act of receiving programming on demand -- whether through realtime delivery systems or through automated time-shifting technologies such as the personal video recorders (PVRs) built into the Sky set-top boxes.
38. More significantly, though, the audience for creative work is demanding the ability to play back their programming using whatever player they choose -- from pocket-sized mobile devices to PCs to game-consoles -- with new features unimagined by yesterday's creators, from simple commercial-skipping to

¹² For more on the threats of DRM to competition, see the author's "Microsoft DRM Talk" at section 3, "DRM systems are bad for biz" at <http://craphound.com/msftdrm.txt>

¹³ Professor Timothy Wu of the University of Virginia's paper on "Copyright's Communications Policy" contains a cogent and even gripping account of previous installments in the struggle between copyright and technology, see <http://faculty.virginia.edu/timwu/occp.pdf>

advanced features such as text-chatting overtop of programming, creating "playlists" of favorite scenes in shows (or conversely, "reverse-playlists" of scenes that should be omitted when children are viewing), and the ability to accumulate collections of works in hardware-neutral formats that can be moved from today's devices to tomorrow's.

39. Most importantly, the audience is awakening to the possibility of mining the culture that surrounds us for the raw materials from which new works may be constructed, from school projects that include clips and music captured from variegated sources to "mash-up" mixes of cleverly combined and juxtaposed music to re-dubbed and re-edited parodies of popular works. This "remix culture" grows by leaps and bounds as the public realises the value of a new kind of folk-art, something that both affirms and defines shared cultural identity by allowing all comers to actively participate in the creation of media, rather than simply eating what we're fed.¹⁴

Conclusion

40. The Creative Archive is a watershed moment in the history of the BBC and of the world. It has the power to lend cultural identity to the coming generation of Britons, to benefit UK cultural institutions, artists and commercial broadcasters, and to push the whole world towards a new height of freedom and cooperation.
41. The BBC has asked its Governors to grant it a Charter provision allowing it to make the Archive, and the Governors, in turn, have asked the DCMS for this.
42. It is EFF's hope that the DCMS will see fit to give the Governors what they seek.

¹⁴ Siva Vaidhyanathan's "The Anarchist in the Library, (Basic Books 2004) contains a stirring account of the rise of participatory entertainment