

The Intellectual Imperialists

Large media corporations, a lawyer argues, are monopolizing the culture of the nation.

FREE CULTURE

How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity.

By Lawrence Lessig.

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By Adam Cohen

A FEW years ago, the American Society of Composers, Authors and Publishers sent a warning to a hardened group of intellectual property thieves: the Girl Scouts. The day was over, ASCAP notified them, when young girls could expect to sing "This Land Is Your Land" and "God Bless America" around the campfire without forking over royalties. "They buy paper, twine and glue for their crafts—they can pay for the music, too," ASCAP's chief operating officer told The Wall Street Journal, no doubt twirling a handkerchief mustache as he spoke. "We will sue them if necessary," he added.

Since the rise of Napster, the conventional wisdom has been that intellectual property is increasingly up for grabs, and that those who create it are losing the battle to be justly compensated. But that's only half the story. News reports are full of Internet file-sharers using Napster and later programs like Kazaa and Morpheus to help themselves to music and movies without paying for them. But the many ways corporations have been quietly using technology to change the intellectual property landscape and grant themselves valuable new rights have won a lot less attention. In 1998, big media won a major victory with the passage of the Sonny Bono Copyright Term Extension Act, which

rence Lessig, a professor at Stanford Law School and a leading member of a group of theorists and grass-roots activists, sometimes called the "copyleft," who have been crusading against the increasing expansion of copyright protections. Lessig was the chief lawyer in a noble, but ultimately unsuccessful, Supreme Court challenge to the copyright extension act. "Free Culture" is partly a final appeal to the court of public opinion and partly a call to arms.

It is also surprisingly entertaining. Lessig writes for the interested layman, carefully explaining copyright's often opaque terminology and doctrines. And he draws on a rich array of literary and pop-culture references, from "The Country of the Blind," a thought-provoking H. G. Wells short story, to Japanese comics. For the silliness to which copyright battles frequently descend, it is hard to improve on Lessig's story of the

ing old works into new ones. Greek and Roman myths were developed over centuries of retelling. Shakespeare's plays are brilliant reworkings of other playwrights' and historians' stories. Even Disney owes its classic cartoon archive—Snow White, Cinderella, Pinocchio—to its plundering of other creators' tales. And today, technology allows for the creation of ever more elaborate "derivative works," art that builds on previous art, from hip-hop songs that insert, or sample, older songs to video art that adds new characters to, or otherwise alters, classic films.

Historically, copyright law has struck a balance between giving creators enough incentive to create—and enough money to live on—and freeing up their works for future generations. America's first copyright statute, passed in 1790, granted copyrights for 14 years. The average copyright now lasts

rights and added, "If you quote me, I'll turn you over to our attorneys."

Lessig offers up an array of eminently sensible approaches to reviving the public domain. He argues for shorter copyright terms, and for a more robust interpretation of fair use of relatively minor amounts of a copyrighted work. And he calls for extending compulsory licenses, the system that allows radio stations to play whatever copyrighted music they want so long as they pay a legally set royalty. He is less successful, though, in explaining how these reforms can be brought about. Lessig argues that fighting the concentration of power is neither liberal nor conservative, pointing to "bipartisan outrage" last year when the Federal Communications Commission made it easier for companies to own a newspaper and a television station in the same city. But corporations spend vast sums in campaign contributions and lobbying to extend their property interests. It is hardly Lessig's fault, but it is hard to see how his side can compete. Sadly, his Supreme Court case, which relied on a very reasonable reading of the Constitution's copyright clause, may have been its best chance.

The biggest issue in intellectual property today is how to handle Internet file-sharing, and Lessig has some interesting thoughts. Most analyses wrongly lump all file-sharing together as piracy, he says, when there are four distinct types: a) downloading content, like a Madonna CD, instead of buying it; b) sampling content before buying it; c) downloading content that is no longer commercially available; and d) downloading content that is not copyrighted, or that the rights owner wants to share. Only type d) is currently legal, but Lessig contends that b) and c) do not do any harm. The Napster problem can be solved, he suggests, by finding a way to

