Cites & Insights

Crawford at Large

Volume 3, Number 5: Spring 2003 ISSN 1534-0937 Walt Crawford

Bibs & Blather

Why is this issue Spring 2003 and not May 2003? Several reasons:

- Some spring cleaning is in order. There's a lot here, including 4,000 words of interesting Feedback, a new copyright end-run and other copyright material. (That doesn't include the new MPAA move for "state DMCA" laws. It's important, but right now there's not enough information for me to be of any use. Go to Edward Felten's "Freedom to Tinker" weblog for excellent coverage.)
- One perspective started small and blossomed, thanks largely to more than 7,000 words of correspondence between Jenny Levine and me beginning with my comment in April. No, I won't burden you with the whole 7,000 words.
- In conjunction with that perspective, I need to clean up any suggestion that, because I believe A (or disbelieve B), that I think those who believe B (or disbelieve A) should shut up. Go back to the very first "Crawford Files" I wrote, the third one published, in March 2002: "Who are you to doubt a library legend?" (You can get it at ALOnline.) If I can take issue with library legends, I can't imagine why any of you would be dissuaded from taking issue with an aging pseudo-librarian who has his own zine. (Similarly, to a nameless colleague who suggested that my thoughts on a specific topic were more important than his: *That's nonsense*—even if I'm as well informed on a particular topic as he is, which was not the case.)
- The schedule's gotten out of whack. This extra issue should put things back in order—it's even possible that the May issue will appear *in May* (but don't count on it).
- I'm committed to a fairly long piece in the May issue, in conjunction with "disContent" in the May 2003 *EContent*. I hope you'll find it interesting, but first I need room.
- Finally, in April's "Bibs & Blather" I said that I'd remark on the Alaska Library Conference "next month." My intention was (and is) to do a piece on that conference and the Washington Library Conference. This issue is *not* "next month." The May 2003 issue will be.

"Good Stuff" and "Library Stuff" should both return in May, along with either ebook or access discussions (possibly under a different name), maybe both, based on the thickest folders on my desk.

Inside This Issue

Copyright Special

The Broadcast Flag: Hollings Lite?

What's the broadcast flag? If you're a conspiracy theorist, it's an end run around heightened awareness of abusive copyright legislation—a way of "passing Hollings," at least in part, without legislation. Specifically, it's an FCC proposal that would, if adopted, mandate that televisions and all related equipment sold after a certain date recognize and obey a "flag" that could limit your right to record or preserve a broadcast (under the assumed interest of preventing distribution of such a recording).

Movie studios demand the broadcast flag. Oddly enough, Howard Berman worries that the FCC might not be *tough enough*—that the rulemaking might recognize some fair use rights. "I'm opposed to the FCC attempting to…limit the *exclusive rights* of copyright holders in its broadcast flag rule making." You thought there were other rights? You don't represent Hollywood. MPAA's lobbyist admits that the broadcast flag is just the beginning, a "necessary, but by no means complete, solution":

> Another key component of this problem is analog reconversion, which refers to the conversion of protected digital content to analog, and its reconversion

to digital, which wipes out all known digital rights management technologies."

You think I'm being paranoid about grotesquely overreaching solutions in the future? Of course, as Public Knowledge points out, there's no evidence that there are current or imminent problems for high-quality digital video. "We have always believed the case for the broadcast flag was thin, but have been amazed to discover that the evidence comes close to being nonexistent."

The Case for FCC Action

I printed the MPAA brief to the FCC (a bunch of other Big Media parties have their names on it as well) and three of many responses. I trust readers can find these documents if they wish to, which is to say they're all PDFs that don't carry URLs on the printouts.

The MPAA et al brief is huge, technical, and beyond my limited abilities to summarize. Much of it consists of details of the proposed flag and which devices would need controls for it to work. Of course, the brief says, "Oh, no, you don't need to change any other devices"—but such devices must be prevented from *receiving* digital video. As noted above, of course, the MPAA already plans to push for more restrictions on us pirates, er, consumers.

Why should the FCC act, particularly when no legislation is pending? According to MPAA, because broadcast high-resolution digital TV represents *more* of a piracy threat than existing (analog and low-resolution digital) broadcast TV. In other words, it would be easier, faster, and cheaper to capture and distribute a movie broadcast over high-res digital TV than it is to capture and distribute a current broadcast movie. As the MPAA puts it,

> [DTV signals are] subject to an *extraordinarily high risk* of unauthorized redistribution. Once received in the home, digital broadcast television content can easily be redistributed via retransmission over networks like the Internet by such means as rebroadcasting, hosting files on a web server, or peer-to-peer file trafficking. Such unauthorized redistribution can be accomplished without downloading any special software…[and] without any complex technical skills whatsoever. For example, all a person has to do is to select "Record" while watching TV on his or her computer using a TV tuner card, and then save the file to a publicly accessible folder on his or her hard drive, where it can be illegally redistributed to anonymous users via peer-to-peer file trafficking. Or that person can easily e-mail the file as an attachment to an unlimited number of people. Or he or she can simply place the recorded file on a personal webpage for unauthorized redistribution to others on the Internet. [Emphasis added]

Later, the MPAA characterizes redistribution as "instantaneous, effortless, and costless," as having "no delay… [and]no significant transaction costs," and as allowing a pirate to "redistribute… works to the entire planet instantaneously." [I've used excerpts from the brief and MPAA's further reply as cited by Edward Felten in his reply, rather than choosing my own. Thanks, Dr. Felten!]

I suggest that you read through the quoted paragraph again. If you know a little about the size of high-def digital video files (or even standard-resolution digital video) and the nature of the Internet, your eyebrows may already be rising.

Naïve Personal Commentary

While I'll go on to provide excerpts from and comments on three reply comments that I've looked at, a naïve (but reasonably knowledgeable) personal commentary may be in order first. [This commentary draws from Edward Felten and his expertise as a computer science professor and Raffi Krikorian, a grad student at MIT's Media Lab, and his actual experiments.] Remember the thesis that's the only plausible basis for immediate FCC action: That broadcast digital TV offers a *higher* risk of redistribution than existing TV and that it's *easier and cheaper* to do it—not, say, 20 years from now, but *now*.

Let's use a two-hour movie as an example—say *Spiderman*, since that's what we watched the night before I wrote this. (Two hours and one minute: Close enough.) For $20, you can buy the DVD, which not only includes the full movie but your choice of two commentary tracks, your choice of two "special viewing" modes with "Spider Sense" or "factoid" popups, your choice of two languages and three different subtitle languages—and another disc (which we haven't seen), with all this stuff (according to Netflix):

> The bonus disc for this exciting, Web-slinging adventure is packed with goodies, including two making-of featurettes, a profile of director Sam Raimi, screen test footage for star Tobey Maguire and others, costume and makeup tests, a gag reel of outtakes, a production gallery, a retrospective "History of Spider-Man" documentary, a rogues gallery, a comic book art gallery, video game hints, DVD-ROM features, and more.

If someone cares about the movie enough to want to pirate it, chances are they'd like some of the extra goodies. Let's assign a nominal value of $2 to the bonus disc and $18 to the movie itself. Why? Because there's a point at which no sensible person would bother with piracy—and that point must be at or below $18 (or $4 if you want to see it once).

Edward Felten's example adds another, absolutely legitimate, twist: We're talking *broadcast* TV, which means the movie's being shown on commercial TV. Thus, the two-hour movie will either be cut to shreds or will take *three* hours including commercials. Since my long-standing preference is to use the scenario most favorable to arguments I disagree with, at least to begin, I'll ignore that: We'll say that NBC's decided to show *Spiderman* uncut, uninterrupted, because they love us so much. I'm a "pirate" who knows that friends and strangers would *love* to get their hands on Spidey, won't cough up $20 for the DVD or $4 to rent it, and are willing to wait.

Current Scenarios

Two years ago, I would have put a videocassette in my VCR, programmed it to record the movie, and mailed the copy to my friend. About three minutes' effort on my part, $1 or $2 (for S-VHS, "near-DVD" quality) materials, a buck or so postage. If I wanted to distribute it to several people, I'd need two VCRs or a two-bay unit and a *lot* more time.

Now? I could do that. Or I could record it directly to DVD-R on a DVD recorder; figure about $1.50 for the blank. Direct DVD recording may not *quite* yield broadcast quality on a two-hour movie (real-time MPEG2 compression can't be as effective as two-pass MPEG2, which is why the highest-quality recordings on PVRs use 3GB or more per hour of recording), but may be good enough. Same effort, same materials cost, $0.37 postage.

Or I use a PVR and make DVD or VHS copies for several people.

Better yet, I *do* use a TV tuner and PC, record the movie to disc at a high bitrate, then encode it to MPEG2 and burn as many DVD-Rs as I want. If I have *really* cheap friends who don't care how bad the picture looks, I can burn Video CDs at $0.20 per disc and the same $0.37 postage. I could even encode the movie in DivX:) format and play Internet pirate, although even there we're talking about transmission of hundreds of megabytes and even lower video quality.

None of these takes much time or money. None allows "instantaneous, effortless, and costless" copying or lets me "redistribute [*Spiderman*] to the whole planet instantaneously."

So maybe broadcast digital TV is different?

The Reality of Digital Video Piracy

True piracy—illegal redistribution of copyright goods in commercial quantities and for sale, not for free—currently works either by having a studio insider grab a copy of the movie before it's even released, or by sneaking a camcorder into a theater and taping it from the screen. True pirates aren't going to wait for broadcast movies and *certainly* aren't concerned with the niceties of video fidelity and high resolution.

But let's set aside the fact that we're talking about casual copying, not true piracy. It's a distinction Big Media studiously refuses to make.

The casual pirate records the broadcast digital signal to their hard disk. ATSC broadcast format uses roughly 8GB per hour. So that's 16GB. Well, OK, modern hard disks have room to spare; that's only about $25 worth of hard disk space. Now what? The MPAA offers several scenarios:

- **Rebroadcast**: There's no such thing on the Internet—it's not a broadcast medium. If there was such a thing, a typical home broadband connection offers no more than 200kbps upload rate. Which means it would take 48 hours to rebroadcast that 2-hour movie. In other words, (a) It's impossible, (b) No sane user would tie up their connection—inbound or outbound—for 48 hours to save $4 or $20. Strike one.
- **Web server:** 48 hours to upload it to your friendly host. Enough host space for 16GB for each two-hour movie and enough transfer bandwidth for 16GB *plus* another 16GB each time someone wants to download it. (Downloading's faster; figure as little as six or eight hours under ideal conditions.) Any guess as to what a host will charge for that kind of capacity? (Any guess as to what the user's broadband provider will do with repeated 16GB downloads?) A little checking suggests that a reputable provider would handle 40GB space and 100GB data transfer for around $200 a month. So you could offer a movie to five people a month. That comes to $40 per copy—twice as much as for the DVD, ten times as much as for a rental. Strike two.
- **Peer-to-peer:** Unlike the "rebroadcast" scenario, it's theoretically possible, but would take five days *if* nobody else wanted the movie at the same time and *if* nothing interfered with the bandwidth. Strike three.
- **E-mail:** "The person can *easily* email the file as an attachment to an unlimited number of people." Here it starts to get scary. Attachments are MIME-encoded, which increases their size by 33%, so the attachment size is 24GB, not 16GB. Attachments don't move any faster over the Internet than any other data, so we're talking *three full days* to send *each* email, and a day or so to receive it. But, of course, email systems won't handle 24GB attachments. Most limit attachments to 10MB per message—and most

commercial email systems only provide 10MB to 100MB total storage per recipient. So, as Felten points out with some charm, the would-be pirate has to break the video down into several *thousand* individual portions (and doing that without first downloading highly specialized software just isn't possible), send a few pieces, get confirmation that the pieces have been moved out of the mail file, send a few more…and, of course, the recipient needs to load new software that can properly reassemble the whole mess. Anybody who would do this to save $20 is probably certifiable. Strike four.

- **Personal web page:** Same problems as with Web server. Services don't sell "personal" web pages with 16GB storage space and essentially unlimited data transfer, and if they do, they'll cost a lot. Strike five.

In other words, there is *no* known scenario in which MPAA's assertions make sense. Illegal copying of current TV is vastly easier and cheaper than any of these scenarios.

While the commentary above was personal in terms of arrangement and nasty comments, the technical aspects are based directly on the Felten and Krikorian replies—but if I got something wrong, it's my fault, not theirs.

Knowledgeable Responses

Edward Felten offers an excellent commentary at Freedom to Tinker (www.freedom-to-tinker.com on March 3, "Broadcast flag blues." He notes that MPAA claims are "ridiculously wrong." He closes:

> Call me naïve if you want, but I still find this sort of thing depressing. Either the MPAA doesn't *know* that its assertions are technically ridiculous, or it doesn't *care*. I'm not sure which is worse.

Felten's FCC communication spells out the problems involved. I've adapted much of it in the commentary above. He includes the cost of new disk drives at both ends and uses a three-hour TV movie (with commercials) as an example; I chose not to do so, in order to give the MPAA the benefit of the doubt.

Felten also notes that both firewalls and ISP terms of service are likely to prevent the MPAA's casual file-sharing case.

His seven-page comment is clear, pointed, and technologically knowledgeable. He concludes that "DTV content is currently *much harder and more expensive* to pirate than analog TV content." [Emphasis in original.] He also explains why it's unlikely that technological change will make casual DTV piracy practical in the medium term—and, offhand, why such changes would *continue* to make low-res video piracy easier and cheaper.

Raffi Krikorian's comment is much longer—twice as many pages and single- rather than double-spaced—and offers a fascinating set of expert notes. To wit, he *tried it*—using all the means at his facilities, both at home and at the Media Lab, to try to transmit a Super Bowl broadcast recorded to hard disk from a 720p ABC broadcast. (720p, 720 vertical lines progressively scanned, is one of the lowest-density "high resolution" alternatives.)

Since the Super Bowl ran roughly five hours, the file was 43GB (again, roughly 8GB per hour). He spent considerable time and ingenuity seeing what he could do with the file locally and whether he could send it anywhere else. A few notes from a long, fascinating, perceptive discussion:

- Once converted from ATSC to regular MPEG2 form, he could stream the video over his high-speed Ethernet connection. No luck with a wireless network, however, and that's not surprising: IEEE 80211.b tops out at 11mb/s and high-definition MPEG2 requires 19.4mb/s. (IEEE 802.11g or 802.11a could handle it.)
- He tried to send "SuperBowl.mpg" as an email attachment. He has an unusually fast upload connection (800kb/s), but nothing much happened. His best estimate was that it would take 6.5 days to send the email *if* he could monopolize the cable path and the nine jumps between his PC and his mail server—which is effectively impossible thanks to TCP/IP. (This ignores other email issues.)
- He put the MPEG-2 file into a shared directory and posted a little web page with a link, then told a few friends about it. At which point his Internet connection became entirely unusable, as four friends were using all available bandwidth in futile attempts to share. He didn't try P2P for various reasons, but—as he notes—his own web server offers much the same situation.
- How about moving the file physically? Not easy: Ignoring silly stuff such as 30,500 diskettes or 175 Zip drives, or even 70 CD-Rs, it would take some 10 DVD-Rs to record the file. But he has a big external hard disk, so he could copy the monster and take it to MIT. (A wonderful footnote harks back to Clifford Lynch's classic statement, "Never underestimate the bandwidth of a plane full of CDs." He concluded that his effective bandwidth in going to work with the portable drive in his backpack was 240mb/s to 500mb/s, 300 to 500 times as fast as his cable modem.)

- At work—and MIT has campus networking and Internet connections that are probably as fast as any university, faster than most corporations—he tried to send the email again. It just disappeared. He asked knowledgeable people. "They looked at me, puzzled at first (as if questioning my quixotic desire to send a 43GB file through e-mail), and then they politely informed me that the mail service was programmed to reject any mail larger than a few megabytes."
- He tried the other methods over MIT's robust services. And, indeed, a colleague *was* able to watch the video in real time, sort of, after letting it download for about an hour first. Even then, the stuttering was irritating—and most intranets don't offer a *minimum* 100 Base-TX connection, moving up to gigabit Ethernet. Set aside the likelihood that a pirate using company or university facilities would attempt such an egregious violation.
- Under ideal conditions—MIT's high-speed Internet connection, no congestion, etc., he concluded that the fastest of several trial Internet downloaders *might* be able to download the file in as little as two full days. Maybe.

He concludes, at the end of an entertaining voyage, "It is just not possible" to send a high-resolution video file to any other computer at any decent physical distance in a reasonable amount of time. The "last mile" problem isn't going away any time soon (if ever). He calls MPAA's view "misinformed" and says, "There is no practical evidence that an ATSC broadcast flag would address a real problem."

The Electronic Frontier Foundation offers a long and wide-ranging commentary (32 single-spaced pages), addressing not only the lack of necessity for a broadcast flag but also its harm to consumers. A key statement appears early on: "Facts…are in notably short supply in the comments submitted by those who support the MPAA Proposal or broadcast flag mandates like it." Some (by no means all) of the key points (and, if it isn't clear, I **recommend** that interested readers go directly to this comment and to those of Felten and Krikorian):

- Internet redistribution of DTV content is not a realistic threat today or in the foreseeable future. Does this need further demonstration? (EFF uses the term "outlandish" in describing MPAA's email scenario.)
- There's no evidence that content is being withheld from DTV in the absence of the Broadcast Flag, or that it will be withheld tomorrow. Additionally, there's no promise of new content if the Broadcast Flag is mandated.
- If Internet redistribution was feasible, the Broadcast Flag wouldn't work because it's a "break once, break everywhere" system. That is: It would be legal to have broadcasts that *don't* have the flag; once hacked, a flagged broadcast would be treated as legitimately unflagged. There's also the analog hole, of course, and several other holes.
- Experience with DVDs should show three things: 1. That content protection will be defeated almost immediately; 2. That appropriately-priced, high-quality commercial offerings will sell very well even if "pirated" counterparts are available; 3. That restrictions imposed to support content protection will burden technological development.
- The Broadcast Flag would derail convergence—an argument that would be more interesting if convergence made sense otherwise.
- The proposal would undermine legitimate fair use activities.
- The proposal is anti-competitive and threatens various constitutional rights.
- The Broadcast Flag is a bad proposal partly because it was developed badly.

Conclusion

Will the FCC take the proper course and laugh the Broadcast Flag proposal out of existence? Only time will tell. For all I know, that could have happened by the time this appears.

Even if it does, the experience is worth remembering. Elements of Big Media appear determined to assert absolute, total control over every use of "their" products, overriding first sale, fair use, and any other doctrines and without regard to secondary damage to consumers, the consumer electronics industry, the computer industry, or others.

It's becoming increasingly clear that the MPAA and RIAA don't think current copyright law is unbalanced *enough*. Given the history of prerecorded video and DVD, this attitude doesn't appear to make commercial or financial sense.

The Broadcast Flag debate has no immediate effect on libraries, but the indirect effects could be considerable—particularly if this end-run or congressional action eventually crippled general-purpose computing devices, eliminated the possibility of archival copying, and possibly even eliminated free circulation. Would Big Media ever do something that would make it impossible for libraries to purchase and circulate music, movies, or books as they do now?

Do you need to ask?

Interesting and Peculiar Products

True Desktop Replacements?

The December 2002 *Computer Shopper* includes a full-page review of Toshiba's Satellite 1900: "a brash statement on portable power." The $2,499 configuration tested includes a 16" screen, Pentium4-2.2GHz, 512MB SDRAM, 40GB hard disk, and a DVD/CD-RW drive, with nVidia GeForce4 440 Go graphics backed up with 32MB display RAM.

The neat thing here is the true "desktop" nature. The keyboard pops out of the case and becomes a wireless desktop keyboard; while there's a touchpad on the keyboard, Toshiba also includes a wireless optical mouse (not a very good one, apparently). Given the screen size, that really does make for desktop equivalence—although the disk is small by today's standards.

The downside, of course, is that it's a *terrible* "portable" computer: 2.2x13.6x12.9" and 10.7 pounds travel weight. It "won't comfortably fit on an economy-class tray table." It's also surprisingly slow for the CPU class, but probably more than fast enough for most purposes.

How Do You Use *Your* PDA?

That same December 2002 *Computer Shopper* reviews the new Razor Zayo A600, a $550 PocketPC that's "sleek and light" (4.9x2.9x0.5", 4.9oz.) and has a reasonably fast processor and 64MB RAM. It's fast enough that you could view "PocketTV" movies. What struck me as interesting was the technique used to test battery life: Playing MP3s. "In our real-world tests, we listened to MP3s with the screen at half brightness for 3 hours and 2 minutes before the battery died." Now that's an expensive (and bulky!) MP3 player! And an absurd test of battery life.

The February 2003 *PC World* includes a group review of three early camera-enabled wireless phones. Sure, the Sprint ads are cute—and from the looks of things, these phones would be just about good enough to let you distinguish between oxen and dachshunds. The review's upbeat—two phones took pictures that "looked reasonably bright but a little grainy"—but the actual sample prints aren't quite so wonderful. Some folks will love them.

Bruce and Margie Brown review Sony's $800 Clié PEG-NZ90 in the March 11, 2003 *PC Magazine*. It pushes convergence hard—a Palm OS PDA with Sony's oversize screen, two megapixel camera, Bluetooth, USB docking cradle, Wi-Fi card slot, voice recorder, thumb keyboard. The display is hinged; in essence, this is a miniature equivalent to a Tablet PC. Of course, it's also big and heavy for a PDA (10.4oz, 5.5x3.0x1.3") and absurdly expensive. You get 16MB RAM. The reviewers love it, giving it five dots.

Smart Displays

Bill Howard reviews the first Microsoft Smart Display in *PC Magazine* 22:2 (February 4, 2003)—the $1,000 ViewSonic Airpanel V110. It's a 10" SVGA LCD panel with slate capabilities; the "Smart Display" concept is that the AirPanel acts as a remote tablet wirelessly interfacing with your desktop PC. The panel weighs 2.7 pounds, measures 11.5x8.4 x1.0", and runs silently. It only works with Windows XP Pro, but Viewsonic includes an upgrade copy as part of the package.

It's a geek's dream. That's about it. Battery life is less than four hours. The screen is too small to use as your primary screen (and a stand costs another $150); Wi-Fi isn't fast enough to view video on the display (but you can listen to MP3s); and you can't have one person using the desktop PC while another is using the tablet—once someone logs onto the desktop, the Airpanel is disabled. $1,000 will buy a pretty decent notebook. The two-dot rating seems about right.

Not the Gateway Destination

Seven years ago, Gateway 2000 offered the Destination—a 36" TV/monitor with a fairly powerful separate PC in a component-style case, equipped with wireless keyboard. It cost $4,000 or so, too much for a fancy TV but not bad for an office training system. RLG has one, and it gave good service for years.

Now, Gateway offers what Bill Howard calls a "spiritual descendent" of the old Destination (in a reasonably favorable *PC Magazine* review): the Gateway Media Center PC with Plasma TV. It's two separate products in a bundle. The more interesting of the two may be the Gateway 42" plasma display/TV (it includes a tuner), which at $3,000 is one of the least-expensive plasma displays on the market. Plasma means it's thin and bright; it's wide-screen—but *not* high-definition (resolution is 852x480).

The PC is basically a midrange Gateway, in the same snazzy black-and-silver midtower case as my home PC, but with Windows XP Media Center Edition, a TV tuner card, and a remote control. Other than those media extras, this is nearly the same configuration I bought last summer, and $1,000 isn't a bad price. Oddly, the keyboard and mouse aren't

wireless, and there are two remote controls, one for the TV/display, one for the PC.

Five Megapixels for $600

More to the point, five megapixel resolution in an Olympus Camedia all-metal body with an f2.8 3x optical zoom lens. If you're in the market for a small digital camera, this is a strong price/performance point—but, of course, it's still $600. Sally Wiener Grotta's February 25, 2003 *PC Magazine* review—a four-dot review—says battery life was very good at 330 shots; the battery is rechargeable. Like Olympus' Stylus film cameras, the Camedia has a sliding metal shutter to protect the lens—and act as a power switch. Grotta's only complaint is that there are too many choices, resulting in a complex menu structure if you go beyond default mode.

Primera Bravo: A Quick Update

The February *Cites & Insights* mentioned the Primera Bravo Disc Publisher, a reasonably-priced all-in-one CD-R production system (burner, robotic arm to handle a stack of blanks, and integrated inkjet printer). A three-page review of the DVD version by the knowledgeable Hugh Bennett appears in the February 2003 *EMedia* (pp. 63-65), and it's fair to call it a rave. The DVD version costs $2,495, $500 more than the CD version; it handles 25 discs at a time, weighs 18 pounds, measures 7.25x17.25x16" (height first, depth last) and runs like a champ. An interesting device for in-house publication, something some of you might be doing one of these days.

Perspective

The Shifting Commons: Musings on Generalization

The title above is to some extent a red herring, reflecting two of several themes that come together in this perspective. The overall theme isn't a new one, but there's a touch of mea culpa this time around:

- People tend to generalize from their own situation, and that's usually a mistake—even in this sentence.

While it's reasonable to criticize positive generalizations—"Everybody will or should do x"—it's too easy to fall into negative generalizations in the process: "Nobody should do y." That's the mea culpa.

Creative Commons

Just over a page of *Cites & Insights* 3:3 was devoted to developments in Creative Commons' "Some Rights Reserved" projects. A chunk of that was Arnold Kling's odd essay asserting that the Creative Commons licenses were pointless because any content that hasn't gone through the editorial process is crap, and reactions to that essay.

Since then, there have been more developments and more discussion. The discussion first:

Gary Stix: "Some rights reserved"

Stix posted this essay at ScientificAmerican.com on February 10. He offers a little background, describes the CC licenses, and notes $2 million in funding for Creative Commons ($850,000 from the Center for the Public Domain and $1.2 million over three years from the John D. and Catherine T. Macarthur Foundation). The final paragraph is the only real commentary and worth quoting in its entirety:

> Some legal pundits will question whether an idea that downplays the profit motive will ever be widely embraced. Creative Commons, however, could help ensure that the Internet remains more than a shopping mall. For his part, Lessig, who last year argued futilely before the U.S. Supreme Court against an extension of the term of existing copyrights, has translated words into action. Now it will be up to scholars, scientists, independent filmmakers and others to show that at least part of their work can be shared and that a commons for creative exchange can become a reality in cyberspace.

I would argue with part of the first sentence. "Some rights reserved" doesn't so much downplay the profit motive as provide for fine-tuning. The license for *Cites & Insights* retains my sole right to make money from the original content in this zine, whether through licensing to commercial publications or through reusing portions of essays in paid columns or eventual collections. The rights I'm yielding are for *nonprofit*—indeed, not-for-sale reuse with credit or for derivation. If a library association wants to republish one of these sections in its newsletter, the association doesn't need to ask for permission. But the rest of the comment is on the money—and many of us are happy to share *part* of our work, without endangering profits from the rest of it.

Tim Hadley: Math class for poets weblog

This weblog (blog.tph-lex.com) for February 23 includes a long and thoughtful essay on CC licensing, particularly as offered in Movable Type weblog software. It's the longest weblog "entry" I've ever seen—nine single-spaced pages when printed out, probably more than 4,000 words—and well worth reading for those worried about consequences of CC licenses.

Apparently, some Movable Type users find that it's hard to remove the default CC license currently provided as part of MT and are concerned about the

consequences of beginning a weblog with the license attached and removing it later. I won't attempt to summarize this lengthy discussion.

I believe the summary of the facts and implications is correct, namely that a CC license is irrevocable for material posted *while the license was on the site*, and that removing the license means that *new* material on the site is not covered by the license—but old material continues to be, at least when it's been passed on with the license attached.

Elizabeth Lane Lawley: mamamusings weblog

Lawley's weblog (www.it.rit.edu/~ell/mamamusings) for February 25 includes a moderately long posting on this issue ("creative commons angst") followed by a *very* long set of thoughtful dialogue among Lawley and her readers—the printout was 15 pages of very small type. The topic is once again Movable Type's implementation of CC licenses and the "anger and angst" that some bloggers have found in them.

Lawley doesn't understand "why allowing your words to be distributed freely is such a frightening concept, particularly in the context of weblogs." She believes in copyright—she has published books to her credit—and understands the nuances of CC licensing. She also understands that webloggers should *want* their content as widely distributed (with attribution) as possible. Otherwise, why weblog?

The many comments that follow expose a range of opinions, as you'd expect, but with the clarity and thoughtfulness common to Lawley's own writing. (This isn't ./, in other words.) The *first* response argues against CC licenses because this particular writer wants to be able to choose which sites can reuse material—to which Lawley appropriately responds that she isn't arguing that *everyone* should use CC licenses, only that she doesn't understand the argument that using CC as the default for a weblog is a bad thing.

A couple of those who argue against CC are part of the discussion, although they quickly take an "I've said all there is to say" stance. (In one post, one of the anti-CC folk labels a pro-CC note "defending the old guard," which means that it now takes *four months* to become the old guard!)

It's a fascinating "discussion" that has probably continued since I printed the pages. There's more passion than I'd expect among those who don't like CC—and a strong sense that they believe they're being shouted down by CC proponents. I have more trouble finding that shouting down.

Incidentally, after reading this stuff, I've revised the wording on the home page: All of *my* writing in *Cites & Insights* is covered by the CC by attribution/noncommercial license, but I make no claim on Feedback.

Creative Commons developments

This is a snapshot early in an ongoing process, but for what it's worth, CC is rolling out more sophisticated versions of their licenses to cover special situations. For example:

- On March 11, they offered a *draft* provision to explicitly allow "sampling" or other commercial transformations, while prohibiting commercial verbatim copying. This is mostly, I believe, an issue for nontext media, but I suppose text collages are possible. The ability to sample and reuse for transformations is fundamental to new music and some other creative media, so this provision appears to be a key offering.
- On March 14, they offered two possible clauses. The first would add to the Attribution license a clause that a web-based copy of the work must include a hyperlink to a specified URI—a more detailed form of "attribution." The second would add a clause to the Noncommercial license that explicitly allows search engines to "index" pages, as long as the engines don't derive *direct* revenue from that indexing. The weblog that announced these changes (creativecommons.org/weblog/) now has a comments feature, and the proposed clauses are gaining comments.

The Moral, Part 1

This is all really another subtrack of copyright—but with a difference, at least for the first part. Most of the brouhaha reflected in the two personal weblogs has to do with generalization, as does Arnold Kling's essay. That is:

- One group is asserting that others believe that *everything* (at least within a category of work) should use CC licenses, and that such generalization is a bad idea.
- Another group is asserting that, because they personally don't find CC licenses worthwhile, *nobody* should use them.

So far, I haven't seen explicit evidence that the first assertion is real. Creative Commons most certainly does not suggest that everyone should use a CC license. I suppose there's an "intellectual property is theft" crowd that might make such an argument, but neither Lessig nor Creative Commons are in that group. I would sharply disagree with such an assertion: CC licenses don't make sense for everybody. You won't see them on "disContent" or "Crawford Files" or on my recent books. (If CC and, perhaps, the Internet Archive do put together a workable reg-

istry for assigning existing material to the public domain, I might do that with some of my older books. Or I might not.)

Neither general adoption nor general shunning makes much sense.

The Shifted Librarian

I took a small swipe at Jenny Levine in "A Zine is Not a Weblog" (*Cites & Insights* 3:4). To my surprise (since I assumed Levine didn't read this zine, given that I'm "unshifted" and it's distinctly not a weblog with an RSS feed), she responded.

Her response, my comments on her response, her comments on my comments, and my…well, anyway, it went on for several exchanges. As I put this piece together—and later, as Levine provided even more commentary—I found that it ran to 7,000 words (more than 9 pages), more than half of it her *selected* comments and my responses. That's too much to deal with, so I'm going to summarize down to 2,000 words—which may be unfair to both of us.

Jenny Levine 1 (partial)

> I'm glad to see you talking about blogging, but I have a couple of questions…. I've been scanning my blog and I can't find anywhere that I said everybody "must" do something. I'm 90% sure I've never said everybody *must* do something, and I'm 100% sure I've never said everybody *must* do something. Well, maybe I've said that about supporting libraries, but can you provide a cite for that as you reference it?
>
> Also, can you share the scientific algorithm you used to determine that reading 200 sites in an aggregator is 170 too many? I realize that 200 is too many for most folks but it's heaven for me, so I'm curious to learn how I figure out Walt's Recommended Daily Allowance of information flow?...

I responded, in part, that I interpreted "must" from her writing, perhaps unfairly; that *Cites & Insights* is a zine, not a journal, and I was stating an opinion with which she was free to disagree; and that I thought tracking 200 sites would lead to information overload—but that this could be my failing. Some of what follows is based on my full response.

Jenny Levine 2 (partial)

> I do believe that librarians need to start preparing for certain technologies (such as circulation of digital materials, wireless access, and new forms of reference service), but I'm most interested in your contention that your curmudgeonly view is at odds with my shifted view… While I am worried about libraries being "left behind" (particularly public libraries), my bigger fear is that we will miss out on providing important services to people that want and need them. Ultimately, that's bad for the library, but it's far worse for our existing and potential patrons.
>
> I concentrate my information tracking in my news aggregator for efficiency and convenience. My guess is that you read a lot more paper and email than I do, which may very well concentrate the same amount of information, just in different places (ways?)…
>
> I try to highlight what I think *will be* happening in the near future, maybe 2-5 years out. I like to think of this as a golden age in which libraries can proactively prepare for some of what's coming, as opposed to just reacting after-the-fact. It took so many librarians too long to realize the power, implications, and effects the internet would have on our profession, and while skepticism (and even cynicism) should be valued, we could have done much better at adapting more quickly. The web would be a better place if we had. The fact that it's taken this long to get live, online reference to the point it's at is proof of that. I guess my question is still the disconnect that my version of the future has with what you regard as the fading past…

I responded, in part: Maybe my problem with Shifted Librarian is one of tone and frequency—and that's my problem, not yours. I seem to see both a level of urgency and a suggestion that other librarians are ignoring this stuff—and, in "Shifted," a sense that this means shifting abruptly *away* from something. Which, given limited resources, is almost certainly the case. [On rereading this, I realize that I'm at least partly wrong here. Mea culpa yet again.]

(I took issue with the suggestion that librarians have just reacted until this "golden age," naming a few of many librarians who have been "proactive" for decades. I'm not fond of the word "proactive.")

To me, crucial parts of considering new technologies are skepticism and balance—and one part of balance is "What do we jettison to take on X, and what's the proper time to do that?" And—again to me, perhaps incorrectly—what I've picked up from your writing is not "librarians need to start preparing for" but "libraries need to ADOPT RIGHT NOW!" which is a quite different message. Restating the first as "librarians should be certain that they're maintaining awareness of new possibilities," that's much of what all of my writing has been about. As for new services, I guess one issue is deciding what's important and how it relates to the patrons of this community at this time. I read your "Movers & Shakers" profile yesterday…and I quote:

> Many people who know Levine from her web site and her presentations think of her as a gadget person, but that's a comparatively recent development. The "shifted librarian" concept came to her when

> she discovered Napster a few years ago. "Everything clicked into place," she says. "PDAs, my MP3 player, portable digital music on my various PCs, and there wasn't a single library that could interact with any of them." That's how she became an information technology evangelist. Whenever she sees new gadgets—Bluetooth-equipped pens, or digital wi-fi cameras, or software that shows you how a web page displays on different kinds of platforms—Levine immediately sees ways librarians can use them. Her web log has convinced many librarians to consider how new technologies might extend services beyond the normal boundaries of place and time.

I don't believe that libraries *should* interact with Napster, nor do I believe that most librarians should be spending significant amounts of time finding ways to use "Bluetooth-equipped pens" or every other new gadget that comes down to the road. That way lies madness—and a library that spends 10% of its time or money serving the most technophilic 1% of its population is doing the rest of its users a substantial disservice.

In fact, I strongly believe that public libraries should be behind the most advanced users technologically. Not in terms of ability to use technology to improve operations—and there I will claim that libraries have generally been ahead of the curve…. I don't believe it made sense for public libraries to invest heavily in Internet-based reference when 10% of the public had the equipment and connections to use it effectively, just as I don't believe that video reference makes much sense today….

[And, after looking at the PowerPoint presentation at her website:] Now I see what makes me grumpy, I think: Universality. Projection. "We all know." And "Generation Y" as the answer to all questions. We don't all know. Anything. We don't all live or plan to live in an everpresent web of ubiquitous computing. And, though you were quoting, we don't all get "computing as we know it is over" moments. I don't even believe that. But I'm not suggesting you should change…

Jenny Levine 3 [partial, more than a week later]

> I have to tell you that from where I sit, that's a pretty big chip on your shoulder.... I'll admit to a tone of urgency, but the intent is awareness, which I never think is a bad thing. You're bringing a personal bias to the word "shift" that isn't found anywhere in the definitions on my site. In fact, that's part of the problem that I note, that we need to prepare for some of what's coming without giving up our current services—a major problem to be sure. And I've never advocated doing any of it abruptly. I'm not sure where you're getting that from…

…I've never claimed to be first with these ideas, and I've certainly never claimed exclusivity of these concepts (the whole Shifted Reading List gives other non-library influences)…

The main thrusts of my blog are how wireless, presence, and pervasive computing will affect society in general and libraries in particular. Do you truly doubt the coming of any of those three things, even if they are 5-10 years away?

Can you point out to me where I said libraries *should* interact with Napster or Bluetooth-equipped pens? My point in the LJ profile was that the method of digital delivery to my personal device was finally real and that libraries need to recognize the implications of the coming shift in media delivery. I never said a library needed to join a P2P network or buy wireless pens, but they're indicative of how people will interact with entertainment and everyday objects over the next decade. If you don't understand what that means for libraries, you won't be ready when your patrons *do* want those services. My kids see a laptop and expect it to have wireless internet access. Everything is wireless to them—cell phones, video in the car, printing, etc. Sure they're ahead of the curve, but by the time they're teenagers, society will have caught up with them….

…Should I not provide information to my libraries that this may become more important in the future? Why would you want to shut down discussion like that? I'm really having trouble with that side of your argument.

[Responding to my comments on the PowerPoint stuff:] Well, again, that chip is weighing you down because I've never said we *all* know anything. That's quite a bias you're bringing in. I don't pull my predictions totally out of thin air; a great many of them are based on observations of my kids. Kids older than them are already having an impact, and as they grow up with location-based, presence-based, digital services, it's going to affect our society as a whole (much the same way Baby Boomers and television did). Look at chat, which I used to think was for teens at best. Now I love it, and not just for personal interactions.

And maybe you haven't had a "computing as we know it is over" moment lately, but I have a hard time believing that you didn't have one when you got your first PC or when you first saw a web browser. If you didn't, don't tell me because that would totally blow my image of you! I think it's sad that you don't believe that most people can have those moments. Every person I know that has a wireless network had one of those moments...

And isn't the point that no one *plans* to live in an everpresent web of ubiquitous computing? Isn't the point to try and identify the stuff that's going to

> happen and ingratiate its way into our lives without us realizing it? Trains, the telegraph, telephone, radio, television, the internet—do you think we unwashed masses all *planned* those and how they changed our lives?

To which I responded, in part: I would take issue with "chip on my shoulder," but will admit that my reading of the urgency and claims of universality expressed in your writing may be a misunderstanding of style, and is to some extent based on how I see your writing interpreted by others. I think my own writing should make it fairly clear that I do not, *ever, under any circumstances*, oppose discussion of any topic, and surely would never suggest to you how you should run your own weblog.

I looked at your "Shifted Librarian" PPT presentation and got a pretty strong whiff of "You MUST," but maybe that's me… I may be reading way too much into some of your stuff. It's not your responsibility to write in such a way as to prevent that from happening. As I know from responses to my own articles, that's impossible without neutering your style, which would be a terrible thing to do.

As for "computing as we know it is dead," I will say that I don't believe I've ever had such an epiphany. There have been several cases where I've said, "Now, this is *another* tool that has enormous usefulness and really interesting implications"—but that's quite a different thing. I've done my part to help explain some tools and why they're important. Maybe it's the "as we know it," in which case the phrase is meaningless: Every time you upgrade a PC, add a peripheral, start a new program, or whatever, computing "as you knew it" has changed. But the Web didn't suddenly replace other major ways of distributing info—email is still the biggest use of the Internet—and WiFi won't suddenly replace other methods of networking.

(I did *not* respond to "Do you truly doubt the coming of [wireless, presence, and pervasive computing], even if they are 5-10 years away?" In terms of *general* societal impact and the need for us all to change, yes, I do doubt—perhaps less for "wireless" in its broadest sense than for the other two. I have considerable explicit *dis*interest in pervasive computing. As always, I may be wrong.)

The Moral, Part 2

I was clearly wrong to put Jenny Levine down for tracking hundreds of websites—although not, perhaps, entirely wrong for criticizing a certain "RSS or nothing" attitude. She finds it useful to track that many sites, and there's no doubt that she comes up with worthwhile notes on what she tracks. It's an approach that I would find maddening. Which means that I can *reasonably* object to claims that *everyone* should use RSS feeds to track hundreds of websites, but not that I should object to someone else choosing to do so.

In other words, I was adopting a negative generalization—"Nobody should be tracking 200+ sources." That's wrong. *I* shouldn't track 200+ sources except through other weblogs as filtering mechanism. For me—for the way I work—context, time, and perspective are critical. For her—for the way she works—a vast, if sometimes decontextualized, array of selected sources works best. By now, I should remember one of my usual mantras: The answer to many multiple-choice questions is "Yes." In other words, we're probably both right.

If you don't read that as an apology and mea culpa, read it again.

But Wait, There's More…

I've now read over the full comments several times. I cannot find anything I've *ever* written, before or during this lengthy interchange, that suggests Jenny Levine should stop doing what she's doing, that discussion should be shut down, or anything of the sort. I don't claim consistency in general, but I do claim to be consistently on the side of open expression and debate, whether within librarianship or elsewhere. I didn't have a chip on my shoulder when this all started. I hope I don't have one now.

If I'm not allowed to disagree with someone without that being interpreted as an attempt to shut them up, I'd have to stop writing. I have no intention of doing that, any more than I have any intention of preventing or discouraging anyone else from saying or writing what they believe. For that matter, I refuse to be put in a position where I can't interpret and extrapolate. I see "Everyone Loves Portability" (from the PPT presentation) as a generalization; the same for "Information *will* come to you, not the other way around" [emphasis added]. If that's interpretation, so be it.

One other aspect of the Shifted Librarian weblog that used to bother me (or make me jealous; I'm not sure which) seems to have declined—the sheer volume of postings. Finally, since this whole subsection belongs in "Bibs & Blather" rather than this particular perspective, I applaud Levine's aggressive attitude toward fair use: She's willing to quote most or all of a newspaper column within her weblog, even though the column is under copyright (and presumably open to syndication or republication for a fee) and does not appear with a "Some Rights Reserved" license. I lack that courage.

Contemplation, Introverts and Extroverts

The following was slated for "Library Stuff":

Crawford, Walt, "The century's most vital technological device," *American Libraries* 34:3 (March 2003): 84.

I mention this mostly because I've received considerably more feedback than I do for most "Crawford Files"—all of it positive. The column's about contemplation. The device, for those of you who can't be bothered to go get *AL* or go to ALOnline, is the off switch—a vital aid to contemplation.

As an addendum to the column, right around the time it appeared I encountered an interesting commentary on a non-library weblog run by a friend. This person, an admitted extreme extrovert, was noting that (in this person's experience) extreme extroverts need to be around people—and that they think things through by talking about them, sometimes starting talking before they've really started thinking. I'm an introvert; that never really occurred to me, but it does match some experiences I've had.

So perhaps contemplation in the sense of "deep thinking" is a pleasure reserved for introverts. Perhaps not.

That's what I originally wrote. The friend is Elizabeth Lane Lawley (noted above). She was commenting, in part, on "Caring for your introvert" by Jonathan Rauch, in the March 2003 *Atlantic Monthly*. (www.theatlantic.com) Consider the first paragraph of that article:

> Do you know someone who needs hours alone every day? Who loves quiet conversations about feelings or ideas, and can give a dynamite presentation to a big audience, but seems awkward in groups and maladroit at small talk? Who has to be dragged to parties and then needs the rest of the day to recuperate? Who growls or scowls or grunts or winces when accosted with pleasantries by people who are just trying to be nice?

Rauch cites these as the signs of an introvert and calls them "among the most misunderstood and aggrieved groups in America, possibly the world." He also calls himself an introvert. The article goes on as a kind of FAQ for dealing with introverts.

While it's an interesting article, I believe it's full of generalizations from Rauch's own form of introversion—or maybe he's talking about *extreme* introverts. As already noted, I'm an introvert (yes, I test that way on Myers-Briggs, for what that's worth), but not an extreme one. I don't know that I consider myself "misunderstood," as Rauch claims "we" all are. I take considerable objection to one sentence, answering the question "Are introverts arrogant?":

> I suppose this common misconception has to do with our being more intelligent, more reflective, more level-headed, more refined, and more sensitive than extroverts.

Give me a break. More reflective? Yes, in the sense of contemplation vs. talking things through. More intelligent, level-headed, refined, sensitive? I think he's answered "Are introverts arrogant?" at least in his own case, and his "Hardly" answer is clearly wrong for him. If that sentence isn't arrogant, I don't know what is.

Maybe it's a matter of degree. Maybe I can't claim to be more intelligent, level-headed, refined, and sensitive than the extroverts I know [claiming to be more intelligent or level-headed than Lawley would be a stretch I'm unwilling to make, just for starters] because I'm insufficiently introverted? I don't "need the rest of the day" to recuperate from a party—but I'm not really "party people" either. I call it "asocial"—I enjoy social events in small doses but don't need them. I don't need "hours alone every day" (but an hour is nice).

The Moral, Part 3

When you generalize by saying that nobody has time to contemplate, you're wrong. (See the original column: Such a generalization was the trigger.)

When I generalize by saying that everybody needs to spend time in *quiet* contemplation, I'm also wrong.

I don't see any need to retract or even modify the "Crawford Files" cited above. I believe we all need to spend time thinking deeply. I believe we can all make such time.

If your style is such that thinking deeply is a talkative, social activity rather than a quiet, solitary activity, that's a difference between your mind and mine.

And here's the final bit of another too-long perspective (for an introvert, I sure do go on, and on, and on…):

I've probably erred in making fun of some gadgets, technologies, and services just because *I* don't find them useful. If so, I apologize—and I have reason to believe that y'all will accept my standing invitation to call me on such erroneous negative generalizations in the future. By now, you should know that I love (and use) thoughtful feedback, *particularly* when it expands my understanding by offering another viewpoint.

I will continue to be critical on at least the following grounds:

- Too many gadgets and technologies are touted as something *everyone* needs or will want. That's automatically grounds for skepticism on the basis of false positive generalization. Other than food and water, there's precious little that "we" all want or need.
- If I believe that a gadget is a solution to no need (that I can perceive), or is an absurd way to do something that something else does better, I'll feel free to call it pointless. If I'm wrong, let me know. (I do not regard "It's *kewl*" as plausible justification for a gadget, or at least as a good reason for librarians to think about the gadget.)
- It's reasonable to say why I would find a system, technology, or gadget more problematic than promising; once in a while, I'll try to note that others might find them wonderful. Maybe you really love the idea of "pervasive computing." My sense that it's a thoroughly dystopian notion is just that: *My* sense.
- And, at least to my mind, there are many devices that make reasonably good sense for thousands, millions, or tens of millions of users but that don't necessarily work well within my conception of a library environment. *My* conception: Maybe not yours.

And now, if you don't mind, I'm going to go watch some mindless TV for a few minutes while I match socks from this week's laundry.

Copyright Currents

A melange of stuff lately—plus the Broadcast Flag (see separate essay) and developments with Creative Commons, discussed above.

Eldred v Ashcroft

Reactions and "next steps" continue, in addition to Creative Commons. Among them:

- Marci Hamilton discussed "other options, including constitution amendment" at FindLaw on February 13 (writ.news.findlaw.com/hamilton/20030213.html). I'd quote the full title, but it's *long*. She asserts, "It's time to take the issue back to Congress, and fight for a rollback of the duration of the copyright term." Noting the anti-copyright group on the Internet, she calls that stance "sheer folly" and looks for balance, saying of "three-generation copyright," "From any objective perspective, it is simply too long." She offers three "uphill battle" alternatives:

  1. Persuade Congress to "take responsibility for copyright law";
  2. Go straight to the copyright industries, possibly boycotting companies that won't endorse shorter terms;
  3. Demand a constitutional amendment forever capping copyright duration. She suggests 50 years and notes that this term would also have to be pushed in the EU.
- Peter K. Yu posted "Four remaining questions about copyright law after *Eldred*" at GigaLaw.com in February 2003 (www.gigalaw.com). He did not find the decision "groundbreaking or different" from prior Supreme Court precedents. He suggests that the decision opens at least one possible challenge of DMCA (as opposed to CTEA), that "harmonization" of copyright is nowhere near as simple as it might seem—and that, while this decision would probably not be the "Dred Scott case for culture" (that is, it would likely not lead to a constitutional amendment), increased awareness of copyright issues could lead to consumer-friendly legislation.
- Lawrence Lessig filed a petition for rehearing to the Supreme Court. It's a brief brief (six book-size pages) and raises questions of principle and conflict with other decisions. The brief argues that the *real* harm in CTEA is not that prices are higher, but is "the removal of a vast amount of our recent past from a domain where it might be usefully or easily cultivated." It notes that a key problem is tracing rights holders, not merely the cost of rights. The court dismissed the petition—as Lessig probably knew it would, since such petitions are almost never granted.

Lofgren's BALANCE

Congressperson Zoe Lofgren—from the heart of "Silicon Valley"—has introduced an act entitled "Benefit Authors without Limiting Advancement or Net Consumer Expectations (BALANCE) Act of 2003." You can find the act itself at Lofgren's website, www.house.gov/lofgren/

Findings in the act assert that authors of the DMCA did not intend a dramatic shift in the balance of copyright rights, noting that the House Judiciary Committee report included the following key clause (emphasis in the original):

> [A]n individual [should] not be able to circumvent in order to gain unauthorized access to a work, *but [should] be able to do so in order to make fair use of a work which he or she has acquired lawfully*.

The changes in copyright would add a new Section 123 to Title 17 of the U.S. Code. Primary provisions would exempt acts taken for archival purposes and for non-public performance or display, and would rule out enforcement of "nonnegotiable license terms" that restrict those rights. It would also explicitly recognize "digital first sale," providing that the owner of a copy of a work could legitimately transfer their privileges to someone else through sale or other disposal as long as the copy retains its original format and the first owner does not retain a copy in retrievable form. In other words, if you buy a digital work, you should be able to sell it or give it away—as long as you don't keep a copy. Finally, circumvention of technological measures would be legal to make a non-infringing use where the copyright owner hasn't made such use possible without additional cost or burden—and it would be legal to manufacture, import, and offer such circumventions.

The brief analysis adds some livelier language and clarifies the bill. It asserts:

> Ultimately, this proposal will help content owners. The bill does not let consumers take their digital content and share it with a million of their best friends. It simply seeks to encourage a legitimate alternative to piracy that respects consumer rights and expectations, which is the only lasting cure for digital piracy.

Lofgren's site also lists early supporters of the act—including the Consumer Electronics Association, Lessig, ARL, AALL, ALA, Public Knowledge, the Home Recording Rights Coalition, and others. Worth following as a modest attempt to restore a little balance. She may not be my representative, but she's doing good work here.

Digital Rights Management

A lot has been said about DRM lately, but in conferences I didn't attend. It strikes me as a little too wifty to comment on commentaries on comments made in such conferences; that's a bit meta for my tastes. (See *Cites & Insights* 2:13, p. 6, for an earlier take on getting too meta.)

I was astonished by an offhand statement in a sidebar to a February 2003 *Computer Shopper* writeup on CD-RW burners. The sidebar discussed the first copy-protected "CDs" (they are *not* CDs according to Philips) and the resulting massive returns and successful lawsuit. It goes on to note "increasingly sophisticated copy-protection methodologies" and the defeat of one "sophisticated" methodology with felt-tip pens, and concludes with this paragraph:

> Despite this latest humiliation, the labels are hardly ready to admit defeat. One way or the other—even if it means terminating the production of all audio CDs—copyrighted music will eventually be distributed only on rip-proof media. But until that happens, the current failure of copy-protected CDs will help ensure CD burners' popularity far longer than anyone thought possible.

Read that middle sentence again. Of course, someone technologically knowledgeable enough to be writing for *Computer Shopper* when it had editorial standards might recognize that "rip-proof media" is an empty phrase as long as it's possible to do a digital:analog:digital cycle, the "analog hole" in all copy protection schemes. Setting that aside, the assertion here is that RIAA members are so pigheaded that they'd willingly lose every knowledgeable customer, forever, than let people make mix CDs.

Here's the thing, maybe more disturbing than the assertion itself: I can't honestly say that I find this unbelievable. I *can* honestly say, after going into Tower a couple of times with the thought of adding to my CD collection—and after seeing CD Now become part of the Amazon colossus—that some of us may own all the recorded music we ever need.

I hope that's not true—"that" being both that record companies are absurdly pigheaded and that I never buy any more music. I know that I do not plan to buy collections of music that I can't enjoy the ways I want to enjoy it, which include playing on my computer's drive and mixing individual pieces with other pieces on CD-Rs, entirely for my own family's use. If record companies find that intolerable, then I find *them* intolerable…and, so far at least, they can't *force* me to buy or rent more music.

Derek Slater mused over some of these issues in "A Copyfighter's Musings," his weblog at blogs.law.harvard.edu/cmusings/ At one point, he assumed that an MP3 file that's been expanded to audio form for a CD-R can't be ripped from that CD-R without becoming "an even more compressed version of poor quality." That's not clear. It *is* clear that recompressing a *compressed* file, particularly using a different system, will lead to poor quality results—we already see some of those results on badly-done recordings. But a high-rate MP3 (192K or better) is likely to expand back to audio (or .WAV) form with so little damage, at least for anything but classical music, that re-ripping would work fairly well.

One response is that the "analog loophole cannot be plugged," which isn't quite right either: It *can*, but only by methods so drastic that they eliminate general-purpose computers.

As part of that discussion, Slater wonders whether many people know how to redigitize or how to capture an audio stream as it's fed from "protected" sources. As for the latter, I can't say—but redigitizing is no big deal: It's *the same* as ripping, if

you're looking at a CD, and it's already supported by tools such as the latest Easy CD Creator for analog:digital recapture (where the CD, for some reason, can't be used on the PC, so you plug a CD player's audio output into your sound card input).

Articles & Items

Fairlie, Rik, "Want to copy content? Then back the bill," *Computer Shopper* 23:3 (March 2003): 30.

This one-page column offers a plausible introduction to DMCRA and groups on both sides. The only reason to mention it is this surprising claim:

> Despite opposition, Boucher is confident the DMCRA will pass during this session of Congress.

That's the first suggestion I've heard that *any* copyright-related legislation, much less pro-consumer legislation, might pass in 2003.

Gassaway, Lolly, "When works pass into the public domain," www.unc.edu/~unclng/public-d.htm

I mention this—and apologize for the informal "Lolly" but that's the form she uses on this page—because I've been getting it wrong. In one concise table, Gassaway summarizes the dates of works and how they're protected under current law. The key element here: material published with a copyright notice between 1923 and 1963 *may* be in the public domain—if that copyright was not renewed. While CTEA automatically granted an extra 20 years to most everything, that was only true for material still in copyright. (Everything *published* before 1923 is in the public domain. Items *created* before 1923 but not published until later might or might not be.)

One problem is finding out which items were renewed and which weren't. Work may be afoot to build a workable, accessible database providing this information. The other problem would remain: Tracking down copyright holders who automatically renewed at some point between 1951 and 1991 (when their first 28-year term expired) but who have since died, disappeared, or just lost interest.

Soules, Aline, "Copyright for writers, readers, and researchers," Parts 2 and 3, eBookWeb.

I mentioned part one of this brief series in March. Part 2 discusses copyright registration and its changing role and the shrinking public domain—including the irony that Disney, after creating works based on public domain material, wishes to deny others that ability. Part 3 deals with DMCA, fair use, first sale rights, and educational use. Soules closes with the concept of balance and a plea for readers to "Be ethical and operate with integrity, not greed." The trio of pieces form a good, down-to-earth, brief discussion of current copyright issues, offered in chunks appropriate for online reading (but better read in print).

Trends & Quick Takes

Changing Times

It's worth noting changes in weblogs and print media that I follow, in no particular order:

- LLRX.com is "on hiatus" and the weblog portion appears to be gone—and Sabrina Pacifici, co-editor of LLRX, has begun a new weblog, beSpacific. The new weblog deals with law, libraries, and technology, similarly to the LLRX weblog, and is off to a good start. Most links offer neutral descriptions rather than opinionated commentary. Worth checking for a wide range of well-selected law and library links.
- Charles W. Bailey, Jr., has put the essential Scholarly Electronic Publishing weblog on a weekly schedule, at least for now—in a clever way that serves readers and gives him flexibility. The top of the log shows when the next update can be expected. Recently, that's always been the following Monday. Bailey's content continues to be wide-ranging (within his chosen scope), carefully described, and solid enough to make this a key resource.
- Steven Cohen has completely redone Library Stuff—and, for now, it seems to be heavily recursive: Many entries are about other blogs and aspects of blogging and related software. Cohen's also active as a LISNews contributor, and is trying to avoid duplication. I suspect further refinements of Library Stuff will take place.
- Last July, I accepted Delta Airlines' offer to use some of my stranded miles—gained on a cruise-related flight, about the only time I'd be flying Delta—for one-year subscriptions to a few magazines. I thought I'd signed up for *Business 2.0*, *Red Herring*, *Technology Review*, and *Wired*—but *Wired* never showed, and I may have imagined that one. I grew to dislike *Technology Review* fairly rapidly, and am still deciding whether to renew *Business 2.0* (but probably won't). Then there's *Red Herring*, one of the original new-economy business magazines. I kept trying, honest I did, but clearly I'm neither sufficiently investment oriented nor enough of a geek to get it. Neither, apparently, were enough subscribers and advertisers. As the staff was pre-

paring a blowout 10th anniversary special issue, *Red Herring* blew out: The March 2003 issue, a little short of 10 years, is also the final issue. It took me less than an hour to read and I can't think of a thing to say about it. Except this: I miss the *Industry Standard*, all the more so as I try its so-called competitors. I won't miss *Red Herring* or the others.

- Here's a nascent perspective that may or may not emerge. Is there an unspoken code among library bloggers and zine people that prevents criticism of one another? There's surely no such code among journalist bloggers or law folk or the rest. I'm not sure it's healthy among library folk either.

Feedback: Your Insights

A variety of feedback, interesting and informative as always. I encourage feedback. I don't promise to use it. And, as the first three items show, I can't always use it in the issue after I receive it. *Please* indicate in the feedback that it's intended for publication. If I have no comments following a letter, it's because I didn't see any reason to comment—the feedback said what needed to be said.

If you wonder why I sometimes use first names in responses, sometimes last, I do have a rule (although I may not always follow it properly, as in showing proper respect to Elizabeth Lane Lawley's Ph.D. by not calling her "Liz"):

- If I've met the person face-to-face at some point, I typically use their first name.
- If I've never met the person, I *try* to use their last name.

Gilles Caron, Université du Québec à Chicoutimi, re: Copyright Currents

I regularly read *Cites & Insights*. I was particularly interested by your last issue (March 2003) and the saga about the recent decision of the US Supreme Court not to overturn the Copyright Term Extension Act.

We support here at Chicoutimi the edification of a collection called "Les classiques des sciences sociales" (http://www.uqac.uquebec.ca/zone30/Classiques_des_sciences_sociales/index.html), a collection of ebooks in French. This collection is born on the initiative of one person, Jean-Marie Tremblay, dedicated to the task of making available knowledge freely to everybody.

An aspect I didn't read in your comments is: Who will benefit from this extension of the copyright to 70 and more years (probably indefinitely)? Surely not the author... Possibly some of his or her descent... Probably those who will buy the rights from those who, to their surprise, will own these "new" rights and will be happy to sell them. And we could end with a situation where the rights on Karl Marx publications will be owned by Bill Gates or some other of these "new editors."

Are we in a situation where the patrimony of humanity will be confiscated by those who have the money to buy it? Is this what is called "progress of civilization"!

Not much to add here, although I could argue that Bill Gates isn't the best example of this particular category of villain.

Steven J. Bell, Philadelphia University, re: My comments on his *American Libraries* article in the March *Cites & Insights*

Greetings. I hope you are warmer than you were in Philadelphia during midwinter. Us natives didn't think too much of that cold spell either (though I thought the Friday—first day of the conference—was really the worst of them). Fortunately you missed out on our fun 24-inch snow over this past weekend. My school is back in session today for the first time since last Friday. Even though it was quite cold, I was warmed by the many folks who stopped me at the conference to say how much they enjoyed reading the article in *AL*. It was very gratifying to know that it had struck a chord with many front line librarians. Like you, folks didn't tend to agree with quite a few of my points - and I knew when I wrote it that would be likely. Like you, I'm certainly not sure I'm convinced I've got it right. But let me respond to a few things you mention in *C&I*.

While I can be relatively ambiguous about this whole full-text issue on any given day, I remain convinced that what I see in regards to the business practices of the major aggregators is something that should be of concern to the profession. The article is mostly a reaction to what I see as a race to add more and more full text. I subscribe to an email alert from one of our aggregators that tells me all the new titles being added. When I look at these titles I find myself asking, "Do we really need this; will my users find this of any use?" Yet I'm paying for it and I have no say in whether it gets added. I find myself questioning if this practice makes sense to me or my library users.

You make a good point on retrieval limits—there are definite dangers in not letting the end-user see what their search has actually resulted in achieving. From my perspective this can create many more problems for the novice undergrad then it will for a grad student or librarian. LexisNexis Academic Universe is a good example. Any search that would retrieve over

1,000 hits will not be completed. The system gives a message informing the user of this. Now, that can be a good thing. If you know how to interpret the message it says, "Wait a minute—this search is way too broad—you need to narrow it" (and yes, I realize there are times when searchers want maximum recall, but that is rarely the case with undergrads). The problem is that LN gives the user absolutely no clue as to how to improve the search. So most undergrads will simply give up and walk away (or maybe ask for help). In many cases the search is pretty bad. For example, search "terrorism" as the term in "all papers." LN originally came up with this as a self defense mechanism, to prevent their computers from a meltdown. They also changed the search mechanism from defaulting to "full text" to "lead paragraph" which helps some, but not enough. I just saw a prototype of a new interface ProQuest is getting ready for June. It does have an interesting "Did this search work?" feature that will prompt the user to try clicking on terms from their controlled vocabulary that will be recommended based on the user's search. This looks like an interesting feature that may help improve search results.

I think your suggestion about index databases with Open URL links makes great sense, and I would be interested in seeing this sort of thing. I think we're still a ways away from that though. Many of us are just beginning to understand products such as SFX (there was a good article on this in the latest *Searcher* magazine), but it looks like the large research universities with lots of systems support are the only ones sticking their toes into this water. We'll have to see where it heads, but this approach would definitely help to ease the full-text fixation thing. I have students (architecture majors) who will try to get away with using ProQuest before they even try Avery in hopes of being able to get full-text online rather than have to track down articles manually. That's just hurting yourself and it makes no sense. But this is what we're dealing with here.

I also understand your points about journals where full-text just doesn't make sense (or isn't appropriate). The art and architecture journals are the perfect example, and I find myself explaining to those students why their journals aren't available in full text many times. On the other hand we do a lot of work in the area of textiles and materials science, and that field could apply itself well, but it's not quite so popular and there just isn't much full text out there yet.

I greatly appreciate the time you took to give my article a good read and to comment on it - and I appreciate that you have recommended it to your readers. While a lot of folks get *AL* I don't think they read it. In fact, I got barely a comment on my article until I was subsequently interviewed about it in the *Chronicle of Higher Education*; then people went back and read it. I am hoping the next issue of *AL* might have a letter or two about it. I would certainly hope that it got folks thinking. Why else bother?

As I responded to Steven, I don't know how difficult or expensive it is to set up an OpenURL resolver. As lead Eureka analyst, I had the easy task: Making Eureka an OpenURL sender. (Any Z39.50-compliant database is an OpenURL target, so we didn't have to do anything.) I expect to see much broader implementation of OpenURL over the next two or three years. Other than that comment, I think Steven raises good points and I regard this as a valuable addition to the original article. As to feedback, that's something I've noted as well: I get considerably more feedback from the 1,400+ readers of *Cites & Insights* than I do from the 12,000+ readers of *EContent* or the 63,000+ readers of *American Libraries*.

Eli Edwards, San Jose State, re: February 2003 "Library Stuff"

In your take on Rachel Mendez's article on productivity software in public libraries, you said:

"Hmm. I was not aware that a neatly-typed letter was no longer acceptable. I wasn't even aware that school papers couldn't be handwritten (but it's been a long time since I was in school), much less typed. I would bet money that any magazine that publishes fiction will favor a brilliant typewritten story over a mediocre computer-printed story and, frankly, I can't imagine an editor saying "No, I won't read this, I can feel the indentations: It must not come from a computer!" The gap in story acceptance has to do with literacy and creativity, not with the difference between a cheap electronic typewriter and a PC."

Mind you, I haven't read Ms. Mendez's paper, so I don't know her arguments. As for your observation, I believe that you are correct: A paper of text produced on a typewriter (if done correctly) should be as acceptable as a paper of text produced via computer/printer. However, there may well be a huge difference between a typewritten paper of text and an electronic document/file. Increasingly, in schools, editors' offices and even HR offices, people want original submissions as electronic files. Having a typewritten resume or term paper is fine for in-person distribution. But I find that as a student (and scholarship applicant), I am starting to submit more of my work/qualifications/credentials in electronic format.

This isn't to argue that we are making our way to the paperless society hyped in the 70s and 80s. On the other hand, not being able to upload and email one's resume at the behest of employers may be a small indicator of the Digital Divide that those in the know should pay attention to.

My reading of Ms. Mendez' argument on "school papers" was that it related to K12, where I find it hard to believe that computer submission is generally expected (but could be wrong). Otherwise, Mr. Edwards' points are very well taken.

Feedback from the April Issue

One followup based on feedback—from an expert in censorware who provided an informal commentary and will probably post his own formal explanation elsewhere.

In discussing censorware, I commented that it was not only not true that filtering vendors offer lists of blocked sites, but "some of them will threaten DMCA action to prevent you from uncovering the lists." That's not quite true—because, in the first round of LC's DMCA exemption hearings, one of two exemptions was for decrypting censorware blacklists. On the other hand, the companies can threaten legal action based on regular copyright, trade secrets, shrinkwrap license, and other laws—and they do. Further, while a censorware expert can legally write a tool to decrypt the lists, that expert *would* violate DMCA by distributing that software to anybody else—for example, libraries. (As you might expect, the censorware companies want this limited-term exemption removed.)

Peter Suber re: My comments on his FOS weblog in "A Zine is not a Weblog"

Thanks for your kind words about my blog writing.

Historical note: I was reluctant to start a blog for many of the reasons that you seem to be reluctant. I was a newsletter writer and enjoyed the time that my newsletter gave me to improve my first draft before sending it out to the world. The turnaround time for blogs is a lot faster, which is both a plus and a minus. In truth, I often publish blog entries that I wish I had held longer for rumination and polish. But I started the blog from necessity: I had to slow down my newsletter in order to return to full-time teaching, and a blog was the best way to offer a similar service that would fit my schedule. But now that I've started blogging, I'm very glad that I did. When I revive my newsletter this summer, I'll keep my blog and do the two in tandem. I expect they'll be strongly synergistic.

Harry M. Kriz, Virginia Tech, re: "The End of Books Déjà vu?"

On page 78 of Thomas Alva Edison's 1921 *Diary and Sundry Observations* there is this paragraph:

"I believe that the motion picture is destined to revolutionize our educational system, and that in a few years it will supplant largely, if not entirely, the use of text-books in our schools. Books are clumsy methods of instruction at best, and often even the words of explanation in them have to be explained."

Eli Neeher re: One of my comments in "Filtering/Censorware Follies"

I very much enjoyed your overview of the current state of CIPA litigation in the April 2003 *Cites & Insights*—it was definitely one of the most comprehensive discussions I've seen, and generally on the mark. That having been said, I'm troubled by your support for blocking access to minors completely as a means of making uncensored access available to adults without enraging too many people. You write…:

"The [Hannibal Free Public Library] director says, 'We've been real conscious of it since we put in public-access computers, and the library asks Internet users to sign an acceptable use agreement. Anyone under 18 must have parental or guardian permission to use a computer, and that permission can be restricted to the filtered computers in the children's room' — in other words, the common 'partial filtering' solution that the government doesn't recognize at all."

I'm not sure this is as much of a solution as you maintain. Certainly most kids would prefer filtered access to no access, and I don't really see how censorship based on who is using a terminal is any less pernicious than censorship based on what is being accessed.

When I was 16 and living a couple of hundred miles from my parents, the Saugerties, NY public library wouldn't let me online (would not, in fact, even issue me a library card) without a parental signature; at the time this was my only e-mail access, and my only way to stay in touch with a variety of people that it was impractical (and expensive) to call. Particularly important to me was the ability to stay active in several political groups I'd become involved in.

In Orange Park, FL, when I was trying to put together a resume before I left a job, the public library maintained the same policy of not allowing computer use without parental permission. This was a pain when I was trying to get printouts of articles I'd written as senior correspondent for the short-lived and ill-fated dot-com startup Ytrybe; since all my other copies of those articles were in New York or on a Unix shell account that had been closed, not being able to get to them on the Web was a serious impediment to compiling any sort of portfolio.

In both these cases the policies were easily circumvented by having a friend forge a parental signature on the permission form. But I resent that I had to perjure myself to gain access to computers that my tax money — the absence of which I felt acutely in

every paycheck — had helped pay for. In both these cases I had no alternative net access (there were not even Internet cafes in these towns) and had a real need for information that couldn't be acquired in any other way. And what if I hadn't had personal Internet access when I was 14 and needed to look up legalities when I was trying to decide whether and to whom to report the sexual and physical abuse of a close friend? Being a socially inept 14-year-old kid in that situation is bad enough without having to deal with self-appointed guardians of morality.

I guess my point is that minors have valid reasons beyond IM and flirty e-mails to be using public Internet terminals; that, while I dislike censorware as much as the next guy (years ago I did some testing for Peacefire of a filter whose name escapes me which, I found, blocked copies of the Iliad and the Odyssey for no reason I could see — maybe it was all those spears through the eyeball), I don't think that cutting off the access of a large population segment altogether is any better than limiting everyone's access.

Thanks for taking the time to read this, which ended up being a bit lengthier than I'd expected.

My initial response—in addition to thanking him for an insightful commentary and asking permission to use it—was along these lines:

My "support" for blocking access to minors is, in fact, extremely uncomforable and, as I think my bulleted points made clear, an internal conflict. And, although I didn't say it in the set of bullets, I think a distinction needs to be made between children (which I'd define as pre-teen) and older minors. My "support" comes down to the recognition that it's politically infeasible to say, "6-year-olds should have unfettered access to everything on the Internet, period, and parents can just keep out of it." Such a stance is an invitation to shut down the library or its computers altogether. A compromise is needed, like it or not.

I don't believe that I said I supported Hannibal's specific policy. The point I was making regarding Hannibal is that they do *not* seem to have floods of pornography washing across their computers despite having unfiltered access for adults. I quoted their case as a comment on the apparent epidemic of filth at the libraries involved in pro-CIPA briefs.

My complex position is saying what I'd probably find necessary to do if, heaven forbid, I was a public library director, and also recognizing that no public library would put *Hustler* or even the relatively tame *Playboy* in its children's room.

There is a simple legal issue: Minors do not have the same legal rights and responsibilities as those over 18. Libraries that require parental signatures to provide library cards or online access do so for sound legal reasons. You might not like those reasons—I might not either—but until the age of majority can be changed, there are legitimate liability issues involved.

Mr. Neeher added this commentary on my first paragraph, which requires no response:

I can't disagree with that. My main objection is not to your (or any of the the anti-CIPA crowd's) beliefs per se—I like to think most of them would, at least in theory, agree that blocking anyone's access is bad—but to the fact that the issue of blocking minors' access is so often glossed over as secondary, if it's considered at all, in this debate. A compromise is needed, but I think the compromise that's current in libraries—the one employed by Hannibal—has gained currency more by default than as a result of any real thought.

Peter Graham, Syracuse, re: MovieMask (in the Censorware roundup)

You comment that you find it suitable for someone to choose an edited version of a film, even an edited-on-the-fly version by some cockamamie software, because it's their right to watch what they want. I suggest a more appropriate response would be to tell people to go get the art they want instead of modifying the art they don't like.

The rights of artists to have their work presented as they intended is another right, and and an important one. If an artist (read: painter, poet, movie producer, filmscript writer) provides to the market a work in a certain form, they have the right to see that it is perceived in the form they intended; otherwise, in a very real sense, it isn't their work. In the UK, and I think further in Europe, the question of the moral right to a work (as an extension of intellectual property) may be asserted by an artist. For painters, e.g., it is my understanding that this prevents a work from being casually destroyed by an owner for whatever reason. It's now often seen asserted on the verso of title pages of UK books, presumably with the aim of having recourse against inappropriate uses of text.

Presumably this is no defense against satire, parody, etc., but against wanton damage to the artistic product—which the software you describe seems to be defined by.

My initial response: In practice, once a work has been reproduced, the creator is not in a position to assure that those using the work use it in exactly the way presented—only that they will be *aware* that they're not doing so. To the extent that impinges on the creative moral rights of the artist, it's a tradeoff between those rights and the desire to be seen.

That is:

- If I buy a copy of a nude sculpture, the artist is not in a position to prevent me from putting fig leaves over certain portions—but the artist should be in a position to prevent companies from selling copies with those fig leaves preapplied. [There's a distinction for an original, unique work of art: There, the artist should be able to object to modifications, although perhaps not to prevent them. And while a painter should have some protection against my wantonly destroying a painting, even though I purchased it, I don't see that the painter would or should have any such protection if I buy a *print* of that painting.]
- If I choose to program my CD player so that it always skips certain songs on an album, or the "nasty" movement of a sonata, the artist has little or no recourse.
- Oddly enough, DVD controls do provide the possibility that a director could insist that you always watch the movie from beginning to end, never fast forwarding or skipping a scene, but it's unlikely that any director would be so controlling (or would sell many copies). For 99.9% of movies, I'm perfectly free to fast-forward or skip certain scenes entirely. Similarly, I can skip pages or chapters of a book.

In all these cases, the keys are (a) that it's a reproduction/publication, not a unique work, (b) that the work itself has not been modified—only the way I view it, (c) that I'm *aware* that I'm modifying the original work.

So, my comment—made badly, no doubt—was that software that modifies a DVD as it's being viewed, with the awareness of the owner that this is happening and with no modifications to the DVD itself, is far less objectionable than are modified copies of the DVD.

Along with permission to use, Peter added these notes:

> The moral right in Europe, as I understand it, indeed forbids you from publicly displaying the nude sculpture that way. I don't know how it would apply in your own home, but if you're a museum, you couldn't do that. (If it isn't otherwise clear, I support that moral right and not very hopefully think it should be available to USA artists as well.)
>
> I'm not sure your distinction [between original and reproduction] holds about an original work of art and a copy in say the music environment. Where's the original? The studio performance? (Which dubbed track?)
>
> The controls [over DVD playback] certainly do exist and as a brand-new DVD owner…I find myself frustrated that I indeed can *not* fast forward through the FBI notice or the production company's irritating initial 20-second splash screen on several of my new BBC DVDs. I suspect if the software you talk about takes any hold at all directors/producers will do exactly what you say, and why not.

It's clearly complex, more so than we're dealing with here. Like most intellectual property discussions.

Following Up: The CIPA Hearing Transcript

April's "Filtering/Censorware Follies" included notes from Skip Auld's extensive informal transcription of the CIPA oral arguments before the Supreme Court. A few days after *Cites & Insights* was posted, the official transcription appeared—which you can find through the usual sources.

After reading the entire official transcript, I'll repeat something I said last month: "Auld seems to have done a remarkable job." Change "seems to have done" to "did." He did such a good job that I'll only add one nugget, cited directly from Theodore Olson's closing statement:

> What this statute [CIPA] does is gives the libraries *the right*, if they choose to accept Federal funds, to make what kinds of decisions, to exclude pornography which there's no dispute in the record libraries have, from time immemorial, chosen not to put in their libraries. So the decision that they're making is the same one they have already voluntarily made over the years.

Amazing. Our government at work.

The Details

Cites & Insights: Crawford at Large, Volume 3, Number 5, Whole Issue 33, ISSN 1534-0937, is written and produced at least monthly by Walt Crawford, a senior analyst at RLG. Opinions herein do not reflect those of RLG. Comments should be sent to wcc@notes.rlg.org.

URL: cites.boisestate.edu/civ3i5.pdf