

Property in Cyberspace

1. What is “Intellectual Property”?

Q: Does it make sense to call intangible work “property”? Why and why not?

Intellectual Property Is:

- Intangible creative work—not necessarily the physical form on which it is stored or delivered.
- Given legal protection in the form of copyright (*U.S. Code Title 17*), patent (*U.S. Code Title 35*), registered trademark, and trade secret laws.

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2. New Technologies Affect Intellectual Property Owners

Q: Many argue that since the technology exists to make copies, it must be all right to do so. Why is this flawed reasoning?

- High-quality copying.
- High-quantity distribution.
- Easier to use.
- Less expensive.

Refer to the *Evolution of Culture* powerpoint for a review of the memetic science behind distribution issues regarding ideas.

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3. A Brief History of Intellectual Property Law

- **1790:** First U.S. copyright law, covered printed material. Later, newer technologies (photography, sound recordings, etc.) were added.
- **1909:** Definition of unauthorized copy formed.
- **1960s:** Some software and databases receive protection.
- **1992:** Making copies for personal gain became a felony.
- **1997:** Illegal to make copies regardless of financial gain (the *No Electronic Theft (NET) Act*).
- **1998:** Illegal to circumvent copy protection schemes - *Digital Millennium Copyright Act (DMCA)*

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Q: How does the Fair-Use Doctrine distinguish between photocopies made by students and those made by workers in a corporation?

4. Fair-Use Doctrine

- Permission to use the work is not required.
- Allows uses of copyrighted material that contribute to the creation of new work and do not significantly affect sales of the material, thus depriving copyright holders of their income.
- Allows some research and educational uses as well as news reporting and critiquing.
- Guidelines for determining Fair Use are found in law.

Legal Cases:

- *Sony v. Universal City Studios, 1984*
- U.S. Supreme Court ruled that non-commercial copying (recording) of a movie for viewing at a later time was fair use.
- Court ruled that copying devices (in this case, Betamax VCR) should not be banned if they have significant legal uses.
- *Sega Enterprises, Ltd. v. Accolade, Inc., 1992*
- Reverse engineering a complete program in order to produce new, creative work was ruled fair use.

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Q: What is the current status of music file-sharing on the Web?

5. What Property is "At Risk"?

a. Music

- Entrepreneurs create businesses to facilitate storing and sharing of music files (Shareaza, EDonkey, Gnutella, etc.). Many individuals set up free sites for music sharing, too.
- The Recording Industry Association of America (RIAA) continues to [fight unauthorized copying of music](#).
- The [EFF opposes the harsh tactics](#) of the RIAA.
- [P2P services are not necessarily illegal](#).

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Q: What is the current status of movie/TV file-sharing on the Web?

5. What Property is "At Risk"?

b. Movies and TV Programs

- Businesses such as [RecordTV.com](#) and [Scour](#) provided free services to facilitate copying of broadcast intellectual material.
- The [Motion Picture Association of America \(MPAA\)](#) and other entertainment companies continue to fight unauthorized copying of their intellectual property.

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5. What Property is "At Risk"?

c. Software

- Individuals and whole businesses, here and overseas, continue to produce, transport, and sell (or give away) copies of software, manuals and supporting material.
- *Software Information Industry Association (SIIA)* as well as other software industry organizations and companies battle software piracy in the U.S. and abroad.

Q: What is the current status of software copying?

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6. Are there Solutions?

a. Technological Solutions:

- Expiration date encoded.
- Hardware dongle required.
- Copy-protection schemes.
- "Activation" features.
- Encryption schemes; digital-rights management (DRM).

Q: From whose point of view are technological solutions good? Bad?

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6. Are there Solutions?

b. Market Solutions:

- Subscribe to services.
- Collect fees from users and large organizations.
- Meter usage of intellectual property on a network.
- Offer discounts to educational users.
- Educate the public about the value of intellectual property belonging to creators and publishers.

Q: From whose point of view are market solutions good? Bad?

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6. Are there Solutions?

Q: From whose point of view are legal solutions good? Bad?

c. Legal Solutions:

- The Digital Millennium Copyright Act (DMCA) and other laws.
- Identify abusers and shut them down in high-publicity raids.
- Monitor abusers.
- Enforce current laws and punish abusers.
