

REMIX

How Creativity Is Being Strangled by the Law

LAWRENCE LESSIG

I've written five books. Four of these books are extraordinarily depressing. I like depressing, deep, dark stories about the inevitable destruction of great, fantastic ideas. After my first child was born, my thinking began to shift some, and I wrote *Remix*, which is quite new in the collection because it's a fundamentally happy book or, at least, mostly a happy book. It's optimistic. It's about how certain fantastic ideas will win in this cultural debate. Though the problem is that I'm not actually used to this optimism; I'm not used to living in a world without hopelessness. So I'm actually moving on from this field to focus on a completely hopeless topic, solving problems of corruption, actually. Completely hopeless. But I am happy to come here to talk about this most recent book.

I want to talk about it by telling you some stories, making an observation, and constructing an argument about what we need to do to protect the opportunity that technology holds for this society. There are three stories.

The first one is very short. A very long time ago, the elite spoke Latin, and the vulgar, the rest of the people, spoke other languages: English, French, and German. The elite ignored the masses. The masses ignored the elite. That's the first story. Very short, as I promised.

Here's number two: In 1906, John Philip Sousa traveled to the United States Congress to talk about phonographs, a technology he called the "talking machines." John Philip Sousa was not a fan of the talking machines. He was quoted as saying, "These talking machines are going to ruin the artistic development of music in this country. When I was a boy, in front of every house in the summer evenings, you would find young people together singing the songs of the day or the old songs. Today you hear these infernal machines going night and day. We will not have a vocal cord left. The vocal cords will be eliminated by a process of evolution, as was the tail of man when he came from the ape."¹

I want you to focus on this picture of “young people together singing the songs of the day or even old songs.” This is culture. You could call it a kind of read/write culture. It’s a culture where people participate in the creation and re-creation of their culture. It is read/write, and Sousa’s fear was that we would lose the capacity to engage in this read/write creativity because of these “infernal machines.” They would take it away, displace it, and in its place, we’d have the opposite of read/write creativity: a kind of read-only culture. A culture where creativity is consumed, but the consumer is not a creator. A culture that is top down: a culture where the “vocal cords” of the millions of ordinary people have been lost.

Here is story three: In 1919, the United States voted itself dry as it launched an extraordinary war against an obvious evil—a war against the dependence on alcohol, a war inspired by the feminist movement, a war inspired by ideas of progressive reform, and a war that was inspired by the thought that government could make us a better society. Ten years into that war, it was pretty clear this war was failing. In places around the country, they asked how we could redouble our efforts to win the war. In Seattle, the police started to find ways to fight back against these criminals using new technology: the wiretap. Roy Olmstead and eleven others found themselves the target of a federal investigation into his illegal production and distribution of alcohol. His case, *Olmstead v. the United States* (1928), was heard by the Supreme Court to decide whether the wiretap was legal.² When the police tapped the phones of Olmsted and his colleagues, they didn’t get a judge’s permission, or a warrant, they just tapped the phones. The Supreme Court looked at the Fourth Amendment to the Constitution, which protects against “unreasonable searches and seizures.” Chief Justice Taft concluded that the wiretap was not proscribed by this amendment. He said the Fourth Amendment was designed to protect against trespassing. But wiretapping doesn’t involve any necessary trespass: they didn’t enter Olmstead’s home to attach anything to the wires; they attached the wiretap after the wires left Olmsted’s home. There was no trespass, therefore no violation of the Fourth Amendment.

Louis Brandeis, in voicing his dissent, argued vigorously for a different principle. Brandeis said the objective of the Fourth Amendment was to protect against a certain form of invasion, so as to protect the privacy of people. He argued that how you protect privacy is a function of technology, and we need to translate the old protections from one era into a new context. He used the phrase “time works changes,” citing *Weems v. United States* (1910). Brandeis lost in that case and the wiretap won, but the war that the wiretap was aiding was quickly recognized to be a failure. By 1933 people recog-

nized this failure in increased costs they hadn't even anticipated when they first enacted this prohibition: the rise in organized crime and the fall in civil rights. They were also seeing a vanishing benefit from this war: everybody still drank. They realized that maybe the costs of this war were greater than the benefits. And so, in 1933 the Twenty-First Amendment repealed the Eighteenth Amendment, and Prohibition ended. Importantly, what was repealed was not the aim of fighting the dependence on alcohol but the idea of using war to fight this dependence.

Those are the stories, and here's the observation. In a sense that should be obvious, writing is an extraordinarily democratic activity. I don't mean that we vote to decide what people can write. I mean that everyone should have the capacity to write. Why do we teach everyone to write and measure education by the capacity people have to write? By "write," I mean more than just grade-school knowledge to make shopping lists and send text messages on cell phones. More specifically, between ninth grade and college, why do we waste time on essays on Shakespeare or Hemingway or Proust? What do we expect to gain? Because, as an academic, I can tell you the vast majority of this writing is just crap. So why do we force kids to suffer, and why do we force their professors to suffer this "creativity"?

The obvious answer is that we learn something. In the process of learning how to write, we at least learn respect for just how hard this kind of creativity is, and that respect is itself its own value. In this democratic practice of writing, which we teach everyone, we include quoting. I had a friend in college who wrote essays that were all exactly like this: strings of quotes from other people's writings that were pulled together in a way that was so convincing that he never got anything less than an A+ in all of his university writing classes. Now, he would take and use and build upon other people's words without permission of the other authors: *so long as you cite*. In my view, plagiarism is the only crime for which the death penalty is appropriate. So long as you cite, you can take whatever you want and use it for your purpose in creating. Imagine if the rule were different; imagine you went around and asked for permission to quote. Imagine how absurd it would be to write the Hemingway estate and ask for permission to include three lines in an essay about Hemingway for your English class. When you recognize how absurd it is, you've recognized how this is an essentially democratic form of expression; the freedom to take and use freely is built into our assumptions about how we create what we write.

Here's the argument. I want to think about writing or, more broadly, *creating* in a digital age. What should the freedom to write, the freedom to quote,

the freedom to remix be? Notice the parallels that exist between this question and the stories that I've told. As with the war of Prohibition, we, in the United States, are in the middle of a war. Actually, of course, we're in the middle of many wars, but the one I want to talk about is the copyright war, those which my friend the late Jack Valenti used to refer to as his own "terrorist war."³ Apparently the terrorists in this war are our children. As with the war Sousa launched, this war is inspired by artists and an industry terrified that changes in technology will effect a radical change in how culture gets made. As with the Twenty-First Amendment, these wars are raising an important new question: Are the costs of this war greater than its benefits? Or, alternatively, can we obtain the benefits without suffering much of the costs?

Now, to answer that question, we need to think first about the benefits of copyright. Copyright is, in my view, an essential solution to a particular unavoidable economic problem. It may seem like a paradox, but we would get less speech without copyright. Limiting the freedom of some people to copy creates incentives to create more speech. That's a perfect and happy story, and it should function in exactly this way. But, as with privacy, the proper regulation has to reflect changes in technology. As the technology changes, the architecture of the proper regulation is going to change. What made sense in one period might not make sense in another. We need to adjust, in order to achieve the same value in a different context. So with copyright, what would the right regulation be?

The first point of regulation would be to distinguish, as Sousa did, between the amateur and the professional. Copyright needs to encourage both. We need to have the incentives for the professional and the freedom for the amateur. We can see something about how to do this by watching the evolution of digital technologies in the Internet era. The first stage begins around 2000, which is a period of extraordinary innovation to extend read-only culture. Massively efficient technology enables people to consume culture created elsewhere. Apple's iTunes Music Store allows you to download culture for ninety-nine cents, though only to an iPod and, of course, only to *your* iPod (and a few other iPods whose owners you trust with your iTunes login). This is an extraordinarily important and valuable part of culture, which my colleague Paul Goldstein used to refer to as the "celestial jukebox."⁴ This step is critically important, as it gives people access to extraordinary diversity for the first time in human history. That is one stage.

A second stage begins around 2004, a reviving of Sousa's read/write culture. The poster child for this culture is probably something like Wikipedia, but the version I want to focus on is something I call "remix." Think about

remix in the context of music. Everybody knows the Beatles' *White Album*. It inspired Jay Z's *Black Album*, which inspired DJ Danger Mouse's *Grey Album*, which literally synthesizes the tracks so that the *White Album* and *Black Album* together produce something gray. That's 2004: two albums synthesized together in what came to be known as a mashup. The equivalent today is something like the work of Girl Talk, who synthesizes up to 280 different songs together into one particular song. Think in the same context about film: in 2004, with a budget of \$218, Jonathan Caouette's *Tarnation* makes its debut in wowing Cannes and winning the 2004 Los Angeles International Film Festival.⁵ Caouette took twenty years of Super-8 and VHS home movies and an iMac given to him by a friend to create an incredibly moving documentary about his life and relationship with his mentally ill mother. On a more modest but more prevalent level, YouTube is full of something called anime music videos. These videos are anime, the Japanese cartoons sweeping America today. It is not just kids making them, but we'll just pretend for a second that it is kids who take the original video and reedit it to a different sound track. It can be banal or interesting. And almost all of this read/write has emerged on YouTube.

Many people focus on the copyrighted TV shows that are digitized and posted onto YouTube overnight. I want you to think about the call-and-response pattern that YouTube inspires, where someone will create something and then someone else will create another version of the same thing. A hip-hop artist named Soulja Boy created a song called "Crank Dat," which featured a dance called "The Superman." The beat was catchy; the lyrics were literally a set of instructions on how to reproduce the dance. The original music video was a low-budget demonstration of the steps required to reproduce the dance.⁶ And reproduce it did.⁷ That how-to video has been viewed over forty million times as of June 2009. There are hundreds, if not thousands, of videos of the Soulja Boy Superman dance—each one building on the next: cartoon characters, people of all ethnicities, Internet celebrities, politicians.⁸ The point is these are increasingly conversations between young people from around the world. YouTube has become a platform where people talk to each other. It's the modern equivalent of what Sousa spoke of when he spoke of "the young people together, singing the songs of the day or the old songs." But rather than gathering on the front lawn, they now do it with digital technologies, sharing creativity with others around the world.

Just today I discovered a remix of the presidential debates that emphasizes the prevalence of talking points through remix.⁹ Many people saw the "Yes We Can" video featuring famous musicians singing along to one of Barack

Obama's speeches.¹⁰ This kind of pastiche of songs, sounds, and words has become a natural way to express politics that maybe a decade ago would not have been understandable.¹¹ My favorite is Johan Soderberg's "Bush Blair Endless Love," which edits their speeches to a love song by Diana Ross and Lionel Ritchie.¹² I'm very sad, but this is one of the last times I get to share this one, as Bush's term is ending shortly.

Remix has nothing to do with technique, because the techniques this work employs have been available to filmmakers and videographers from the beginning of those forms of expression. What's important here is that the technique has been democratized for anyone who has access to a fifteen-hundred-dollar computer. Anyone can take images, sounds, video from the culture around us and remix them in ways that speak to a generation more powerfully than raw text ever could. That's the key. This is just *writing* for the twenty-first century. We who spend our lives writing have to recognize that nonmultimedia, plain alphanumeric text in the twenty-first century is the Latin from the Middle Ages. The words, images, sounds, and videos of the twenty-first century speak to the vulgar; they are the forms of expression that are understood by most people. The problem is that the laws governing quoting in these new forms of expression are radically different from the norms that govern quoting from text. In this new form of expression that has swept through online communities that use digital technology, permission is expected first. Why is there this difference?

It is a simple, technical clause in the law, a conflict between two architectures of control. One architecture, copyright, is triggered every time a copy is made. The other architecture, digital technology, produces a copy in every single use of culture. This is radical change in the way copyright law regulated culture.

Think, for example, about a book that is regulated in physical space by copyright law. An important set of uses of a book constitute *free* uses of a book, because to read a book is not to produce a copy. To give someone a book is not a fair use of a book; it's a *free* use of a book, because to give someone a book is not to *produce* a copy of a book. To sell a book requires no permission from the copyright owner, because to sell a book is not to produce a copy. To sleep on a book is an unregulated act in every jurisdiction around the world because sleeping on a book does not produce a copy. These unregulated uses are balanced with a set of regulated uses that create the incentives necessary to produce great new works. If you want to publish a book, you need permission from the copyright owner. In the American tradition, there is a thin sliver of "fair use," exceptions that would otherwise have been

regulated by the law but which the law says ought to remain free to create the incentive for people to build upon or critique earlier work.

Enter the Internet, where every single use produces a copy: we go from this balance between unregulated, regulated, and fair uses to a presumptive rule of regulated uses merely because the platform through which we get access to our culture has changed, rendering this read/write activity presumptively illegal. DJ Danger Mouse knew he could never get permission from the Beatles to remix their work. Caouette discovered he could wow Cannes for \$218, then discovered it would cost over \$400,000 to clear the rights to the music in the background of the video that he had shot. Anime music videos are increasingly getting takedowns and notices from lawyers who are not happy about the one thousand hours of remixed video needed to create the anime music videos. And back to my favorite example of “Bush Blair Endless Love”: I don’t care what you think about Tony Blair, I don’t care what you think about George Bush, and I don’t care what you think about the war. The one thing that you cannot say about this video is what the lawyers said when they were asked for permission to synchronize those images with that soundtrack. The lawyers said no, you can’t have our permission, because “it’s not funny.” So the point here is to recognize that no one in Congress ever thought about this. There was no ATM-RECA Act, the “Act to Massively Regulate Every Creative Act” Act. This is the unintended consequence of the interaction between two architectures of regulation, and, in my view, this is problem number one: the law is fundamentally out of sync with the technology. And, just as with the Fourth Amendment, this needs to be updated. Copyright law needs an update.

Problem number two is what those who live in Southern California typically think of as problem number one: piracy or, more specifically, peer-to-peer piracy. Piracy is the “terrorism” that Jack Valenti spoke of when he called kids terrorists. Now, I think this is a problem; I don’t support people using technology to violate other people’s rights. In my book *Free Culture* and in *Remix*, I repeatedly say you should not use peer-to-peer networks to copy without the permission of the copyright owner. But all of that acknowledged, we need to recognize that this war of prohibition has not worked; it has not changed the bad behavior. Here’s a chart of peer-to-peer simultaneous users (see fig. 11.1). The one thing we learn from this chart is that peer-to-peer users don’t seem to read the Supreme Court’s briefs: the arrow marks the date that the Supreme Court declared completely, unambiguously, that this is presumptively illegal. After the ruling, the number of users did not decrease.

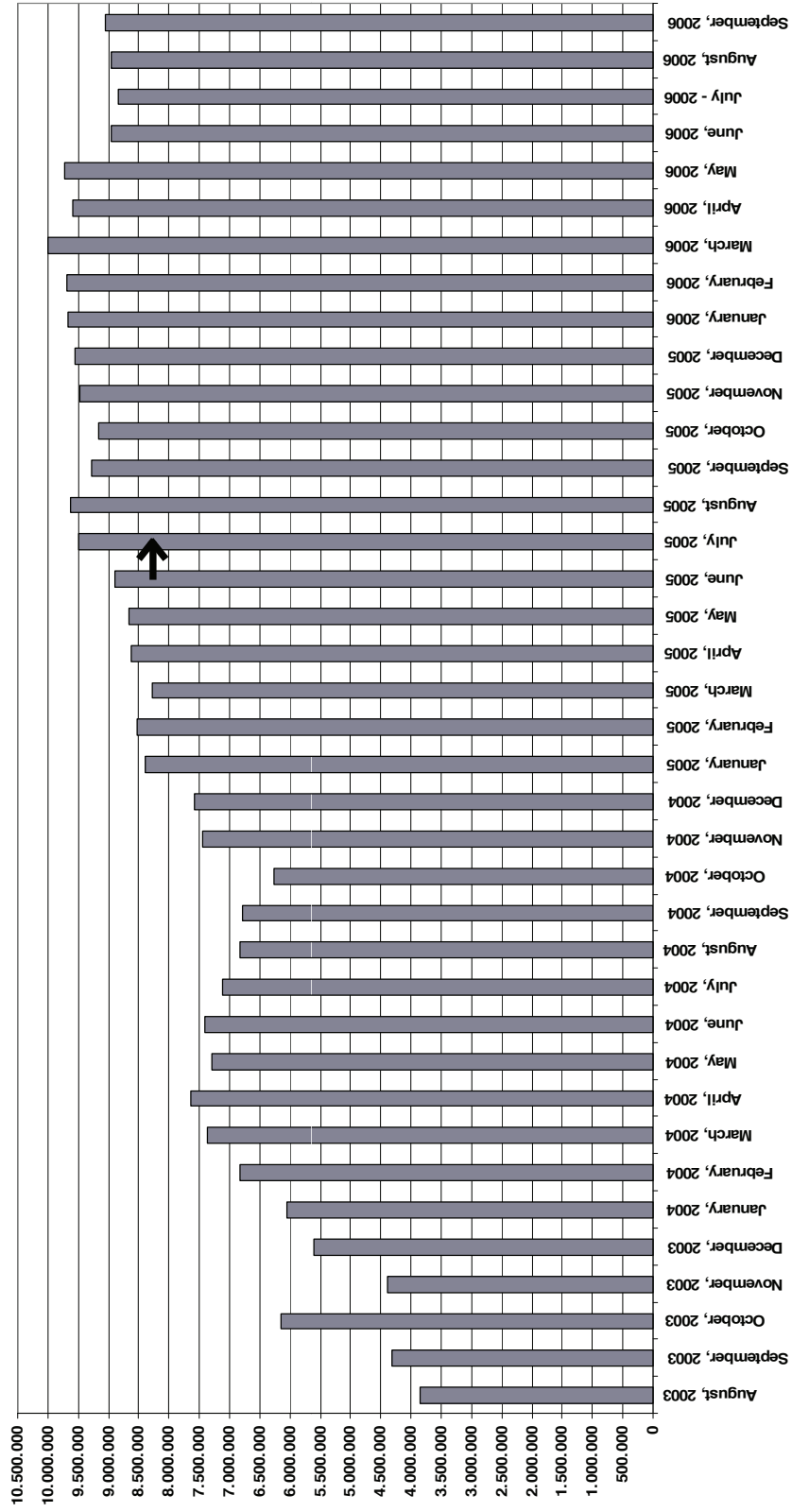


Fig. 11.1. Average simultaneous P2P users

All this war has done is produce a generation of “criminals.” That part of the story is very ugly, unhappy, and sad. It is the sort of inspiration that I used for my last book, *Free Culture*. But times have changed, and the story in *Remix* is a story of change, a change that is inspired by what I think of as the third stage in this development: the development of hybrid economies.

To understand a hybrid economy, first think about what “economies” means. Economies are repeated practices of exchange, over time between at least two parties. I want to identify three such economies. First, there are commercial economies. At the grocery store it is a quid pro quo: you get a certain number of bananas for a certain number of dollars. Money is how we speak in this economy. Second, there are economies where money is not part of the exchange. For example, two kids playing on the playground is a sharing economy. Friends going out to lunch sharing their time with each other is a sharing economy. And romantic love is a sharing economy. They are economies, because they exist over time, but, for these economies, money is *not* how we speak. Indeed, if we introduced money into these economies, we would radically change them. Imagine if two friends were planning a lunch date, and one says, “How about next week?” and the other one says, “Nah, how about fifty dollars instead?” Or consider that when money is introduced into romantic relationships, it radically changes the meaning of that economy for both parties involved. These are both rich and important economies that coexist with the commercial economy. They don’t necessarily compete, but we want lives where we have both.

Now the Internet, of course, has produced both commercial and sharing economies. The Internet has commercial economies where people leverage knowledge to produce financial value, and it has sharing economies like Wikipedia or free sound resources like FreeSound.org or SETI@home, where people make their resources available to discover information about the universe. The Internet also has hybrid economies, which I want to focus on.

A hybrid economy is one where a commercial entity leverages a sharing economy or a sharing entity leverages a commercial economy. I’m not going to talk about the second case. I want to focus on the first case, where commercial economies leverage sharing economies. So here are some examples, obvious examples. Flickr, from its very birth, was a photo-sharing site that built sharing into its DNA. Indeed, it facilitated sharing by setting “public” as the default viewing state for all uploaded images and giving people the option to license their photos explicitly under a Creative Commons license. This sharing enabled community creation. Yahoo bought Flickr with the goal of leveraging value out of this sharing economy. Likewise, Yelp has exploded,

as thousands of people around the world share reviews of hotels or restaurants. These shared reviews, which people do for free, produce value for Yelp. Second Life began as a virtual world filled with big blue oceans and beautiful green fields, but through literally hundreds and thousands of hours of volunteer labor by people from around the world creating objects, places, and buildings, they have produced an extraordinarily rich environment that attracts people to Second Life and which profits the company, Linden Labs.¹³

These are examples of what I think of as a hybrid. Once you see these examples, you will begin to see hybrids everywhere. Is Amazon really a commercial economy in this sense? Because, though it is selling books, much of the value of Amazon comes from the enormous amount of activity that people devote toward helping other people navigate the products which Amazon tries to sell. Apple is doing this. Even Microsoft gets this deep down in its DNA. Of course, Microsoft builds much of its support through volunteers who spend an enormous amount of their time not helping their local church but helping other people run Microsoft products more simply. Now this is not an accident. Mark Smith, a very bright former academic, works in something called the Community Technologies Group at Microsoft. This group develops all sorts of technologies to gauge the health of these communities, to encourage these communities to be more healthy so that other people want to spend more unpaid time helping Microsoft get richer. This dynamic is extraordinary. And it's no surprise, then, that at a conference about a year and one-half ago, I heard Steve Ballmer declare that every single successful Internet business will be a hybrid business. I think there is enormous promise in these hybrid combinations of free culture and free markets. This presents an enormous potential for the Internet economy to drive value back into these creative industries. That is the argument for what I think can happen, but this takes us doing something to produce it.

I want to identify two kinds of changes. The first change is a very technical legal change: the law needs to give up the obsession with the copy. As discussed earlier, copyright law is triggered on the production of every copy. This is, to use a technical and legal term, insane. I believe the law needs to focus on meaningful activity; in a digital world, the copy is not a meaningful activity. Meaningful activity, instead, is a function of the context of the copy's use. Context will help us distinguish between copies and remixes. We need to distinguish between taking someone's work and just duplicating it versus doing something with the work that creates something new. Context will help us distinguish between the professional and amateur. The copyright law, as it exists right now, presumptively regulates all this in the same way.

Never before in the history of copyright law has it regulated so broadly. In my view, it makes no sense to regulate this broadly right now. Instead, copyright law needs to focus on professional work being copied without being remixed. It needs to effectively guarantee professionals can control copies of their works that are made available commercially. Amateurs making remixes need to have free use, not fair use; they need to be exempted from the law of copyright. Amateurs need to be able to remix work without worrying about whether a lawyer would approve their remix or not. And between these two very easy cases, there are two very hard cases, professional remixes and amateur copying, cases where the law of fair use needs to continue to negotiate to make sure that sufficient incentives are created while leaving important creativity free. Now, if you look at this and you have any conservative instincts inside you, you might recognize this as a kind of conservative argument. I am arguing in favor of deregulating a significant space of culture and focusing regulation where the regulators can convince us that it will be doing some good. That's change number one.

Change number two is about peer-to-peer piracy. As discussed earlier, we have to recognize we're a decade into a war on piracy that has totally failed. In response to totally failed wars, some continue to wage that same war against the enemy. That was Jack Valenti's instinct. My instinct is the opposite. It's to stop suing kids and to start suing for peace. For the past decade, the very best scholars around the country have created an enormous number of proposals for ways to facilitate compensation to artists without breaking the Internet, proposals like compulsory licenses or the voluntary collective license.¹⁴ But as you look at all of these proposals, what we should recognize is what the world would have been like if we had had these proposals a decade ago. Number one, artists would have more money; of course, artists get nothing from peer-to-peer file sharing, and they don't get anything when lawyers sue to stop peer-to-peer file sharing (because any money collected goes to the lawyers, not the artists). Number two, we would have more competition in businesses; the rules would be clearer, so there would be more businesses that could get venture capital to support them as they innovate around ways to make content more easily accessible. Number three, and the point that is most important to me, is that we would not have a generation of criminals surrounding us. We need to consider these proposals now. We need this legal change.

The law needs to change, but so do we. We need to find ways to chill control-obsessed individuals and corporations that believe the single objective of copyright law is to control use, rather than thinking about the objective of

copyright law as to create incentives for creation. We need to practice respect for this new generation of creators. For example, there is a kind of hybrid which I unfairly refer to as a Darth Vader hybrid. This name was inspired by the Star Wars MashUps site that enables users to remix this thirty-year-old franchise through access to video footage from the films, into which you can upload and insert your own material. You can integrate your own music and pictures into the *Star Wars* series. But if you read the terms of service for this site, the mashups are all owned by Lucas Film.¹⁵ Indeed, Lucas Film has a worldwide perpetual license to exploit all content you upload for free, without any recognition back to the original creator. Yes, this is a hybrid economy, but an economy where the creator doesn't have any rights. Instead, it's a sharecropping economy in the digital age. This is an important understanding to track because people are increasingly taking notice of the way hybrid economies work and wondering whether there is justice in it. Om Malik asks, does "this culture of participation . . . build businesses on our collective backs? . . . Whatever 'the collective efforts' are, they are going to boost the economic value of those entities. Will they share in their upside? Not likely!"¹⁶

We increasingly arrive at this question: what is a *just* hybrid? I don't think we know the answer to that question completely. I do think we have some clues. Neither historical nor digital sharecropping is a just hybrid. So how, then, can we express this respect? One way to express this respect is to practice it. Companies can practice it, and you can practice it by doing as Radiohead, Nine Inch Nails, Girl Talk, Beastie Boys, David Byrne, Spoon, Fort Minor, Danger Mouse, Gilberto Gil, Thievery Corporation, Matmos, Cee-Lo, Le Tigre, and My Morning Jacket have done, making your works available in ways that expressly permit people to share and build upon your works. Many companies are already doing this, companies like Flickr, Blip TV, Picasa, Fotonaut, Yahoo, and, I promise, before the end of next year, Wikipedia.¹⁷ All of these entities build encouragement on top of Creative Commons licenses—licenses which we launched in 2003 and which over the past six years have exploded in numbers so that there are probably more than 150 million digital objects out there that are licensed under Creative Commons licenses. This is a way to say to creators, "We respect the creativity you have produced. We give you a freedom to express that respect to others." And it's an opportunity for us to say "happy birthday" to Creative Commons because it turns six today. And you can say "happy birthday" by giving money at <https://support.creativecommons.org/>. But of course you can't sing "Happy Birthday," because it is still under copyright, and we haven't cleared those rights. That's what we need to do, and your support is really critical.

I want to end with just one more story. I was asked to go to the Association of the Bar of the City of New York and speak in a beautiful room with red velvet curtains and red carpet. The event had many different aspects. The room was packed with artists and creators and at least some lawyers. All of these people were there because they were eager to learn how they could create using digital technologies, while respecting the law of fair use. The people who organized this conference had a lawyer speak on each of the four factors in fair use for fifteen minutes, with the thought that, by the end of the hour, we'd have an audience filled with people who understood the law of fair use. As I sat there and watched in the audience, I was led to a certain kind of daydreaming. I was trying to remember what this room reminded me of. And then I recalled when I was a kid in my early twenties, I spent a lot of time traveling the Soviet system, seeing great halls where the annual conventions took place. I recognized that the room had reminded me of the Soviet system's extraordinary tribunals. I began to wonder, when was it in the history of the Soviet system that the system had failed, and what could you have said to convince people of that? 1976 was way too early: it was still puttering along at that point. And 1989 was too late: if you didn't get it by then, you weren't going to get it. So when was it? Between 1976 and 1988, if you could have convinced members of the Politburo that the system had failed, what could you have said to them to convince them? For them to know that this romantic ideal that they grew up with had crashed and burned and yet to continue with the Soviet system was to reveal a certain kind of insanity. Because, as I sat in that room and listened to lawyers insisting, "Nothing has changed. The same rules apply. It's the pirates who are the deviants," I increasingly recognize that it is we who are insane, that the existing system of copyright simply could never work in the digital age. Either we will force our kids to stop creating, or they will force on us a revolution around copyright law. In my view, both options are not acceptable.

Copyright extremists need to recognize that there is a growing movement of abolitionism out there. Kids were convinced that copyright was for another century and that in the twenty-first century it is just not needed. Now, I am not an abolitionist. I believe copyright is an essential part of a creative economy. It makes a creative economy rich in both the monetary and cultural sense. In this sense, I'm more like Gorbachev in this debate than Yeltsin. I'm just an old Communist trying to preserve copyright against these extremisms—extremisms that will, in my view, destroy copyright as an important part of creative culture and industries.

Now, you may not be concerned about the survival of copyright. You may say, "Whatever. If it disappears, my machines will still run." If that's not

enough to get you into this battle, let me try one last effort. What you know is that there is no way for us to kill this form of creativity. We can only criminalize it. We can't stop our kids from creating in these new ways; we can only drive that creativity underground. We can't make our kids passive the way I, at least, was. We can only make them "pirates." The question is, is that any good? Our kids live in an age of prohibition. All sorts of aspects of their life are against the law. They live their life against the law. That way of living is extraordinarily corrosive. It is extraordinarily corrupting of the rule of law and ultimately corrupting to the premise of a democracy. If you do nothing else, after you've supported Creative Commons, you need to support this movement to stop this war now.

NOTES

This chapter was transcribed and edited by Michael Mandiberg from a talk given at the Computer History Museum in Mountain View, California, December 16, 2008. Lessig gave versions of this stump-style speech to share his ideas on free culture and promote Creative Commons. He kept the basic structure of a series of stories, observations, and a call to arms but updated the examples in the later part to reflect the rapid changes in digital culture. I have tried to preserve Lessig's powerful didactic, spoken presentation style, while streamlining the transcript to be effective in print form. The video of this talk is available at <http://lessig.blip.tv/file/1591892/> (accessed May 31, 2009). This chapter is licensed CC BY.

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2. *Olmstead v. United States*, 277 U.S. 438 (1928).
3. Amy Harmon, "Black Hawk Download: Pirated Videos Thrive Online," *New York Times*, January 17, 2002, <http://www.nytimes.com/2002/01/17/technology/circuits/17VIDE.html> (accessed May 31, 2009).
4. Paul Goldstein, *Copyright's Highway: From Gutenberg to the Celestial Jukebox* (Stanford: Stanford University Press, 2003).
5. Patricia Aufderheide and Peter Jaszi, "Untold Stories: Collaborative Research on Documentary Filmmakers' Free Speech and Fair Use," *Cinema Journal* 46, no. 2 (2007): 133–139, <http://www.acsil.org/resources/rights-clearances-1/nps240.tmp.pdf> (accessed July 20, 2010).
6. Soulja Boy, "How to Crank That—instructional video!," YouTube, originally posted April 2007, reposted August 2, 2007, <http://www.youtube.com/watch?v=sLGLum5SyKQ> (accessed May 31, 2009). At this point, Soulja Boy is still a self-produced amateur, without a label. Interscope signed him and made an official music video for the song: Soulja Boy, "Crank That," YouTube, August 9, 2007, <http://www.youtube.com/watch?v=8UFIYGkROII>

(accessed July 20, 2010). The premise of the official video is to reenact the discovery of Soulja Boy on YouTube: the hip-hop producer Mr. Collipark, who signed him to Interscope, is trying to understand the Soulja Boy phenomenon, after watching his children dance and surfing YouTube and seeing all of the videos that build on each other. He instant messages with Soulja Boy, eventually signing him to a record deal.

7. Ironically, after Interscope signed the artist, some of these fan videos have been subject to DMCA takedowns: see Kevin Driscoll, “Soulja Boy, Why Take My Crank Dat Video Down?,” response video posted on YouTube, May 31, 2009, <http://www.youtube.com/watch?v=wkeaxXLjhs>.

8. A tiny sampling of the Soulja Boy meme includes BEA5TED, “Soulja Boy—Crank Dat Pinocchio,” YouTube, January 5, 2008, <http://www.youtube.com/watch?v=aUM6NLeWQDc> (accessed July 20, 2010); djtj1216, “Dora the Explorer (Crank Dat Soulja Boy),” YouTube, July 13, 2007, <http://www.youtube.com/watch?v=vgmMgLjMghuk> (accessed July 20, 2010); Eric Schwartz, aka Smooth-E, “Crank That Kosha Boy,” YouTube, December 5, 2007, <http://www.youtube.com/watch?v=9oYDBtCN-hk> (accessed July 20, 2010); Barelypolitical, “Obama Girl . . . Does Soulja Boy . . . with Mike Gravel,” YouTube, May 9, 2008, <http://www.youtube.com/watch?v=RkZwF96IOyA> (accessed July 20, 2010); Jordan Ross, “Crank That Soldier Boy,” YouTube, July 21, 2007, <http://www.youtube.com/watch?v=7ZE2OzguWHo> (accessed July 20, 2010).

9. 236.com, “Synchronized Presidential Debating,” YouTube, October 28, 2008, http://www.youtube.com/watch?v=wfd5g8Y_Jqo (accessed May 31, 2009).

10. will.i.am et al., “Yes We Can,” YouTube, February 2, 2008, <http://www.youtube.com/watch?v=jjXyqcx-mYY> (accessed May 31, 2009).

11. For example, think about how differently this video treats editing and remix than the famous “We Are the World” video of the previous generation.

12. Johan Soderberg, “Read My Lips: Eternal Love,” 2001–2004, <http://www.soderberg.tv> (accessed July 20, 2010).

13. *Editor’s Note*: Not only is this labor unpaid, but it is done by customers who pay for the privilege to do this unpaid work; customers are charged a fee for monthly virtual land use, which we might call rent.

14. For more on the Electronic Frontier Foundation’s alternate schema, see <http://www.eff.org/wp/better-way-forward-voluntary-collective-licensing-music-file-sharing> (accessed May 31, 2009).

15. See <http://www.starwars.com/welcome/about/mashup-copyright> (accessed May 31, 2009).

16. Om Malik, “Web 2.0, Community & the Commerce Conundrum,” GigaOM.com, October 18, 2005, <http://gigaom.com/2005/10/18/web-20-the-community-the-commerce-conundrum/> (accessed May 31, 2009).

17. In May 2009, the Wikipedia Community voted to switch from the GFDL license to a Creative Commons license: http://meta.wikimedia.org/wiki/Licensing_update/Result (accessed May 31, 2009).