

Internet Law Series: Technological Complements to Copyright

By Jonathan L. Zittrain

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Intellectual Property Law Concentration

New technologies and rising social expectations that disrupt existing paradigms have always been at the heart of copyright law. The Statute of Anne, the first copyright law, was early eighteenth century England's response to the challenges of the printing press, increased literacy and the monopoly of publishers who printed literary works. Since then, governments and legislatures have adapted copyright law to deal with music, photography, theater, the motion picture, radio, television and the sound recording. Over the course of time, the copyright owner's exclusive right to exercise his or her rights has become central to the law. Recently, however, copyright law has been faced with its biggest challenge in three centuries: the Internet and its ability to copy and distribute perfect digital copies of copyrighted works with or without the permission of the copyright owner.

Most of us have experienced some form of digital Internet distribution. Some readers have purchased music from authorized websites and others have downloaded music or film through unauthorized peer-to-peer file sharing services. The ability of copyright owners to use Digital Rights Management (DRM) to protect, distribute and sell their content online has led to such developments as the I Tunes store as well as Hollywood's recent efforts to conceptualize the authorized downloading of first run and

classic motion pictures. This issue becomes even more fascinating as we watch our neighbors to the North in Canada debate whether they should become signatories to the 1990s WIPO treaties and pass anti-circumvention legislation in Ottawa. Many commentators have noted that Canada's lack of anti-circumvention laws protecting DRM have led to a marketplace with the Industrial World's smallest percentage of authorized digital sales and one that has Internet piracy so rampant that the United States has put Canada on a watch list for lack of intellectual property rights enforcement.

Jonathan Zittrain is the Jack N. and Lillian R. Berkman Visiting Professor for Entrepreneurial Legal Studies at Harvard Law School and the Chair in Internet Governance and Regulation at Oxford University. He has written a guide that examines these contemporary issues and particularly places emphasis on the notion of "trusted systems." Trusted systems are a combination of hardware and software designed and manufactured according to industry standards that would dictate how consumers could use computers and copyrighted materials. The book explores not only the law and public policy but it also takes a look at the underlying technology through the use of academic and journalistic sources. By concentrating on trusted systems as vehicle to examine the current state of copyright as it relates to the Internet, Zittrain is able to use a practical concept to explain some of the more esoteric legal and policy issues.

Because trusted systems allow copyright owners to control the distribution and copyright of their content, such proposals also have ramifications on legitimate fair use as well as consumer privacy. The volume takes a hard look at how copyright has reached this point and examines how the Digital Millennium Copyright Act (DMCA) and recent proposal such as the Broadcast Flag have served as the copyright industry's responses to

the ubiquity of the Internet. This serves as a great introduction to the reader to the threshold question of the justification of such initiatives and whether the free market or legislation should determine the future of the Internet.

The work is divided into sections discussing the architecture of trusted computing, current law focusing on the DMCA, hacking and the first amendment and recently proposed legislation that would restrict access to unauthorized copyright distribution. The book explains the current legislative structure that protects copyrighted content on the Internet but it also poses two additional questions: what sort of consumer experience do we want on the Internet in the future and what sort of legislation do we need to pass or not pass in order to get there. Zittrain also focuses on the conundrum of whether technological standards that restrict access to unauthorized copyrighted materials are worth the potential loss of freedom to consumers. The book does a good job of presenting both sides of the argument and allowing the reader to enhance his or her knowledge on the subject as well as outlining the parameters of the debate.

Professor Zittrain's book is composed in such a way to serve as a valuable supplement to anyone teaching or studying copyright or intellectual property. By using a variety of sources, he is able to give the reader a concise summary of the issues facing copyright owners and consumers, as the Internet becomes the major source of copyright distribution. The questions following each section also serve to reinforce the material as well as to stimulate discussion of his text. Given the recent debate in Ottawa, this is also a very valuable guide for Canadian educators and students.