

Copyright and Intellectual Property



Information Technology and Social Life

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Copyright and Intellectual Property

- Intellectual property - reflects that the property is the product of the mind (as opposed to tangible property), includes copyrights, patents, trademarks, trade secrets.
- Copyright - A form of intellectual property that grants the holder sole legal right to copy their works of original expression
- Can include literary works, movie, music, sound, art, programs, designs
- Do not cover ideas or facts, but only expression of an idea
- Granted for a defined period of time
- Once term is up, work falls in to public domain
- United States Constitution, Article I, Section 8, Clause 8: "Congress shall have Power [...] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."



Copyright History

- Copyright Act of 1790 - 14 years, can be renewed for 14 years, afterward falls in to public domain
- Past 40 years, Congress has extended term 11 times
- Copyright Act of 1976 - added fair use doctrine and exclusive rights to holder
- 1998 Sonny Bono Act - copyrights last the life of the author, plus seventy years in the case of individual works, or 75 to 95 years in the case of works of corporate authorship and works first published before January 1, 1978
- Digital Millennium Copyright Act - 1998 - criminalizes production and dissemination of technology that can circumvent measures taken to protect copyright, not merely infringement of copyright itself, and heightens the penalties for copyright infringement on the Internet; limits ISP liability.

A copyright holder typically has exclusive rights:

- * to make and sell copies of the work (including, typically, electronic copies)
- * to import or export the work
- * to make derivative works
- * to publicly perform/display the work
- * to sell or assign these rights to others



Copyright concepts

- **First-sale doctrine** - copyright law does not restrict resale of copies of works, provided those copies were made by or with the permission of the copyright holder. Books and CDs.
- **Fair Use**
 1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 2. The nature of the copyrighted work;
 3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 4. The effect of the use upon the potential market for or value of the copyrighted work.
- In the U.S., copyrights are automatic as soon as the expression is secured in a fixed medium



Eldred vs. Ashcroft

- 2003 - Supreme Court case, challenged constitutionality of Sonny Bono Act
- First in DC District Court, then appeals, all denied
- Eric Eldred - noncommercial Internet publisher of public domain texts; one of the founders of Creative Commons
- Lessig argued case-based primarily on extension of copyright is unconstitutional; perpetuity
- Decision 7-2 to uphold lower courts

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Lawrence Lessig

- Stanford law professor
- Tried *Eldred vs. Ashcroft*, challenging Sonny Bono Copyright Extension Act (1998), in Supreme Court, lost 2003
- Wrote *Code and Other Laws of Cyberspace, The Future of Ideas, New Culture*



Future of Ideas

- More commerce, TV, powerful networks
- Or falling costs, reduced barriers to creativity, creative sharing
- Film model - use software to prevent copying
- Free Beer or Free Speech
- Some control of resources, incentive to create
- Some resources are free to improve society, i.e. testing scientific theories
- Creative works both input and output to expression
- Copyright conceived as limited protection, how to balance?
- "To reestablish a balance between control and creativity, our aim should be to give artists enough incentive to produce, while leaving free as much as we can for others to build upon and create."

Communism? Altruism?



Lessig's Solution

- Work that an author "publishes" should be protected for a term of five years once registered, and that registration can be renewed fifteen times. If the registration is not renewed, then the work falls into the public domain.
- Registration need not be difficult. The U.S. Copyright Office could run a simple Web site where authors register their work. That Web site could be funded by charges for copyright renewals. When an author wants to renew the copyright, the system could charge the author a renewal fee. That fee might increase over time or depend upon the nature of the work.
- Unpublished works would fall under current system.
- What constitutes publication?
- Payments to artists while assuring access to the work

Term of SW effectively unlimited (when SW is in public domain, no machine will be available to run it)



Some Final Comments on Copyright

- Lessig's own critique -
 - Needed a lawyer, not a scholar
 - Should have heeded advice of other lawyers, must make issue seem important, dramatic harm done to free speech and free culture
 - Too focused on the limits of Congress' power, rather than on harm
 - Is the idea of "public domain" over?
- Hilary Rosen, former CEO RIAA
 - Ultimately convinced as supporter of Creative Commons - there are ways to maintain ownership of copyrighted works and still make it possible for the average person to license the use of those works.
 - Recognized unique business arrangements, i.e. Prince, Pearl Jam
 - But, while current copyright system is antiquated, has created a great deal of wealth for artists and a large body of work for the public

Honey, I shrunk the Constitution.

Eventually Rosen got the Free Beer vs. Free Speech difference



Music Sharing

- Why was the Wired article entitled “The Year the Music Died?”
Do you think we are approaching the end of the music industry as we know it?
- What is the Creative Commons?
- 2 Licenses
 - Noncommercial Sampling Plus - noncommercial file-sharing and non-commercial sampling (can't sell it)
 - Sampling Plus - allows file-sharing and commercial use of samples; use in advertisements not permitted; must be highly transformative.
- What's the significance of the long tail?
<http://www.wired.com/wired/images.html?issue=12.10&topic=tail&img=2>

Beastie Boys - Paul's Boutique 1989

Read excerpts, particularly Spoon

Long Tail

Money to be made all across products, not just hits

Access is facilitated by technology like Amazon's recommendations

Embrace niches

Aggregate dispersed audiences

Not reliant on physical space, inventory

Industry - poor sense of what people want

Price according to digital not physical costs

Use recommendations to drive demand down the curve - hits still matter, but only to drive the curve



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Pew - Musicians' Attitudes

- Web survey of musicians
- Two-thirds say the internet is "very important" in helping them create and distribute their music.
- 90% of these respondents use the internet to get ideas and inspiration;
- 87% use it to promote, advertise and post their music online;
- 3% offer free samples online and notable numbers report benefits from that such as higher CD sales, larger concert attendance, and more radio play;
- 77% have their own Web site;
- 69% sell their music somewhere online;
- 66% use the internet to collaborate with others.
- Two-thirds of these respondents report that the internet has had a big effect on improving their ability to communicate with their audience and fans.
- 72% of musicians in our survey report that the internet has helped them to make more money from their music and
- 83% have provided free samples or previews of their work online.
- Half of musicians say that copyright regulations generally benefit purveyors of art work more than the original creators.

The musicians we surveyed were similarly divided over burning a CD for a friend; 47% think this should be legal while 41% think it should be illegal. However, most say that sending a digital copy of music over the internet to someone they know should be permitted.