22. Jerri Stroud, "Linking Up a Town, *St. Louis Post-Dispatch*, March 24, 2004, available at: http://www.freepress.net/news/article.php?id=2906.
23. A notable exception to this business practice is Speakeasy, a Seattle-based Internet Service Provider that actively encourages end users to share their connections.
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27. This section was created with the help of the CUWiN development team (Bryan Cribbs, Zachary Miller, Victor Pickard, Ben Scott, David Young). Special thanks goes to graphic artist Darrin Drda who took our general ideas and turned them into these images. Full-color images and more information on Community Wireless Networks is archived online at: http://freepress.net/wifi/.
28. Zorzi, 2.
29. See Kyung-Hyu Lee, Kyu-Ok Lee, Kwon-Chul Park, Jong-Ok Lee, and Yoon-Hak Bang, "Architecture To be Deployed on Strategies of Next-Generation Networks," Paper presented at the 2003 IEEE International Conference on Communications, Conference Proceedings, pp. 819–822.
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31. CUWiN recently filed comments to the FCC regarding "Establishment of an Interference Temperance Metric to Quantify and Manage Interference and to Expand Available Unlicensed Operation in Certain Fixed, Mobile and Satellite Frequency Bands" in response to Docket No. 03–237 and is hosting a National Conference on Community Wireless Networking in August 2004 to build a coalition of CWNs to further work towards policy and regulatory reform.
33. PowerPoint presentation "Adopted by Wireless Communications Association Board of Directors," 2002, archived online at: http://www.saschameinrath.com/sources/WirelessPRmission7-02.pdf.
34. See, for example the New America Foundation's "Cartoon Guide to Federal Spectrum Policy," April 10, 2004, http://www.newamerica.net/index.cfm?pg=article&DocID=1555.
35. For example, Motia (http://www.motia.com/) "is a fabless semiconductor company focused on enabling smart antennas for wireless systems providers. The Company's standards-compliant adaptive beamforming technologies easily integrate into customers' wireless products to enhance overall functionality and performance."
36. See http://www.saschameinrath.com/sources/TemperatureInterferenceComments.rtf for an in-depth analysis of the feasibility of this technology.
37. Tim Pozar, "Regulation Affecting 802.11 Deployment," Bay Area Wireless Users Group, June 6, 2002, available at: http://www.saschameinrath.com/sources/Regulations_Affecting_802_11.pdf.

COPYRIGHT REFORM: THE NEXT BATTLE FOR THE MEDIA REFORM MOVEMENT

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When we think about the media reform movement, we often think about efforts to ensure that control of television, radio, cable, satellite and the Internet are not placed in too few hands. What we don't normally put in this category are efforts to bring balance back to copyright, trademark, and patent law.

It is critical to understand how integrally linked traditional notions of media reform are to the reform of intellectual property law, particularly copyright (and trademark) reform. In a nutshell, both are about control over what you see and hear and what you can do with what you see and hear. In traditional media ownership debates, we seek to limit "big media" control over particular distribution mechanisms (broadcast licenses, cable systems), because such controls limit the public's access to the diversity of information and ideas vital to a democratic society. In debates over the proper balance in intellectual-property law, we seek to limit big-media control over specific content and the technology for viewing, hearing, and transforming that content (such as televisions, radios, and computers) because such control again limits diversity of information and ideas by prohibiting individuals to comment upon, transform, or otherwise engage in expressive conduct concerning that content. By trying to limit the use of technology, these big-media companies wish to keep us passive "consumers" of information, as opposed to active creators.

Threats to the Historical and Constitutional Balance of Copyright Law

Copyright laws are grounded in Article I, Section 8 of the Constitution, which

gives Congress the power "[t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." This language makes clear both that the main purpose of copyright protection is to benefit the public ("to promote the progress of science and the useful arts") and that any such protection will be "for limited times."

With this language, the framers sought to strike a balance: by giving artists and innovators a time-limited monopoly over their works, they sought to encourage creation of new works, while at the same time ensuring the development of a robust public domain of information and ideas that could be shared and built upon by others to create new works.

For many years, this "cultural bargain" worked well, and its fruits are all around us. For example, most American music post-1950 has its roots in other forms of music, particularly the blues, and many of our plays, films, and books derive from earlier works. *West Side Story* is Shakespeare's *Romeo and Juliet* set in a different time and place. Such artists as Andy Warhol, Roy Lichtenstein, and Barbara Kruger have enriched our artistic heritage by using consumer products and cultural icons as the foundations of their work. And a large number of Disney movies borrow from the public domain (*Alice in Wonderland*, *Little Mermaid*, *The Hunchback of Notre Dame*, and so forth). To paraphrase Sir Isaac Newton, American culture has flourished because artists, scholars, and innovators have stood "on the shoulders of giants."

For the past decade, however, the cultural bargain of copyright has been under siege, thanks to a variety of political, technological, and marketplace initiatives that seek to make access to scientific and artistic works either impossible or prohibitively expensive. Because we are in the "information age," the market value of information and its consequent creative works has increased. This has resulted in a movement by the "copyright industries" (largely the major motion picture, major recording, and large book publishing industries) to keep it in private hands for as long as possible. Their strategy for doing so has been to strengthen copyright and trademark laws. The result has been to stifle creative expression, civic discourse, scientific inquiry, and free speech.

Big Media Strategies for Tipping the Balance

Over the past decade, the copyright industries have been very creative and unrelenting in their effort to gain control over content and technology. They have used multiple strategies in federal and state legislatures, regulatory agencies, the courts, international bodies, and the marketplace to accomplish their goals.

Longer and Stronger Copyrights

Despite the clear constitutional mandate that copyright protection be for "limited times," the copyright industries have tried their very best to ensure that copyright terms last almost in perpetuity, or as one big media lobbyist put it, "forever less one day."[1]

The first copyright law, passed in 1790, imposed a term of fourteen years plus another fourteen-year renewal. Terms increased slowly over the next hundred and fifty years, but in the past forty years, copyright terms have been extended eleven times. The two most recent term extensions were imposed by Congress in 1976 and then again in 1998. The Copyright Act of 1976 extended copyright terms from twenty-eight years plus another twenty-eight-year renewal to fifty years beyond the life of an author. In 1998, the Sonny Bono Copyright Term Extension Act extended terms to seventy years beyond the life of an author for individual copyright holders, and ninety-five years for corporate copyright holders. In February 2003, the Supreme Court rejected a constitutional challenge to the Sonny Bono Act in *Eldred* v. *Ashcroft*.[2] The case was brought by an Internet publisher and others who argued that extending copyright terms retroactively was both a violation of the Constitution's "limited times" provision and a restriction on the First Amendment's guarantee of free speech. The Court disagreed, ruling that, among other things, Congress has wide latitude to set copyright terms.

The other significant change in copyright law has been the elimination of such "formalities" as the requirement that copyrights be registered and renewed. Thus, the minute I write something down on a piece of paper, it is copyrighted, regardless of whether I register it with the Copyright Office (registration is a prerequisite to bringing a copyright infringement suit). As a result, it is often extremely difficult, if not impossible, for an artist, scholar or other potential user of a work to know whether that work is still under copyright or even who owns the copyright. And it is no excuse for a user of a work to say that attempts were made to find the copyright,because infringement is a "strict liability" violation, and the costs for such a violation can be expensive—up to $150,000 per instance. This provision has a colossal chilling effect on creative and scholarly activity.

But changes in the law are not the only way that copyrights have become stronger over the past decade. Perhaps the most significant dilution of the public's rights under copyright has been the shrinking scope of "fair use." Fair use is a judicially created (now enshrined in the Copyright Act) exception to the copyright monopoly, which permits an individual to use portions of copyrighted works for certain purposes (such as educational) without securing the copyright owner's permission. But the practice of the copyright industries is such that they require permission (and usually a large sum of money) for even the most incidental use of a copyrighted work. Even though use of a work might clearly be considered "fair

use" by a judge, many scholars and artists will change their work rather than risk the threat of a lawsuit or a significant licensing fee.

A great example of the shrinking scope of fair use can be found in Professor Lawrence Lessig's book *Free Culture*. The example involves Jon Else, a documentary filmmaker who made a documentary about Wagner's Ring Cycle. The scene at issue involved stagehands at the San Francisco Opera who are playing checkers. In a corner of the room, the television program *The Simpsons* is playing. When the film was completed, Else sought to "clear the rights" to use the few seconds of *The Simpsons*. It not only took a good deal of effort to find the copyright holder, but when he did, Else was told that it would cost him $10,000 to include the clip. Rather than risk a lawsuit, Else edited *The Simpsons* out of that segment of the documentary, even though it set a particular mood for that scene.

Stronger Trademarks

In trademark law, the most significant change over the past decade has been the passage of the Federal Trademark Dilution Act of 1995. Normally, the standard for trademark infringement has been consumer confusion; for instance, I cannot open up a fast-food hamburger stand with golden arches and call it McSohn's or sell sneakers with a swoosh logo.

But the Dilution Act went beyond the consumer-confusion standard and made it a violation of trademark law to "dilute the value" of a trademark. This standard has been used to deter social commentary or criticism about a product. Perhaps the best-known example was the suit that Fox News Network brought against the comedian Al Franken and his publisher over Franken's book *Lies and the Lying Liars Who Tell Them: A Fair and Balanced Look at the Right*.[3] Fox claimed that the book title "diluted" its trademark in the phrase "fair and balanced." Franken won the case, but few have the kind of means that he and his publisher have to fight such a lawsuit.

Privatizing Facts

In 1991, the Supreme Court ruled that nonoriginal databases, such as the telephone book, were not eligible for copyright.[4] In response to this ruling, for the past decade, large database publishers have attempted to create new intellectual-property protection for nonoriginal databases and, more importantly, for the facts underlying those databases. Thus, if I wanted to write a history of the Civil War using an encyclopedia as a resource, I might, under such a proposal, be forced to pay the publisher of the encyclopedia a licensing fee, or I might even be prohibited from using the facts found in that encyclopedia. The most recent attempt to give databases and the facts underlying them protection failed in the 108th Congress,[5]

but efforts are now being made to enshrine such protection in an international treaty (see discussion below).

Technological Locks and Laws that Enforce Them

While the speed, ubiquity, and relatively low cost of digital technologies present greater opportunities to make works more widely available, they also present greater opportunities for the copyright industries to limit access to, and use of, copyrighted works beyond what the law would allow. For example, copy protection mechanisms on certain CDs do not permit them to be played on computers. Similarly, some online music and film services limit one's ability to burn files onto CDs, DVDs, or hard drives, and others simply cause the file to "disappear" after a specified time period. Copyright law does not permit a copyright holder to tell you how many times you can listen to or read content, for what length of time, or on what machine. But "technolocks" (sometimes known as "Digital Rights Management" tools) permit those very limits.

As if the technological locks themselves were not enough, the Digital Millennium Copyright Act (DMCA), passed in 1998, ensures that these locks are backed with the force of law. Under the DMCA, it is unlawful to break or "circumvent" these locks, even if an individual's reason for doing so is otherwise lawful. Indeed, the first court case involving the DMCA concerned a Norwegian teenager, Jon Johansen, who bought a DVD that would not play on his Linux-operated computer. Johansen broke the technological lock on the DVD for the sole purpose of playing it on his computer. Regardless of the fact that Johansen did not engage in any infringing conduct, he was still considered a criminal under the DMCA.

In addition to prohibiting the actual breaking of technolocks, the DMCA also prohibits an individual from "manufactur[ing], import[ing], offer[ing] to the public, provid[ing] or otherwise traffic[king]" in any tool that would circumvent such locks. This broadly worded "antitrafficking" provision has been used to stifle speech on several occasions. The best known of these involved a Princeton computer science professor, Edward Felten, who was invited by the recording industry to try and break the industry's "Secure Digital Music Initiative" ("SDMI") copy-protection scheme. After several weeks of effort, Professor Felten, working with researchers from Rice University, was successful in cracking SDMI. But when Professor Felten sought to publish a paper giving the details of how they did so, the recording industry threatened a lawsuit under the antitrafficking provision of the DMCA.

Licenses that Seek to Replace Copyright Law with Contract Law

Another way that the copyright industries seek to protect their works is through

the use of so-called end-user license agreements. These are the icons that you click on when trying to access software or other digital content (click-through licenses), or the terms you agree to when breaking the shrink-wrap on your newest piece of software (shrink-wrap licenses). Without any negotiation, you are asked to waive rights reserved to you under the Copyright Act (such as "fair use") and agree to a list of restrictions, some of which can include a limitation on criticizing the work without the licensee's permission.

In common law, one-sided contracts of this kind are called "contracts of adhesion." But in the digital era, these licenses are used to extend the rights of copyright holders beyond those which is permitted by law. Like technolocks, these licenses can and do limit modification, excerpting, portability, and repeated access to content. As such, they can chill creative and educational activity.

Limiting Access to Content Via "Authorized Devices"

A recent strategy of the copyright industries is to try and ensure that every technology that can receive and retransmit its content is "authorized" to do so either by the industries or by the government (strongly pressured by the same copyright industries, of course). The idea works like this: if a television, radio, computer, or other digital device is not preapproved to receive or record content, then the technology is either illegal or will be otherwise rendered incapable of doing so.

The so-called digital television broadcast flag, scheme, adopted in November 2003 by the FCC, is a manifestation of this strategy.[6] The flag is a series of bits embedded in a digital television signal that prohibits the copying of that signal on a device other than that approved by the FCC. Thus, if I have an unauthorized Digital Video Recorder (DVR) hooked up to my authorized digital television set, my DVR will not be able to make a perfectly legal personal copy of a "flagged" digital television program. The flag also prohibits excerpting of digital television programming and redistribution of some or all such programming over the Internet. Thus, if a congresswoman wants to send a digital clip of her performance on *Meet the Press* to staff in her district office, she cannot do so if the show's creator embeds a flag in the signal. There is no exception for news or public-affairs programming.[7]

Similarly, the motion picture industry engaged in a three-year battle in state legislatures to have laws enacted that make it illegal to use devices not expressly authorized by cable companies and Internet service providers. Eight states currently have such laws on the books. Thus, if you own a TiVo, but your cable company wants to sell you its proprietary Digital Video Recorder, it could prohibit you from using your TiVo under these laws.

Limiting Use of New Technologies Through Increased Enforcement, Elimination of Anonymity, and Expansion of Copyright Liability

The rapid growth of new peer-to-peer (P2P) technologies have struck fear in the hearts of the copyright industries, and much of their efforts in the copyright realm over the past several years has been directed toward making these technologies unattractive to use. P2P file-sharing software programs allow a group of computer users to share text, audio, and video files stored on each other's computers. While there are many legitimate business, educational, and recreational uses for P2P technology (indeed, it is the technology that underlies the entire Internet), it is perhaps best known as a mechanism by which people share copyrighted music and movies without permission from the copyright holder.

The copyright industries have tried a variety of ways to hobble the use and growth of P2P technologies:

- ***Lawsuits.*** Since 2003, the recording industry has brought thousands of lawsuits against people who make multiple music files available over commercial P2P networks. The motion picture industry started bringing suits against those who upload movies in late 2004.
- ***Increased penalties.*** Several bills introduced in the 108th Congress would render the passive "making available" of even one copyrighted work on a computer network punishable by up to five years in prison.
- ***Restricting Anonymity.*** Eliminating the anonymity of the Internet generally, and P2P networks specifically, is a core goal of the copyright industries. The recording industry lost the first stage in this battle when a Federal Court of Appeals ruled that it could not force Internet service providers to give the recording industry the names of alleged file sharers without first going to court and providing a judge with evidence of illegal activity. The recording industry is trying a variety of legislative and judicial methods to reverse this decision.
- ***Notice and Consent Requirements.*** Some of the same bills discussed above would also require that P2P software companies provide notice that their networks are used to trade in copyrighted and obscene materials and that such software could not be downloaded without the specific consent of the downloader (or, in the case of a minor, his parent).
- ***Legalizing Invasive "Self-Help" Technologies.*** The copyright industries currently use a variety of legitimate technological measures to try and discourage illegal file trading. For example, a person downloading a copyrighted music file without permission may receive one that has cracks and pops in it ("spoofing") or which directs her to a website where the music can be purchased legally ("redirection"). In the 107th Congress, Rep. Howard

Berman (D-CA) introduced a bill that would make legal the use of technologies that would send viruses into hard drives to prevent an individual from making copyrighted files available to others ("interdiction"). The legislation produced a firestorm of protest, and the bill died in subcommittee.

- ***Expanding "Secondary" Copyright Liability.*** In 1984, in the seminal *Sony Betamax* case, the Supreme Court ruled that technology manufacturers could not be held responsible for copyright infringement engaged in by those using their technologies if those technologies were capable of "substantial non-infringing uses." In the 108th Congress, the copyright industries attempted an end run around this important doctrine through legislation that would have held responsible anybody who "aids, abets, induces or procures" copyright infringement, regardless of whether the technology at issue is capable of substantial noninfringing uses. The effort to expand secondary copyright liability is sure to continue, either through the courts[8] or through legislative means.

A Few Words about International Copyright Law

A long, detailed description of international intellectual property law is beyond the scope of this chapter. It is important to understand, however, how United States intellectual-property law influences international intellectual-property law and vice versa.

International intellectual property law is made primarily through three mechanisms:

- International policymaking bodies, like the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO);
- Multilateral trade agreements, like the Free Trade Area of the Americas;
- Bilateral trade agreements between the United States and individual countries.

The goal of the large copyright industries in the international realm is to impose the strongest possible copyright regime on foreign countries. If United States law provides the strongest protection, then the industries' goal is to export our law overseas. However, if United States policymakers have resisted the copyright industries' efforts to impose even stronger copyright and trademark protection, the industries will seek to have those stronger laws adopted first overseas and then seek to have them *imported* into the United States. This is how both the Sonny Bono Copyright Term Extension Act and the DMCA became law in the United States—they were imported from international agreements.

Another important thing to know about international intellectual property lawmaking is how integrally it is related to trade policy. This is no accident—the pharmaceutical industry convinced the United States government to tie intellectual property protection to trade in the 1980s. As a result, many countries—and particularly developing countries—will accede to the United States government's intellectual-property demands because they are simply more concerned about agricultural and other issues normally associated with trade. As a result, developing countries end up spending vast resources that could be used for education, safety, or creating their own cultural products on protecting the intellectual property of large multinational corporations.

Now for the Good News

Most of this essay has been devoted to describing the bad news about copyright and trademark law here and overseas. But there is also good news: the increasing privatization of culture that used to be available for public use over the past decade has resulted in a serious backlash. The past several years have seen the birth and the growth of a number of new organizations and initiatives inside and outside of the legal/policy arena that are working to bring balance back to copyright and trademark law.

The Rise of Copyright Activism and the Public Debate

Just six or seven years ago, the large copyright industries could accomplish their policy goals in Congress and the courts virtually unnoticed and unimpeded. That is no longer the case. New policy advocacy organizations, such as Public Knowledge (www.publicknowledge.org), were specifically created to combat the copyright industries' march to strengthen copyright and trademark law further. Moreover, existing civil-liberties organizations like the Electronic Frontier Foundation (www.eff.org) and the American Civil Liberties Union (www.aclu.org) began to engage in these issues because of their effect on freedom of expression, and consumer groups like the Consumer Project on Technology (www.cptech.org) began to work on international issues. Additionally, battles over new state laws that limit access to certain technologies have led to the formation and growth of such state and local grassroots organizations as Electronic Frontiers Georgia, the Tennessee Digital Freedom Network, and EFF-Austin (Texas).

Equally as important has been the radicalization of certain industry segments that have chafed under the copyright industries' desire to control their products and services. Chief among these are the consumer electronics industry (which had its first battle with Hollywood over the VCR in the early 1980's) and telephone-company Internet service providers, such as Verizon.

This activism has brought debates over stronger copyright and trademark to the attention of the press and into the public eye. Rarely a week goes by without major press coverage of copyright-related issues. Where copyright issues were rarely discussed outside of a congressional office or corporate boardroom just three years ago, they are now part of a much larger and more visible public debate.

Legal Proposals to Rebalance Copyright

As a result of this new activism and the resulting visibility of copyright reform, several bills were introduced in the 108th Congress that would bring some balance back to copyright law, including, among other things:

- providing an exemption to the anticircumvention and antitrafficking sections of the DMCA for noninfringing activity (H.R. 107, the Digital Media Consumers Rights Act);
- requiring registration of a copyrighted work fifty years after publication, with renewal required every ten years thereafter (H.R. 2601, the Public Domain Enhancement Act); and
- ensuring that digital media are subject to the "first-sale doctrine," which allows the owner of a copyrighted work to dispose of that work as she sees fit (S. 1621, The Consumers, Schools and Libraries Digital Rights Management Act of 2003).

Although the mere introduction of a pro-user copyright bill might be seen by cynics as nothing of consequence, the power of the large copyright industries was such just three years ago that even that activity would have been unheard of. Indeed, with the increasing resources that are being brought to efforts to reform copyright, there is reason to believe that this momentum will continue, eventually leading to the passage of one or more pro-user bills.[9]

Marketplace Mechanisms

Equally, if not more important than the legal and policy activity to rebalance copyright, is the work being done *outside* the legal and policy realm. These initiatives seek to create a new, less restrictive copyright regime using new technologies and marketplace forces.

- ***Creative Commons Licenses.*** The Creative Commons (www.creativecommons.org), founded by a number of legal scholars, has developed a series of licenses that allow copyright holders to retain control over their works but still make them available under terms more favorable than copyright allows. The copyright holder can choose to make the work available under a single license or a combination of licenses. For example, a copyright holder can permit use of the work only if it is used for noncommercial purposes and if the work is attributed to him, but not for derivative works. Or he could make it available for derivative works but require that the derivative works be made available under the same terms as the original.
- ***Open-Access Publishing.*** Open-access publishing refers to the free availability of scientific and other research data and analysis over the Internet in a searchable, downloadable form. This movement stands in stark contrast to proprietary print journals, which do not compensate researchers for their work yet charge libraries extraordinarily high subscription fees for their volumes. The crisis in this area is such that many libraries have stopped subscribing to certain academic journals.
- ***Free and Open-Source Software.*** In contrast to proprietary software programs like Windows, free software/open-source programmers make available to anyone the source code underlying their software. Other programmers can modify the code in any way they see fit, but they must make that future code available on the same terms as the original. This model eliminates the restrictive licensing and copy-protection controls that are inherent in proprietary software.

How *You* Can Make a Difference

For the most part, the copyright reform movement has been very top-down, with professional policy advocates, legal professors, and lawyers engaging in most of the work. However, there is a great need, and a lot of opportunity, for grassroots participation. Here are several ways that you can participate in copyright reform:

- ***Get involved.*** Organizations like Public Knowledge and the Electronic Frontier Foundation have "action centers" that allow you to send letters, e-mails, and faxes and make telephone calls to policymakers and corporate executives at the click of a mouse. If you sign up to be on their mailing lists, they will send you "action alerts" that keep you apprised of particular opportunities to get involved. In addition, several states and cities have grassroots technology-policy organizations, like Electronic Frontiers Georgia, the Tennessee Digital Freedom Network, and EFF-Austin, and over a dozen colleges have started "Free Culture" chapters dedicated to promoting the free flow of knowledge. If one doesn't exist in your city, state, or college think about starting one! The national organizations would be happy to help you get started.
- ***Express yourself in the marketplace.*** The power of the purse is often understated in dictating corporate behavior. When people refused to buy

software with restrictive copy protection in the 1970s, software companies relented and made their software more flexible. If a music CD or a DVD has restrictive copy protection, don't buy it!

- ***Walk the Walk: Explore alternatives to the current copyright regime.*** If you are an artist, author, or other producer of content, consider licensing your work under a Creative Commons license. If you are an academic or student, consider making your research available over the Internet for free in an open access journal. When possible and practical, use free software or open-source tools for web content, software applications, and even your computer's operating system!

Conclusion

If media-policy advocates are successful in containing—or even rolling back—media concentration, they will have won just one battle of a much larger war. The war is over how artists, scholars and citizens will be able to express themselves in the twenty-first century. Will we merely be passive consumers of whatever huge media conglomerates want to feed us, unable to make our own political and social commentary about that content or even to create something new and different? Will we be "couch potatoes" tethered to our one-way television sets and radios, or will we take advantage of the flexibility and end-to-end nature of computers and the Internet, which empower us to distribute information and ideas cheaply, quickly, and ubiquitously? Will big media dictate how we can use digital technology, or will we? These questions are likely to be answered over the next decade.

The next, and equally important, battle for media-reform advocates is copyright and trademark reform. Hundreds of thousands of ordinary citizens have made their voices heard and have made a tremendous difference in the debate over media ownership. Imagine what could be accomplished if that many, or more, people speak out in favor of bringing balance back to copyright law. I urge you to join this burgeoning movement.

Notes

1. 144 Cong. Rec. 9946, 9952 (October 7, 1998), statement of Mary Bono quoting Motion Picture Association of America President Jack Valenti.
2. 537 U.S. 186 (2003).
3. *Fox News Network* v. *Penguin Group*, (SDNY 2003).
4. *Feist Publications, Inc.* v. *Rural Telephone Service Co.*, 499 U.S. 340 (1991).
5. This marked the ninth time since 1991 that large database providers tried and failed to obtain legislation giving protection to nonoriginal databases.

6. Nine public interest and library organizations have challenged the FCC's decision in federal court, alleging that the agency does not have the power under the Communications Act to adopt the broadcast flag scheme. A decision is expected by summer 2005. See *American Library Association* v. FCC, No. 04-1037 (D.C. Cir.).
7. The FCC is also considering a recording industry-backed proposal to require a similar kind of "flag" copy protection scheme in new digital broadcast radio services. See Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service, FCC No. 04-99 (released April 20, 2004) at pp. 67–69.
8. Indeed, in 2005, the Supreme Court will decide the case of *MGM* v. *Grokster*, in which the copyright industries seek to hold the creators and distributors of P2P software responsible for copyright infringement engaged in by users of the software. This case will test the vitality of the Sony Betamax case in the digital age.
9. Further evidence of this momentum is demonstrated by the fact that in January 2005, the Copyright Office began a proceeding that seeks to resolve the problems artists and scholars face when trying to locate the owner of a copyrighted work. The Copyright Office was asked to examine the problem of these "orphan works" by the four most powerful members of Congress with jurisdiction over copyright matters. See http://www.copyright.gov/fedreg/2005/70fr3739.html.
10. These college groups take their name from the most recent book by Lawrence Lessig, mentioned above.