

The Equilibrium between Stakeholders and the Market

*Regional Workshop on the Disruption in the Digital Creative Economy:
A Multifaceted Challenge with Great Potential*

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Trina Ha,

Director, Legal Department / Head, IP Management (Government)

Co-Chair of Copyright Review Taskforce

Ideas Today. Assets Tomorrow.

Copyright Policy Making - Competing Principles



Incentivise the creation and dissemination of original content for commercial benefit



Access and use content for public benefit eg. education, culture, research, and the creation of more content

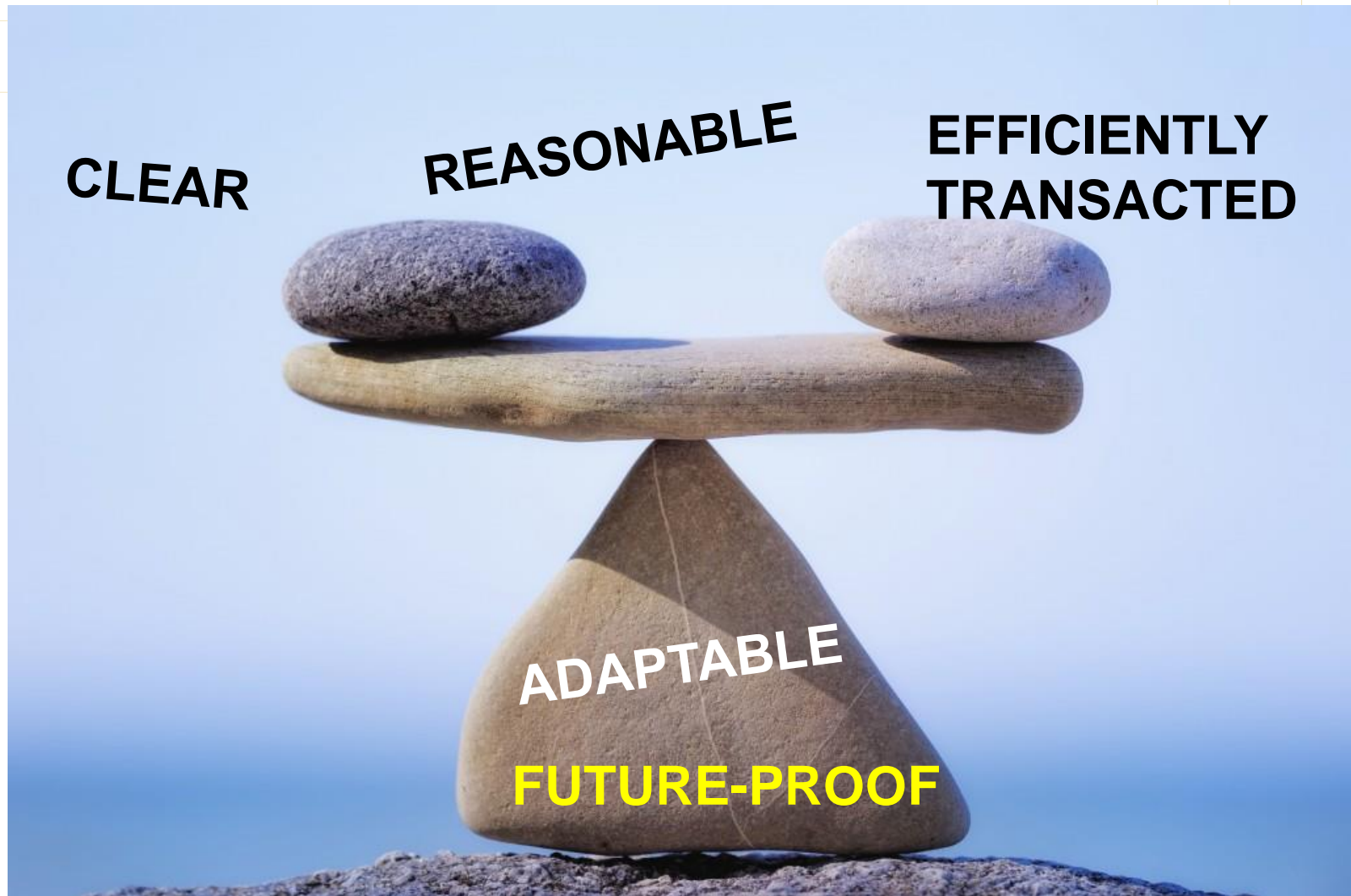


Copyright Policy Making – Challenges in the Digital Age

- **Easier to make, distribute and consume content**
 - one can be both creator and user eg UGC; proliferation of infringing content
- **Overlapping copyrights**
 - reproduction, communication, making available to the public
- **Fast emerging new technologies and business models**
 - opportunities for innovation; change is the only constant

Important for the law and policies to keep pace

Copyright Policy Making: finding the “Goldilocks” zone



Copyright Policy Making: finding the “Goldilocks” zone

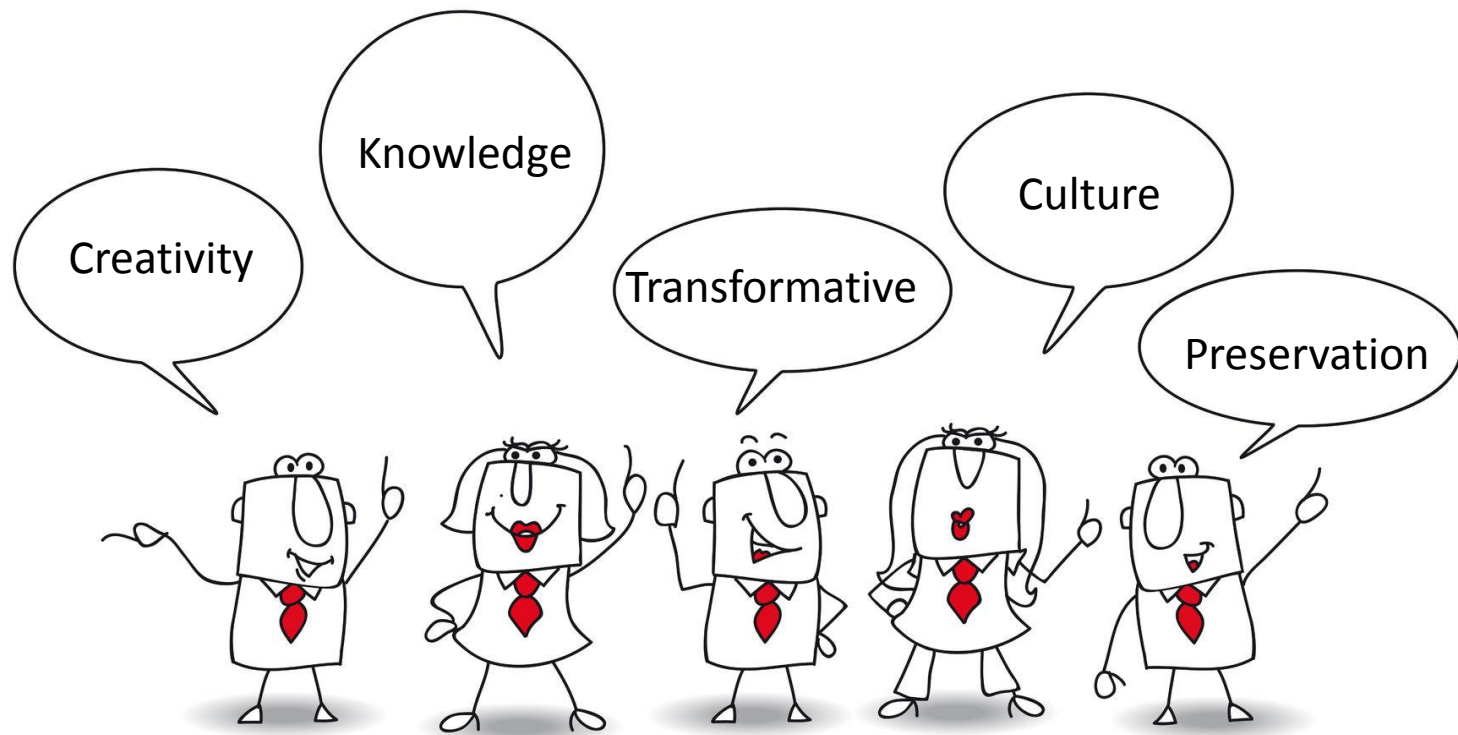
What policy-makers have to grapple with:

- Maintaining an appropriate balance between rights and exceptions
- Ensuring that copyright can be meaningfully enforced on the Internet
- Furthering the development of an efficient online marketplace

Copyright Policy Making: finding the “Goldilocks” zone

Two common areas

- Limitations & Exceptions
- Fair Use vs Fair Dealing:



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Preserve

Disseminate

Exhibit



Educate

Research

Galleries; Libraries; Archives; Museums

Preservation – digitisation to prevent deterioration?

Access – online access? Downloads or just streams?

Marketing – online photos?

Exhibitions – virtual exhibitions?



Fair Use – the way forward?

Broad

Durable

“Future-Proof”

Fair Use

Flexible

- Broadly applicable to all uses of works and can be adapted to new situations through a case-by-case basis.
- Statutory language is “tech-neutral” and able to accommodate challenges arising from rapid technological changes.

Uncertain

- Case-by-case determination and interpretation by a judge
- US jurisprudence reflects inconsistency in application?

Fair Dealing

Rigid / Inflexible

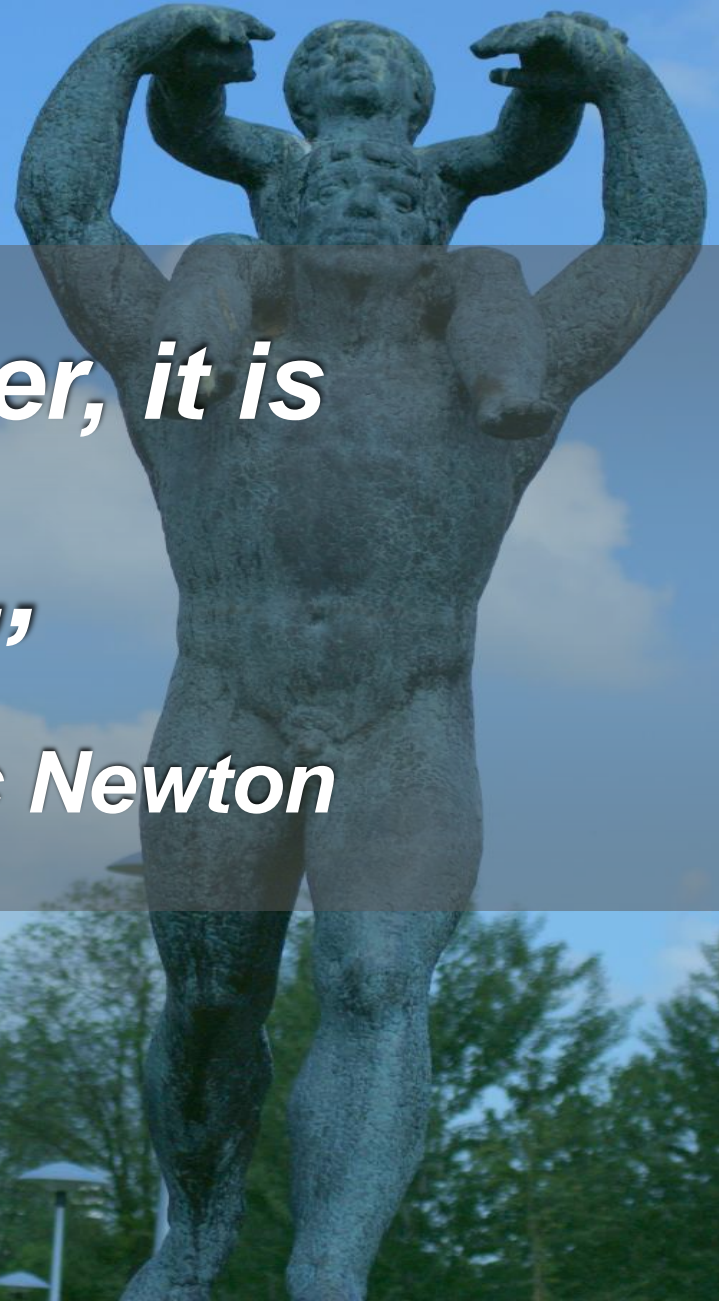
- Restrictive in scope as meant for finite, specific purposes.
- Statutory language might become obsolete as technology changes or introduces new uses of works.
- Need for legislative changes to cope as technology changes

Certainty

- Specifically defined exceptions
- Possible to carve out safeguards or specific conditions
- Legislative action involves policy-making which may lead to a more balanced outcome

***“If I have seen further, it is
by standing on the
shoulders of giants”***

Isaac Newton



Equilibrium between Stakeholders and the Market

- How much should Government Intervene?

There are many areas in which there are calls from industry for Government to intervene

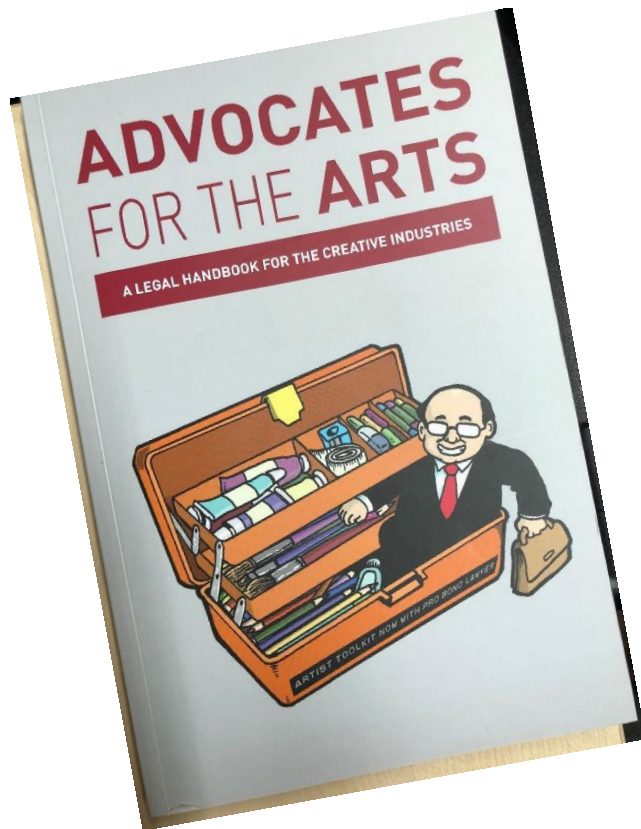
- The creator-publisher relationship which is usually skewed in favour of the publishers who possess stronger bargaining power and better understanding of their legal rights.
- To facilitate cross-licensing of IP / media properties to generate new commercial opportunities
- CMOs : tariff regulation; accountability and transparency

Is it always for Government to intervene or to let the market decide?

- Legislation can be a blunt tool
- New economic/business models may also be a better way forward

Equilibrium between Stakeholders and the Market - How much should Government Intervene?

Educating the Industry



Partnering the Industry to Raise Awareness and Facilitate Discussions





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THANK YOU