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## EDITORIAL:

### Patience and the Possibilities of Collaborative and Derivative Expression

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Human cultures have deep roots, put down across millennia of shared experience. Over time, societies develop detailed systems of law, morality and social conduct to protect those cultures, and these frameworks properly adapt only gradually over time. In some cases, changes are enacted self-consciously (as with law), while in others they occur organically (as with evolving norms of social conduct), but in neither case are they apt to morph abruptly.

That is, until now. Increasingly, fundamental and sustaining changes are occurring in the world around us that are comparatively sudden, and therefore present greater challenges to existing systems. Because the cumulative effect of changes that occur deliberately and slowly tends to go unnoticed, we may be tempted to think of abrupt change as being, at best, a necessary evil.

And indeed, much change can be unwelcome and daunting, such as the need to deal with the pressures of increasing population and decreasing natural resources. But other transitions can be liberating and beneficial - although still daunting to embrace. When this happens, we face the dual task of applying the strengths of our historical systems and values to address new realities, while at the same time resisting our predisposition to allow historical biases to stand in the way of embracing the opportunities of the future.

One such liberating and beneficial opportunity I will call the greatly expanded potential for “collaborative and derivative expression” made possible by the Internet. By this I mean the ability to not only share and build upon ideas, but for trans-national, self-selecting communities to form to collectively instantiate them, often incorporating the work of others as quickly as those modules are created. The result can be discrete works (e.g., source code projects involving from a few individuals to thousands of developers), or more diverse, affiliated works of authorship (such as the Wikipedia, with its increasing number of largely independent language editions). Any of these efforts would have been impossible to imagine as other than geographically local, slower moving projects in the very recent past, if indeed they would have existed at all.

New opportunities, of course, are apt to raise new questions. Looked at from the outside in, if a project does not carefully record the authors of discrete contributions, who can or should be held liable for infringement or libel if unauthorized reuse occurs or defamatory statements are made (and if the answer is no one, then who can be protected from such acts?)

Viewed from the inside out, other issues emerge: who should own works of collective expression in order to maintain them into the future, and how? Are the rights of free speech of those that contribute to works of collective expressions in any way different or weaker than those of the sole author of a work of self expression? Should the rules governing fair use under copyright law be more liberal when creating Web-based, interactive "mashups," simply because the Internet enables far richer opportunities for expression than were conceivable in a world possessing only printed pages?

And in each case, absent amendment by legislatures or reinterpreting in the courts, will existing laws dictate the "wrong" answers - answers that over restrict and under deliver?

To derive the best answers to questions such as these, it is important to recognize that virtually all rules that restrict human behavior involve a balancing between the rights of the individual and those of society. In short, the specifics of many laws have been determined not empirically and universally, but subjectively and situationally, based upon the assumption that a certain amount of benefit can be gained (or harm avoided) by society in exchange for imposing a certain degree of restriction on the individual. When the facts underlying such equations change, it becomes appropriate to reexamine whether the location of the legal boundaries that evolved in the past should be relocated to better serve the best interests of all concerned in the future.

Is now such a time? The answer is both yes and no. Yes, because the benefits of both collaborative and derivative expression are becoming obvious. But also no, because the exact new locations for such historical boundaries is not yet obvious. Instead, what is most needed is patience and forbearance on the part of the traditional owners of rights in intellectual property and those charged with protecting those rights, in order to allow the rich and rapid experimentation that is ongoing today in a wide variety of projects and settings to continue.

Such patience, I believe, will be well rewarded. What we are seeing on a daily basis today is a fascinating process of organic adaptation as the marketplace explores new models. Many content owners, at first concerned by the ease with which their content can be copied, are learning to benefit from this same activity. Others are willingly embracing free and open source software licenses, Creative Commons licenses, and open content publishing models that use existing laws as a means to encourage reuse of the fruits of their labors rather than to tax or discourage such use. The result is a creative ferment of collaboration, innovation, advancement and opportunity for all concerned.

If this exploration is too tightly restricted by new laws, or if courts too strictly apply old laws, this process could be inhibited, or, worse yet, brought to a halt entirely.

That would be a great tragedy, as the Internet has already proven itself capable of providing an unparalleled vehicle for sharing knowledge, creativity and opportunity.

Disruptive technologies, by definition, stir the pot, upsetting the status quo and applying stress in areas where all may have seemed in balance. Until things once again settle down, that stress may be extremely unwelcome and painful. But attempts at putting the genie back in the bottle are rarely successful. Moreover, the wishes that are within the power of the same genie to grant can be lost as well.

Clearly, the Internet has much more to deliver than we have yet to experience, or perhaps even guess. Where it will take us can hardly be presumed after so few years of wide use. With so much promise, it is certainly too early to set the promise of the future in the concrete of comprehensive laws enacted today. Indeed, it may be that if traditional content owners press too hard to protect their traditional rights rather than join in the creative exploration of this far larger stage, they may lose the most of all.

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