

Offset	Topic
00:17	<ul style="list-style-type: none"> • Intro
04:00	<ul style="list-style-type: none"> • Word of the Week: computron
	<ul style="list-style-type: none"> • http://www.catb.org/jargon/html/C/computron.html
06:08	<ul style="list-style-type: none"> • Rant: Is Fair Use a Right?
	<ul style="list-style-type: none"> • Disclaimers <ul style="list-style-type: none"> • I am not a lawyer or a scholar • Trying to understand the issues for myself • Have been studying this for some time, conclusion will not be surprising • May even see this rant as a rationalization, not an exploration • The answers are never as simple as anyone represents • I may have missed important points, questions • If you want to persuade me otherwise, convince me that my interpretations of the original values is wrong • What is a right? <ul style="list-style-type: none"> • a moral or legal entitlement to have or obtain something or to act in a certain way • Two kinds, actually • Natural <ul style="list-style-type: none"> • Cannot be taken away from the holder • Also cannot be given away • Free speech, freedom of religion • Non-natural, through social contract <ul style="list-style-type: none"> • Primarily to enter into contracts • But also right to petition institutions of government • Right to private property expressed in Constitution as natural right • Would expect to be a non-natural right • Property seen as primary means for exercising other natural rights, pursuing happiness • Is copyright a right and, if so, what kind? <ul style="list-style-type: none"> • The ability to create works is natural • Copyright say anything about the right or ability to create • It grants the ability to exclude use of something already created • Exclusions are governed by contracts, like non-natural rights • Copyright has become a default contract of exclusion between the creator, public • A means of securing happiness, exercising natural rights • So it can be seen as a right, but a non-natural right • Is fair use a right and, if so, what kind?

Offset

Topic

- In the absence of copyright, more of a natural right, anyone can re-use creations
- Is this "fair" use, though? Fair implies consideration for creator
- Copyright and fair use are definitely mutually limiting
- Is fair use also a form of general contract between a creator and society as a whole?
- Does condition use, much like clauses of a contract
- More open to interpretation, though
- As a non-rivalrous good, re-use of creations is more of a natural right
- Jefferson quote: He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me. That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density in any point, and like the air in which we breathe, move, and have our physical being, incapable of confinement or exclusive appropriation. Inventions then cannot, in nature, be a subject of property.
- Creators can protect their creations by not sharing
- Copyright and "fair" use are about rules for sharing
- Fair use, as such, then is a non-natural right, balances copyright in re-use for pursuit of happiness, exercise of natural rights
- Is the copyright about perfect control?
 - Fair use is not the only exception
 - Original definition was limited in time
 - First sale doctrine
 - Hard to argue that at some point, under some circumstances, copyright ends
 - If copyright is not meant to be perfect control, what value is supposed to balance it?
 - Fair use for promotion, criticism while work is commercially active
 - Public domain eventually as a common good
 - First sale allows further spread of work
 - Would indicate the spread, promotion of copyrighted works is a value
 - Also that public domain is meant to grow, always be making new, free creations available
 - Strongly resonates with Jefferson's premier quote on the subject
 - Schemes to effect perfect control, then, defy the idea of a balance between rights
 - Creator is not meant to be able to exclude all uses
 - Would you trust a machine to mediate any other kind of contract?
 - This is why DRM rankles

- Argument of alternate access to analog media rings false
- If the expression in one form is not perfectly controlled, why would the expression in another form be any different?
- Is fair use obsolete?
 - Argued that fair use is just an expression of certain values
 - Is it the only way to express these values?
 - Micro transactions, Solveig Singleton from TPW, PFF summit
 - <http://www.techliberation.com/archives/042761.php>
 - If fair use is an expression of public good as a value, then economic arguments are insufficient
 - Why would you pay in order to promote a work?
 - Main criticism seems to be that fair use is argued after the fact in court
 - That courts will always lag technology is a given
 - The alternatives are limited if fair use cannot be machine mediated
 - Licensing every use, even for promotion and criticism, is inconsistent with imperfect control
 - I think this argument proceeds from a flawed assumption
 - Perfect control seems to be a response to perfect, and cheap, copies
 - Perfect copies have always been possible
 - Text is by definition digital--discrete, with printing press and decent proofing, can create perfect copies
 - Printing presses were not traditionally cheap
 - Perfect copies already covered, that is an issue of piracy
 - A disputative framework is all that is left between poles of perfect control, perfect copy
 - Maybe the criteria could change, be made more clear?
 - Vested interests on both sides, tons of court rulings
 - These are not easy to discount
- Fair use is a right, a set of values worth protecting
 - The only way to judge it is case by case
 - A rights holder can always give permission in the absence of clear fair use
 - Recognition of values of promotion, public good should inform rights holders as much as control
 - <http://www.locusmag.com/2006/Issues/09DoctorowCommentary.html>
 - Involvement of organizations, not individuals, dilutes this appreciation of values
 - Changes in law have eroded the limits on copyright meant to preserve these values

- Contact me
 - Email to feedback@thecommandline.net
 - Web site at <http://thecommandline.net/>

Offset**Topic**

- IM to command.line@skype
- Listener comment line is 360-252-7284
- del.icio.us tag is "for:cmdln"
- <http://twitter.com/cmdln>
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