

A Modest Proposal on Copyright

A relatively longstanding issue that is less publicized but is extremely important is the copyright system in this country. The system, quite simply, is broken. Copyrights have become so long that a person is no longer able to freely comment on anything created during his lifetime (unless he lives to reach the century mark). On top of this is the Congressional propensity to extend copyrights, meaning that copyrights could *de facto* extend indefinitely. This directly contradicts the Constitutional intent of extending copyrights to individuals and other legal persons. Copyright has gone from being an incentive to innovate to a burden upon innovators. Below I propose steps to bring our copyright system back into rationality.

Leave the Bern Convention

First, the United States needs to leave the Bern Convention on Copyright Protection. This is a non-executing treaty that limits the ability for Congress to adjust the terms of copyright protection below certain thresholds. Placing such inhibitions upon Congress limits our national sovereignty and makes impossible any of the other changes I propose below. I am not suggesting that all of the benefits of the Bern Convention be abandoned, though. Since the treaty itself is non-executing, the government was required to put in place many of the actual mechanics of the treaty, and these mechanics do not get thrown out with the treaty. Leaving the treaty simply ensures that our government is free to act as it wishes without concern for violating a 19th century treaty.

Explicitly Allow Dedication to the Public Domain

Strangely enough, though copyright law codifies all the manners and methods by which copyrights are obtained and held, nothing in the law indicates any means by which such rights may be surrendered. Today, there is a strong desire from many people to release certain works and content directly into the public domain (myself included). Legally, however, there is no established method by which to accomplish this task. Some have created non-standard methods to accomplish licensing to the same effect, such as Creative Commons' public domain dedication and Wikipedia's public domain license template. This very document is released under a license that closely resembles both of these methods of public domain dedication. The issue arises as to whether a person can actually dedicate a work into the public domain. This issue becomes relevant when proposals arise such as was recently suggested by the RIAA that the Department of Justice be independently able to engage in civil prosecution of copyright violations.

Explicitly Allow Flexible Licensing Options

Just as with public domain dedication, there is no codified method by which copyright holders can release their works under liberal licensing terms such as those found in Creative Commons licenses and GNU licenses. While there is court precedent now supporting these licenses, the law needs to explicitly codify the ability to release works as such.

Reduce the Copyright Terms

Copyright terms have become obscenely long. Copyright holders hold rights for nearly a century after the author of the work has died. This does not serve to inspire innovation, but rather serves as intellectual welfare for people whose only contribution to the work was sharing a few genomes. Similar terms exist for corporations, who hold rights over works for more than a century. The majority of the economic benefits are obtained from the first few years of the copyright term, but almost a century later, these corporations can earn a second income stream from copyrighted works not through sales but through litigation on copyright violations. This is nothing more than corporate welfare.

I suggest that the terms of copyright be adjusted. First, intellectual property creators would

receive automatic copyright benefits for twenty-eight years from publication (or creation, etc. as is established in law today). In the last year of the initial term, copyright holders would be required to apply for a copyright renewal for a second term of twenty-eight years. This renewal would cost a specified fee necessary to cover costs as well as submission of a non-DRMed copy of the work at the highest reasonable quality, with preference toward digital format, for preservation purposes. This system is very similar to the system in place during the earliest years of the country, but with many of the protections expected in a modern intellectual property system.

Prohibit Changes Mid-Journey

The manner by which Congress can achieve a *de facto* eternal copyright is by altering the copyright terms of works already created. This means that, though a work was created when the term was fifty years, Congress can extend that term before the end of fifty years to a longer period of time, effectively unilaterally changing the terms of the copyright. It is by these means that lobbyists are able to extend their monopoly over classic pieces of American culture to near-infinite durations. I propose that changes in copyright not be applied retroactively to works created prior to the change. Strangely enough (and I do see the irony in this), I want to apply this rule retroactively. Works created prior to certain extensions would be returned to their statuses as they would have been under the copyright law of the day of creation (or publication, etc.). Works that would today be in the public domain by the rules of their day would now enter the public domain. Works that have had their terms of copyright extended would have those terms returned to their original length. Works most recently created, which are of the longest terms, would receive the full benefits of those terms, for to do otherwise would be improper and contradictory.

Eliminate Legal Protections for DRM

DRM technologies were put in place to protect copyright holders from malicious copying and sharing across networks such as the Internet. These technologies, however, have far more widely reaching implications than simply protecting the copyright holders. DRM impedes upon the consumer's right to use and dispose of his purchased property as he sees fit. Instead, the controller of the DRM technology decides how the consumer may or may not use his purchased product. Additionally, if the DRM controller's business model fails, the customer may be left with products he purchased but may no longer be able to use.

DRM has the further detriment of restricting the ability for individuals to use a work in a fair use manner. The principles behind fair use are that a person would be able to make use of a work in a manner that is consistent with free speech and does not impede upon the copyright holder's economic rights. It gives people the freedom to critique and mock aspects of their own culture without needing to ask the copyright holder for permission (who would give someone permission to harshly critique?). DRM technologies prevent individuals from using works in a fair use manner, and would require people to ask permission to use a work at all. This contradicts the very principles of fair use and free speech.

An aspect not even fully considered is the prospect of what happens to DRM-protected works after the copyright has expired. Though there is the freedom to copy, there still is not the ability, and so much of our culture could end up in files that we cannot access because of these DRM technologies being in place.

DRM technology should be an option for copyright holders if consumers are willing to accept it, but the law has given extraordinary support to this technology. It has placed heavy restrictions upon consumers regarding even possessing the technologies to crack DRM for any purpose, even if that purpose is legal. This protection could give copyright holders control over works they no longer have legal ownership of, effectively giving them an eternal copyright.

Allow the Library of Congress to Make Copies of Works for Preservation

One of the dangers of such lengthy copyright terms is that over the course of the term, the work itself may disintegrate and disappear. This is the case with many of the older moving picture works. The media upon which they were printed was not very good for long-term storage, and these works are disappearing forever. The problem is that the costs to the copyright holder are too large to maintain all of these works. I propose that an exception be made so that the Library of Congress and its agents can make copies of any copyrighted work for the purposes of preservation. Because the government has a few more resources and a little more interest in preservation of works, it would be able to save many of these works for future generations. This project should be taken on in cooperation with the Copyrights Office and the proposed deposit-on-renewal process proposed above.

Conclusion

Copyright laws were originally intentioned to encourage innovation, and Congress is constitutionally charged with this very mandate. Congress, however, along with special interests and lobbyists, has twisted copyrights to inhibit innovation and to burden the people with onerous legislation that does not protect their interests.