

## Daniel Lemire's blog

Daniel Lemire is a computer science professor at the Data Science Laboratory of the Université du Québec (TÉLUQ) in Montreal. His research is focused on software performance and data engineering. He is a techno-optimist and a free-speech advocate.

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### Do we need copyright?

The concept of property is a social construction. Animals, such as cats, can own a piece of food, or a territory, but only as long as they are able to personally maintain a credible threat of violence. And animals can only defend concrete, physical properties, such as an area, a dead bird or a tree.

Yet we are trained to hold copyright as a natural right. People who infringe on copyright are labelled as pirates, thieves. We are told that they literally steal from hard-working creators.

Most people learn about copyright in schools. Often the local librarian will lecture students on the evil of photocopying a book. However, as is often the case, schools fail us. We have good reasons to be critical of copyright and we should question the myths that are often reiterated about copyright.

#### **First myth: Copyright is meant primarily to protect authors.**

- State-enforced copyright came about with the Statute of Anne in 1710. It was the result lobby of a group English publishers who sought to regain their monopoly on publishing. Handing out the initial copyright to the authors was a political gesture: the goal has always been to get authors to hand over the copyright to the publisher, effectively giving the publisher a monopoly.
- In most countries, copyright holds for 70 years after the death of the author. Such a long-term copyright cannot possibly be meant to protect authors.

#### **Second myth: Copyright protects the little guy.**

Most of the revenue due to copyright go to wealthy individuals and corporations. Meanwhile, most people who rely on their copyright for a living (writers, musicians, and so on) have low incomes.

#### **Third myth: Without copyright, there could be no innovation.**

Some of the most innovative domains are virtually free from copyright:

- The fashion industry is effectively copyright-free. Anyone can come up with a new design for a dress. If the design is successful, it will be copied and it is unpractical to try to enforce copyright. Thus, fashion designers must constantly out-innovate the competition.
- Researchers freely hand over the copyright to publishers in exchange for nothing. Researchers are driven to invent and innovate because their remuneration and social status depends on their reputation. If anything, copyright on research work slows down progress.

**Fourth myth: We know that copyright makes us collectively better off.**

The evidence points in the opposite direction. Germany had weak copyright laws up until the Copyright Act of 1901. Yet, maybe because of these weak laws, it became a literary and scientific power:

*(...), only 1,000 new works appeared annually in England at that time – 10 times fewer than in Germany – and this was not without consequences. Haeffner believes it was the chronically weak book market that caused England, the colonial power, to fritter away its head start within the span of a century, while the underdeveloped agrarian state of Germany caught up rapidly, becoming an equally developed industrial nation by 1900. (No Copyright Law The Real Reason for Germany's Industrial Expansion? by Frank Thadeusz)*

Your dentist probably does not have access to the latest research papers in dentistry: subscribing to a single scientific journal can cost thousands of dollars a year. Is it any surprise if the general public is poorly informed when copyright is used to keep them away from the best science, leaving them only generic news content and blogs?

Even if you don't care about science, you should be concerned with the cost of copyright. For example, have you seen the latest Star War movies? They are awful. But that is all we are going to get for at least another 70 years because George Lucas has a monopoly on Star Wars. Without copyright, or with more limited copyright, we would have had several creators competing to build better Star War movies.

**Fifth myth: Without copyright, authors would not get paid.**

American authors have always enjoyed the protection of copyright laws in the USA. Prior to the adoption of the US constitution, authors in the US were subject to the Statute of Anne. However, the work of *foreign authors* in the USA was considered to be in the public domain up until the end of the 19<sup>th</sup> century. One might think, since copyright is supposedly good for authors, that foreign authors would be penalized by this lack of copyright. It seems that there were not. Dickens made a fortune in the USA despite the lack of copyright. Foreign authors could sell

their “authorization” and they would frequently negotiate advances in excess of what they could get in Europe. (References: Khan, Does copyright piracy pay and Plant, The economic aspects of copyright in books)

What about contemporary examples? Indian intellectual property enforcement has been historically weak. You can readily find copies of American movies made in India, and American studios do not bother suing: Indian courts place a high bar on infringement. Derivative works (such as making a movie or a book out of an existing work) are often not found to be infringing copyright in India whereas they would elsewhere. So how does India fare culturally? Well, outside of America, Indian movie production is unsurpassed (hence the term Bollywood).

Similarly, Japan, Korea and Taiwan have maintained weak intellectual property regimes. It is believed that this was a key factor to explain their economic growth during the second half of the XX<sup>th</sup> century. (Kumar, Intellectual Property Rights, Technology and Economic Development: Experiences of Asian Countries)

Many YouTubers make a good living. Do you think that if we abolished copyright, YouTube would stop revenue sharing? In other words, does YouTube share part of the revenues because creator have copyright? It seems doubtful. They do so because rewarding good content is good business for them. The same applies to other ventures like Apple Music.

When authors do get paid, a natural model is patronage. That is the model used by most scientists. Copyright is of no help whatsoever to mathematicians.

“But, Daniel, you are delusional! Not every writer can find a patron.” Am I? I have funded several book projects myself. For example, a lady called Kio Stark got \$38,928 from us to write a handbook on alternatives to schooling.

Several authors get funded on kickstarter:

- Rich Burlew received \$1,254,120 to get back in print an old comic book.
- Dennis McKenna received \$85,750 to write a memoir.
- Cory Silverberg received \$65,516 to write a book on where babies come from.

In fact, if you think about it for a minute, whenever you buy a book or a movie, you are being a patron to this project. So all work is the result of patronage. Cory Doctorow makes all his novels available for free from his web site. He happens to be one of the most successful writer of his generation. You can be confident that he is doing well financially. It works for him because people are willing to support him: his paying readers are his patrons.

I should add that whenever you follow a link to Amazon.com from my site, and purchase something, I get a percentage of the transaction. On a good day, I can make \$5 with my blog. I could also add ads and make a few hundred dollars a month. You do not need copyright laws to make some money off a blog: your readers can act as your patrons.

**My position:** I see no justification for copyright. I am effectively a writer: I write lecture notes, research articles and blog posts. I get paid without relying on copyright. Instead, I have patrons: funding agencies, students, and blog readers. But if we insist on having copyright, it should at least be limited to a short term (say 5 years or less).

**Further reading:** [Defining Property](#) by Paul Graham and [What We Know, What We Don't Know, and What Policy-makers Would Like Us to Know About the Economics of Copyright](#) by Ruth Towse. You may also enjoy my blog post [Do we need patents?](#)

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#### **PUBLISHED BY**

##### **Daniel Lemire**

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## **50 thoughts on “Do we need copyright?”**

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### **Peter Turney**

March 22, 2012 at 9:58 am

I've long believed that copyrights last too long, but your argument makes me think getting rid of them is a good idea. And what about patents? Might as well get rid of them too. “As state-granted monopolies, patents have been criticized as inconsistent with free trade. On that basis, in 1869 the Netherlands abolished patents, and did not reintroduce them until 1912.” [from Wikipedia on Patent]

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### **Andreas Flierl**

March 22, 2012 at 10:01 am

I think your points about payment are valid. One question – how would you propose to deal with the following situation:

Person A invents/creates stuff and publishes it, investing lots of her/his money into that research/creation.

Person B grabs the published work, publishes it again and does a considerably better job at making money from it than person A (let's say because person A just sucks at selling things)

reducing A's profits so much that A is not able to raise enough money for a living (or even make up for the initial investments).

I don't want to imply that copyright is a particularly good solution to this problem, but it mitigates it somewhat (at least from my observation). Do you think there is a good solution?

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**Matt Hall**

March 22, 2012 at 10:06 am

Nice post – provocative. Getting rid of copyright is an interesting idea, but aren't there lots of ways to allow re-use and proliferation? I can't speak for others, but I like to retain recognition of creation through attribution – the CC-BY license (sometimes called copyfree) does this nicely, but it depends on copyright (I have to own the right to license it). I guess you like recognition too because you license your own writing here as CC-BY-SA (copyleft), and not CC0 (public domain or copyright-free). So is it really copyright that's the problem, or just restrictive licensing models?

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**Peter Turney**

March 22, 2012 at 10:07 am

@Andreas Authors/artists/inventors could ask for donations, the way some radio stations do. Radio Paradise seems to be thriving on donations. For example, a reader would pay person B for the paper, printing, and binding, and then make a donation to person A for the creative content.

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**Daniel Lemire** 🧑

March 22, 2012 at 10:44 am

@Andreas

Your argument is on perceived fairness. You feel that it is unfair if someone copies your ideas and benefits as a result without giving you back something.

The problem with this argument is that we always copy ideas, from the day we come to the world, up until our death.

J. K. Rowling might be a great writer, but she is basing herself on Tolkien and other writers. Should she have to pay something to Tolkien's descendants?

Star War is basically a variation on Dune. Some have called it a rip-off.

The Americans were being in space technology and they copied the Russians up until they could surpass them. Should the American government have paid the Russian some fees?

I try hard to emulate the great minds. Should I have to pay them for the right to copy their techniques?

In any case, I dismiss this “fairness” argument. I think it has to be fair to copy what others do, even if they worked hard at it, because that is how human beings have progressed. I also think that “fairness” is not a great foundation for a society: lots of things are not fair. Why are some people taller than me? Maybe they should compensate me? What about wealth? Isn’t it unfair that some people have inheritances and I don’t? Let us agree that life is not “fair”.

What remains is whether copyright makes us better off collectively. To that, I ask “no, it makes us worse off”.

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### **Twan van Laarhoven**

March 22, 2012 at 11:04 am

IMO the only good part about copyright is the protection against plagiarism. It is fine if people copy my work, but verbatim copies (of large enough parts) should at least be attributed to me. It would be bad if a researcher could put his name on something that he didn’t do himself.

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### **Peter Turney**

March 22, 2012 at 11:24 am

(@Twan) I agree that writers should cite their original sources and (@Andreas) person B should clearly name person A as the author, but it seems to me that the failure to do so should be considered a case of fraud (deliberate deception) rather than a case of copyright violation.

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### **Daniel Lemire** 🧑

March 22, 2012 at 11:33 am

@Twan

It is unclear to me whether citations without attributions to the authors are illegal under copyright laws. I expect rather that the copyright holder (who is often not the author, but the publisher) can sue for damages and effectively require licensing if the amount of content that was lifted is excessive. Whether or not attribution was given to the author might not be relevant. That is, copyright is effectively a matter of trade and economics.

What is protected in many countries is your right to claim authorship and your right to prevent others from falsely attributing work to you (as per your moral rights).

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**Andreas Flierl**

March 22, 2012 at 11:53 am

@Daniel

I think I basically agree, although I'm still mentally stuck at a distinction between an idea and an actual product. If I write a song, record it and publish it, I have no problem if someone makes a cover-version of that song or samples parts of it and publishes/sells that. I have a problem with someone copying the file, publishing it again under her/his own name and making money with it.

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**Daniel Lemire** 

March 22, 2012 at 12:30 pm

@Andreas

Passing off someone's work as your own is fraud as @Peter wrote. People are protected against fraud outside of copyright law.

As for the practicality of your example, the patronage model applies. Just say: "I have this song I am willing to publish it, but I need at least 50k\$ to make it worth my time. Please support my project." This is not just a theory: see the fellow who made a million dollars by promising to release an old comic book. If people fail to support you sufficiently, you simply keep your song.

If you got your 50k\$ and you have posted your song on your web site, and then some folks start selling your song for a profit on some other sites... you may think that it is unfair, but is it, really? And even if it is unfair, as in my previous answer, lots of things are unfair, we can't get rid of them. Building a fair society is an utopia. No such thing. We can build a society where we all get progressively better off though.

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**Andreas Flierl**

March 22, 2012 at 12:48 pm

@Daniel I appreciate your thoughts on this matter. Thank you for sharing.

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**Marc-Antoine Parent**

March 22, 2012 at 2:53 pm

Hmmm... Personally, I find not even trying to optimize for fairness ruins an otherwise excellent argument... I think we can do better! When making a similar argument re patents, I usually argue that the overhead cost of getting a patent ensures small inventors never get it anyway. Not quite as true of copyright, I realize.

That made me rethink your line on big corporations get most copyright revenue (true) vs most originators of copyright are poor (true.) But might not that be a consequence of a power law distribution in revenue to originators? Not that it justifies anything, just trying to see how it affects the argument.

Best.

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### **Archwright**

March 22, 2012 at 3:52 pm

@Daniel

I was under the impression that Star Wars was a knock off of Flash Gordon.

@all

We are fast approaching a scarcity-free world with regard to content. Every hour, 24 hours of video is uploaded to YouTube. There is no way that a single person could ever keep up with the content that is being created and published every minute of every day.

I like the idea of doing away with copyrights in theory. There is one sticking spot, though. If I intend to make a trilogy (I have the scripts and everything) and my first movie is successful, now have to deal with copycats left, right, and center. Someone with money, could create the sequels to my work faster than I could on my own and cut me out of the process entirely. Are you saying that it his right to violate my canon? I suppose I might have trademark on my side, still, unless you want to throw that out as well.

Someone could do that now, but they'd either have to pay me, or they'd have to be so rich they could soak the impending lawsuit as part of their operating costs.

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### **Daniel Lemire**

March 22, 2012 at 4:09 pm

@Archwright

We are back to a moral argument. If you initiated something, you feel like you ought to “own it” and if people use it, you feel like they “steal it”. Of course, you convenient forget that to create anything at all, you have to borrow extensively from your cultural background.



But let us consider the practical considerations.

Assuming that you could make Star War movies legally, you would still face the fact that George Lucas is the original author. Everything else being equal, people would prefer the George Lucas movies.

Think about another example. Who would want to read Harry Potter novels I wrote? Nobody... unless I do a very good job. Would I steal from Rowling? That's a moral argument. In actual life, Rowling was compensated for her work. I would not take anything away from her. Intellectual property is not a thing. We've only been conditioned to think it is. To make a living writing Harry Potter novels, I would need to be an excellent writer, and I would need to work very hard.

But look at it from a collective point of view. The pressure would be on George Lucas to offer solid sequels, otherwise other people would run with it. The incentive to keep creating would be stronger.

In the current system, Lucas has a strong set of lawyers protecting him. He does not care too much about outdoing himself.

That is exactly how we would collective win. We would get better movies.

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### **Enolough**

March 23, 2012 at 5:13 am

So we don't need copyright because that's just a way of supporting publishers, not authors. I agree.

And then you say that we can support a blog with advertisement from Amazon. And you get money each time a person buys something with copyright. 😊

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### **Daniel Lemire** 🧑

March 23, 2012 at 7:28 am

@Enolough

A lot more books were being sold in Germany than in the UK despite the fact that there wasn't a copyright law in Germany. Amazon would still sell books in a copyright-free world. It is not like people would stop buying books!

For the record, you can already get most e-books for free from sites such as piratebay.se. (At least, the popular ones.)

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## **Enolough**

March 23, 2012 at 7:43 am

@Daniel Lemire

Amazon does provide free non-copyrighted books too. There will always be the issue of material costs – from those the author does not benefit.

Crowdfunding is a good solution and I have contributed myself to several works but we have to pay in advance which makes it a rather random business. There are no simple solutions. Maybe we need to lower the copyright standards (the 70 years rule is just stupid) and connect authors directly to the sales, avoiding publishers.

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## **Giuseppe**

March 23, 2012 at 3:10 pm

I also suggest this illuminating book:

<http://www.dklevine.com/general/intellectual/againstfinal.htm>

The authors analyse the issue of patents and copyright from an economical point of view, and find no economic reason for copyright. The book is also very easy to read.

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## **Venkat**

March 23, 2012 at 10:57 am

Your counter-examples have limited value since the claims in favor of copyright are probabilistic in nature. Some authors being able to survive on patronage does not mean all can. Scientists paying page charges does not imply novelists should. Cory Doctorow figuring out an online-free model does not mean his model will work for all.

The point you are missing is that copyright has evolved over decades as the bedrock of a finely tuned global system. Sure it was mostly for publishers, but now it has been extended to authors who retain copyright and self-publish.

Pre-writing patronage, and post-writing donations are simply too primitive in their current forms. They need to evolve in sophistication and authors will need time to figure out the risks of that model. It has its own problems.

I use a mix of all 3. My book is copyrighted and not free. My blog accepts both sponsorships, which act as pre-writing patronage, and coffee-tips, which are post-reading voluntary payments. The first mechanism has earned me 8x more money in a year than the other two have in 4 years. and arguably my blog has more, and more valuable content than my book.

Sure I can optimize, tune and refine. But framing this in ideological either/or terms is a mistake. Authors need options and control. Copyright and fixed price may be the way to go in some cases, copyleft and patronage in other cases etc. A portfolio strategy in short.

Different populations will differ in how they react to gift economy models versus transactional. In some cases, people will surprise you with their generosity, in other cases they will take advantage of your generosity, grab a freebie, screw you over and walk away. This risk also must be managed.

Ultimately this is not an ideological problem. It is a risk and yield management problem on one side and a mechanism design problem on the other. Framing it in ideological terms is not helpful.

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**jld**

March 23, 2012 at 10:59 am

YES – We need copyright because otherwise the creators of the most valuable intellectual productions will try to defend their rights by other means, that is, **secret**, which is *already* obfuscating many advances in science and technology.

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**Venkat**

March 23, 2012 at 11:10 am

Also, arguments like “if you can’t raise the money, keep your song” are silly. Sometimes people trust enough to support before seeing what they’ll be getting, other times they need a taste or the full thing. You need ways to get those types of works to market without extreme risk. Sometimes social proof is needed, like famous reviewers. Sometimes a work will need to seek out its market via a word of mouth chain.

Sponsorship is like waterfall financing. It needs to develop agile implementations of its philosophy to compete with copyright in such cases.

“Pay what you like after” is even worse. It puts all the risk on the author and uses goodwill to manage a transactional risk. A full/partial refund model, no questions asked, will create very different behaviors in the same population. The differences will be due to pricing psychology rather than the content. So it seems unfair to burden the author with the risks of pricing psychology.

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**Sazzad Bin Kamal**

March 23, 2012 at 11:12 am

IMHO, all arguments that promote or prohibit copyright laws, are valid within specific contexts. But in general none of the arguments are valid. But, I believe a pragmatic model could be established or invented if we could focus on the business part. Like 'producing' some product is different from 'promoting' it. To make it short, isn't it another extension of GNU vs Non-free software? I like GNU but I never understood the 'economy' or 'business' part of it.

I can see Veblen's theory can give us more insight for 'why' part of some of this scenario. But, it doesn't present a solution.

Good post anyway.

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**Enolough**

March 23, 2012 at 11:22 am

@Venkat:

I found your argument of splitting risk very interesting.

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**Daniel Lemire** 🇺🇸

March 23, 2012 at 12:16 pm

@Venkat

Have you read Paul Graham's essay? His point is that to keep the current system running, we need to break the Internet. This should tell us that the system is broken.

If your book makes it on the front page of the New York Times, I will be able to download it from piratebay.se and similar sites within a day or two.

Any business model that relies on the fact that making copies of popular items is expensive and difficult is broken. Period. Don't change the law, change your business.

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**Venkat**

March 23, 2012 at 12:30 pm

You don't see me arguing for SOPA type legislation do you? It is possible to keep mechanisms like copyright without trying to bail out big publishers who no longer find it good enough.

Copyright isn't enough to save business models that depend on scale. There is a reason you had to talk about the hypothetical of my book making the NY Times front page: that sort of thing happens primarily to big publisher books, and they have the most to lose from such scale-related effects. If I made it there, as an individual, even after the Pirate Bay effect, I'd hit the jackpot because most people would pay. It wouldn't be worth my while, and I wouldn't have the money, to go after the pirates, but my business model wouldn't REQUIRE me to. Copyright in its current form would ensure good enough levels of compliance that I wouldn't have to bother.

“Break the Internet” is a stretch. The design space is a lot bigger than either you or Graham seem to think. There is room for a lot of different mechanisms to co-exist.

He says:

“So what does this mean? Should people not be able to charge for content? There's not a single yes or no answer to that question. People should be able to charge for content when it works to charge for content.

But by “works” I mean something more subtle than “when they can get away with it.” I mean when people can charge for content without warping society in order to do it. ”

The first paragraph is right on. The second one is more ideological, but “warping society” is an extreme consequence. Not all uses of the copyright model will do that, and the ones that will are the ones that the SOPA types are trying to bolster.

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**Daniel Lemire** 🇺🇸

March 23, 2012 at 1:51 pm

@Venkat

Four honest questions:

1) How much of your revenue depends on copyright laws? That is, what would be your loss if the copyright laws were abolished tomorrow?

Please consider that I would not abolish all laws and moral rights. I am not saying that someone could freely claim what you produce as his own. I am merely contemplating a society where I could make copies of your Forbes posts and reproduce them here, without going as far as hinting that I wrote them.

2) What fraction of your future revenues will probably depend on copyright laws?

3) You seem to imply that if people had a legitimate way to get a free copy of your book (like Doctorow), it would hurt either the short term or long term financial benefits of your book.

How sure are you that it is the case? If people could download a free PDF of your book from your site, do you know for a fact that your sales through Amazon would be diminished?

(We don't have to focused on the last book you publish. Maybe we can talk about the next one. Whatever.)

4) Do you acknowledge that there is a cost to copyright laws to society and that, therefore, it does not suffice to show that copyright laws can have benefits to justify them... you need to show that the benefits outweigh the costs.

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**jld**

March 23, 2012 at 2:02 pm

*“there is a cost to copyright laws to society”*

There is a cost to **whom**?

Who is “society”?

This is “weasel speak” as much as Elsevier's, it doesn't matter if this is on the opposite side.

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**Venkat**

March 23, 2012 at 2:16 pm

I am not going to share the details, but basically, I mainly lived off income derived from copyright in the last year. If I'd been single, without copyright I'd have been reduced to poverty.

And yes, I do have data that satisfies me that shows that making the book free would be a terrible idea. In a few years maybe, but prematurely, that's like giving money away. Long-term considerations do not make a difference. I invest in the long term differently (the blog for example).

Sure, there's social costs. There's social costs to everything, including doing away with copyright and relying on patronage exclusively. When the benefits and costs are unequally distributed, people get political. Paul Graham is hardly an unbiased party. His wealth depends on a sector that gets more benefits than costs currently. SOPA may be a dumb way to balance the books, but that does not mean the Internet people are all holy saints and every opponent an evil demon.

In my little life, I'll be damned if I'll sacrifice income and income security for Grahamesque greater good abstractions like “don't break the Internet.” as a blogger I think I do more than enough on the credit side of the Internet, given my means.

How about the counter-argument that rent and ramen in California should be sponsored for all by Paul Graham and other millionaires, with poor, struggling “entrepreneurs” paying whatever

they can afford? Or maybe he should give YC candidates 50k with no strings attached and let them decide how much of a stake to give to YC in return? If I am supposed to trust to the benevolence of an unseen crowd, perhaps he can too.

There is no shortage of hypocrisy to go around. As far as I am concerned, content lives in the same economy as rent and ramen. Scarcity arguments apply. Distribution costs falling to zero does not mean production costs and risks fall to zero as well.

Bottom line, assault copyright too strongly without putting something adequate in its place, and you'll be left with Demand Media on one end and rich pontificators who can afford to take the risks of the alternate models on the other end. You'll lose the creative middle.

Not everything needs to be a revolution. Copyright can adapt and live alongside newer mechanisms, and the Internet will survive just fine. Graham and Zuckernerg may end up a little poorer though. Forgive me for not being super sympathetic to that.

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## **Charlie**

March 23, 2012 at 2:47 pm

I have been of the opinion for many years that what needs adjusting is our concept of "Intellectual Property". One can claim proprietary rights to an object only when one can find an interlocutor willing to exchange something you desire for that for which you claim proprietary rights. This is much easier to accomplish with physical objects.

Philosophically, at what level can one consider the product of any particular intellect "unique"? One would tend, for example, to consider the works of William Shakespeare "unique" from our current perspective on the history of English drama, but, were we judging from the perspective of the common man attending theater in England in the 16th century, would we consider his works sufficiently unique, or would we just enjoy them for the entertainment value? By the way, William Shakespeare was apparently successful without copyright protections... Modern history is replete with examples of conflicts over the originator of a concept or invention- who invented the telephone? Manned flight (one gets a different answer in Brazil or France than one encounters in the US)? The laser?

The point is, most of us view the same issues facing society from a fairly common historical perspective, and it would be really, really surprising if only one person arrived at the same solution (or creation). Is just being the first to publicize sufficient justification for you to demand that I pay you every time I want to review your thoughts on a subject? Before responding, bear in mind that your thoughts are most likely not unique, and if you charge me too much, I can most likely find similar thoughts originated by someone else, who has a less restrictive attitude...

**Daniel Lemire** 🧑

March 23, 2012 at 4:21 pm

@Venkat

So you have been making a living by leaning on copyright laws and you are opposed to their abolition.

Fair enough.

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**Venkat**

March 23, 2012 at 4:40 pm

That's an oversimplification and you know it. The fact that I've been living on it does not automatically cast suspicion my analysis. I make best-faith attempts to let my own experiences inform my analysis.

I am fine with reasoned redesign of what used to be the intellectual property system. I am against ideology of any flavor and subversion by big business interests on either side, be it big music or big data majors.

I don't understand why you're so opposed to simply a more complex situation with more than one parallel IP model in operation. We already have multiple kinds of economies that run in parallel, why not multiple kinds of IP environments for different purposes.

It's like the free-agent zealots. It isn't paycheck vs. free-agency. It is a more complicated situation with a mix of both in existence.

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**Daniel Lemire** 🧑

March 23, 2012 at 8:35 pm

@Venkat

*I don't understand why you're so opposed to simply a more complex situation with more than one parallel IP model in operation.*

You might want to read the Ruth Towse paper I link to in my post. He makes a few sophisticated proposals.

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**Marc Couture**



March 25, 2012 at 10:45 am

Highly interesting debate, and very relevant to boot, especially these days in Canada, where opponents to a proposed revision of copyright law which gives more rights to the public have used repeatedly at least three of those myths (#1, 2, and 5), and got massive public support in their fight (I won't enter here into the fact that this same bill adds also some new protection rights to copyright holders).

I won't discuss myths #3 and #4, because they are highly complex statements of a most general nature. Personally, I don't find Daniel's examples very convincing (many multi-million dollars Star Wars movies being made and competing against the original? dentists spending hours reading highly specialized scientific papers, instead of the synthesis articles in their professional magazines?). And I let historians and economists discuss the strength of the "evidence" in favor of a strong (negative) link between innovation and copyright law that constitutes the Germany-Great Britain comparison.

By the way, isn't it somewhat ironic that Häffner's ideas have been published in a two-part book costing close to 200 euros... Not a good thing for Germany, if we follow the author's line of thought...

Now for the other myths.

(#1 and 2) I agree that copyright (at least the economic part of it) don't protect primarily authors, or "the little guy". But it does protect them, at least as much as we are all protected against fraud and other misdemeanors (being able to afford a lawyer and to keep up with the pace of justice notwithstanding). There is the example of this "little guy" (Claude Robinson) who was awarded millions in a lawsuit against a company that had stolen his IP. There are also the case of a student who won against his advisor who had published the student's work under his own name. But one has to say that such cases are extremely rare.

(#5) I see that there are other "business models", in or outside academic publishing, not based upon the monetization of copyright. Can they be generalized, especially outside the academic world? Others on this list have commented on that. But I'd be curious to know how, in the 19th century, a German author or a foreign author in US was able to get make money through the sales of a work that anybody could publish without having to "buy" the permission from the author.

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**Daniel Lemire** 🇩🇪

March 25, 2012 at 4:49 pm

@Colin

I think that a relevant link is <http://www.everythingisaremix.info/>.

**Daniel Lemire** 🧑

March 25, 2012 at 1:50 pm

@Marc

(1) Claude Robison (a little guy) was awarded by the court a few millions in 2009 after he showed that Cinar (a large company) violated his copyright. Somehow, people always assume that when the little guy wins, the big corporation or the government immediately pays up. But last time I checked, Cinar has not paid anything since the decision was appealed. It is worth nothing that he has been in legal actions since 1996.

If you believe in his cause, you can make a donation at <http://clauderobinson.org/>.

In any case, Robinson's case is a perfect example, to me, of how copyright does not protect the little guy. It protects corporations.

(2) I must, here, take objection with the verb "steal" you use. Stealing someone's property implies, in our minds, that the other person no longer has it. If you make a drawing, and I see it and make the same drawing, have I stolen it from you? I think not. What we have is a free exchange of ideas. This free exchange of ideas, copying the great ideas of your neighbors, is what has made our species so strong. Restrictions on copying ideas makes us collectively poorer.

At the very least, using the word "steal" or "pirate" for what is in fact copying is "newspeak": you change the language to affect the minds.

(3) Yes, some foreign authors could make good money in the USA. See the two references (Khan and Plant) that I gave. Khan reports that authors were disappointed to find out that they did not make more money when the USA granted them copyright.

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**Colin**

March 25, 2012 at 4:23 pm

Kirby Ferguson has a nice 4-part series on Vimeo called "Everything is a Remix." Part 4 from Feb 16 delves into copyright.

Without question you lose unless you are Disney, but even then I would contend that Disney loses in the long run. Ferguson hits on this by discussing that Disney profited immensely from the public domain in the beginning, but ardently is against copying of their work. Steve Jobs in 1996 says they copied shamelessly but would destroy Android because it copied the iPhone.

Essentially: copying is good when you do it, but bad when others copy your work.

Necessarily, I wholly reject all forms of IP law.

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**Marc Couture**

March 26, 2012 at 9:51 am

@Daniel

**Khan DOES COPYRIGHT PIRACY PAY**

(1) Well, it's true that Robinson's story has also a sad, if not discouraging twist, considering the length of the process. But I don't see in that any argument against the relevance of copyright law. The fulcrum of justice may well lean more heavily in favor of the rich and powerful, but no one thinks of that as a reason to get rid of the laws against fraud, theft or other crimes.

(2) I'd prefer not play words, and I thought it was the name of the game here, but if you insist, let's play. Instead of "œ... a company that had stolen his IP" I could have written "œ...a company that had infringed his copyright...". But the really interesting point is: Did copyright protect Robinson? Or, what would have been the situation if there were no copyright protection? What would Robinson have done with his characters, in order to make a living out of it? What would Cinar have done? This leads us to #3.

(3) I did find in Plant's book a good explanation of how foreign authors could make money without copyright protection in 19th century US. But it's not obvious that all the arguments still apply in the Internet era, where it costs almost nothing to copy and disseminate a book, or, from the point of view of a user, to access a free copy of it (you even give us the URL). Let's point out, again for the sake of irony, that reading online Plant's almost 80 year-old book requires a subscription, which I fortunately have through my job.

Finally, just to tease you, I must say that to my surprise, considering that these are scholarly texts, both Plant and Khan use "œnewspeak" ("œpiracy", without quotes).

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**Daniel Lemire** 🧑

March 26, 2012 at 10:23 am

@Marc

(1) We don't justify laws against murder on the basis that it protects the little guys from the wealthy. But it is repeatedly used to justify copyright. "Think of the little guys! Think of the artists!"

Empirically, copyright mostly benefits the wealthy and the powerful (e.g., Disney). The Robinson-Cinar case exemplifies what happens when the little guy try to use copyright against a

corporation.

(2) What should have Robinson done? Unfortunately, after you've had an idea, once you communicate it, it tends to spread. I understand why he felt cheated, but I stress that the concept that his ideas were his "property" is fairly recent in history, and I am not sure it is a valid concept. Certainly, we must recognize that it is a social convention, not an objective reality. Our brains are not designed to keep track of the ownership of an idea. Our ancestors might have kept track of who owned such and such bow, or who was allowed to go hunt in such and such woods, but they did not keep track of who owned an idea.

But let us agree that we want the little guys to stand a chance against the large corporations. That's the objective.

If copyright is your tool, then you need to assess it. Does it work? Does it even out the odds when a lone guy faces a big corporation, or does it make the corporation even more powerful?

(3) Yes, "pirate" and "thief" is often used to describe people who infringe on copyright. I might use these terms myself sometimes. However, they are clearly not appropriate.

A pirate is someone who uses violence, or at least the threat of violence, to take goods away from others.

Can you say that it is intellectually honest to describe a kid copyright MP3 files as a "pirate"? At best, it is an hyperbole.

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### **Marc Couture**

March 27, 2012 at 3:56 pm

I use the CC-BY-NC license on some of my works, which means that anyone can copy them, modify them, put them online, but not for commercial purposes. I want my ideas to be widely known, but I don't want to see someone making money by, for instance, translating my works, or including them into larger works.

Daniel uses CC-SA for his blog: he doesn't oppose commercial usage, but wants that those who put online copies (verbatim or modified) of its content use the same license.

Both of us ask to be acknowledged as authors when someone uses our works.

The point is: it's because copyright exists, and that Daniel and I are copyright owners, that we can use these licenses. And these conditions seem important to us, because we could use the CC0 license, which is the nearest thing from "no copyright" (or public domain) that can exist.

So there is more at stake than the "big corporations v. little guy" thing.

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**Nate**

March 27, 2012 at 2:58 pm

Thank you for writing this article. I've been a huge fan of tanking copyright law. Copyrights are just a tool used to control power, if you believe otherwise you are probably a lawyer or corporate lackey. Copyrights are in the top 5 most detrimental problems to society and they are a complete drain on human productivity. After all, didn't your mom always tell you to share.

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**Daniel Lemire** 👤

March 27, 2012 at 3:08 pm

@Nate

Yes, sharing is good and quite natural. Friends freely share, especially information and ideas.

The restrictions on the spread of ideas appear to be quite unnatural to me.

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**Daniel Lemire** 👤

March 27, 2012 at 4:19 pm

@Marc

Right, but I don't view my CC license as a legal issue. What I am telling the world is: you have my blessing to use my stuff, but give me some credit.

Some author could say: please don't reproduce my material. In my ideal world, you could go against the wishes of the author, without breaking the law. It does not follow that it would be good business to do so.

I will give another example. Some entrepreneurs make you sign an NDA before they explain their ideas. I am convinced that these NDAs are not enforceable. If you hear about an idea during a meeting, and then you share it with a friend who later starts a business... how are they going to prove that you broke the NDA? It is impossible.

Yet I still sign the NDAs when they are submitted to me. I take it not as a legal document, but as an indication that the entrepreneur does not want me to talk about the company and its ideas.

It is good business for me to respect these wishes. If I ever want to make good money again as a consultant, I better respect such wishes, otherwise my reputation will suffer.

We have many understandings of the sort. For example, I must review 100 papers a year, if not more. It is understood, even when it is not cited, that the review process is confidential. I never talk about the content of the paper I review. I doubt anyone could sue me if I did. But my reputation could suffer.

In the example with Robinson, Cinar's reputation has been tarnished, to say the least, because they clearly went against the wishes of Robinson (not to mention that they committed fraud).

Let us go back in time. Suppose that I invent the wheel. I am the first one to do so. It is not an obvious invention. A lot of effort goes into building a wheeled carriage. I could then say: please don't copy this design. In this instance, people have a choice. They can respect my wishes. But maybe they won't because they will feel that I am being unfair by refusing to share the design.

In fact, something of the sort is happening. Disney is telling us: please don't copy our movies. And yet people post them on piratebay.org. People feel that the wishes of Disney are unreasonable. Maybe people are willing to pay for the movies, but maybe they feel that paying full price for a 20-year-old movie based on the public domain (e.g., Cinderella) is excessive.

But I could certainly ask people not to reproduce my blog. This would be viewed as reasonable. If I did and someone chose to ignore his request, I believe that the community would punish him by lowering his social status.

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### **Charlie**

March 27, 2012 at 6:47 pm

One of the points that seems to be overlooked here is that, when I write a technical document, a citation of original sources actually increases the credibility of my work, in that it demonstrates that I have done the appropriate research. Not crediting previous sources limits the credibility of my own work. Thus I, as an author, gain benefit by providing proper credit where due, and I think this is as pretty common perspective.

In other words, the "system" should work relatively well without inviting in all sorts of legal complications.

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### **Daniel Lemire**

March 28, 2012 at 8:31 am

@Marc

As for your doubts regarding the Star War movies that could be made, and remade... I point you to the number of big budget movies made with the 3 musketeers. I see yet another one has been released by Hollywood.

My point is that being permissive about derivative work is a good thing culturally. I am sure that some new authors could reinvent Star War. Probably, they could surpass the originals, or invent radically new stories based on the same characters.

No. Instead, we are stuck for the next 70 years, at the very least, with whatever Lucas wants us to have.

I think he was justly rewarded for his hard work. Right now, he is merely charging rent.

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### **Marcel Popescu**

March 30, 2012 at 4:32 am

I will start by saying that I completely agree with Daniel here (and have been against any form of IP for at least ten years). However, more to the point, I find it weird that nobody brought up the subject of Konrath when discussing authors (<http://jakonrath.blogspot.com/>) – he uploaded his own books to demonoid (a torrent site) to prove that “piracy” is irrelevant to an author. He did that a few years ago, when he was less successful, and he has the same opinion now when he makes several hundred thousand dollars a year.

You should also look up Eric Flint, the editor of Baen, who is very much against the idea that “piracy” is any kind of a threat to writers. In fact, <http://baen.com/library> has a few dozen books free and the <http://baencd.thefifthimperium.com/> site has their blessing.

Great article, Daniel.

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### **Giuseppe**

March 30, 2012 at 2:58 pm

Look at this post: “Infinite Copyright is killing culture”

[http://www.slate.com/blogs/moneybox/2012/03/30/infinite\\_copyright\\_is\\_killing\\_culture.html?tid=sm\\_tw\\_button\\_toolbar](http://www.slate.com/blogs/moneybox/2012/03/30/infinite_copyright_is_killing_culture.html?tid=sm_tw_button_toolbar)

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### **Anonymous**

April 15, 2012 at 9:22 am

Thank you for this posting. As most others argued against abolishing IPRs from economic point of view, I'd add an psychological argument. IPRs feel good when your work is recognised. It's an important part of our desire for self-actualisation. And the IP regimes help us think that we should give credits to those who deserve.

One mistake to correct – Japan and Taiwan have had strong IPRs, because their societies support the idea of intellectual honesty (in other words, the laws and enforcement didn't need to be strong to obtain the desired results). It's wrong to think those countries developed by copying others. Korea, on the other hand, does not find it shameful to copy – their nationalism simply cannot accept that others came up with the idea first.

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### **Charlie**

April 15, 2012 at 10:56 am

Anonymous-

One issue with your assessment that “Japan...[did not] develop by copying others...”. During the Meiji restoration (beginning around 1868 or so, in response to Commodore Perry firing a salvo from his cannon in Tokyo Harbor), the Japanese very definitely “copied” others- to the point of buying up complete factories, disassembling them, and moving them to Japan and reassembling them. Using this technique, they were able to go from a feudal society with limited technologies (still fighting with bows and arrows and swords) to arguably one of the strongest military powers of the era, defeating the Russians in short order in the Russo-Japanese war (Russia at the time was considered a formidable military power). They copied what others had done- albeit, they paid for what they copied, but it was still copying...

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### **Nicolas Blackburn**

May 8, 2012 at 8:52 pm

A nice copyleft book on this subject is Free Culture. You can download it for free in all popular ebook formats.

I think all myths you are referring to are quite well explained in it.

There is also a nice movie at ONF.ca that you can watch for free called RiP: Remix Manifesto. It talks about remix culture, copyrights and creativity.

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### **Cassandra**

February 5, 2013 at 2:35 pm

Well a lot of government now are being aware and now pushing to block also file sharing sites such as TPB. But with the blocking a lot of proxy sites come into play like pirate bay copy, into which it can help you bypass the blocking because it's just a proxy url.

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