

Content – What should the EU do?

An academic view Prof. Dr. Thomas DREIER, Karlsruhe, Germany

... if I were a Commissioner ...

... I'd create a system which would

- ... incite creativity and innovation,
- ... aliment creators and inventors,
- ... enable competition,
- ... benefit consumers,
- ... and secure full employment

But how ...

- ... to make all those conflicting ends meet?
- ... to achieve the right balance
 - between exclusivity and freedom of competition;
 - between exclusivity and free access?
- ... to maintain exclusivity, ensure access and provide for adequate remuneration?



We don't start from scratch ...

True, but

- ... does the current IP-system achieve the results just described?
- ... what should we do in the future to meet the Lisbon goals 2010?

"A city of two tales":

• **Tale 1**: exclusive rights are necessary to incite creation and innovation: "the more the better"

versus

• Tale 2: exclusive rights stifle creation and innovation: "the less the better"

Tale 1: "Too much is not enough"

- **Increase** exclusive protection to counter loss of control in digital environment
- Protect technical protection measures (TPM)/ digital rights management (DRM) against circumvention
- Higher profits **benefit producers/creators**
- Strong protection **benefits consumers** and increases overall social welfare

2004

Tale 2: "We protect ourselves to death"

- Increase of exclusive protection reduces freedom to create and invent
- Protection of TPM/DRM locks content away
- Higher profits of producers make consumers pay more
- and decrease overall social benefits

2004 Which story to believe?

• We don't know: There are

... no experiments in real life possible... no real-time computer simulations (yet?)

U 2004 However: some credible assumptions

- **Historic evidence** for usefulness of an *appropriate* level of exclusive IP-protection
- **Trend** of ever-increasing protection seems irreversible
- But: only a balanced approach provides sufficient protection and keeps access open

Hence, academics say ...

- ... avoid over-protection
- ... adjust rather than merely expand protection
- ... **use** existing, built-in flexibility-jolts, e.g.
 - condition for protection;
 - scope of exclusive rights,
 - and, in particular, limitations (free access, but remuneration)



... if I were a Commissioner ...

... my policy

- ... aims,
- ... strategies,
- ... and **agenda** would be ...

2004

Policy aims for the EU

Aim should be to benefit

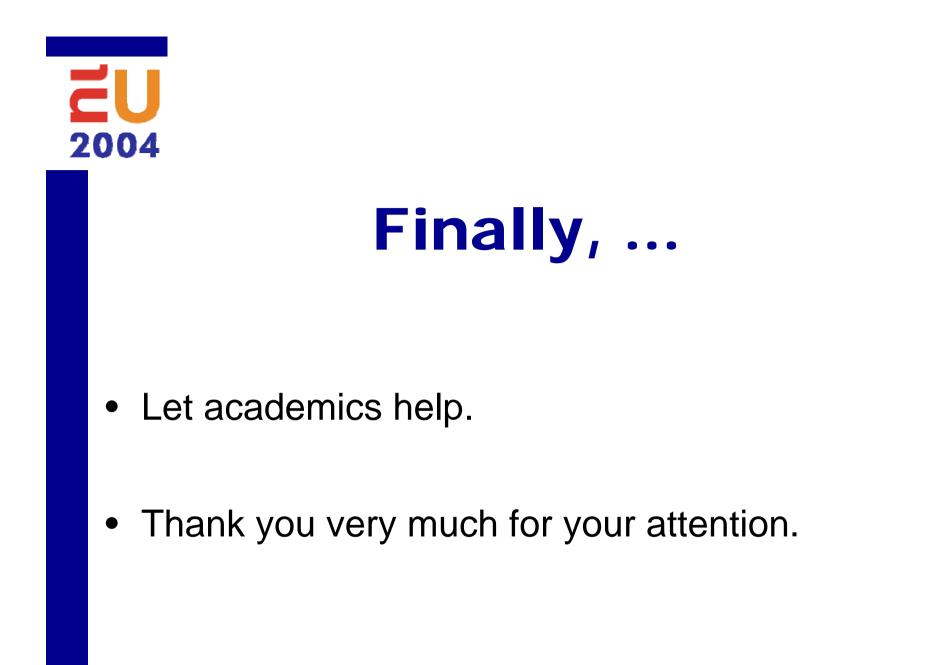
- **Creators**: e.g. by appropriate framework for teaching and research (open-access policy)
- **Producers**: e.g., by allowing competition with regard to value-added services
- Users: by allowing digital private copying
- **General public**: by supporting preservation of digital material (*issue so far overlooked*)

2004 Policy strategies for the EU

- International level: negotiate appropriate legal framework
- Level of Member States: principle of subsidiarity/competition of national systems
- Input: base decisions on serious economic studies (e.g., UK-House Report on Open Access Publishing)
- **Output**: enhance awareness of IP-issues

Policy agenda for the EU

- Use upcoming "clean-up"-Directive to
 - remove existing overprotection
 - create harmonised fair use-exception
 - create appropriate room for teaching and research
 - enable competition with regard to valueadded services
- Create an EU information network





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