



Does "more technology" ever "win" a war?

Council of Federal Libraries Annual Fall Seminar

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The Questions

1. semantics & definitions: what does (intellectual property / copyright / DRM) mean to me?
2. in my opinion, how does it impact on libraries/librarians (service delivery, communities) now?
3. Who are / could be our collaborators in this venture?
4. What's the bleeding edge, and how do we prepare to meet it?

Note: Slides offer more detail than we are able to present as part of panel.



What is: "Intellectual Property"

- used to refer to a group of laws that create (often temporary) monopolies on intangibles so that they can be bought/sold like tangible property
- areas of law more dissimilar than similar, and use of term creates confusion
- confusion benefits certain special interest groups who gain from these areas of law being complex to understand and navigate
- when talking about copyright, say copyright. When talking about trade secrets, say trade secrets, ...
- the World Summit on the Information Society working group on Patents, Copyrights, Trademarks and related laws suggests the acronym PCT when trying to reference group of laws: wsis-pct.org



What is: Copyright

- temporary monopoly on certain activities granted to the creator
- author may "sell" and/or "license" the material part of this monopoly, but may only "waive" the moral part
- while some authors wish to collect royalties to express their material rights, royalty collection is simply one business model among many. Copyright is not a "right of remuneration"
- Free/Libre and Open Source Software (FLOSS), Creative Commons, Open Access and other initiatives do not replace copyright, but help copyright holders express their material rights using a full spectrum of creation, distribution and funding models.



What is: Digital Restrictions Management (DRM)

- technology that proponents "claim" protects copyright related rights.
- everyone must ask how this is accomplished, and what the costs are!
- Technological Protection Measures (TPM) limit access to authorized persons, and encode identity information (digital signatures, watermarks)
- Access Controls often compared to digital locks which **keep people without keys out**, denying access to unauthorized persons
- copyright holders **want to give access** to authorized persons
- copyright is a set of legal tools which limit what people **who already have access** can do with content
- Access Controls and copyright seek to accomplish different goals. One can't be used to protect the other



"copy control"

- so-called "copy control" doesn't really exist
 - Access Control: access to content only available on "authorized" access tools. Creates a monopoly in these tools which can be leveraged to control creative markets
 - Examples: DVD Movies (DVD CCA), music from iTunes (Apple), music from PureTracks, Napster Canada (Microsoft)
 - only customers of access tools authorized by DRM vendor can access encoded content without "circumventing" the DRM
 - harmful unintended consequences (AKA: civilian casualties)
- Media Defects: information is encoded in a way that behaves a certain way with existing access tools.
 - "Copy control" music CDs which tend to target Microsoft Windows customers



How does battle affect service delivery?

- libraries offer access to collections of materials, with public libraries offering public access
- libraries share knowledge so that their patrons can make further use of that knowledge
- the mandate of libraries is threatened by new digital technologies which seek to create privately controlled environments for private access to materials
- example: libraries being "allowed" to "loan" digital materials only under the condition that the patron access the material in a privately controlled environment (DRM) can have worse effect on patrons than not being allowed to loan at all



Contrast: (real) Books vs. DRM

- | | |
|---|--|
| • most "human readable" format | • least "human readable" format |
| • environment/technology (eye glasses/etc) created for/by reader, and controlled by reader | • environment/technology controlled by DRM company |
| • purchased books are property of owner, with few regulated limits protected in law | • use regulated by technology under control of third party manufacturer of authorized access technology, under contract with DRM company |
| • purchaser controls use (use as furniture), resale, loan, and destruction (throwing away, firewood, etc) | • DRM company controls use, resale, loan, and new types of destruction (including "self destruct" and other time limited access) |



Collaborators?

- work with those who seek to make knowledge more "shareable", and thus media more "loanable".
- Free/Libre and Open Source Software (FLOSS)
 - both a demonstration of shareable software knowledge, but also of transparent and accountable communications technology
- Open Access (more than just for journals)
 - demonstrates non-royalty based models
- Creative Commons (International, Canada)
 - offers legally vetted license agreements which can be more easily understood by creators and their audiences. Lawyer-free creativity!



Peer production, Peer distribution

- "Commons-based peer production"
 - "Coase's Penguin, or Linux and the Nature of the Firm", by Yochai Benkler
 - includes Free/Libre and Open Source Software (FLOSS)
 - "users' freedom to run, copy, distribute, study, change and improve the software", without additional permission or payment.
 - Creative Commons.
- Peer Distribution
 - "And they tell two friends, and so on, and so on"
 - (authorized) Peer-to-Peer (P2P) file distribution

FLORA.ca/floss.shtml

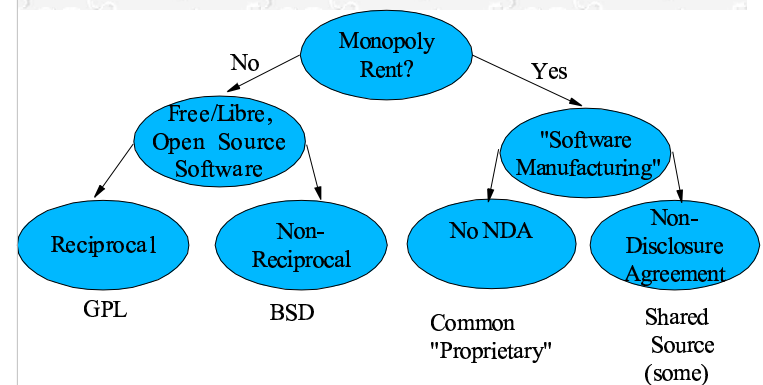


Contrast: PP/PD vs. Royalties

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|--|--|
| <ul style="list-style-type: none"> • motivation before creation/distribution (grant, advertising for other product, etc) • no counting, levies. • sharing as benefit, not threat • unrestricted loaning of media • remaining litigation not against customers, but legacy industry • non-commercial infringement a concept of the past - battles between creators and users over | <ul style="list-style-type: none"> • unknown reward "after the fact" • levies (imposing business models) and litigation (suing best customers) • always in constant battle with user community (and modern creators) over requirement for counting, amount of "monopoly rent", and now attempt to have remote control over personal communications technology |
|--|--|



Full Spectrum for software?





Modern business models

- marginal cost is zero for intangibles like software, etc
 - counting copies not necessary, and creates overhead/incentive for infringement
 - finance fixed cost of development, reward for creativity
 - resource development other than from counting copies
 - leveraging lower costs of intangible inputs
 - leverage zero marginal cost by re-partitioning revenue streams
- not the "bleeding edge", but fairly well established models used by many creators.
 - FLOSS is fastest growing part of software economy
 - many creators adopting Creative Commons to "skip the intermediaries", including musicians and book authors



Prepare for challenges?

- libraries caught between those trying to protect legacy "monopoly rent" business models at all costs, and those who wish to harness new models
- libraries must think longer term about which options allow them to provide the best services to their patrons
- librarians should become knowledge sharing activists
 - become involved in worldwide movements to make knowledge more shareable. CLA signed Development Agenda statement: http://www.ipjustice.org/WIPO/NGO_Statement.shtml
 - reject DRM, use most accessible/interoperable media formats. http://www.lac-bac.gc.ca/06/0612/061204_e.html
 - discontinue lobbying for "institutional exceptions" which not only do not help short term problems, but cause longer term problems