



# Key Issues in the Arts and Entertainment Industry

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# 5 Intellectual Property in the Digital Age



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## Introduction

Once a backwater of law that elicited little interest beyond arts and entertainment industries and their lawyers, over the past generation, copyright law has become a major arena of social and political conflict. Many clashes amount to tactical skirmishes among companies for competitive advantage – a long and familiar dynamic in copyright law. But much of the turmoil revolves around a deeper issue: what legal principles and social norms should be used to promote new creativity, especially when the Internet and other digital technologies are involved? Many Internet users, academics, software programmers, artists and citizens criticise the expansion of copyright law and its enforcement as an obnoxious limitation on their basic freedoms. Content industries, for their part (with significant exceptions among large Internet-based companies like Google) tend to regard expansive copyright protection and enforcement as indispensable for sustaining creativity itself.

This chapter describes the profound shifts that copyright law has undergone over the past 20 years as digital technologies have disrupted mass media markets and changed people's stake in copyright law. As we saw in Chapter 2, the 20th century business models for media industries treated people as passive audiences, whose chief role was to 'consume' works made by professionals and sold in the marketplace. This changed with the arrival of the Internet. Telecommunications and digital technologies have enabled ordinary people to become prolific creators in their own right. The 'people formerly known as the audience', in Jay Rosen's memorable phrase (Rosen, 2006), have become bloggers, musicians, remix artists, video producers, website curators, hackers, academic

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collaborators, and much else. Ordinary people can generate, copy, modify and share works with a global public without having to deal with commercial content intermediaries such as publishers, record labels or studios.

The rise of this new 'sharing economy' outside the marketplace – in which self-organised communities can generate and manage their own 'commons' of content – poses profound challenges to a system of production based on exclusive ownership and control. A commons is a self-organising social system in which a defined community of people manage the access, use and allocation of resources sustainably without money, legal contracts, and other features of markets. Commons-based platforms such as Wikipedia, social networking and open source software divert people's time and attention from commercial platforms, resulting in smaller audiences and lower advertising rates. They also provide new cultural spaces in which amateurs can create qualitatively different new sorts of content that may or may not be marketable, but nonetheless attract considerable web traffic and thus compete with commercial media and content producers.

This chapter will explore the key drivers of the sweeping transformations in market structures, technology and social practice. It will also examine some of the new 'open business models' that are challenging traditional, centralised market structures for the arts and entertainment. Special attention will be paid to the dynamics of new *non-market* structures for creating and enjoying music, video, books, web content and other creativity and information.

## Copyright Law

The new models of content production and distribution have engendered intense political and legal conflict. While this strife manifests itself in many areas of law – antitrust, telecommunications regulation, privacy, consumer protection, and more – copyright law is a primary venue in which this drama is playing out.

Despite the new pressures from digital media, copyright law is not destined to undergo a radical transformation any time soon. Existing business models of various arts and entertainment industries remain highly dependent upon copyright protection, and so incumbent businesses tend to resist open platforms and innovative business models that might render their existing investments less valuable. Thus for years, the record industry insisted upon encrypting its music and bitterly fought any form of digital distribution that might undercut its lucrative compact-disc market franchise. So, too, book publishers have historically resisted developing 'e-books' – digitised forms of conventional books –

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