Lessig, Lawrence. "Notes." *Remix: Making Art and Commerce Thrive in the Hybrid Economy*. London: Bloomsbury Academic, 2008. 299–318. *Bloomsbury Collections*. Web. 26 Apr. 2023. <<http://dx.doi.org/10.5040/9781849662505.0008>>.

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NOTES

Throughout this text there are references to links on the World Wide Web. As anyone who has tried to use the Web knows, these links can be highly unstable. I have tried to remedy this instability by redirecting readers to the original source through the Web site associated with this book. For each link below, you can go to remix.lessig.org and locate the original source. If the original link remains alive, you will be redirected to that link. If the original link has disappeared, you will be redirected to an appropriate reference for the material.

Preface

1. George Lakoff and Mark Johnson, *Metaphors We Live By* (Chicago: University of Chicago Press, 1980), 156–57.
2. *Ronald Allen Harmelin v. Michigan*, 501 U.S. 957 (1991).
3. Amy Harmon, “Black Hawk Download: Moving Beyond Music, Pirates Use New Tools to Turn the Net into an Illicit Video Club,” *New York Times*, January 17, 2002.
4. *Metro-Goldwyn-Mayer Studios Inc. v. Grokster Ltd.*, 545 U.S. 913 (2005).

Introduction

1. All quotes from Candice Breitz taken from an in-person interview conducted August 6, 2007.
2. E-mail to Candice Breitz, May 31, 2006.
3. All quotes from Gregg Gillis taken from an interview conducted June 21, 2007, by telephone.
4. All quotes from SilviaO taken from an interview conducted February 8, 2007, by telephone.

Chapter 1. Cultures of Our Past

1. "They Ask Protection," *Washington Post*, June 6, 1906, 4.
2. E. Fulton Brylawski and Abe Goldman, *Legislative History of the 1909 Copyright Act* (South Hackensack, N. J.: Fred B. Rothman, 1976), 24.
3. Eric von Hippel, *Democratizing Innovation* (Cambridge, Mass.: MIT Press, 2005).
4. Brylawski and Goldman, *Legislative History*, 24.
5. Sousa, "The Menace of Mechanical Music," 280.
6. *Ibid.*, 280–81 (emphasis added).
7. See Tarla Rai Peterson, "Jefferson's Yeoman Farmer as Frontier Hero: A Self Defeating Mythic Structure," *Agriculture and Human Values* 7 (1990): 9–19; Jefferson to James Madison, October 28, 1785, Merrill D. Peterson, ed., *Thomas Jefferson: Writings* (New York: Library of America, 1984), 842; Willard Sterne Randall, *Thomas Jefferson: A Life* (New York: HarperCollins, 1994), 432; Lawrence S. Kaplan, *Thomas Jefferson: Westward the Course of Empire* (Wilmington, Del.: Scholarly Resources, 1999), 27.
8. As Harvard professor Yochai Benkler describes it:

Music in the nineteenth century was largely a relational good. It was something people did in the physical presence of each other: in the folk way through hearing, repeating, and improvising; in the middle-class way of buying sheet music and playing for guests or attending public performances; or in the upper-class way of hiring musicians. Capital was widely distributed among musicians in the form of instruments, or geographically dispersed in the hands of performance hall (and drawing room) owners. Market-based production depended on performance through presence. It provided opportunities for artists to live and perform locally, or to reach stardom in cultural centers, but without displacing the local performers.

Yochai Benkler, *The Wealth of Networks* (New Haven, Conn.: Yale University Press, 2006), 50–51.

9. Henry Jenkins, *Convergence Culture: Where Old and New Media Collide* (New York: New York University Press, 2006).

Cultural production occurred mostly on the grassroots level; creative skills and artistic traditions were passed down mother to daughter, father to son. Stories and songs circulated broadly, well beyond their points of origin, with little or no expectation of economic compensation; many of the best ballads or folktales come to us today with no clear marks of individual authorship. While new commercialized forms of entertainment—the minstrel shows, the circuses, the showboats—emerged in the mid-to-late nineteenth century, these professional entertainments competed with thriving local traditions of barn dances, church sings, quilting bees, and campfire stories. There was no pure boundary between the emergent commercial culture and the residual folk culture: the commercial culture raided folk culture and folk culture raided commercial culture. (Jenkins, *Convergence Culture*, 135.)

But the twentieth century, Jenkins argues, changed this:

The story of American arts in the twentieth century might be told in terms of the displacement of folk culture by mass media. Initially, the emerging entertainment

industry made its peace with folk practices, seeing the availability of grassroots singers and musicians as a potential talent pool, incorporating community sing-a-longs into film exhibition practices, and broadcasting amateur-hour talent competitions. The new industrialized arts required huge investments and thus demanded a mass audience. The commercial entertainment industry set standards of technical perfection and professional accomplishment few grassroots performers could match. The commercial industries developed powerful infrastructures that ensured that their messages reached everyone in America who wasn't living under a rock. Increasingly, the commercial culture generated the stories, images, and sounds that mattered most to the public. (Ibid.)

10. Wikipedia contributors, "Player Piano," Wikipedia: The Free Encyclopedia, available at link #1 (last visited July 30, 2007).
11. Ibid., available at link #2 (last visited July 30, 2007).
12. Pekka Gronow, "The Record Industry: The Growth of a Mass Medium," *Popular Music* 3 (1983): 54–55, available at link #3.
13. Leonard DeGraff, "Confronting the Mass Market: Thomas Edison and the Entertainment Phonograph," *Business and Economic History* 24 (1995): 88, available at link #4.
14. Gronow, "The Record Industry," 62, available at link #5.
15. Ibid., 62, available at link #6.
16. Ibid., 63, available at link #7.
17. Philip E. Meza, *Coming Attractions? Hollywood, High Tech, and the Future of Entertainment* (Stanford, Calif.: Stanford University Press, 2007), 51.
18. Ibid., 50–51.
19. Lawrence Lessig, *Free Culture* (New York: Penguin Press, 2004), 3–7.
20. U.S. Census Bureau, "NAICS 5111—Newspaper, Periodical, Book and Directory Publishers," Industry Statistics Sampler, available at link #8 (last visited August 20, 2007).
21. U.S. Census Bureau, "NAICS 515120—Television Broadcasting," Industry Statistics Sampler, available at link #9 (last visited August 20, 2007).
22. U.S. Census Bureau, "NAICS 512—Motion Picture and Sound Recording Industries," Industry Statistics Sampler, available at link #10 (last visited August 20, 2007).
23. "Economies," Motion Picture Association of America, available at link #11 (last visited January 24, 2008).
24. Brylawski and Goldman, *Legislative History*, 25.
25. Currier was skeptical of unlimited patent rights. See *Zoltek Corp. v. United States*, 464 F.3d 1335, 1337 (2006) (Newman, J., dissenting), available at link #12 (last visited July 30, 2007). He was reluctant to expand copyrights.

Chapter 3. RO, Extended

1. Until 1972, federal law didn't regulate the copying of recordings. See *Capitol Records Inc. v. Naxos of America*, 4 N.Y.3d 540, 544 (2005).
2. See Lawrence Lessig, *Code 2.0* (New York: Basic Books, 2006), 5–6.
3. Bruce Lehman, *Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property Rights* (Darby: Diane Publishing, 1995).

4. See Sonny Bono Copyright Term Extension Act, Pub. L. No. 105-298, 112 Stat. 2827 (1998) (extending the term of existing copyrights).
5. See, e.g., No Electronic Theft Act of 1997, Pub. L. No. 105-147, 111 Stat. 2678 ("NET Act"), amending 17 U.S.C. §506(a).
6. See Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860 (1998).
7. See *UMG Recordings Inc. v. MP3.com Inc.*, 92 F. Supp. 2d 349 (S.D.N.Y. 2000); *A&M Records Inc. v. Napster Inc.*, 239 F.3d 1004 (9th Cir. 2001).
8. See, for example, Lessig, *Free Culture*, chap. 3.
9. RIAA Watcher, "RIAA Watch," RIAA Watch, available at link #13; Nate Mook, "RIAA Sues 261, Including 12-Year-Old Girl," *BetaNews*, September 9, 2003, available at link #14; Nate Mook, "RIAA Sues Deceased Grandmother," *BetaNews*, February 4, 2005, available at link #15.
10. See Susan Butler, "Sixth Wave of RIAA Pre-Litigation Letters Sent to Colleges," *Hollywood Reporter*, July 19, 2007, available at link #16.
11. Number of Lawsuits in the United States Courts Concerning Copyright, 2000–2006.

Year	Court of Appeals	District Courts
2006	415	5,488
2005	453	4,595
2004	475	2,653
2003	453	2,111
2002	517	2,439
2001	486	2,049
2000	Not Available	2,056

The Federal Judiciary, "Federal Judicial Caseload Statistics," U.S. Courts, available at link #17 (last visited July 30, 2007). Table C-2. "U.S. District Courts—Civil Cases Commenced, by Basis of Jurisdiction and Nature of Suit," 2000–2006. Table B-7. "U.S. Courts of Appeals—Nature of Suit or Offense in Cases Arising from the U.S. District Courts, by Circuit," 2000–2006.

12. International Federation of the Phonographic Industry, *IFPI:07 Digital Music Report* (London: IFPI, 2007), 18.
13. The last great panic surrounded the emergence of cassette-tape technology. See the discussion in Office of Technology Assessment, *Copyright and Home Copying: Technology Challenges the Law* (Washington, D.C.: U.S. Government Printing Office, 1989), 145–47, available at link #18.
14. Meza, *Coming Attractions?*, 87–88.
15. Ibid. But obviously the claims are contested. See Martin Peitz and Patrick Waelbroeck, "The Effect of Internet Piracy on CD Sales: Cross-Section Evidence," *CESifo Working Paper Series* 1122 (January 2004), concluding that Internet piracy accounts for just 22.5 percent of the drop in CD sales. See also Felix Oberholzer and Koleman Strumpf, "The Effect of File-Sharing on Record Sales: An Empirical Analysis," University of North Carolina (2004) (no statistically significant connection between downloading and drop

- in sales). Compare Stan J. Liebowitz, "Economists' Topsy-Turvy View of Piracy," *Review of Economic Research on Copyright Issues* 2 (2005): 5–17; Stan J. Liebowitz, "Economists Examine File-Sharing and Music Sales," *Industrial Organization and the Digital Economy* (Cambridge, Mass.: MIT Press, 2005); Stan J. Liebowitz, "Testing File-Sharing's Impact on Music Album Sales in Cities," *Management Science*, forthcoming.
16. "The Recording Industry 2006 Piracy Report: Protecting Creativity in Music," International Federation of the Phonographic Industry (IFPI), available at link #19 (last visited January 18, 2008). For a fantastic study of the relationship between artists' income and digital technologies see Martin Kretschmer, "Artists' Earning and Copyright: A Review of British and German Music Industry Data in the Context of Digital Technologies," *First Monday* 10 (2005), available at link #20.
 17. Amy Matthew, "The Creative Revolution: Consumers, Artists Lead the Way into New Entertainment World," *Pueblo Chieftain*, April 29, 2007; "Apple to Give iTunes Users Credit for Full Albums," *InvesTrend*, March 29, 2007.
 18. Less elegant was the idea of a coin box in the home. I remember as a kid staying in a boarding house in England in the 1970s that had a coin box to operate hot water. A hot bath is one thing, but television is a necessity. The inconvenience of this system must have been staggering. Still, the idea was tested in Palm Springs, California, in the early 1950s, again by Paramount. This system, called telemeter, used scrambled television signals sent over telephone lines. When customers deposited the correct amount of change in the coin box, the telemeter descrambled the signal. The system debuted in 1953, showing a USC–Notre Dame football game (presaging the popular college sports packages now available on satellite TV services) for \$1.00 and a first-run Paramount movie, *Forever Female*, for an additional \$1.35. (Meza, *Coming Attractions?*, 83.)
 19. In *Napster Inc. Copyright Litigation*, 191 F. Supp. 2d 1087 (N.D. Cal. 2002).
 20. In January 2008 the last of the major labels, Sony BMG, dropped the requirement that its music be sold with DRM. Peter Sayer, "Sony BMG to Sell DRM-Free Music Downloads Through Stores," *InfoWorld*, January 7, 2008, available at link #21.
 21. Lessig, *Code 2.0*.

Chapter 4. RW, Revived

1. *Grand Upright Music Ltd. v. Warner Bros. Records Inc.*, 780 F. Supp. 182 (S.D.N.Y. 1991).
2. All quotes from Don Joyce taken from an interview conducted March 20, 2007, by telephone.
3. David Bollier, *Brand Name Bullies* (Hoboken, N.J.: Wiley, 2005), 69.
4. J. D. Lasica, *Darknet: Hollywood's War Against the Digital Generation* (Hoboken, N.J.: Wiley, 2005), 72–73.
5. Heidi Anderson, "Plugged In," *Smart Computing* (November 2000): 90–92.
6. Benkler, *Wealth of Networks*, 217.
7. Mark Lawson, "Berners-Lee on the Read/Write Web," *BBC News*, August 9, 2005, available at link #22 (last visited July 31, 2007).
8. Niall Kennedy, "Technorati Two Years Later," Niall Kennedy's Weblog, November 26, 2004, available at link #23; David Sifry, "Technorati," Sifry's Alerts, November 27, 2002, available at link #24; David Sifry, "Over 100,000 Blogs Served," Sifry's Alerts, March 5, 2003, available at link #25; David Sifry, "One Million Weblogs Tracked," Sifry's

- Alerts, September 27, 2003, available at link #26; David Sifry, "State of the Blogosphere," Sifry's Alerts, October 10, 2004, available at link #27; "About Us," Technorati, available at link #28 (last visited July 30, 2007).
9. David Sifry, "The State of the Live Web," Sifry's Alerts, April 5, 2007, available at link #29 (last visited July 23, 2007); David Sifry, "State of the Blogosphere, October 2006," Technorati, available at link #30 (last visited July 23, 2007).
 10. Benkler, *Wealth of Networks*, 217.
 11. Thomas Vander Wal, "Off the Top: Folksonomy Entries," Vanderwal.net, October 3, 2004, available at link #31.
 12. Don Tapscott and Anthony D. Williams, *Wikinomics: How Mass Collaboration Changes Everything* (New York: Portfolio, 2006), 41.
 13. *Ibid.*, 52.
 14. *Ibid.*, 144–45.
 15. *Ibid.*, 42.
 16. "Blogging Basics," Technorati, available at link #32 (last visited July 23, 2007).
 17. David Sifry, "The State of the Live Web, April 2007," Sifry's Alerts, available at link #33 (last visited August 16, 2007).
 18. Charlene Li, *Social Technographics* (Cambridge, Mass.: Forrester, 2007), 2.
 19. Benkler, *Wealth of Networks*, 225–33.
 20. The blog Corporate Influence in the Media tries to document examples of advertisers pressuring publishers and broadcasters. See Anup Shah, Corporate Influence in the Media, available at link #34 (last visited August 16, 2007). In 2006 the Center for Media and Democracy released a report detailing a large number of instances in which news organizations broadcast "video news releases" as news without revealing to their audiences that the video was provided by a public relations firm. See Diane Farsetta and Daniel Price, "Fake TV News: Widespread and Undisclosed," Center for Media and Democracy, April 6, 2006, available at link #35.
 21. Lawrence Lessig, "The People Own Ideas," *Technology Review* (June 2005): 46–48.
 22. "To the Point; Trends & Innovations," *Investor's Business Daily*, September 26, 2006.
 23. *Ibid.*
 24. Gail Koch, "'800-Pound Gorilla' Still Rules for Most," *Star Press* (Muncie, Ind.), September 28, 2005.
 25. Xinhua News Agency, "Census Bureau: Americans to Spend More Time on Media Next Year," December 15, 2006.
 26. U.S. Fed News, "American Time Use Survey—2006 Results," *U.S. Fed News*, June 28, 2007.
 27. This is not to say that before the Internet, there was nothing like this RW-media culture. Indeed, for almost a half century, beginning with the *Star Trek* series, there has been a rich "fan fiction" culture, in which fans take popular culture and remix it. Rebecca Tushnet, "Legal Fictions: Copyright, Fan Fiction, and a New Common Law," *Loyola of Los Angeles Entertainment Law Journal* 17 (1997): 655, citing Henry Jenkins and John Tulloch, eds., *'At Other Times, Like Females': Gender and Star Trek Fan Fiction*, in *Science Fiction Audiences: Watching Dr. Who and Star Trek* (London: Routledge, 1995), 196. Some trace the history of fan fiction back even earlier, to "metanovels" written in response to classic works of fiction such as *Pride and Prejudice* (Sharon Cumberland, "Private Uses of Cyberspace: Women, Desire and Fan Culture," in *Rethinking Media Change: The Aesthetics of Transition*, ed. David Thorburn and Henry Jenkins (Cambridge, Mass.: MIT

Press, 2003), 261. An Internet commentator known as Super Cat argues that the first fan fiction was John Lydgate's *The Siege of Thebes*, a continuation of *The Canterbury Tales* circa 1421: Super Cat, "A (Very) Brief History of Fanfic," Fanfic Symposium, available at link #36 (last visited August 11, 2007). Many believe that the contemporary online fan fiction community is predominantly composed of women, and the genre addresses topics traditionally marginalized in the commercial media, including "the status of women in society, women's ability to express desire, [and] the blurring of stereotyped gender lines" (Cumberland, "Private Uses," 265). In addition to traditional textual fan fiction, cyberspace has spawned an active culture of fan filmmaking. See Henry Jenkins, "Quentin Tarantino's Star Wars? Digital Cinema, Media Convergence, and Participatory Culture," in *Rethinking Media Change: The Aesthetics of Transition*, ed. David Thorburn and Henry Jenkins (Cambridge, Mass.: MIT Press, 2003), 281–84 (offering a case study of *Star Wars* fan fiction, which began in textual form with the first official film, and developed into digital film distributed on independent creators' Web sites). There is a comprehensive study of fan fiction in chapters 5–8 of Henry Jenkins, *Textual Poachers: Television Fans and Participatory Culture* (New York: Routledge, 1992).

28. All quotes from Mark Hosler taken from an interview conducted May 1, 2007, by telephone.
29. All quotes from Johan Söderberg taken from an interview conducted February 15, 2007, by telephone.
30. Telephone interview with Don Joyce, March 20, 2007.
31. "Misperceptions, the Media, and the Iraq War," Program on International Policy Attitudes and Knowledge Networks, available at link #37 (last visited January 18, 2008).
32. Charles Krauthammer, "A Vacation Bush Deserves," *Washington Post*, August 10, 2001.
33. All quotes from Victor Stone taken from an interview conducted February 15, 2007, by telephone.
34. All quotes from Mimi Ito taken from an interview conducted January 24, 2007, by telephone. For more, see Mimi Ito, "Japanese Media Mixes and Amateur Cultural Exchange," in *Digital Generations*, ed. David Buckingham and Rebekah Willett (Mahwah, N.J.: Lawrence Erlbaum, 2006), 49–66.
35. Jenkins, *Convergence Culture*, 128.
36. *Ibid.*, 182.
37. *Ibid.*, 177.
38. *Ibid.*, 182.

Chapter 5. Cultures Compared

1. An argument "in favor" is certainly not an argument anyone should consider conclusive. Free speech values should still weigh in the balance, driving regulation away from restrictive measures when alternative, nonrestrictive alternatives exist.
2. Andrew Odlyzko, "Content Is Not King," *First Monday* 6 (2001), available at link #38.
3. Stewart Baker, "Exclusionary Rules," *Wall Street Journal*, March 26, 2004.
4. Andrew Keen, *The Cult of the Amateur* (New York: Doubleday, 2007), 64.
5. *Ibid.*, 27.
6. *Ibid.*, 131.
7. *Ibid.*, 15.

8. I've enumerated some errors on my blog. See Lawrence Lessig, "Keen's 'The Cult of the Amateur': BRILLIANT!" Lessig Blog, available at link #39.
9. Keen, *The Cult of the Amateur*, 27.
10. New York Institute for the Humanities and NYU Humanities Council, "The Comedies of Fair U\$\$e," Internet Archive, available at link #40 (last visited July 30, 2007); Joy Garnett, "Full Program Audio on Archive.org," Comedies of Fair U\$\$e, available at link #41 (last visited July 30, 2007).
11. Steven Johnson, *Everything Bad Is Good for You: How Today's Popular Culture Is Actually Making Us Smarter* (New York: Riverhead, 2005).
12. Jenkins, *Convergence Culture*, 103–4.
13. A real problem for readers of his last novel, *The Mystery of Edwin Drood* (1870). Dickens died before he completed the story, even though serial chapters were already being printed. Joel J. Brattin, "Dickens and Serial Publication," PBS, available at link #42 (last visited August 16, 2007).
14. Christopher Lydon, "Ecstasy of Influence—Interview with Jonathan Lethem, Siva Vaidyanathan, Mark Hosler, and Mike Doughty," Open Source with Christopher Lydon, February 2, 2007, available at link #43.
15. Ithiel de Sola Pool, *Technologies Without Boundaries: On Telecommunications in a Global Age* (Cambridge, Mass.: Harvard University Press, 1990), 121.
16. The standard of intermediate First Amendment review permits speech regulation only "[1] if it advances important governmental interests unrelated to the suppression of free speech and [2] does not burden substantially more speech than necessary to further those interests." *Turner Broad. Sys. v. FCC*, 520 U.S. 180, 189 (1997); see also *United States v. O'Brien*, 391 U.S. 367, 377 (1968); *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (applying intermediate scrutiny to time, place, and manner regulation of speech in the public forum); *San Francisco Arts & Athletics Inc. v. U.S. Olympic Comm.*, 483 U.S. 522, 537 (1987) (applying *O'Brien* review to a law protecting the word "Olympic" under trademark law).
17. Work from 1923 on is potentially subject to copyright. Whether in fact a particular work is copyrighted depends upon whether the work satisfied certain formalities.
18. Jessica Litman, "The Exclusive Right to Read," *Cardozo Arts and Entertainment Law Journal* 13 (1994): 29, 34–35.
19. R. Anthony Reese, "Innocent Infringement in U.S. Copyright Law: A History," *Columbia Journal of Law & the Arts* 30 (2007): 133, 136.
20. V. Clapp, *Copyright—A Librarian's View, Prepared for the National Advisory Commission on Libraries* (Washington D.C.: Copyright Committee, Association of Research Libraries, 1968).
21. This important though obscure story about the unintended expansion of the scope of copyright is told best by L. Ray Patterson, "Free Speech, Copyright, and Fair Use," *Vanderbilt Law Review* 40 (1987): 40–43.
22. Paul Goldstein, *Copyright's Highway: From Gutenberg to the Celestial Jukebox* (Stanford, Calif.: Stanford University Press, 2003).
23. Office of Technology Assessment, *Copyright and Home Copying: Technology Challenges the Law* (Washington, D.C.: US Government Printing Office, 1989), 145–47, available at link #44.
24. Wikipedia contributors, "Jazz," Wikipedia: The Free Encyclopedia, available at link #45 (last visited July 30, 2007).

25. Wikipedia contributors, "Louis Armstrong," Wikipedia: The Free Encyclopedia, available at link #46 (last visited July 30, 2007).
26. Fairly relaxed, not completely. There is an important tension in jazz created by the way the derivative right functions. Because jazz is in essence improvisation, it must build upon some other work. But because copyright law treats this other work as expression, rather than as an idea, the improvisation requires permission from the underlying copyright owner. In practice, jazz musicians almost never seek that permission, instead relying upon the mechanical license to secure permission to record the underlying work. That license, however, doesn't cover derivatives. For a penetrating analysis of these questions, see Anonymous, "Jazz Has Got Copyright Law & That Ain't Good," *Harvard Law Review* 118 (2005), 1940.
27. *Bridgeport Music Inc. v. Dimension Films*, 383 F.3d 390 (6th Cir. 2004).
28. William W. Fisher, *Promises to Keep* (Stanford, Calif.: Stanford University Press, 2004).
29. Peter Lauria, "File-Sharing," *New York Post*, June 25, 2007.
30. *Metro-Goldwyn-Mayer Studios Inc. v. Grokster Ltd.*, 545 U.S. 913 (2005).
31. Mitch Bainwol and Cary Sherman, "Explaining the Crackdown on Student Downloading," *Inside Higher Ed*, March 15, 2007, available at link #47.
32. I also stand by my view that the harms caused by p2p file sharing are overstated by the industry. Mark Cooper has now added to this debate. As he has argued effectively, much of the loss in sales comes from people buying one or two tracks from an album. LPs forced those tracks to be bundled before; digital technology now permits them to be separate. It makes no sense to count that "loss" as a harm to society, since it simply represents people choosing to buy what they want. See Mark Cooper, *Digital Downloading of Music* (Washington, D.C.: Consumer Federation of America, 2007).
33. Bainwol and Sherman, "Explaining the Crackdown."

Chapter 6. Two Economies: Commercial and Sharing

1. Yochai Benkler, "Sharing Nicely: On Shareable Goods and the Emergence of Sharing as Modality of Economic Production," *Yale Law Journal* 114 (2004): 273-358.
2. Ronald E. Yates, "Internet-Related Manager Tops List of Hottest Jobs; Position Is So New and in Such Demand That Candidates' Lack of Degrees or Advanced Age Are Not Seen as Deterrents," *Sun-Sentinel*, February 5, 1996. Robert D. Atkinson and Daniel K. Correa, "The Digital Economy—Internet Domain Names," *The 2007 State New Economy Index* (2007): 40, available at link #48.
3. U.S. Census Bureau, "E-Stats-Measuring the Electronic Economy," available at link #49.
4. *Sony Corp. v. Universal City Studios*, 464 U.S. 417 (1984).
5. See Julie Niederhoff, "Video Rental Developments and the Supply Chain: Netflix, Inc.," Washington University, St. Louis (2002); Michael K. Mills and Jon Silver, "Analysing the Effect of Digital Technology on Channel Strategy, Power and Disintermediation in the Home Video Market: The Demise of the Video Store?" *Video Technology* magazine (February 2005); IRS, "Retail Industry ATG—Chapter 3: Examination Techniques for Specific Industries (Video/DVD Rental Business)," Small Business and Self-Employed One-Stop Resource, August 2005, available at link #50; "Videotape Rental—Background and Development," All Business, available at link #51; "Videotape Rental—Current Conditions," All Business, available at link #52.

6. Hoover's Inc., "Blockbuster, Inc.," Answers.com, available at link #53 (last visited August 7, 2007).
7. Wikipedia contributors, "Blockbuster, Inc." Wikipedia: The Free Encyclopedia, available at link #54 (last visited July 31, 2007).
8. Keith Regan, "Netflix Taking Over Wal-Mart's Online DVD Rental Business," *E-Commerce Times*, May 19, 2005, available at link #55 (last visited July 5, 2007); see also Phillip Torrone, "Netflix, Open Up or Die . . .," *Engadget*, July 19, 2004, available at link #56.
9. Hoover's Inc., "Amazon.com," Answers.com, available at link #57 (last visited July 31, 2007). These numbers reflect sales only. According to reports, Amazon's net deficit is still high—\$2 billion as of 2005.
10. *Ibid.*, available at link #58 (last visited July 31, 2007).
11. Wikipedia contributors, "Larry Page," Wikipedia: The Free Encyclopedia, available at link #59 (last visited July 31, 2007).
12. Verne Kopytoff, "Google Shares Top \$400: Search Engine No. 3 in Market Cap Among Firms in Bay Area," *San Francisco Chronicle*, November 18, 2005; Yahoo! Finance, "GOOG: Key Statistics for Google Inc.," Capital IQ, available at link #60 (last visited July 5, 2007).
13. Keen, *The Cult of the Amateur*, 135.
14. The point was made long before by Nicholas Negroponte. "A best-seller in 1990, Nicholas Negroponte's *Being Digital* drew a sharp contrast between 'passive old media' and 'interactive new media,' predicting the collapse of broadcast networks in favor of an era of narrowcasting and niche media on demand: 'What will happen to broadcast television over the next five years is so phenomenal that it's difficult to comprehend.'" Jenkins, *Convergence Culture*, 5.
15. Chris Anderson, *The Long Tail* (New York: Hyperion, 2006), 23.
16. Alan Cohen, "The Great Race; No Startup Has Cashed In on the DVD's Rapid Growth More Than Netflix. Now Blockbuster and Wal-Mart Want In. Can It Outrun Its Big Rivals?," *Fortune Small Business*, December 2002–January 2003. "Media Center," Netflix, available at link #61 (last visited April 1, 2008).
17. See Erik Brynjolfsson, Yu Jeffrey Hu, and Duncan Simester, "Goodbye Pareto Principle, Hello Long Tail: The Effect of Search Costs on the Concentration of Product Sales," MIT Center for Digital Business Working Paper (2007); Paul L. Caron, "The Long Tail of Legal Scholarship," *Yale Law Journal* 116 Pocket Part 38 (2006); Anita Elberse and Felix Oberholzer-Gee, "Superstars and Underdogs: An Examination of the Long Tail Phenomenon in Video Sales," Harvard Business School No. 07-015 Working Paper Series; Indiana Resource Sharing Task Force, "Wagging the Long Tail: Sharing More of Less; Recommendations for Enhancing Resource Sharing in Indiana," White Paper (2007); Anindya Ghose and Bin Gu, "Search Costs, Demand Structure and Long Tail in Electronic Markets: Theory and Evidence," NET Institute Working Paper No. 06-19 (2006); Teruyasu Murakami, "The Long Tail and the Lofty Head of Video Content: The Possibilities of 'Convergent Broadcasting,'" Nomura Research Institute, NRI Papers No. 113 (2007).
18. Lee Gomes, "It May Be a Long Time Before the Long Tail Is Wagging the Web," *Wall Street Journal*, July 26, 2006.
19. All quotes from Robert Young taken from an interview conducted April 26, 2007, by telephone.

20. Free as in free speech is different. Robert Young has been a strong supporter of Creative Commons.
21. I am grateful to Tim O'Reilly for getting me to see the importance of this point.
22. Dan Bricklin, "The Cornucopia of the Commons: How to Get Volunteer Labor," Dan Bricklin's Web site, August 7, 2000, available at link #62.
23. Linked from Bricklin, "Cornucopia of the Commons."
24. Dan Bricklin, "Cornucopia of the Commons," available at link #63.
25. See "Google Defies US Over Search Data," BBC News, January 20, 2006, available at link #64; Maryclaire Dale, "Judge Throws Out Internet Blocking Law: Ruling States Parents Must Protect Children Through Less Restrictive Means," MSNBC, March 22, 2007, available at link #65. Google prevailed in its effort to restrict the government's search. See *Gonzales v. Google*, 234 F.R.D. 674 (N.D. Cal. 2006).
26. Phillip Torrone, "Netflix, Open Up or Die . . .," available at link #66.
27. Netflix, *Netflix Prize*, available at link #67 (last visited July 2, 2007).
28. Tapscott and Williams, *Wikinomics*, 183.
29. See Tim O'Reilly, "What Is Web 2.0: Design Patterns and Business Models for the Next Generation of Software," O'Reilly, September 30, 2005, available at link #68. As Mary Madden summarizes the idea, it is "utilizing collective intelligence, providing network-enabled interactive services, giving users control over their own data." Mary Madden and Susannah Fox, *Riding the Waves of Web 2.0* (Washington, D.C.: Pew Internet Project, 2006), 1.
30. Ronald H. Coase, "The Nature of the Firm," *Economica* 4 (1937): 386–405.
31. Benkler, *The Wealth of Networks*, 59–60.
32. Lawrence Lessig, *The Future of Ideas* (New York: Random House, 2001) 35–36.
33. Clayton M. Christensen, *The Innovator's Dilemma* (Boston, Mass.: Harvard Business School Press, 1997), 228.
34. Benkler, "Sharing Nicely," 282.
35. This is the phenomenon of "crowding out" described extensively by Professor Benkler in *The Wealth of Networks*. As he summarizes this work, "Across many different settings, researchers have found substantial evidence that under some circumstances, adding money for an activity previously undertaken without price compensation reduces, rather than increases, the level of activity" (94).
36. See Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1984).
37. Lewis Hyde, *The Gift—Imagination and the Erotic Life of Property* (New York: Vintage Books, 2004), 3.
38. *Ibid.*, 56.
39. *Ibid.*, 45–46.
40. *Ibid.*, 82.
41. Benkler, "Sharing Nicely," 327.
42. *Ibid.*
43. *Ibid.*, 324; see also at 323, describing the work of Bruno Frey.
44. Increasingly the concern among record company executives is with social sharing. See Jason Pontin, "A Social-Networking Service with a Velvet Rope," *New York Times*, July 29, 2007.

45. See Eric A. von Hippel and Karim Lakhani, "How Open Source Software Works: 'Free' User-to-User Assistance," *Research Policy* 32 (2003): 923–43.

Kollock (1999) discusses four possible motivations to contribute public goods online. Given that his focus is incentives to put online something that has already been created, his list does not include any direct benefit from developing the thing itself—either the use value or the joy of creating the work product. His list of motives to contribute does include the beneficial effect of enhancements to one's reputation. A second potential motivator he sees is expectations of reciprocity. Both specific and generalized reciprocity can reward providing something of value to another. When information providers do not know each other, as is often the case for participants in open source software projects, the kind of reciprocity that is relevant is called "generalized" exchange (Ekeh, 1974). . . . The third motivator posited by Kollock is that the act of contributing can have a positive effect on contributors' sense of "efficacy"—a sense that they have some effect on the environment (Bandura, 1995). Fourth and finally, he notes that contributors may be motivated by their attachment or commitment to a particular open source project or group. In other words, the good of the group enters into the utility equation of the individual contributor. (Ibid., 927.)

46. Or so the terms of service for Skype say. See "Skype End User License Agreement—Article 4 Utilization of Your Computer," Skype, available at link #69 (last visited July 31, 2007).
47. Daniel H. Pink, "The Book Stops Here," *Wired*, March 2005, available at link #70.
48. All quotes from Jimmy Wales taken from an in-person interview conducted May 4, 2007.
49. Seth Anthony, "Contribution Patterns Among Active Wikipedians: Finding and Keeping Content Creators," Wikimania Proceedings SA1 (2006), as summarized at link #71 (last visited August 20, 2007).
50. Aaron Swartz, "Who Writes Wikipedia," available at link #72 (last visited August 20, 2007).
51. "Meetings/February 7, 2005," Wikimedia Foundation, available at link #73 (last visited July 31, 2007).
52. Tapscott and Williams, *Wikinomics*, 72.
53. Ibid.
54. Noam Cohen, "The Latest on Virginia Tech, from Wikipedia," *New York Times*, April 23, 2007.
55. Ibid.
56. Robert Young and Wendy Goldman Rohm, *Under the Radar: How Red Hat Changed the Software Business—and Took Microsoft by Surprise* (Scottsdale, Ariz.: Coriolis Group Books, 1999), 110.
57. Netcraft, "Reports—What Is the Market Share of the Different Servers?" Netcraft—Web Server Survey, available at link #74 (last visited July 31, 2007): follow monthly "Index" link for November 1996–present; follow monthly "ALL" link for August 1995–October 1996.
58. Steven Weber, *The Success of Open Source* (Cambridge, Mass.: Harvard University Press, 2004), 234.
59. Scott E. Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (Princeton, N.J.: Princeton University Press, 2007).
60. Wikipedia contributors, "Project Gutenberg," Wikipedia: The Free Encyclopedia, available at link #75 (last visited October 10, 2007).

61. Ibid., available at link #76 (last visited October 10, 2007).
62. "Beginning Proofreaders' Frequently Asked Questions," Distributed Proofreaders, available at link #77 (last visited July 31, 2007).
63. Wikipedia contributors, "SETI@home," Wikipedia: The Free Encyclopedia, available at link #78 (last visited August 20, 2007). See also Benkler, "Sharing Nicely," 275.
64. Wikipedia contributors, "Einstein@Home," Wikipedia: The Free Encyclopedia, available at link #79 (last visited August 20, 2007).
65. "About the Internet Archive," Internet Archive, available at link #80 (last visited July 31, 2007).
66. All quotes from Brewster Kahle taken from an interview conducted January 24, 2007, by telephone.
67. NASA Ames, "Welcome to the Clickworkers Study," Clickworkers, available at link #81 (last visited July 31, 2007).
68. B. Kanefsky, N. G. Barlow, and V. C. Gulick, "Can Distributed Volunteers Accomplish Massive Data Analysis Tasks," Thirty-second Annual Lunar and Planetary Science Conference 1272 (2001), available at link #82.
69. Ibid., available at link #83.
70. Ibid., available at link #84.
71. Benkler, *The Wealth of Networks*, 69.
72. "Let Data Speak to Data," *Nature* 438 (2005), available at link #85 (last visited July 31, 2007), cited in Tapscott and Williams, *Wikinomics*, 159.
73. Ibid., available at link #86 (last visited July 31, 2007).
74. Michael W. Vannier and Ronald M. Summers, "Sharing Images," *Radiology* 228 (2003), available at link #87.
75. U.S. National Virtual Observatory, available at link #88 (last visited July 31, 2007).
76. "About the Open Directory Project," Open Directory Project, available at link #89 (last visited July 11, 2007).
77. "About Open Source Food," Open Source Food, available at link #90 (last visited July 11, 2007).
78. Benkler, *The Wealth of Networks*, 121.
79. Bricklin, "The Cornucopia of the Commons," available at link #91.
80. von Hippel, *Democratizing Innovation*, 60–61.
81. Steven Weber, *The Success of Open Source* (Cambridge, Mass.: Harvard University Press, 2004), 153.
82. von Hippel, *Democratizing Innovation*, 60–61.
83. Weber, *The Success of Open Source*, 155.
84. von Hippel and Lakhani, "How Open Source Software Works," 927.
85. Weber, *The Success of Open Source*, 224.
86. Benkler, *The Wealth of Networks*, 16–18.
87. Ibid., 2.
88. Ibid., 3.

Chapter 7. Hybrid Economies

1. I don't mean to suggest that there weren't hybrids before the Internet. Think of dog shows, open-mike nights at bars, or country fairs. All of these have a dynamic similar to

- the one I identify on the Internet. The only difference is the significance of these hybrids. The Internet will enable a much wider range of hybridization, with a much greater economic and social value. I am grateful to Oliver Baker for reminding me of this point.
2. Benkler, *The Wealth of Networks*, 55.
 3. "GNU Free Documentation License," Free Software Foundation, available at link #92 (last visited August 20, 2007).
 4. All quotes from Brian Behlendorf taken from an interview conducted May 11, 2007, by telephone.
 5. Red Hat employed 50 percent of Linux's core team. Telephone interview with Robert Young, April 26, 2007.
 6. Red Hat and VA Linux gave stock options to Torvalds. Wikipedia contributors, "Linus Torvalds," Wikipedia: The Free Encyclopedia, available at link #93 (Last visited July 31, 2007); Gary Rivlin, "Leader of the Free World," *Wired*, November 2003, available at link #94.
 7. All quotes from Mark Shuttleworth taken from an interview conducted March 19, 2007, by telephone.
 8. Ted Rheingold, "Don't Outsource Your Sales," Dogster & Catster company Blogster, available at link #95 (last visited April 1, 2008).
 9. All quotes from Internet venture capitalist Joichi Ito taken from an interview conducted January 23, 2007, by telephone.
 10. "New Cyberspace Classified Ad Technologies to Impact Newspaper Revenues in 3 Years," *PR Newswire*, November 21, 1996.
 11. "Newspaper Advertising Being Challenged by the 'Net," *E-Commerce Law Report* 11 (1999), 24.
 12. Wikipedia contributors, "craigslist," Wikipedia: The Free Encyclopedia, available at link #96 (last visited July 31, 2007).
 13. *Ibid.*, available at link #97 (last visited July 31, 2007).
 14. All quotes from Craig Newmark taken from an interview conducted January 22, 2007, by telephone.
 15. Tapscott and Williams, *Wikinomics*, 190. craigslist charges for job ads.
 16. *Ibid.*
 17. *Ibid.*
 18. Nick C. Sortal and Ian Katz, "Volunteers Use Internet to Offer Homes to Katrina Victims," *South Florida Sun-Sentinel*, September 1, 2005.
 19. Kathleen Sullivan, "Hurricane Katrina; Lodging Offers Being Posted on Craigslist; Across Continent, People Opening Homes to Survivors," *San Francisco Chronicle*, September 4, 2005.
 20. Tapscott and Williams, *Wikinomics*, 187.
 21. "Flickr Founder: Creativity Is Human Nature," CNN.com, January 17, 2007, available at link #98; Dan Fost, "Welcoming Startups into Yahoo's Fold; Web Portal Works to Integrate the Companies It Has Acquired," *San Francisco Chronicle*, December 24, 2006, available at link #99.
 22. All quotes from Stewart Butterfield taken from an interview conducted May 1, 2007, by telephone.
 23. All quotes from Steve Chen taken from an interview conducted January 29, 2007, by telephone.

24. Wikipedia contributors, "YouTube," Wikipedia: The Free Encyclopedia, available at link #100 (last visited July 31, 2007); Pete Cashmore, "YouTube Is World's Fastest Growing Website," *Mashable—Social Networking News*, July 22, 2006, available at link #101.
25. Wikipedia contributors, "List of YouTube Celebrities," Wikipedia: The Free Encyclopedia, available at link #102 (last visited April 1, 2008).
26. Tim Deal, *User-Generated Video on the Web: A Taxonomy and Market Outlook* (Silver Spring, Md.: Pike & Fischer, 2007), 4.
27. All quotes from Declan McCullagh taken from an interview conducted April 4, 2007, by telephone.
28. Declan McCullagh, "About Declan McCullagh's Politech," Politech: Politics & Technology, available at link #103 (last visited July 31, 2007).
29. "Yahoo! Groups," Yahoo!, available at link #104 (last visited January 18, 2008).
30. Tapscott and Williams, *Wikinomics*, 259.
31. All quotes from Jerry Yang taken from an interview conducted January 24, 2007, by telephone.
32. "Yahoo! Answers," Yahoo!, available at link #105 (last visited April 14, 2008).
33. "Points and Levels," Yahoo! Answers Point System, available at link #106 (last visited August 20, 2007).
34. "Bessemer Venture Partners Funds Jimmy Wales' Startup Wikia," Wikia.com, available at link #107 (last visited July 31, 2007).
35. Michael Arrington, "Wikia Gaming Launches with 250,000 Articles," TechCrunch, available at link #108 (last visited January 18, 2008).
36. Jenkins, *Convergence Culture*, 185.
37. Ibid.
38. All quotes from Marc Brandon taken from an interview conducted February 13, 2007, by telephone.
39. Jenkins, *Convergence Culture*, 185.
40. All quotes from Heather Lawver taken from an interview conducted February 1, 2007, by telephone.
41. Telephone interview with Heather Lawver, February 1, 2007.
42. Jenkins, *Convergence Culture*, 187.
43. Elizabeth Weise, "'Potter' Fans Put Hex of a Boycott on Warner Bros.," *USA Today*, February 22, 2001; Janine A. Zeitlin, "Potter Fan Masters Her Domain," *Washington Times*, July 19, 2001.
44. Jenkins, *Convergence Culture*, 187.
45. Ibid., 186.
46. Ibid., 58.
47. Tapscott and Williams, *Wikinomics*, 135–36.
48. Jenkins, *Convergence Culture*, 3.
49. Ibid., 96.
50. Ibid., 133.
51. Maria Alena Fernandez, "ABC's *Lost* Is Easy to Find, and Not Just on a TV Screen," *Los Angeles Times*, January 3, 2006.
52. Ibid.
53. Ibid.
54. Tapscott and Williams, *Wikinomics*, 127.

55. All quotes from Philip Rosedale taken from an interview conducted February 8, 2007, by telephone.
56. Wagner James Au, "Laying Down the Law: The Notary Public of Thyris, New World Notes," New World Notes, available at link #109 (last visited July 31, 2007).
57. "State of Play III—Social Revolutions," State of Play Architecture Submissions, available at link #110 (last visited August 20, 2007).
58. Sherry Turkle, *Life on the Screen: Identity in the Age of the Internet* (New York: Simon & Schuster, 1995), 13.
59. Tapscott and Williams, *Wikinomics*, 30.
60. *Ibid.*, 39.
61. *Ibid.*, 45.
62. All quotes from Tim O'Reilly taken from an interview conducted January 24, 2007, by telephone.

Chapter 8. Economy Lessons

1. See Ed Treleven, "Cracking Down of Music Theft; Recording Industry Gets Very Aggressive," *Wisconsin State Journal*, February 4, 2007. ("Big Champagne found that in August 2003, when the RIAA began bringing lawsuits against file-sharers, the average number of global peer-to-peer users online at one time was about 3.8 million. Though there were peaks and valleys, that number steadily increased to nearly 10 million in March 2006. The number dipped slightly but remained steady at around 9 million through October, the last month for which Big Champagne has data.")
2. "2006 10-Year Music Consumer Trends Chart," RIAA, available at link #111 (last visited July 31, 2007).
3. Lydia Pallas Loren, "Building a Reliable Semicommons of Creative Works, Enforcement of Creative Commons Licenses and Limited Abandonment of Copyright," *George Mason Law Review* 14 (2007), available at link #112.
4. Mia Garlick, "Lonely Island," Creative Commons, available at link #113.
5. von Hippel, *Democratizing Innovation*, 91.
6. *Ibid.*, 78–79.
7. *Ibid.*, 86.

Routine and intentional free revealing among profit-seeking firms was first described by Allen (1983). He noticed the phenomenon, which he called collective invention, in historical records from the nineteenth-century English iron industry. In that industry, ore was processed into iron by means of large furnaces heated to very high temperatures. Two attributes of the furnaces used had been steadily improved during the period 1850–1875: chimney height had been increased and the temperature of the combustion air pumped into the furnace during operation had been raised. These two technical changes significantly and progressively improved the energy efficiency of iron production—a very important matter for producers. Allen noted the surprising fact that employees of competing firms publicly revealed information on their furnace design improvements and related performance data in meetings of professional societies and in published material. (*Ibid.*, 78.)

8. *Ibid.*, 80.
9. William J. Baumol, *The Free-Market Innovation Machine: Analyzing the Growth Miracle of Capitalism* (Princeton, N.J.: Princeton University Press, 2002), 134–35. See also Mark Lemley and Brett Frischmann, “Spillovers,” *Columbia Law Review* 100 (2006).
10. von Hippel, *Democratizing Innovation*, 87.
11. Baumol, *The Free-Market Innovation Machine*, 120.
12. von Hippel, *Democratizing Innovation*, 42.
13. *Ibid.*, 23.
14. *Ibid.*, 22.
15. Paul Krill, “Sun: Pay Open-Source Developers,” *InfoWorld*, May 7, 2007, available at link #114.
16. Tapscott and Williams, *Wikinomics*, 206–7.
17. *Ibid.*, 205.
18. *Ibid.*, 206.
19. *Ibid.*, 209.
20. *Ibid.*, 210.
21. All quotes from David Marglin taken from an interview conducted June 12, 2007, by telephone.
22. Robert Lemos, “Companies Fight over CD Listings, Leaving the Public Behind,” CNET News.com, May 24, 2001, available at link #115.
23. Tim Deal, *User-Generated Video on the Web: A Taxonomy and Market Outlook* (Silver Spring, Md.: Pike & Fischer, 2007), 11.
24. See Richard Stallman, “The GNU Manifesto,” GNU Project, available at link #116 (last visited August 20, 2007). (“I consider that the golden rule requires that if I like a program I must share it with other people who like it.”)
25. See Lessig, *The Future of Ideas*, 70.
26. “Official Rules for ACIDplanet.com, David Bowie Remix,” ACIDplanet.com, available at link #117 (last visited July 31, 2007).
27. Elizabeth Durack, “fans.starwars.con,” Echo Station, available at link #118 (last visited July 31, 2007).

Chapter 9. Reforming Law

1. See 17 U.S.C. §§108, 112, 403, 512, 1201, 1203, 1204, 1309.
2. See, e.g., 17 U.S.C. §115 (establishing a compulsory license for making and distributing phonorecords).
3. Lawrence Lessig, “The Regulation of Social Meaning,” *University of Chicago Law Review* 62 (1995), 943–1045.
4. “Googling Copyrights,” *Wall Street Journal*, October 3, 2005.
5. See Brian Lavoie, Lynn Silipigni Connaway, and Lorcan Dempsey, “Anatomy of Aggregate Collections: The Example of Google Print for Libraries,” *D-Lib Magazine*, September 2005, available at link #119.
6. See the data in Paul J. Heald, “Property Rights and the Efficient Exploitation of Copyrighted Works: An Empirical Analysis of Public Domain and Copyrighted Fiction Best Sellers” (January 9, 2007), UGA Legal Studies Research Paper No. 07-003, available at link #120.

7. Richard Epstein, *Simple Rules for a Complex World* (Cambridge, Mass.: Harvard University Press, 1995).
8. R. Anthony Reese, "Innocent Infringement in U.S. Copyright Law: A History," *Columbia Journal of Law & the Arts* 30 (2007), 133–84.
9. As Patterson explains, before 1909, the law included the word "copies," but in a section defining the scope of the rights, the law made clear that the exclusive right to "copies" did not apply to a "book." Instead, the right was intended to protect works, such as statues, that could only be "copied." L. Ray Patterson, "Free Speech, Copyright, and Fair Use," *Vanderbilt Law Review* 40 (1987): 40–43.
10. *Ibid.*
11. Jessica Litman, "The Exclusive Right to Read," *Cardozo Arts & Entertainment Law Journal* 13 (1994): 29, 34–35.
12. There are of course important limits on Congress's power if it is to live up to the obligations of international law. I don't address those limits here. The simplest way to avoid inconsistency yet permit significant reform would be to limit the reach of any reform to U.S. law alone. More ambitiously, the United States could take the lead in reforming international law to make it conform better to creative interests. Christopher Sprigman, "Reform(aliz)ing Copyright," *Stanford Law Review* 57 (2004): 485.
13. See William W. Fisher, *Promises to Keep* (Stanford, Calif.: Stanford University Press, 2004); Neil Weinstock Netanel, "Impose a Non-commercial Use Levy to Allow Free P2P File-sharing," *Harvard Journal of Law and Technology* 17 (2003): 1; "A Better Way Forward: Voluntary Collective Licensing of Music File Sharing," Electronic Frontier Foundation, available at link #121 (last visited January 18, 2008).

Chapter 10. Reforming Us

1. David Hackett Fischer, *Albion's Seed: Four British Folkways in America* (New York: Oxford University Press, 1989), 765.
2. Lessig, *The Future of Ideas*, 4.
3. Jenkins, *Convergence Culture*, 134.
4. *Ibid.*, 18.
5. James C. Carter, *The Provinces of the Written and the Unwritten Law* (New York: Banks & Brothers, 1889), 4.
6. James C. Carter, *Law: Its Origin, Growth, and Function* (New York: G. P. Putnam's Sons, 1907), 323.
7. My favorites are Lawrence Wright, *The Looming Tower: Al-Qaeda and the Road to 9/11* (New York: Knopf, 2006) and Bob Woodward, *State of Denial: Bush at War, Part III* (New York: Simon & Schuster, 2006).
8. The simplest claim to support here is that if kids view laws regulating culture as unjust, they are less likely to obey those laws. As Professor Geraldine Moohr argues, "a criminal law that is not supported by community consensus will be less effective and can even be counterproductive. Members of the community will not condemn those who violate such laws. This state of affairs can eventually weaken respect for the law. Witnessing punishment for conduct not viewed as immoral may cause people to view the law as less than legitimate and not morally credible. For this reason, courts have been generally cautious when deciding whether conduct in which citizens routinely engage is a crime." GERAL-

dine S. Moohr, "The Crime of Copyright Infringement: An Inquiry Based on Morality, Harm, and Criminal Theory," *Boston University Law Review* 83 (2003): 731, citing Paul H. Robinson and John M. Darley, *Justice, Liability and Blame* (Boulder, Colo.: Westview Press, 1995). As Moohr concludes, "criminalizing copyright infringement may produce the opposite of its intended goal." Similar conclusions have been reached studying other "youth crimes," such as illegal use of alcohol, tobacco, and marijuana. See Claudia Amonini and Robert J. Donovan, "The Relationship Between Youth's Moral and Legal Perceptions of Alcohol, Tobacco and Marijuana and Use of These Substances," *Health Education Research* (2005): 276.

The harder claim to sustain is that any effect localized around culture crimes might bleed to other areas of the law. Scott Menard and David Huizinga have advanced an important understanding about the interaction between conventional attitudes and delinquent behavior in adolescence, suggesting that changes in attitudes can lead to a small increase in delinquent behavior, which in turn will have a reinforcing effect on attitudes. See Scott Menard and David Hulzing, "Changes in Conventional Attitudes: and Delinquent Behavior in Adolescence," *Youth and Society* 26 (1994): 23. But the most important, and foundational work supporting this hypothesis is Tom Tyler's *Why People Obey the Law* (New Haven, Conn.: Yale University Press, 1990), 161. Much great work has been built upon Tyler's foundation. But the core insight Tyler advanced in this debate—that the "values that lead people to comply voluntarily with legal rules" . . . "form the basis for the effective functioning of legal authorities"—underlies the concern that local skepticism (or even disgust) with criminal enforcement of laws regulating behavior perceived to be harmless might generalize beyond that locality. Tyler's particular concern was procedural legitimacy. The *in terrorem* tactics of the RIAA and MPAA certainly weaken any perceived procedural legitimacy to the enforcement of these culture crimes.

The strongest support for the idea that perceived injustice in one law can spill over to others comes from the extraordinary work of Professor Janice Nadler. In her essay "Flouting the Law," *Texas Law Review* 83 (2005): 1399, she provides experimental evidence to support the hypothesis that willingness to disobey can extend far beyond a particular unjust law.

The most obvious or appealing parallel—to youth in the Soviet Union—is a harder claim to sustain. Paradoxically, even though youth in the Soviet Union were referred to as the "bewildered generation"—bewildered by the hypocrisy and double standards of the late Soviet Union especially—"the Soviet Union was unique in its attempt to control and shape the development of its youth into 'proper Communist citizens'" (James O. Finckenaue, *Russian Youth* [New Brunswick; N.J.: Transaction Publishers, 1995], 80). See also June Louin-Tapp, "The Geography of Legal Socialization," *Droit Et Société* 19 (1991): 331, 349 ("Soviet youth perceive USSR law and its applications to be more fair than American youth perceive US law and its applications"). Thus, while there's little doubt that juvenile crime was rising by the end of the Soviet Union, it is difficult to compare Soviet attitudes with American attitudes. Both may suffer the same negative effect (laws seen to be unjust), but only one had an extensive propaganda effort to counter the consequences of that effect (the Soviet Union). See also Walter D. Connor, "Juvenile Delinquency in the USSR," *American Sociological Review* 35 (1970): 283 (concluding delinquency not "protest"). See also Emanuela Carbonara, Francesco Parisi, and Georg

von Wangenheim, "Unjust Laws and Illegal Normas," *Minnesota Legal Studies Research Paper* No. 08–03 (January 2008) (modeling effect of social opposition to unjust laws on effects of legal intervention).

9. Anonymous, "Who Passes Up the Free Lunch" (unpublished, 2007) (on file with author).

Conclusion

1. See Carl J. Dahlman, "The Problem of Externality," *Journal of Law and Economics* 22 (1979): 141.
2. Thomas Jefferson letter to Isaac Mcpherson, August 13, 1813, reprinted in H. A. Washington, ed., *Writings of Thomas Jefferson 1790–1826*, vol. 6 (Washington, D. C.: Taylor & Maury, 1854), 180–81; quoted in *Graham v. John Deere Company of Kansas*, 383 U. S. 1, 8–9n.2 (1966).
3. See Mark Stefik, ed., "Epilogue: Choices and Dreams," *Internet Dreams: Archetypes, Myths, and Metaphors* (Cambridge, Mass.: MIT Press, 1996), 391.
4. Rick E. Bruner, "Blogging Is Booming," *iMedia Connection*, April 5, 2004, available at link #122 (last visited January 18, 2008).
5. Stephen Breyer, "The Uneasy Case for Copyright: A Study of Copyright in Books, Photocopies, and Computer Programs," *Harvard Law Review* 84 (1970): 281.
6. See Lessig, *Code Version 2.0*, 409n8.
7. Al Gore, *The Assault on Reason* (New York: Penguin Press, 2007), 194.
8. *Ibid.*, 195.