THE ETHICAL VISION(S) OF COPYRIGHT LAW

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The Internet as Playground and Factory

13 November 2009

GOALS

- Give a reading of copyright law in narrowly relational, ethical terms
- Situate some common arguments about copyright in rhetorical relationship to that reading
- Discuss ambiguity of “sharing” rhetoric

FOUR ETHICAL SCRIPTS

- “Respect copyrights.”
- “Don’t sue your customers.”
- “Software should be free”
- “I like to share.”

WARM-UP:

TRADE SECRET

ETHICAL?

What do we think about industrial LOL-spionage?

THERE'S AN ETHICAL VISION AT WORK HERE

- It's easy to tell a story about trade secret law without using phrases like "efficient precautions"
  - "Improper means" violate commercial morality
  - Breach of confidence is a betrayal of trust
  - Espionage is intrusive and aggressive
- Despite scholarly effort, courts often hew to moralistic reasoning

ETHICAL VISION

- It embodies expectations about how people behave
  - With a distinctly ethical tone
    - Emphasis on relationships
    - Often nonconsequentialist
- It makes claims about the relationship among the action, its ethical status, and its legal treatment

ARGUMENT SCHEMAS

- *Justification*: Corporate espionage is [. . .], so trade secret law ought to prohibit it.
- *Articulation*: The [. . .] goals of trade secret law will be furthered by preventing airplane surveillance.
- *Education*: Because airplane surveillance violates trade secret law, it's [. . .].
- *Challenge*: Airplane surveillance isn't [. . .], so trade secret law should be changed . . . (and so on)

ETHICAL CLAIMS

- *Justification*: Corporate espionage is *unethical*, so trade secret law ought to prohibit it.
- *Articulation*: The *ethical* goals of trade secret law will be furthered by preventing airplane surveillance.
- *Education*: Because airplane surveillance violates trade secret law, it's *unethical*.
- *Challenge*: Airplane surveillance isn't *unethical*, so trade secret law should be changed . . . (and so on)

THE ETHICAL VISION(S) OF COPYRIGHT LAW

DOMINANT ETHICAL VISION

- Commercial exchange
- One-to-one
- Voluntary agreement
- Mutual respect

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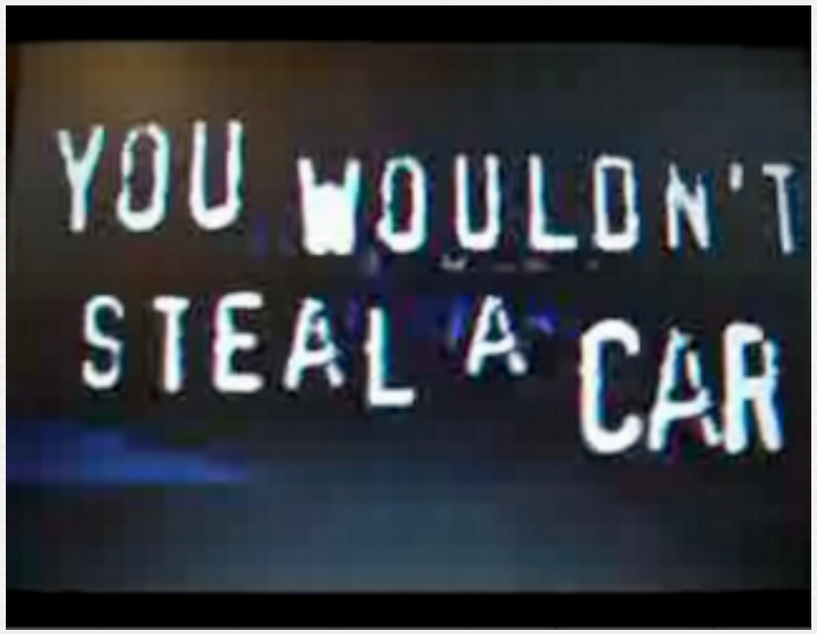
ETHICAL TRACES IN COPYRIGHT LAW

- *Bleistein* makes the market the judge of quality
- Moralistic anti-copying opinions vs. remix as respect
- Copyright misuse prevents overreaching
- Statutory exceptions for especially good institutions

FOUR SCRIPTS

"RESPECT COPYRIGHTS"



COMMON THEMES

- Language of "respect"
- Creators humanized; middlemen hidden
- Fandom encouraged and channeled
- Copyright law unproblematically reflects ethics
- Monetary exchange is the basic indicator of legal (and ethical) behavior

"DON'T SUE YOUR CUSTOMERS"

COMMON THEMES

- Audiences humanized, authors hidden, middlemen excoriated
- Audiences portrayed as ready and willing to participate in monetary exchange with authors
- Lawsuits depicted as betrayals of authorial duty of good faith negotiation
- Copyright law abused, but fixable to conform with ethical principles

COMMON GROUND?

- Ethical vision: mutual, respectful, price-mediated exchange between author and audience
  - No one contests mutuality of obligation
  - Copyright should (and does?) reflect this vision
- The basis of divergence is who's responsible for the breakdown of normal commerce
  - With similar divergence on proper legal responses within the dominant ethical vision

“SOFTWARE SHOULD BE FREE”

Definition of
Free Cultural Works

debian

COMMON THEMES

- Overreaching authors unethically deprive users (. . . and audiences more broadly) of basic freedoms
- Copyright law (inherently) supports this authorial oppression, and may thus be irredeemably unethical
- License jujitsu as necessary compromise to live ethically within unethical copyright system
- Exchange-for-money may not be problematic, but the exclusive rights backing it up are

"I LOVE TO SHARE"

creative commons

open source

WIKIMEDIA COMMONS

FreeCulture.org

COMMON THEMES

- "Sharing" valorized as showing respect for audience
- Author/audience division less stark
- Language of conversation, commons, community

REFLECTIONS

MAPPING CONNECTIONS

- The dominant ethical vision: market exchange
  - "Respect copyrights" and "Don't sue your customers" emphasize its mutuality
- The critique: exclusive rights are wrong
  - "Software should be free" makes the case
- "I like to share" is ambivalent between these visions

MAPPING CONNECTIONS

Selling is Ethical	Selling is Unethical
"Respect copyrights." "Don't sue customers."	"Software should be free."

IS "SHARING" RADICAL?

NO	YES
▪ Possible within existing copyright system	▪ Can look like a world without copyright
▪ Complements other business models	▪ Demonstrates non-monetary model
▪ Accepts "authorial choice" rhetoric	▪ Natural affinity to strong "freedom" claims
▪ No claims about non-sharing authors	▪ If sharing is good, not-sharing is bad

MAPPING CONNECTIONS

Selling is Ethical	Selling is Unethical
"Respect copyrights." "Don't sue customers."	"Software should be free."

MAPPING CONNECTIONS

	Selling is Ethical	Selling is Unethical
Sharing is Ethical	"Don't sue customers."	"Software should be free."
Sharing is Unethical	"Respect copyrights."	

FURTHER QUESTIONS

- Stability of hybrids?
- Crafting doctrines that fit with ethical scripts?
- Relationship between these ethical scripts and consequentialist stories about overall effects?

YOUR FURTHER QUESTIONS?