

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

Learning element 1.2

Freedom v Protection:

What is the best way to encourage innovation?



Bill Cope, Tom Davis and Mary Kalantzis

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

Freedom v Protection:

What is the best way to encourage innovation?

Bill Cope, Tom Davis and Mary Kalantzis

www.C-2-CCourse.com

About The Course Developer

Tom Davis
Course Developer
Faculty of Education, Language
and Community Services

Tom has an Honours degree in Political Science, a Masters degree in International Relations, and is currently awaiting assessment of his PhD thesis on the Australian foreign aid program. He has lectured at the University of Melbourne in Public Policy and the Politics of the Asia-Pacific Region. Prior to undertaking his PhD, Tom worked for the Refugee Review Tribunal and the Onshore Refugee Program in the Department of Immigration and Multicultural Affairs.

First Published in Australia in 2003
by the Faculty of Education, Language
and Community Services
PO Box 71
RMIT University
Bundoora VIC 3083

Copyright © RMIT University 2003

All rights reserved. Apart from fair dealing for the purposes of study, research, criticism or review as permitted under the Copyright Act, no part of this book may be reproduced by any process without written permission from the publisher.

[Cataloguing-in-Publication and ISBN data]

Cover image: <http://www.apocalypse.org/pub/u/hilda/ssd/newpix/newbwb.jpg>

Contents

Framework map.....	6
Aims.....	7
Knowledge scope	7
Knowledge and capability aims	7
Important terminology.....	7
Learning processes	8
Learning activity: Online/Tutorial Issues	8
Recommended reading:.....	8
Sources	9
Assessment Task A option	14
Learning pathways	15
Transition from Learning Element 1.2.....	15
Pathway options	15

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

Freedom v Protection engages you in the arguments over technology and content control that underlie the formation of copyright law. Central to this is the public interest in innovation, and the role of legislation in preserving that public interest. The debate is between those who believe that future innovation is best promoted by maximising free access to, and utilisation of, past innovations, and those who believe that it is the profit-imperative that motivates investment in knowledge development. Copyright rules must offer an effective balance between creative freedom and financial reward so as to ensure continued innovation in all fields of endeavour in the modern world. This is a public policy issue that has tended to be resolved by a mixture of legislation from elected representatives and common law from the courts.

Knowledge and capability aims

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

- ⊗ define the fundamental public policy debates underpinning the law on copyright, and their associated theories of innovation and control;
- ⊗ critically examine those debates and to assess the value of competing arguments by referring to existing primary sources, secondary analyses and your own experience;
- ⊗ begin to arrive at your own assessment of the best way to use copyright provisions in order to encourage innovation; and
- ⊗ begin to structure your position as a clear, academic argument.

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) **How does Lessig (2001) conceptualise the link between copyright and innovation?**
- 2) **Why might a publisher or a corporation be justified in attempting to ensure, through all means possible, that consumers properly pay for their consumption of content?**
- 3) **How does the increasing access to ideas and intellectual property afforded by the Internet begin to impact on the traditional justifications for copyright regulation?**
- 4) **Are hacker's legitimately engaged in a "class struggle" against new, state-protected, private monopolies of intellectual property, as Wark (2002) suggests?**

Recommended reading:

Begin your reading with the Lessig, Koepsell, Rose and Wark pieces, before expanding your coverage to the other sources.

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:	The Architecture of Innovation
Author(s):	Lessig, Lawrence
Year:	2002
Journal:	Duke Law Journal
Volume:	51
Issue:	6
Pages:	1783-1802
Perspective:	Culture, Business, Technology
Keywords:	Corporatism, Freedom of speech, Control Through Copyright, Profit Incentive, Culture, Innovation
Abstract:	<p>[Extracts from article] "If communism versus capitalism was the struggle of the twentieth century, then control versus freedom will be the debate of the twenty-first century. If our question then was how best to control, our question now will become whether to control. What would a free resource give us that controlled resources do not? What is the value in avoiding systems of control?</p> <p>"We win the cold war against state control so as to reentrench this system of control in the name of the market. We fight battles in the name of free speech, only to have those tools turned over to the arsenal of those who would control speech. We defend the ideal of property, and then confuse its limits, and extend its reach to a space none of our founders would ever have imagined."</p>

Title:	The Ontology of Cyberspace: Philosophy, Law, and the Future of Intellectual Property
Author(s):	Koepsell, David R.
Year:	2000
City:	Chicago and La Salle, Illinois
Publisher:	Open Court
Perspective:	Culture, Business
Keywords:	Intellectual Property, Copyright, Ontology, Legal History, Legal Philosophy, Jurisprudence
Abstract:	Ch 4 considers the historical and philosophical development of Patent Law, Trademark Law and Copyright Law in the US legal system. It is into these categories that intellectual property issues have tended to be placed. The categories do not, however, easily accommodate all aspects of intellectual property. This opens the way for potential problems when it comes to digital information and property.

Title:	Ch 8, "Strange Changes" from Authors and Owners: The Invention of Copyright
Author(s):	Rose, Mark
Year:	1993
City:	Cambridge, Massachusetts
Publisher:	Harvard University Press
Perspective:	Business, Culture
Keywords:	Copyright, Intellectual Property, Author's Rights, Original Work, Creativity, Privacy, Public Interest
Abstract:	"The institution of copyright is ... deeply rooted in our economic system, and much of our economy does in turn depend on intellectual property. But, no less important, copyright is deeply rooted in our conception of ourselves as individuals with at least a modest grade of singularity, some degree of personality. And it is associated with our sense of privacy and our conviction, at least in theory, that it is essential to limit the power of the state." (Rose 1993: 158)

Title:	A Hacker Manifesto [version 4.0]
Author(s):	Wark, McKenzie
Year:	2002
City:	Available on the Internet
Publisher:	http://subs01.c3.hu/subsol_2/contributors0/warktext.html
Perspective:	Culture, Technology
Keywords:	Computer Hacking, Freedom of Speech, Innovation, Cultural Change, Copyright Control
Abstract:	[Wark's final, concluding point] "Politics can become expressive only when it is a politics of freeing the virtuality of information. In liberating information from its objectification as a commodity, it liberates also the subjective force of statement. Subject and object meet each other outside of their mere lack of each other, by their desire merely for each other. Expressive politics does not seek to overthrow the existing society, or to reform its larger structures, or to preserve its structure so as to maintain an existing coalition of interests. It seeks to permeate existing states with a new state of existence, spreading the seeds of an alternative practice of everyday life".

Title:	Whose Rights Need to be Managed?
Author(s):	Laidler, Terry
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:	17-30
Perspective:	Business, Culture
Keywords:	Copyright, Technological Change, Rights of Creators and Producers, Commercialisation of knowledge
Abstract:	[Laidler's core argument re the connection between copyright enforcement and the 'social good'] "Copyright and its protection regime in the physical environment have never sought to capture, register and take commercial benefit from every use of every part of every creative work ever produced. Regardless of whether technology makes such capture possible, the question of what real economic or social benefit there is to be had in doing so is the moot point."

Title:	Copyright: Endurance & Change
Author(s):	Harper, Georgia K.
Year:	2000
Journal:	EDUCAUSE review
Volume:	35
Issue:	6
Pages:	20-26
Perspective:	Business, Technology
Keywords:	Copyright, Technological Change, Rights of Creators and Producers, Commercialisation of Knowledge
Abstract:	[From the author's introduction] "The balance that copyright law has achieved between the interests of copyright owners and the interests of the public has evolved slowly and has been only periodically adjusted. Today, however, the pace and the magnitude of change threaten to skew this balance to the point of collapse. Some of these changes—licenses, access controls, certain provisions in the Digital Millennium Copyright Act (DMCA)—have the potential to drastically undermine the public right to access information, to comment on events, and even to share information with others."

[Federal Court of Australia. Copyright Agency Ltd v Charles Sturt University \(No 2\) \[2001\] FCA 1145 \(24 August 2001\)](#)

[Federal Court of Australia. Desktop Marketing Systems Pty Ltd v Telstra Corporation Limited \[2002\] FCAFC 112 \(15 May 2002\)](#)

Assessment Task A option

You may wish to draw on the issues raised in this element, **Freedom v Protection**, 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:

help you begin to format the structure of Task B; and
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 **Freedom v Protection** 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 1.2

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, **Freedom v Protection**, 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 or Culture.

You may now wish to apply this theoretical knowledge by undertaking the *Applied And Transferred* element of this Theme, **Copyright & The Publishing Industry**. 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 the elements titled **Digital Rights Management (DRM) Systems & The Law** or **Software And The Intellectual Commons**.

Example pathways

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

About this Learning Element

Freedom v Protection engages you in the arguments over technology and content control that underlie the formation of copyright law. Central to this is the public interest in innovation, and the role of legislation in preserving that public interest. The debate is between those who believe that future innovation is best promoted by maximising free access to, and utilisation of, past innovations, and those who believe that it is the profit-imperative that motivates investment in knowledge development. Copyright rules must offer an effective balance between creative freedom and financial reward so as to ensure continued innovation in all fields of endeavour in the modern world. This is a public policy issue that has tended to be resolved by a mixture of legislation from elected representatives and common law from the courts.

Keywords

Australia. Copyright Act

Control

Copyright

Creator

Fair Use & Fair Dealing

Hacking

Industrious Collection

Innovation

Internet Architecture

Intellectual Property

Moral Rights

Originality

Ownership

Public Domain

Public Interest

World Intellectual Property Organisation (WIPO) Copyright Act