"Architecture" and Policy Making
When Technology Is The Policy / Implementation

Frank Field
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Music Licensing Structures - Current Non-Digital
("simplified" - focus on music delivery & mechanical reproduction)

- Performer
- Record Company
- Song (writer)
- Music Publisher
- Harry Fox Agency
- ASCAP/BMI
- public performance (analog)
- mechanical reproduction (CD, etc.)
- recording contract
- contract?
- contract?
Music Licensing Structures - Digital Phonorecord Issues

- Performer
- Song (writer)
- Record Company
- Music Publisher
- Harry Fox Agency
- ASCAP/BMI

- Public performance (digital, permanent)
- Public performance (digital, not copyable)
- Mechanical reproduction (CD, etc.)

Why All These Extra Lines?

- Record Companies Argue That Digital Copies, Persistent Or Otherwise, Are As Good As The Original - Could Displace CD Sales - Added To The 1995 Law
- Harry Fox Argues That Digital Copies, Persistent Or Otherwise, Are "Mechanical Reproductions" - Thus, Copying Licenses Must Be Paid
- ASCAP/BMI Argue That Digital Distribution Is A "Public Performance" - Thus Performance Licenses Must Be Paid
Lessig’s "New Chicago School" Model
Constraints On Individual Action

- Law
- Architecture → Individual
- Markets
- Norms/Culture

"Architecture" - A Dimension Frequently Missed

- "Digital Copies Are Different"
- "Internet Is Unregulable"
- "We Must Take Extraordinary Measures To Defend A Policy"
"Architecture" Changes In The Internet

- Proprietary Client/Server & Formats
  - RealNetworks
  - Windows Media
- Encrypted Content
  - eBook
  - CSS for DVDs
  - SDMI/Macrovision/SafeAudio/Midbar for CDs
- Trusted Server/Identification Systems
  - Hailstorm/Passport
- Hardware Initiatives
  - CPRM
  - Licensing Encrypted Content Into Readers
  - Detecting SDMI
  - Blocking Digital Output

- The "Other" Constraint Formats
  - Legal Tie Ins
    - Copyright/Digital Rights Management
    - Anti-Circumvention
    - SCCCA - Hollings (D-SC)
  - Economic Tie Ins
    - Market Power/Dominance
    - Format Constraints
  - Culture
    - "Information" Campaigns

Disputes - Extant and Emerging

- Music Sharing Systems
  - Napster
  - For-Pay Services
  - Pure Peer-to-Peer
    - Movies
    - Software
    - OLGA/Tablatures
- Anti-Circumvention Tests
  - Sklyarov & e-Books
  - Felton & SDMI
  - DeCSS
- Open Source/"Shared Source"
  - Operating System Standards
  - Licensing Controversies

- Databases
  - End-Run On "Facts" Exception For Copyright
- Webcasting
  - Compulsory Licensing?
  - Other Models?
- Raids On File Sharers
  - National Chengkung Univ. (Taiwan)
  - Oklahoma State
  - Soribada/Korea
- Anti-Trust Questions
  - Big 5 and their Online Music Plans
  - Record Promotion/Payola
**A Few Issues**

<table>
<thead>
<tr>
<th><strong>Music Questions</strong></th>
<th><strong>&quot;Deeper&quot; Questions</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>- Defend the Current Distribution Model?</td>
<td>- &quot;Copy-Duty&quot; - Lessig/Litman</td>
</tr>
<tr>
<td>Or Develop A New Business Plan?</td>
<td>- A &quot;Right to Read?&quot;</td>
</tr>
<tr>
<td>- Has Napster &quot;Poisoned&quot; The Digital</td>
<td>- &quot;First Sale&quot; Doctrine</td>
</tr>
<tr>
<td>Music Distribution Well?</td>
<td>- Barlow's &quot;Digital Bottles&quot;</td>
</tr>
<tr>
<td>- Is Digital Delivery A Perfect Substitute</td>
<td>- Is &quot;Digital&quot; == &quot;Better&quot;?</td>
</tr>
<tr>
<td>For CDs?</td>
<td>- Is Ice-T Right? Are We &quot;Robbers&quot;?</td>
</tr>
<tr>
<td>- Whose Fault Is That?</td>
<td>- How To Answer These Questions?</td>
</tr>
<tr>
<td>- Is Digital Delivery Sufficiently Different</td>
<td>- Market Power</td>
</tr>
<tr>
<td>To Sacrifice Other Goals?</td>
<td>- Political Choices</td>
</tr>
<tr>
<td>- Fair Use?</td>
<td>- Legislative Initiatives</td>
</tr>
<tr>
<td>- The Public Domain?</td>
<td>- Judicial Interpretation</td>
</tr>
<tr>
<td>- Functionality In Digital Machines?</td>
<td>- Technical Advances/Developments</td>
</tr>
<tr>
<td>- Functionality In Software &amp; O/Ses?</td>
<td></td>
</tr>
</tbody>
</table>

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MSL
Materials Systems Laboratory