

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

Learning element 3.2

Protecting The Commons:

*What legal, commercial and political arguments
have occurred over the copyright commons?*



Bill Cope, Tom Davis and Mary Kalantzis

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www.C-2-CCourse.com

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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><i>How has technology change altered the freedom v protection debate?</i></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

Protecting The Commons opens up discussion over the extent to which the boundaries of the public domain in relation to digital copyright should be pushed, and what legal, commercial, and political support there is for any expansion to occur. This debate is reaching a boiling point in the United States, with supporters of the Copyright Commons and the government both having deposited briefs with the Supreme Court in the *Eldred v Ashcroft* case. The arguments here concern not just the free dissemination of text – which is the major point of conflict in the *Eldred Case* – but also unhindered access to computer software and digital conflict. You are encouraged in this element to think about how a satisfactory balance between public interest and private rights can be reached on this issue, and the respective roles governments and private organisations should play in relation to this.

Knowledge and capability aims

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

- ⊗ identify the fundamental debates, and their key protagonists, in relation to the Copyright Commons and the public domain and the Internet;
- ⊗ 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,
Technology or
Cultural studies 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) **What public interest is there in allowing all digital works and software to be in the public domain?**
- 2) **Why have the US courts and legislature been reluctant to support the notion of the Copyright Commons?**
- 3) **What commercial arguments are there for favouring an extensive digital public domain?**
- 4) **What political pressure, if any, has been placed on the Australian Government to do more in support of the concept of the Copyright Commons?**
- 5) **What is your response to the claim that creators must inevitably borrow from others and, so, there cannot be any such thing as originality which deserves copyright protection?**

Recommended reading:

This is an element which covers a debate that is occurring most vociferously on the Internet itself. So, while the first two sources provide you with a good grounding in the topic, you are urged to discover what the current state of the debate is by searching the web. Lawrence Lessig's homepage is a very good place to start.

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 and Technology.

Title:	The Electronic Commons
Author(s):	Starr, Paul
Year:	2000
Journal:	The American Prospect
Volume:	11
Issue:	10
Pages:	30-34
Perspective:	Technology, Business
Keywords:	Copyright Commons, Internet, Public Good, Law and Public Policy Responses
Abstract:	[Author's introduction] "While the rise of electronic commerce excites visions of a new economy, the Internet continues to produce explosive growth in free, public communication. The sheer scale and variety of the electronic public domain are staggering, but the promise is not simply an information cornucopia. Despite all its problems, the Internet has the potential to remedy some historic defects of public communication. It has already begun to do so, and with additional capital and new forms of organization, it can do much more."

Title:	Ch 5, 'The Digital Moment: The End of Copyright?' in Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity
Author(s):	Vaidhyanathan, Siva
Year:	2001
City:	New York
Publisher:	New York University Press
Perspective:	Technology, Business
Keywords:	Copyright Commons, Intellectual Property., Digital Rights Management, International cCopyright, Capitalism, Creativity
Abstract:	"... a thin, leaky copyright system allows people to comment on copyrighted works, make copies for teaching and research, and record their favourite programs for later viewing. Eventually, copyright runs out, and the work enters the 'public domain' for all of us to enjoy at an even lower cost. But when constructed recklessly, copyright can ... be an instrument of censorship ..." (Vaidhyanathan 2001: 184)

Title:	Copyright revision. (The Internet)
Author(s):	Conhaim, Wallys W.
Year:	2002
Journal:	Link-Up
Volume:	19
Issue:	4
Pages:	3-4
Perspective:	Technology, Business
Keywords:	Copyright commons, Creative Commons, Eldred Case, Lawrence Lessig, US Law and Public Policy
Abstract:	This article covers recent development n the copyright commons debate, with a focus on the efforts of the public domain effort known as Creative Commons. The author argues, however, that "Despite the organization's many supporters in the public interest and open source movements and in creative and academic communities, the Creative Commons concept is still very controversial and has a long way to go before its basic tenets are understood, much less endorsed, in the mainstream legal, publishing, and entertainment communities."

Title:	Content in a Digital World
Author(s):	Prater, David
Year:	2001
Book Title:	Digital Rights Management and Content Development
Editor:	Cope, Bill; Freeman, Robin
City:	Altona, Vic
Publisher:	Common Ground Publishing Pty Ltd
Pages:	61-85
Perspective:	Technology, Business
Keywords:	Copyright Commons, Impact on Creators, Subverting Usual Publishing Models, Creative Freedom
Abstract:	This article picks up on the digital copyright debate from the perspective of creators and those seeking alternative publishing models - especially through publishing on the Internet. It draws on Australian examples in the course of its discussion.

Web sources

Lawrence Lessig's home page at Stanford Law School

www.lessig.org/

Brief for Petitioners in *Eldred v Ashcroft*, No 01-618 in the Supreme Court of the United States. (Filed 20 May 2002).

<http://eldred.cc/legal/supremecourt.html>

Brief for Respondent [US Govt] in *Eldred v Ashcroft*, No 01-618 in the Supreme Court of the United States. (Filed 5 August 2002)

<http://eldred.cc/legal/supremecourt.html>

The Baker & McKenzie Cyberspace Law and Policy Centre. 2002. Transcript of proceedings. Symposium: Digital Rights Management Systems and Public Interests, Baker & McKenzie Board Room, AMP Tower, 50 Bridge Street, Sydney, The Baker & McKenzie Cyberspace Law and Policy Centre, University of New South Wales.

www.austlii.edu.au

Homepage for Copyright's Commons, Berkman Centre for Internet & Society, Harvard University

cyber.law.harvard.edu/cc/index.html

Opencode homepage

eon.law.harvard.edu/opencode/

Creative Commons project

creativecommons.org

Assessment Task A option

You may wish to draw on the issues raised in this element, **Protecting The Commons**, 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 this 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 **Protecting The Commons** 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 3.2

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, **Protecting The Commons**, you should have improved 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, **Copyright Commons And The Publishing Industry**. Alternatively, you may wish to engage with a new theme by undertaking any **Empirical And Experiential** learning elements you have yet to complete.

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

Protecting The Commons discusses the extent to which the boundaries of the public domain in relation to digital copyright should be pushed, and what legal, commercial, and political support there is for any expansion to occur. This debate is reaching a boiling point in the United States, with supporters of the Copyright Commons and the government both having deposited briefs with the Supreme Court in the *Eldred v Ashcroft* case. The arguments here concern not just the free dissemination of text – which is the major point of conflict in the *Eldred Case* – but also unhindered access to computer software and digital conflict. You are encouraged in this element to think about how a satisfactory balance between public interest and private rights can be reached on this issue, and the respective roles governments and private organisations should play in relation to this.

Keywords

Control
Copyright Commons
Creator
Fair Use & Fair Dealing
Freeware
Government Regulation
Intellectual Property
Moral Rights
Originality
Ownership
Public Domain
Public Interest
Social Interest v Market Forces
United States Supreme Court: *Eldred v Ashcroft*