

Striking a Balance in the Digital Age

Jason A. Wood

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Abstract

Digital represents the ability to duplicate and disseminate works without loss through copying. Prior to digital every copy would reduce the quality of the work, such as audio tapes and copy machines. Now once a work is digitized it can be copied over and over again and the quality will remain the same. The other quality digital possesses is its ability to be distributed cheaply, efficiently, and illegally. This presents a problem to intellectual property owners who wish to maintain control over the distribution of their works, which have been digitized and therefore are at risk to mass distribution outside of their immediate control. This paper looks at the consequences of the so-called Digital Age on intellectual property and how digital can co-exist with property rights.

Introduction

If we are to, as a society, make a positive judgment when it comes to intellectual property whether it be songs, private email, source code, artwork, or anything else

it has to come down to the individual. Illegal trafficking has exist for thousands of years. The key element here is respect. Very few people would go over to their neighbor's house and steal their stereo equipment. That is not necessarily because it is impossible, once you are a neighbor long enough you may even have copies of their keys to house-sit or pet-sit when they are gone. The reason you do not steal from them is because of mutual trust, respect, and morals. The same goes for intellectual property. The only thing that has become easier is there is no lock on the front door and everybody is doing it. Why?

1 The path of least resistance

When given a choice the one that looks the most favorable is the one that takes the least effort. This is extremely true in the case of Intellectual Property in the digital world. It is much easier and less costly to download a song from an illegal source than to go to a store and buy a CD full of songs, especially if the only song of interest was one that was just heard on the radio. In this case the consumer has no affiliation with the music company, the artist, or the local record store. They only have one interest and that is to add the song to their personal collection in order to enjoy the song again and again. It is simply easier to download a digital copy than to buy one legitimately, not to mention a lot cheaper.

But what about getting caught? Again looking at the individual it is easy to see why a person feels safe trafficking in the market of illegal sharing of intellectual property. First, there is safety in numbers, it would be nearly impossible to go after everyone who is doing it. Second, the intellectual property owners desire to sell their wares to the consumers, the same people who are getting the products illegally. As a producer having your primary market revolt against your actions is not going help. As a result the consumers feel relatively safe continuing in their illegal pursuits.

If this is all about consumer-producer economics, why all the politics?

2 The role of government

The US government has a primary role in protecting the freedoms and rights of the individual. Cybercrime is a problem and protecting privacy and property is becoming an important issue. What is complicating this issue today is that the individual is put at risk. The battles are becoming less individualistic and more corporate. It is not Joe Smith v. Betty Thomson, it is Sony Music, Inc. v. Napster, Inc. They both have vested financial interests in the issue of intellectual property. Napster has something to gain from looser restrictions, Sony from tighter restrictions. Either way many people would lose. Those who would benefit from the ruling in Napster's favor would be the consumer, who could then get what they want without it having to go through a long expensive process that in the end means a lower quality of life and pursuit of happiness. At the same time a ruling in Sony's favor would protect the investments of the many people who have invested in Sony, either by signing over their intellectual property rights (artists) or have placed considerable amounts of money in Sony's hands in order to gain in profits.

The government then is being used as a zone in order to battle out the positions of both sides. At the same time the government sets the precedent for future cases of intellectual property rights. The rulings in either direction could be abused by the plaintiff or the defendant. In fact, the plaintiff has already started to use the ruling in their favor by the ninth district court to prevent other people from running Napster like services [Gomes]. This, however, does not solve the problem. People will still continue to traffic things illegally until it gets harder to do that than to do things through legal means, something that is not likely to happen now that we are in the digital age. So, if the government is not able to fully protect the rights of the owners and the rights of the citizens by stopping criminal activities, what can be done?

3 Natural change

The printing press ended the domination by the nation-state on information, religion, and politics. Likewise, digital media is ending the commercial oligopolies on artwork by modern publishers [Moglen]. This is by no means the end of the recording industry, but the beginning of a change in the industry. Companies like Sony, Napster, mp3.com, and others will continue be the distributors of intellectual property, but the barriers to entry and the associated costs are less. It will allow people to get what they want cheaper, easier, and legally. Those artists who are not able to generate enough of a listening audience to sell their music to the recording industry will now be able to reach out to a global audience and the large bands and the corporations that support them will have to compete on a more balanced level. The governments who once held control over information learned to adapt to the new power of the individual and many that didn't faced bloody revolutions.

The digital age is bringing with it a new revolution, providing more power for the individual in ways never before imagined. We are leaving the world of paper and ink, compact disks, and other costly forms of information storage and retrieval. Instead we are moving towards digital books and digital multimedia. Each person has ownership on the things that are theirs and will have more power over what they can do with it, with less physical barriers. They can sell it, give it away to corporations, sell it to corporations, or share it only with their closest friends. This change will be a natural one as society learns to adapt to the new tools in a new age. It will not result in a bloody revolution, but in economic choices and changing business and social models.

Open Source in the software market is one demonstration of property sharing, where software is naturally becoming a community resource, much like the highways, parks, and common areas are shared. Each person involved benefits, from those paid to create new software (like new roads) and those whose provide services that use those roads (like the trucking industry). As stated in Shelly Warkick's article on the ethics of copyright it can be claimed intellectual products

should be shared, “Intellectual products, states Hettigner, are fundamentally social products and there is no reason for [the] last contributor to get all the rewards” [Shelley]. Music, technology and other forms of Intellectual property are built off of previous works in a very natural and positive way. Cutting that natural evolution of creativity by copyright seems not only unethical, but a barrier to future progress. Like the proprietary software companies are doing with their software, the music industry producing barriers to the strength of sharing their works for the greater good. Will music and other forms of intellectual property eventually go in a similar direction to that of Open Source, where what is being sold is the music service for personal enjoyment and recomposition rather than the overpriced data bits being sold on plastic disks today? Only time will tell.

Conclusion

Issues such as Napster, the DeCSS and other similar legal battles are a wake up call. They are making it obvious that the times are changing and that companies, individuals, and authors need to change with them. The important thing to remember is that these changes come down to each and every person and do not lie exclusively in the hands of the government or the corporations. We have a choice as to where our discoveries, our artwork, our dreams take us. We also chose whether or not to show equal respect to the discoveries and artwork of others. The new tools of the digital age, should give individuals more control, not less, over how their intellectual property is used. A balance will be struck, but it will take some time, the current court cases, new systems of dealing with intellectual property such as Open Source, and digital media is only the beginning.

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