

9 Conclusion

The legislative history of the DMCA shows the blind spots in its configurations of users and their activities. The technological realities of the NII raised some troublesome issues for lawmakers and media companies, putting pressure on longstanding applications of copyright law. Awareness of the blind spots in the legislative process instigated the work of the digital rights movement and its progress toward challenging technolegal regimes over content so that consumers can do more with their legally purchased media.

The formulation of the DMCA, informed by the IITF WGIP, was a contentious process where stakeholders from the content industry, libraries, and the technology industry sought to carve out exemptions and expansions in copyright. Yet during this process very few organizations represented consumers. The policy proposal that emerged from the WGIP hearings was informed by fear of what would happen to intellectual property if law and technology did not protect it on the information superhighway. This generalized fear led to restrictive technology policies that, instead of harnessing the power of digital technology for the user, harnessed technology for copyright owners, allowing them to design technologies that would enforce ever more restrictive licenses and constrict traditional privileges such as first sale and fair use.

In response to these developments, a core group of activists (technologists and law professors at first) called for better policy that would allow consumers the privileges that they enjoyed in analog media. Furthermore, these activists wanted to expand those privileges so that users could become active creators. As a response to the formulation of the DMCA, the digital rights movement began advocating for fair copyright law. The movement's advocacy was founded on the ideals of legal scholars such as James Boyle (1997), who thought that consumption of cultural products ought to be politicized and that consumers ought to feel their stake in culture every time they listen to music, read a book, or view a film.

The technolegal structures that emerged from the policy wrangling gave rise to a host of cases that challenged the law on a number of constitutional and technological grounds. These cases illustrate the issues that copyright protection in digital media would create. Much like policymakers who struggled with the changes that legally defined categories such as phonorecords and transmissions would undergo given shifting technological realities in the early twentieth century, courts and activists in the late twentieth and early twenty-first centuries were left to contend with the changes that law and technology would bring to the way users saw fair use, free speech, and their own personal relationship with content. In response to those cases and threats to their perceived rights, activists formulated a host of strategies from lawsuits to hacks. Although the legal or institutional strategies were important, it was the technological forms of resistance that distinguished digital rights activism. The role of technology in the movement demonstrates how activism might take shape for other causes that deal intimately with the technological.

For the digital rights movement, technology is a resource for a number of reasons. From a basic point of view, it is a resource in the sense that access to it can mean the difference between being part of cultural production or not. Computers, the Internet, DVD players, and other devices and processes that allow users to experience content are thus important at a basic level. But technology is also a resource for activism. The very same technologies used to consume can morph, be hacked, and worked around to allow for specific participatory uses or conveniences. Technology, then, is a resource not only to experience content, but to modify it and to participate in it. However, technology is also a resource for the content industry because it mediates that industry's goods and serves to regulate their consumption. It is a resource for both sides of the digital rights debate for not dissimilar reasons: it mediates delivery, participation, and consumption of content in opposite ways depending on what side of the debate one finds oneself. The fight between the content industry and digital rights activists, then, is in part a fight over this resource, where both try to define its meaning and its uses through legal strategies, licensing mechanisms, and architectures of consumption or participation.

The meaning of technology as a resource cannot be underestimated here. Whether one uses Mozilla or Explorer or Safari; whether one uses Winamp, VLC, or iTunes; whether one uses Unbutu, Windows, or Mac OS, all these uses open to framing that goes beyond the actual functionality of those technologies. For many, technological use is a political brand, and what one uses signals where on a particular political debate one might lie.

Thus, thinking of technology as a resource is to think of it not only as a functional resource, but also as a linguistic resource. Technology speaks a certain kind of language about cultural production—a participatory ethos and its politics.

Technology can also be thought of as opportunity in the digital rights movement—an opportunity to allow for a particular relationship between consumers and content. Without the current technological realities, the idea of a culture of participation on the scale imagined by the movement would not be possible. Likewise, for the content industry, without digital technologies the idea of enforceable licensing schemes that regulate user consumption to a high degree and that increasingly sanction participation in production of content using existing intellectual properties would not be possible. In the context of the struggle between the movement and the industry, the regimes of digital technology can serve as a form of opportunity to rewrite the architectures of consumption into architectures of participation.

The idea of technology as opportunity is not divorced from its role as resource. In the sense that technology can serve as a meaningful resource, those meanings imparted on the technology can give the movement and its activists the language to talk about users' lived consumptive and productive experiences. They make possible the opportunity to talk about cultural participation where perhaps that opportunity did not exist previously. This is why the case studies presented in this book involve not just technologies, but the legal arguments about the meaning of fair use and free speech that those technologies made coherent. Arguments about what constitutes free speech and fair use are framed in language that implicitly (and explicitly) references the technological realities of technology users' lives.

The central role of technology is not deterministic, and this analysis should not be read as such. If anything, this text recognizes many determinisms. There is a very real social construction in the formulation of the meaning of technologies such as iTunes hacks or the products of Battle Labs. But we should not shy away from pointing out the clear ways in which technology, whether designed by movement activists or the content industry, attempts to structure not only the user's experience with cultural goods, but also his or her views on that experience. Technologies of this sort are in many ways normative moves executed in attempts to convince users that the world ought to be a certain way. Technology, then, is a space of contest where the players in this particular struggle come to realize their worldviews and convince (or cajole) others into embracing those views.

What is the meaning of the digital rights movement, and what does it show us about technology for society as a whole? What it shows primarily is that as various forms of consumption are increasingly mediated through technologies that can increasingly control our levels of access and involvement, it becomes important to seize that very same technology for the opportunities it may afford us to become participants in the making of cultural goods. This capture requires not a tacit acceptance of the means provided for us by media companies, but rather a consideration of how we might actively design technologies for ourselves. In that sense, media consumption should be a form of intervention into the manufacture of cultural goods, and the technologies we choose to mediate content should have those affordances. Two decades ago Langdon Winner (1985) wrote about the politics of artifacts when thinking about the way technologies have the potential both to structure social configurations and to influence political arrangements (supporting or undermining democratic principles). If technologies have these potentials, then technological use is an implicit political exercise, for it is only when we willingly adopt technological systems that they become embedded in the social architecture and gain their formidable power to influence society in certain ideological ways.

The movement for digital rights has shown this to be true, and its politics—its technological political reality—explicitly reflects this view. Today, as I mentioned in the introduction to this book, the movement has expanded to engage a wider discourse of cultural rights, arguing for a citizenry's right to engage and reconfigure the cultural forms generated by the media industries. Many of the actors covered in this text have changed since the early days of activism. Lawrence Lessig, for example, now works on other issues even as his ideas remain powerful in the movement's underlying logic. Although the movement continues to be intimately tied to the technological, the term *digital* to describe the types of rights it seeks seems limiting, and *participatory rights* is perhaps more apt. In addition, some of the organizations and key players illustrated in some of the case studies have changed. Downhill Battle, for example, is no longer active, but its founders went on to start the Participatory Culture Foundation, which is responsible for producing Miro, an open-source video player meant to decenter concentration of user-generated video within any one online platform (YouTube, for example), and Jon Johansen is now working in Silicone Valley.

Despite these changes, the movement continues as other players and issues take the field. Corporate actors are now also entering the field, for example, as the interests of Internet giants like Google, banking on the

continued creativity and participation of users, overlap with those of the digital rights movement. Increasingly they will join the protests against copyright protection laws seen as overreaching and that threaten their business models. Most recently, this was exemplified in Google's participation in the successful protest against the Stop Online Piracy Act (SOPA), where the Web stalwart blacked out its famous logo and pointed users to means of contacting their legislative representatives.

The movement also now seems more global, with activists in Europe taking the lead in articulating the flows of a global technolegal regime that seeks to circumscribe the public domain. Student groups are also more active in this regard, with the free-culture student movement in the United States and groups such as Isaac Hackimov and the Hackademy in Spain. Using cultural jamming and hacking to achieve their goals of raising awareness, the young (our digital natives) now seem to be the most active originators of technological resistance and interventions.

This text, then, should be read as an opening exploration of a movement that today is global and broad in scope. I hope it is a good beginning to an ongoing study of this issue, one that will continue through my own future work, but also that of others.

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The Digital Rights Movement

The Role of Technology in Subverting Digital Copyright

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