

Imagining a Cultural Commons - Lift Lecture 2
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Creative Commons in a Connected World

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Welcome to this, the second LIFT lecture and to the Royal Geographical Society, this place of explorers, which indeed was founded of course at a time when we had the world empire and when colonial administrators saw nothing amiss in sitting around with maps and drawing lines on foreign countries which became national borders and today the issue that Lawrence Lessig is going to be talking about concerns borders and it concerns exploration but of a very, very different kind – not physical, but virtual. This world of the internet has an extraordinary potential for creativity but, as LL will, I think, be intimating its potential for the opposite, its dark potential, is as great. And LIFT has for 23 years, I think, been exploring the great issues of our culture and of the exchange of culture, in drawing them out from the traditional theatre into a larger Forum. The kind of questions that LIFT has been asking, asking us to ask, are about : Does the increasing impact of commerce on the cultural domain matter? How can theatre open up new spaces and what do the spaces for this free exchange of culture look like in a connected world?

I'm here as a long-term friend of LIFT's as an ex-film producer and writer and as a founder of something called Open Democracy - a magazine on the Internet – which grapples with many – all – of the issues that LL will be speaking about. And I have got my own interest from a very different angle in that I'm a student of Russia, Soviet Russia and now Post-Soviet Russia and in that context I have watched the whole issue of the attempt to centralise information and to control it in a very different one from the one that Lawrence is going to be talking about but one which has made me very alive to the problems of economic stagnation, creative stagnation and indeed, fear, that come when you start to centralise and control information.

But it's LL we have come to hear, not me. He is one of the sharpest minds on issues of the Internet and copyright. He is a distinguished lawyer and he is a great campaigner on issues constitutional and civic. But the most extraordinary thing about him is that he is one of those two-headed creatures who sits at the table with the decision-makers and influences the shape of our lives but comes out to include us in this ongoing conversation because he believes that unless we are involved and informed, the wrong decisions will get taken.

Lastly, I'd just like to thank the institutions without whom this would not be happening. Morgan Stanley, our sponsors, and the Arts Council. And it's exactly their kind of enlightened support that we need.

Thank you very much, over to Lawrence.

LL

In this hall, explorers would return to describe their explorations to the interested and the disinterested. The disinterested people far removed from the subject of the exploration, the interested people who were keen to understand. I'm a lawyer, but an explorer, in two separate worlds that I want to describe for you tonight. I hope to at least some who are disinterested in this debate and I hope to most who are interested in understanding what's at stake if we don't as a culture understand soon the dynamic that these two worlds colliding will produce.

So these two worlds are two worlds of IP and IP. One, the world of the Internet Protocol – the Internet - and the other, the world of intellectual property.

So let's start with intellectual property. Intellectual property comes to us as a finished product but it has a history. It has beginnings which actually start 230 years ago this year. In 1774, the House of Lords decided that, when Parliament in 1710 established a principle of copyright that said that existing copyrights would expire 21 years later, that that rule had meaning. Even though in 1769, Lord Mansfield decided that copyrights could be perpetual, the statute then notwithstanding in 1774, Parliament, the House of Lords, decided copyrights would end. It's a mysterious concept. For those who think of copyrights as property, no other form of property expires after a period of time. But the framers of our system of protection understood the extraordinary importance of two aspects to the regime of intellectual property. The importance of the proprietary and the importance of the public domain.

The proprietary has a function to produce incentives, to create the incentives that artists and creators need to survive the work of producing great new work. But the public domain serves the purpose to help spread and advance culture and primarily in the minds of those who set the limits on copyright in 1710, to avoid the queering effect of concentrated owners of the distribution and production of culture. For it was the Conger here in London which scared Parliament into assuring that the ownership of intellectual property would terminate so that competitors to this tight monopoly controlling the spread and advance of culture in Britain could arise. And that these few publishers could not exercise their control over how knowledge would spread. They set for work going forward a term of fourteen years for copyright renewable once. The United States followed. We set a term of fourteen years in 1790 which could be renewed to 28 years if the author survived to the end of the initial term.

That founding ideal of limited protection for a limited range of intellectual property – just maps, charts and books, was then during the middle period slowly expanded. For 186 years, a gradual extension of those protections in the United States occurred.

Slow change that reflected reasonable balance being struck by a Congress responding to changes in technology. Expanding the scope to take account of new technologies, including protections for music, for derivative work, for sculptures, for photographs, for sound recording, for film and extending the term of protection to give more incentive to artists and creators as they engaged in their creative act. So here's a picture of the extending term in the US, from a maximum of 28 years to, in 1976, a maximum of 56 years [slide]. And an increasingly complex set of protections were layered on to this extraordinarily simple ideal of intellectual property. By the end of this middle period which extended to 1978, we had a vast array of potential work that could be protected – literary, musical, dramatic, choreographic, pantomime, motion pictures, sound recordings, pictorial, graphic and sculpture and we had a wide array of kinds of rights that could be protected. The exclusive right to copy, to produce a derivative work, to distribute a work, to perform a work, to publicly display a work, and to publicly display a digital copy of a work. And this matrix of possible objects of protection and possible ways to protect it produced a map of protection like this (slide) where the red space, are objects of protection, meaning to exercise one of these rights, you needed the permission of a copyright owner and the green space left free for people in the public to exercise without requiring the permission of a copyright owner.

Now even this description is somewhat simple. If we think of, for example, the rights of a motion picture the exclusive rights that are wrapped together in a motion picture are not simply the rights of a motion picture. They are also the rights to the literary work underlying the motion picture, they can be sound rights included in the motion picture. A wide array of interests get wrapped together in this protection. A protection that slowly accreted as the technology of culture changed.

Now that was fine enough, that system of protection, when primarily the system of production was relatively large companies dealing with relatively large companies. Of course, there are many artists and there are many authors, but those who bore the burden of this system of regulation were primarily those like publishers who, aggregated and collected the rights that they were responsible for and negotiated, among the various companies that were necessary to secure the rights to produce the new work that was to be produced. That slow accretion of protection which, in my view, was a completely reasonable set of balances struck by a long and patient Congress in the United States, has undergone a radical change in the last 30 years.

It has undergone a radical change in term, which is not apparent if you read just the surface, maximum term of copyright. For this graph again looks like this if you add the last 30 years on. In 1976, the maximum term was extended to 75 years for corporate works and now 95 years after the Sonny Bono Copyright Term Extension Act. But that graph overstates the continuous nature of the change. Because until 1978 in the United States, copyrights were granted in two parts. One needed to renew a copyright to get the benefit of a second term which means that the average term was always significantly lower than the maximum term because ninety per-cent of copyright owners never renewed their copyright. So that the actual average term

looked something more like this, but even this overstates the drama of the change that happens in 1978. Because before 1978 in the United States one got the protection of copyright only if one took affirmative steps to claim protection. Only if one registered the work, only if one marked the work. Ninety per-cent of the work over the history of the United States published never went through that system of registration. So the expected copyright term for any particular bit of culture that was spread in a published form was much lower than even this average term. It looked something more like this.

But in 1978, copyright was extended to all published works automatically for the full term of the copyright, effectively increasing the average effective term by a factor of twenty-five. Now even this understates the significance of the change because again, remember, that the world before this change protected just some work, regulated, just some work and left a vast majority free. So if this is the map of all the rights, before 78 there is a tiny corner of published work that is actually regulated by copyright law, the rest remains free. But after 1978, those works sitting in the public domain are automatically removed by this automatic extension of copyright. Everything is regulated by this system that controls the rights under which one speaks. This radical change, I want you to see, burdens progress. It burdens progress in both in the sense of spreading culture and in advancing culture.

So for example, here is one way in which this works. 1993, a lawyer called Alex Alban was working at a company called Starwave, started by one of Microsoft's founders, Paul Allen. And this company had as its ideal the creation of CDROMs which would have a retrospective on certain stars and their first star was Clint Eastwood – who has produced over 50 films either as actor or director. The idea was to produce a single hour CDROM that would have clips from all these films and posters and stories about Clint Eastwood. An interesting project for those obsessed with Clint Eastwood, not a significant project in the great order of things...[laughter] But this was their objective. To do this of course under the system of copyright as it exists, you need permissions. You need permissions to do all the various things you want to do when you re-use the clips from Clint Eastwood's films. So you need permissions from the actors, you need to clear the display rights, you need to get clearance for derivative works, you need to clear certain images. There is a whole list of permissions that are required here. So, Alex Alburn the lawyer told the Chairman of the company that there would be this project necessary to clear the permissions and it would take a significant amount of effort. The chairman said "Go for it".

So Alex, proud of his charge as a young lawyer deeming himself up to the task set out to create a method, a team. He hired a gaggle of lawyers to work through this process and he succeeded. After one year of work, the lawyers had gathered sufficient rights to clear all the permissions necessary to put these clips from fifty films on a single CDROM and sell it. Alex was proud of his work, but when I interviewed him for a book I wrote about this subject, I asked him: "Isn't it odd that to go through the act of recreating and re-expressing our culture this is the level of burden you must undergo?" My question was not should you not be able to do this for free, it was just

that does this system make sense? And for a brief moment, this lawyer stepped out of role and recognised the absurdity of a system that forced this level of burden on those that would attempt to recreate and re-express. That the system as he described it had become radically inefficient for its underlying goal of encouraging the recreation and spread of culture. Now I would add to Alex's claim to focus on a point which we lawyers find hard to recognise, just how strange this world of intellectual property regulation of culture is. That there is no other place in the regulation of memes that exist in our society where such control exists supported by the Government producing something, I want us to understand as a permission culture. Where to engage in an act of recreating and re-expressing, to engage in an act of culture production, increasingly requires the permission of someone else first. Requires the permission if ones wants to avoid an extraordinarily high risk of liability for crossing the lines increasingly put by copyright.

Now of course, it's the nature of the creative work to remix culture around you. From the beginning of time people have told stories that have remixed the culture that is around them. They have used the material at hand to re-express ideas, to speak differently about how they have inherited the world. They have used these materials to produce these memes whatever sort they find around them, remixed and retold to produce culture. For example, 1928, my hero - really, my hero – Walt Disney - produced an extraordinary new creature ... (Music/picture)... Steamboat Willie.. Which, through the genius of his mixing of sound and cartoon, produced a sensation that produced eventually the character, Mickey Mouse. But at the same time, in fact prior to the time, Walt Disney was producing this great work, there was another work floating in 1928, a work by Buster Keaton. A work called Steamboat Bill Jnr. It's in part built on Steamboat Bill Jnr. that Steamboat Willie emerges. Building expressly, as Disney said, out of modelling the comedy that Buster Keaton displayed and the theme and the music from Steamboat Bill Jnr. Steamboat Will is created. This is a kind of creativity, a creativity we should celebrate. We could call it a Disney creativity. That would be misleading. It's more accurately called Walt Disney creativity. It is a creativity that celebrates the ability to take and re-express from the culture one finds. And if one examines the range of creativity that defines the Disney history, it is a history of re-expressing the work of others, sometimes paying, sometimes not. Sometimes waiting just until the copyright expired so that no payment was required. It is a constant history of exercising the freedom to speak by re-using the work one finds and over time, the significance of the change in legal culture that has transformed us from the age that Disney knew to the age that the Internet confronts, is extraordinary.

These changes that increasingly force us in many contexts increasingly familiar to ask for permission first, are radically different from where we were as a culture just 30 years ago. For example, there is an author, Steven MannEs, who writes a column called Digital Tool in a magazine which self-identifies itself as 'capitalist tool' - Forbes. Steven Mannis reviewed my book. His basic view was that it was a book about 'freeloading culture' and that it was 'idiotic'. It was a hilariously engaging and one might say, idiotic, review. But it was a review that took advantage of a certain freedom of culture. A freedom to express his views using my work, without seeking

my permission first regardless of his purpose, regardless of his fairness. He could use my work to express his ideas and I have no power to stop him. That is the default of a free society. The ideal that one can build on culture without seeking permission first - that was our past. But increasingly as we express ourselves in forms that have been regulated by copyright law, this past changes.

So, we had the freedom to use the culture in these ways but without asking first, but if this were for example, music, the rules would be different. If I were a musician and Mannes were a musician and he were attempting to build his music out of mine, sampling my music to advance his career or to show me to be clumsy or idiotic, I have the power as a musician to tell him no. To demand whatever price I set before he can use my work in his work. To censor his ability to speak without asking permission first, I have that power because the law gives that power to me. And increasingly as expression moves into these forms of speech regulated by copyright directly, there is a change in the frequency with which one must ask. The freedom of text supported by hundreds of years of tradition, is that I am allowed to write a book without calling anyone first. I can cite and quote without seeking permission first. I need not prove to my editor or publisher, within reasonable range, that I have asked anyone before I use their work. This is the freedom guaranteed to an author.

But if it were film I was producing the rules would be different. The rules, not of law, but of practice. For example, 2002, this film producer Robert Greenwald, produced a film *Uncovered*. A story about the Iraq war. It was a very critical story of the Iraq war –critical of the President. *Uncovered* was extraordinarily successful and he decided, to release the film this year on a DVD. To release the film on a DVD he needed to add updating sections and there was a particularly important interview that the President of the United States had on NBC's *Meet the Press*. He wanted one minute of that extensive interview for his film. So he asked NBC in the standard way that filmmakers ask first. And NBC told him ...“No”. And officially they said, quote: “It does not make the President look good”.

Now the perverse dance that goes on in the United States between an ever-shrinking number of networks and the President of the United States is a problem that you need not worry about, but it is a problem fundamental to my Republic. The problem of favour, that networks must demonstrate favour to assure access in a world where Presidents have fewer press conferences and more interactions on *Meet the Press*, produces this dynamic. It is an obvious consequence of this dynamic. But what Greenwald faces in the face of this rejection by NBC is a choice that filmmakers recognise that he must make. He must cut the section any filmmaker would say. Because there is no way to distribute a film with clips included and secure the necessary insurance for the distributor unless you can demonstrate that there have been permissions for every clip included. The theory of fair use that should justify this use does not operate in the court of insurance companies. Insurance companies are the practical block to his ability to use this clip without seeking permission first or face a significant threat of significant liability if in fact the ambiguous doctrine of fair use gets ruled against him.

We should recognise these changes as changes that this explorer submits produce a deeply strange culture. Strange to a tradition that we sing of repeatedly. A tradition of freedom. Strange that in this country that says 'freedom first' increasingly the right to speak is conditioned upon seeking the permission of an ever-shrinking number of actors.

Now that's the history. And the future of this concentration threatens that this strangeness only increases.

That's the exploration of the world of IP. Let me come back to the world of IP. Back to the world of the Internet Protocol, or the Digital Technology and Internet Protocol, or the Internet Age or the world where Multi-media has now just become Media because all forms of media – sound, image, film and text – are existing on a single platform. A single platform that gets manipulated through a common set of tools. The text you post on the web, manipulated with the same tools that include the sound or the motion picture – the files that you might place on this tool. This is the essence of digital networks. That there is a convergence in form that enables this network to mix and remix culture on this common platform and produce perfect copies. That is its design. And an ability to ship this content at a marginal cost of zero. That's the feature that the Internet adds. These two things together produce an extraordinary opportunity to create and spread culture. Create and spread culture differently from how it has been before. And I submit never really imagined by anyone who has thought that the ideals of the Enlightenment could be realised through the technologies of computers. Never imagined how this technology will transform the way we experience culture and produce creativity.

Now to understand the significance of this we have to create an 'us' and 'them' distinction, which I can see from the audience will be easy. All of us are 'us'. 'We' consume culture. The 'them' I want you to focus are people who consume and create. They are our children. We experience culture as something that we take. It is delivered to us – broadcast. They increasingly understand culture as something they make, or something they remake and remix and remake, something that they get and through the tools of this technology, recreate. Culture for them is not delivered in final form. Increasingly, as we study what children do with computers, we recognise they understand computers as the tool to recreate the experiences that are given to them. Just as we would tell jokes, they take computers and re-express, in a funny way, the images they have been given. They use technology where we had no technology and they therefore experience culture in a way we have not seen. So for example, here's an expression made by some children. Children from my perspective, but from theirs they feel quite like adults. But here's an expression of this culture.

Music:

*The song could be between two of your favourites
In the middle of the B-side of your mixed tape.*

*You got it off of the web, burned it onto a disk
Bounced it on a cassette because it's an old ...
Mixed tape, on your mixed tape, buy your mixed tape..
And you don't know what band is playing and you made up the name
The name of the song, 'cos you lost that piece of paper now it's just a thing you made
to pass it on
Mixed tape...*

So here's the first idea. What if creative works were building blocks?, these kids ask. Because they look around the world where no-one treats creative works as building blocks as far as they see. Because the people who are free to create with the building blocks of culture are people within organisations that are far from these children and they don't know them. So they think that it's something new to use creative works as building blocks and they see the technology that gives them this opportunity. What if they were ingredients that could be used by others, then art becomes organic these kids say. Then it becomes something that lives within a culture which is theirs, not a culture that is just fed to them by others. If art could be this – building blocks – that people were free to remix and re-express and recreate then art would be different it would be mixed tape it would be the modifications of clothes that kids do all the time, it would be the expressions of creativity that we are increasingly seeing.

So for example, here on this trip, I visited an extraordinary school, called Dog Kennel Hill School - (You wouldn't have a name like that in the States, but here it is a school - for humans, really, it's a human school) and at this school I saw a series of expressions of this ideal of mixed tape. So for example, Ellen aged 5, took this drawing she had made and this drawing she had made (insisting she is 5 1/2 actually) and then this picture she took around London. And she began to remix them together to express a different kind of picture. That was what creativity is for Ellen. Or, here is Choubert Corte aged 7. He took this picture – dark, this picture – drawn, added them together like this, added some light with the child's bed. Or Louis, aged 10. This very dark picture of a building against the background of this very depressing picture of a shopping centre. First expressed like this and then something happened to make Louis a happier person, re-expressed like this. [images]

These are the expressions of creativity that are increasingly natural especially to the youngest of our children or cartoon culture. Here is Apple excited to sell the story of Brad Shaffer a 14 year-old who produced a movie that HBO bought using his computer an I-mac. [sound/images]

Or here is a familiar child's story retold [sound/images]

Or older creators using music in ways that remix and re-xpress.

The Beatles produced this album, *The White Album* . JZ produced this album, *the Black Album*, DJ Dangermouse took the two together
[Music...] “Will the real slim Sadie please stand up...”

Film too, 2004 just last week, this director produced a film called Tar Nation which was reported by the BBC news to be an extraordinary hit at Cannes. The film cost him \$214 to make. That was the cost of the video-tape and he had to buy some angel wings. That was the expensive part of the film. Using \$214 and the digital technologies that he had, he created a film that could merit the suggestion that it would win in his category at Cannes – for political speech. Which, in the United States especially this year, is increasingly populated by expressions of re-creativity. Using images and sounds to produce a message far more powerful than could have been produced by using text alone.

Film:

Do you ever get the feeling that you are living in a virtual reality dreamworld?

Fabricated to enslave your mind?

Alive or War ... American Juniors.... Shake, Shake, shake your body.. push em up... ooh, ooh, ooh.

But there is another sound, the sound of goodwill...

... oh sorry, ladies and gentlemen, we're far away in a remote place

Music

TV voice:

Well tonight it all changes.. We are going to have an open debate between the President of the United States and the one man we believe has the insight and the cojones to stand up to him. It's a first, joining us tonight, George W Bush, 43rd President of the United States. Welcome Mr President.

GWB:

Good evening, I'm pleased to take your questions tonight.

TV Host: Well thank you Mr President

Taking the other side.. Joining us from the year 2000, Texas Governor and Presidential Candidate, George W Bush.

GWB: Good Evening.

TV Host: Thank you, Governor. Mr President, you won the coin toss, the first question will go to you.

Why is the United States of America using its power to change governments in foreign countries?

GWB: We must stand up for our security and for the permanent rights in the hopes of mankind. The United States of America will make that stand.

TVHost: Well, certainly that represents a bold new doctrine in foreign policy, MrPresident. Governor Bush, do you agree with that?

GWB: I'm not so sure the role of the United States is to go around the world and say this is how it's gotta be.

Or, forgive me. This is my favourite.

Music (Image Bush and Blair in sync to music)

Bush:

My love, there's only you in my life, the only thing that's pride

Blair:

My first love, you are every breath that I take. You're every step I make.

Bush and Blair:

And I, I want to share all my love with you, no-one else will do

And your arms and eyes tell me how much you care

Female voice:

Read my lips... take dictation.

[Applause]

We have to think about what we have here. An extraordinary capacity produced by digital technology, digital creativity. A capacity that takes anyone with a \$2000 computer and an internet connection and gives him or her the opportunity to speak differently, more powerfully, capturing images and sounds and texts from the culture and re-mixing them and expressing ideas differently. This digital creativity to engage in what Apple Corporation used to call the freedom to 'Rip, mix and burn', until Disney told them to stop calling it 'the Freedom to rip, mix and burn' is an expression of Walt Disney creativity raised to the digital. It is an expression of Walt Disney creativity because it is this recreative act now spread broadly. Not in the few who have access to the machines of cartoon technology in production studios but to anyone who has access to a machine, creativity, digital technology changing the way we mix and remix culture. These children experience culture through these technologies. These children understand culture through these technologies. They know what it means to speak by knowing how it is they change this. This is a technology to realise a creative potential that we must come to understand and respect a democratic potential that we ought to defend. A potential changing the way people speak, changing the freedom to speak, changing the power to speak, changing the way in which we produce political results, not through a broadcast democracy but a bottom-up democracy. Not through the New York Times democracy but through a blog democracy, not through a few speaking to the many but increasingly through peer to peer. This is the potential of this technology.

Now of course the history of the regulation of that other world called IP is a history of changes to respond to changes in technology, but never have the changes before been more significant than they are now. This is a radical change in the opportunity for an extraordinary range of speakers to speak who otherwise would not have that capacity. Now these two cultures that I have explored – the IP culture and the IP culture are colliding here. They are colliding in this sense that these children experience those rules as alien. And those rulers experience these children as criminals.

It's a collision between two ways to think about how one engages with culture. Some who think they should have the right to speak and recreate without asking permission first and some who think that permission is at the core of how one respects culture. What these children do, what these works are, is in the United States at least, illegal.

It's not really piracy, but it's called piracy and it has launched a war, yet another war that we in the United States are waging, a war the copyright war or what my friend, Jack Valenti, calls his own 'terrorist war' where the terrorists are our children. This is a war waged against these digital technologies, against the copying of content which I want to distinguish fundamentally from the activities I am describing here. It is a war waged against, peer to peer quote 'piracy'. But the consequences of that war is that it is also a war against this form of creativity. The same weapons used to kill that form of copying will have the consequence of destroying the freedom to engage in this kind of creativity. These creators are deemed criminal. Increasingly punitive regulations in the United States call them that. Expanding law makes more and more of their actions here outside of the reach of freedom. Now often it is simply impossible to comply with these burdens. It is sometimes extremely expensive. For example this story that I told about the film that was winning at Cannes, produced for \$214, if you read the article to the end, reports that the total spend will rise to about \$400,000 once rights for music and video clips are used to illustrate a mood or an era have been paid for. Sometimes the rights or permissions are simply denied.

Take, for example, that clip *Read My Lips*, the Swedish Company that produced that recognised that there were lots of rights that it needed to worry and clear so that they went to Columbia to ask for permission to clear these rights. Now if you want to understand just how alien these cultures are and if you want to see which culture you live in, then judge yourself against the following reaction. When asked: 'Can we use this?' The lawyers representing Columbia answered: 'No, it's not funny'. [laughter] Whatever your position on the war, whatever your position on President Bush or on Prime Minister, Tony Blair, whatever your view, there is no way to view that without viewing it as funny yet what wasn't funny here was that permission had not been sought first and therefore permission was denied. And then, it is increasingly complex. Now Mannes, in that wonderful review of my book, said: 'No it's not, it's simple. Just ask permission first, he said.'

Well, here's a very concrete example to get your head around how simple this might be. 1930, in the United States there were 10,057 books published. In 2000, there are 174 of those books that were still in print. 9, 883 had fallen out of print. Now a former entrepreneur in Silicon Valley, Brewster Kale, decided he wanted to launch a project to digitise out of print books, not just from 1930, but from every year to take books and digitise them and make them available for free across the Internet, to deliver as large a library as we could to every school connected with a computer. So he asked his lawyers what he would have to do to be able to do this. And they said 'Well, the first thing you would have to do is to figure out which of the 9883 books are still under copyright. A significant proportion will be. To do that requires consulting huge texts of pages of written out entries that are lodged in various libraries around the country. And once you have identified who might be copyright owners by identifying which works are still under copyright, you then have to ask permission from the copyright owner.' Well, sane people think, that can't be too difficult. There must be a list kept somewhere. The Government must have a list of the monopolies that it is handing out and protecting, but of course as we lawyers know, there is no such list in the

United States. There is no requirement of registration any more. There is no such place to go to ask the question: 'who is it that owns this property?'

And so, to use this property in a way that would advantage everybody requires essentially hiring private detectives to track down the current copyright owners for the 9883 potential books that might still be under copyright. Not just for 1930 but for every year. This increasingly complex and increasingly inefficient system of regulation burdens the ability for people to reuse this culture in a way that does no conflict with the underlying ideals of copyright law. So is it simple, to engage in this act of asking permission? This law of copyright now regulates more harshly, more extensively, more inefficiently than in any period in the history of our culture. And if you think of all the dimensions of the changes here – changes in term, changes in scope of the law, changes in the way in which the law gets enforced, changes in the reach of the law over increasingly ordinary uses and changes in the concentration of media that have occurred around the world, you reach a conclusion that is extraordinarily hard for those in a free society to accept – never in our history, not even when the Conger controlled publishing in London, have fewer exercised more control over the development and spread of culture than now. Never has legal control been as extensive as it is now. And never has that legal control been exercised by as concentrated a group as now. This regulation, critically important to the creative process and absolutely essential to protect and preserve the opportunity for creators has gotten out of control. And the consequence is to destroy an extraordinary opportunity for creativity that these children possess.

It's simple, yes. It's simple, if you choose to make your relationship to culture the relationship of the couch potato. It's simple for us because for us we don't care about the opportunity to remake and re-express culture, but to our children this is not simple. It is not simple to behave legally in this world of regulation and engage in the form of creativity that comes most naturally to them. We wage this war, it has costs. Some of them are direct costs: costs on progress, costs on learning, costs on economic growth. Some of them are collateral. Collateral costs are the costs to our children. This terrorist war where they are the terrorists, increasingly produces in them, extremes. The record industry in the United States sues 12 year-olds. In response, the 12 year-olds reject the idea that the record industry has any legitimate right to say anything to them. For example, Apple and Pepsi thought they would capture the wonderful spirit of freedom that they think the Internet stands for in the post-Napster age and express it in this commercial.

Film:

Music

?? rocks in the hot sun. I fought the law and the law won...

Girl's voice:

Hi, I'm one of the kids who was prosecuted for downloading music from the internet. And I'm here to announce in front of everyone, we're still going to download music free off of the internet.

Music. *I fought the law and the law won.*

Girl's voice

...and there's not a thing anyone can do about it.

You can just imagine the ad execs proud of themselves because they captured the spirit of free culture here by understanding that kids want to download free music drinking a pepsi. That's the expression of their desire. This ad produced very quickly a counter ad.

Film:

Music

We're not going to take it. We're not going to take it, we're not going to take it any more.

Girl's voice:

We're still going to download music free off of the internet.

The point is that the extremism on one side begets an extremism on the other. And the extremism it produces in our kids is something that should concern us profoundly, because we who celebrate the ideal of the rule of law are producing a generation who thinks that the rule of law is nothing more than unjust rule. They view these increasingly punitive regulations as the expression of injustice and they react as Soviet citizens reacted by celebrating the Black Market that is their life. Now the response of the recording industry is increasingly simply to wage an ever more vigorous war to pacify the enemy to threaten more and more felony prosecutions for the behaviours they engage in. But our response should be to recognise that most of the problem here is caused by law outdated with the technology. And that rather than waging war, we should find a way to wage peace in this context through the wide range of proposals that have been made to readjust the set of regulations that define our children as criminals, into regulations that celebrate the creativity that they demonstrate and can ensure that artists continue to get paid.

Now, one idea for facilitating this transformation is a project I have been involved with for the last two years, a project called The Creative Commons, which has as its objective a technology to offer a simple way to mark content with freedoms. Simple way so that content can express the freedoms that others are allowed to engage with it. So you can go to the web page and you get to select a licence by expressing which restrictions you would like between all or none: requiring attribution, permitting commercial use, allowing modification of your work. And that produces a licence that comes in three layers. One is a human readable expression of these freedoms - the Commons deed. Then there is a lawyer readable expression of the deed - very different - a billion page licence. Then there is a machine-readable expression of the freedoms which makes it simple for computers to increasingly gather content based on the freedoms attached to it. So you can say - show me all the pictures of the Empire State Building available for non-commercial use and increasingly search engine technology will make it possible to collect those.

So, these three layers live together to mark and express freedoms associated with content. And they produce things. So, for example, this guy Colin Muchler, produced this guitar track, *My Life*, and contributed it to Upsound, which is a sound resource that makes its work available under a Creative Commons licence. Cora Beth is a 17 year-old violinist who downloaded the music and layered on the violin track you hear on top. She donated it back to the Upsound Archive, naming it *My Life Changed*. But the fact that is hard for some of us in our profession to understand is that this creativity happens with no lawyer standing between these two creators. This creativity happened because these two creators knew they were free to build in this way and build respecting the underlying copyrights that each creator held.

This is a voluntary system. Artists choose to express their work under it. And it feeds a free culture as others can choose to build on top of the work that artists make available. And in the first 14 months of this project, we now have more than 3 million link backs to these licences spread out across the net. And this year we have launched a project to extend these licences around the world, according these licences to more than 60 countries around the world. By the end of this year all EU countries will be up including in addition these countries too [slide]. So that this language for expressing freedoms becomes a standard associated with content and creators can know and build upon that consistent with the a respect for the underlying rights associated with it.

But there is another idea I want to end my talk tonight focussing on. And this is the idea launched last year by Greg Dyke at the BBC – the Creative Archive. The Creative Archive has as its exact objective, freeing content for British citizens to take and, if Disney will permit me, rip mix and burn. Content which children and citizens are allowed to recreate and re-express consistent with the permission granted because the content is set free by a licence granted by the BBC by taking advantage of the creativity that this technology enables. Now there is no single event in the last five years, in the last five years of this war, that has better captured the imagination of people around the world than this announcement by the BBC.

For the first time this debate is not a debate about whether people should be stealing Britney Spears or not. Because if that were the debate, I would be on the record companies' side because I don't think that people should steal Britney Spears. I don't think that people should get Britney Spears for any price. This is not a debate about stealing or copying content. What the BBC did was help us see was this was also a debate about how to enable creativity, creativity that would allow children to express themselves differently not by pirating but through using these technologies, technologies that would drive commerce. Because as people experienced the power that this content gave them, they would increasingly demand better software and better computers and better cameras and bigger hard disks and fatter bandwidth to make this creativity possible. They would demand an infrastructure to support this creativity and that demand would spur lots more than simply the creativity associated with this content. It drives progress to set this content free. And this action by the BBC captures the imagination of everyone around this world who wants to see this

debate advance from this simple ideal - That we have to stop the control of the spread of content.

This explorer comes to you as an alien, not as a citizen. But as we were taught growing up, I come as an alien returning to our mother country. You are our mother country – America – and we are engaged in a war. We are engaged in a war around culture. Let's speak just of that. And the question I want you to ask us is: What is the lesson a mother teaches a child about war? What is the lesson here as you reflect on what you have taught us here and how much you can teach us by this lesson of independence? Because we have certain predictable pathologies in my country. A certain righteousness, a certain extremism, a certain blindness to the costs of war, of prohibition, to the costs of war. You can teach us something. And you have. Thank you very much.

[Applause]

Susan Richards:

We have legislators of culture here, we have practitioners and administrators of culture here, all in one room. This is very unusual and that was a wonderful, inspiring talk.

First Question

What I was confused about in the talk was – are we expecting the children who are growing up when they are adults that they just work for free? I don't see that there is any difference for example between say an artist and a doctor. There is nothing special about artists in particular. And I can't see how what you suggested at the end, say if you're a digital artist, how do you make money? Do we expect them to work to the public domain for free and then somehow that's just reward enough? That's my first question.

Lawrence Lessig.

Yes, this is a feature of this debate. That when someone stands up and says that copyright has become too extreme a regulation. It is heard as – 'copyright should be abolished.' I don't believe that. I fundamentally believe in copyright. I think it's an extremely important part of the creative process and I think artists and authors and publishers need it to produce and continue to flourish in the context of creative industry. So I am wildly in favour but the details matter here. And what I am suggesting here is that a system that had been fairly well calibrated to technologies has fallen wildly out of kilter because of a radical change in technology. And, in the mix of this change there is a struggle to understandably protect and understandably reclaim some space. Now, a response to your particular question – do I think that artists should give away their work? No, they don't have to. If they want to, they should be allowed to. And some of the artists who have wanted to make their work available under a less restrictive licence than their label, under a Creative Commons licence, have been forbidden by their label from doing it. So I think that's a problem, artists should have that protection. Sometimes though, it turns out to be extremely

valuable to the artist to give away their work. There was a story this week in business 2.0 as they called it, quote: 'the multi billion dollar industry that is going to be enabled by this mixed economy of spreading content in one form free and building revenue outside of content in a different form'. So all that I push here is the freedom to experiment within that range and that's what Creative Commons does. You get a range of choices as to how you wish to express the freedoms you wish to go with your content. Nobody's taking that from you. You as a creator do it. And there is an increasing number who see this as a way, either to make money or, it's hard for people to believe this, but there are a lot of people out there who like to produce things and share them. That's all. Produce and share. And we have built a regime of regulation that makes it presumptively extremely difficult for them to do that. So there's a tool here, right. But the core question of copyright, I'm for it.

Second questioner:

Sandro Mahojin from University of Cambridge.

One of your themes is that asking for permission is what's stifling creativity. Well, what about a system of some kind of compulsory licence where say you get say copyright for five years or maybe a year for a computer programme, and then after that on payment of 1% of your revenues from copying something, you can copy it without having to ask anyone permission, you just pay it to some licensing agency, which I think might have been a feature of old UK copyright law and maybe US.

LL

Yes, there is a very important example of that which the recording industry likes us to forget. In the United States, there is a mechanical reproduction right which says that when a musician composes music and authorises it to be recorded, then any other person can come along and record that same song and pay a flat, compulsory fee. Yeah, that's how cover bands work. Now, in a certain sense you might say: 'that's outrageous', because here the composer and then the performer produce this great work, a Beatles song, and then every dopey band in the world comes along and tries to copy it and it all sounds awful. Isn't that a great insult to the original musician. But what the Congress in 1909 thought was that this would be a great way to guarantee that there wouldn't be too much monopoly power in the owners of the music and as the recording industry testified in 1967 and in 1976 having, quote: 'non-discriminatory access to the underlying music was an essential part of creativity in the recording industry.' So, I think that is a great insight. I think there are lots of contexts where that might actually help facilitate creativity on (?).

So I think, some people have suggested compulsory licences in some contexts to deal with particular inefficiencies of the market. That's the way I would think of that. I wouldn't say, universal, because to emphasise the point I think the first questioner was trying to make. I think there are many cases when it doesn't make sense and it isn't right to give a compulsory licence, but I'd certainly be open to it. I think that would solve a lot of the problems here.

Ian Forrester from BBC new Media of the World Service

First question was, Are there tools that the kids, and I count myself as one of the kids, is it too late are the tools already locked up in the spirit of the Palladium and trusty computing that Microsoft and other companies are involved in? Also the broadcasting flag is an interesting point. One of the things that I found very interesting was that Fox wouldn't allow the BBC to bid for a series on TV just because they do have a broadcasting flag. And I just wondered whether you had a view on that?

LL

It's a great way to see the threat in the next five years is of what I'm talking about because there is this oblivious settlement that's happening in the United States right now. People are tired of the war, they want to settle it and the war will be settled in the following terms. We will embrace a very strict DRM standard and Microsoft wants to sell us one and maybe that will be it. But it will be a very powerful DRM standard, which means Digital Rights Management technology which means using computers to enforce rights. And there will be relatively liberal permissions granted within the home. So you'll be able to copy ten CDs in your home, or within a network within your home. And that's what people think is a solution. But notice how that solution has nothing to do with the kind of creativity I'm talking about here. It's not important to me that you are allowed to make three copies of the Britney Spears CD. I don't mind that you would have to buy three copies. That's not important to me. What's important to me is that when you do a remix from the Britney Spears CD and you want to share it with your neighbour, you are allowed to do that, not just under the law, but capable to do it under the technology without using hacking tools to circumvent the copy protection protocols. Freedom here means the ability to recreate and share with your neighbours and that's what not going to be possible after the code gets in. Right now it's the law that threatens, but then it will be the technology that threatens and the broadcast flag is just another example of that. It's a wonderful example of how people don't think about the consequences of this regulation. So the broadcast flag says when digital broadcasting happens, if the broadcaster turns on the broadcast flag then all technology capable of reading digital broadcasts must respect the broadcast flag and not permit copies of that content. It sounds harmless, right? Well, one problem with the broadcast flag technology as it exists right now is that if there were a digital broadcast going on here and the broadcast flag were turned on, you could sit there using your Sony minicam and take a video of it. That's called the analog hole in the digital broadcast. So the analog hole will allow you to capture that. So technologists at HBO have said, we're smart guys, we can figure out how to get around this, we are going to develop the technologies so that your Sony will recognise that the broadcast flag is turned on. If you try to film that digital broadcast, your Sony will shut down. Sounds ingenious. Until you begin to think about the creative ways in which people will use these technologies. So, there's your son taking his first steps and my son's eight months old – I can't wait – So there's my Sony watching my son taking his first steps and he walks in front of the television set and there's a digital broadcast on the television set and bingo! The Sony shuts down because I'm a pirate trying to steal a broadcast from the television set. The point is you bury the technology in these controls and you destroy the flexibility of the technology for all sorts of different uses. Now when we have the plethora of proposals for dealing with the core underlying

copyright concerns, we should be dealing with them without breaking the network. We should be dealing with them in that way first.

SR

Has that answered your question about is it too late?

LL

Five years is too late. So we can fix this in the next five years. So, let's just reveal something important about the BBC Creative Archive. I think, if this rolls out in the way the most hopeful people describe and, if Britain turns into this place where kids are using this to produce all sorts of amazing content and the technologists begin to notice that sales of computers and broadband go up dramatically in places where this is happening, there is an opportunity for people to recognise the other side to this debate. That you know, we are spraying DDT here to kill a gnat. And it will subsequently destroy an environment that was much more important than the threat posed by the gnat. An environment that affects computer makers, commercial enterprises all over the place. So, if this happens quickly I think there is an opportunity to get people to recognise this. But if it doesn't roll out the way it's expected or if it's not understood in this way, then I think in five years, it's too late.

Stuart Candy's my name from Australia – I suppose.

I think your Creative commons scheme is great. I have a passing familiarity with it beyond what you have told us of it tonight, but it is an opt in scheme. And obviously apart from encouraging people to opt into that, presumably you are pushing for legislative reform as well. And I'm curious, and I guess you could go on for hours I presume, about the main priorities for legislative reform. Is it term of copyright or re-aggregating those rights so that it's not such a complex matrix. What do you think is most important?

LL

Well, I think it's a little counterintuitive. Whilst I think there is a radical change that has occurred, I actually think that relatively small changes would take care of the largest bulk of the problem. But we won't get any legislative change in the United States until there is a pretty significant movement of people who recognise the problem. So, Creative Commons – I would be the happiest person in the world if Creative Commons were rendered unnecessary by changes in legislation but we believe is that, if we can produce a 100 million linkbacks to our licences, then when Congress begins to think about this debate they won't see it in this zero and one way. They will realise that – It's as though this is the only thing they learned from the Internet – binary thinking – that there is no space between zero and one – But if they see 100 million people expressing themselves in between, they will understand what the different uses of these rights are.

Now, what are the changes that I want right away? Well, here's a picture of how extreme the debate is. After I lost the case that went to the Supreme Court asking the Court to reverse Congress's latest extension of copyrights which extended copyrights

not only going forward but also extended existing copyrights. And the basic argument was, if copyright is to be a bargain, a quid pro quo for producing something new, George Gershwin is not going to produce anything regardless of what the Congress of the United States says. I mean we do believe we are powerful but still we are not going to get Gershwin to do anything more. So the Supreme Court took a punt (I mean, not that kind of punt...) they just said no, so we proposed the following legislation – see how radical I am, here it is.

Fifty years after something is published, the copyright owner has to pay one dollar to the copyright office and register the work. American copyright owners for Burn aficionados, so it's not going to violate Burn. So American copyright owners pay one dollar, they get the term as long as Congress wants. If they don't pay a dollar, if it's not worth it to them to pay one dollar, the work passes to the public domain. Now we know from history of registration that probably 80-95% of work 50 years out would not pay the dollar. So that huge chunk of work would pass into the public domain and people would be able to remix it and do stuff with it totally free of copyright protections. We proposed that Congressman Loffgren introduced it. The NPAA started lobbying against it, Jack Valenti going around to the members of the committee that would be involved. I swear to God that one of the objections the NPAA offered was: 'this would too burdensome for poor copyright owners'. The ones who couldn't pay a dollar. Now where is the extremism in this debate? When you look at a system like this and you can't even imagine having to pay one dollar, then the position rejecting this kind of proposal is the extreme one. So in a world where that kind of argument plays – we don't want to hurt poor copyright owners – we have a lot more work to do before we get legislative change.

Joe Kelleher, Roehampton University

This might be a little bit broad, but I wonder if I can ask you to comment on performance. We are talking about the copying of content and I look at some of the examples of creativity that you showed us and what I'm seeing in those examples of creativity is an example of performance. I am thinking for example of the *Read My Lips* parody, or the Pepsi parody. That so-called content is taken and a performance act is played upon it. What seems to be done in both those examples, the piss-take that's done, the thing that's thrown back I guess at North American political culture or North American corporate culture is to say: this thing you're calling content, this thing you want to copyright and own is itself a theatre, a performance. It's Bush and Blair doing their thing, it's Pepsi organising a bunch of signifiers, a bunch of scenes, a bunch of events and throwing it back. It looks like there's some weird kind of slip there, some gap opens up, this war is weirdly a war against performance which the power can't recognise it has on its own side in the first place.

LL

Yeah, I think that's a good way to understand it in the sense that all the examples I selected were examples where there was meaning behind the creation that was expressed in exactly this kind of performance sense. But the point is that, if you perform through this medium, you copy in the act of performing. So, the legal system

marches along and says: oops, I've noticed a copy here. Is there authorisation for this copy? No. Does it satisfy Fair Use? Well, hire a lawyer and six months later or a year later, we'll tell you after you'd paid the bill. So the point is, the American legal system right now has expected that Fair Use would provide the necessary balance here. But it is such an undefined, ambiguous set of protections that all Fair Use does is give you the right to hire a lawyer, which is no right at all in this context. So there is a kind of almost technical reason as to why this has reached as broadly as it has. The technical fact that digital networks all produce copies when they do something and there would be a much narrower range of copyright infringements for instance if, in fact, we were just re-enacting something. One of my points is that activities that are totally OK when they get translated into this medium become problematic. And I think that is something problematic about the law's application to the medium not something problematic about the activities that are going on in that medium.

Susan Richards

Interesting point that no women have been asking questions.

LL

I was just very clear, I guess!

Questioner

Alfie Dennon. I use Creative Commons for licensing the software for a web site that we do called boblog uk.com. But what it's allowed us to do is reach a very creative audience who send images and video to our site and to their own web page and they have also agreed to use, in 90% of the cases, to use a CC agreement to licence their own work. And because they are very creative, a lot of comic artists, stuff like that are using us. In the UK, how much protection does that licence actually give people at the moment?

LL

Well, the standard answer is as long as there is a sufficient connection you're going to have to the American jurisdiction here. I mean to enter into the kind of agreement you need. But if it doesn't there is a project that has been launched out of the Comparative Media Studies Department at Oxford, which is the CC UK. And we are in the middle of drafting licences and this fall there will be UK licences up there. So if you come from a UK site to the CC place, you'll get given the choice of selecting a UK licence to enable these same kind of freedoms. This autumn.

Another Questioner

I'm starting my question with an assumption that has come out of your piece which is that there is no such thing as a creative class and that people are innately creative. So, if that's the case and people need to create, technology is merely the thing that leads the kinds of creation that is created. However, with these restrictions, my question is - do you not think that there is a case where people will increasingly work around restrictions that are placed around them. Now that is either within the technology as you've defined it or outside it. So, for example a group of kids who find

that the technology doesn't allow them to download the Britney Spears track, might actually go into a garage, play some instruments and create a new track which might or might not be in the field of copyright ownership?

LL

I completely agree that restrictions force people to be creative in different ways. One way which is forces them to be creative might be to go out and create the music but again there might be some rights that are infringed depending on how they create and distribute it. Another way that they are creative is that they try and break the rules. It's the second kind that really troubles me, and it troubles me as a Law Professor, as someone who has to try and convince students that they should do the right thing even if it means losing their job. You know, kids who come in who have been drinking under age where they have been engaging in illegal drug use, where they have been downloading music for their whole life, look at you when you say 'Do what's right' and they say: 'Who are you? What are you talking about? I don't have any understanding of what that means any more.' Right. So that's the part that really troubles me. I agree that we get something good, but I think we swamp the good with something bad. And, if we made the system so that they could engage in creativity without being illegal, there is still enough difficulty creating that they will have to work around. Have you ever used the Windows Operating System? The point is there is so much difficulty in just using the technology, let's direct the creative energies to that as opposed to creative ways to break the law.

Hi, I'm David Bovill from Arts Partnership in London.

I've spent a good deal of time in the last few years trying to convince artists to use CC style licences and while I think it was a fabulous talk and that the work that you've done is a good part of the answer, there are some major problems or extra bits that need to fit in to make a whole picture. Particularly for people who are bordering on the position of being able to get copyright or to be able to sign a contract or what have you. In order to publicise this initiative, you need to engage with the creative community and they have a problem with the CC licences as they are. For me, the missing ingredients are partly legal. They are to do with how artists are to be remunerated. Well, we've got a project called the Open Partnership and we are trying to add currencies, commissioning currencies we call it, so that when artists contribute to the commons participate in the rewards of the commons. And also to get constitutional change going so that people who do engage in these processes can have a say in the commissioning of new content for instance.

LL

Yes, it's a great point. The first response is to recognise that, and if you've worked with the licences you'll see this. When the licences say, I give my work away under a non-commercial licence, so, you can download my music and use it for non-commercial purposes. That doesn't say 'I don't want to get paid.' It's to say, 'If you want to do something commercial with this, you've got to come back and talk to me about it.' The non-negotiated part is you can do non-commercial things with it, but if you want to do commercial things, then you've got to talk to me about it. Now, we've

been developing technologies to enable something more than that. So, for example, you've seen, there is a wide variety of Tip Chart ?? technologies there's all sorts of problems with that. We actually think we've found an extraordinarily elegant solution to the problem and we are testing it. And we will be able to give away CC licences that will also have something next to it that will also enable voluntary payback to that.

Questioner: Are you allowed to speak about that or is that under intellectual property?

LL

Yes, it is under NDA. So no, I'm not. [Audience laughter] But the critical thing that we want to avoid, the architecture that we have can't condition access on doing something because that's digital rights management in a certain form. And we understand that the DRM necessary for all sorts of content. But we are about showing how much can be done without DRM. That's very important to our mission. So we can only go so far in that. Now that might mean certain people can't use CC Licences. And I'm not somebody who believes that everybody ought to. I think there are certain works that shouldn't. I think many more people ought to experiment with it.

So, my latest book *Free Culture* was published by the second largest publisher in the world. Penguin Press is my imprint. My editor, after reading the book said: 'Why shouldn't we give your book away free online?' And I said: 'Well, I was thinking how was I going to convince you of that. But yes, we should.' And he convinced the publisher that giving the book away free online would sell more books. It turns out to be pretty obvious why that should be true. You just have to think of two numbers. One is the cannibalisation rate- the number of people who wouldn't buy the book because they can now get it for free. Versus the conversion rate, the number of people who would never have seen the book, would never have had anything to do with it, now that they see it, now that they are human and don't like to read on a computer, they buy the book. If the second number is bigger than the first then this is a plus for publishers. Our publisher was convinced about that. In the first month there were some 220,000 downloads of the book and sales spiked in a way that confirmed what my publisher believed. But for me, the more interesting thing part of the story was the derivative works that came out of the book.

So, I gave the book out under an attribution, non-commercial licence, meaning that you have to give me attribution, you can do anything you want as long as its not for commercial purposes. Within 24 hours there were nine different formats of the book posted on the web. Within 36 hours, somebody said: 'Why don't we create an audio version of the book?' And there was a kind of barn-raising audio version produced where people read different chapters, a site was produced to aggregate the chapters and some of the readings are extraordinarily beautiful readings of the chapters and you can now download the book and listen to it on your I-pod. Within a week there were translation projects in Poland and in China started – group translation projects. And within a week-and-a-half, somebody had put out a WIKI version of the book. Now a WIKI is a version that allows anybody to change the underlying text. So, as

the changes are made there is a little change record made, "you made this change". And if you read the change records of the WIKI, you can see the war has broken out between the Steven Mannes types who want to come in and make me look like an idiot and people who actually believe in the argument and have to come in and clean the mess up. [laughter] So there's this huge community that wages war over the text and people who are contemplating adding chapters, filling out arguments, adding things to the notes, putting counter arguments in. You know, the book has a life of its own now and I have promised to review the book in a year [laughter] and tell the world whether I think it's a good book or not. But the point is, none of that would have happened had I not let the book go free under this type of licence. So my publisher thinks they've sold more books and there's a huge community around the book. Now most publishers would not have thought this through and would not have allowed this to happen. All I'm saying is that more people should experiment like this. It may not be the right thing for some books, for some type of work, but I'm sure it's the right thing for more than who naturally think it is the right thing.

Woman asks question:

My point regards DRM, to follow up on the previous question about whether 5 years is enough time. What will happen beyond 5 years if nothing changes?

LL

Well, if nothing changes and the DRM gets rolled out in the way that it looks like it will be rolled out then it will just not be quote 'possible' to engage in the kind of creative re-mixing that companies like Apple bet their company on. It won't be possible in the sense that you could'nt find ways to do it, it just won't be the trivial easy thing that it is today to do. That means that fewer people will do it, fewer schools will have programmes around it, because if the content that people want to do stuff with is embedded with these protections and can't be mixed in certain ways, then schools and businesses aren't going to be in the business of promoting the illegal uses. So it will be less and less a part of our culture for people to be engaged in that kind of creating re-use. Now, there will always be a certain section of the world that finds creative ways around, breaks the rules, breaks the code, finds ways to circumvent, but it won't be the extraordinary part of the culture that I believe it could be. Now, do I think that 50% of the people will sit down and remix their music? No. But if it's 5% instead of 0.5% or if it's 1% instead of 0.1% is that a huge gain? I think it absolutely is a huge gain because, people who create, through text, or through images, or through sound, think critically. That's what they have to do. The greatest thing about blog culture is that all of a sudden people who used to think they knew what they thought have to sit down and write out arguments. And when they write out arguments, they find half way through their argument, that it's stupid. Now they'll never admit it, they'll never say that they were wrong, but the very act of having to express it, changes how people think, changes the way the democracy deliberates.

So I think that all of these tools that force people to be creators, or invite them to be creators or create a context in which this is what you do, brings about a critical thought, that I think at least we, in the United States, desperately need. We have no

political discourse of any serious substance anywhere right now. That's because we are totally the product of broadcast politics. We sit there we get blasted with these things. I mean, you guys don't know Fox news. Maybe you know a version of Fox News, but you don't know Fox News. Fox News calls itself fair and balanced. Most people think it's a joke, but they don't believe it's a joke and most people who watch it don't think it's a joke. Because we have this amazing culture that there isn't even the critical thought enough to recognise that it is a totally biased network. They can't even see that. Now this is the product of some kind of Sovietisation of our culture. We are just pathologically pathetic, I guess. This bovine culture that just accepts what fed to it. My point is, there's no reason it has to be like that, it wasn't always like that, we can enable it to be something different. And the thing that's in the way is a bunch of legal rules.

Where I grew up, in my tradition, when the law comes in and tells you not to speak in a certain way. Your response should be: 'what's your argument, what's your justification? Give me your reason for silencing me. Give me your reason for silencing me.' And what's so fundamentally disturbing to this lawyer, who deeply believes in the American legal tradition and the American Constitution is, any critical thought about the expansion of intellectual property that has happened in the United States right now, can't muster that reason. And yet, the system goes on pretending that there's nothing wrong here. There's nothing wrong here when a filmmaker who wants to make a film about the most important decision that a President makes – whether to go war – can't even quote the President talking about it. Can't even use his images talking about it without risking a lawsuit by one of the most powerful networks in the country. People who don't see there is anything political in this is just bizarre, yet I promise you that the majority of the Bar in my country just look at me and say: 'it's nothing to do with politics, it's just property, it's just property'. As if that's a coherent statement 'it's nothing to do with politics, it's just property.'

So it's somehow we've got to get critical thought. So, do I think Creative commons is going to rebuild the Republic? I don't think so, but it's got great logos!

Question:

I'm a Chinese student currently studying law at Edinburgh University. I joined the Chinese translation project at the end of April. That's quite fun. And here I advance my question on behalf of our translation team and e-commons China. Our concern is in addition to a divided world here we have another separate world. There are information haves and information have-nots. This is a disconnected world. So my question is how does the Free Culture project contribute to narrowing the digital divide? The information haves and have-nots. Thank you.

LL

How does the Free Culture address the digital divide questions? In a certain part of the digital divide problem, I don't think it has anything to do with it. I think there are certain very stupid government policies around the world that help create the digital divide. In addition to extraordinary inequity around the world. But given the inequity

which we are taught to say is given and can't be questioned, there are still stupid policies that exacerbate that problem. So, Africa is totally destroyed as far as the internet solely because of the idiotic telecommunications policies of most of the African nations which adopt extraordinarily monopolistic practices. So if you want to send an e-mail from Nigeria to South Africa it goes through the United States. It's cheaper to go through the US than to go through the local system because the monopoly exchange rates are so exceedingly high. So we could take care of a huge part of the digital divide just by dealing with that stuff.

But the other part that we are trying to do something about is if this method of creating, producing and sharing culture is allowed to flourish, I think one consequence is greater diversity. So, one of our superstars in the Creative Commons world is a guy named Gilberto Gil, who is the Culture Minister of Brazil and one of the greatest musicians in Brazil. Gil forced us to, and he's very persuasive so it feels like forcing, forced us to create a licence which we've called the 'mash-me' licence. That says, you can sample my music, you can even sample my music even for commercial purposes, you're just not able to make a verbatim copy of my song. Now Gil wanted that licence that we have now released because there is an extraordinary amount of Brazilian music that is never heard anywhere because the only way to hear it anywhere is to go and hire a lawyer who's going to clear the rights in Brazil and who's going to do that? So, Gil thinks that if this music can be licensed under this type of licence, it will spread virally around the world to the extent that it becomes powerful and compelling, more people will go back to Brazil to get that music. They will buy more Brazilian music. So, freeing culture in this way for Gil is a way to advance the opportunities of musicians in Brazil and we have a CC South Africa project that is trying to do exactly the same thing.

So, on the margin, if I could solve one problem, would it be the free culture, or the idiot policies or inequality. Well, I'd start with inequality, I would move to idiot policies and then I would deal with free culture, but one of the most – let me just end on this because this is the part that is hardest to accept, some day our kids will look at us and not even understand who we are – The hardest thing for us to recognise about this is that part of the consequence of the war that's going on about IP is that the extremism of the United States becomes exported to every country around the world, including developing nations. So the United States participated in the TRIPs agreement, the Doha accord. Doha allowed developing nations to slowly come up to some of the standards of intellectual property protections. The United States now goes around, in bilateral negotiations, and forces these countries to adopt extremely high restrictive intellectual property protections as a condition to getting access to the United States. Now, that is harmful to those nations, but they have no choice in some sense and it produces another layer of extraordinary anger directed against the United States. And sometimes the consequence is just financial, although for a poor country there is no such word as 'just financial', but sometimes it's much more profound. So, for example in 1998 at the time that South Africa was considering a compulsory licence to licence drugs to deal with AIDS, the United States Government, not a Republican Government, a Democratic Government, Al Gore went to SA, told the South Africans

that we would retaliate against them if they adopted compulsory licences to get drugs into South Africa. Now, you step back from this and you say, how is it that you get to a place in your thinking where it seems even reasonable to stand in the way of drugs getting to people who are dying in the millions of AIDS in the name of protecting the sanctity of an idea that property has to be respected? Now that's the rhetoric. Literally, 'you have to learn how to be a market participant by respecting Intellectual Property rights.' You can imagine the South Africans: 'We'll learn that, but right now we've got in sub-Saharan Africa 30 million people dying of AIDS. We need to deal with this problem now.' My point is that the mentality associated with this debate makes people feel at ease when they engage in that kind of behaviour. I think that's astonishing. I hope my child says to me when he turns 18: 'How could you have allowed that to happen?' Because, what did I do in 1998? I didn't do anything about it? 'How could you have been a good German like that?' Should be the question my child asks me. And it's because we come from a culture that accepts as natural this structure. Now let me just make sure that you understand what kind of a radical I am not. I believe in drug patents. Given the way we finance research, and there are lots of people who have different ways to finance research and those would be better. So Jamie Boyle has a great way to finance research and those would be better. But if we don't adopt those, I believe in drug patents. It's one of the rare examples where patents are actually necessary within the constraint sense of necessary. But, even if you believe in drug patents, you have always understood the importance of differential application of patent protection on the basis of whether people were from developing nations or not. And while I think it's a complicated question why drug companies do what they're doing, I think it's not a complicated question when the United States uses its power to stop the spread of drugs or stop the spread the knowledge, there is something unambiguously wrong with that. And the fact that it's not even recognised as a political issue. It's not even an issue that the Democrats or the Republicans talk about, is the most profoundly depressing feature of this whole debate.