

Digital Copyright and the Consumer Revolution: Hands Off My iPod

By Matthew Rimmer

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In 2006, Time Magazine crowned “You” as its annual Person of the Year.¹ Time described how instead of one individual making a great difference, millions of computer users changed the world with their blogging, networking, online reporting, revelations, and video posting. This controversial decision is testament to just how much our world has been changed by the rise of the Web 2.0. Musicians are utilizing free social networking sites instead of signing on with large record producers to get publicity and introduce themselves to listeners. Erstwhile opinionated nobodies have transformed into powerful bloggers who receive White House invitations. Consumers have the ability to listen and watch copyrighted material, but now, enabled by technology at their finger tips and emboldened by their vast numbers and seeming anonymity, they alter, editorialize, and share protected works quickly and inexpensively with everyone and anyone.

Copyright holders in the past were largely concerned with violations from their competitors. The consumer was regarded as a passive non-player, content to buy from the established owner of the protected work – merely an endpoint in the equation. In

¹ Lev Grossman, *Time's Person of the Year: You*, Time Magazine, Dec. 13, 2007 (available at <http://www.time.com/time/magazine/article/0,9171,1570810,00.html>).

*Digital Copyright and the Consumer Revolution: Hands Off My iPod*², Dr. Matthew Rimmer argues that paradigm of copyright law has completely changed. A new tug-of-war has developed between copyright holders and consumers. Instead of passively buying new protected works, the consumer has become an active “user” of these products. This is the crux of the problem for anyone who holds a copyright: technology allows the consumer to become a user, and to use as they see fit.

Copyright holders are struggling keep up with their customers who, wielding new technologies and the communication possibilities of the Internet, are violating copyright protections. After centuries of solid protection, the changed equation has left these holders at a loss as to how to proceed. Rimmer writes that copyright holders are responding ineffectively by overreacting, resulting in the souring of users against them and stifling the creation of new works outside of the control of established producers of music, television, etc. The reader will definitely come away from this book concerned that current copyright law is failing all parties involved.

Mr. Rimmer, a senior lecturer and director of Higher Degree Research at the Australian Northern University College of Law, is an accomplished scholar in the area of intellectual property. In *Hands Off My iPod*, he details how the wider consumer revolution against the restrictions of digital copyright has played out. Prior natural barriers to widespread sharing of copywrited material have been done away with by digital technology and the Internet. For example, older recording mediums suffered from decreased quality when reproduced and users had difficulty sharing over long physical distances. Now, users are no longer under the complete control of distributors and see the

² MATTHEW RIMMER, *DIGITAL COPYRIGHT AND THE CONSUMER REVOLUTION: HANDS OFF MY IPOD* (Edward Elgar 2007).

for more and more freedom. *Hands Off My iPod* relates statements from a variety of sources that reflect a growing resistance and opposition by users to continue wearing the reigns copyright law had fastened to them. This book argues that we have lost our way, and forgotten the real purpose of copyright law in the quest to protect current copyright holders.

Chapter by chapter, Rimmer presents controversies concerning copyrighted material and offers critiques of the resulting court decisions or statutes passed. Rimmer considers each new dilemma against a backdrop of wider trends in the field, including how the court decision has played out, and commentary from involved organizations like the Electronic Freedom Foundation and the Recording Industry Association of America. Rimmer also takes care to compare American copyright law problems to the responses effected in England, Australia, and elsewhere in the Anglo-centric legal world.

Rimmer carefully details the rise of companies such as Napster, Grokster, and the semi-successful efforts by the recording industry to control file-sharing. He details the ham-handed efforts by record producers to sue users as well as the cases of mistaken identity resulting in enormous damages being assigned to grandmothers and five-year-olds. He also notes the enormous ground-swelling of ill-will that was generated by this ineffective cherry-picking. Rimmer argues multiple times throughout his text that copyright holders are foolish to reel against technological developments that they see as putting their intellectual property in jeopardy. Companies should not follow their knee-jerk reaction to quash new technologies and uses as they have in the past (from radio broadcasting to cable television to VCR's) since they have always ended up profiting from new opportunities that these technologies introduce. Rimmer provides many

sources praising Apple's iTunes as a good compromise between allowing the user to spread out their wings while still honoring the record companies' right to profit from their copyrights.

In another chapter, Rimmer recounts the passage of the *Sonny Bono Act*³ as another case in point of how copyright law has been used against the interests of the public. In 1998, Congress passed this act which extended the copyright term of past works from the life of the author plus fifty years to the life of the author plus seventy years, as well as extending protection of works for hire and existing works from fifty to seventy years. Congress justified the extension by arguing it would protect copyright holders so they would feel secure in creating new works. However, it was glaringly obvious this law was also extending protection of the works of Disney, Warner Brothers, and other holders of lucrative copyrights that were soon to expire. The copyrights of major creations like Mickey Mouse and other famous cartoon characters, films, and various other works from the first major film studios of the 1920's were to have expired as soon as 2003, but now received protection until 2023. Instead of serving the public good by encouraging the creation of art and invention, the modification of this copyright law was criticized as incorrectly focused on the protection of the entertainment industry's interests at the expense of the law's intended beneficiaries: the public. The U.S. Supreme Court agreed⁴ that this statute is constitutional. Rimmer examines their opinion and opines that the justices have arguably botched the case.

³ The Sonny Bono Copyright Extension Act, Pub. L. No. 105-298, tit. I, § 101, 112 Stat. 2827, 2827 (1998) (codified as amended in scattered sections of 17 U.S.C. (2000)).

⁴ *Eldred v. Ashcroft*, 534 U.S. 1160 (2003).

Intellectual property protection has existed since the Statute of Anne⁵, but the debate over how far that protection should extend remains hotly contested. The late Congressman Bono himself advocated that copyright protection should be extended forever. Consumer advocates have called for the drastic shortening of periods of copyright protection in addition to varying the terms of that protection depending on the context.⁶ The resulting Sonny Bono Act demonstrated how the influence of the well-heeled side overwhelmed the politically-unorganized end users and created bad law to serve interests not in line with that of the public.

Besides file sharing, Supreme Court opinions, and other headline-garnering topics, Rimmer spends time discussing lesser-known new issues in intellectual property law. For example, there is currently a controversy in the academic publishing world about the availability of newly published articles on medicine. Many are concerned that the data from new studies are being withheld from non-subscribing practitioners by journal publishers in the name of copyright law. “Mash-ups,” where artists take copyrighted works, and combine them to make new recordings,⁷ is also an issue currently bewildering record companies. This digital sampling and its distribution on the Internet violates copyright law protections, yet irate fans create problems for the holder if they try to assert their rights against these popular digital creators. Rimmer also discusses search engines, new technological protection measures aimed at preventing privacy, and copyright intermediaries and the new legal issues that have arisen from these plays in the consumer revolution.

⁵ Copyright Act 1709, 8 Anne c.19 ("An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or purchasers of such Copies, during the Times therein mentioned")

⁶ Rimmer, *supra* note 1, at 298.

⁷ Rimmer, *supra* note 1, at 131.

Missing from Rimmer's analysis is mention of the phenomenon of tolerated use, as discussed by Timothy Wu in his recent series of articles on American lawbreaking.⁸ Copyright owners, particularly television, film, and book publishers, are now pointedly declining to assert their rights to protection of their product because they see it as causing more harm than good.⁹ The fact that many copyright holders are choosing to ignore copyright violations, in effect discarding their legal rights to obtain exposure at the expense of maintaining control¹⁰, further cements Rimmer's point that current copyright law is not serving its original purpose of promoting the creation of art and invention. Rimmer does offer the suggestion that companies embrace rather than battle users because he hypothesizes that passive consumers will dwindle in the future. His book gives the impression that the pendulum has swung to far in the favor of copyright holders, who are now scrambling to retain gains in the face of the inevitable swing back to the user.

Heavy with citations, legal jargon, and thorough examination of U.S. Supreme Court and other tribunal rulings, *Hands Off My iPod* is definitely not for the casual reader. However, it will most definitely prove be an indispensable tool for researchers concerned with recent legal developments in the copyright field, both in America and Australia. Rimmer's *Hands Off My iPod* is a comprehensive and detailed analysis of current problems facing copyright holders as they struggle (and often fumble) to find a

⁸ Timothy Wu, *Tolerated Use: The Copyright Problem*, Slate, Oct. 16, 2007, <http://www.slate.com/id/2175730/entry/2175731/> (describing the phenomenon of tolerated use where copyright holders "wait and see" whether copyright infringement will promote or actually harm their interests before choosing whether or not to assert their rights).

⁹ For example, J.K Rowling's publisher chose not to sue www.the-leaky-cauldron.com, a fan site devoted to the Harry Potter books. NBC chose not to order YouTube to remove clips of Saturday Night Live skits from their website, and in fact offered clips from its new shows to be posted. *Id.*

¹⁰ *Id.*

balance between profiting off their property and keeping the newly-powerful,
increasingly agile user happy.