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Liberian Laws Are A Secret Due To Copyright; Even The Gov't Doesn't Have Them

We've seen a few ridiculous cases whereby local governments claim copyright on a law, but it's still stunning to see what's going on in Liberia. Tom sends in the news that *no one* knows what the law covers in Liberia, because one man, leading a small group of lawyers, claims to hold the copyright on the laws of the country and won't share them unless people (or, rather, the government of Liberia) is willing to pay. Oh, and did we mention that the US government paid for some of this?

The story is a bit convoluted, but apparently, Liberia hasn't really had a full copy of its laws, as they were mixed and matched in "incomplete sets" throughout different libraries. A professor at Cornell had begun a (free) project to compile the country's laws, but after he died, a group of lawyers in Liberia took over the project -- and were given \$400,000 by the US Justice Department. The lawyers then "numbered, bound, and indexed" all of the recent laws, and claim that because of that, they now own the copyright on it.

While perhaps copyright law is different in Liberia, most places have rejected "sweat of the brow" arguments for copyright. If you didn't create the actual content, you're not supposed to get the copyright. You don't get a copyright just for compiling the work of others without adding anything new. If this lawyer wanted to get paid for the work, he should have negotiated that upfront. Instead, he's holding the country's laws hostage, and asking for \$150,000 to \$360,000 to turn them over to the government.

What's really amazing is that this guy is *currently serving as Liberia's justice minister*. The work he did on the laws happened before that, and he claims that he'd give up the laws for free, but that the other lawyers he worked with will not.

Perhaps Liberia should just start from scratch and create all new laws, wiping out the value of these particular locked up laws.

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Lily Allen: It's Ok To Sell My Counterfeit CDs, Just Don't Give My Music For Free

Dark Helmet alerts us to the news that our good friend Lily Allen is back in the news discussing file sharing again. Tragically, it does not appear that she's used her "time off" to better understand copyright issues very much. Unlike nearly everyone else who complains about copyright infringement, she's apparently "all for" infringing on her copyrights, just so long as you pay *someone* -- even if it's the guy on the street selling the counterfeit CDs. Seriously:

"If someone comes up with a burnt copy of my CD and offers it to you for £4 I haven't a problem with that as long as the person buying it places some kind of value on my music."

Yes, so while some musicians have said they're fine with non-commercial file sharing, but are against anyone selling their unauthorized works, Ms. Allen seems to have taken the opposite approach. Counterfeit all you want, just as long as you profit from it. Yeah. Someone should explain to her the difference between price and value, and also the benefits of word of mouth marketing. But, it doesn't seem like she's much interested in actually understanding this stuff, so if you want to help her understand, maybe go set up a shop selling burned copies of her CDs, and see what happens.

Of course, if we take this seriously, it shows how little she's thought this through. Her earlier complaint was that when people file share, they don't provide money back to the artists and the labels. Of course, when counterfeiters are selling on the street, the same thing is true, but suddenly it's okay? At what point does the world realize that Ms. Allen doesn't know what she's talking about?

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EFF Looks To Bust Bogus Podcasting Patent; Needs Prior Art

Back in July, we wrote about how a company named Volomeia had gleefully announced that it had patented podcasting. The patent itself (7,568,213) seemed ridiculously broad, obvious and covered by prior art. On top of that, it was difficult to see how it passed the current (though, perhaps not for long) "Bilski" test for what can be patented.

It looks like the EFF has decided to be proactive about this and is looking for prior art with which to bust this particular patent. In the comments on our original post about this, reader Marcel de Jong, noted that Dave Winer described audio enclosures for RSS in a blog post in January of 2001 -- nearly *three years* before this patent was filed. Hopefully that is rather compelling prior art, but if anyone has any more info, please send it over to the EFF.

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Google Blocking Set Top Boxes From Showing YouTube Unless They Pay Up?

I'm wondering if there's more to this, because it seems rather "un-Google-like." The makers of a set top box that can display internet content are complaining that Google is blocking them from displaying YouTube content, unless they agree to "partner" and commit to buying lots of ads (the amount is in dispute). If this sounds quite a bit like the ongoing battle between Hulu and Boxee, you might be right. However, in that case, at least you could sort of understand the (misguided) thinking behind it, since Hulu is owned by the colossally short-sighted content companies. But what's Google's excuse? If all these set top boxes are really doing is accessing free internet content and formatting it better for a TV, why stop it? They're really no different than accessing content via a computer and a browser -- it's just that the "computer" is a set top box and the "browser" is formatted for a television. That shouldn't require a special agreement, or any sort of ad buy commitment. **Update:** Received a confused and angry email from YouTube PR linking us to the very Wired article we linked to and demanding we add their PR statement (which is already in the Wired article). However, it does not actually answer the questions raised or change the point of this post. The fact that YouTube restricts set tops from accessing the content still does not make sense.

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Entertainment Industry: Yes, Please Keep Negotiating Secret Copyright Treaty To Save Our Asses

Sherwin Siy (one of the few people who actually was allowed to glance briefly at parts of the proposed ACTA treaty, though under strict NDA) has written about yet another letter sent by the entertainment industry to the government in support of ACTA. This letter includes pretty much everyone who benefits from abusing copyright laws and is afraid of the internet:

Advertising Photographers of America
American Association of Independent Music (A2IM)
American Federation of Television and Radio Artists (AFTRA)
American Society of Composers, Authors and Publishers (ASCAP)
American Society of Media Photographers, Inc. (ASMP)
Association of American Publishers (AAP)
Broadcast Music, Inc (BMI)
Commercial Photographers International
Directors Guild of America (DGA)
Evidence Photographers International Council
Independent Film and Television Alliance (IFTA)
International Alliance of Theatrical Stage Employees (IATSE)
Motion Picture Association of America, Inc. (MPAA)
National Music Publishers Association (NMPA)
NBC Universal
News Corporation
Picture Archive Council of America (PACA)
Professional Photographers of America (PPA)
Recording Industry Association of America (RIAA)
Reed Elsevier Inc.
Society of Sport & Event Photographers
Software & Information Industry Association (SIIA)
Stock Artists Alliance
Student Photographic Society
The Advertising Photographers of America
The Walt Disney Company
Time Warner, Inc.
Universal Music Group
Viacom Inc.
Warner Music Group

Funny... isn't it, that all these companies and industry groups are supporting a deal that no one's seen yet? Oh wait... that's because many of them *have* seen it and actually have had a hand in creating it. But what's really damning is that no where in the letter do they explain why this is actually needed or how it will do anything valuable. Instead, it's a pure faith-based letter saying "if you pass this secret treaty, good things will happen." I don't know about you, but generally, I prefer there to be actual proof and evidence that restricting consumer rights around the world actually leads to some sort of real benefit.

Tellingly, they don't respond to any of the points we raised earlier. This is not a treaty to help people or the economy. It's a deal to try to sneak through a system for propping up an obsolete business model by companies who don't want to adapt.

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If Google's Book Scanning Violates Copyright Law, What About The AP's Book Scanning?

Danny Sullivan does a great job calling out the hypocrisy of the Associated Press yet again. The organization, which has taken a very maximalist position on copyright, where fair use gets mostly ignored, apparently had no problem scanning Sarah Palin's entire book into a computer so that reporters could search it. Of course, this is no different than what Google is doing with its book scanning program (which, again, I still believe is a clear case of fair use). Yet, since the AP seems to take such a limited view on fair use (and has a habit of accusing Google of "stealing" content), it's amusing that it's now trying to defend its actions by claiming that it was legal because it was for the sake of journalism, and the scan wasn't for public consumption. Except, of course, Google's book scanning isn't for "public consumption" of the entire work either, but so people can do a search to find the relevant tidbit of info within the book. The AP's statement on the matter is laughable:

"The book, purchased several days ahead of its on-sale date by the AP, was scanned after the first spot stories moved on the wire from New York so that staffers in bureaus in Washington and Alaska with knowledge of various parts of Gov. Palin's life and political career could read those relevant sections the next day."

Yes, you can understand *why* they did it, and even why it seems reasonable. But that doesn't change the fact that it appears the AP made an unauthorized copy of the book, in violation of its own interpretation of copyright law. Funny how the law seems oh so different when it limits what *you* can do, than when it's about limiting what your competitors can do...

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iPhone App Developer Backlash Growing

Early on, we predicted that Apple's walled garden approach to apps for the iPhone would lead to developer backlash. Even if it was successful at first, the obvious trajectory was that it wouldn't just lead to problems that drove developers away, but it would eventually limit application innovation, just as other competing platforms were getting good enough to match Apple's. We might not be all the way there yet, but the evidence is growing that the backlash is getting serious. Slashdot noted that some respected developers are ditching the iPhone app store and reader Andrew Fong alerts us to Paul Graham's well argued explanation of why Apple's setup is bad for developers, bad for innovation, bad for consumers and bad for Apple.

To summarize, it's **bad for developers** because they're distanced from their users, and can't quickly make changes and updates, since each change needs to go through Apple's long, mysterious and arbitrary approval process. On top of that, by creating a very real risk that Apple might not approve an app, developers have less incentive to put in the time. It's **bad for innovation** because you are putting a gatekeeper in front of any innovation. It's **bad for consumers**, because they can't do what they want and often the apps they get are *lower quality* than they would be otherwise, because developers cannot rapidly respond with necessary improvements and changes. Finally it's **bad for Apple** because it's driving away some talented developers who are useful in making the iPhone so powerful. As those developers move to other platforms, it will help those other platforms catch up, and potentially surpass the iPhone. But, perhaps more importantly, it's bad for Apple because it risks Apple's overall reputation. It makes it harder to hire top engineers:

There are a couple reasons they should care. One is that these users are the people they want as employees. If your company seems evil, the best programmers won't work for you. That hurt Microsoft a lot starting in the 90s. Programmers started to feel sheepish about working there. It seemed like selling out. When people from Microsoft were talking to other programmers and they mentioned where they worked, there were a lot of self-deprecating jokes about having gone over to the dark side. But the real problem for Microsoft wasn't the embarrassment of the people they hired. It was the people they never got. And you know who got them? Google and Apple. If Microsoft was the Empire, they were the

Rebel Alliance. And it's largely because they got more of the best people that Google and Apple are doing so much better than Microsoft today.

As for why Apple is making this mistake, Graham blames Apple's general view of the market:

They treat iPhone apps the way they treat the music they sell through iTunes. Apple is the channel; they own the user; if you want to reach users, you do it on their terms. The record labels agreed, reluctantly. But this model doesn't work for software. It doesn't work for an intermediary to own the user. The software business learned that in the early 1980s, when companies like VisiCorp showed that although the words "software" and "publisher" fit together, the underlying concepts don't. Software isn't like music or books. It's too complicated for a third party to act as an intermediary between developer and user. And yet that's what Apple is trying to be with the App Store: a software publisher. And a particularly overreaching one at that, with fussy tastes and a rigidly enforced house style.

If software publishing didn't work in 1980, it works even less now that software development has evolved from a small number of big releases to a constant stream of small ones. But Apple doesn't understand that either. Their model of product development derives from hardware. They work on something till they think it's finished, then they release it. You have to do that with hardware, but because software is so easy to change, its design can benefit from evolution. The standard way to develop applications now is to launch fast and iterate. Which means it's a disaster to have long, random delays each time you release a new version.

My guess is that there may be another reason: the perfectionist attitude at Apple. They don't want "bad" apps getting into the store, and certainly some people appreciate that. But the store has 100,000 apps right now, and most people are never going to see the vast majority of them. Having a few "bad apps" get in isn't a huge issue at this point, and certainly user-level reviews can help deal with that issue anyway. And, even if that is the biggest concern, why not at least allow non-approved apps to be viewed and downloaded, just without an official "apple seal of approval." Perhaps it made sense when Apple was first launching the store (though, even that seems questionable), but if it wants to continue to lead the market, it needs to break down that wall.

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Norwegian Band Told It Can't Post Its Own Music To The Pirate Bay, Even Though It Wants To

Having recently returned from Norway, where I was impressed at the optimism and the willingness to embrace new technologies and services, it's disappointing to read the following story (found via brokep) of a Norwegian band who recently released an album on their own label and decided to put it up on The Pirate Bay themselves, as more and more indie labels are doing. Except... the band members are a part of the Norwegian music collection society TONO, who is among those fighting to have The Pirate Bay blocked in Norway. Since the band has allowed TONO to enforce its copyrights in performance situations, TONO is claiming that it can forbid members from putting their music on sites like The Pirate Bay (translation from the original Norwegian):

The management contract in TONO means that we can not allow the TONO-members post things on your own at some commercial sites.

Once again, examples of these performance rights groups working against the wishes of artists, rather than helping them out.

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If You Only Share A Tiny Bit Of A File Via BitTorrent, Is It Still Copyright Infringement?

We've mentioned the ongoing lawsuit against ISP iiNet in Australia a few times. Basically, the movie studios are pissed off at iiNet because it didn't do much in response to letters that were sent concerning IP addresses of those that the studios believed were sharing unauthorized works. As iiNet noted, however, it didn't see why it was involved in any of this:

They send us a list of IP addresses and say 'this IP address was involved in a breach on this date'. We look at that say 'well what do you want us to do with this? We can't release the person's details to you on the basis of an allegation and we can't go and kick the customer off on the basis of an allegation from someone else'. So we say 'you are alleging the person has broken the law; we're passing it to the police. Let them deal with it'.

The trial has been going on recently, and while I haven't been following the details that closely (figure it's worth waiting for the verdict), there was one interesting tidbit. As the company had suggested earlier, it's arguing that sharing a file via BitTorrent is arguably not copyright infringement at all. That's because of the way BitTorrent works, in breaking up any file into tiny components and sharing the individual pieces. A key element of copyright law is looking at how much of the content is shared. Down in Australia, they have a "fair dealing" exception to copyright law that appears to allow for copying small portions of a work, and some precedent of short video clips not being considered infringing.

While I would be quite surprised if this argument worked (even if it may be technically correct, it's so rare that judges pay attention to the technical aspects when it comes to copyright), I'm a bit surprised we haven't seen this argued elsewhere as well. Of course, if it does actually work, it will only turn the focus back towards the question of whether or not "making available" violates the distribution right of copyright, since that would cover what BitTorrent users were doing, if they offered up any unauthorized content (even if they actually shared only a tiny fraction).

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UK Digital Economy Bill As Bad As Expected; Digital Britain Minister Flat Out Lies About ISP Support

Just as the leaks predicted, the UK government has offered up its Digital Economy Bill, which includes massive changes to copyright law, including the power of the government to effectively change the law at will with little to no oversight. Basically, it would let the Business Secretary, Lord Mandelson, change copyright law through secondary legislation, which requires no Parliamentary approval. As people are noting, Mandelson has had to resign from elected positions twice in the past in disgrace, and is now in an unelected position. And he's the guy who gets to change copyright law at will? That does not seem right. On top of that, the bill doesn't even specify "three" strikes for users. Instead, it requires ISPs to notify users with warnings -- and to notify copyright holders that they did notify users -- and if file sharing is not reduced by 70% in a year (with no indication of how this is measured), then the government will tell ISPs to start kicking people off the internet.

Furthermore, Minister for Digital Britain Stephen Timms, who introduced the new bill, claimed that 99% of ISPs are "broadly supportive" of the bill. That's funny because BT and TalkTalk -- two of the largest ISPs in the UK -- have loudly complained about the plans (with TalkTalk threatening to sue, and BT saying that this solution is "not the way forward") and the ISP Association, which represents ISPs in the UK has loudly slammed the bill as unworkable and backwards looking:

"ISPA members are extremely concerned that the bill, far from strengthening the nation's communications infrastructure, will penalise the success of the internet industry and undermine the backbone of the digital economy," the industry group said.

Nicholas Lansman, ISPA's general secretary, said in the statement that the government's proposals were "being fast-tracked... and will do little to address the underlying problem".

"Rather than focusing blindly on enforcement, the government should be asking rights holders to reform the licensing framework so that legal content can be distributed online to consumers in a way that they are clearly demanding," Lansman said.

So, where exactly are the 99% who are supportive of the bill? Or is that RIAA/IFPI/BPI math?

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NPR's Daniel Schorr Blames The Internet For Ft. Hood Shootings

I recognize that NPR news analyst Daniel Schorr is well into his tenth decade of life, and plays the role of the "senior statesman of journalism" on NPR at times, but as a bunch of folks have sent in, he seems to have totally lost it with his recent piece suggesting the internet should share some of the blame for the Ft. Hood shootings done by Maj. Nidal Hasan. The reason? Hasan apparently communicated via email with an "extremist cleric" whom he had met years ago (in person) at a mosque in Northern Virginia. One wonders if they had corresponded by telephone, if Schorr would be questioning if AT&T was to blame. Or, if by pen and paper, if Bic was at fault. Of course, Schorr doesn't even know what was in the emails sent between the two, so his speculation is based on even less than nothing. However, even if his worst fears are true, and the cleric somehow pushed Hasan to carry out his attack, the fault remains with Hasan, and potentially the cleric. Not the internet.

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No, ACTA Secrecy Is Not 'Normal' -- Nor Is It A 'Distraction'

Over the last few weeks people who are actually concerned about individual rights have done a decent job sounding the alarm about the problems with what little we've seen of the ACTA negotiations. In the last week or so, those who work for the entertainment industry have suddenly started scrambling to respond, after realizing that more and more people are starting to pay attention and to worry about ACTA. However, it's been pretty funny to watch the desperate attempts by industry lawyers to try to paint this all as much ado about nothing (with gratuitous swipes at those of us who have called attention to what's going on).

One of the points they make is to say that the "secrecy" is no big deal, because it's "normal" for such negotiations to happen this way. This was what the USTR stated earlier this year when the question was raised, but unfortunately, the facts (and common sense) simply don't support that claim at all. If you look at the transparency level on many other international agreements, including well known ones concerning WTO, WIPO, WHO, UNCITRAL, UNIDROIT, UNCTAD, OECD, Hague Conference on Private International Law and many others, you see that they are significantly more transparent and/or have clear procedures in place for concerned parties to take part in the discussions. That is not the case with ACTA.

A second point they make is that if the end result is really bad, countries can simply decide not to sign it and not to participate. Yes, stop laughing. It's as if they think that we're all idiots who haven't seen how lobbyists have historically relied on the line "but we must live up to our international obligations" to push through all sorts of laws the public does not support.

A third point raised is that this isn't a "treaty" but a "sole executive agreement," so we shouldn't worry since it can't change the law. Except, by categorizing it as such, it's actually a loophole that could potentially take Congress out of the process of reviewing or approving anything that's in the agreement, and then just wait for the "but we must live up to our international obligations" to start pouring out of lobbyists and industry lawyers' mouths.

A fourth point of attack is that some of the descriptions of what's being discussed are inaccurate. Well that's funny since a big part of the problem is that we're not even being shown what's being discussed. So, yes, as we've been clear, this is an ongoing negotiation, and the final results may differ from what bits and pieces have been leaked. But, what is leaked has suggested that some very, very bad things are at least on the table, and making that clear and opening up the discussion is important, no matter how much the lawyers don't want anyone interfering. Separately, as you would expect, some of the language used to date in the leaked reports suggests the usual legal games are being played, so that when people point to something and say that opens us up to a bad thing, the lawyers can say "oh, that's no different than what we have already." Just like the RIAA did back when they wiped out musicians rights to reclaim their music (thankfully, only temporarily). But if you actually understand the details, you know that the subtle language choices are all chosen very carefully to drive future legislation. You can see this by simply monitoring what's happening in South Korea now, since that's what the new agreement is supposedly "modeled" on. And, it's not pretty. Various user-generated content sites are severely limiting what users can do, to the point that they're barely recognizable as UGC sites any more. Liability pointed at service providers are scaring them into massive limitations. That's not the sort of world most of us want to live in.

Finally, the ACTA supporters claim that because the administration showed a very small group of consumer rights folks, such as Public Knowledge, a draft of the document, that consumer groups are "a part of the process." That doesn't take into account the level of access. Whereby industry lobbyists had a large hand in drafting ideas and suggestions for parts of the legislation, a Public Knowledge representative was involved on "very short notice" in an initial hour-long meeting whereby they were allowed to look at the text, but not copy it, and then a further short discussion about a revised copy -- but the process included NDAs that prevent much discussion about what was seen. That's not serious involvement.

Finally, as I was writing this, Jamie Love pointed out that the MPAA has sent a letter in favor of ACTA, which is chock full of laughter inducing falsehoods (such as claiming the entire motion picture industry is at risk, even as it's having its best year ever). But the most ridiculous is this:

"Outcries on the lack of transparency in the ACTA negotiations are distraction."

Yes, that's right, making sure that the public knows what the hell its government is signing up for is a "distraction." Could the MPAA's lawyers be any more obvious in brushing off the concerns of *the public* than by calling it "a distraction." To the MPAA this is all about propping up its business model and stopping competition from online sources. The public doesn't matter. As Jamie Love notes, "transparency isn't a 'distraction.' it is an obligation of governments, to those it wants to govern."

So, yes, perhaps some of the discussion has suggested things that will go beyond what's actually in the document, but it's hilarious to see industry lawyers suggest that those concerned about our rights are "creating a moral panic" when the only reason there's concern at all is because the public is not even allowed to see what's being discussed. Want to end the rampant speculation? Release the documents and let the public take part in the process. The MPAA's letter and the sudden whining from industry lawyers shows what this really is: yet another attempt by one particular industry that refuses to adapt to a changing marketplace, looking to governments to prop up their existing business model at the expense of innovation, consumer rights and upstart competitors.

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Murdoch's The Times Accused Of Blatant Copying, Just As It Tells The World You Should Pay For News

Just this week, James Harding, the editor of The Times (of London), a paper owned by Rupert Murdoch, tried to explain why the news is worth paying for, as the paper starts to put up a new business model to get consumers to pay for news. Unfortunately, Harding apparently didn't get the message himself. As pointed out by Mathew Ingram, just days after making the case for paying for news, The Times has been accused of publishing an article that it copied without permission from a blog.

You can't make this stuff up.

Yes, just as Rupert Murdoch is calling aggregators (sites that simply summarize and link to stories) parasites (even as he owns a bunch of aggregators himself), one of his papers didn't *aggregate*, it flat out copied, without permission, a blog post that was written by Edgar Wright as a tribute to Edward Woodward, who recently passed away. The Times eventually put up a "clarification" online that had a link to the original site, but that hardly explains the original copying -- especially during the very week that they're trying to convince the world that news should be paid for....

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Copyright Extension Moves To Japan

Looks like the latest battle over copyright extension is about to take place in Japan, where the new prime minister, Yukio Hatoyama, has vowed to extend certain copyrights. Specifically, he says that posthumous copyrights for compositions should last 70 years, rather than 50. This makes no sense, no matter what basis you judge copyright on. Copyright is supposed to serve a simple purpose: to encourage the creation of new works. It never makes sense to extend copyright on existing works, because those works were already created. In other words, the social "bargain" that was offered in terms of the limited times of protection available were clearly sufficient. But, it's making a pure mockery of the law to specifically single out posthumous copyright protection to be extended because, as far as I know, the dead no longer have any incentives to create new content, no matter how long the copyrights on their old content lasts. The *only* explanation for doing so is to create a special welfare program for songwriters and composers. But, if that's the case, let's make it clear this is a welfare system, rather than anything to do with copyright.

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Canadian Ebook Store Offers 'Free' Public Domain Ebooks -- Claims Copyright Says You Can Only Make 1 Copy

Brendan writes "Chapters/Indigo, the dominant book retailer in Canada, just recently launched their eBook store, thinly disguised as an independent 3rd party called ShortCovers. Both companies are children of the parent company Indigo Books & Music Inc.

The fact that they have launched an eBook program is not a problem. It's great, in fact. I'd like to see more action in this space, and anything to help people read more is a step in the right direction. The problem I have is with how they've done it.

When announcing the service on Monday, the company trumpeted loudly the offer of "FREE eBook downloads!" in a mass email and on the main Chapters page. Can you guess what all the eBooks offered for free have in common? That's right, they're almost all public domain works. They do list the publisher as "Gutenberg" for all the PD books, but do they explain what that means? Do they inform the user that these are public domain works? Do they include a link to Gutenberg.org, where any user can download these books in plain texts to use however they want? No, of course not.

Instead, they wrap the books up in their tight little DRM package. Each page (according to their idea of a page) loads painfully in a flash frame and within the text of the book is non-selectable. And most are not available as downloads (as they are on Gutenberg).

*The worst offense? That dangerous little line at the bottom of each page of each book: "**(C) All Rights Reserved All copyright ownership rights relating to this content are specifically and expressly reserved by the owner thereof and are marked © by the owner of this content, 2009.**" An interesting claim, to be sure. What am I to do with this book, ShortCovers?*

"All Rights Reserved. You are free to make one (1) copy of this work for non-commercial purposes only, provided you abide by the following:

** For any reuse or distribution, you must make clear to others the license terms of this work. The best way to do this is with a link to this web page.*

** Any of the above conditions can be waived if you get permission from*

the copyright holder.

** Nothing in this license impairs or restricts the author's moral rights."*

I can make one (1) copy? Wow! I better use it carefully."

This isn't the first time we've seen bookstores DRM up and claim copyright over public domain works. The DRM stuff is dumb, but understandable, since they just want to have one system and often seem to choose an anti-consumer one. But telling people that they are only allowed to make one copy of a public domain work and putting a © sign on it is pretty ridiculous.

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There Are Lots Of Ways To Fund Journalism

As various folks in the news business (and outside of it) continue to fret about how it could be possible to ever fund the production of news, some are taking more positive looks at the space. Jay Rosen has [listed out 18 different sources of subsidies](#) for funding journalism (or journalism-like) work. Some of them are better than others, but it's a useful list to get you a thinking. Full disclosure: a part of our own business model is on the list. Along those lines, since people have been saying nice stuff about our business model, Jesse Hirsh has a way-too-nice writeup [about our CwF+RtB experiment](#), which I still think is a bit short of a full business model, but is getting closer. Based on our experiences with it, we're getting more and more ideas on how to fund not just journalism, but all sorts of content creation.

And, really, that's the idea. There are lots of different ideas and experiments going on -- and many of them are showing early signs of success, and I'm sure more will come along at a later date that are even more successful. Really, the only ones complaining and demanding changes to the law are those who represent the old way of doing things, and don't want to change. They talk up all sorts of horror stories and moral panics about how "journalism" or "music" or "movies" are going to go away -- despite the fact that we actually have more of all three of those things happening today than at any time in history. Based on that faulty reasoning, they demand special protection not for "journalism" "music" or "movies" but for the old business models and old institutions that produced all three.

Eventually, as these new business models and new institutions work themselves out, it'll suddenly seem "obvious" what the right answers were, and people will forget the hundreds if not thousands of different experiments -- both good and bad -- that went into developing the new model. It's a time of upheaval, for sure, but there's no indication that there's any real risk to the production of content. Just a few businesses that got big and don't want to change with the times.

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Winner Takes All, Long Tails And The Fractilization Of Culture

Reader Eileen points us to a thought-provoking article by Joshua-Michele Ross discussing the idea that, rather than a diverse "long-tail" culture, we're actually being driven to a homogenized "winner-take-all" culture thanks to the rise of our robot overlords, better known as online recommendation engines. Or something like that. It's a nice theory, with some interesting statistical modelling behind it. And, I've always been interested in "winner takes all" economies, since the guy who taught me Econ 101 literally wrote the book on "winner takes all" economics.

That said, I think this really only tells a part of the story -- and maybe not the most important or most interesting part. That's because (and, again, this may be due to my own econ education) it doesn't surprise me in the slightest that we'd see hits follow a winner takes all approach (that's how hits work). Nor is it a surprise that the effect would seem stronger as the world globalizes and borders and barriers become less of an issue. So, yes, of course there will be a "globalized" winner takes all situation at the hits level. But is that all?

What's much more interesting to me is what happens *beyond* the hits. And, as you start to dig down into subsectors or subcultures, you begin to notice an interesting pattern there as well: that those subsectors and subcultures follow that same power law pattern themselves. The big name bands in a subculture may seem "small" in the wider world, but they're huge within the subculture. Within that subculture, they're the winner who took all -- but from a more limited population.

In some ways, it's the **fractalization** of culture.

Just as a fractal repeats its same pattern as you zoom in and look closer on the smaller segments, so do cultural subsegments. And those segments continue to thrive, despite the recommendation systems just pushing people to the hits. Part of that may be that once you've begun exploring those subcultures, the recommendation engines and collaborative filters drive you towards the "hits within" the subculture -- or it may be that the impact of algorithmic recommendation engines isn't quite as dominating as some make it out to be. Yes, people do rely on those recommendation engines... somewhat. But they trust people they

know even more. And once you get involved in a subculture you quickly find other people already involved in that culture who act as guides who point you both to the "hits" but also to the interesting and "diverse" long tail places to go as well.

So, yes, there is a winner take all effect found in the recommendation engines, but it hasn't resulted in less diversity within our cultural output or our cultural consumption -- and that's because people don't just follow that limited algorithmic overlord to find the content they want to consume. In fact, the original statistical model highlighted above more or less makes this point. Basically, it shows that even if each individual sees a more diverse culture, it can still end up with a more homogenized culture -- but really only among the hits. Basically, because the world is global, the really big hits go global and become winner-take-all in a much larger market. But, at the same time, the niches thrive as well.

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The Lobbyists' Ability To Control The Message

It certainly won't come as much of a surprise to readers around here that lobbyists from Roche/Genentech were able to get 42 different members of Congress to include text they had written into the Congressional Record. For way too long, we've seen how much politicians seem to rely on lobbyists to write the legislation, create the talking points and (at times) even deferring questions to the lobbyists themselves. Is it any wonder that lobbyists have become the new celebrities?

But what is rather stunning about the NY Times story on how Genentech's talking points were mentioned (with multiple Congressional reps using the *exact same language*) is how unconcerned everyone is about it. The lobbyists wrote up talking points for both sides of the aisle. It wasn't about being in support or against the current healthcare bill, but just to get these Congressional Reps "on the record" in supporting key concepts, so that those same lobbyists can go back and point to such "bipartisan" support in the future, even if the Congressional reps themselves don't even know what they're talking about.

The NY Times talked to a bunch of Congressional offices about this, and they all seem to admit freely that the language came from Genentech lobbyists, and they incorporated it directly (sometimes with a few minor changes) into the remarks that get put into the Congressional record. This isn't the fault of Genentech or its lobbyists -- who, of course, are going to push for such things. The really damning part is that all of these Congressional reps don't seem to think there's any problem at all with simply taking text directly from a company and putting it into their own remarks as if they agree on the concept, when they don't even seem to understand what they're saying half of the time. Often these sorts of Congressional remarks are later used to show "Congress' intent" in doing certain things. But, perhaps they should just start being upfront and honest about the fact that these remarks are "the industry's intent" and simply signing them with the companies that actually wrote the language (or at least tagging the remarks with the name of the company/industry group that wrote it).

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In Going Free, London Evening Standard Doubles Circulation While Slashing Costs

In October, we wrote about how, just as Rupert Murdoch and crew look to put up paywalls for online content, the operators of the London Evening Standard were going in the other direction and making their physical paper free. So, how's that been working out? mowgs alerts us to the news that the paper has doubled its circulation in just a month. Not bad. But what's more interesting is that it's *also* slashed its distribution costs massively. It used to cost about 30p, and now it's just 4p per paper.

This actually brings up a point that's rarely talked about in the free vs. paid debate. Charging can be *expensive*. It takes quite a bit of effort to charge, to take money, to manage the money, to set up the accounting and bureaucracy for managing each transaction. And, even worse, if you're working with third party distributors, like news agents, then you have to handle financial relationships with them as well. Getting rid of the per paper price changes the economics not just on the revenue side, but on the cost side as well -- something that's rarely discussed at all. And, yes, this impacts online news orgs too. Putting up a paywall is going to prove a lot more expensive than most people think on the cost side.

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Senate Exploring Med School Profs Putting Names On Ghostwritten Journal Articles In Favor Of Drugs

We've had a few posts recently about the growing scandal in the pharma and publishing worlds, whereby big pharma companies would produce fake medical journals with the stamp of approval from big publishing houses, to make it look like their drugs had a lot more scientific support than they really did. To make matters even more insane, often the pharma companies would ghostwrite articles, and then get professors to basically put their names on the works, which were designed to emphasize the benefits of certain drugs, while hiding or de-emphasizing the risks. Copycense points us to the good news that Senator Grassley is at least asking various med schools to explain why this was allowed, while probing how putting professors names on ghostwritten articles is any different than plagiarism.

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