

Copyright and the digital economy

a case for reason

In considering how to manage copyright on the internet, and patent relative to new manufacturing technologies like the *RepRap* personal 3D printer, we must return to fundamental principles beyond all current technological concerns. What are the fundamental goals of copyright, patent and other similar legal constructs?

Capital, *labor* and *talent* are the conventional categories for these kinds of analysis. In this instance, however, *labor* has been automated. This leaves *capital* and *talent* fighting about how to divide up the pie, as in the ongoing skirmishing around what constitutes fair division of the spoils in the record industry.

Previous generations of this struggle left us with institutions like *United Artists* - a movie studio formed by *talent* to better represent their interests and free them from studio domination. There are constructive, as well as punitive, solutions on the table.

To really understand the issues, however, we must use new analogies: the current discussions of theft and piracy leave us without meaningful insight into *how to fix it*.

Public rights of way, trespassing, unlawful occupation, breaking and entering, squatters rights and similar classes of land law actually provide a much more nuanced understanding of the relationships between owners and users of the land we all share. That the world of ideas is in some sense for all is basic human instinct - had Euclid patented his work, for example, the Greeks would have laughed and used it anyway.

But we also wish to protect the hard labor of journeying into new parts of this unknown terrain and returning with new knowledge, and we must accept that every successful journey may require many dozens of fruitless, expensive trips. To provide the mechanisms to absorb the risk of creative work is one definite function of the free market in this domain. Risk management of creativity is a function that must be rewarded if we expect to see first albums of quality, for example.

What we seek to distinguish is between simple civil matters - "*excuse me, it's time for you to leave the bar, sir*" and the more complex terrain of criminal activity "*the police have been called, please remain here.*"

At the moment, *all copyright infringement is handled under the same legal framework* robbing us of the ability to use nuanced force to protect the rights of *talent* and *capital*. We need to be able to distinguish between a 14 year old sending a copy of a song to five friends and wholesale downloading of a new movie before release, organized from studio leaks. The parallel distinction here is between kids making a noise in a mall being asked to leave, and gangs of criminals stealing valuable goods from the shops. The suggestion that the teens sharing music are actually "*shoplifters*" who must be prosecuted is an analogy that comes from using the wrong metaphors: if they were not going to buy the song anyway, there is no corresponding loss of revenue. We need to understand a "nuisance" level of abuse which is on the order of making noise in a public place. Parallels to driving - with a points system at which point access to a public utility is lost - are inappropriate because *the internet is not a safety-critical public utility*.

To efficiently and equitably share land, so that new construction and farming are possible, is our goal. We must move beyond the naval metaphors, and discuss *digital trespass* rather than theft as our core terrain.

Vinay Gupta - hexayurt@gmail.com
<http://hexayurt.com> open refugee shelter project