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Connections

If Books Are on Google, Who Gains and Who Loses?

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In 1709, Daniel Defoe compared them to "House-breakers," "High-way Robbers," and "Pick-Pockets," not sounding that different from the way software makers, movie producers and writers sound today when they speak about copyright pirates.

Why, Defoe asked - at a time when authors had no rights to their own work - should there be laws against one class of villain, and not against those who steal another kind of property created "after infinite Labour, Study, and Expence"?

Why, his colleague at arms Joseph Addison asked, should "Mechanick Artizans" be able to reap the "Fruit of their Invention and Ingenuity without Invasion" while a writer who has "studied the Wonders of the Creation" has "no Property in what he is willing to produce"?

Such were some of the earlier clamors for authors' rights. The latest can be heard in debates about Google Print, an enterprise in which Google is scanning books from five major research libraries, along with submissions of publishers, to create a searchable database of the written word. In September, the Author's Guild, a trade group representing writers, sued Google, claiming "massive copyright infringement." The Association of American Publishers has also sued Google over its project, which just resumed after being suspended for a few months while the company re-examined the issues. Last month, a competitive group, the Open Content Alliance (which includes Yahoo and Microsoft), announced plans to scan collections of other libraries, while trying to accommodate the objections made to Google.

The controversy promises to erupt on Thursday at 7 p.m. at the New York Public Library's Celeste Bartos Forum, when the debate will be joined by members of the guild, the publishers' association and Google. Also in the fray will be Lawrence Lessig of Stanford Law School, Chris Anderson, editor in chief of Wired Magazine, and Paul LeClerc and David Ferriero from the library (which is participating in Google Print).

But as I argued in a version of this column in The International Herald Tribune last month, contention is commonplace during eras of technological change. When Defoe and Addison were demanding consideration in London 300 years ago, the right to "copy" or publish any book was held not by the author but by members of London's Stationers' Company - booksellers and printers - who held a monopoly on that right in perpetuity. That seemed reasonable during the century after the introduction of the printing press and the considerable expenses needed to print, distribute and sell a book to the small literate public.

But by the beginning of the 18th century, printing was becoming less expensive, international and provincial publishers were offering competition, literacy increased and authors grew in public stature. So over the next half-century, British laws limited the control of the Stationers and expanded the rights of authors, while also putting time limits on all forms of control, creating what became the public

domain.

Then came another wave of technological change: the industrial revolution. And similar controversies erupted. Inventions were once relatively immune from copying because of the craft they required; execution could seem more difficult than coming up with the idea. Once manufacturing was mechanized, though, the idea itself could become vulnerable, leading to both increased governmental control and increased industrial espionage. Britain prohibited the export of machinery while the fledgling United States welcomed insiders with information from there.

Now, just as increasing trade and decreasing costs led to the breakdown of the Stationers' monopoly in the 18th century and to an increase in industrial espionage in the 19th, the Internet's near elimination of costs for the transmission and sifting of digital media has led to another wave of copiers and protectors, along with accusations of theft and heated debates over file-sharing, copy-protection and licensing.

But during the last decade the debates have had a different character. The self-described "progressive" side has challenged copyright enforcement and even argued for its radical diminishment. This attempt to minimize existing controls, though, is imagined not as a triumph for authors (as was initially the case in the 18th century) or as a triumph for profiteers or national ambitions (as in the industrial espionage of the 19th), but as a form of liberation.

In many such arguments, lines are starkly drawn and echo older ideological battles: idealism confronts materialism, socialism confronts capitalism, communal values confront individualism. Challengers of copyright and patent legislation often portray themselves as liberators, bravely opposing a greedy global corporate culture that tries to claim each bit of intellectual property for itself the way imperialist explorers tried to plant the motherland's flag on every unclaimed piece of land. Meanwhile, advocates of tighter control over copyright see things very differently, viewing this attack as an assault on the rights of inventors and writers, undermining those who invest their time and labor to answer human needs and desires.

In part, the ideology of liberation evolved out of libertarian and utopian hacker culture (which also gave birth to recreational piracy). An international counterculture developed around the new technologies sometimes spurred by figures who had also been active in the political counterculture of the 1960's and 70's. That spirit led to advances - like the development of "open source" software in which programmers have contributed their energies to shared projects. It has also led to well-traveled mantras like "Information Wants to Be Free" and to arguments more focused on restricting those who attempt to control than those who attempt to copy.

But the categories are all wrong. Organized information - information given shape and meaning - is never really free. And the virtues of "open source" software are not simply that it avoids corporate ownership. The operating system Linux, for example, has succeeded not just because varied individuals are freely contributing to its evolution, but also because companies are supporting it, and panels of overseers and a strict organizational procedure govern its specialized licenses.

Technology also keeps unsettling the categories. Some new forms of control will be needed to prevent unrestricted copying, but technological innovation will undermine attempts to apply too much control. Some flexibility is needed to prevent the stifling of communication and commerce, but technological innovation will foil those who believe it should not exist at all. This doesn't make things easy; it makes them unpredictable.

This is clear in the Google debate. Google, which is engaged in a project that was sci-fi fantasy two decades ago, is essentially being accused of piracy, creating copies of protected works without prior

permission. But these are new kinds of copies, with very different uses; only books out of copyright will be fully available online.

The law has already judged search engines to be engaged in "fair use" when they index copyrighted material found on the Internet; now the issue is whether indexing copyrighted material not found on the Internet is also "fair use." Google has specified the extremely limited form such use will take for copyrighted library material: enough to allow a search that will provide information about the book (including places to buy or borrow it) and three citations restricted to small passages that should suffice to illustrate the book's importance or relevance to the researcher. More extensive reading would require purchasing the book from booksellers or publishers (though other payment models will be necessary, such as those being experimented with by Amazon). Individual books can be removed from the index, just as Web sites can.

This model will change over time. So will the notion of "copy." So will the practices of libraries, publishers and booksellers. It may not be too much to hope that so will the ideologies of copyright debate.

Connections, a critic's perspective on arts and ideas, appears every other Monday.