# Cites & Insights:
# Crawford at Large

Volume 2, Number 14: November 2002 ISSN 1534-0937 Walt Crawford

## Perspective

## Blowing It: Music Publishers and CD-R

If you read "Copyright Currents" or my columns, you know I'm unhappy with what's going on these days in the name of copyright—but if you read carefully, you also know that I believe creators should be rewarded for their efforts and that stealing from Big Media is fundamentally no different than stealing from your neighbor. As with most issues, I'm somewhere in the middle, finding Richard Stallman and Lawrence Lessig almost as disagreeable (in some areas) as Hilary Rosen, Jack Valenti, Michael Eisner and their congressional stooges (Hollings, Berman and others). I also support some of Lessig's notions and actions—and, for that matter, Hilary Rosen may not be 100% wrong. [If you haven't read the Silver Edition, *Cites & Insights* 2:11, please do.]

That's background, irrelevant for regular readers. Foreground is the "PC Monitor" column I wrote for next March's *Online*, with commentary on unexpected reasons that I find my new PC exciting. The two are related—and in the process, I begin to wonder why the RIAA is so anxious to make enemies of people who should be good customers and have the money to carry out their desires. Patience; it may all come together in my usual roundabout way.

### It's all in the Mix

One unexpected pleasure with my newish PC is that I've gone back to making "mix tapes" after a 16-year gap. They're not tapes, of course; they're CD-Rs. Just as all of the songs on the old cassettes came from LPs that I owned, I use nothing but purchased audio CDs as source material for the new CD-Rs. Fortunately, with today's technology, it's a whole lot faster, easier, and more fun to make custom collections of your own material than it was back in LP and cassette days.

In my case, there are two good reasons to make custom CD-Rs:

- For long road trips and even for commuting, it's great to put together the most pleasing songs. That's the primary reason I made more than 150 mix tapes back then. For the driving-and-cruise vacation that explains the lateness of this issue, I prepared 10 CD-Rs, each with 78 to 80 minutes of music (21 to 24 songs), reflecting the 235 most suitable songs from 134 different CDs.
- For shorter trips and for use at home, it's nice to be able to edit CDs and combine multiple CDs from a single artist. I can't think of more than one or two artists where I find all of the songs on all their CDs that we own enjoyable—where we both wouldn't just as well skip through a few every time. Single-artist "mix" CDs can concentrate the good stuff and omit the drek. And, of course, an 80-minute CD-R can include as many songs as two typical CDs. The original CDs are in a safe place in case one of us changes our minds or we want higher-resolution recordings. (I've been ripping everything as 192KB MP3. My aging ears can tell the difference between 128K MP3 and CD or, worse, MP3 Pro and CD, but at 192KB I don't hear differences I care about.)

## Inside This Issue



I use slimline cases for the CD-Rs. Great for travel (twice as many fit in the same space) and seemingly more durable than jewel cases, they have one big disadvantage: no room for "rear-cover" inserts. A plain-paper printout, scissors, and an ultra-high-tech adhesive device (Avery Permanent Glue Stic or Eberhard Faber Uhu stic) give me workable song listings to accompany the snazzy disc labels MusicMatch Jukebox will create. If some of the source CDs for edited collections were in "twofer" jewel cases (where two CDs fit in a single-width case), I'll

put the originals in compact storage and print inserts for the case.

This is great stuff. The first time I put one of the new custom CD-Rs in my car radio, I was blown away by the improvement in sound quality over the old cassettes. We're more likely to listen to some of our favorite music when we're not pressing track-skip as often. And as I replace three or four jewel boxes with a slimline case, there's a lot more room for new CDs and new mixes.

## Don't Call Me a Thief, Don't Stand In My Way

I've already purchased some CDs that I might have skipped earlier—boxes and collected works where the "good stuff" just wasn't a large enough portion of the whole, although the price wasn't too awful. It's likely that I'll purchase more, particularly if prices for CDs come down to semi-rational levels. I'm much *more* likely to purchase more CDs because the combination of fast CD-R burners, cheap media, and good software makes it so much fun and so cheap to build the CDs I really want. (I figure $0.60 for the combination of CD-R, slimline case, self-adhesive disc label, and miscellaneous paper and ink. If I blow a burn—which has never happened at the drive's rated 24x speed—I'm out twenty cents.)

This is a win:win situation. Record companies sell more CDs and artists receive more royalties. Target and Office Depot sell more blanks, cases, label stock and ink. We get back in touch with some of the artists we used to love (and some newer artists), and with newer songs by those artists. I'd never heard Billy Joel's superb "And So it Goes," "Baby Grand," or "Lullabye (Goodnight, My Angel)" until I picked up *The Essential Billy Joel* as source material.

Who gets hurt? Nobody, as far as I can tell.

But I've heard voices from the RIAA camp that would call my CD-Rs inappropriate, just as they've said you really should buy a cassette copy of an album you own if you want to play it in your car. If I say that the publishers don't make CDs with the set of songs that I want, and that they stomped on efforts to make such services available? Other than a ludicrous claim of "artistic integrity" (increasingly ludicrous as songs are reissued in various cokmbinations), the only response is "We make the music. You buy what we make, the way we make it. Anything else is wrong."

If I believed that the extra money charged for music CD-Rs was actually increasing royalties for a wide range of recording artists, I'd pay the 3% extra that's represented by the Home Recording Act royalty. I don't believe that any but the wealthiest artists are seeing any of that money, and the typical surcharge is a whole lot more than 3%, but if the RIAA can demonstrate otherwise, I'll gladly send a check for an extra penny on each of the twenty-cent CD-R blanks that I buy. Heck, I'll make it a nickel.

I don't appreciate being called a thief. I am offended by suggested legislation that could, if I had a stable Internet connection, allow the RIAA's agents to look at my PC, see that there are 1,100 MP3 tracks reflecting commercial music, say "there's no *proof* that he owns all of those CDs" (how could there be?), and delete all the files, quite possibly trashing my PC in the process. With such proposed legislation, anyone with a PC, an Internet connection and MP3 files is presumed guilty unless proven innocent, with punishment carried out immediately, and no real way to prove innocence: A whole new chapter in American law. (Technically, I suppose you need file-sharing software for such a presumption, but file-sharing software comes with every current operating system.)

I *really* don't appreciate efforts to assure that I can't produce my own CD-Rs. Fortunately, those efforts seem to be receding in the U.S., at least for the moment—but the RIAA sees no conflict between the Home Recording Act and making such recording impossible, and we'll see future efforts to preclude copying without additional payment. Even if I didn't produce the CD mixes that I really want—and it's taken 15 years of CD ownership to start doing that—I surely would not appreciate a typical side effect of copy protection, that I couldn't use my most common means of listening to music (on my PC's sound system while I'm working).

We have enough money to buy as many CDs as we want. We have deep personal biases against theft.

We also have enough music already, if the music industry wants to go to such lengths to damage our names and preclude our enjoyment of the music we pay for. We both hate shopping, and it's remarkably easy to stay out of record stores and off of CDNow and its competitors.

Push us away hard enough, often enough, and eventually we won't come back.

Bibs & Blather

# The Sea of Cortez Ate My Homework

That's my story and I'm sticking to it. If this issue seems lumpy (two huge sections, one of them feedback) and less balanced then usual, blame Loreto, Santa Rosalia, Pichilingue, Mazatlan, Puerto Val-

larta, Cabo San Lucas, San Diego, La Jolla, Santa Barbara and Santa Maria. And, of course, the preparation that goes into going away for a two-week vacation—and coming back with 10 days to prepare a talk for the Charleston Conference. Our only real vacation this calendar year, entirely to places I've never been (except San Diego, and we were only there to go from car to ship and vice-versa). A cruise; since I'm still waiting for people to suggest that I write about cruising in *Cites & Insights*, I'll let it go at that. I believe Loreto may become a first-rate "ecotourism" low-key destination if they can avoid the excesses of Cabo and its Big Resort peers.

Sure, there's "Good Stuff" to be had—a couple of notes are already on disk and there's a stack of articles waiting to be reread and annotated. I'm sure I've missed some good stuff that came out in mid-October, but I always miss good stuff; *Cites & Insights* never claims completeness. "The Good Stuff" will return next issue along with a broader assortment of regular and special features. Meanwhile—well, there's a lot of assorted material relating to copyright, and Peter Suber's lengthy response to one piece of "The Access Puzzle" deserves printing in full. I'll see a few of you in Charleston at the end of the month.

# Copyright Currents

No single topic seems most prominent at this point. Instead we have a hodgepodge, with extremists on several sides arguing past each other, politicians assuming technological expertise they clearly lack, the hired guns of Big Media continuing to say outrageous things because that's their job—and once in a while, a hopeful sign. If the groupings seem arbitrary and overlapping this time, blame my two-week vacation or the scattered nature of the field. A hint: They really *are* arbitrary and overlapping in cases; I just couldn't see covering a ream of documents in one unbroken screed. As usual, commentary—opinion, if you will—is mixed with notes from articles, and articles are considered in chronological order within a section. Also as usual, "Big Media" is grossly unfair and oversimplified shorthand for the corporations most involved in pushing egregiously unbalanced copyright stances. The set of companies and associations included in Big Media varies over time and with the specific issue, but it's sometimes too clumsy to spell things out. (Sometimes, AOL Time Warner is part of Big Media, sometimes it's not; Sony is frequently part of Big Media but also one those helping to undermine Big Media efforts

First, the standing reminder. I have no idea what the situation is in Australia, and would not presume to suggest reasonable bases for legal arguments in that nation—but in the United States, the primary basis for copyright (and patents) is the following oldie but goodie:

> The Congress shall have power…To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive rights to their respective writing and discoveries.

## P3P: Preventing Peer to Peer, or Berman and Beyond

"Dear Colleagues," begins a July 15 letter to the CEOs of seven true Big Media firms—a response to *their* letter of April 12 "in which you ask your industry to help explore solutions to address the ongoing threat of piracy to motion pictures distributed in digital formats." (Almost as long as one of my sentences!) The letter—PDF, but you can probably find it—is from the Big B's of personal computing, Steve Ballmer of Microsoft and Craig Barrett of Intel. It's only two pages, but it's interesting, particularly in light of some later developments (see "Semi-Crippled Computing?" below).

Ballmer and Barrett note the "long and proud history" of hardware and software industries in advising the "content community" on technical ways to fight piracy. (Hmm. I typed "privacy" at first, a possibly Freudian slip.) Think DVD—where casual copying is essentially impossible, although professional piracy would barely be hindered.

But, as the BBs point out, "there is unfortunately no panacea-chip or cure-all piece of code that will stop piracy completely." Here's the real point on which technology firms disagree with Big Media:

> Peer-to-peer technologies constitute a basic functionality of the computing environment today and one that is critical to further advances in productivity in our economy. Any solutions to the problem of piracy must not compromise the innovations this functionality has to offer, and—more importantly, must first address the means by which unprotected content finds its way onto these systems in the first instance.

They go on to discuss the need for consumer education, enforcement of existing laws, ways to "harness the power of the Internet" for content, and addressing legitimate consumer expectations. Ballmer and Barrett put scare quotes around fair use—and this is the *only* use of quote marks in the entire letter.

When I first read the letter, I was encouraged. In the light of other developments, I'm not so sure. But that's another story. Meanwhile, an interview with Howard Berman in the October 2002 *Wired* makes his take on P2P networks clear: "There really can't be any doubt that their primary use is sharing millions, perhaps billions, of copyrighted works." So much for legitimate uses.

An August 9 Reuters story notes that a bunch of lawmakers "have asked…Ashcroft to go after Internet users who download unauthorized songs and other copyrighted material, raising the possibility of jail time for digital-music fans." A spokesperson said the lawmakers wanted the FBI to go after network node operators; that's not quite the same thing as "Download a song, go to jail."

David Segal had an interesting piece on *current* industry anti-P2P tactics in the August 21 Washington *Post*: "Spoofing frustrates music pirates." He discusses the recent appearance of "spoof files" on networks—"typically nothing more than repetitive loops or snippets filled with crackle and hiss." RIAA calls spoofing a legitimate way to combat piracy. I agree, as long as spoof files don't contain viruses: If you go looking for a file on someone else's computer that's reputed to be a copyright song, you have no legitimate complaint if you get 30 seconds of static. (Told you this was complicated.) Spoofing is one of the behaviors the Berman bill would legitimize—but it's not clear that spoofing is illegal now. If it can be traced back to record companies, people might be upset—but people who pay attention to RIAA are pretty upset already, so what's new?

As usual, this article makes the phony connection between rising blank CD sales and song downloading, as though nobody uses CD-Rs for anything but illegally-obtained songs. Backups? Custom mixes from your own CDs? Limited-run business and entertainment CDs? (I know RLG uses CD-Rs to ship out software, and I'm pretty sure that indie bands use them to sell "CDs" without the hefty upfront cost of mastering.) Since nobody's done any legitimate survey, there's no way of knowing what proportion of CD-R use actually relates to illegitimate P2P sharing. (Later, the story *does* note some of the legitimate uses for CD-Rs, along with a silly and probably unprovable claim about CD-R sales patterns spiking when "major new releases" come out. Wouldn't casual pirates buy CD-R spindles, not pay through the nose for individual discs? Otherwise, they're not only unethical, they're stupid.)

The story covers a lot more than spoofing. Hilary Rosen says that the recording industry has "been, with regard to enforcing our rights, pretty generous with consumers." Note the lack of any suggestion that consumers have rights over items they've purchased. Rosen claims they're looking for "a way to stop gross infringers, and there are measures we can take to prevent people from making 100 copies or uploading CDs for millions to take." Read that carefully, noting that true "gross infringement" is done via disc replication and sale, not by a college student copying 100 songs. The story goes on to note, "foolproof locks…don't exist in the digital realm." Segal also notes that the "ultimate goal" of recording companies is to get rid of audio CDs and replace them with inherently secure media. I love the mention of Ripflash: "Plug the $179 gadget into your stereo and it will convert anything that plays over your speakers—an LP, a cassette, a CD—into an MP3 file." Wow! Here I thought I'd have to buy a $5 cable from Radio Shack (two RCA jacks at one end, a stereo minijack at the other) and plug it into my sound card to do the same thing (via MusicMatch Plus or any comparable program). Instead, I can spend $179: ain't technology grand? The maker says, "there's no legal way to restrict that, that I know of"—but it's my belief that any real-world technology to satisfy CBDTPA requirements would, along the way, make the Ripflash useless.

Another Washington *Post* article from the same day notes the Berman bill, CBDTPA, and the letter to Ashcroft. Comments on the Berman bill include the note from EFF's Robin Gross that "This is more power than we give to law enforcement to go after terrorists."

In late September, Berman and colleagues attacked critics of his bill for "scare tactics," according to a Declan McCullagh story on ZDNet News. This was at the first congressional hearing on the bill, now called the P2P Piracy Prevention Act, and it was as open and balanced as most such hearings: Precisely one opponent of the legislation was allowed to testify. Hilary Rosen, predictably, accused opponents of "misinformation" and "irresponsible descriptions" of the bill (such as allowing "copyright vigilantism")—and yet, she gave no actual facts to suggest such misinformation. When people are authorized to disable, interfere with, block or otherwise impair nodes that they *suspect* are distributing copyright material, with no specification of allowed techniques and absurdly limited recourse, what else would you call it but copyright vigilantism? Another Declan McCullagh story, this one at News.com.com (that's the URL!) and dated October 22, says that Berman's aides may be listening to critics and might make his bill a little more reasonable.

As an incidental note, the July 2002 *EMedia* includes a quick report on a Jupiter Media Matrix survey showing that peer-to-peer downloaders are 75

percent *more* likely to buy more CDs than people who don't download. The RIAA says their research shows just the opposite—that downloaders buy less music. Make of this what you will.

In late August or early September, RIAA asked Verizon to identify a particular subscriber, and you won't be surprised to find that DMCA gave them the leverage to do so. Verizon is resisting on procedural grounds, and groups such as EFF and EPIC have filed briefs opposing the move. (Information from a Declan McCullagh posting at ZDNet News.) Doug Isenberg writes, "Is this the way to fight copyright infringement?" on September 4 at News.com, after a somewhat similar lawsuit had come and gone. That time, 12 Big Media companies sued four of the biggest Internet backbone providers to force them to block access to Listen4ever.com. No lawsuit was filed against Listen4ever itself. Can you sue the transmission company? Once again, "hello DMCA!" This time, the lawsuit became moot (Listen4ever disappeared), but there will be a next time. The **recommended** commentary makes sensible points without attempting to excuse piracy or theft.

Someone somewhere will doubtless take this story seriously: "RIAA sues radio stations for giving away free music." That's from *The Onion* for October 2, 2002, headlining a "news" story involving a $7.1 billion lawsuit against the nation's radio stations. If you can find this story, take a look; I must say that the Hilary Rosen "quotes" are fully in character—and the fact that *The Onion* finds this satire timely says a lot about the depth of RIAA nonsense.

Howard Berman himself offers a commentary on his act at FindLaw.com, posted October 1, 2002. (writ.news.findlaw.com/commentary/20021001_berman). He says he believes in a "carrot and stick" approach to dealing with "rampant P2P piracy"—but his statement that copyright owners "must offer reasonably-priced, consumer-friendly ways to access legal content online" is akin to my wishing for peace in the Middle East. Berman's providing a stick, period. He goes on to describe just how narrow he believes the bill to be. His take isn't quite the way I interpreted the bill itself, but maybe I'm wrong. **Read Berman's comments** yourself, then go back to the bill to see what you think.

Gary Shapiro of the Consumer Electronics Association offers a thoughtful set of comments on consumer rights and how you *can* "compete with free" in "The campaign to have copyright interest trump technology and consumer rights," available somewhere at politechbot.com. **Recommended**.

An October 16 ZDNet commentary from Cary Sherman of the RIAA responds to a Gary Shapiro speech (which may or may not be related to his politechbot posting). In the interests of fairness, I would also **recommend** that you read Sherman's vehement disagreement with Shapiro. As the headline says: "RIAA response—you're dead wrong."

## Copy Protection: Bad News and Good

The bad news first. Or, given the parties and the situation, maybe these are early warnings of potential bad news. To wit, Microsoft and Intel may have implemented or be on the verge of implementing partial lock-down systems to make Big Media happy—or maybe not.

I haven't heard much about Microsoft's Windows XP Media Center Edition, but a Joe Wilcox story on ZDNet News (September 3) and a David Coursey commentary at ZDNet's AnchorDesk (September 8) show the essentials. The specialized OS is for "digital entertainment PCs," and HP and Samsung both promised systems in time for the holiday season. If that's true, they should be in ads when you read this. The systems include a user interface for digital media, with a remote control; HP's versions should run $1,500 to $2,000. The systems will include TV tuners and digital video recording (DVR or PVR) functions in addition to the usual multimedia features. The rub: when you use the DVR functions, the programs are encrypted. You can burn DVDs, but they can only be played back on that particular PC.

Some analysts deride the product: "There's no way consumers are going to like this proprietary way of doing business." Von Ehman (an analyst for West Virginia and also a musician) says, "If you copy protect in any way, the kids will scream bloody murder…that would be suicide." The story notes that Sony's VAIO ships with DVR features and *no* copy protection (the players do get confusing, don't they?).

David Coursey's take is fairly clear: "Redmond [Microsoft headquarters] is perfectly happy to sell out its customers to keep the entertainment industry happy." The **recommended** column includes a variety of speculation as to Microsoft's motives.

An October 9 story in the Washington *Post* notes that Microsoft is already changing its tune: Media Center will create DVDs that will play on "any PC that runs Windows Media 9 Series player and the latest version of Windows XP," and by year's end users should be able to burn DVDs that run on set-top players.

Then there's Intel. According to a September 10 story in the Boston *Globe*, its next generation chips will include hardware antipiracy features. The fea-

tures are related to Microsoft's Palladium software initiative, another troubling possibility. This is the "post-Pentium4" chip, so at least we have a couple of years to hope for sanity.

Another twist in copy protection is the long-promised DataPlay medium, quarter-size optical discs with 500MB capacity—and built-in copy protection in prerecorded form. Some major record labels want to see DataPlay replace CD—but that's going to be a tough sell, even if the media are cute. (As of September 27, it's going to be an even tougher sell. DataPlay laid off half its staff in July after burning through $119 million. Most recently, the operation is entirely shut down.)

The good news, if we can believe a September 3 News.com story by John Borland, is that record labels are backing down on plans for copy-protected CDs in the United States. Apparently it's now the record *stores* that are hot for copy protection. That makes sense: They drive out anyone over 30 with blaring grunge rock or rap, and now they'll piss off everyone *under* 30 by pushing for crippled CDs. Since it's apparently record stores as much as the record companies that continue to *raise* prices every time sales go down, you might wonder whether industry executives have strong suicidal tendencies. The News.com story included the automatic RIAA claim that a 7% drop in CD shipments must come from piracy; high prices, a stumbling economy and crappy music can't possibly have anything to do with it. Borland says that labels may be holding off on copy protection but "their desire" hasn't diminished—and outside the U.S., people are apparently rolling over for this nonsense. Maybe those lawsuits and tough talk from Rep. Rick Boucher (D-Va.) actually did some good. The fact that copy protection doesn't really work—it shafts honest people who play music on PCs without seriously deterring even casual thieves—may or may not matter. Naturally, Midbar (a producer of copy protection technology) says people won't criticize copy protection once it's universal. Would you expect the company to say, "People will scream bloody murder, and it doesn't really work, but buy it anyway"?

## The Broadcast Flag and DTV Sagas

When you hear that consumer electronics and entertainment companies have agreed on a solution to protect digital TV, look closely. That's what Lauren Wiley did in an August 2002 news report in *EMedia*, and what she saw isn't pretty. The group, Broadcast Protection Discussion Group (BPDG), proposed an embedded broadcast flag—and proposed that *all* digital devices would be required to recognize the flag. Hear sounds of CBDTPA in the distance? The discussions were closed, apparently, and the supposed consensus masks a bunch of real issues. Hollywood wants to plug "the analog hole"—what I call the D:A:D cycle in my December 2002 "Crawford Files." That is, convert a digital program to analog, then back to digital, and any flags or watermarks should be gone. There's only one way to plug that hole, and it's pretty draconian.

The Consumer Electronics Association frets that the tens of millions of existing DVD players wouldn't be able to play new "protected" DVDs—but Hollywood, as you'd expect, is opposed to "grandfathering" those drives. Not at all incidentally, the proposed solution also makes all digital TVs that have been sold so far obsolete and possibly useless.

Rep. Billy Tauzin (R-Louisiana) released a draft of a DTV bill in September. According to Brad King's September 20 *Wired News* report, the bill includes the broadcast flag—and for removal of analog output from digital TVs, so that you can't record shows on VCRs.

### Related Print Articles

Booth, Stephen A, "Access denied II," *Sound & Vision* 76:7 (September 2002), pp. 80-4.

I cited "Access denied!" in an earlier Copyright Currents as a good discussion of CD copy protection and a refreshing change for a magazine that's traditionally sided with pay-per-use to the extent that it discussed consumer rights at all. This followup concerns HDTV, which may be both its weakness and the key to getting readers involved. That is, while the discussion concerns whether Hollywood will have complete control over how viewers can see, record, and copy digital TV (and particularly high-definition TV), the tools Hollywood wants—CBDTPA and its "friendlier" cousins—go far beyond digital TV.

**Recommended** as an entirely different perspective on some important fair-use and copyright issues. At the same time, I believe that SonicBlue substantially muddied the waters with the ReplayTV-4000 PVR and its "send a copy to a friend" feature. It doesn't work that well—figure 8 hours over a broadband connection to send a copy of a half-hour sitcom at TV quality—and it's a huge red cape waved in front of the Hollywood bulls. It's also, I believe, the wrong fight. A conspiracy buff would suggest that SonicBlue is serving as an agent for Big Media, adding features that enrage movie houses and that have little to do with familiar fair use rights. I make no such suggestion; I just think it was a dumb move.

Brinkley, Joel, "Contention abounds on DTV copy protection," *Stereophile Guide to Home Theatre* 8:7 (September 2002), p. 30.

Digital television copy protection may be as far from library copyright concerns as you can get, but it's all part of the complex of control issues. This one-page column provides a good overview of the state of things with a hopeful conclusion that may have already been contradicted when it appeared. Such are the perils of magazine lead times.

The Broadcast Protection Discussion Group, representing consumer electronics and Big Media, recommended requiring "demodulators" in future digital TVs that would prevent digital transmissions from being retransmitted over the Internet "though they could be viewed and, in some cases, recorded at home." If you can't view it at home, of course, digital video becomes entirely useless—and if you can record but not retransmit, something very strange is involved. One provision, apparently, includes "selectable output controls" with which cable companies could cause your digital recorder to erase already-recorded programming, at the request of studios. Earlier, media reps said they would never use such provisions—but now MPAA endorses them.

Brinkley concludes that the recommendation is meaningless and that nothing will happen. "These arguments will linger for years"—and as more millions of digital TVs are sold, "congress and the consumer-electronics industry will not allow these owners of very expensive sets to be disenfranchised."

I'm not sure how that squares with an August 18, 2002 article by Noel C. Paul of the *Christian Science Monitor* noting that the FCC "approved regulations that would require television manufacturers to include anticopying technology in the next generation of televisions." Which sounds very much like the BPDG recommendation.

## Speaking of CBDTPA and DMCA…

What's happened to Declan McCullagh? He's been the source of many good brief articles on various aspects of filtering, copy protection and other technological issues, and his Politech list has included worthwhile commentaries. I don't expect consistency of other people any more than I display it myself, but recent articles have been odd enough to cluster.

First was a Politech column, "Geeks should write code, not laws." I haven't read the column, but the gist appears to be that it's better to spend time writing "disruptive" applications than lobbying for better laws. A series of thoughtful responses—"thoughtful" on many sides of a far-from-simple issue—included the note that disruptive code as an alternative to better laws tends to destroy the rule of law, leading to chaos. Public Knowledge posted a response noting, "writing code and taking political action are not logical opposites when it comes to protecting freedoms. You need to do one to do the other… No amount of good code can overcome harmful laws and bad policy." Astonishingly, McCullagh responded that this last sentence is a "misstatement… Of course good code can do just that." In essence, he seems to be saying that with enough "disruptive technology"—encryption, anonymous remailers, anonymous digital cash—you can just ignore the laws you don't like. Amazing and absurdly shortsighted—or maybe he's saying that Only Übergeeks Deserve Freedom?

Oh, yes, the heading mentions DMCA. Here's an August 19 McCullagh "Perspective" on News.com, "Debunking DMCA myths." He poohpoohs researcher fears of being sued, even saying of the Felten situation that "the fears of legal action may not all be justified." To some extent, that may be true—if research doesn't include working code, it's probably not covered by DMCA—but it's *clear fact* that DMCA threats have been used to suppress publication of research. Not paranoia, not EFF "extremism." Yes, Felten could have given his paper at the original conference and looked for lawyers to defend him if the threatening letter was followed by an actual lawsuit—and he would almost certainly win. After spending a couple of hundred thousand in legal fees, most likely. The ALA legal effort on CIPA is a $1.3 million affair; how many individual libraries would spend that kind of money to avoid unreasonable restrictions on their operation?

The problem with bad law is that it leads to bad legal threats. Maybe that doesn't bother McCullagh—after all, he puts his faith in "disruptive technology"—but it bothers me. "Freedom to tinker" has a response from Edward Felten and others that points out the extent to which McCullagh "misses the boat." I **recommend** this brief commentary (www.freedom-to-tinker.com/archives/000020.html), including this key sentence: "It is disruptive to the progress of research when scientists must first consult with attorneys to determine if previously legitimate research might be in violation of the DMCA." No kidding.

How about this one? The August 27 News.com story is an interview with Sarah Deutsch of Verizon at the point that the RIAA wanted the name of a subscriber and some telecom companies began lobbying against new copyright laws. Here's the headline: "Why telecoms back the pirate cause." Now

there's a neutral headline for you. The piece is interesting. For example, the Berman/Hollings bills "came as a complete surprise to Verizon, because we had thought we had a long-term deal with the copyright community after spending three years negotiating [DMCA]. That was supposed to be the end of the war." Deutsch gives clear and sensible reasons that ISPs are nervous about the draconian new measures. McCullagh uses interesting phrasing in one question: "You're sounding a little like consumer groups and fair-use activists. Isn't it odd for such a huge company, a once-strictly regulated monopoly, to come across like Ralph Nader?" Deutsch responds by noting the need for fair use (without scare quotes) and that copyright should balance the interests of many parties. "We have a 300-pound gorilla on one side of the scale. Many of us are joining together on the other, to reach that necessary balance." (Meanwhile, isn't it odd for McCullagh to sound like a mouthpiece for Big Media? I mean, "back the pirate cause"…)

You have to give Big Media credit for changing the language. Even some otherwise reasonable people have started using "piracy" instead of "copying" and "pirates" instead of "downloaders," when even copying a single file is now "piracy," apparently just as evil and felonious as running off a few thousand counterfeit DVDs. Both may be theft, both may be wrong—but the law makes distinctions between misdemeanors and felonies, between the petty and the grand, and the switch to "piracy" as a universal term undermines such distinctions. Good for Big Media's efforts to overrule freedom and technological progress on behalf of "shutting down piracy." Bad for reasoned discussion and debate.

A later note: McCullagh's October 14 ZDNet commentary, "It's time to fix copyrights—permanently," offers a reasonably balanced view of the copyright situation. **Worth reading.** (My printout shows "zdnet.com.com" as the domain, which seems redundant but consistent with the sister CNet site news.com.com.)

## Related Print Articles

Ozer, Jan, "It is our problem," *EMedia* 15:7 (July 2002), p. 55.

I've always respected Ozer's informed tests and commentary on video devices and related hardware and software. I don't know what to make of this "the moving picture" column—but it disturbs me. Basically, Ozer calls for the computer industry to "remove its head from the sand and start to work on the least intrusive ways to implement the standards called for in the CBDTPA." He also accuses Gateway Computers of "misinformation" in the company's fair-use campaign and seems to swallow RIAA's assertions uncritically.

Andrew Grove (cited in *Cites & Insights* 2:12) asked whether it's "the responsibility of the technology industry to protect other industries from the challenges that a new technology can bring?" Ozer says yes, because it's the "right" thing to do (his scare quotes) and because "the computer industry is benefiting from copyright violations that it enables." If you hear echoes of "People only buy PCs so they can pirate MP3s and burn CD-Rs," you're hearing right, and it's an argument that grows no stronger with repetition.

Ozer's response to the clear probability that CBDTPA would be used to prevent people from making their own mix CD-Rs, particularly of any CDs purchased *before* CBDTPA (and thus lacking digital watermarks)? "We asked for further clarification from Senator Hollings' staff and the [RIAA]. Spokesmen from both organizations flat-out stated that the CBDTPA won't impact current CD-Audio Fair Use standards." This is the same RIAA that favors copy protection on CDs, protection that *absolutely* rules out mix CD-Rs. But they said so, so it must be true. And, of course, we hear once more that only downloading can account for the drop in music sales—not CDs that become more expensive to buy as they become cheaper to produce. Nope, it *must* be the pirates.

I'm frankly astonished by Ozer's column. I thought he understood computers well enough to see how crippling CBDTPA-style protection would be. Gateway's site says that CBDTPA "*could* prevent all digital copying," and that's absolutely factual. Ozer's disappointed in the computer industry. I'm disappointed in Ozer.

Machrone, Bill, "Bad laws and good technology," *PC Magazine* 21:16 (September 17, 2002), p. 57

Machrone takes an acute pro-technology look at the Berman bill in the first third of this one-page column. He starts by calling DMCA a "lousy piece of legislation" that "undermines the valuable tradition of testing encryption algorithms publicly." The result—one that seems to run throughout Big Media's approach to copyright? "You get crummy locks that violate the rights of honest people and hardly inconvenience the crooks." His quick take on the Berman bill raises yet another good point: "Considering how ham-handed the entertainment industry has been in its copy protection attempts, do you trust it to identify software on your machine accurately or to disable it without doing any other

harm?" As he notes, the Berman bill would "outlaw file sharing as we know it." But then, Berman and supporters simply assert that the vast majority of file sharing is piracy anyway.

## CTEA and Lawrence Lessig

Three interesting items on the road to the Supreme Court, all worth reading:

- Aaron Swartz wrote a rather nice one-page summary of the government response in Eldred v. Ashcroft; you'll find it at www.aaronsw.com/weblog/000474. He's placed it in the public domain, so I could quote the whole thing, but go read it yourself. I haven't read anything from Swartz before, but based on this I envy his succinctness. **Recommended**.
- The usual CTEA-related sources should get you to the *Reply Brief for the Petitioners* in Eldred v. Ashcroft, and if you've read the government's earlier response, I **strongly recommend** you read this relatively brief reply: 19 pages plus tables and one addendum. Good stuff, clearly written, and as far beyond my ability to properly evaluate as all the other legal briefs were and are.
- Steven Levy does an adulatory writeup on Lawrence Lessig in the October 2002 *Wired*, "Lawrence Lessig's supreme showdown," available in the wired.com archives. I was astonished to find that Lessig is a mere child of 41 years. One charming (and unsurprising) point: Michael Hart, the Grand Poobah of Project Gutenberg, wasn't the lead plaintiff because they wouldn't buy into his "manifestos attacking the greed of copyright holders." You won't find any more balance or skepticism in this article than in most *Wired* content—but it's still interesting background and **recommended**.

In case you missed it earlier: I agree that CTEA is bad law and hope it will be overturned. I do not agree with Lessig's assertions (not mentioned in this article or relevant to CTEA) about how short copyright protection *should* be. Nuance, nuance: What a mess it makes of life.

I wrote the section just above before the actual Supreme Court hearing, which happened on October 9. According to the October 10 *Chronicle of Higher Education*, the judges questioned both sides skeptically. (An interesting October 25 *Chronicle* article discussed Eric Eldred and why he's in court; it's worth finding and reading.) Lawrence Lessig's own Weblog (cyberlaw.stanford.edu/lessig/blog/archives/) has four print pages of his own thoughts on the hearing, posted October 16.

Finally, the transcript of the hearing—27 print pages, but it's large print—*may* be available for downloading at www.aaronsw.com, but I wouldn't bet on it. I haven't had time to read and digest it yet, but I **recommend** that you take a look if you care about CTEA. If it's gone, go to Lexis.

## More from Janis Ian

In the previous "Copyright Currents" I recommended an article by Janis Ian on the RIAA, NARAS, and Internet distribution of music. This time, I can **recommend** "Fallout—a follow up to The Internet Debacle" (www.janisian.com/article-fallout.html), in which Ms. Ian discusses early response to the original article. "I had no idea that a scant month later, the article would be posted on over 1,000 sites, translated into nine languages, and have been featured on the BBC." In 20 days she received more than 2,200 emails—and answered them all! "Do I still believe downloading is not harming the music industry? Yes, absolutely. Do I think consumers, once the industry starts making product they *want* to buy, will still buy even though they can download? Yes. Water is free, but a lot of us drink bottled water because it tastes better."

There's a lot more to it. She believes the heavy-handed tactics of the recording industry stem from three issues: Control (wanting all of it), Ennui (Lack of interest in developing new models), and "The American Dream"—but she's really saying that the last is the fundamental reason that copyright balance needs to be regained.

She's hopeful, partly because she believes we (consumers) will stop buying CDs altogether—"a general strike"—if RIAA pushes too hard. She suggests a "modest experiment" involving all the record companies, music that's out of print, and truly reasonable prices for a pure-download model. She suggests a quarter a song, with no limits on how many you can download or your ability to retain them. Try it for a year—with no loss of sales for current CDs, since this would be entirely out-of-print material. See how it works. (Her proposal includes more detail on how money received should be spread around, additional services that could be offered, etc.) It's an astonishingly sensible proposal. I'd guess the chances of Hilary Rosen and friends doing anything with it are pretty much nil.

If you want even more Janis Ian, a little searching on Slashdot.org should yield a 12-page September 23 interview (her responses to questions invited in an earlier posting)—fascinating, and covering lots

of ground—and many pages of additional comments from the many slashdotters. Some of the comments are even relevant. I would no more attempt to summarize or comment on a 40+-page Slashdot.org melee than I would slit my wrists.

## Digital Choice and Freedom

I'll admit that I give this one less chance of passage than CBDTPA, but *pro-consumer* copyright legislation is so unusual these days that it's worth a mention. Zoe Lofgren, from around these parts (D-San Jose), introduced the above-named bill to "ensure consumers can copy CDs, DVDs and other digital works for personal use." Lofgren thinks that consumers should have the same rights with digital material that they do with analog material—what a notion! This bill and a promised similar bill from Rick Boucher amend DMCA to allow bypassing technological protections in order to make personal copies.

Paula Samuelson of UC Berkeley's Boalt Hall law school says Lofgren's bill "aims to restore what Congress thought it was doing [with DMCA]—preserving fair use for people who have lawful rights to use stuff." As you might imagine, Jack Valenti issued a juicy rejoinder: "If this bill were to pass, it would render ineffective, worthless and useless any protection measure we would have in place to protect a $100 million movie. You could download a million movies a day, and no penalty for it." Does the Lofgren bill suggest anything of the sort? Probably not—but for Valenti, it appears that fair use means nothing and the only acceptable policy is 100% Hollywood control. He usually wins, but maybe at some point our elected representatives (there's a quaint phrase) will recognize just how extreme Valenti and his Big Media friends really are.

## Also Worth Noting

Drew Clark and Bara Vaida published "Digital divide" in *National Journal's Technology Daily*, September 6, 2002 (nationaljournal.com). The 12-page article is one of the best overviews of the Big Media-vs.-Big Technology arguments that I've seen. **Recommended** as an interesting, reasonably thorough recent history.

The Berkman Center for Internet & Society at Harvard Law School produces *The Filter* on a somewhat irregular basis as a pure-ASCII email newsletter. You can read it online at cyber.law.harvard.edu/filter/ (or add "subscribe" to that string to get to a subscription point). If you're concerned with the set of issues discussed here, consider subscribing; it's not long or frequent, and it is meaty and filled with good links.

There's also *ALAWON*, ALA's Washington Office Newsline; you should be able to read archived issues at www.ala.org/washoff/alawon or subscribe at that address. Also free, also irregular, also brief, also worthwhile.

The IFLA Committee on Copyright and Other Legal Matters has updated "Limitations and exceptions to copyright and neighbouring rights in the digital environment: an international library perspective" at www.ifla.org/III/clm/p1/ilp.htm. It's 17 pages (not including appendices), also available as a complete PDF; I recommend the latter, since the html file has those cute formatting tricks that cause the right edges of lines to be cut off unless you set page margins Just So. Arggh.

### Product Watch

## Big Screen, Bigger Price

Seen the TV ads with a couple carrying a big TV around, finally hanging it on one wall and settling down in front of it? They're not carrying NEC's PlasmaSync 61MP1, reviewed in the July 2002 *EMedia*, but they'd probably love it—or at least its size. At 61 inches diagonal, it's a *big* screen—and at 135 pounds, it's not something you move easily. WK Bohannon loves it with some reservations—but there's one reason he might not buy one. $19,995. No speakers, but when you're spending $20K on a display, you can afford separate speakers!

## Proliferating iPods

When Apple first introduced its iPod portable hard disk/MP3 player, it struck me as a little overpriced for the 5GB capacity—but also sleek and light (and exclusively Mac-oriented). I'm a bit surprised by the first line of a piece in the September 2002 *Macworld*, saying, "Mac users marveled at its then staggering 5GB of storage capacity." Historic hyperbole aside, Apple's introduced several other models and reduced the price of the original. Now you get 5GB for $299, 10GB for $399, and a "20GB monster" for $499. The 10GB iPod's actually a little thinner than the original and the same 6.5oz. weight; the 20GB unit a bit thicker and heavier, but still sleek. And it's hard to argue with the capacity.

The rest of the proliferation? Apple won't ignore the rest of us: for the same price, you'll be able to buy iPods that work with the worst and two best current versions of Windows (ME, 2000, and XP).

## More on the eMac

The September 2002 *Macworld* includes a two-page review of the consumer version of Apple's eMac, the all-in-one with a G4 CPU, low price, and 16"-viewable CRT. It's heavy (50 pounds) and more mundane-looking than the original (silver and white, no Bondi Blue), but the price is right ($1,099 with a CD-RW drive, $1,199 with a DVD/CD-RW combo) and decently equipped. Four mice.

## Cramming It In

Samsung's $250 Yepp XTunes YP-700H may be a neat little MP3 player—it's half an inch thick and weighs less than three ounces—but whoever wrote up the "Gear" minireview in the September 2002 *Computer Shopper* needs a refresher course in mathematics or physics.

"Featuring 2xMP3 compression technology, this $249.99 Yepp stores 4 hours of 128Kbps music in its 128MB of built-in flash memory…"

*No it doesn't*. Yes, there are new lossy compression techniques that appear to yield better results at lower rates (if you're not listening closely)—for example, MusicMatch makes much of MP3Pro in its newest versions, which may be the same technology. (In my half-deaf informal testing, 64K MP3Pro sounds about as good as 128K MP3, but *nowhere near* as good as CD or 196K MP3.) If the writeup claimed that the Yepp stores 4 hours of near-CD quality music, I'd say "OK, maybe," and if it said "CD quality" I'd write it off to the usual technology-magazine deafness.

But four hours of music stored at 128Kbps takes at least 220MB. Period. Do the math yourself. (Depending on where you substitute "1024" for "1000" in "K" units, you get between 219.7 and 230MB.)

## Faster Graphics than nVidia?

Maybe so, depending on the application. *PC Magazine* 21:17 (October 1, 2002) reviews ATI's Radeon 9700 Pro, a $399 graphics card—and on the magazine's 3D graphics test suite, the card does outperform nVidia's GeForce4 Ti 4600. All of this is almost entirely academic unless you're a gamer or doing some extremely specialized graphics work, but it's good to see a little competition.

## Tattooing Your CD-R

How do you make a CD-RW drive stand out, when they're all cheap, reliable, and fast? They can't get much faster for physical reasons. Yamaha has one idea: the $180 CRW-F1 not only claims a 24x write speed for CD-RW, it has a "DiscT@2" feature. What's that? If you don't fill up your disc with silly stuff like music or data, you can use the drive for important stuff—burning visible text or images onto the data side.

Ten-cent self-adhesive labels may be more colorful (with an inkjet printer and the software that comes with the label applicator or, for that matter, MusicMatch Plus)—but text burned into the data side sure is distinctive. (Yes, this is a silly season item—and I've seen full-page Yamaha ads for this wonderful new feature.)

## Linux PCs at Walmart

The thought of buying a PC at Walmart fills me with foreboding, but then so does the thought of buying anything in those stores. Here it is, though: the Microtel Sysmar701, a $299 box with a Duron-850 CPU, 128MB RAM, 10GB hard drive, CD-ROM drive, video card, modem, Ethernet, keyboard, and speakers. No diskette drive, no display. Software? Lindows-OS 1.1, a Linux-based OS with modified KDE3 desktop. The deal includes three pieces of downloadable software from the Lindows.com Click-N-Run Warehouse software library "via their own existing Internet connection." (A quote from the October 2002 *PC World* review.) Hmm. You're buying a rock-bottom PC but you already have an ISP?

Lindows includes Wine, so it's possible to run MS Office 2000 and a handful of other Window applications—although, to be sure, Office will cost more than the whole PC. I don't see any discussion of customer support, but for $299 what would you expect? If you're desperate to avoid "M$" and really short on cash, this oddity might even make sense. Will Microtel be around for the system's second anniversary? I wouldn't bet one way or the other.

## External Audio Enhancers

The October 2002 *PC World* offers reviews of two pretty much pointless devices: Links between your PC and a stereo system that bypass your sound card. One costs $90, one $50, and when tested against a "so-generic-it-lacks-a-name" sound card, neither one even *equalled* the sound card's quality.

Theoretically, such a device could make sense. The interior of a PC is electrically noisy; an internal sound card should, if not well shielded, suffer as a result, particularly the DACs (digital-to-analog converters). By now, the major sound card makers understand the situation and probably have it under control—and if not, Creative Labs makes the SoundBlaster Extigy. All of this assumes that your

PC is in the vicinity of your stereo; otherwise, none of the devices makes any sense.

To me, it seems simple enough if you do have the PC and stereo in the same room. Rip your favorite CD to your hard disk—keep it in .WAV form (or the Mac's equivalent uncompressed form) for the purest test, but high-rate MP3 may be OK (192K or better). Connect a cable from your sound card's line output to your stereo system (you'll probably have to get a minijack-to-twin RCA adapter from Radio Shack). Plug that in to one line-level input, your CD player in another. Once you equalize for volume—the most important step, and not always an easy one—see if you can tell the difference between the two. If you can't, don't worry about external audio enhancers: you don't need them. (You can also try comparing directly from your CD-ROM drive, but this methodology doesn't require that you have two copies of the CD.)

## Feedback: Your Insights

# The Access Puzzle (and more)

Peter Suber, Professor of Philosophy at Earlham College and perhaps the most articulate spokesperson for the Free Online Scholarship (FOS) movement, wrote a detailed response to my first "Access Puzzle" section (*Cites & Insights* 2:14). That response appeared first on the FOS Forum list; it is repeated here in its entirety, and unchanged except for formatting (and modification of URLs to remove the http://). My comments appear following Peter's response. A few shorter notes on other topics follow.

## From Peter Suber, October 6, 2002:

In the October issue of *Cites & Insights*, Walt Crawford comments on several open-access initiatives, including SPARC's Create Change, PubSCIENCE, and the Budapest Open Access Initiative (BOAI) and its FAQ. Here are some responses to his comments on the BOAI FAQ.

- Walt writes:

> I'm not sure why the anonymous FAQ creators feel the need to snipe at authors of scholarly monographs, but snipe they do: "Most authors of scholarly monographs hope to make money from them, regardless of the true sales prospects."

This isn't a snipe. Everyone associated with the BOAI agrees that authors have a right to make money from their work. We don't criticize anyone for trying. We draw a fundamental distinction between donated literature, for which authors do not expect payment, and undonated literature (for lack of a better term), which authors would rather sell than give away. Our mission is not to push works from the undonated category to the donated. We want to leave this decision up to authors. Instead, our mission is to provide open access to the works in the donated category.

Virtually all journal articles are in the donated category. So are dissertations. Textbooks are not, so we do not advocate open access to textbooks (rather than snipe at textbook authors for trying to earn some income). Monographs are an interesting intermediate case. Authors hope to make money from them, so they don't consent to open access. Yet the sales are often too low to pay royalties, so that many monograph authors might well trade the low probability of revenue for the larger audience and greater impact of open access.

Speaking as the author of one monograph that made some money and one that didn't, I believe that the language of the FAQ respects the two-sidedness of the phenomenon: these authors hope for some financial reward (which affects their consent to open access), but sometimes this hope is fulfilled and sometimes it is not (which affects the analysis of the bargain).

The BOAI does not advocate open access to monographs. The purpose of the sentence on monographs is to separate the kind of literature to which BOAI applies from other kinds of literature, in order to prevent misunderstandings. But it also functions to point out that the category of donated literature can expand or contract according to the considerations that affect an author's consent.

Read the BOAI FAQ sentence in its full context: www.earlham.edu/~peters/fos/boaifaq.htm#consent

By the way, "anonymous" isn't quite the right word for the BOAI FAQ. The FAQ speaks for the BOAI, not for individuals, and so it is signed by the BOAI, not by individuals. I am the principal drafter, and wrote it with the feedback and comments of the other BOAI participants. But I did not work alone and I did not write in order to represent myself. If I make a point of mentioning the collaborative nature of the work, it's not to deflect criticism or responsibility for a weak document, but to avoid taking undue credit for a strong one.

Parallel example: The Library of Congress Copyright Office FAQ is attributed to the Copyright Office, not to the individuals who wrote it. I don't think anyone finds this misleading or evasive. [www.copyright.gov/faq]

- Walt writes:

> About halfway through the FAQ is one of those dangerously simple statements. "Open access does not require the infusion of new money beyond what is already spent on journals, only a redirection of how it is spent." Does "redirection" mean stripping away the money that libraries spend retaining runs of print journals and the librarians that deal with the serial literature, as well as the "voluntary" abandonment of print journals?

The answer is no. The redirection we have in mind is to pay for the dissemination of articles rather than for access to them, or to pay for outgoing articles rather than incoming articles. Dissemination fees should be paid by those sponsoring an author's research—for example, foundations, governments, universities, and laboratories. As these institutions agree to pay for more and more outgoing articles, then everyone gains—these institutions themselves, as well as libraries and individuals around the world—by paying for fewer and fewer incoming articles.

The redirection is a subsidy making this literature free of charge for libraries and readers. Literature funded this way has a natural competitive advantage over traditional literature charging subscription fees. Many libraries will choose to drop expensive journals in favor of free journals of comparable quality and impact. Eventually, but not immediately, a second form of redirection may come from the savings realized by dropping expensive journals. But these savings will not be the first source of the redirection. In short, we do not advocate that libraries cancel any journals simply for the sake of funding an open-access alternative. They should only cancel journals when they believe it is wise to do so, using their customary criteria, and taking all relevant information into account.

Neither do we advocate that libraries save money by canceling preservation and access projects or firing librarians.

It's important to keep in mind that the costs of dissemination are very low compared to the current prices charged for access. Hence, shifting from access fees to dissemination fees can support the same body of literature, distributed to a much larger audience, at a much lower overall cost. This means that the money already spent on access is more than enough to pay for dissemination. This is why we are confident that redirection will suffice and that the long-term sustainability of the dissemination model is not in doubt.

If Walt's point was that the transition from access funding to dissemination funding will not be trouble-free, then I certainly agree. Because we're not advocating the cancellation of priced journals in order to fund open-access journals, the funding will have to come from other sources, such as the author-sponsors listed above. Hence, initially, these dissemination fees will be added to the total spent on journal literature, rather than merely redirected from journal subscription payments. However, this is only a transition problem, not a problem with the long-term sustainability of the dissemination model. (The proof, as noted, is that the money already spent on access is more than enough to pay for dissemination.) The BOAI addresses the transition difficulties in part by raising special funds for the transition, starting with the $3 million committed by the Open Society Institute. I analyze the transition and redirection problems at greater length here, "Dissemination Fees, Access Fees, and the Double Payment Problem," FOSN for 1/1/02 [makeashorterlink.com/?B2DC62302]

The transition troubles for open-access journals do not affect open-access archives, which are rapidly approaching a critical mass of endorsement and adoption: "Momentum for Eprint Archiving," FOSN for 8/8/02 [makeashorterlink.com/?W5B012CD1] (Scroll to the second story.)

- Walt writes:

> But "redirection" implies pressure—from somebody, if not from the BOAI itself—to abandon print subscriptions so that the money can be spent supporting this competition.

We don't advocate any form of pressure other than competition. We hope to stimulate the existence of high-quality, peer-reviewed, open-access journals. When they exist, librarians will decide which expensive subscriptions they can continue to justify. We are not working to pressure librarians to make decisions that favor open-access journals. We're working to make journals that librarians will favor.

- Walt writes:

> A later question about impact on libraries is disingenuous in the extreme: "We do not call on libraries to stop acquiring or curating priced literature of any kind. We do not call on libraries to change their serials policies…. The BOAI is about a particular kind of access to a particular body of literature. It is entirely compatible with other kinds of access to other bodies of literature." But of course it's that body of literature—scholarly articles—that bring library budgets to grief. BOAI does, in effect, call for priced scholarly journals to go away—and necessarily, if indirectly, calls on those who fund libraries to "redirect" funding away from libraries in order to pay for author fees.

The quotation from the FAQ is neither disingenuous nor misleading. We do not call on libraries to stop acquiring or curating any kind of literature. We do

not call for a boycott of any kind of literature or any kind of publisher.

We do not call for priced journals to go away. That way of putting it suggests that we are making demands rather than making a better alternative, or that we are more interested in eliminating competition than in competing. As we put it elsewhere in the FAQ, "Our goal is not to put for-profit publishers out of business, but to provide open access to as much as possible of the peer-reviewed research literature....Our project is constructive, not destructive."

The difference is partly one of emphasis and partly one of priority. We are working hard to bring it about that over time the balance of priced to free journal literature tilts decisively toward the free end. This will hurt some publishers. But the cause of this effect will be competition from high quality, peer-reviewed, open-access journals, not boycotts, demands, threats, or other forms of pressure.

We do not call on libraries to change their serials policies, because their subscription and cancellation criteria already include price alongside other factors like usage and impact. We're creating open-access journals that appeal to the current criteria of libraries, because they are the right criteria. We're not pulling strings to change those criteria or rig the decisions.

As I said in response to the last question, the redirection to pay for open access journals will not come from the forced cancellation of priced journals. We can't force anything. All we can do is create an attractive alternative and let it compete. If librarians agree that it is attractive, and cancel some priced journals that are no longer cost-effective, then the savings may contribute to further redirection. But even this portion of the redirection will have come from successful competition rather than boycotts, force, or pressure.

Here's another perspective on this. When an existing product is expensive and you want to displace it with a free one, you don't have to exert pressure or call for boycotts. Just produce the free one and let it compete. We believe that journal articles (both preprints and postprints) can be free for end-users. Arranging the subsidies to make them free for end-users requires no pressure or boycotts either, just clear presentation of the facts underlying this beautiful opportunity. The key facts are the two highlighted by the BOAI in its opening sentences: "An old tradition and a new technology have converged to make possible an unprecedented public good. The old tradition is the willingness of scientists and scholars to publish the fruits of their research in scholarly journals without payment, for the sake of inquiry and knowledge. The new technology is the internet."

- The FAQ:

  What is the intended impact of BOAI on initiatives to make scholarly literature affordable rather than free? We hope these initiatives succeed, because their success will make scholarly literature more accessible than it is today. However, we believe that the specific literature on which BOAI focuses, the peer-reviewed literature in all disciplines, can and should be entirely free for readers.

- Walt's comment:

  Noting that SPARC and related initiatives are directly and almost exclusively concerned with peer-reviewed research literature, this is answer is self-contradictory. I consider this an entirely fair paraphrase of the two sentences: "We hope these initiatives succeed…but we believe they should fail because we have the only proper solution."

Here's a better paraphrase: There's a best solution (free access) and a second-best solution (affordable access). Both are superior to the status quo (expensive access).

We thought this was obvious, but perhaps it needs spelling out. If I prefer A to B and B to C, then I can back both A and B against C while consistently preferring A to B.

SPARC supports both free and affordable journals. It also helped draft the BOAI. There's no contradiction here either. BOAI supports SPARC and SPARC supports BOAI.

Additional URLs:

- October issue of Cites & Insights: home.att.net/~wcc.techx/civ2i13.pdf
- Create Change: www.createchange.org/
- PubSCIENCE: pubsci.osti.gov/
- Budapest Open Access Initiative (BOAI): www.soros.org/openaccess/
- BOAI FAQ: www.earlham.edu/~peters/fos/boaifaq.htm

This is Chapter 2 of the public dialog between Walt Crawford and me on open access issues. In the July issue of *Cites & Insights*, he reviewed several FOS-related articles, including two of mine. I replied in a June 28 posting to the FOS Forum, which includes my response to his skepticism that FOS might be part of the solution but not a "Grand Solution." [makeashorterlink.com/?I3F213602]

## My Immediate Response

Peter Suber's commentary clarifies some important points. If I had read the BOAI FAQ on its own, with no more context than *FOS News* ("FOSN" in Peter's commentary) and Suber's other writings, I might not have raised some of the points. Reading the self-

archiving FAQ, which is incorporated by definition into the BOAI FAQ, caused me to go back and re-read the overall FAQ much more critically, perhaps too critically. (Note my comment in *Cites & Insights* 2:14 after recommending the BOAI FAQ: "Maybe you won't find the questions and contradictions that I do." In other words, maybe I'm reading it wrong: you should draw your own conclusions.) However:

- I continue to believe that "regardless of the true sales prospects" damages the FAQ. It serves no positive purpose and has the negative effect of suggesting that authors of scholarly monographs are fooling themselves—which is a snipe by my standards. If the purpose of the clause is to say, "For those authors who don't expect to make money from monographs, we suggest that making them part of the donated category can give them greater impact," then that should be said in a clear, positive manner.
- Yes, "anonymous" is the wrong term. The BOAI FAQ is properly signed by the issuing body. A good editor would have questioned my usage; I'm not always a good editor of my own writing. Sorry.
- The "redirection" commentary is particularly helpful—and as Peter notes in that commentary, the FAQ statement is true *only* in the long run, and only if BOAI succeeds.
- "Disingenuous in the extreme" may have been too strong. However, whatever the assurances of BOAI, I tend to believe that most universities, faced with the prospect of paying publication fees for articles prepared by faculty and researchers so that readers won't have to pay, will find the most logical source from which to take that money: The library. I'm satisfied that Peter Suber has no such intention and that BOAI offers no such intentional threat. I'm also keenly aware of unintended consequences.
- As to A, B, and C, this is a significant difference between Peter Suber and some other advocates of change, who seem intent on deriding solutions other than their own. See the self-archiving FAQ for examples.

Am I now satisfied that FOS is the Grand Solution? No—and that's one reason I keep nudging people to read FOS-related material and consider it seriously. I don't believe in Grand Solutions; that hasn't changed. I believe FOS can be a significant part of a complex set of steps to improve access and ease financial pressures.

# More Feedback

- Andy Barnett, Assistant Director of the McMillan Memorial Library in Wisconsin Rapids, WI, writes:

In the Oct. 2002 *Cites & Insights*, you have a subhead "The Other E-books."

McMillan Memorial Library has published a number of such e-books (available at http://www.scls.lib.wi.us/mcm/local/local_history.html). The list includes the six oldest city directories, every out of copyright item we could find and two books that the copyright holders gave us permission to digitize and load (University of Wisconsin Press and Badger State Chapter of the 82nd Airborne Division Association).

We also make them available as CD-ROMs (very retro) since they take forever to download. Autoloading CDs are also easier for low-tech users.

We did this without special equipment or software. Adobe Acrobat was the most exotic element in the program. We used no dedicated staff, lots of volunteers and small grants. Certainly within the reach of most libraries.

We received (have been awarded but not handed out) a Highsmith innovation award for the program.

As Tenant noted, we are making valuable content available free.

We have also been able to document local use, ranging from 10 to 100 uses in a six-month period, for most of the titles. Not enough to make money, but plenty to reward our efforts.

No comment except, "Thanks for letting us know about this innovative program." I hope and expect to see more like it.

- Dan Lester comments on several items in the September issue. His letter is indented in smaller ragged-right type; my responses are interspersed in normal justified type.

On the CD burning issue, a point that hasn't been raised anywhere that I've noticed. Being an old fart, I've listened to lots of tunes over the decades. I bought Elvis on 45, on 33, on cassette, and on CD. That's just one example, of course, of buying the same songs three or four times, in different media. Same song, different day, different medium. I've been gradually getting rid of my cassette tapes (tossing them, not selling them, since there is almost no market...and even most thrift shops don't want them). However, if there are songs on them I want to hear again, I feel no compunction about downloading the song with some P2P software (using hacked versions that don't have the spyware on them) and saving it on disk, even burning a CD if I'm so inclined. (Most of my music listening is done

while at computer, or in same room with computer...CDs rarely used except in car changer)

Is what I do legal? Most likely not. But, I'm a pretty darn honest and moral guy, and I don't feel like I'm committing any sort of sin or other violation by doing this. I'm sure there are vast numbers of others who feel the same way. (Right now I'm listening to Platters version of "Great Pretender," to be followed by Robert Plant, Ernest Tubb, Elvis Costello, Doc Watson, Bruce Springsteen, Roy Orbison, and Lee Greenwood) (and everyone of them has been purchased on cassette or CD)

Personally—speaking as one who believes artists should be paid for their work, not as a lawyer—I believe that what Dan's doing is ethically appropriate and should not violate a well-balanced fair use definition. He's paid for the music; he should be able to use it in the form he prefers, particularly since he isn't selling the old cassettes. (See also the lead essay in this issue.)

As to copy protection:

First, if it can be built, it can be hacked...and will be.

Absolutely, which is why I believe that the only workable CBDTPA "solution" is to cripple PCs altogether, making them incapable of copying any but watermarked files. (See my December 2002 "Crawford Files.")

Second, we have seen the failure of copy protection in game software, no matter what type of protection they tried to use.

Third, the only place that I'm aware of copy protection being used any more is in high priced vertical market software. For example, I know that the PCs in my doctor's office and in my dentist's office have dongles hanging on them. I know the dentist's software cost him over $25,000 to buy, plus an annual maintenance fee. The dongles keep him from giving a copy of it to some other guy in the dental association, splitting the cost with some other practices, etc. In those areas with high prices and small sales potential, I can understand it. Neither the doc nor DDS see it as an issue, and I guess I wouldn't if I were running something similar.

It is interesting that I've never seen dongles used by III, DRA, Geac, Endeavor, etc. Guess they figure librarians are either too honest, too stupid, or the results would be too obvious, for us to install pirated OPACs at other places. Even the vendors of small systems for schools, etc, don't use dongles.

I'll betcha that III, DRA, and Endeavor don't think librarians are too stupid (I don't know the Geac people as well). For small systems, I'd wonder whether the cost and hassle of using dongles wouldn't outweigh any benefit. In all cases, support is such a critical aspect of library systems that I think the chief "anti-piracy" method is that you have to be a known customer to get support.

On page 9, column 2, Cohen says something about "casting dispersions". Is that his typo/wordo/thinko instead of yours? Assume it is his. Regarding his comments on ebooks, in general I agree that if it ain't broke don't fix it, and that current books work fine. The one time it would be nice to have a readable ebook device, would be when traveling. For example, when we spend three weeks in Hawaii in January, Gail and I will each read four or five books during the trip. That is a bunch to lug on the plane. We usually take a few and buy a couple more there. But, would I buy an ebook device just for that reason? Not likely. I've not bought a laptop just for that reason either.

Assume it's *my* typo; I didn't copy the text in machine-readable form. (If I'm being too charitable to Mr. Library Stuff, well, he says it's fine for me to keep using "Library Stuff" and I like his Weblog.) As for buying an ebook appliance for use when traveling, I think Dan's got it right. It could be useful (for vacations—for business trips, people are more likely to use a notebook computer for both functions), but most people won't buy one for that use.

- David Dorman says, regarding the REB1100 ebook appliance:

This afternoon I read in your October *Cites & Insights* that the REB was being discounted down to $80 by Staples. For a bargain hunter of failed ebook technology this seemed an opportunity too good to miss, so I immediately drove down to the local Staples Superstore to check out the alleged opportunity. What I found was a lone REB on display with no backup stock, on sale for $49.95. Upon further discussion with the salesperson, I learned that last copies were further discounted by 10%. So I walked out of Staples with a quaint if not very useful REB for the pre-tax price of $44.55.

After playing around with it for a while, I will donate it to the UIUC Rare Book and Special Collections Library. My dilemma will be what to value it at for tax purposes.

A quick update on Gemstar may be in order. In at least one recent *TV Guide* edition, the useless eBook ad was replaced by an ad that actually had a Web address to buy—the new GEB1150, which appears to replace the REB1100, and which is currently being sold by SkyMall (!) for $99, as long as you sign up for $19.95 per month worth of copy for two years. Gemstar's Website also shows a GEB2150, replacing the REB2100, with no price stated. These devices only have Gemstar and eBook names on them; I have no idea who actually builds them.

# It's Not Goofing Off, it's Addiction!

I picked it up from CyberAtlas, but you may have seen the reports elsewhere: Websense Inc. says "25 percent of employees feel addicted to the Internet, while only a meager 8 percent of those polled claim no knowledge of workplace Web addiction." Dr. Marlene Maheu, an "Internet addiction expert," cites unnamed "studies" showing that "25 to 50 percent of cyber addiction is occurring at the workplace. That means employees are getting paid to participate in activities that are not work-related."

It's not just that we're all shopping, viewing porn, and acting as "news junkies" while we should be working, it's worse than that—"malicious mobile code" may enter corporate networks while "employees are seeking out mindless online entertainment." Ooh, scary—and reason enough to have decent corporate firewalls and corporate virus subscriptions. Here's absolute proof: 60 percent of online purchases are made during business work hours, and since 100% of the Internet-using population works at corporate jobs during all those hours, that's a *lot* of goofing off. Or a lot of misapplied statistics, perhaps dropped from a nearby bull.

Who is Websense to nobly inform us that pornography hounds are replacing after-work cocktails and "extra half pack of cigarettes" as productivity thieves? The company sells "employee Internet management" software. Spyware, filtering, what have you. You're all lazy bums trying to congest corporate networks while markedly reducing your own productivity; good locked-down networks will perk you right up, and Websense is there to help. I'm impressed. (Does Websense provide water-cooler monitors and cubicle spies as well, to make sure goof-offs don't find some other way to waste time? Probably, for the right price—but "office gossip addiction" may be harder to sell as an international disease.)

## Technology and Magic

Maybe it's just me, but I would assume that staff writers for personal computing magazines would have rudimentary understanding of scientific principles. Apparently not. In an October 2002 *PC World* section of "dynamite downloads," the writer recommends MP3 WAV Converter 2.6, a $20 download. Here's the beginning of the writeup:

> When it comes to digital music, sometimes you want the compactness of MP3s, and sometimes you want the quality of a CD. MP3 WAV Converter makes it easy to have both. By changing .wav music files into .mp3 files, the program reduces them to roughly a tenth of their original size; it converts MP3s to .wav format for playback on standard CD players.

Never mind that any ripping-and-burning program also converts both ways, and that the same $20 will buy the Plus upgrade to MusicMatch JukeBox, providing far more flexibility. The "have both" claim is pure nonsense. MP3 conversion involves lossy compression. You cannot, *cannot* reverse lossy compression through decompression. Once the information is gone, it's gone. If you rip at one-tenth the original size (basically the default 128K MP3 rate), when you "restore" the files to CD Audio form (.wav on a PC), anyone with good hearing and a good stereo system should be able to tell the difference. There's nothing wrong with MP3; at a higher data rate (192K), my aging ears don't hear the difference from CD on most music, and you still get 7-to-1 compression. But claims that reconverting restores lost information are ignorant at a level I find disturbing.

## Quicker Takes and Pure Oddities

- In early September, a press release came out from TRAC, the Telecommunications Research and Action Center, demanding a correction for an AP story that had suggested TRAC was using spam email to promote an anti-spam effort. Why do I mention this? Because I remember receiving a succession of email messages from an organization I had never contacted that were impersonal advertisements for a course of action. I deleted all of the messages, as I would other spam. Now I learn that they could not have been spam—because they were from TRAC, and TRAC loudly insists that it did not generate any spam. They were some other form of unsolicited, repetitive, irrelevant email. I'm glad *that's* cleared up.
- I haven't written much about library portals here (and don't plan to), but I did write a column about them elsewhere, so it's worth noting that the MyLibrary@NCState OSS project home page is moving to dewey.library.nd.edu/mylibrary/. That's a Notre Dame site. Earlier, Eric Lease Morgan moved from North Carolina State University to the University of Notre Dame. There's also a new mailing list if you're interested in library portals: dewey.library.nd.edu/mylibrary/mailing-list.shtml.
- We all get a little defensive sometimes (and if you remember my September 2002 "Crawford Files," *of course* I know that's a phony generalization). It happened to Rory Litwin of *Library Juice* when he was at "Rangapalooza" in Berke-

ley (a celebration of Ranganathan—that's all I know). Karen Schneider walked in and introduced Rory to someone else saying, "Rory is the editor of *Library Juice*…a fine, upstanding publication." When I read that in the September 5 *Library Juice* I immediately thought, "Well, sure, that makes sense: I'm sure Karen S. reads and appreciates the *Juice*." But Rory picked up a "playful, ironic tone" in her remark—and it annoyed him. So much so that he wrote a lead editorial objecting to the irony. (It's a good editorial, if you overlook the misunderstanding at its heart.) As soon as I read it, I sent him email suggesting that Karen probably wasn't being ironic at all; so did Karen (and, I suspect, others). He corrected the misunderstanding in the September 19 issue. *Library Juice* is, of course, a fine, upstanding publication, one that I regard as serving a vital role in librarianship—even though I no more agree with all of Rory's views than I do with all the views expressed in most other fine, upstanding publications.

- After you read Joe Janes' October 2002 "Internet Librarian" column in *American Libraries*—you know, the column with the young guy on the computer screen, right behind the column with the old geek who can't seem to decide on a column focus—go to Gary Price's ResourceShelf (VAS&ND) (resourceshelf.freepint.com) and look for Wednesday, September 18 in the archives. Price offers an important set of comments on "Librarianship after Google," the topic of Janes' October column.
- I frequently grump about implausible forecasts for adoption of new technology. It's unusual to see someone "in the biz" raise such questions, but that's what happened in the September 16 *Media Life*, an online "magazine" that's thoroughly devoted to media-as-business. Michael Katz uses the headline "Wild forecasts for mobile phone market" and notes that industry forecasts for mobile commerce in 2004 range from $700 million to $27 billion. The report giving that discrepancy has an explanation, of course: "Until a technological standard is defined…and adopted, you will continue to see massive differences between the projections from different firms." That presumes that market forecasts are based on logic and have some relationship to reality, a presumption I'm increasingly unwilling to make. Naturally, the story also bemoans the fact that the U.S. and Canada are "lagging behind" in adopting mobile phones—and, as usual, never mentions the reason for such lagging: Excellent landline service that's usually flat rate for local calls.
- Dan Gillmor continues to write provocative, sensible technology columns for the San Jose *Mercury News*, posted at siliconvalley.com. His September 8 column discusses "10 choices that were critical to the Net's success," based on the choices of Scott Bradner (Harvard). Choices include making the Internet work on top of existing networks, using packets rather than dedicated connections, and a number of funding choices. September 15 follows up with three "Issues that will shape the Internet"—freedom to create and innovate, customer choice and competition, and security and liberty. He also corrects an error in the September 8 column, where he said that NSF funded UC Berkeley's addition of key Internet protocols to Unix; it was, of course, DARPA.
- Give Nicholas Negroponte credit for persistence. No matter how wrong his projections may have been, he never stops making them (or admits to error). In the October 2002 *Wired* he proclaims that WiFi "will transform the future of telecom," replacing large companies with millions of "micro-operators." And we can "reallocate spectrum"—I'm sure the companies using it won't mind stepping aside. Since Negroponte's broadband Internet connection (which he "opens" by having an unsecured WiFi node) has a flat rate no matter how many people use it indirectly, *it's all free* or close enough. Naturally, no ISP or backbone provider would ever think of changing that charging model or enforcing the user licenses that forbid open sharing. I'm not sure who provides the backbones and broadband connections in this future where large companies have been replaced, but I guess WiFi's magic. Oh, the name of the piece is "Being Wireless." And, like *Being Digital*, it's all inevitable.

# The Details

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