

Copyright And Digital Rights Management: Creator To Consumer In A Digital Age

Learning element 2.2

DRM And Freedom:

*How has technology change altered
the freedom v protection debate?*



Bill Cope, Tom Davis and Mary Kalantzis

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Framework map

Copyright And Digital Rights Management

| | <i>Empirical And Experiential</i> | <i>Conceptual And Critical</i> | <i>Applied And Transferred</i> |
|--|--|---|--|
| <p>Theme 1: Copyright & Intellectual Property</p> | <p>1.1</p> <p>Existing Copyright Rules</p> <p><i>How has copyright traditionally been determined?</i></p> | <p>1.2</p> <p>Freedom v Protection</p> <p><i>What is the best way to encourage innovation?</i></p> | <p>1.3</p> <p>Copyright & The Publishing Industry</p> <p><i>How does the publishing industry deal with copyright issues?</i></p> |
| <p>Theme 2: Digital Rights Management</p> | <p>2.1</p> <p>Digital Rights Management (DRM) Systems & The Law</p> <p><i>How do DRM systems work and how has copyright law responded?</i></p> | <p>2.2</p> <p>DRM & Freedom</p> <p>How has technology change altered the freedom v protection debate?</p> | <p>2.3</p> <p>Industry Responsibilities Under DRM</p> <p><i>What copyright issues do businesses need to consider under a digital regime?</i></p> |
| <p>Theme 3: Copyright Commons</p> | <p>3.1</p> <p>Software & The Intellectual Commons</p> <p><i>What do we mean by the 'commons' and how have some software developers attempted to keep their work within it?</i></p> | <p>3.2</p> <p>Protecting The Commons</p> <p><i>What legal, commercial and political arguments have occurred over the copyright commons?</i></p> | <p>3.3</p> <p>Copyright Commons & The Publishing Industry</p> <p><i>How can businesses survive in a copyright commons?</i></p> |

Aims

Knowledge scope

DRM And Freedom further investigates the dilemma over free access to information that is at the core of intellectual property and copyright. It considers how this issue might be reconfigured as a result of the new technological environment of Digital Rights Management Systems. This course element engages you in arguments about the capacity of new digital technologies to improve the ability of producers to control access to, and usage of, information/content. In the United States, legislatures and courts have protected the rights of producers to control the usage and distribution of their products, setting the scene for continued, highly charged public debate. In Australia, the Federal Government has partly responded to these issues, but not yet fully responded to the issues that DRMS raise. The key question returned to in this element is whether previous arguments in relation to copyright and freedom of access continue to apply in this new environment.

Knowledge and capability aims

By the completion of this Learning Element you will have the capacity to:

- ⊗ identify the key public debates in relation to the increasing opportunities for producer/distributor control over access to digital content;
- ⊗ understand the major points of view, and the reasoning behind them, as expressed by the participants in these public debates;
- ⊗ engage in those debates and assess the value of competing arguments by referring to existing primary sources, secondary analyses and your own experiences; and
- ⊗ better structure an academic argument as you work your way to a considered position on the substantive issues raised in this element.

Important terminology

The ‘Learning Framework’ is the overall educational endeavour of ‘*Copyright And Digital Rights Management*’. This is comprised of three ‘themes’, presented in the left-hand column of the Framework map. Each theme is divided into three learning ‘processes’, presented in the top row of the Framework map. Altogether this constitutes nine ‘elements’. The Learning Framework is also referred to as the ‘course’.

Learning processes

The primary learning process in this element is to discuss with fellow students the questions set out below. In your discussion you are to make reference to the readings listed underneath the questions. You should also seek out other material, starting from the list of weblinks provided.

You will notice that the information included along with the reference indicates the perspective of the reading, whether it tends to be:

Business,
Cultural studies or
Technology oriented.

In your discussions and learning activities you should take account of the different perspectives represented by the readings and acknowledge those in your responses. You may wish to concentrate on one approach over another, such as technological change taking place in the industry.

Learning activity: Online/Tutorial Issues

Engage in Online/Tutorial discussion in response to the following questions:

- 1) **“The changes to copyright legislation spurred on by technological changes have resulted in authors’ rights being ‘in the ascendancy’”. What would Lessig’s (1999, 2001) response to this claim be?**
- 2) **How might the benefits that Digital Rights Management Systems bring to authors be in conflict with the needs of educational institutions and libraries?**
- 3) **How might DRMS open the way for large media and software corporations (e.g. Disney, Time-Warner, AOL and Microsoft) to attempt to monopolise their markets?**
- 4) **What justifications does the recording industry have for closing down Napster? What are the implications for the print and publishing industries?**
- 5) **Munro and Clark (2001) cite several US Congressmen who claim they are seeking a re-worked approach to copyright that can appease the concerns of consumers and producers alike. Based on the readings made available, do you have any ideas as to what changes might be able to bring about such a compromise?**

Recommended reading:

The Lessig and the Litman sources are the key texts for this element. It is important, however, that you consider the other sources in order to gain a sense of the debate over this topic currently occurring in the United States.

Sources

When viewing this online you can click on a learning source title to go to the reading. Each reading in the list is provided with a label titled ‘**Perspective**’. Use this as a guide in determining its relevance to the three categories: Business, Culture or Technology.

| | |
|---------------------|--|
| Title: | Ch 11, 'Controlling the Wired (and Hence the Content Layer)' in The Future of Ideas: The Fate of the Commons in a Connected World |
| Author(s): | Lessig, Lawrence |
| Year: | 2001 |
| City: | New York |
| Publisher: | Random House |
| Perspective: | Technology, Business |
| Keywords: | Code, Control, Copyright Commons, Courts, Innovation, Originality, Profit Imperative |
| Abstract: | Examines the relationship between the architecture of the Internet and innovation. Identifies three layers to Internet architecture: physical, logical or code, and content. The physical layer is the hardware—the wiring. Code/logical layer is made up of the protocols and software that make Internet communications possible, primarily TCP/IP. Content is the highest form of layer, e.g. Web pages. Lessig argues that changes to the Internet architecture can curtail freedom, increase the control of the owners of resources, and reduce innovation. |

| | |
|---------------------|---|
| Title: | Code, and other laws of cyberspace |
| Author(s): | Lessig, Lawrence |
| Year: | 1999 |
| City: | New York, NY |
| Publisher: | Basic Books |
| Perspective: | Technology, Business |
| Keywords: | Digital Rights Management, Software Code, Intellectual Property., Privacy, Control, Capitalism |
| Abstract: | "We must build into the [digital code] architecture a capacity to enable choice - not choice by humans but by machines. The architecture must enable machine-to-machine negotiations about privacy so that individuals can instruct their machines about the privacy they want to protect. but what would push cyberspace to build in the necessary architecture? Not the market. The power of commerce is not behind any such change. ... Collective action must be taken to bend the architecture to this goal, and collective action is just what politics is for." (Lessig 1999: 163) |

| | |
|---------------------|---|
| Title: | Ch 12: Revising Copyright Law for the Information Age in Digital Copyright |
| Author(s): | Litman, Jessica |
| Year: | 2001 |
| City: | Amherst, N.Y. |
| Publisher: | Prometheus Books |
| Perspective: | Technology, Law |
| Keywords: | Copyright and Electronic Data Processing |
| Abstract: | Recent major publication on the implications of the US Digital Millennium Copyright Act and the broad impact of changes in technology on copyright regimes. Argues for reassessing copyright law, moving away from the traditional focus on reproduction rights and toward an appreciation of the needs of non-institutional end-users. |

| | |
|---------------------|--|
| Title: | Digital Dilemma |
| Author(s): | Munro, Neil; Clark, Drew |
| Year: | 2001 |
| Journal: | National Journal |
| Volume: | 33 |
| Issue: | 30 |
| Pages: | 2386-2392 |
| Perspective: | Technology, Law |
| Keywords: | Copyright, Digital Rights Management, Corporatisation of Knowledge, Legal Responses, Public Policy, US Responses |
| Abstract: | [From the authors' introduction] "... how far can companies and the federal government go to protect content owners' copyrighted property from theft and misuse, and at the same time preserve such fundamental rights as freedom of speech and of the press? The tension between the two sets of interests requires a difficult balancing act, and the ease with which information can be transmitted and accessed in the digital age has raised the stakes. Congress has only begun to grapple with the economic and legal issues raised by the new information technologies. Internet-driven economic growth may stay in the doldrums, content owners say, until the government strikes a workable balance between the rights of content owners, content sellers, and content users." |

| | |
|---------------------|---|
| Title: | Ch 5, 'The Internet' in The Illustrated Story of Copyright |
| Author(s): | Samuels, Edward |
| Year: | 2000 |
| City: | New York |
| Publisher: | Thomas Dunne Books (St Martin's Press) |
| Perspective: | Technology, Law |
| Keywords: | Copyright, Intellectual Property, Digital Rights Management, Capitalism, Investment, Historical Development of Copyright, Internet |
| Abstract: | The author argues in favour of the Digital Millennium Copyright Act, claiming it protects those prepared to conduct large-scale research into digital technologies and those who are prepared to invest in digitally transmitted content. The technology itself is able to assist in protecting copyright through improved efficiency in tracking and licensing works. "Technology, on balance, is neutral to copyright interests; in some ways it's a threat, but in some ways it's a boon, just another market to be exploited." (Samuels 2000: 124). |

| | |
|---------------------|---|
| Title: | DRM For the Forces of Good |
| Author(s): | Fausett, Bret A. |
| Year: | 2001 |
| Journal: | Web Techniques |
| Volume: | 6 |
| Issue: | 11 |
| Pages: | 10-11 |
| Perspective: | Technology, Business |
| Keywords: | Copyright, Digital Rights Management, Corporatisation of Knowledge, Legal Responses, Public Policy, US Responses |
| Abstract: | [Author's statement of his core argument] "As sympathetic as I am to the need to preserve the public's right of fair use, dealing with licensed intellectual property requires great care when using digital distribution methods. It may make strong copyright protection an absolute necessity. If you're both the copyright owner and the distributor of a property, then by all means, feel free to use, or not use, a copyright protection scheme. Give the property away for free, or just make it easy to copy. But when dealing with a third-party's property, you have a good faith obligation to ensure that the creator receives full licensing agreement benefits." |

| | |
|---------------------|--|
| Title: | Digital Copyright: A Tale of Domestic Discord Presented in Three Acts |
| Author(s): | Amen, Kathleen; Keogh, Trish; Wolff, Necia |
| Year: | 2002 |
| Journal: | Computers in Libraries |
| Volume: | 22 |
| Issue: | 5 |
| Pages: | 22-27 |
| Perspective: | Technology, Law |
| Keywords: | Copyright, Digital Rights Management, Legal Responses, Public Policy, US Analysis, Fair Use Provisions |
| Abstract: | [From authors' introduction] "Copyright laws and fair use doctrine created reliable boundaries of acceptable behavior. Copyright holders and copyright users had reached an accommodation. Fair use met the needs of each, allowing users of copyrighted material to reproduce materials in certain situations and also encouraging copyright owners to innovate by protecting against unlimited copying [D]igital technology upset this balance by providing users with the ability to obtain data and create multiple copies at almost no cost of time, money, or effort." |

| | |
|---------------------|---|
| Title: | Copywong: Why the Digital Millennium Copyright Act hurts the public interest |
| Author(s): | Godwin, Mike |
| Year: | 2001 |
| Journal: | Reason |
| Volume: | 33 |
| Issue: | 3 |
| Pages: | 57-61 |
| Perspective: | Technology, Business |
| Keywords: | Copyright, Digital Rights Management, Corporatisation of Knowledge, Legal Responses, Public Policy, US Responses |
| Abstract: | [From author's introduction] "There's a war going on over the state of copyright law in this country, but it's a war whose battles are largely being fought covertly. On the occasions when the conflicts are made public, they have not been recognized for what they signify. What has gone mostly unseen and unremarked upon is the effort by industries who benefit from copyright law to shift the balance of the law forever in their favor, and away from the public interest that, according to Article I of the U.S. Constitution, is supposed to be the beneficiary of copyrights." |

| | |
|---------------------|--|
| Title: | Technology as Security |
| Author(s): | McCullagh, Declan |
| Year: | 2001 |
| Journal: | Harvard Journal of Law & Public Policy |
| Volume: | 25 |
| Issue: | 1 |
| Pages: | 129-143 |
| Perspective: | Technology, Business |
| Keywords: | Copyright, Digital Rights Management, Corporatisation of Knowledge, Legal Responses, Public Policy, US Responses |
| Abstract: | [From author's introduction] "... technology has begun to supplant law, and at an accelerated pace. Contrary to conventional wisdom, this may be a welcome and inevitable development. Instead of protecting rights such as privacy, free speech, and copyright through legal means, more people are turning to technological protection methods. To guarantee liberty, mechanisms such as public key encryption and anonymity - providing "dc-nets" rely on the equations of mathematics and not the whims of courts and legislatures." |

Assessment Task A option

You may wish to draw on the issues raised in this element, **DRM & Freedom**, for your Assessment Task A (worth 25% of your overall grade).

To complete Assessment Task A you must write a proposal (of approximately, but not exceeding, 1,500 words) for the larger work that will constitute Assessment Task B. In choosing the format of this proposal refer to the range of assessment formats provided in the Framework Level description of the course. If applicable, you can draw on experience from your own workplace to provide examples of how these issues impact on the education, communication and/or business sectors.

The aim of Task A is to:

- (i) help you begin to format the structure of Task B; and
- (ii) help you begin to build the content for Task B.

You also need to consider how you will later integrate the final work you produce for Task A into Task B.

Note: You are required to do only one Assessment Task A throughout the course.

Choosing issues from **DRM & Freedom** as the springboard for your Assessment Task A does not necessarily lock you into pursuing them for Task B. For example, on completion of this task, you may decide to pursue a different theme for Task B.

Even if you choose not to base your Assessment Task on the issues raised in this element, the knowledge and capabilities you have gained here can be fed into the topic you eventually use as the basis for your Assessment Task A.

Note: Assessment Task A must be submitted by the end of week four.

Learning pathways

Transition from Learning Element 2.2

Having completed the learning process of this element (with or without completing the Assessment Task A option), you must decide which element to undertake next.

Possible transitions from this element are presented below, however it is recommended that you work out your own pathway in consultation with your teacher.

Pathway options

By the completion of this element, **DRM And Freedom**, you should have improved critical capabilities and an in-depth knowledge of the issues in this element as analysed from the perspectives of Technology, Business and Culture.

You may now wish to apply this theoretical knowledge by undertaking the *Applied And Transferred* element of this Theme, **Industry Responsibilities Under DRM**. Alternatively, you may wish to engage with a new theme by undertaking an *Empirical And Experiential* learning element and pursue more practical issues regarding the relationship between this element and **Software And The Intellectual Commons** or, if you have yet to undertake it, **Existing Copyright Rules**.

Example pathways

| | <i>Empirical And Experiential</i> | <i>Conceptual And Critical</i> | <i>Applied And Transferred</i> |
|-----------------------------|---|--------------------------------|---|
| <i>Theme 1: Print</i> | 1.1 Existing Copyright Rules | 1.2 Freedom V Protection | 1.3 Copyright & The Publishing Industry |
| <i>Theme 2: Etext</i> | 2.1 Digital Rights Management (DRM) Systems & The Law | 2.2 DRM & Freedom | 2.3 Industry Responsibilities Under DRM |
| <i>Theme 3: Convergence</i> | 3.1 Software & The Intellectual Commons | 3.2 Protecting The Commons | 3.3 Copyright Commons & The Publishing Industry |

About this Learning Element

DRM And Freedom considers how the dilemma over free access to information that is at the core of intellectual property and copyright might be reconfigured as a result of the new technological environment of Digital Rights Management Systems. It explores arguments about the capacity of new digital technologies to improve the ability of producers to control access to, and usage of, information/content. In the United States, legislatures and courts have protected the rights of producers to control the usage and distribution of their products, setting the scene for continued, highly charged public debate. In Australia, the Federal Government has partly responded to these issues, but not yet fully responded to the issues that DRMS raise. The key question returned to in this element is whether previous arguments in relation to copyright and freedom of access continue to apply in this new environment.

Keywords

Coding
Consumer Rights
Control
Copyright
Creator
Digital Copying
Fair Use
Freedom
Intellectual Property
Moral Rights
Napster
Originality
Ownership
Piracy
Privacy
Profit Imperative
Public Domain
Public Interest