

Intellectual Property Rights: How Much Should We Have?

There has been a steady expansion of intellectual property rights. Is this good or bad? Arguments for more intellectual property rights are

that they *encourage creativity and originality*;

arguments against are

that they *make it difficult to obtain information* and block our access even to material that has minimal commercial value.

St. Columba



In about 540, an Irish abbot named Finnian (various spellings) brought the first copy of St. Jerome's Vulgate to Ireland. Columba, a monk under Finnian at Moville, asked permission to copy this book, was refused, and made a copy surreptitiously at night. Finnian discovered him and demanded the copy. King Diarmuid, saying "to every cow its calf", awarded the copy to Finnian. Columba instead revolted, and wound up fleeing Ireland and helping introduce Christianity to Scotland. Both Finnian and Columba were later named as saints. No actual portrait of Columba exists.

What are the implications?

If Columba had been allowed to copy the Bible, would this have meant:

that Finnian had been denied his rightful benefits from ownership of the Vulgate?

that others would be discouraged from bringing books to Ireland?

that someone might have been discouraged from perhaps preparing another and better translation?

All the arguments are the same

Proponents of strong intellectual property rights make several arguments, and they are pretty much the same whether you are complaining about American piracy of British books in the 19th century or about music downloading today.

- a) The creator of a work has as much moral right to all the profits as the owner of an object or of a piece of land, indeed more; yet the creative rights expire.
- b) Without intellectual property rights, people will copy things rather than create new ones.
- c) The stronger the intellectual property rights, the more innovative people will become.

Some more serious legal history

1710: the Statute of Anne. Copyright is 14 years plus a renewal for 14 more years. (It takes almost the entire 18th century to resolve legal claims that there is also common law copyright and that it lasts longer).

1790: first US copyright law (same term): books, maps, charts

1802: illustrations now covered

1831: term of 28 years plus renewal of 14

1870: translations and adaptations now covered

1891: US pays royalties to foreign authors

1909: term now 28 years plus renewal of 28.

1976: term for newer works now life+50, older 75 years;
music is included; television rights weakened

1990: architecture included (buildings, not just plans)

1998: term extended by 20 years

What else might be protected?

Boat hulls. 1997 law. Ten year term.

Architecture. Drawings protectable; how much of the idea? Lawsuit over Freedom Tower (*Shine v. Childs*).

Data bases. Considerable lobbying on both sides, Congress has not enacted a law. Europe has one.

Type fonts. Protected in Europe, not in US.

Recipes: ingredients and dishes not protected, explanations are.

Stage direction. Not currently protected, but some directors are claiming ownership in how a play is presented.

Fashion design. Not currently protected.

Piracy

In the 18th century, Irish publishers reprinted British books.

In the 19th century, the United States was the great pirate country.

In the 20th century, Asian countries were blamed.

Today, it's worldwide downloading. In fact Sweden (as the home of Pirate Bay, a major BitTorrent site) is currently the hot spot.

In general, developed countries want strict IP laws, less developed countries want use of IP (with the most sympathetic argument being about drug patents).

The US did not sign the copyright treaty because it felt sorry for British authors who did not get royalties; it was pressured by US authors who said that their books were not published because the publishers found it cheaper to print books by foreign authors.

The basic argument

If creators are rewarded by more protection, they will write/compose/create more works. The more extensive the protection, the more innovative creators have to be. You choose:

“In truth, literature, in science and in art, there are, and can be, few, if any things, which in an abstract sense are strictly new and original throughout. Every book in literature, science, and art borrows, and must necessarily borrow, and use much which was well known and used before.” -- Supreme Court Justice David Souter

"Copyright is about sustaining the conditions of creativity that enable an individual to craft out of thin air an *Appalachian Spring*, a *Sun Also Rises*, a *Citizen Kane*." -- Stanford law professor Paul Goldstein.

Goldstein's example is awful

“craft out of thin air an *Appalachian Spring*, a *Sun Also Rises*, a *Citizen Kane*.” (Goldstein, J. Copyright Society 1990) *Thin air???*

Citizen Kane is based on the lives of William Randolph Hearst and Marion Davies; this was so generally accepted that Hearst tried to suppress the movie: he offered to buy the negative, refused RKO's advertising in his newspapers, and threatened Welles and the movie industry in general with the publication of unfavorable stories.

Appalachian Spring is best known for its adaptation of the Shaker hymn “Simple Gifts,” which is not a folk-song of unknown ancestry, but composed by a Shaker elder, Joseph Brackett, in 1848. If today's laws had been in effect earlier, Copland would have needed permission: Brackett did not die until 1882, and Copland published in 1942, only 60 (not 70) years later. (Hear *Appalachian Spring* [here](#)).

Adaptations

Shakespeare took a lot of his plots from Holinshed's *Chronicles of England, Scotland and Ireland* which itself is taken from Thomas More and others.

More recently Alice Randall wrote *The Wind Done Gone* as a slave's view of the plot of *Gone With The Wind*. Should this be forbidden? If it were, Margaret Mitchell's estate argues, either (a) Margaret Mitchell's heirs would get money that is rightfully theirs; or (b) Alice Randall would have written a more innovative book. (The lawsuit was settled by having Houghton Mifflin make a donation to Morehouse College).

At some point this has to stop, or *Huckleberry Finn* will be called an infringement of *Don Quixote* (two guys go on a trip).

Serious questions

Do creators deserve a larger share of the economic pie than they now get? Can this be achieved by enlarging intellectual property rights?

Would innovation increase, in particular more complete innovations (“out of thin air”), if intellectual property rights were expanded?

Some of these arguments are difficult to reconcile with retrospective extensions of copyright – as Pamela Samuelson once said, even Congress could not believe that a longer copyright term would coax additional creative effort from people who had been dead for 50 years. But the movie industry argued that nobody would preserve older movies unless they could control their exhibition.

Some specific stories

Daguerrotypes in England and France

Airplanes

Recorded music

Architecture

Type fonts

Songwriters and playwrights

Documentary creators

Daguerrotypes

When Louis Daguerre invented photography, he sold his French patent to the government and they made it available free. He kept and sold his UK patent to somebody who tried to collect license fees for its use. In the 1849 there were 36 photographers in Paris and about 10 or so in London, a city twice the size (it's hard to count the ones in London because Daguerre's agent sued everyone who advertised). By the way, nobody made any money out of the license in the UK: the lawsuits against the photographers and against Fox Talbot, who had a different patent on a different process, consumed all the money. In 1851 the collodion process replaced both daguerrotypes and talbotypes for photography.

The pioneers



Left: Joseph Niepce; center, Louis Daguerre; right, William Henry Fox Talbot. Talbot's licensing demands and lawsuits, along with Daguerre's, delayed UK photography. Talbot was independently wealthy and could afford a botched economic exploitation of his ideas.

Airplanes

Oversimplifying somewhat, early in the history of aviation the Wright brothers had half the important patents, and Glenn Curtiss had the other half. Neither would license the other, and so nobody in the US could build a state of the art airplane.

When the US entered World War I, people realized that American pilots would be shot down and killed because of this. The Navy forced cross-licensing on the two companies.*

* And just by the way, the assistant secretary of the Navy in 1917 was Franklin D. Roosevelt.

Recorded music

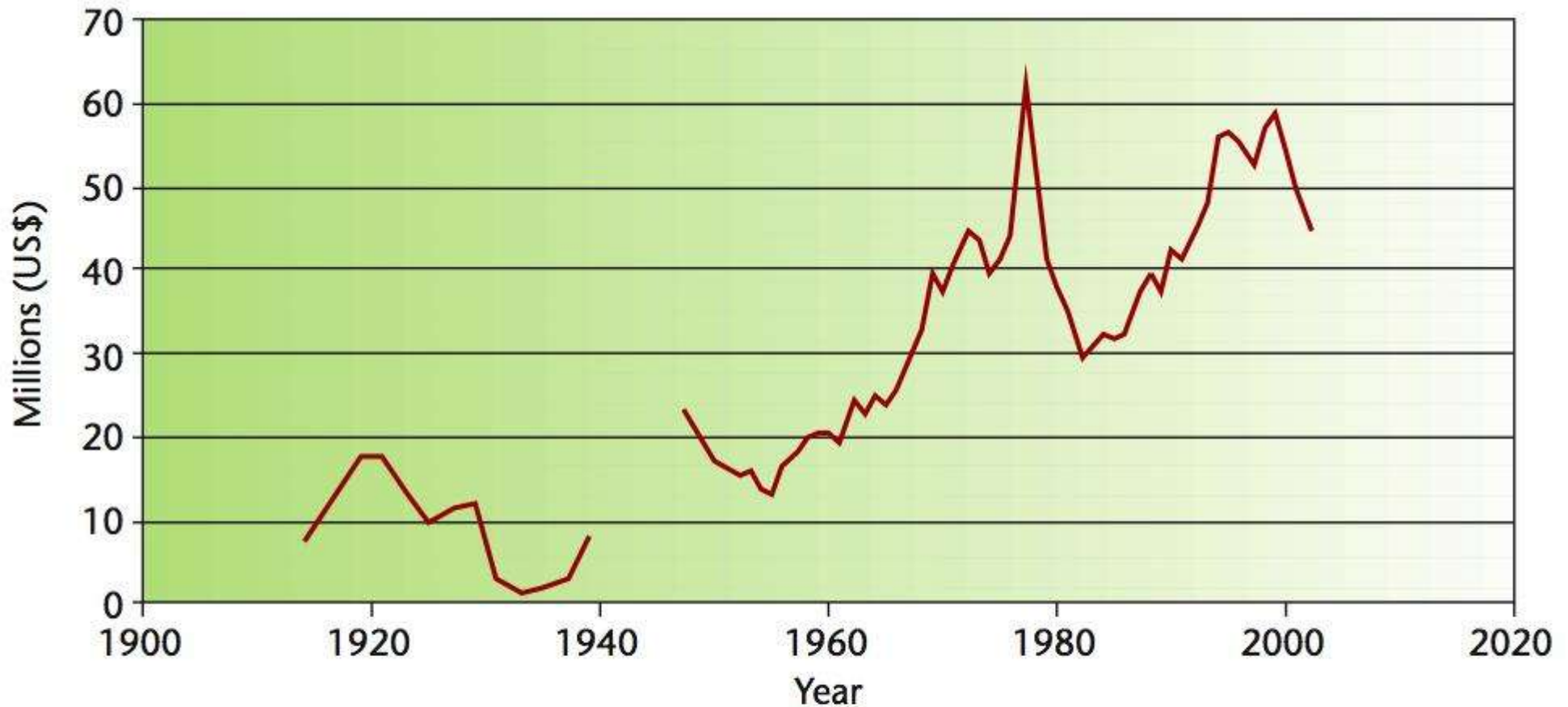


Figure 1. Per-person recorded music sales, adjusted for inflation and data source. There are gains after the general acceptance of vinyl disks, cassette tapes, and CDs; declines coincide with the growth of radio, the start of the Great Depression, and the introduction of television and VCRs.

Recorded music

According to *Rolling Stone*, most of the top bands make more money touring than on royalties. In 2002, for example, Springsteen made \$17.9M touring and \$2.2M from CD sales; the Eagles took in \$15.1M touring and \$0.7M from CDs. Such artists as Billy Joel, Neil Diamond, and Crosby, Stills, Nash and Young received *no* money from royalties. (Admittedly, Elvis received \$3M in royalties and no money touring.)

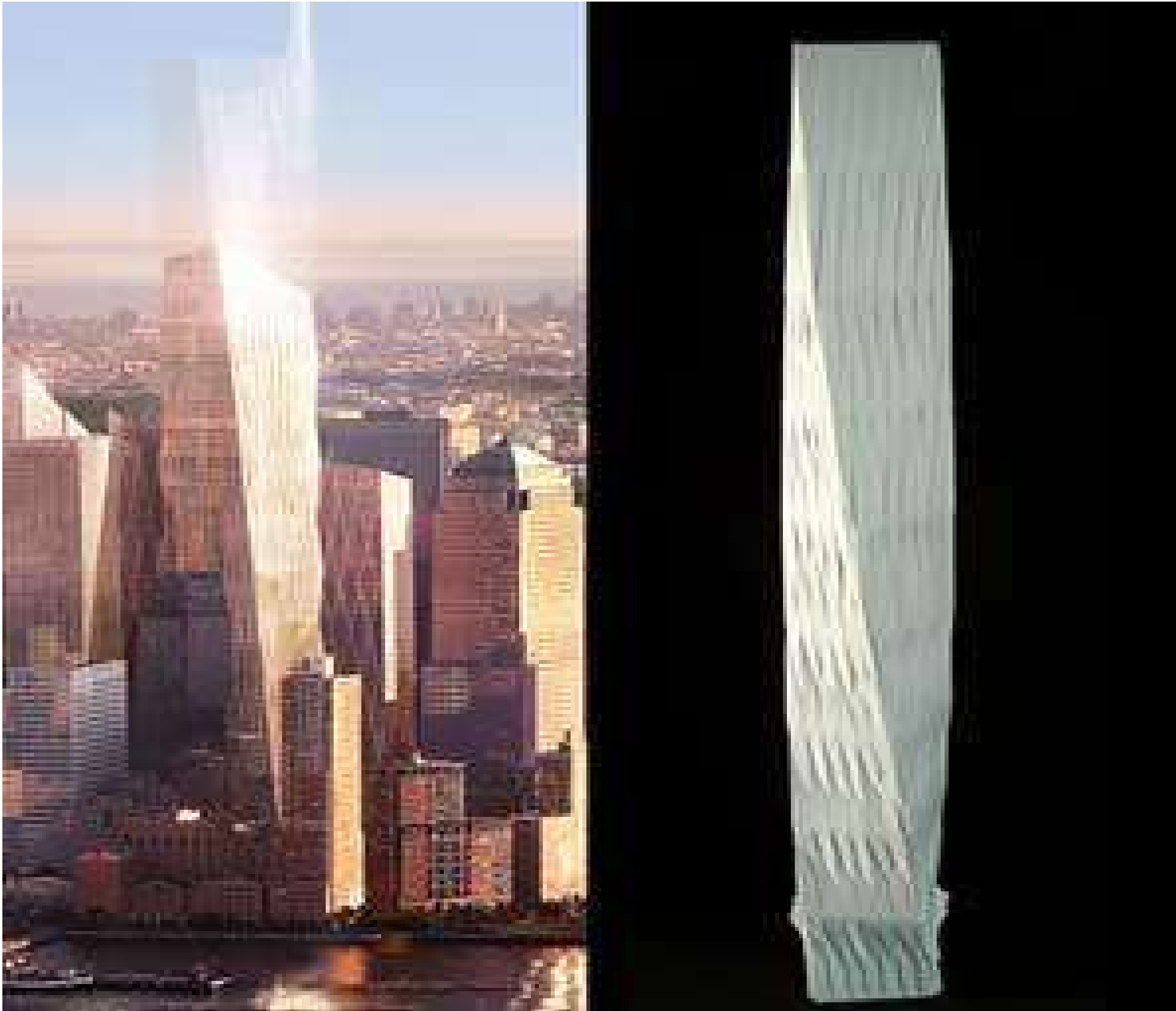
It's not entirely clear whether, from the standpoint of the musicians, CDs are advertising for the concerts or vice versa (there is no argument that the recording companies benefit from selling CDs).

Buildings



Left, NYC Municipal Building, McKim, Mead and White, 1913-1918. Right, Moscow University, Lev Rudnev, 1948-1953. Stalin admired a picture of the NY building; at that time this was as good as a direct order.

Architecture



Left: David Child's design for the Freedom Tower.

Right: Thomas Shine's 1999 student design for an Olympic Tower for NYC.

So far, Shine is winning



Just to be clear, Daniel Liebeskind is not involved in the suit: his design (left) is no longer relevant.

It is important that Childs was a judge of the Yale competition; for unpublished works, copyright infringement requires an explanation of how the infringer had access to the material copied.

Current Freedom Tower design



Judge Thomas Mukasey has let the lawsuit proceed; the design has changed again, to something that looks like other Skidmore-Owens-Merrill designs.

It doesn't really matter that the student got the idea from Cesar Pelli (teaching at Yale then) nor that the twisted grid design is originally by Fazlur Khan.

It may matter that Richard Meier has said that the designs are not similar.

Type fonts

Europe allows type fonts to be protected; the US does not. There are companies in the US that make their business selling duplicates of well-known fonts. Since the US does allow trademarks of font names, this is why you see “Swiss” or “Geneva” as a font name when you expect to see “Helvetica”. Arial is another Helvetica (well, actually not, same widths, mucked-up design).

So you would expect that all type font innovation would take place in Europe, if the economists were right.

But in fact the US leads: type font design today is tied to new kinds of printers, and the printers appear first in Silicon Valley, so the type designers are in California (e.g., Charles Bigelow, designer of Lucida).

Microsoft

“Software piracy threatens to rob our cultural pioneers of their incentive to keep bringing us the best in everything they do. Microsoft is committed to preventing piracy from hurting legitimate software users, ...” (from the Microsoft website)

Yet Microsoft uses Arial, an imitation of Helvetica; and is now doing the same thing again, using Segoe instead of Frutiger and Book Antiqua instead of Palatino. (Although they now offer the real alternative, perhaps because Adrian Frutiger and Herman Zapf, the designers of the original fonts, are still alive and complaining).

Font imitations

Helvetica is one of the most familiar fonts in the world; it is the font of US income tax forms and New York City subway signs, for example. It was designed by Max Miedinger (1910-1980) in the 1950s, although it is certainly related to early fonts such as Akzidenz Grotesz (Hermann Berthold, 1898). Monotype had Robin Nicholas create an imitation, Arial, in 1982. You can tell when a font is an imitation because all the letter widths are the same, meaning that if a substitution is made the resulting document will have the line breaks in exactly the same place.

There is nothing illegal about this in the US (there was a European lawsuit over the similarity of Segoe and Frutiger, which Microsoft defended by claiming Frutiger had not been properly copyrighted and then by changing Segoe to be a little more different). But it's hardly a strong moral position. Apple, by the way, licenses Helvetica.

And how much did Linotype want for a license to the real Frutiger? One cent per copy of Windows (disputed).

Font comparisons

[Helvetica™](#) —

Linotype Font Family — 35 styles — from \$2

the lazy

[Arial®](#) —

Ascender Corp. Font Family — 6 styles — fr

the lazy

[Gill Sans™](#) —

Linotype Font Family — 15 styles — from

the lazy

[Futura™](#) —

Linotype Font Family — 21 styles — from

the lazy

[Palatino™](#) —

Linotype Font Family — 14 styles — from \$21.00 Az € Ć

the lazy dog

[Book Antiqua](#) —

Monotype Imaging Font Family — 4 styles

the lazy dog

[Times New Roman®](#) —

Ascender Corp. Font Family — 4 styles — from \$30.00 Az €

the lazy dog

[New Century Schoolbook](#) —

Linotype Font Family — 6 styles — from \$21.00 Az € Ć Я ђ Σ α

the lazy dog

If you ever want to tell them apart

There are some very subtle differences between Helvetica and Arial.

The easiest one to see is in the lower case “t”. Here are enlarged versions, Helvetica on the left. Note that the top of the “t” is flat in Helvetica and slanted in Arial. Also note the bottom right extension of the letter “a” in Helvetica.

tap

tap

Ramen wars



Jealous noodle chef takes revenge

From Richard Lloyd Parry in Tokyo (*The Times, London*)

YEAR after year, as Yoshiro Haga's wealth and fame increased, his old friend and mentor, Toshio Kawashima, could only look on in jealous fury.

Mr Haga's business grew and expanded while his friend sweated unrecognised in his single shop. His face appeared on television and in magazines, while the older man laboured in obscurity. Yet the secret formula on which Mr Haga's success was based had been given to him by Mr Kawashima. Finally the sense of resentment became too much.

One night, Mr Kawashima and a colleague picked up Mr Haga, tied him up, put a bag over his head, and drove him around for six hours beating him up, to teach him what happens to those who steal secrets. Yet this dispute was not about industrial chemicals or a cure for cancer, it was over a recipe for Japanese noodles.

On Tuesday, Tokyo police arrested Mr Kawashima for the kidnap and assault of the man acknowledged as the creator of some of Japan's finest ramen, or noodle soup. Mr Kawashima is said to have told police: "I taught him everything he knows about making a good soup and running a business, but he never greeted or thanked me. So I thought I'd make him taste a bit of pain."

Recipes

Prawns, pureed with transglutiminase, extruded into noodles, and served with smoked yogurt, paprika and nori. Served in New York at “WD-50”, chef Wylie Dufresne. Then appears on a menu in Melbourne at Interlude, chef Robin Wickens. Is this really “one of the most serious issues facing the global culinary community today”? (eGullet). Dufresne forgave Wickens, partly because he got the idea from UK chef Heston Blumenthal.

Would we have better food if chefs could not copy each other's recipes?

Playwrights and songwriters

Dramatists have complete control over their works: they can choose who is allowed to perform them, and the more successful ones do pick and choose which theatre companies they will allow to do them.

Songwriters are subject to a compulsory license. If you think you can sing “My Way” better than Frank Sinatra, you are free to make and sell your own CD, as long as you pay 2 cents per disk to Paul Anka (the songwriter). For a current song it’s 7 cents, see the Harry Fox website.

Would anyone looking at the relative health of the market for straight plays and pop songs say that music is suffering?

What is the impact on us?

More and more permission is required to do anything.

There is a bias towards big companies that already own large portfolios.

It's a step AGAINST the Internet as a place to encourage a great deal more individual creativity.

It's a way to increase the importance of mass media.

Suppose fashion designers get copyright. What effect do you think this will have on the clothes you can buy?