

Digital Barbarism: A Writer's Manifesto

By Mark Helprin

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In an age where almost any song, book or movie is available online to be downloaded for free if one just spends the time to find it, the arguments for and against extending the current duration for copyright protection are growing. In *Digital Barbarism: A Writer's Manifesto*, Mark Helprin blasts the Creative Commons movement and all opponents of extending copyright protection for creatives. The current copyright code in the United States provides protection, generally, for the life of the author plus an additional 70 years.¹ Helprin argues that this protection leaves the heirs of authors with no control, both financially and creatively, over their loved ones life works. In his trademark eloquent and illustrative manner of writing, Helprin explicitly states he is not calling for infinite copyright protection, but argues that without greater protection artists are left with little incentive to create when such life-long creation will leave their heirs with nothing to depend on after the artist's death.

Mark Helprin is a life-long author, whose works include *Winter's Tale*, *A Soldier of the Great War*, and *Refiner's Fire*. Additionally, his writing has appeared in *The New York* for over two decades. Although he has no formal legal training, he has fast become one of the leading voices for the perpetuation of copyright protection in the United States. His first foray into copyright law came on May 20, 2007, when Helprin contributed an

¹ 17 U.S.C. §302(a).

Op-Ed to *The New York Times*, entitled “A Great Idea Lives Forever. Shouldn’t Its Copyright?”² Following that article, Helprin was sent more than 750,000 angry comments from what he called “the anti-copyright movement” blasting his call for greater copyright protection for authors. *Digital Barbarism* is Helprin’s in-depth defense of the notion of the romantic author and his often biting response to proponents of the digital culture, who he calls nothing more than “fast-talking thieves.”³

Relying heavily on his experience as a story-teller, not a lawyer, Helprin’s analysis of the copyright argument largely consists of a series of anecdotes, both fictional and autobiographical. The often-lengthy anecdotes initially seem to repeatedly veer off the topic at hand- copyright protection- yet each anecdote, throughout the course of the book, expertly build upon his opinion until his clear vision of copyright law emerges in the final chapter. In short, he makes the argument that our copyright protection is simply not long enough. However, he at no point argues there must be infinite copyright protection, as his critics claim. Instead, he acknowledges that the Constitution only provides protection for a limited time.

The bulk of his argument is simply that the time we currently provide authors, their life plus 70 years, is insufficient to incentivize them to keep creating, which is the stated purpose of the Constitutional copyright protection. Helprin’s argument is that such a short period leaves the children and grandchildren of creators without any expectation of long-term control over the integrity of their relative’s work and without any expectation of a long-term financial benefit. He laments that the protection of his life’s work will eventually expire and flow from the hands of his children, into the hands of

² Mark Helprin, “A Great Idea Lives Forever. Shouldn’t Its Copyright?”, *The New York Times*, May 20, 2007 available at <http://www.nytimes.com/2007/05/20/opinion/20helprin.html>.

³ MARK HELPRIN, *DIGITAL BARBARISM: A WRITER’S MANIFESTO*, 141 (HarperCollins) (2009).

another author.⁴ He states copyright is important because without the rights of authorship “the individual voice would be subsumed in an indistinguishable and instantly malleable mass.”⁵ His argument in favor of the descendants of authors is a strong one. The reader is left wondering what the future of our arts will be if authors are forced to turn away from their creative works so they can find a profession that will allow them to leave behind an ever growing, ever protected legacy for their families.

Much of Helprin’s attack against the anti-copyright movement, as he calls it, is focused on proponents of the Creative Commons, a group chaired by Stanford Law Professor Lawrence Lessig. He attacks the group by accusing them of creating a culture in which authors who wish not to release their copyrights in their works are viewed as selfish and acting against the public good. Furthermore, Helprin criticizes “the remix culture” claiming that casting aside copyright protection so that new artists may build on old works would result in the desecration of the individual voice. Helprin seems to almost adopt a Lockesian view of copyright law when he argues that the author lacks a true independent voice if he fails to contribute his labor and time into his work, but instead can cut and paste from other works. All this, he argues, is counterintuitive to the actual intention of “promoting the progress of science and useful arts” called for in the copyright clause of the Constitution. In these middle chapters of his book, Helprin provides entertaining anecdotes about the digital culture prevalent in the current generation, while simultaneously providing criticism that would make even the most enthusiastic infringer think twice about his actions.

⁴ HELPRIN, *supra* note 3 at 27.

⁵ HELPRIN, *supra* note 3 at 100.

The anti-copyright movement has claimed two champions for its cause- Thomas Jefferson and Thomas Babington Macaulay. Helprin spends a great deal of time meticulously setting out each of these arguments and then tearing them apart. His contempt for the adoption of these champions is clearly apparent from the first chapter of the book. First, Helprin insists any claims that Jefferson would have supported the termination of copyright protection are misguided. The belief that Jefferson would have been opposed to the lengthening of copyright duration stems from Jefferson's argument that countries must fight monopolies of inventions. However, Helprin presents a convincing argument that such a statement referred only to patent protection and the creation of inventions is emphatically different than the creation of the useful arts. Helprin takes his argument as far as to predict that if Jefferson were alive, he would classify the supporters of creative commons movement as thieves.

Thomas Babington Macaulay famously stated, "copyright is monopoly, and produces all the effects which the general voice of mankind attribute to monopoly."⁶ Helprin admits that in the sense that an artist is given exclusive control over their works, there is some element of monopoly, but he states it is no more of a monopoly than a person has over any product of his labor. But Macaulay argued that extended copyright protection would stunt artistic growth, an argument that Helprin says the current anti-copyright movement now trumpets. However, as Helprin points out, at the time Macaulay made his speech only 600 books were issued a year in England, but by 2005, the country put out 206,000 titles.⁷ This, Helprin argues, is evidence that extended

⁶ Thomas Babington Macaulay, Speech in the House of Commons (Feb. 5, 1841) *available at* <http://yarchive.net/macaulay/copyright.html>.

⁷ Jeffrey Goldfarb, "Bookish Britain Overtakes America as Top Publisher," *Reuters*, May 10, 2006, *available at*

copyright protection does not hamper the progress of the useful art, but instead does just what the Constitution intended it do, it promotes it. While Helprin does make an impassioned argument against Macaulay, in the end, his argument lacks force as the pure anti-copyright title of the speech Macaulay so famously made still seems to overpower Helprin's weaker argument that Macaulay was just plain and simply wrong.

In the final stage of his argument, Helprin cites the support of the U.S. Supreme Court, Congress, and the Founding Fathers as the basis for copyright protection in the United States for hundreds of years. In his opinion, the rise of the digital culture, his so-called digital barbarism, is to blame for the sense of entitlement that he believes has led to the popularity of the anti-copyright movement. He states that young people "having spent most years of [their] life with others providing for [them] rather than the other way around, easily mistakes this for the natural order, and may, when it begins to fall away, become incensed and try heroically to 'restore' it via various forms of protest."⁸ Calling the copyright revolution a mere "subset" of the machine revolution, he again calls for protection for the romantic author, arguing that without such protection, the machine will take over, leaving no sense of creativity behind, allowing the artist to fade away.

In *Digital Barbarism: A Writer's Manifesto*, Helprin presents an eloquent argument for the protection of the rights of an artist, by sprinkling his legal assumptions with colorful anecdotes, in a way perhaps only a true artist can. He openly apologizes for not being a lawyer, but his lack of a legal background in no way impedes on his ability to capture the heart of the fight between those seeking longer copyright protection and those seeking to see all works freed into the public domain. In each chapter, his bitterness

http://www.redorbit.com/news/entertainment/499053/bookish_britain_overtakes_america_as_top_publisher/.

⁸ HELPRIN, *supra* note 3 at 213.

towards and contempt of the digital generation becomes more apparent, but despite his biting criticism, his eloquence assures that even “remixers” will come away with a clearer view of the pro-copyright argument. Artists, lawyers, and downloaders everywhere would benefit from learning about how their cut-and-paste mentality impacts the very creators they are seeking to borrow from.