

## **Copyfights: The Future of Intellectual Property in the Information Age**

Edited by Adam Thierer and Clyde Wayne Crews Jr., Washington, D.C.: Cato Institute, 2002, ISBN 1-930865-24-4, \$10.95, pp. 295.

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### **Introduction**

*Copyfights: The Future of Intellectual Property in the Information Age* is a collection of essays about copy protection in an electronic world. The essays cover the subject matter presented during the fifth annual Technology and Science Conference in Washington, D.C. on November 14, 2001. The conference, cosponsored by the Cato Institute and Forbes ASAP, featured lectures given by intellectual property experts, including law professors, writers, legislators, and intellectual property attorneys. The lectures reflected differing views on how much protection the law should give to intangible property and how current laws might be adapted to accommodate the difficulties the Internet poses to content owners.

The Cato Institute, located in Washington, D.C., is a nonprofit educational foundation created in 1977. The mission of the Institute, a public policy research foundation, is to include options in public policy debate that reflect “traditional American principles of limited government, individual liberty, and peace.” The Institute, which strives to include the public in determining policy issues, receives no government subsidies; it is funded solely by contributions from corporations, individuals, and other foundations. The Institute also receives some profit from its publications *The Cato Journal* and *Regulation*. Most of the content in these two publications derives from

various conferences sponsored by the Institute every year. The intellectual property debate featured at the Technology and Science Conference is of particular interest to the Institute because it deals with two traditional American principles the Institute considers important: free speech and property rights. (p. xvii)

The two editors of *Copyfights* are Wayne Crews and Adam Thierer. Wayne Crews is the director of technology studies at the Cato Institute, where he focuses on the Internet and technology regulation and antitrust. The former director of competition and regulation policy at the Competitive Enterprise Institute, Crews has also worked as a legislative aide to Senator Phil Gramm of Texas and as an economist at the Citizens for a Sound Economy Foundation and at the Food and Drug Administration. Crews has appeared as a commentator on television and radio and has contributed columns to *The Wall Street Journal*, *Forbes*, and *The Washington Times*, among other publications.

Adam Thierer is the director of telecommunications studies at the Cato Institute, where he researches the impact of government regulations on communications networks. Thierer is a former Alex C. Walker Fellow in Economic Policy at the Heritage Foundation; he has also worked at the Adam Smith Institute in London, England. Like his co-editor, Thierer has appeared on various radio and television programs and *The Washington Post*, *Newsweek*, *Wall Street Journal* and *Forbes* have all featured his articles.

*Copyfights* opens with an essay written by Crews and Thierer titled “Introduction: The Great Intellectual Property Debate,” in which they explain the history of intellectual property law. They point out that ever since Article I, Section 8 of the United States Constitution gave Congress the power to grant temporary protection to an individual’s

creation, debate has been ongoing on how best to balance the rights of content owners against the rights of the public. Crews and Thierer contend that the debate had grown more intense in recent years with the advent of the Internet, as content owners seek to protect their products with strict regulations and consumers argue that information on the Internet should be free.

Crews and Thierer use the introduction to explain the organization of the book and to provide an overview of the essays that comprise each section. The book is divided into two parts: theory and application. (p. xix). Each part consists of essays written by speakers featured at Cato's 2001 Science and Technology Conference. The essays reflect differing points of view on the extent of protection that should be afforded to intellectual property in the Internet age.

Part I of the book, "Theory: What Rights Do We Have in Our Intangible Creations?", comprises four essays that summarize the arguments both for and against copyright protection for online content. For example, an essay by James DeLong strongly defends intellectual property rights. DeLong points out that property rights are the foundation of modern civilization. (p. 23). He argues that, although tangible and intangible property differ in key ways, they share a common rationale: rights to both tangible and intangible property exist as an incentive for people to be productive. DeLong contends that intellectual property law, by protecting ownership of creative works, provides an important incentive encouraging the invention of new products.

In sharp contrast, Tom Palmer's essay, "Are Patents and Copyrights Morally Justified? The Philosophy of Property Rights and Ideal Objects," argues against legislation that protects intellectual property rights. Palmer suggests that intangible and

tangible property are fundamentally different: unlike tangible property, intangible property can be used by many people at the same time. He goes on to argue that laws that bestow property rights to ideas ultimately restrict individuals' rights to free expression. (p. 77).

Part II, "Current Disputes in Intellectual Property Law," examines current copyright law. Part II includes four subsections: (1) "Updating Copyright Law for the Digital Age"; (2) "The Digital Millennium Copyright Act"; (3) "Digital Rights Management"; and (4) "Business Method Patents."

"Updating Copyright Law for the Digital Age," comprises four essays that provide an overview of current intellectual property law. For example, Rick Boucher's article, "The Future of Intellectual Property in the Information Age," examines the Digital Millennium Copyright Act and argues that it provides too much power to copyright owners. David Post's article, "His Napster's Voice," discusses the impact of the ruling against Napster and examines the peer-to-peer sharing protocol Napster used.

The four essays contained in "The Digital Millennium Copyright Act" section reflect the ongoing debate over Congress's response to copyright infringement on the Internet. Orin Kerr, in "A Lukewarm Defense of the Digital Millennium Copyright Act," notes that it is impossible to tell at this early stage whether the DMCA will be successful. (p. 169). Kerr says that people should respect the DMCA since it "reflects an intellectually coherent effort to protect copyrights and enforce contracts in an Internet age." (Id.)

Mike Goodwin's article, "The New Legal Panic over Copyright," provides a comprehensive analysis of the other side of the DMCA debate. Goodwin criticizes the

DMCA because it “prohibits one from distributing tools that circumvent access control or copy protection.” (p. 180). Goodwin worries that, because the act does not consider one’s intent to infringe, individuals who are engaged in “fair use” may be held criminally responsible for infringement that would be considered lawful under “substantive copyright law.” (p. 181).

The “Digital Rights Management” subsection includes three essays that examine technological tools, such as encryption, created to protect content in the Internet age. On one side of the debate, Robin Gross warns in “Copyright Zealotry in a Digital World: Can Freedom of Speech Survive?” that these tools have the potential of extending beyond current legal protections for content, to the point where they may begin to erode individuals’ fair use rights. In “Copyright in the Post-Napster World: Legal or Market Solutions,” Stan Liebowitz supports technological advances to protect content owners’ rights and contends that digital rights management will not have a negative impact on the creation of new intellectual property.

The final subsection of Part II, “Business Method Patents,” analyzes the current phenomenon in which a business uses patents to restrict other companies from using its business processes. The consensus among the authors of the four articles in this subsection appears to be that businesses are patenting processes that are not necessarily new; however, because the process is considered “new” when used on the Internet, it is eligible for patent protection. The authors suggest various remedies. Ron Laurie and Robert Beyers, in “The Patentability of Internet Business Methods: A Systematic Approach to Evaluating Obviousness,” posit the need for a better way to determine whether a business method passes the “obviousness” test before being granted a patent.

*Copyrights: The Future of Intellectual Property in the Information Age* provides readers with an overview of the current issues and problems posed by the advent of the Internet. Crews and Thierer acknowledge that, while the book provides different views and recommendations, ultimately it does not give the reader any “definitive conclusions.” (p. xxv). The divergent opinions expressed in the essays do make clear, however, that these issues have no easy answers. This book is recommended for consumers looking for a clear explanation of both the pros and the cons of current and proposed legislation aimed at protecting content owners’ creations on the Internet. The book would also be helpful to law professors and intellectual property attorneys interested in gaining insight and background on the ongoing debate on how best to protect property interests in online content.