

## REMIX: Making Art and Commerce Thrive in the Hybrid Economy

By Lawrence Lessig

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In *REMIX: Making Art and Commerce Thrive in the Hybrid Economy*, Lawrence Lessig calls for a fundamental change in copyright law. Lessig describes the “War on Piracy” as an empty war where the costs outweigh the benefits, especially when there are promising alternatives that can provide artists with the protections that copyrights are intended to provide. According to Lessig, current copyright laws are inadequate to protect and stimulate creative works. Copyright laws are not adequate in this technological age. Instead of adapting to the new features technology provides, copyright law remained fixated on fighting “pirates” and has had the harsh consequence of criminalizing our kids. Lessig not only calls for change, but he presents the hybrid model as a means to achieve a copyright system that gives artists an incentive to create while decriminalizing the actions of our kids.

Lawrence Lessig is a professor of law at Stanford Law School and founder of the school’s Center for Internet and Society. He is the author of other works such as *Free Culture*, *The Future of Ideas*, and *Code and Other Laws of Cyberspace*. A renowned spokesperson on intellectual property in the Internet age, Lawrence Lessig is chairperson of Creative Commons, a successful project that Lessig refers to throughout the book as a starting point for the future hybrid copyright system.<sup>1</sup> Not only is Lessig a prominent figure in the intellectual property arena, but he is now a father. He writes this book based on his knowledge of intellectual

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<sup>1</sup> See *Creative Commons*, available at <http://creativecommons.org> (providing the author with the discretion to decide how much control to exercise over a creative work –“all rights reserved” versus “some rights reserved”).

property, but constantly at the forefront of his argument are his concerns about the effect the War against Piracy has on America's children, especially his kids. No longer are the concerns he expressed in *"Free Culture"* about providing incentives for artists to create of such high priority. Lessig asks his audience to consider, "What is this war doing to [our kids]? What is it making them? How is it changing how they think about normal, right-thinking behavior? What does it mean to a society when a whole generation is raised as criminals?"<sup>2</sup>

To set the tone for his argument Lessig identifies two cultures. One is "Read/Only" ("RO") culture and the other is "Read/Write" ("RW") culture. In an RW world, people connect with their culture by listening and interpreting, but the connection is more involved than that. The reader adds to culture by building upon it, so that the original work plus the artist's contribution yield a new form of art. RW culture embraced amateur artists because it provided a foundation for them to build on. Slowly culture shifted from RW to RO - where reading - the simple consumption of culture created by professionals controlled and amateur artists' creativity became stifled. Lessig acknowledges that our copyright system regulated RO culture for the past forty years. The problems with copyright laws today do not stem from their ability to regulate RO culture. Culture is shifting. Digital technology is an enabler of RW culture and amateur artists. Lessig sees room for both amateur and professional creativity to prosper economically in the future. The "War against Piracy" has led many to believe that only RO or RW culture can exist. Lessig believes that narrow-minded belief is a misconception. He believes that the future is a hybrid of RW and RO culture, and that when copyright laws adapt to the hybrid model there will be extraordinary economic opportunities.

The RO way - to consume by watching a movie, listening to a song, or reading

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<sup>2</sup> Lawrence Lessig, *REMIX: Making Art and Commerce Thrive in the Hybrid Economy*, xvii.

a book - changed with the outburst of digital technology. Lessig explains that content providers feared that the content industry, which includes Hollywood and the music industry, would become obsolete. The content industry “believed that ‘piracy’ was unavoidable given the ‘nature’ of digital technologies.”<sup>3</sup> Lessig maintains that the War against Piracy escalated because most in the industry believed that there were only two possible outcomes; either the industry could save itself by pushing out digital technology or the industry could sit back and allow digital technology to take center stage at the industry’s expense. Lessig disagrees that the future is carved into black or white. He believes the future is a shade of gray and that the key to the success of both digital technology and the content industry is “find[ing] a balance between access and control that [can] satisfy both the consumers and the creators.”<sup>4</sup> Digital technology has changed a consumer’s expectation of access to content. Gone are the days when the consumer is forced to wait until the latest song is available on CD. Enter the days of the iPod – a device that compiles RO culture and provides access to the consumer – “whatever [the consumer] wants whenever [they] want.”<sup>5</sup> Lessig cautions that adopting a policy that protects RO culture by rendering RW culture illegal is a mistake.

To illustrate to the reader exactly why adopting RO culture at the expense of RW culture is the wrong choice, Lessig questions why remix of text is an accepted norm, but remix of any other media is illegal. Specifically, Lessig asks “should the norms we take for granted from writing be applied to video? And music? Or should the norms from film be applied to text?”<sup>6</sup> When Lessig refers to remix he means collage – RO culture is intermixed to create something new. For example, when a writer quotes another writer in a paper that writer is using the quote

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<sup>3</sup> Lessig, *supra* note 1 at 40.

<sup>4</sup> Lessig, *supra* note 1 at 42.

<sup>5</sup> Lessig, *supra* note 1 at 46.

<sup>6</sup> Lessig, *supra* note 1 at 55.

outside its original context to express a new idea. Similarly, when a musician samples another musician's beat and inserts new words a new song is created. Lessig questions why a writer can remix another writer's words so long as attribution is given, but for an artist to remix a musician's song or a filmmaker's video permission must first be granted. In Lessig's mind the norm for writing "quote freely, with attribution" could become the norm for other media, or if it is permission that is sought than why not impose the "ask permission first" norm of music and video on text.

RO culture is about professional creative works. The RO industry measures the success of the song or film based on its ability to turn a profit. RO artists want others to purchase and enjoy their talent, but ultimately want their form of expression to remain the final product. RW culture sends a different message. RW artists intend their audience to be inspired by what they create and want their audience to treat their work as a first draft that other artists are free to build upon. Lessig endorses RW culture. He views the ability to create a learned process that requires practice. For the second time in this book the reader sees Lessig's fatherly motivation come to the forefront as Lessig expresses his desire to see his child become a creator by remixing.

In preparation for introduction of the hybrid model, Lessig differentiates between RO culture and RW culture in terms of economics. On one hand is the commercial economy and RO culture, on the other is the sharing economy and RW culture. For purposes of his book, Lessig defines economy as a "practice of exchange." In a commercial economy money is being exchanged as compared to a sharing economy where money plays no part in the exchange.

The hybrid economy – a mix of the sharing economy and commercial economy – is in Lessig's mind the economy that will come to dominate Internet commerce. Lessig defines the hybrid economy in more detail as "either a commercial entity that aims to leverage value

from a sharing economy, or it is a sharing economy that builds upon a commercial entity to better supports its sharing aims.”<sup>7</sup> To better understand how a commercial entity can profit through a sharing economy, Lessig describes a model hybrid example. In Redhat, the founder of the GNU/Linux operating system set out to make a profit, but he knew that the only way to successfully develop the operating system was to encourage developers to contribute for free. Contributors freely volunteered their services to the development of the system because they were given free software to work with. Lessig established three elements that must exist for a hybrid community to flourish. First, the community – the volunteers - must be respected. Second, volunteers must be given actual responsibility. Third, the volunteers must believe that their contributions are part of a larger, important product.

The hybrid model links the two economies and produces a more efficient economy only if the line between the sharing and commercial economies is not blurred. More and more Internet businesses are adopting the hybrid economy because it is the way to balance the access the consumer wants and the control over the art that the creator demands.<sup>8</sup> Thus, Lessig strongly stands behind the hybrid economy as a solution to decriminalizing our youth. The hybrid economy should not be mistaken as a suggestion to abolish copyright law entirely. Lessig recognizes that copyright law plays an important role in regulating American culture. Instead of calling for an end to copyright law, Lessig demands that copyright law be changed. In support of his contention that current copyright laws are in need of serious change, he offers five proposals that in his opinion will “radically improve” the law’s relationship to RW culture in a digital environment, and as a result spur a market where the hybrid economy will thrive. Lessig only

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<sup>7</sup> Lessig, *supra* note 1 at 177.

<sup>8</sup> Brandon Griggs, [Facebook Invites Users to Help Set Policy](http://www.cnn.com/2009/TECH/02/27/facebook.democracy/index.html), February 27, 2009, available at <http://www.cnn.com/2009/TECH/02/27/facebook.democracy/index.html>. Facebook is adopting the hybrid model in attempt to keep its users happy and it profitable, Facebook is open to suggestions from users on how the website should be run. *Id.*

proposes change; he informs the reader that the necessary changes he advances throughout the book will not happen without society taking a stand to craft a copyright system that facilitates creativity.

Lessig first proposes to deregulate amateur creativity. Specifically, the genre Lessig speaks about is amateur remix by which the amateur artist transforms the original work into something new. Historically, copyright law followed this approach and Lessig supports a return to it. Essentially he believes that amateur creativity could prosper if the regulation of noncommercial uses is excluded from the bundle of rights that a copyright encumbers. Deregulation would in no way lessen the copyright holder's right over the original work. Instead it would decrease the cost of regulation while simultaneously providing amateurs with an incentive to create. Second, Lessig proposes to clear title to creative works. Copyright is an "opt-out system" – meaning that protection automatically extends without the creator taking any formal step. Clearing title would preserve the extension of initial automatic copyright protection, but it would instill an obligation on the creator to renew copyright protection after the initial period ended. In Lessig's opinion, clarifying who the owner is will make many works available for RW creativity because if the creator does not take responsibility to maintain the copyright status, then the work will fall into the public domain.

Third, Lessig calls for simplification of copyright law. Due to digital technology, copyright law affects people with varying intelligence levels. Lessig's simplification argument is based upon principles of fairness. He argues that if a law is to have such widespread applicability, it should be clear as to how it regulates and how such regulation will affect daily activities. Fourth, Lessig proposes that the law shift away from "decriminalizing the copy."<sup>9</sup> Simply, remixes or copies would not be regulated. Rather, the law would focus exclusively on

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<sup>9</sup> Lessig, *supra* note 1 at 268.

regulating copies that are distributed by someone other than the artist to the public for a profit. This change distinguishes between transformations and purely copying to benefit financially at another's expense. In Lessig's eyes, copyright regulation over the latter and not the former significantly narrows the pool of material that would be subject to regulation and, thus increases the material available to RW creators. Lastly, Lessig supports the decriminalization of file sharing. Lessig points to a decade's worth of energy wasted fighting peer-to-peer file sharing as evidence that file sharing is not going to cease. He believes a smarter solution is to legalize file sharing, but require that the user pay a nominal fee to compensate the artist.

In, *REMIX: Making Art and Commerce Thrive in the Hybrid Economy*, Lessig presents an entertaining, yet well-articulated, and persuasive argument. The book contains a myriad of examples that paint a picture of how the current copyright system is flawed. In the end, Lessig's true message shines through as he asks the reader to demand an end to the "War against Piracy" so that decriminalization of remix, RW creativity, and most importantly, America's children can occur. Lessig has the ability to reach a broad audience. Legal professionals and law students are only one subset of people who would benefit from reading this book. Amateur artists, professional artists, parents, children, and any user of digital technology could learn a thing or two from reading Lessig's words on Remix.