Lessig, Lawrence. "Conclusion." *Remix: Making Art and Commerce Thrive in the Hybrid Economy*. London: Bloomsbury Academic, 2008. 289–294. *Bloomsbury Collections*. Web. 26 Apr. 2023. <<http://dx.doi.org/10.5040/9781849662505.0006>>.

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CONCLUSION

The economic theory behind copyright justifies it as a tool to deal with what economists call the “problem of positive externalities.”¹ An “externality” is an effect that your behavior has on someone else. If you play your music very loudly and wake your neighbors, your music is producing an externality (noise). If you renovate your house and add a line of beautiful oak trees, your renovation produces an externality (beauty). Beauty is a positive externality—people generally like to receive it. Noise is a negative externality—people (especially at 3 a.m.) don’t like to receive it.

Copyright law deals with the positive externality produced by the nature of creative work. Creative work is a “public good”—meaning that (1) once it is shared, anyone can consume it without reducing the amount anyone else has; and (2) it is hard to restrict anyone from consuming it once it is available to all. If you paint a beautiful mural on your garage door, my viewing it doesn’t reduce your opportunity to view it. And without building a wall around your garage (not a very practical design, for a garage at least), it’s very hard to block who gets to see your mural.

Jefferson put the same idea more lyrically in a letter he wrote in 1813:

If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it. Its peculiar character, too, is that no one possesses the less, because every other possesses the whole of it. He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me. That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density at any point, and like the air in which we breathe, move, and have our physical being, incapable of confinement or exclusive appropriation.²

Jefferson was talking about ideas here. Copyright regulates expression. But his observations about the nature of ideas are increasingly true of expression. If I post this book on the Internet, then your taking a copy doesn't remove my having a copy too ("no one possesses the less, because every other possess the whole"). And my making a copy available for you to have makes it relatively difficult to prevent others from having a copy as well ("like the air in which we breathe, move, and have our physical being, incapable of confinement or exclusive appropriation"). "Relatively difficult," not impossible: the whole history of Digital Rights Management technology has been the aim to remake Jefferson's nature—to make it so digital

objects are like physical objects (your taking one copy means one less for me; your getting access means I don't have access).³ But in the state of Internet nature, Internet expression is like Jefferson's ideas.

I said that economists justify copyright as a way to deal with the "problem of positive externalities." But why, you might rightly wonder, are "positive externalities" a problem? Why isn't it a positive good that expression "should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition"? Why isn't it "peculiarly and benevolently" the Internet's "nature," to be encouraged rather than restricted?

The answer, for the economist at least, is that while free is no doubt good, if everything were free, there would be too little incentive to produce. And if there's not enough monetary incentive to produce, the economist fears, then not enough stuff is produced.

In this book I've sketched a bunch of obvious replies to this fear: there are tons of incentives beyond money. Look at the sharing economy. Look at 100 million blogs, only 13 percent of which run ads.⁴ Look at Wikipedia or Free Software. Look at academics or scientists. We have plenty of examples of creative expression produced on a model different from the one that Britney Spears employs.

But I've also made the other side to that argument clear: the sharing economy notwithstanding, there's lots that won't be created without an effective copyright regime too. I love terrible Hollywood blockbusters. If anyone could copy in high quality a Hollywood film the moment it was released, no one could afford to make \$100 million blockbusters. So give me this example at least. And if there's one example, then it's plausible that there are more. Movies. Maybe music. Maybe some kinds of books—dictionaries, maybe novels by John Grisham. We should of course be skeptical about how broadly this regulation needs to reach. (Supreme Court

justice Stephen Breyer got tenure at Harvard with a piece that expressed deep skepticism about how broadly this claimed need reaches.)⁵ But I'm convinced that it reaches into some places at least. For those cases, without solving the problem of positive externalities, we wouldn't have that kind of creative work.

So to get Hollywood films, some kinds of blockbuster movies, maybe Justin Timberlake-like music, and maybe a few types of books, we run a copyright system. That system is a form of regulation. Like most regulation, after a while, it becomes big and expensive. Federal courts and federal prosecutors spend a lot of money enforcing the law copyright is. Companies invest millions in technologies for protecting copyrighted material. Universities run sting operations on their own students to punish or expel those who fail to follow copyright's rule. We build this massively complex system of federal regulation—a regulation that purports to reach everyone who uses a computer—to solve this “problem” of positive externalities.

Good for us. Our government is working hard to “solve” this “problem.” But what about negative externalities? What does our government do about those? Think, for example, about mercury spewed as pollution in the exhaust from coal-fired power plants. Or think about the carbon spewed from these coal-fired power plants. These too are externalities. Millions are exposed to dangerous levels of mercury because of this pollution. The planet teeters on a catastrophic climate tipping point because of this carbon. Whatever harm there might be in not having yet another *Star Trek*, the harms from these negative externalities are unquestionable and real. They cause real deaths. They will cause extraordinary dislocation and economic harm. So given its keen interest in regulating to protect against uncompensated positive externalities, what precisely has our government done about undoubtedly harmful negative exter-

nalities? In the past ten years, in a time when Congress has passed at least twenty-four copyright bills,⁶ and federal prosecutors and federal civil courts have been used to wage “war” on “piracy” so as to solve the problem of positive externalities, what exactly has the government been doing about these negative externalities?

The answer is, not much. Though President Bush successfully deflected Al Gore’s charge in 2000 that we faced a carbon crisis by promising to tax carbon when elected, within two weeks of his swearing in, he reversed himself, and indicated he didn’t think global warming was a problem.⁷ And though the Clean Air Act plainly regulates pollutants like mercury in power plants, in 2003, the Bush administration changed the regulations to “allow polluters to avoid actually having to reduce mercury.”⁸ Thus, with these real and tangible harms caused by negative externalities, the government has done worse than nothing. At the same time, it has devoted precious resources to fighting a problem that many don’t even believe is a problem at all.

So what gives?

It’s been a decade since I got myself into the fight against copyright extremism. Throughout this book, I have argued that this decade’s work has convinced me that this war is causing great harm to our society. Not only from losses in innovation. Not only from the stifling of certain kinds of creativity. Not only because it unjustifiably limits constitutionally guaranteed freedoms. But also, and most important, because it is corrupting a whole generation of our kids. We wage war against our children, and our children will become the enemy. They will become the criminals we name them to be. And because there is no good evidence to suggest that we will win this war, that’s all the reason in the world to stop these hostilities—especially when there are alternatives that advance the purported governmental interest without rendering a generation criminal.

But there is insult to add to this injury. For the point is not just that our government is waging a hopeless war. It is that our government does little to fight real harm, while it wastes resources fighting “problems” that are not even clear harms.

And why does it do this?

The lesson a decade’s work has taught me is that the reason has nothing to do with stupidity. It has nothing to do with ignorance. The simple reason we wage a hopeless war against our kids is that they have less money to give to political campaigns than Hollywood does. The simple reason we do nothing while our kids are poisoned with mercury, or the environment is sent over the falls with carbon, is that our kids and our environment have less money to give to campaigns than the utilities and oil companies do. Our government is fundamentally irrational for a fundamentally rational reason: policy follows not sense, but dollars.

Until that problem is solved, a whole host of problems will go unsolved. Global warming, pollution, a skewed tax system, farm subsidies: our government is irrational because it is, in an important way, corrupt. And until that corruption is solved, we should expect little good from this government.

This book is not about that corruption generally. All I have aimed for here is to get you to take one small step. Whatever you think about global warming, the environment, tax gifts to favored corporations, subsidies that benefit only corporate farmers, at least think this: there is no justification for the copyright war that we now wage against our kids. Demand that the war stop now. And once it is over, let’s get on to the hard problem of crafting a copyright system that nurtures the full range of creativity and collaboration that the Internet enables: one that builds upon the economic and creative opportunity of hybrids and remix creativity; one that decriminalizes the offense of being a teen.