**Information Program: Copyright Reform**

**Portfolio Review Outcomes Summary**

**May 2015**

Participants: Darius Cuplinskas (moderator), Chris Stone (discussant), Niva Elkin-Koren (discussant), Vera Franz (portfolio lead), Janet Haven, Hannah Draper, Melissa Hageman, Lisa Lee, Els Torrelle, David Knuth, Mort Halperin, Daphne Panayotatos

**Introduction by portfolio lead**

Vera introduced the copyright reform portfolio commenting that in today’s OSF language this portfolio would be considered a concept. This is because grant-making served the purpose of reforming international copyright law with a focus on WIPO’s treaty making processes, as opposed to building a field. However, one of the key questions Vera is struggling with is whether, in retrospect, we would be better off today if OSF over the past ten years had invested in building a stronger field. While the Access to Knowledge movement celebrated a major success in 2013 with the adoption of the Marrakesh Treaty, today the movement working to reform copyright is weak and fragmented without clear vision for change. At the same time, Vera wondered whether it is even possible to build a field with OSF being the only advocacy funder in the space. Most of our grantees are crossing the 1/3 threshold. Vera concluded her introduction by remarking that the Marrakesh Treaty was a unique project in many ways. It introduced a global mandatory standard protecting the blinds’ access to copyrighted materials, and was possible because the treaty is not interfering with publishers’ revenues in any significant way, and the moral cause was incredibly strong. However, it is far from clear whether this type of global standard setting can be repeated for other domains, and this raises important questions for the future strategy of this portfolio.

**Responses and discussion**

Reflection on strategic choice of small as opposed to big ask

Niva Elkin-Koren commented on the portfolio review process, which she thinks is unique and very laudable. Reflecting back, OSF’s investment was successful in bringing together a wide variety of interests under the Access to Knowledge umbrella. However, Niva worries that by deciding to focus on a narrow ask, i.e. the Marrakesh Treaty, the opportunity to mobilise energy for a larger reform agenda may have been lost. Also, Niva wonders, similarly to Vera, whether the Marrakesh Treaty might be the last achievement of this movement in the international sphere. This raises the question of whether the decision to focus on a relatively small ask, i.e. the Marrakesh Treaty, was the right strategy. Niva says that she’s not sure that there was another feasible option, but it’s worth reflecting on this choice. Els commented that the question of whether small change might be undermining the bigger reform agenda is a constant question for the Public Health Program’s access to medicines work. There is a lot of tension around this question, and it is very difficult to know which way to go.

The crisis of the A2K movement

Niva agrees with Vera that the A2K movement is going through a crisis. She thinks one important reason is the inability of the field to respond to a changed environment. For example, in a world of streamed content the focus on fair use may be misguided because commercial contracts overrule fair use rights and hence are controlling our ability to access knowledge. Also, the dominant business model on the web is one in which content is provided in exchange for personal data. Niva stressed that these larger shifts in the environment mean that the A2k movement needs to step back and re-evaluate its problem statement, framing and strategy, considering for example emerging problems such as how monopolistic control of by intermediaries is increasingly allowing for control of knowledge and pervasive surveillance.

Building on Niva’s point, Chris argued that he was surprised to see that we did not have a clear road map for moving forward, but instead provided a laundry list of potential strategic interventions. Vera responded by saying that after the adoption of the Marrakesh Treaty in 2013, she was keen to move from concept to field building and wanted to let the field drive the strategy. The challenge is that the field is in crisis and hence was not able to come up with a coherent strategy so far. The conversation about the crisis of the A2K field led to a discussion about what it means to build strong fields.

How to build a strong field that can respond to a crisis effectively?

*Field building does not mean stepping back*

Chris stressed that field building does not imply that a funder sits back. Field building is as much work and requires as much creativity as implementing a concept. For example, if the field is in need of a new vision and strategy, one approach could be to figure out who can afford to leave his or her organisations for a fellowship and come back with a fresh perspective able to change the direction of the field. Chris also encouraged us to observe how other foundations build fields. For example, the Sandler Foundation is only ever backing one organisation in any given field with long-term, large general support grants. Over time, they have developed a strong reputation for building up organisations that end up leading their fields. Chris warned against creating new organisations to lead a field, mainly because it is challenging to pull off. Instead, he thinks it makes sense to identify an organisation that already exists and has the potential to develop into a true field leader.

*Need for organisations with expertise and consciousness of the state of the field*

The type of field leadership the Sandler Foundation is promoting allows them to focus on developing organisations with both *expertise* as well as *consciousness* about the state of the field. This means organisation have the capacity to change course of a field at important inflection points. Niva has eloquently spoken about the changed A2K environment and why the type of leadership able to course correct and bring in new players is so urgently needed in the A2K field today.

*Field building benefits from support for inside and outside game*

Chris asked why Vera decided to prioritise support for NGOs that advocated for uncompromising positions, and wondered whether our purity in advocacy is actually hurting our ability to build fields? Would Vera turn to this criterion again? Vera argued that for the specific project of the Marrakesh Treaty she felt that the uncompromising voices were the underfunded ones, and yet were critical to getting the job done. However, moving into a field building mode, Vera mentioned that she started to think much more consciously about the need for a diverse set of players. For example, in the other portfolio she’s leading, which includes work to reform of surveillance by intelligence agencies, she has started to very support NGOs that play an outside game, complementing the work of NGOs playing an inside game.

*Only fields can prevail in long drawn out fights*

Chris underlined the need to build a strong A2K build by pointing to Vera’s comment in the PRD about that fact that our A2K grantees focus on opportunities, whereas the other side is focused on the long drawn out fight. If this is a game of persistence, field building becomes all the more important. Thinking about OSF as a whole, Chris observed that if the Foundation really wanted to build strong fields, it could concentrate on a smaller number of fields and invest in them in a concentrated way.

Vera responded by saying that she fully acknowledges the need to build strong fields, and that in the A2K space the Information Program has so far failed to do so. She thinks this is in part the case, because OSF was a different institution when the A2K portfolio was launched. At the time, OSF management incentivised policy wins and encouraged staff to prioritise project as opposed to general support grants. Today, OSF’s DNA has changed. We look differently at what success means. Janet commented that we are as an organisation only learning how to give general support grants and successfully build fields. It’s work in progress.

Funding landscape

Chris acknowledged the challenge of lack of funders active in the A2K space. He stressed that OSF often tends to go it on its own, expecting others to join at a later date without having shared the “founding moment”. Vera clarified that in this case it was other funders who led the way. However, all the major funders exited around five years ago, in part because of political pressure by industry. We discussed the question of how we can encourage other funders to re-engage with the issue. Chris suggested that we try and reach some of the wealthy individuals that made money in Silicon Valley. Vera commented that part of the goal needs to be to re-engage foundations such as the Ford Foundation. What will make this task easier is if the field engages in a re-evaluation and reframing of its ambitions and strategies to reflect the changes in the environment we are operating in. Also, there are new wealthy players such as the Wikimedia Foundation that increasingly engage in policy advocacy.

**Conclusions**

* The main take-away from the conversation is that the Information Program will move into field building mode with its A2K portfolio, picking up on the useful recommendations and insights the portfolio review conversation has surfaced.
* Any field building effort will need to include outreach to other funders and wealthy individuals.
* From an Information Program perspective, it is useful to step back and evaluate the usefulness of the A2K frame, and clarify what the A2K challenges are in 2015. The problem the Program is concerned with is the concentration of corporate power that results in the control of knowledge. If the Information Program’s goal is to build a strong field dealing with this problem, we may need to look across the boundaries of today’s A2K portfolio and consider issues such as the power of internet intermediaries to control our public sphere and carry out pervasive surveillance.