Think Locally, Act Globally: Taking US Copyright Reform to a World Stage

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Early last month, Lawrence Lessig [http://cyber.law.harvard.edu/people/llessig], gave a keynote at the World Intellectual Property Organization’s (WIPO) Global Meeting in Geneva. The theme of this year’s meeting was “Emerging Copyright Licensing Modalities: Facilitating Access to Culture in the Digital Age [http://www.wipo.int/meetings/en/2010/wipo_cr_lic_ge_10/program.html],” and the goal of the meeting was to “raise the awareness of member states on the complexities underlining a vast variety of licensing practices in different sectors, including the online market for music, the software industry, and open access publishing.” In his 38 minute speech [http://dotsub.com/view/d354cf7e-835e-464d-b171-ef1463ed15ee/viewTranscript/eng], Lessig moved beyond merely raising awareness of US Copyright issues and issued a call to action: WIPO must take the lead in copyright reform if there is any chance to fix what is, in Lessig’s estimation, a “failed system.”

The system’s failure is not an “accident,” according to Lessig, “it’s implicit in the architecture of copyright as we inherited it.” It isn’t that the law has grown more complicated, it’s that the law has stayed the same, even though the nature and scope of what it regulates has changed dramatically:

At the turn of the century US copyright law was technical, inconsistent, and difficult to understand, but it didn’t apply to very many people or very many things. If one were an author or a publisher of books, maps, charts, paintings, sculptures, photographs, or sheet music, a playwright or producer of plays, or a printer, the copyright law bore on one's business….ordinary citizens, however, could go about their business without ever encountering a copyright problem. 90 years later, US copyright law is even more technical, inconsistent, and difficult to understand. More importantly, it touches everyone and everything. Technology, heedless of law, has developed modes that insert multiple acts of reproduction and transmission – potentially actionable events under the copyright statute – into commonplace daily transaction. Most of us can no longer spend even an hour without colliding with the copyright law. (Lessig quoting Jessica Litman, 1994 [http://www-personal.umich.edu/~jdlitman/papers/read.htm])

Technology may be “heedless” of law, but the law cannot remain “heedless” of technology. In an analog world, most uses of culture were unregulated. Think of the example of a book in physical space. To read the book, give someone the book, sell the book, or sleep on the book are all free, unregulated uses of the book because none of these uses produce a copy. “Enter the internet where, because of a digital platform, every single use produces a copy. And we go from this balance of unregulated and regulated and fair uses, to a presumptively regulated use for every single use, merely because the platform through which we get access to our culture has changed.”

What has also changed, according to Lessig, are our “ecologies of creativity.” Creativity happens within an ecology; ecologies are environments that set the conditions of exchange. Our ecologies of creativity can be loosely categorized as those that “have money at the core” (the professional ecology), those that “don’t have money at the core” (the amateur ecology), and those where “people don’t use money to express value” at all (the sharing ecology). These ecologies are not mutually exclusive and, in fact, must coexist to survive.

The professional ecology depends upon an “effective and efficient system of copyright” to assure that compensation can provide the incentive the artist needs to create; the amateur ecology depends on the opportunity for “free use and sharing,” not on control and copyright and compensation. It is within this sharing ecology that children, lovers, friends and family live – an ecology whose character would change radically if money were introduced as a mode of exchange. “Imagine friends,” Lessig asks, “inviting the other for lunch the following week and the answer is ‘Sure, how about for 50 bucks?’” Our work as scholars “is and has always been” a kind of hybrid activity: “creating within a mixed economy of free and paid” and depending not upon “exclusive control, but both on free and fair use of creative work that is built upon and then spread.” The “critical point” Lessig makes with these examples is that a copyright system has to support each of these ecologies; it cannot privilege one and neglect the others. Of course, these ecologies are moving targets – government, technology, and
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Economics change and redefine them for every age – so it is critical that our laws keep up with these changes.

Yet Lessig asserts that our copyright laws have “failed.” They have “failed to assure the adequate incentives in the professional culture, and failed to protect the necessary freedoms in the amateur and critical or scientific culture.” It is because of this failure that he “flings himself across the Atlantic” to ask WIPO to take the lead in reform. In the short term, he asks that WIPO actively encourage systems of voluntary licensing (like Creative Commons) as they create a “better balance” between the ecologies of professional and amateur creativity. Rather than using a one-size fits all copyright protection, creators can use voluntary licensing to more accurately mark their content with the freedoms they intend for it to carry (Al Jazeera, the White House, and Wikipedia have all released content under such licenses.) In the long term, Lessig asked that WIPO support a “Blue Sky Commission,” a group that would have “the freedom to think about what architecture for copyright makes sense in the digital age, freed from the current implementation of copyright.”

Lawrence Lessig has never been shy when it comes to enumerating the problems of the US copyright system. Whether he is speaking to Stephen Colbert or to the preeminent IP agency of the UN, he makes clear that our existing system of copyright “could never work in the digital architecture of the Internet.” “Either it will force people to stop creating,” Lessig argues, “or it will force a revolution. And both options, in my view, are not acceptable.” The extremes that Lessig identifies here – prohibition or revolt – are the extremes that will “lead to the destruction of the core value of copyright” as well as “corrupt the rule of law in a democracy.” Reform needs to take place, not somewhere in the middle, but somewhere completely outside of the constrictive architecture of existing laws – in a wide-open place with a big “blue-sky” – where we can think freely and clearly about how to define the new, rather than about how to protect the old.

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2In his keynote, Lessig uses this quote from Jessica Litman’s article “The Exclusive Right to Read” 13 CARDOZO ARTS & ENT. L.J. 29 (1994); For a video of his slideshow presentation, see: http://www.youtube.com/watch?v=6AT02dOSbxc [http://www.youtube.com/watch?v=6AT02dOSbxc]

3Lessig also gave a brief interview to IP Watch about the WIPO conference; it can be viewed at the following link http://vimeo.com/16512341 [http://vimeo.com/16512341]