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From the Selected Works of Alan E Garfield

November 4, 2007

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Perspective

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MAKING MONEY MAKING MUSIC

By ALAN E. GARFIELD

How should our society encourage authors to produce the works that so many of us enjoy – movies, music, television, books, theater, art, video games? Sure, some artists might be compelled to express themselves even without compensation. But most would probably agree with Samuel Johnson who said way back in the 18th century that “no man but a blockhead ever wrote except for money.”

Historically, artists were compensated by the few who had the means to pay – royalty, the church and wealthy patrons. That explains why so much artwork in museums consists of religious art or portraits of wealthy individuals. Even today, a considerable amount of art is produced because of funding from government and private foundations.

Still, much can be said for a system that rewards artists for producing works of mass appeal. Societies whose artists rely on government or church support only get works appealing to those patrons. Perhaps that’s why the poet Archibald MacLeish said that “works of art are rare” in the former Soviet Union. President Franklin D. Roosevelt said that “the conditions for democracy and for art are one and the same.”

With the advent of technologies that facilitate the mass dissemination of works (starting with the printing press) and the subsequent rise of the middle class, it became possible to have more democratic markets for works authorship. But for these markets to function, something had to be done about the ease of copying.

After all, what publisher would pay an author a hefty sum for a book if the publisher knew that the minute the book hit the market, others could freely copy it?

To solve this problem, policymakers came up with copyright law, which says that the owner of a particular work (a book, song, movie) has the right to control reproduction of the work. This means that someone who buys a book can use it or sell it, but cannot ordinarily make copies of it. And he certainly cannot make multiple copies to sell or give away.

To be sure, copyrights are a strange kind of property. Most property (land, a car, jewelry) is in the owner’s possession. But copyright applies to books, movies, records and software in other people’s possession. It restricts what people can do with works even though they have lawfully purchased them.

Notwithstanding copyright’s odd nature, it has been enormously successful as an engine of creativity. Our culture is awash with creative works, and much of what this nation now produces is copyrightable products.

Yet this system of copyright rights is under tremendous stress. While a certain amount of illegal copying has always occurred,



In October, the British band Radiohead released its album “In Rainbows” by download on its own Web site without a record company, asking listeners to pay what they wished. An actual CD of the album is expected in 2008.

WHAT’S MUSIC WORTH TO YOU?

How do you tune into the music of your choice? What alternatives appeal from among live performances, recordings, broadcasts, downloads or subscriptions? What’s the distribution industry missing? Talk to www.delawareonline.com/opinion.

Both digitization and the Internet are wondrous inventions that can vastly expand people’s access to information and cultural works. But they are also nerve-racking for copyright owners. After all, if your income depends upon your ability to control copy-

ing, what happens when you lose control?

The record industry has been at the forefront in wrestling with this question. Music is so popular with the computer-savvy younger generation. (If only kids were downloading science books!)

It is also because the bandwidth of most home Internet connections easily accommodates music sharing. Movies still take a long time to download, though that will soon change.

To a large extent, the record industry has reacted to rampant piracy by trying to bring copying back under control. The industry has tried to educate the public about the illegality of copying, through both gentle means (teach-ins on college campuses) and not so gentle (highly publicized lawsuits against file-sharers like Jamie Thomas, who was recently hit with a \$222,000 judgment).

The industry is also hoping technology will allow it to wrap works in encrypted copy-proof envelopes.

Industry critics rail against the notion that piracy is the problem. In their minds, the problem has been the record industry’s reluctance to abandon an antiquated business model that forces consumers to buy albums with 12 unwanted songs to get one good song.

Critics even imply that the Internet has rendered the industry obsolete. After all, why should artists and consumers pay anything to an intermediary when they can now communicate directly?

Of course, the record industry has made changes in recent years. There are now many Web sites where consumers can lawfully and cheaply download individual songs. Yet one still wonders whether the industry will ever stop piracy. Even the best business model cannot compete with free music. And while lawsuits and encryption can slow piracy, it’s unclear whether they can prevent it.

Perhaps the answer is a whole new system for distributing music and compensating artists. Maybe musicians will give away music for free, and hope to make money through touring or the sale of related merchandise. Radiohead recently let fans set their own price for an album.

Maybe consumers will pay a monthly fee for a service that streams music to their homes on demand. Perhaps copyright law will give up on regulating copying and instead compensate artists through a tax on the sale of copying devices and media.

All that can be safely predicted is that copyright will continue to wrestle with the implications of new technologies, just as it addressed the printing press. At stake is not just how authors are compensated, but the richness and diversity of our cultural capital.

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