

**WHO WILL OWN YOUR NEXT
GOOD IDEA?**

Excerpted from: Charles C. Mann
September 1998

About twelve years ago I walked past a magazine kiosk in Europe and noticed the words “*temple des rats*” on the cover of a French magazine. Rat temple! I was amazed. A few months before, a friend of mine had traveled to northwestern India to write about the world’s only shrine to humankind’s least favorite rodent. The temple was in a village in the Marusthali Desert. That two Western journalists should have visited within a few months of each other stunned me. Naturally, I bought the magazine.

The article began with a Gallic tirade against the genus *Rattus*. *Le spectre du rat, le cauchemar d’humanité! Quel horreur!*—that sort of thing. Then came the meat: an interview, in Q&A form, with a “noted American journalist” who had just gone to the rat temple. The journalist, who was named, was my friend. No such interview had occurred: the article was a straight translation, with fake interruptions by the “interviewer” such as “*Vraiment?*” and “*Mon Dieu!*”

I was outraged. To my way of thinking, these French people had ripped off my friend. I telephoned him immediately; he had the same reaction. Expletives crackled wildly across the Atlantic. Reprinting his copyrighted article without permission or payment was the same, we decided, as kicking down his door and stealing his CD player.

We were wrong. Although the magazine had done my friend wrong, what was stolen was not at all like a CD player. CD players are physical property. Magazine articles are *intellectual* property, a different matter entirely. When thieves steal CD players, the owners no longer have them, and are obviously worse off.

But when my friend’s writing was appropriated, he still had the original manuscript. What, then, was stolen? Because the article had been translated, not one sentence in the French version appeared in the original. How could it be considered a copy? Anomalies like this are why intellectual property has its own set of laws.

Intellectual property is knowledge or expression that is owned by someone. It has three customary domains: copyright, patent, and trademark. Copyrighted songs, patented drugs, and trademarked soft drinks have long been familiar

denizens of the American landscape, but the growth of digital technology has pushed intellectual property into new territory. Nowadays one might best define intellectual property as anything that can be sold in the form of zeroes and ones. It is the primary product of the Information Age.

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growing in importance, but copyright holds pride of place. In legal terms, copyright governs the right to make copies of a given work. It awards limited monopolies to creators on their creations: for a given number of years no one but Walt Disney can sell Mickey Mouse cartoons without permission. Such monopolies, always valuable, are increasingly lucrative. For the past twenty years the copyright industry has grown almost three times as fast as the economy as a whole, according to the International Intellectual Property Alliance, a trade group representing film studios, book publishers, and the like. Last year, the alliance says, copyrighted material contributed more than \$400 billion to the national economy and was the country’s single most important export.

These figures may actually understate the value of copyright.

The digital world has created new problems for copyright owners. If the cost of manufacturing and distributing a product falls, economic forces will drive down its price, too. The Net embodies this principle to an extreme degree. Manufacturing and distribution costs collapse almost to nothing online: zeroes and ones can be shot around the world with a few clicks of a

mouse. Hence producers of digital texts, music, and films will have trouble charging anything at all for copies of their works—competitors can always offer substitutes for less, pushing the price toward the vanishing point.

In addition, creators must deal with piracy, which is vastly easier and more effective in the digital environment. People have long been able to photocopy texts, tape-record music, and videotape television shows. Such leakage, as copyright lawyers call it, has existed since the first day a reader lent a (copyrighted) book to a friend. With the rise of digital media, the leakage threatens to turn into a gush. To make and distribute a dozen copies of a videotaped film requires at least two videocassette recorders, a dozen tapes, padded envelopes and postage, and considerable patience. And because the copies are tapes of tapes, the quality suffers. But if the film has been digitized into a computer file, it can be E-mailed to millions of people in minutes; because strings of zeroes and ones can be reproduced with absolute fidelity, the copies are perfect. And online pirates have no development costs—they don't even have to pay for paper or blank cassettes—so they don't really

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have a bottom line. In other words, even as digital technology drives the potential value of copyright to ever greater heights, that same technology threatens to make it next to worthless.

This paradox has engendered two reactions. One is to advocate eliminating copyright altogether. "Information wants to be free" is the apothegm of choice here. In this view, copyright restricts what people can do with the intellectual property coming through the wires. Futilely but dangerously, it tries to fence the electronic frontier. It unjustly creates monopolies in information. It is a relic of the past and should be expunged.

The other, opposing reaction is to strengthen the hand of copyright owners. Realizing the growing economic import of copyright, Congress is

rapidly trying to overhaul the nation's intellectual-property regime. The changes would give copyright owners more control for longer times; some would make it a crime to work around copyright-protection schemes. A different tack is being taken by state governments, which may bypass copyright altogether by amending the laws governing sales contracts. If they succeed, copyright owners will be able to ask individual customers to agree to contracts regulating the zeroes and ones flowing into their homes.

Before we send this vintage episode of Seinfeld to your computer, please read the following conditions and terms, paying careful attention to the clauses that forbid taping or replaying the program even once. After you click "OK," the transmission will start.



Because I make much of my living from copyright, I find the to-and-fro fascinating, and have a vested interest in the results. But issues bigger than the financial status of writers are involved. Copyright is the regulatory authority for the marketplace of ideas. It lays out the economic ground rules to create the hubbub of debate that the Founders believed necessary for democracy—one reason that they included copyright in the Constitution (Article

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I, Section 8, instructs Congress to “secur[e] for limited Times to Authors and Inventors the exclusive Right to their Respective Writings and Discoveries”). Copyright law allows Michael Jackson to make a fortune from the Beatles catalogue, and Bill Gates to add to his untold wealth by licensing electronic reproductions of the photographs of Ansel Adams. But its real purpose is to foster ever more ideas and ever more innovation from ever more diverse sources. When, in 1790, George Washington asked Congress to enact copyright legislation, he argued that it would increase the national stock of knowledge. And knowledge, he said, is “the surest basis of public happiness.”

Today the marketplace of ideas is being shaken up by the competing demands of technology, finance, and law. Large sums of money are at stake. Change seems inevitable. One way or another, we will lay a new institutional foundation for literary culture in the United States. How we do it will play a big role in determining our future well-being. It would be comforting to believe that decisions will be made thoughtfully and well. But little evidence suggests this is true. Indeed, we may be heading into a muddle that it will take us a long time to escape.

In December the MPAA estimated that piracy, chiefly in the form of illegal videocassettes, costs the U.S. motion-picture industry more than \$2.5 billion a year.

Movies are not the only losers. Publishers complain that pirates knock off expensively produced textbooks in fields ranging from business

management and computer science to medicine and English. Music companies hire a firm called GrayZone to hunt down bootleg-CD makers and Web-site pirates around the globe. In some countries—Russia and China, for example—more than 90 percent of all new business software is pirated, according to the Business Software Alliance and the Software Publishers Association, the two major trade associations in the field. The International Intellectual Property Alliance claims that foreign copyright infringement alone costs U.S. firms as much as \$20 billion a year.

Critics charge that these huge figures are absurd, and not only because of the obvious difficulty of measuring illicit activity. While researching this article I obtained a CD-ROM called “CAD Xpress” for about \$30 (“CAD” is the acronym for “computer-assisted design”). It contained a copy of the current version of AutoCAD, the leading brand of architectural-drafting software, which has a list price of \$3,750. According to the Software Publishers Association, my copy of CAD Xpress represents a \$3,750 loss to Autodesk, the manufacturer of AutoCAD. This assumes, of course, that I, and every other buyer of CAD Xpress, would otherwise pony up thousands of dollars for AutoCAD.

More important, in the view of Stanley Besen, an economist at Charles River Associates, a consulting firm in Washington, D.C., the huge estimates of piracy losses don’t take into account the copyright owners’ responses to copying.

“Suppose I know that people are going to copy Lotus 1-2-3,” he said to me. “So I sell it for \$500, knowing that four people will make copies of each program, whereas I might sell it for only \$100 if all five users purchased programs for themselves.” The price takes copying into account, and no loss occurs.

Such accommodations might insulate software firms from some of the effects of copying. But Besen does not think that they can insulate the companies from all of them, especially when a single bootleg can spawn so many other illicit copies that the original company can’t raise the price enough to compensate for the losses incurred. I bought CAD Xpress at the Golden Shopping Centre, in Hong Kong. The Golden Shopping Centre was a kind of shopping mall for copyright infringement: three stories of pirated video games, CDs, videotapes, and software. Situated next to the Sham Shui Po subway station, in Kowloon, the mall was not hard to find—the address was in my *Fodor’s Citypack* guidebook to Hong Kong.

The mall consisted of an unlovely concrete

block jammed with small, kiosklke stores. Stores on the first floor sold mainly bootleg video games and devices that permit players illicitly to use games built for one company's machines on machines made by another. The second floor was full of pirated music and film. I wasn't interested in the music, but I was intrigued by the stacks of digital video disks. DVDs are compact disks that contain entire movies (they are sometimes called video compact disks, or VCDs). Expatriate cinéastes complain that most theaters in Hong



A video store in China, where pirated movies are cheaply sold.

Kong are devoted to the local product: action pictures starring the fleet-footed likes of Jackie Chan and Chow-yun Fat. But the stacks of illegal DVDs included such esoteric fare as the works of the late Polish director Krzysztof Kieslowski. *Grand Illusion* for \$6.00! *The Crying Game* for \$8.00! Fellini's *Satyricon* for next to nothing! I began to see what low-cost distribution was all about.

The third floor was devoted to computer programs. Here I bought CAD Xpress. In a gesture to the law, it was sold under the counter. Actually, what was under the counter was looseleaf binders that catalogued the store's illicit wares. Confused by the descriptions, which were written in garbled English, I asked a woman at one store if she sold AutoCAD, and she spoke to a young person who ran off and ten minutes later reappeared with the CD-ROM. "How much is it?" I asked. She wrote "240" on a slip of paper—240 Hong Kong dollars, then about \$30 U.S. Because I make my living from copyright, I felt funny about buying pirated software. To satisfy my curiosity without arousing my conscience, I had decided to buy software that my family already owned. This idea collapsed when I saw CAD Xpress and its ilk. Competition among pirates ensures that their CD-ROMs are

crammed with software; buying a single program wasn't easy. According to my local Autodesk dealer, my \$30 copy of CAD Xpress contains more than \$20,000 worth of computer-assisted-design software.

For me, the software was less than ideal. Most of the instructions were in Chinese, and some of the programs didn't work (or at least I couldn't make them work). But overall the disk was still a good buy. For another \$30 I bought a CD-ROM called Power Dragon Software. One of its forty-eight programs was Quicken, the popular accounting software. Given the relatively small size of Quicken, I presumably paid less than a dollar for it—indeed, less than a quarter. In another store I bought the same version of Quicken on two floppy disks. This cost \$25—about a hundred times as much, and almost as much as the whole CD-ROM, which included forty-seven other programs. The difference was that the floppy disks came with a photocopy of the manual, which is more informative than the program's help screens.

Many stores in the Golden Shopping Centre sold compilations of computer games, fifty or so per CD-ROM. It occurred to me as I flipped through them that I was inspecting a kind of precursor to the electronic book. I had recently written a book. Completely formatted, the manuscript was about 600,000 bytes in size. A CD-ROM holds more than 600 million bytes, enough for scores of books.

Complaining too loudly about illicit software exposes Americans to a charge of hypocrisy. During the nineteenth century U.S. copyright law did not extend to foreigners' works. New York City became the piracy center of the world. Charles Dickens's *A Christmas Carol* sold for the equivalent of \$2.50 in England. On this side of the Atlantic bootleg editions cost six cents. U.S. publishers were unmoved by the plight of their writers who were pirated in England: they could make more money by stealing *Little Dorrit* here than by selling *Little Women* there. Only in 1891 did Congress pass international-copyright legislation.

I asked the man who sold me Power Dragon if the threat of prosecution worried him. He asked a friend to translate. The friend said, "He is not worried. Soon, very soon, his boss will sell on the Internet. They will send the programs through another country." Iraq, India, Bulgaria, somewhere in Africa, the friend said. In a world made up of hundreds of nations, someone would always be willing to assist his operations.