



Copyright v Creativity

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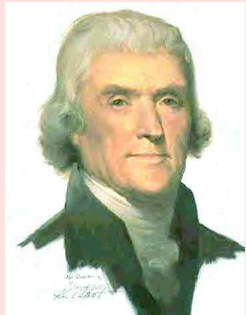


Overview

- The Philosophical Arguments over Copyright
- The Practical Development of Copyright
How did we get here?
- Where is here? What *is* current copyright law?
- Language, Legitimacy and Legislation
- Creativity, Culture, Reward

No Copyright

There is no new thing under the sun (The Bible)



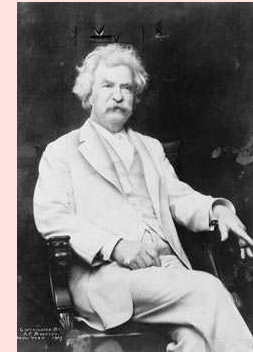
Thomas Jefferson

Limited Copyright

Without reward none will create

Unlimited Copyright

Creation is an inalienable part of the creator



Mark Twain

(Samuel Clemens)

- UK Copyright: Originally a method of **CENSORSHIP** and patronage.
- Continental Copyright: Moral Rights, Long Duration (Life+)
- US Copyright: Short Duration (14/28). Bilateral Agreements Only.



How Did We Get Here?

- Pre-Gutenberg: patronage, scribes, authorship=authority
- Printing to Recording: One of the causes of the American Revolution.
- Recording to the Internet: Compromise and Piracy



Middlemen, not Creators, not Consumers

- The original copyright laws were made at the behest of the publishers.
- Only when their political power base was shaky did they claim to act on behalf of authors.
- International agreements have long been used to justify laws locally unacceptable.

Major US Court Cases



Ben Hur (1907)

Film of the Book

Publisher v Moviemakers



The Player Piano

Recording of Played Music

Recording Co. v Sheet Publishers



Betamax VCR

Fair use technology

Publishers v Tech Manufacturers



Where Are We Now?

- Copyright has longer duration than ever:
 - life+70 years (written)
 - 95 years (motion pictures)
 - 50 years (sound recording)
- Copyright has wider extent than ever:
 - “Derivative Works”
 - Presumptive Takedown
 - Laws Against Circumvention of Technological Protection Measures
 - Attempts to re-copyright the Public Domain (Broadcast Rights!?!?)
 - Attempts to stop new technologies that undermine old business models (peer to peer sharing, search engines, digitisation).



Language, Legitimacy and Legislation

- The words “Pirate”, “Theft”, lying simplifications, “education” (indoctrination).
- Appeals about “starving artists”: 95+% of musicians *with* record deals do not make a living off them.
- Corruption of US national politics.
- “Intellectual Property” — an empty concept.
- An international body (WIPO) dedicated to “expanding protection” (may be changing).
- Overbearing US trade policy enforcing their approach on others (net importers/net exporters). China, Australia, EU.



Relevant Cartoons

See:

<http://ars.userfriendly.org/cartoons/?id=20020319>

<http://ars.userfriendly.org/cartoons/?id=20020323>



The Copyright Bargain

- Who is the Pirate?
- The Bargain is between the public and the creators of individual pieces.
- Each member of the public is potentially a new creator.
- Creation comes from reuse.
- Copyright is not supposed to prevent but to enhance creation.
- The bargain must be restruck in the light of new technology and new lives. Traditional Music, School Music, out of print novels, decaying archives, prevention of useful new technologies.



Lights in the Tunnel — Daylight or Train

- Creative Commons — Some Rights Reserved
- Doujinshi — Balance and Creativity, not Blind Adherence.
- The BBC Creative Archive
- The Broadcast flag
- The CBDTPA proposals — The Consumer Broadband and Digital Television Promotion Act (or, the Consume But Don't Touch the Product Act).
- If it can't be understood, it shouldn't be applied!
- Fruit of the Poisoned Tree/Dogs in the Manger



Acknowledgements and Sources

- Larry Lessig:
 - *Code, and Other Laws of Cyberspace*
 - *The Future of Ideas*
 - *Free Culture*
- Jessica Litman: *Digital Copyright*
- Siva Vaidhyanathan: *Copyrights and Copywrongs*
- Edward Samuels: *The Illustrated Story of Copyright*