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EIGHT

ECONOMY LESSONS

When commercial and sharing economies interact, they produce the hybrid. How they sustain a hybrid successfully is a harder question. We've not yet seen enough to say anything conclusive. We have seen enough to describe a few important lessons.

Parallel Economies Are Possible

The simplest but perhaps most important conclusion is that parallel economies are possible. Work successfully licensed in a commercial economy can also be freely available in a sharing economy. If this weren't true, then there would be no commercial record industry *at all*: despite the war on file sharing, practically every bit of commercially available music is also available illegally on p2p networks; this "sharing" has not been stanching by either the war against it waged by the recording industry, or the Supreme Court's declaring the practice illegal.¹

Yet despite this massive sharing, according to the recording industry's own statistics, sales of music have declined by 21 percent.²

If parallel economies were not possible, that 21 percent would be 100 percent.

Voluntary parallel economies are also possible and often profitable. When labels discovered artists in ccMixter and then signed them to record deals or contracts, the work the artist had freely licensed continued to be free. Indeed, sometimes the very same song was licensed both commercially and noncommercially. This helped the commercial. More artists and record companies will do the same in the future.

Tools Help Signal Which Economy a Creator Creates For

As creators choose between these two economies, the market has developed—free of government intervention—tools to signal which economy they intend to be a part of. When they want to be part of the commercial economy exclusively, they have associated with the traditional representatives. The RIAA, for example, speaks well for those artists who want their art distributed according to the rules of a commercial market only. “All Rights Reserved” is the familiar refrain. “Don’t share” is the unfortunately familiar slogan. But when artists want to create for the sharing economy, increasingly they use signs that mark them as members of this economy. Tools such as the Creative Commons “Noncommercial” license enable an artist to say “take and share my work freely. Let it become part of the sharing economy. But if you want to carry this work over to the commercial economy, you must ask me first. Depending upon the offer, I may or may not say yes.”³

This sort of signal encourages others to participate in the shar-

ing economy, giving them confidence that their gift won't be used for purposes inconsistent with the gift. It thus encourages this sort of gift economy—not by belittling or denigrating the commercial economy, but simply by recognizing the obvious: that humans act for different motives, and the motive to give deserves as much respect as the motive to get.

Crossovers Are Growing

As the second lesson suggests, nothing bans crossovers. There's nothing wrong, for example, with an artist who created something she offered the sharing economy for free then taking that creative work and selling it to NBC or Warner Bros. Records. Indeed, this happens all the time in the world of CC-licensed work. Because economies can be parallel, many participants have discovered that playing in one economy does not disqualify you in the other.

In 2005, for example, a Los Angeles-based comedy collective called Lonely Island was trying—like many such collectives—to get discovered. It posted all its material to the Web with a Creative Commons license, enabling others to share its work and remix its work, so long as they gave credit back to Lonely Island. For example, the collective shot a pilot for Fox called *Awesometown*. Fox rejected it, but Lonely Island posted the pilot in full on the Web under a CC license. The collective used the license both to encourage the spread of its work and, as its members commented in an interview, to “protect ourselves and our fans. That’s what sold us on it. It lets everyone know that they are free to share and remix our stuff, all the rules are right there—they don’t even need to ask permission.”⁴

Someone at *Saturday Night Live* saw the group’s work and loved

it. In the fall of 2005, one member of the collective joined *SNL* as a cast member; the other two joined as writers. Their work continues to be available under the CC license. But the licenses also helped them cross over to a commercial economy.

Strong Incentives Will Increasingly Drive Commercial Entities to Hybrids

Their rhetoric notwithstanding, hybrids are in it for the money. Commercial entities leveraging sharing economies do so because they believe their product or service will be more valuable if leveraged. And sharing economies that bring commerce into the mix do so because they believe revenues will increase. The hybrid is a way to produce value. If it doesn't, it shouldn't be a hybrid.

The hybrid produces value in part by freely revealing information. By its nature, a hybrid can't control exclusively the knowledge or practice of the sharing economy it builds upon. The design thus leaves the door open on its research or development. The company simply gives this asset away.

Some are puzzled by the idea that giving something away might be a strategy for making more money. Indeed, our intellectual biases about concepts like property lead us almost naturally to believe that the best strategy to produce wealth is to maximize control over the assets we have, including (and most important here) intellectual-property assets.

If you find yourself attracted to this view, then you should survey an increasingly significant field of writing about the opposite strategy, used voluntarily by those seeking the same end: wealth. As Eric von Hippel describes, "Innovations developed at private

cost are often revealed freely, and this behavior makes economic sense for participants under commonly encountered conditions.”⁵ For example, “after the expiration of the Watt patent, an engineer named Richard Trevithick developed a new type of high-pressure engine in 1812. Instead of patenting his invention, he made his design available to all for use without charge.”⁶ The work spread to be foundational in the field. Von Hippel’s work provides a host of modern examples that follow the same strategy.

These innovators reveal not as an act of charity, but as a strategy to better returns. “Active efforts to diffuse information about their innovations suggest that there are positive, private rewards to be obtained from free revealing.”⁷ Put differently, intentional “spillovers” of information may often benefit both the public and the private entity making the spillover.

Again, to many, this may feel counterintuitive. Economics teaches us that a spillover (meaning a resource that is made available to entities that didn’t contribute to its production) is an externality (albeit, a positive externality). Externalities, the lesson goes, should be “internalized.” Whether it is positive (think: beautiful music) or negative (think: pollution), the person creating the spillover should pay for it—whether positively (by cleaning up the pollution), or negatively (by collecting some reward for the good produced to the public). As von Hippel writes,

The “private investment model” of innovation assumes that innovation will be supported by private investment if and as innovators can make attractive profits from doing so. In this model, any free revealing or uncompensated “spillover” or proprietary knowledge developed by private investment will reduce the innovator’s profits. It is therefore assumed that innovators will strive to avoid

spillovers of innovation-related information. From the perspective of this model, then, free revealing is a major surprise: it seems to make no sense that innovators would intentionally give away information for free that they had invested money to develop.⁸

But in fact, historically, spillovers have produced great value to society. William Baumol estimates that “the spillovers of innovation, both direct and indirect, can be estimated to constitute well over half of current GDP—and it can even be argued that this is a very conservative figure.”⁹ The Internet is the simplest example: the “inventors” of the Internet captured a tiny fraction of its value; the spillover has been critical to most economic growth in America over the past fifteen years.

That good is enjoyed not just by the society. Instead, it is also often (though certainly not always) enjoyed by the person revealing the information. Describing authors of open-source software, for example, von Hippel writes,

[If] they freely reveal, others can debug and improve upon the modules they have contributed, to everyone’s benefit. They are also motivated to have their improvement incorporated into the standard version of the open source software that is generally distributed by the volunteer open source user organization, because it will then be updated and maintained without further effort on the innovator’s part.¹⁰

These considerations lead many to conclude, with Baumol, that “despite the substantial spillovers (externalities) of innovation, expenditure on R&D in the free-market economies may nevertheless be quite efficient.”¹¹ Put differently, of all the problems we need

to solve, eliminating positive externalities should perhaps be quite low on our list.

So when does it make sense to reveal information in order to build a hybrid? One factor is the heterogeneity of the customers. "Data are still scanty," von Hippel writes, "but high heterogeneity [or diversity] of need is a very straightforward explanation for why there is so much customization by users: many users have 'custom' needs for products and services."¹² Another factor is the feedback companies get from this kind of collaborative innovation. Again, von Hippel: "the commercial attractiveness of innovations developed by users increased along with the strength of those users' lead user characteristics."¹³ Encouraging these "lead users" to innovate is thus a powerful way to push innovation at the firm.¹⁴

While hybrids will increase with the spread of the Net, I am not describing some special rule of economics that lives just in the virtual world. Indeed, to the extent that the hybrid is spreading the right to innovate, the dynamic is again following the very old principle I described above: shifting innovation out of the core of the corporation where transaction costs permit.

The hybrid teaches us that this strategy will increase as technologies for reducing transaction costs proliferate. And conversely, it would be checked by changes that increase the transaction costs of the hybrid.

Perceptions of Fairness Will in Part Mediate the Hybrid Relationship Between Sharing and Commercial Economies

We are not far into the history of these hybrid economies. And early enthusiasm will no doubt soon give way to a more measured,

perhaps skeptical view. Those contributing to the sharing economy within a hybrid will increasingly wonder about this world where their free work gets exploited by someone else. Should they be paid? How long will these hybrids last?

Some fear it won't last long. At a conference in San Francisco, Rich Green, an executive vice president for software at Sun, expressed doubt. "It really is a worrisome social artifact," Green said. "I think in the long term that this...[is] not sustainable. We are looking very closely at compensating people for the work that they do."¹⁵

But as we've seen, simply compensating people is not necessarily a solution. The ethic of a sharing economy and that of a commercial economy are different. Were the work of these volunteers plainly part of the commercial economy, then the answer would be easy: of course, they should be paid; and unless they are paid, they will stop the work. And were the work of the volunteers plainly part of the sharing economy, then the answer would be easy as well: you no more pay volunteers than you (should) pay for sex.

If the work of these volunteers is part of a hybrid, however, we don't yet have a clear answer to this question. If the hybrid feels too commercial, that saps the eagerness of the volunteers to work. Brewster Kahle founded the nonprofit Internet Archive after profiting from many commercial enterprises, as he told me: "If you feel like you are working for the man and not getting paid, visceral reactions will come up.... People have no problem being in the gift economy. But when it blurs into the for-pay commodity economy... people have a 'jerk reaction.'" A "jerk reaction": the feeling that they, the volunteers, are jerks for giving something to "the man" for free. No sense could be more poisonous to the hybrid economy, yet like it or not, the skepticism is growing. Said Om Malik, founder of GigaOmniMedia:

I wondered out loud if this culture of participation was seemingly help[ing] build business on our collective backs. So if we tag, bookmark, or share, and help del.icio.us or Technorati or Yahoo become better commercial entities, aren't we seemingly commoditizing our most valuable asset—time? We become the outsourced workforce, the collective, though it is still unclear what is the payoff. While we may (or may not) gain something from the collective efforts, the odds are whatever “the collective efforts” are, they are going to boost the economic value of those entities. Will we share in their upside? Not likely!¹⁶

Anil Dash, a vice president with Six Apart, posed this question more directly: “Should Flickr compensate the creators of the most popular pictures on its site?”¹⁷ Tapscott and Williams describe the reply by Caterina Fake, cofounder of Flickr:

[T]here are systems of value other than, or in addition to, money, that are very important to people: connecting with other people, creating an online identity, expressing oneself—and, not least, garnering other people's attention. She continued on, saying that the Web—indeed the world—would be a much poorer place without the collective generosity of its contributors. The culture of generosity is the very backbone of the Internet.¹⁸

It is hard for many to see how a “culture of generosity” can coexist with an ethic of profit. The slogan “You be generous, and I make money” seems like a nonstarter. And so increasingly, we must ask how these different norms might be made to coexist. Jeff Jarvis, journalist and blogger, suggests companies “pay dividends back to [the] crowd” and avoid trying too hard “to control [the gathered]

wisdom, and limit its use and the sharing of it.”¹⁹ Tapscott and Williams make the same recommendation: “platforms for participation will only remain viable for as long as all the stakeholders are adequately and appropriately compensated for their contributions—don’t expect a free ride forever.”²⁰

The key word here is “appropriately.” Obviously, there must be adequate compensation. But the kind of compensation is the puzzle. Once again, the “sharing economy” of two lovers is one in which both need to be concerned that the other is “adequately and appropriately compensated for [his or her] contribution.” But writing a fat check as “thanks for last night” is not likely to work.

Similarly, there’s another important ambiguity in this notion of a “free ride.” For again, if Bricklin is right—if the entity succeeds when it is architected to give the user what he wants while contributing something back to either the commercial entity, the sharing economy, or the hybrid—then is the entity really getting a “free ride”? Consider two examples:

- You submit a search query to Google and then click on one of the links Google returns. You have given Google something of value—the information that you judged one link to be the appropriate answer to the query you selected. Google has built its company upon such gifts of value. Is Google riding on your work for free? Or are you riding on Google for free?
- You post a video to YouTube and then embed it in your blog. You have given YouTube something of value—another string of customers further strengthening its market share, drawing viewers in through a channel that helps YouTube

understand who they are, and hence advertise to them more profitably. Is YouTube riding on your work for free? Or are you riding on YouTube?

The point should be obvious: both the user and the company benefit from the interaction. And when both benefit, how do we say who is riding for free?

These questions, however, like any questions of perceived justice, won't be decided on the basis of logic alone. They will turn instead upon practices and understandings. There are lines that companies can't cross. Those lines are drawn by the understanding of those within a community. To their communities, hybrids will try to signal their virtue, or the fairness of the exchange they offer. Craig Newmark, for example, emphasizes moderation as a key to his hybrid's success. ("People see that we're not out to make lots of money, and people can see that we've given away a lot of power over the site through the flagging mechanism and how we actually try to listen to people in terms of suggestions and then follow through.") Tim O'Reilly makes a similar point, though not about moderate profits. He emphasizes moderate efforts at control:

There is a social compact....[And] people in some sense will regard certain people as good guys and so they'll go further for them than they would for somebody who they regarded as a hostile. A really good example of that is...Safari, our online book service. We have a very light DRM [for those books, making] it hard to spider. But not too hard....And we get thousands of e-mails from people reporting that to us. You know, "Hey, I found

your books on a site in Russia.” “I found your books on a site in Romania.” I bet the RIAA didn’t get those e-mails.

Philip Rosedale of Second Life emphasizes a different value: transparency. “I’m a tremendous believer in the idea that there’s a new mode by which businesses can interact which is based on complete transparency,” he explained to me.

There’s a trust-building exercise there that doesn’t traditionally happen, because companies are inherently private because historically, competition was the first order of concern of companies. Therefore privacy [or secrecy], for the purpose of giving you a leg up on your competitors, has always been a kind of a central building block of corporate behavior. And, in a world where openness and network effects are likely to decide the winner, you now have to break down that perception. You want to build a company whose first value is not privacy but, instead, disclosure.

Some companies go even further. Brewster Kahle describes the decision of the search company Alexa.

[W]e wanted to build a new-generation search engine, which is sort of what Alexa and the Internet Archive strove to do in ’96. It turns out that we were wrong, that the world didn’t need a fundamentally different kind of search engine, because the search engines were going along okay. But Alexa would collect the World Wide Web and make a service based on it. So that it was a for-profit company that leveraged the community work of others, which was the contents of the Web, to produce a service.

But exploiting that material beyond being directly tied to producing that service, we at Alexa did not feel it was right. So Alexa donated a copy of what it had collected to a nonprofit and deleted its own. So after six months, that was how long it took for Alexa to use the material to do the service that people were, in some sense, cooperating [with] or allowing Alexa to have built. It donated a copy, and it deleted theirs. We think of that as very... we thought of that as a very important part of the balance of the property interest in a commercial company and the public interest that can be better served within a nonprofit.

Every company building a hybrid will face exactly the same challenge: how to frame its work, and the profit it expects, in a way that doesn't frighten away the community. "Mutual free riding" will be the mantra, at least if the value to both sides can be made more clear.

There are of course famous examples of this mutual free riding gone bad. The volunteer-created CD Database—CDDB—was one.

As I've already described, CDDB was an online database that contained track information about CDs. That information was not included on the CD itself. Instead, it was added by users. The inventor of CDDB, Ti Kan, thought "[I]f I typed in all this information about a given CD, why should Joe down the block have to type in the same information," as David Marglin, general counsel of the company that eventually took over CDDB, Gracenote, explained to me. So Kan and his collaborator, Steve Scherf, "started figuring out a way to collect various other people's collections as typed in by them. And then that repository became the CDDB."

All this typing was done voluntarily. People wanted their machines to know what the tracks were; they were happy to share with others the information they typed into their machines. And Kan and Scherf built the tools to aggregate the results of this voluntary work “with the best intentions in the world. They were not trying to make any money off of it. They really wanted to make just a social network and get all the network effects.” They built a commons for others to add to; volunteers demonstrated the “grace of the commons” through the contributions they made.

But, Marglin explained to me, as more and more people began to rely upon this database to identify their CDs, Kan and Scherf began to realize “very quickly that they had a beast on their hands because: one, in order to be any good, the software would have to do a lot more reconciling than they first expected...and two, the amount of server space that they would need in order to take in, not only all the lookups, but...all the submissions, was just going to overwhelm them.”²¹

So the founders of CDDb started looking for a way to make sure their creation would survive.

Gracenote would become their savior. With the help of a serial entrepreneur, Scott Jones, Tan and Scherf launched the for-profit Gracenote, to generate the revenues necessary to support the database, and to profit from the idea they had brought to life. Gracenote started licensing the database to whoever would pay for it. And soon many started to wonder why this thing of value, created through the work of volunteers, could be so easily sold. Many complained that Gracenote took “what [was] essentially an open-source database and clos[ed] it off.”²² There was an explosion of criticism within the online community.

Gracenote wasn't prepared for the criticism. Marglin told me that there was a lot of "bad mojo in the air from people who didn't understand the transition from 'here's a couple guys in the garage' to this 'it's a world-class service that has to be able to power Apple software.'" More transparency would have helped here, as would a clearer way for the collaborators to benefit. Again, Marglin: "The compensation may not be dollars but maybe credits or attribution for something that is of value so that there is a value exchange between the conduits."

It was the shift in rules, against the background of different expectations, that produced a fairly strong reaction against Gracenote—even though to this day, Gracenote still has "a program where if you're a programmer and want to develop a noncommercial application and don't want to derive any revenue from it, you're free to get and use Gracenote software."

Many believe this commercialization of a free project weakens the incentive for volunteers to contribute to it. Brewster Kahle, for example, holds this view. Gracenote became less after its founders made more. The same is true for a parallel database, also initially built by users for free, the Internet Movie Database, or IMDb. As Brewster explained to me,

Both [CDDb and IMDb] went off into commercial organizations. And there was a feeling of betrayal on the part of those who contributed their efforts for free. Because somebody else seemed to be taking advantage of them or not offering it back to the commons.

Now with IMDb, Amazon is thrilled that they are paying their own bills based on their advertising and subscription-based

premium products.... But did IMDb end up what it could have been? I don't think so.

The conflict here is deeper than the Internet. It will get resolved in the hybrid economy only when each economy—the commercial and the sharing—validates the other. If those within a sharing economy hate commerce—if they're disgusted with the idea of anyone profiting, anywhere—then the prospects for healthy hybrids are not good. Likewise, if those within the commercial economy ignore the ethic of sharing—if they treat members of the sharing economy like customers, or kids—then the prospects for a healthy hybrid are not good either.

Not surprisingly, copyright is an important tool in mediating these expectations. As a fantastic report by the analysts Pike & Fischer argues,

Strict copyright enforcement on user-submitted/generated content may also result in a negative shift in attitude in the communities that build around all these sites. The widespread appeal of user-submitted/generated content, especially within the framework of social networking sites, relies strongly upon the freedom of expression, which often circumvents copyright law. Any further restriction to that expression may result in a reduction of user activity—the lifeblood of an advertising revenue-based business model. In the end, copyright holders and social networking sites may be forced to strike a balance in order to maintain user-interest.²³

The norm that would encourage a hybrid economy most is the norm of many within the GNU/Linux community: any use, including commercial use, is fair. The problem with this norm

in the context of culture (as opposed to software) is that cultural products are less obviously collaborative. The feeling of individual exploitation is therefore much more likely to be real. When Google takes the free labor of the GNU/Linux community and leverages it into the most successful Internet business in the world, no member of that community could reasonably say, "Google has exploited me!" But if Sony took a song licensed in a similarly free way and sold 1 million CDs without giving the creator a dime (again, plainly possible under a copyleft license), there's little doubt that someone would have a strong claim of exploitation.

More problematically, free software rests ultimately upon a shaky economic foundation. Robert Young, for example, following the GNU Manifesto,²⁴ explains the free-software ethic as a version of the Golden Rule: "There's no ideology. There's no complexity. It's do unto others as you would have them do unto you. And if they're doing unto you what you are doing for them, they're welcome to use your technology for whatever they want to use it for because you're receiving a benefit from them." This states a beautiful ethical principle. But it doesn't quite constitute an economic motivation. No doubt "you're receiving a benefit from them." But you could receive that benefit whether or not you contributed your technology back. It might well be the "fair thing" to give back because you've taken. I certainly hope my kids think this way. The hard part is believing that over time, many will continue to believe that giving back makes sense.

Or more skeptically still: There are lots of reasons to believe that the particular character of free software makes it rational to keep the code free—for example, the costs of synchronizing a private version often overwhelm any benefit from keeping the code private.²⁵ IBM, for example, was free to take the Apache server and

build a private label version that would sell, without releasing to others any improvement it made in the code. But that benefit would have been purchased only by IBM's continuing to update its code to reflect changes made in the public version of Apache. At first (when the code bases are close), such updating is not too hard. But over time (as the code bases diverge), it becomes increasingly costly to maintain the private code. Thus the purely rational strategy for this kind of creativity is to innovate in the commons, since the cost of innovating privately outweighs the benefit.

But that story hangs upon the physical characteristics of complex coding projects. Those same characteristics don't exist with, say, a song or a novel. Whatever incentive there may be to stay in the commons with complex, collaborative goods, that same incentive doesn't carry over automatically to all creative works. For these works, nothing more than a norm will support keeping the resource open. And whether, or how, that norm survives is not, to me at least, clear.

It is clear to me, however, that we must avoid a kind of intellectual imperialism. We must be open to the differences in cultural goods—software versus movies; music versus scientific articles. The norms that support free production in one are not necessarily the norms that support free production in the other. As Brian Behlendorf, a cofounder of the Apache project, puts it,

I don't know if there is one single, social contract amongst cultural works. I think it's different for DJs and electronic music than it is for folk music or even different types of dance music. [For example, the] R & B community has appropriated a lot of tracks and a lot of song examples yet probably would fight fiercely with the RIAA against downloading of their work and such.

He points to another important difference as well:

A lot of software is, by its nature, a team effort with lots of iterations over time. A lot of cultural media—songs or plays or movies—are, if they have teams, much smaller teams where they tend to be the vision of one or two people. And they arrive at a finished body of work or mostly finished work and then it's kind of put in a time capsule....[M]aybe it's this evolutionary nature of software, the fact that contributors come and go over time and that, sure, you have certain versions that are well known and such, but it's not like movies where there's a finished work that makes its way to the theater and people pay money to go see it.

We need to understand these differences to envision the lines communities will draw.

“Sharecropping” Is Not Likely to Become a Term of Praise

Although I am uncertain about how these norms will develop generally, there are particular conclusions we can draw with confidence. Here's one: digital sharecropping will not be long for this world. Of all the terms that creators from the sharing economy will demand, the right to own their creativity will be central.

“Sharecropping”?

In April 2007, an excellent research assistant did a survey of every site she could find that invited creators to “remix” or “mash up” content provided by the site. There were over twenty-five sites in her survey. But as she read through the terms of these many

remix contests, a key difference among them became apparent. In 56 percent of the sites, the artist or remixer owned the rights to his remix—not the content he remixed, but the remix. Sixteen percent of these sites required that the remix be licensed under some form of public license (okay, all of those that did require a license required that it be a Creative Commons license). But in 28 percent of these sites, the artist or remixer got no rights in her work at all. She was the creator, but she did not own her creativity. She was, in the totally neutral, noninflammatory terminology that I've selected here, a sharecropper.

David Bowie's contests were typical. Bowie's contract required that the remixer "grant, sell, transfer, assign and convey . . . all present and future rights, title and interest of every kind and nature" in the remix. The remixer also waived any moral rights he might "feel" he had in the remix. And the remixer granted to Bowie's label, Sony, "worldwide royalty-free, irrevocable, non-exclusive license" to any content added to the Bowie content to make the remix.²⁶ Thus, if you composed a track and uploaded to the Bowie site to remix it with something Bowie created, then Bowie was free to take that track and sell it, or use it in his own music, without paying you, the artist, anything.

This trend away from artists owning their creations is not new. It has long been a part of commercial creativity. In America, for example, the "work-for-hire" doctrine strips the creator of any rights in a creative work made for a corporation, vesting the copyright instead in that corporation.

This is an awful trend, fundamentally distorting the copyright system by vesting copyrights in entities that effectively live forever. (For that reason, the copyright given to humans is life plus seventy, but to corporations, a fixed ninety-five years. Unfortunately, unlike

humans seventy years after their death, after ninety-five years there is still an “artist” eagerly begging Congress for more.)

Yet whether or not the work-for-hire doctrine flourishes in the commercial economy, my sense—and no doubt, my bias—is that sharing-economy creators will increasingly demand at a minimum that their rights remain theirs.

We’ve already seen a similar frustration brew in the context of “fan fiction,” particularly around the *Star Wars* franchise. As with the Harry Potter story, Lucasfilm learned early on that there were millions who wanted to build upon *Star Wars*, and few who thought themselves restricted by the rules of copyright. Like Warner, Lucasfilm recognized that these fans could provide real value to the franchise. So under the banner of encouraging this fan culture, Lucasfilm offered free Web space to anyone wanting to set up a fan home page.

But the fine print in this offer struck many as unfair. The contract read:

The creation of derivative works based on or derived from the Star Wars Properties, including, but not limited to, products, services, fonts, icons, link buttons, wallpaper, desktop themes, on-line postcards and greeting cards and unlicensed merchandise (whether sold, bartered or given away) is expressly prohibited. If despite these Terms of Service you do create any derivative works based on or derived from the Star Wars Properties, such derivative works shall be deemed and shall remain the property of Lucasfilm Ltd. in perpetuity.

Translation: “Work hard here, *Star Wars* fans, to make our franchise flourish, but don’t expect that anything you make is actually

yours. You, *Star Wars* fans, are our sharecroppers. Be happy with the attention we give you. But don't get too uppity."

These terms incited something of a riot among the fans. As one of their leading spokesmen put it, "The real story is a lot uglier, and has much less to do with the encouragement of creativity than its discouragement—there's nothing innocent about Lucasfilm's offer of web space to fans."²⁷

"Nothing innocent," again because all ownership went to Lucasfilm. Fans may well agree not to profit from their work; they may well think it fair that any commercial opportunity arising out of *Star Wars* be ultimately within the reach of George Lucas. (Remember, this was the good sense expressed by Heather Lawver, leader of the Potter Wars.) But that concession does not mean the fans believe that their work too should be owned by George Lucas. And so when Lucasfilm pushed to the contrary, these fans pushed back.

Lucasfilm, however, does not seem to be deterred. In 2007, the company launched a mash-up site to encourage creators to mash up scenes from the *Star Wars* series with their own music or images uploaded to the Lucasfilm server. Who owned the mash-ups? No surprise: Lucasfilm. But here's the part that really gets me: As with David Bowie's site, if you upload, say, music you have written to be included in a mash-up that you have made, you not only lose the rights to the mash-up, *you also lose exclusive rights to your music*. Lucasfilm has a perpetual, and free, right to your content, for both commercial and noncommercial purposes. Once again: sharecropping.

I'm not saying that this virtual sharecropping should be banned. Instead, I am asking which types of hybrid are likely to thrive. A hybrid that respects the rights of the creator—both the original

creator and the remixer—is more likely to survive than one that doesn't. That's not because everyone will care about the rights of ownership offered by a particular site. They won't. But competition is won on the margin. And the ham-handed overreaching of the typical Hollywood lawyer is just the sort of blunder most likely to spoil the success of an otherwise successful hybrid.

Think again about what the Lucasfilm site says to the kids it invites to remix Lucas's work. No one doubts that Lucas's contribution to this site is significant. The *Star Wars* franchise is one of the most valuable in history, extraordinarily compelling and creative, not just to my generation, but to anyone. No one would think that Lucas has any moral obligation to give up ownership to that work (at least during the "limited time" period that its copyright survives). This creativity is rightfully Lucas's.

But when Lucas invites others to remix that creativity, he does it for a reason. A financial reason. He wants to leverage the work of thousands of kids to make his original content more compelling. And, in turn, to make the franchise more valuable.

There can be nothing wrong with that objective, at least from my perspective. This is precisely the manner of every hybrid. And we shouldn't shrink from acknowledging that profit is one objective of those within the hybrid mix.

But though the objective of profit is not a problem, the manner in which that profit is secured can be. The respect, or lack of respect, demonstrated by the terms under which the remix gets made says something to the remixer about how his work is valued. So again, when Lucas claims all right to profit from a remix, or when he claims a perpetual right to profit from stuff mixed with a remix, he expresses a view about his creativity versus theirs: about which is more important, about which deserves respect.

To the lawyers who drafted the agreements I'm criticizing (for I'm sure George Lucas, who is an important contributor to education, had nothing to do with selecting these terms), my concerns will seem bizarre. They've spent their whole career striking deals just like this. The agreements between media companies, or media companies and artists, are not love letters. They do not express mutual respect. A lawyer's job (at least in a commercial economy) is to get everything he can. He is to maximize the value for his client. Social justice is not within his ken.

But these lawyers are the most likely to fail in this new environment. They have developed none of the instincts or sensibilities necessary to build loyalty and respect with those in the sharing economy that their clients depend upon. Like the lawyers working for union busters at the start of the twentieth century, they're proud of precisely the behavior that will cause the most harm to their clients.

Others will teach them—not through lectures or exams, but through the success in the market others will have, and that they (or more accurately, their clients) won't have. Competitive markets will reward right behavior. Too bad for their clients, but lawyers know little of competitive markets. (And tenured law professors know even less.)

The Hybrid Can Help Us Decriminalize Youth

As hybrids for culture have developed, the most successful of these hybrids have learned that encouraging *legal* creativity is the key to encouraging a healthy and successful business. The struggles

companies like YouTube have faced to address both legitimate and illegitimate claims by copyright owners have led others to plan for these complexities in advance. blip.tv, for example, explicitly enables users to mark their creative work with the freedoms they intend it to carry. Sony's version of YouTube in Japan, eyeVio, requires uploaders to verify the freedom to share the content they intend to upload.

As this model becomes the norm, it will change the world within which this remix creativity happens. The focus will shift to the creativity alone; the conditions under which that creativity happens—and the “piracy” of its making—will no longer be interesting. The hybrid can pave a way toward legal remix creativity. The incentive of the market can drive a market reform to make this form of expression allowed.

I don't think this market incentive alone will be enough. Policy changes will be necessary as well. But one great thing about democracy in America is that when the market demonstrates the wisdom of a certain freedom, politicians at least sometimes listen. As the market of hybrids becomes even more significant, the freedoms hybrids will depend upon will become more and more salient to policy makers.