

## Preface to the Paperback Edition

This book describes a crisis in the entertainment industry, explores its origins, and compares possible ways in which it might be resolved. It was originally published in the summer of 2004. Since then, distressingly little has changed.

A few things are different—or, rather, a few trends already underway in 2004 have continued. Perhaps the most important is that online sales of digital audio and video recordings have increased considerably. The best-known and most popular of the online sellers, Apple's iTunes MusicStore, continues to grow, and new businesses using similar strategies spring up weekly. But two forces are limiting their success. The first is that almost all of the online sellers wrap their products in technological protection measures (TPMs) in an effort to discourage purchasers from redistributing them. TPMs have several disadvantages (explored in Chapter 4 of this book) from the standpoint of overall social welfare. Partly as a result, most consumers dislike them and are reluctant to purchase recordings that are subject to them. The second force is the continued availability on the Internet of very large numbers of unauthorized copies of recordings. It remains difficult for the new businesses to “compete with free.”

Another, related trend that has continued since 2004 is the tightening of the legal rules that seek to prevent the unauthorized reproduction and distribution of recordings. Chapter 3 of this book describes several ways in which copyright law was modified between 1990 and 2004 in order to strengthen the positions of copyright owners. Those reforms slowed but certainly did not stop unlawful trafficking in recordings. Consequently, in the past few years, copyright owners have sought—and sometimes obtained—additional legal protection. In the United States, the most important recent innovation

was the decision by the Supreme Court in the *Grokster* case, which made it easier for copyright owners to bring suits against intermediaries who “induce” copyright infringement by others. Some European jurisdictions have increased the penalties for infringement. And in China, a group of entertainment companies prevailed, at least temporarily, in a high-profile copyright suit against Baidu, the operator of an enormously successful search engine that enabled users easily to locate on the Internet unauthorized copies of recordings. These changes undoubtedly have had an impact, but have done far less than their sponsors hoped. The net result: in the music industry, the traditional market in CDs and tapes is declining faster than the new market of online sales is growing. Copyright owners are justifiably worried that they are driving toward a cliff. The major players in the film industry fear that they will soon suffer the same fate.

A more encouraging recent development is an increase in the frequency with which consumers are making creative uses of the digital recordings that come into their hands. Chapter 1 of this book contains several examples of such creativity and argues that it should be celebrated and fertilized. Many more instances could be identified today. But TPMs and a justified fear of copyright infringement have curbed this trend as well.

In short, the crisis described in this book has deepened since 2004, and the need to resolve it has grown. Somewhat more specifically, we need to identify a combination of legal rules and business models that will enable us simultaneously to realize the huge potential social and economic benefits of the digital revolution and to provide the creators of the entertainment products from which we all benefit reliable sources of income.

How are we to accomplish that? I remain convinced that the best solution would be a state-sponsored alternative compensation system of the sort described in Chapter 6 of this book. Last year, France came close to adopting a system of that general sort, but in the end backed away. There is some hope that Germany would institute such a regime, but probably not quickly.

So what are we to do in the meantime? In the last section of Chapter 6, I suggest how, even in the absence of legal reform, one might construct a private enterprise that would have many of the advantages of a government-run alternative compensation system. Since the publication of the book, a group of us have been working to build such an enterprise. The fledgling venture was nurtured by a generous grant from the MacArthur Foundation, but now is on the verge of flying on its own. Known as Noank Media, it aspires to create a world in which all Internet users pay, through their access providers, small amounts of money into a pot, in return for unlimited access to unencrypted digital recordings. The money in the pot is then distributed

to copyright owners in amounts proportional to the frequency with which their creations are watched or listened to. Companies seeking to implement these principles are now taking shape in both China and Canada. If successful there, similar enterprises may spring up in other countries. With luck, they may provide a solution to this increasingly serious problem.

*William Fisher*

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