

Cultural Democracy & Technology

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“...although human beings value and strive for autonomy, dependency and interdependency are inescapable aspects of well-lived lives”

Alexander and Panalver, p. 87

Philosophical Roots & Assumptions

- Norms: how do we “get along”?
- Democracy and its premises
 - Egalitarianism
 - Public goods and shared resources
 - Different ways to achieve democracy
- Role of culture
 - Value individuals’ chances to “fulfill their capacities to the fullest” & actively participate in cultural meaning-making
 - Democracy is “developmental”
 - Not just “access” to culture, but access to the means of production and distribution

What's the problem?

- Individual self determination sounds good....but this also extends to ideas about **property**, particularly in western, industrialized settings
- Property and ownership can conflict with broader social goods & what's good for the collective

****Political democracy deals with making collective decisions and has mechanisms for that; cultural democracy does not!****

“The choices that shape property in media, insofar as they shape what it means to be a speaker and a listener in an electronically mediated environment, and hence subjectivity, may influence the character of social existence.

Ongoing developments in ‘information’ law and policy will draw boundaries that will undergird the development of social life. The law of ephemeral property is thus becoming a principal terrain for constructing the contours of contemporary cultures. “ -Tom Streeter, Selling the Air, 1996

What's this got to do with open?

Property law fights openness!!

From RIP! A Remix Manifesto (Brett Gaylor):

1. Culture always builds on the past
2. The past always tries to control the future
3. Our future is becoming less free
4. To build free societies you must limit the control of the past

Property's answer to cultural control:

Copyright

- Why created?

Copyright Clause in US Constitution

- “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.”
- Purpose is to promote the creation of original expression AND to insure access to that expression by the public

Property's answer to cultural control: Copyright

It is supposed to be a balance:

- *Create incentives to cultural producers so they produce new work

- *Ensure cultural and scholarly work circulates to the public at large and can be shared, incorporated, altered and used in the public domain

Problems...

1. Where does copyright end and new work begin?

2. Duration of protections

3. Technologies – Code – limiting options



Food Chain Barbie



“WEIRD AL” YANKOVIC
OFF THE DEEP END

Copyright & Music

- [Under Pressure](#) (David Bowie & Queen) / [Ice Ice Baby](#) (Vanilla Ice)
- The Last Time (Rolling Stones) / Bittersweet Symphony (The Verve)
- [Oh, Pretty Woman](#) (Roy Orbison) / [Pretty Woman](#) (2 Live Crew)

Digital Culture and Copyright

- Digital culture challenges copyright law
- New forms include [fan fiction](#), [spoofs](#), sampling, [mash-ups](#), [machinima](#) & [more](#)
- Derivative work or fair use?
- Must rebalance stakeholder interests and rethink control rights

keith
AOKI
james
BOYLE
jennifer
JENKINS

TALES FROM THE PUBLIC DOMAIN

BOUND BY LAW?

TRAPPED IN A STRUGGLE SHE DIDN'T UNDERSTAND

DUKE
CENTER FOR THE
STUDY OF THE
PUBLIC DOMAIN

BY DAY A FILMMAKER...



CC

BY NIGHT SHE FOUGHT FOR **FAIR USE!**

SOME RIGHTS RESERVED

W H A T I S

T H E

MEATRIX



W W W . T H E M E A T R I X . C O M

[Fair Use](#)

Fair Use

- Using copyright material in ways to do not infringe/violate copyright - work must be transformative (add value or new meaning)
- Criteria –
 - Purpose and character of work (Is it commercial? Nonprofit?)
 - Nature of the work (Criticism? Satire?)
 - Amount and substantiality of what is used in relation to the entire copyrighted work
 - Financial effect on the value of the copyrighted work



"What is 'fair use'?"

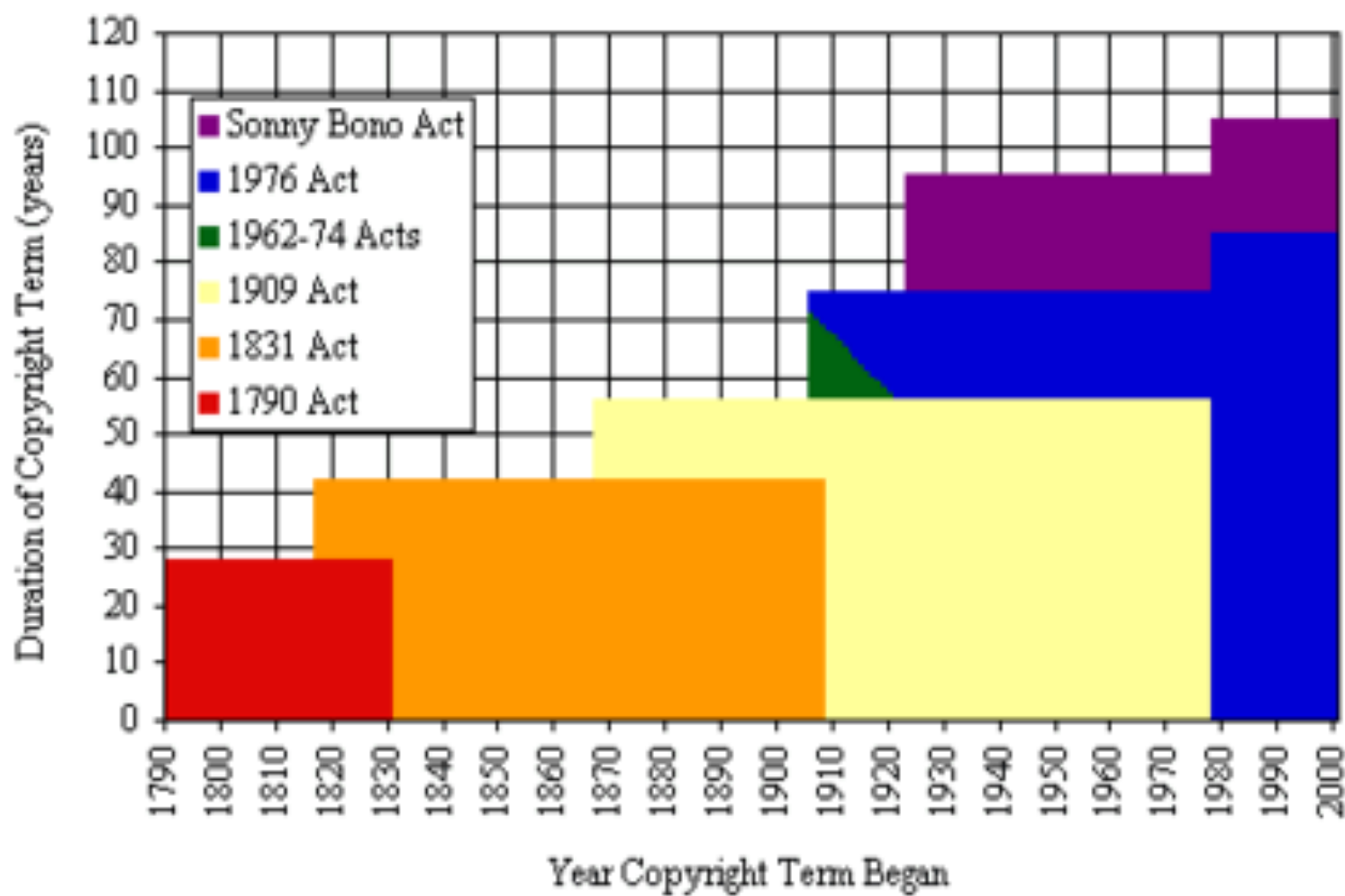
Bion Smalley

Current Term of Copyrights

- Life of author + 70 years
- 95 years for corporations
- Works then enter the public domain & can be freely used / reproduced without having to:
 - Pay
 - Ask permission



Eldred v. Ashcroft (2003) upholds term extensions





New tech
challenges
copyright

Example:
Burrow-Giles v.
Sarony Case
(1884)

iPod+iTunes+DRM

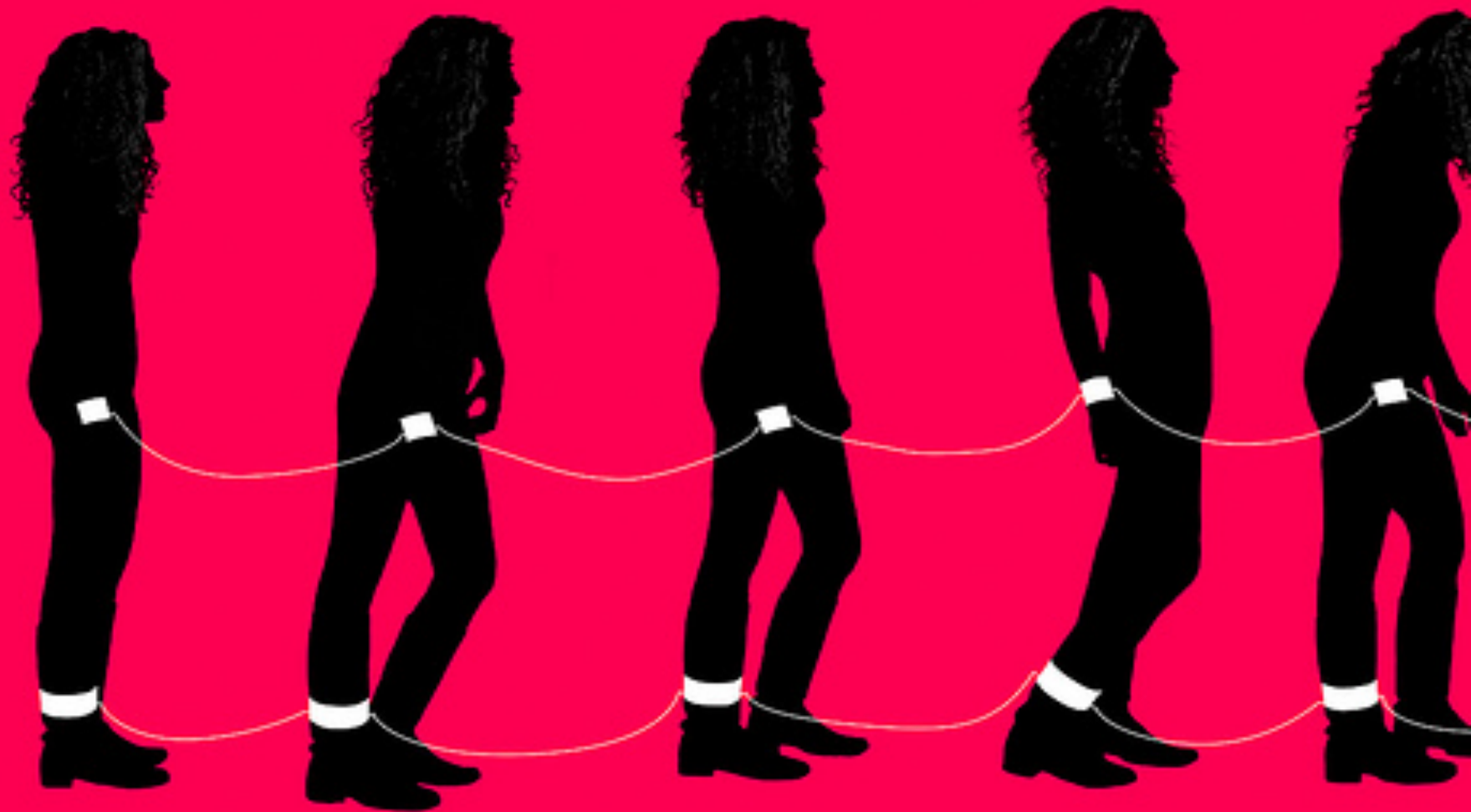


Digital Rights Management (DRM)

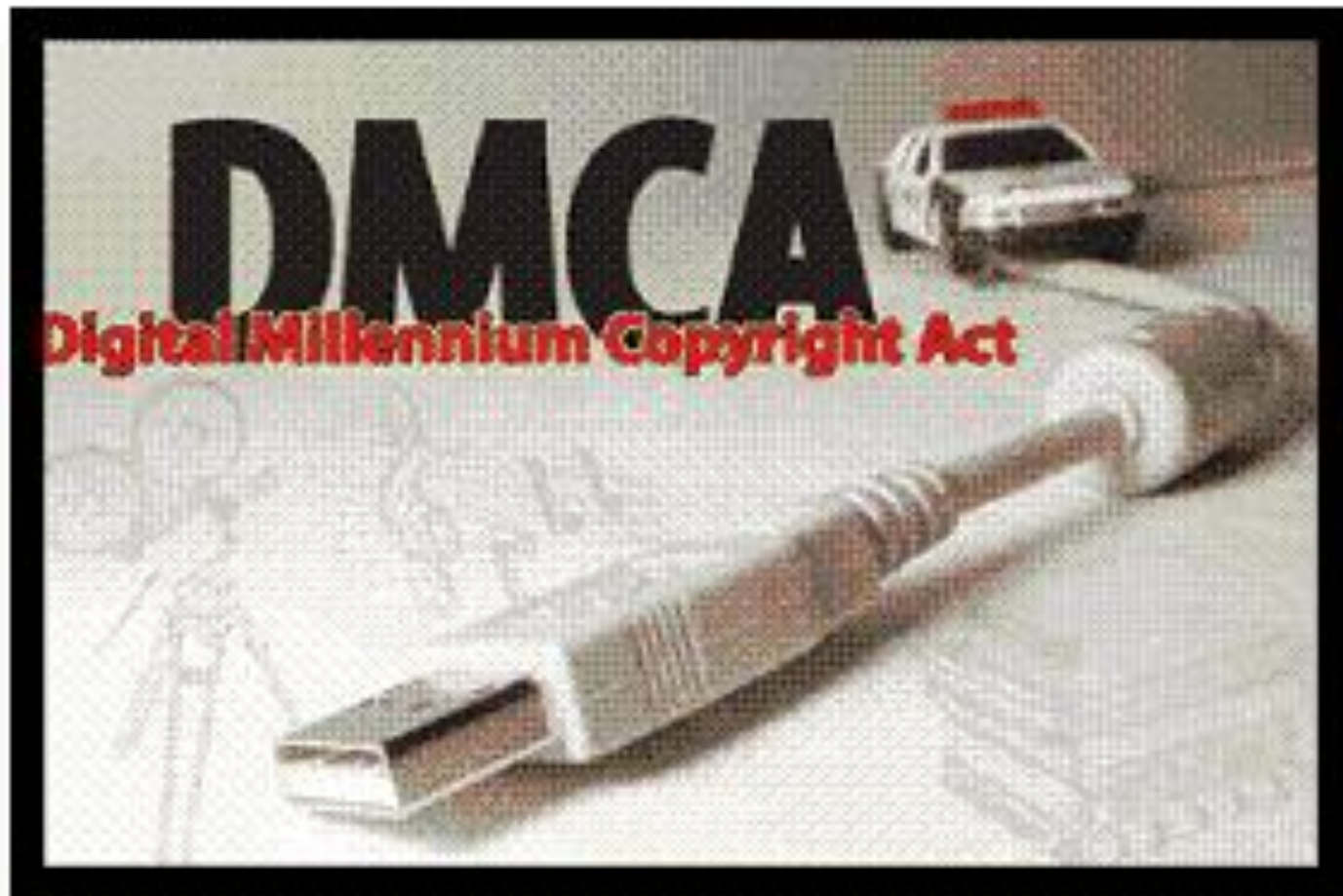
Join the iTunes community.



iTunes



To learn how Digital Rights Management (DRM) is hurting consumers and artists visit <http://www.eff.org/IP/DRM/guide/>



1998 Digital Millennium Copyright Act (DMCA)

Microsoft^(R)

End User License Agreement

Microsoft Licensing Agreement

You must purchase multiple licenses for every computer ever made, including your home, office, and notebook computers. Gr... the rules, so you still must... recorder, television, refrigerator, boom box, lawnmower, vacuum cleaner, hair blower, shovel, or a pair of shoes, these too must be licensed.)

Microsoft shall... may assign a replacement code for \$200 by calling Microsoft at 1-800-YOU-WAIT. To get your new code, please give us your old code. (That dam "we're a monopoly and make the rules" thing again, sorry.)

User furthermore agrees to sing praises to Microsoft every morning upon waking and each evening before retiring. Simply lower your hands to the ground, and while raising them, repeat aloud, "All hail Microsoft! All hail Microsoft!" Should this program have bugs or crash, you hereby agree that you shall NOT TRY LinuxOS because Linux is evil! If you do not agree to the terms of this license, too bad, you already touched the mouse, so deal with it! (Now, so that sue-happy Microsoft doesn't come after me with an army of lawyers for this, please don't sue me. This is a parody and JOKE! Please Bill, don't hurt me???)

End User Licensing Agreements
(EULAs)



First Sale Doctrine (control limited once work is sold)



[GNU Project](#)

Open Source Movement

- Code is open (not proprietary)
- Governed by special licenses
- Allows users to modify & improve code
- Free (as in speech, not beer)
- Aims to protect free flow & sharing of information

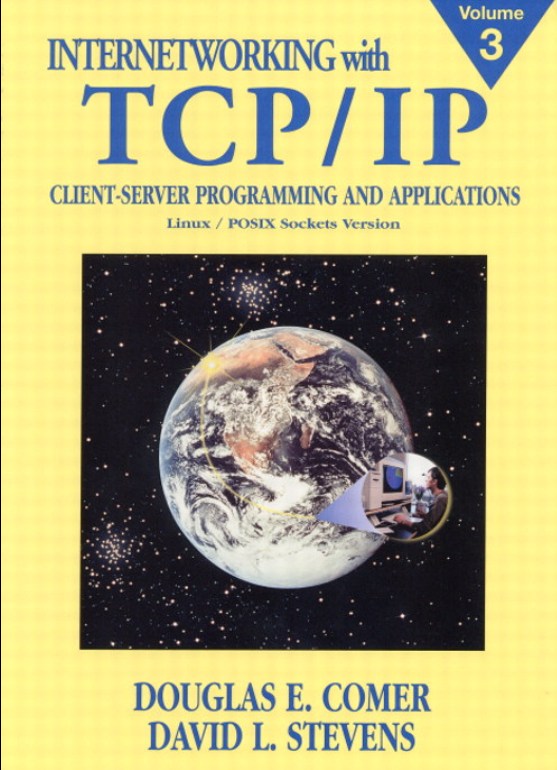


[Free Software Foundation](https://www.fsf.org/)

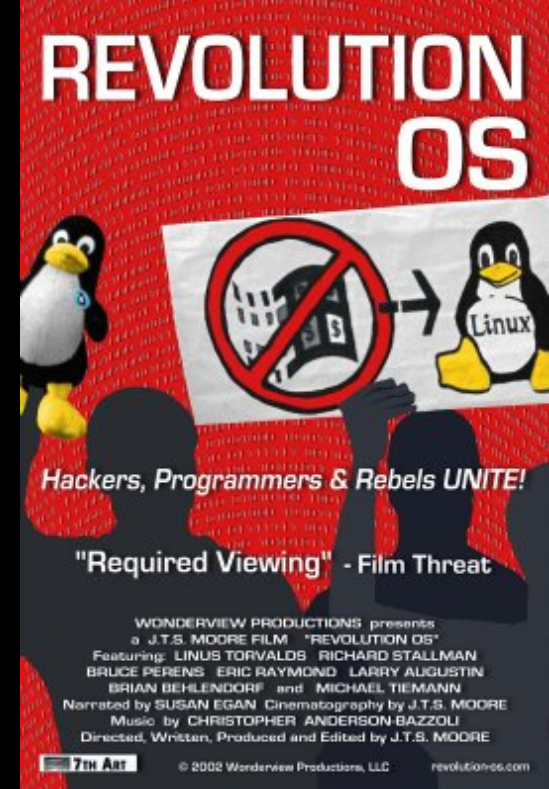


Open Source Copyright

- Applies to content
- Creative Commons License – flexibility
 - Attribution
 - Commercial?
 - Share/distribute?
 - Derivative work?



Advantages of open source software



The copyright trajectory... timeframe

Originally targeting printing (Statute of Anne gave rights to authors), copyright gave a limited time of protection for creators.. but that **duration is expanding**:

- Originally 28 years protection (1710, England)
- By 1976, changed to the length of the author's life plus 50 years in the U.S.; later 70 years!

The copyright trajectory... infringement and derivative works

- New electronic means of storing and recirculating material meant new claims (and new terrain) for copyright infringement

Technical “solutions”

Example: DVD players lacked a “record” button [DVD manufacturers’ agreement with the movie industry]

Federal law made it criminal to “hack” DVD players and other technology to “violate” copyright

DRM: Digital Rights Management

The copyright trajectory... infringement and derivative works

(2) **Legal protections** joined technical solutions to enhance copyright

already mentioned timeframe of protections

Examples: 1998 Digital Millennium Copyright Act creates “anticircumvention” provisions to criminalize getting around technologies that control access;

The past tries to control the future...

- Practical: We need earlier cultural materials to rework, update, remix
- Copyright owners don't want to release those materials; they want to maintain their control in order to maintain their profits
- Implications:
 - Libraries, archives: when can materials enter the public domain?
 - Artists: on shaky ground reworking existing materials
 - Fair Use: Criteria evolving