

THE ETHICAL VISION(S) OF COPYRIGHT LAW

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When Worlds Collide
31 October 2008

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 [bad], so trade secret law ought to prohibit it.
- *Articulation*: The [normative] goals of trade secret law will be furthered by preventing airplane surveillance.
- *Education*: Because airplane surveillance violates trade secret law, it's [bad].
- *Challenge*: Airplane surveillance isn't [bad], 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
- Voluntary agreement
- Mutual respect



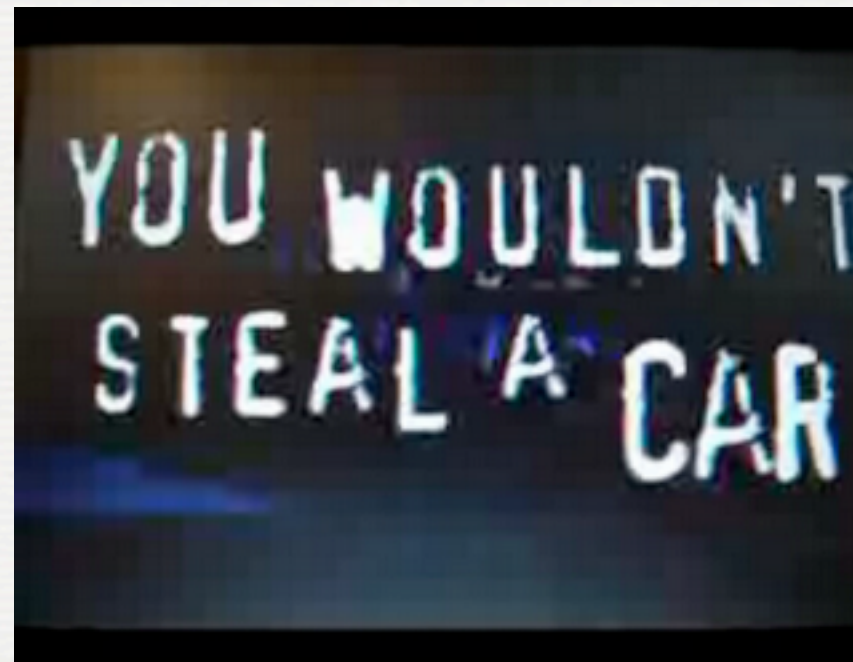
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ETHICAL TRACES IN COPYRIGHT LAW

- *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"



Tired of being treated like a criminal for sharing music online?

You're in good company. Over 60 million other music fans use peer-to-peer programs like Kazaa and Morpheus to share their favorite tunes. Yet the record labels are bullying ISPs and hunting down college kids in an effort to shut down file sharing.

Isn't it time for a new approach? The Electronic Frontier Foundation thinks so. We believe the answer lies in a model that fairly compensates artists while supporting music lovers. Join EFF today so the music can play on.

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It's Music to our Ears**



Stand up for your right to share the music you love!
Join EFF today at www.eff.org/share.



WARNING!

BUYING THIS CD FUNDS LAWSUITS
AGAINST FAMILIES AND CHILDREN

RIAAradar.com

DownhillBattle.org

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



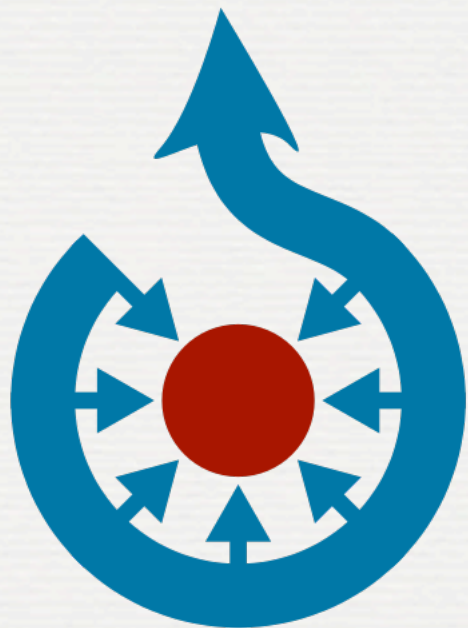
COMMON THEMES

- 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

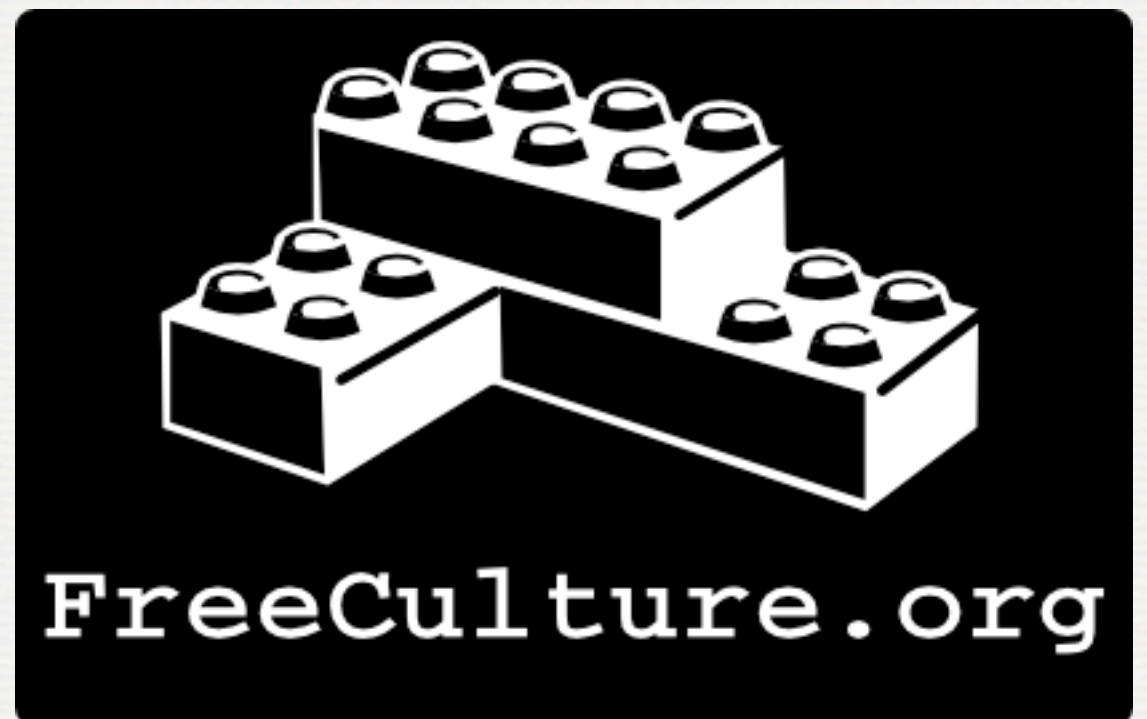
**"I LOVE TO
SHARE"**



open source



**WIKIMEDIA
COMMONS**



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

- Possible within existing copyright system
- Complements other business models
- Accepts “authorial choice” rhetoric
- No claims about non-sharing authors

YES

- Can look like a world without copyright
- Demonstrates non-monetary model
- Natural affinity to strong “freedom” claims
- 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


“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."	

A Creative Commons logo (CC) is positioned between the middle two rows of the table. A large 'X' mark is drawn over the bottom-right cell of the table, which is currently empty.

FURTHER QUESTIONS

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