

Review of Copyrights and Copywrongs

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Siva Vaidhyanathan's *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity* argues against the current trends in copyright and so called "intellectual property" primarily through historical case studies. Examining the foundation of United States copyright law, especially in contrast to its European antecedents, Vaidhyanathan shows that the initial rationale for copyright law by the founders of the country was an attempt to balance the needs of creators and consumers of intellectual works in order to promote the progress of arts and sciences. Moreover, this notion was essential and vital in the history of most of the cultural life of the United States. Despite this, the trend has been to make copyright more restrictive and tip the balance towards the holders of copyright, at the expense of the larger society that uses intellectual works and the creators of new works. Vaidhyanathan argues that copyright is best at promoting science and art when it is less restrictive. Finally, the very notion of "intellectual property," and the recent international legal infrastructure being created to protect it is disturbing and potentially very dangerous.

Vaidhyanathan does not advocate the abolition or abandonment of copyright, but rather for what he calls "thin" copyright - "just strong enough to encourage and reward aspiring artists, writers, musicians, and entrepreneurs, yet porous enough to allow full and rich democratic speech and the free flow of information." (p. 5) Although this notion is rather vague, the book does clarify it somewhat by pointing out where "thin" copyright and borrowing of ideas to further new expression was good, and where thick copyright has been used to stifle expression. The book focuses on empirical "case studies" including: the evolution of literary copyright and Mark Twain's peculiar role in it, the emergence of motion picture and music industries, the court decisions thinning and thickening copyright - specifically the idea vs. expression dichotomy, selected history of the intersection of jazz, blues, and rock music and originality issues, and finally rap music's use of sampling older musical elements and the broader issue of postmodern reuse of cultural artifacts to create new expression.

The trends in copyright outlined are clearly part of a larger trend, the change

from information and cultural products as a public good to a large, private, business enterprise, that is one of the overarching themes of this class. Most of the book focuses on the effects of copyright and related law on the creation or inhibition of new creative works. The concept of the future building on past creativity is something mentioned frequently by Larry Lessig as the impetus of the Creative Commons project. The "Copyright as Cudgel" piece discussed in class is actually excerpted from the afterward of the book, and discusses recent issues such as the Digital Millennium Copyright Act (DMCA,) the Eldred case and perpetual copyright, and other important issues for library professionals to consider. The book also discusses the attempts by the WIPO to allow "databases" of information to be protected intellectual property, which relates to our class discussions on the privatization of government information in particular. Is it possible to "own" a collection of facts? Traditionally it has not been, but corporate content producers are arguing that the difficulty in collecting it necessitates some form of "property ownership."

Since the book is primarily interested in large, consumer culture examples, it does not focus on some of the issues in the academic world related to copyright. In particular, the sorts of issues brought up by John Willinsky in "Copyright Contradictions in Scholarly Publishing." When scholars, who specifically are exempted from work-for-hire laws in order to promote learning and knowledge dispersion, so commonly sign over the copyright to their work to large corporations, clearly there is something strange going on. While Willinsky argues for a free and open access policy for the work, this book does not go nearly as far in prescribing such a drastic remedy to the general problems in copyright.

While the book does go on at length about differences between US, African, and Caribbean cultural traditions of sharing, it fails to go into any depth about recent experiment in free culture. There is a brief mention of Richard Stallman and the GNU project (p. 155-156) but nothing about the successes and failures of the Open Source movement, simply that the mainstream still considers Free and Open Software principles "fringe views, even though the software the inspired and enable had worked its way into the mainstream of the computer industry." (156) First, I dispute this interpretation of the events, but even granting that it is true, it seems that if someone is advocating a very "thin" form of copyright, and their work is being used and built upon, but their views and they themselves are marginalized and considered "fringe," what does that say about advocating thin copyright?

The book's strict focus on consumer culture, and in particular the creation of consumer culture, is perhaps one of its weakest points. In some sense, the class has this weakness as well. Most of the arguments made against strict copyright and extra-legal copy-protections afforded by the DMCA all basically derive from the "information as a public good" theory, or overarching democratic notions. It often focuses on content creators, and their troubles in borrowing from the past to create new works, something that may not resonate as well with people who do not create intellectual works, nor see the connection between older works and newer ones. An equally important, and in my view far more persuasive argument to a larger portion of people, is to focus more on the

users of intellectual works. For example, focus on the Supreme Court protected right to "time-shift" television programs - and how the DMCA could make that impossible in new HDTV systems. To be fair, this is mentioned in the book, but not until literally the second to last paragraph of the afterward. (p. 255) Frankly, this is going to mean a lot more to most people than whether people can write transformative stories using characters from Vladimir Nabokov's books, and when it will be legal.

While the book is extremely well researched, it seems to lack a certain cohesion. While it is apparent it fits into this larger trend of information privatization and the rise of the business of culture, the connection to those issues seems ignored in the book. The overemphasis on historical details seems to detract from what is the real thesis of the book, and sometimes the connections between these historical case studies are not as clear as they should be. Finally, the book seems in many cases to be preaching to the choir. While the supposed central thesis of the book is for "thin" rather than "thick" copyright, it seems to me the arguments copyright holders make for "thick" copyright today are not really given any serious credence, and they certainly should be since the book advocates "balanced" copyright.

1 Works Referenced

- Lessig, Lawrence et al. Creative Commons. April 15, 2004. [<http://www.creativecommons.org>].
- Vaidhyanathan, Siva. Copyrights and copywrongs: the rise of intellectual property and how it threatens creativity. New York: New York University Press, 2001.
- Vaidhyanathan, Siva. "Copyright as Cudgel" Chronicle of Higher Education, August, 2002
- Willinsky, John. " Copyright Contradictions in Scholarly Publishing ." First Monday 7 (11).