

LAWRENCE LESSIG INTERVIEW

How are coders themselves increasingly becoming lawmakers?

In implementing and choosing the architectures that will define cyberspace, you're implementing and choosing certain architectures to enable or disable values. So you're making political choices. What's troubling is when these political choices are made by entities that aren't responsible publicly; we then begin to worry about the extent to which this kind of private law making defeats public values.

How is commerce changing the character of the Internet?

The intended consequence of 'cookies' is to deposit little markers on your hard drive so that the website 'remembers' you and what you want to buy, which makes it easy to shop online. The unintended consequences include the fact that it's now much easier to track people as they move around the Internet, and to target advertising or gather information from people. What are typically considered invisible markers are actually indelible markers. And as a result, it's now very easy to monitor and chase all online transactions. Those in business are not paid to think about privacy and personal liberty. Businesses do what they're paid to do: find ways to make it so they can sell stuff on the Internet. We need to think about the consequences of their techniques, and if those consequences corrode values that are important to us. If so, then we have to find ways to resist this.

What are the roots of intellectual copyright law?

Massive Change Radio is a project by Jennifer Leonard, Bruce Mau Design, the Institute without Boundaries, and CIUT FM, Toronto.

People have an understandable view that the idea of copyright has been around for 200 years and that it has never changed. And so, when you see this explosion of peer-to-peer file sharing – which is said to violate copyright laws – most people’s natural response is to say, “Let’s stop the ‘theft.’” But in fact, there’s a long tradition to consider. There was once a powerful group in England called the Congor. They were a monopolist group that restricted the spread of knowledge by keeping prices of books high. Then along came the Statute of Anne, which was designed to promote education and learning by limiting copyright to 14 years. Its effect was to basically tell the Congor that their government-granted monopolies would be over, and they would have to compete in the marketplace if they wanted to continue to prosper. As a result of its implementation, for the first time in English history, the works of Shakespeare, for example, were no longer under the control of monopoly publishers. Works became free and the tradition of free culture was really born.

What do the open source and free software movements of today have in common with the Oxford English Dictionary?

The OED was explicitly a collaborative process. It got born when there was an announcement in the newspapers around England that said, “We want to put together a peoples’ dictionary” – an empirical dictionary. It wouldn’t try to tell people how they were supposed to speak; it would try to figure out how people were using the English language and catalogue that so there would be a common reference point when people were trying to understand what the language was or how it had changed. So they sent out a request for volunteers and literally got thousands of volunteers across England to begin to produce little note cards of the usage of the English language. These notes were sent to an editor who went through them all and collated the work into what eventually became the OED. This was the most explicitly open source publishing

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project that we had before the production of the Free Software Foundation's new Linux operating system. And it's an example of creativity that I think is not limited to software dictionaries but is common in many areas of creative life.

So your interest in copyright is not exclusive to cyber culture?

The war in cyberspace over copyright has increased the regulations of copyright, but the burden of those increased regulations is not just felt in cyberspace. Unfortunately, creators everywhere feel it. This is the aim of the free culture movement: to try to remove the unproductive, burdensome restrictions so that we can get back to a world where it's easy for creators to create. Especially when technologies like the Internet enable a wide range of creators to create.

Was it Walt Disney who changed everything?

Walt Disney's greatest work built on the public domain. Walt Disney took the stories of the Brothers Grimm and retold them in a warm and fuzzy way, and captured the imagination of many generations of Americans. He was free to take those stories and retell them in the way that he did because the Grimm fairytales had passed into the public domain. This was Walt Disney's technique – and it's been the technique of the Disney Corporation all the way to the present. Because Disney has been so successful in extending the terms of copyright, nobody can do to Walt Disney what Walt Disney did to the Brothers Grimm. Nobody can build on top of Disney's work in the way that Disney built on top of other peoples' work. And that change in the basic bargain of copyright is what I think has been most destructive to the way in which free culture has evolved. Free culture has always depended upon the Walt Disneys of the world having the freedom to build without seeking permission upon our past. That freedom has now been removed by lobbyists, who convince Congress that a better way to have a

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culture is to require that you first get permission from corporate owners.

What do you mean when you say, “A time is marked by the ideas that are taken for granted”?

If you really want to understand a culture, don't look to the things people argue about but, instead, try to understand the things they take for granted. I believe there's an important role to be played by copyright, in creating incentives for a culture to be developed, but we have, almost subconsciously, adopted an extreme vision of copyright protection. The result is that we are destroying the very opportunities that copyright was originally intended to enable.

What are your thoughts on Copy Left?

Copy Left is the creation of Richard Stallman and the Free Software Foundation. They use the rules of copyright to not limit the spread of culture but guarantee that creative work is freely available for people to build upon.

How is Microsoft responding to this?

Microsoft, of course, is a company that was built entirely on proprietary software, not free software, and so it's threatened by the extraordinary growth and employment of free software. Both by governments and commercial entities, who find, for example, the GNU Linux operating system to be just as good and in many ways better, and certainly cheaper, than the Windows operating system. Microsoft has been very keen to drive governments away from the GPL by, at various times, suggesting that it would destroy the country's software industry and claiming that it was an unfair business practice for the government to prefer open source or free software versus proprietary software.

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Your thoughts on the future?

I hope the future is one where people increasingly embrace the idea of making content available on freer terms than content is available now. I am the chairman of something called the Creative Commons, which enables people to mark their content with licences that signal freedoms associated with the content, just like the Free Software Foundation tried to do with software. My hope is that we get a much wider range of adopters to this model, so that the extremism of All Rights Reserved, which was Hollywood's vision – versus No Rights Reserved, which is the kind of anarchist's vision and is no longer what defines the debate – is replaced by something more moderate, something that enables artists to build and share content, but also compensates them for their creativity.

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