



## From 1556 to Creative Commons

You may not know it but you will eventually. Big media companies are positioning themselves to restrict creative opportunity on the Internet.



### The development of copyright

Since the mid 16th century control over the reproduction of literary works has been practiced. Publishers, then known as 'stationers', acquired literary works from authors and organised the printing and sale of the works. These literary entrepreneurs wanted to protect their investments against copiers [1]. In 1556 the stationers, with the cooperation of the English Crown, who at the time wanted to control the import and distribution of books, formed a guild and were chartered to register lawfully printed books [2]. This mechanism amounted to the first licence and came with powers of seizure to act against infringing copies, a mechanism which still exists in today's law [3].

The power of these entrepreneurs continued until 1710 when the statute of Queen Anne gave authors, "*sole right and liberty of printing such book and books for the term of one and twenty years*". Where before the weight of law was towards the entrepreneurs, the statute of Queen Anne supported, "*...the encouragement of learned men to compose and write useful books.*" [4]

During the 19th century the term of copyright gradually increased as did the scope of copyright to include, in addition to literary work, dramatic, artistic and musical works. A merger of copyright laws occurred between nations in 1886 with the Berne Convention. At its revision in 1908 copyright no longer required registration, as it did back in 1556, but came in to existence at the moment of creation of the work and would last for the life of the originator plus 50 years [5].

The next significant change to copyright law occurred in 1911 when the scope of copyright was widened further to prevent the unauthorised reproduction of sound recordings. This right was however not given to the originator of the recorded work nor to the performing artist but to the entrepreneur who produced the recording. This widening of copyright to derived works and the protection of the entrepreneur has in part, I believe, enabled the growth of ever more powerful Big Media companies. Their commercial weight has enabled them to bring about changes in statute that increase the term of copyright to protect their business rather than foster creativity, as intended back in 1710. Significantly the changes in 1911 showed that copyright was flexible enough to protect works delivered through new technologies. In 1956 this was extended to include works delivered via films, broadcasts and typography and more recently software [6].

### Technology and the Law

Just as the 'stationers' of the mid 16th century used the technology of the day, the printing press, along with lobbying the English Crown to profit from creative works, so to do Big Media companies attempt to exploit digital technology and the law to protect the consumption of works under their control. This control has reached the state where companies have attempted to sabotage the consumer's media players.

In November 2005, Sony BMG Music sparked a copy protection controversy when it included a form of protection called Extended Copy Protection (XCP) on audio discs. Upon inserting a protected disc in the CD drive of a computer running Microsoft Windows, the XCP software would be installed. If CD-ripper software [7] were to then access the music tracks on the CD in order to copy the protected musical works, the XCP software would substitute white noise for the audio on the disc.

*"It turns out that Sony is using techniques normally seen only in spyware and computer viruses in order to restrict the unauthorized copying of some of its music CDs."* [8]

The type of protection utilised by Sony BMG is a form of 'Digital Rights Management' (DRM) which came about under the U.S copyright law, the Digital Millennium Copyright Act (DMCA). The act criminalizes production and dissemination of technology that can circumvent measures taken to protect copyright and heightens the penalties for copyright infringement on the Internet. The European equivalent is the directive given to its member states in May 2001, known as the EU Copyright Directive (EUCD). It is generally regarded as a victory for copyright-owning interests (publishing, film, music and major software companies) over copyright users' interests [9]. The UK implementation of the directive states:

*"A person commits an offence if he ... [amongst other conditions] possesses, to affect prejudicially the copyright owner, any device, product or component which is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of effective technological measures."* [10]

In the 1970's the Disney Corporation stifled what many believed to be the cartoonist Dan O'Neill's legitimate satirical criticism of an American icon, Mickey Mouse [11]. Later, with the prospect of the copyright on Mickey Mouse due to expire in 2003, the Disney group, having lavished donations of more than \$6.3 million campaign cash in 1997-98 [12], got the U.S. Congress to pass the Sonny Bono Copyright Term Extension Act (CTEA). This extended the term of protection by 20 years for works copyrighted in the 1920s [13]. This meant that works that had been ready to enter the public domain were maintained under private ownership until at least 2019.

### To the rescue

In the light of the restrictive practices brought about by a combination of technology, copyright law and dominant Big Media companies, some notable people have come to the public's attention. One of the main opponents of the CTEA was Stanford Law professor Lawrence Lessig, who, although ultimately unsuccessful at preventing the CTEA, did succeed in bringing the issue of protecting cultural development before the public.

*"never before have the big cultural monopolists used the fear created by new technologies, specifically the Internet, to shrink the public domain of ideas, even as the same corporations use the same technologies to control more and more what we can and can't do with culture". [14]*

In his book 'Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity', he concludes:

*"The architecture and law that surround the Internet's design will increasingly produce an environment where all use of content requires permission. The "cut and paste" world that defines the Internet today will become a "get permission to cut and paste" world that is a creator's nightmare." [15]*

a sentiment supported in an article recently published by the BBC who commented:

*"But today's digital rights management systems are not being used to promote a more open market in electronic content and are almost entirely concerned with enforcing restrictions on use." [16]*

When the economics of software changed in the 1980s from free source code to commercial proprietary code, a researcher at MIT, Richard Stallman, felt he should be free to tinker with and improve the code that ran a machine. In 1984, Stallman began a project to create a free operating system, so that the notion of free, open source software, would survive. That was the birth of the GNU project whose mission is to:

*"... preserve, protect and promote the freedom to use, study, copy, modify, and redistribute computer software, and to defend the rights of Free Software users. We support the freedoms of speech, press, and association on the Internet, the right to use encryption software for private communication, and the right to write software unimpeded by private monopolies." [17]*

This License, used to lubricate and protect the freedom of distribution of open source software, is referred to as a 'copyleft', which means that derivative works must themselves be free in the same sense. This principle forms the GNU General Public License (GNU GPL) [18]. In 1991 a similarly gifted individual, Linus Torvalds, began the open source development of what was to become Linux which fast became a healthy antidote to Microsoft's monopoly model of proprietary operating systems. [19]

Between them, Stallman and Torvalds showed the world that creativity under the wing of a 'copyleft' licence could far out perform any Big Media company. It is on these principles, and following the inspiration of the cultural environmentalist [20] Lessig, that the remedy for Big Media's domination of creativity was conceived.

## The remedy

The GNU GPL was intended mainly as a license for software documentation. Its creator, Stallman, suggests that new projects should not use it. In its place comes the Creative Commons Licenses. Creative Commons (CC) was officially launched in 2001 by Lawrence Lessig, the founder and chairman, as a method to mitigate any failure to prevent the enactment of the U.S. Copyright Term Extension Act.

CC licenses are designed for creative works: websites, scholarship, music, film, photography, literature etc. Since their launch, mainstream organisations like Yahoo and Google have begun to adopt CC searches which utilise the search based licence to identify creative works and the degree of use that can be made of them. Like copyright, CC licenses do not apply to ideas but the representation of those ideas. A CC license provides the ability to dictate how others may exercise the holder's copyright rights. In this way creative developers across the Internet can identify resources that represent creative works and that can be used to create derivative works and placed back in to the creative pool, the Internet. In this way it is hoped that the stifling grasp of Big Media over the Internet can be avoided.

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By Inna Savitskaya, 12 June 2006



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