Copyright
Share/Share Alike: A Panel Discussion featuring Prof. Lawrence Lessig

The following text is an edited transcript of the panel discussion Share/Share Alike, which took place on November 21, 2003 at Eyebeam in New York City.
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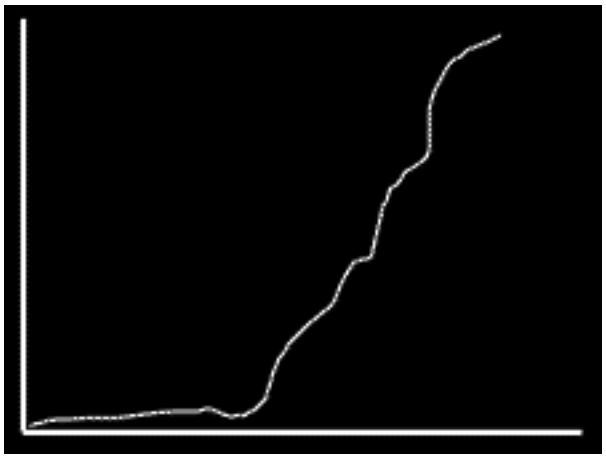
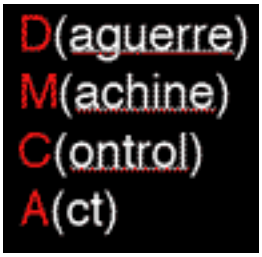
Moderator: Jonah Peretti, Director of R&D, Eyebeam
Featured speaker: Prof. Lawrence Lessig
Lawrence Lessig is Chairman of the Board of Directors of Creative Commons, Professor of Law at Stanford Law School and founder of the school's Center for Internet & Society. He was named one of 50 top innovators by *Scientific American* in 2002; one of *National Law Journal*'s top 100 most influential lawyers in 2000; and one of *Business Week*'s E-Biz 25. Lessig received a BA in economics and a BS in management from the University of Pennsylvania, an MA in philosophy from Cambridge, and a JD from Yale. He is one of the country's leading commentators on legal aspects of new communication technologies in cyberspace. He's the author of many publications on cyber law and cyberspace, including two books: *The Future of Ideas: The Fate of the Commons in the Connected World* and *Code and Other Laws of Cyberspace*.
Respondants:
Joline Blais, co-founder of the Stillwater Program at the University of Maine
Carrie McLaren, founder and editor of Stay Free Magazine (http://stayfreemagazine.org) and curator of the exhibition "Illegal Art"
Jon Ippolito, Associate Curator of Media Arts at the Guggenheim Museum



Larry Lessig: In 1839, Louis Daguerre invented the daguerreotype, the technology to produce photographs. This was an expensive, clumsy, very difficult to integrate technology, and so the market for photographs looked something like this graph. Then in 1888, George Eastman produces a new technology, the Kodak -- inexpensive, versatile technology that consumers can use to produce and capture images. The market takes off.

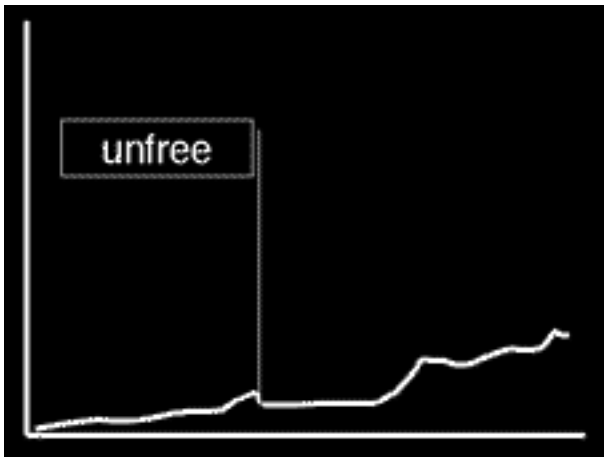
About the time Eastman makes his invention, there was a decision that the courts had to make. Do you need permission before you capture someone's image and share it with others? This was extremely important to some people who thought they lost their soul if their image was taken without their permission and had a very strong interest in asserting that permission was needed. The courts had to decide: do you need permission to take -- do you need permission to pirate, we might say -- images before you capture them on a Kodak? The court said no. You didn't need permission to take images. Images were in this sense free.

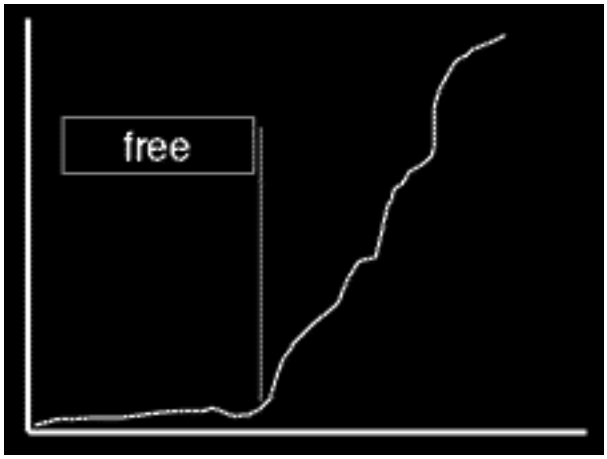
It is that freedom, too, that is responsible for the extraordinary growth of the market for photography. For we can imagine what the world would have looked like if the courts had



gone the other way. Imagine if the courts had said you needed permission to take or to pirate images before you actually captured or developed them. We can imagine the law attempting to support this regime through lots of effective regulation. For example, there could have been a Daguerre Machine Control Act that would have attempted to control when Kodak was allowed to develop images, depending upon whether permission was given. The results of this would be obvious. The market would not have looked like a steep upcurve -- it would have looked like relatively flat graph.

Do you need permission before you capture someone's image and share it with others? This was extremely important to some people who thought they lost their soul if their image was taken without their permission and had a very strong interest in asserting that permission was needed. The courts had to decide: do you need permission to take -- do you need permission to pirate, we might say -- images before you capture them on a Kodak?





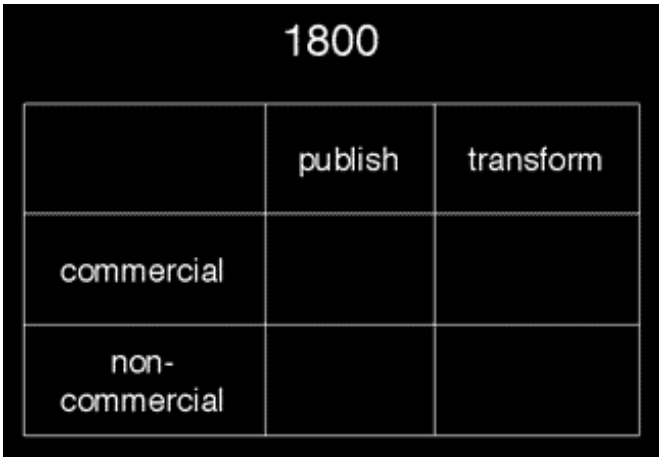
It would have grown, but it would have been small. It would have been professional and commercial, not non-professional and consumer-driven. It wouldn't have been a democratic technology for capturing and sharing culture.

In the early 90s, a documentary filmmaker named John Ellis shot a documentary film about the San Francisco Opera. He wanted to capture the Wagner *Ring Cycle* as it was being produced at the San Francisco Opera. And in one scene, he captured the brilliant combination of an image of stagehands playing checkers while the opera was being played in the background, with a television set in the far corner of the room, on which *The Simpsons* were broadcast. So, for three and a half seconds this Fox Studio content was on the screen of his shot -- barely visible, but you could make it out. Ellis went to Fox Studios and said, "I need permission to include your content in my DMCA -- content in my film." That permission was granted under the condition that he pay for this three and a half seconds; a fee of ten thousand dollars. Ellis responded, "I don't have ten thousand dollars to pay for three and a half seconds in this film -- a barely visible image of *The Simpsons*. I don't have that kind of money." Fox's reply was, "I don't give a damn what you have money for. It's ten thousand dollars or you can't use our content."

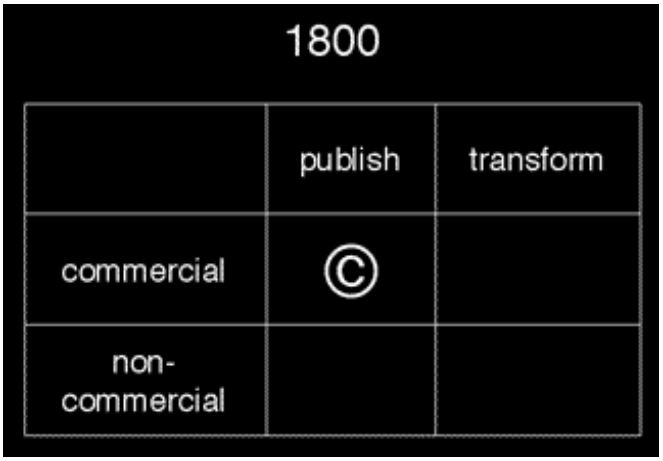
There is lots of piracy out there, tons of it. There is theft of content all over the place. We often have an image of the theft, which is unrelated to the full range of the kind of "piracy" that is going on. An example are these images of George Bush and Tony Blair edited to make them appear to be singing a love song to each other (http://www.atmo.se). Extraordinary piracy; illegal under the law. Extraordinary creativity enabled by this rip-mix-and-burn technology -- technology that defines a potential culture where people can use speech in different ways, but ways that the law defines as illegal now. Piracy. This democratic, technologically enabled potential is rendered illegal by the lawyers.

Those are stories; here's an argument. We should understand the way this rule of copyright law has changed. The first way to understand it is to make two distinctions: first, the distinction between commercial culture and non-commercial culture, if that is sensible anymore; and second, the distinction between publishing and transforming, or taking an exact copy of something versus changing it into something new.

If you take those two distinctions and map them together on a single page, it looks like this:

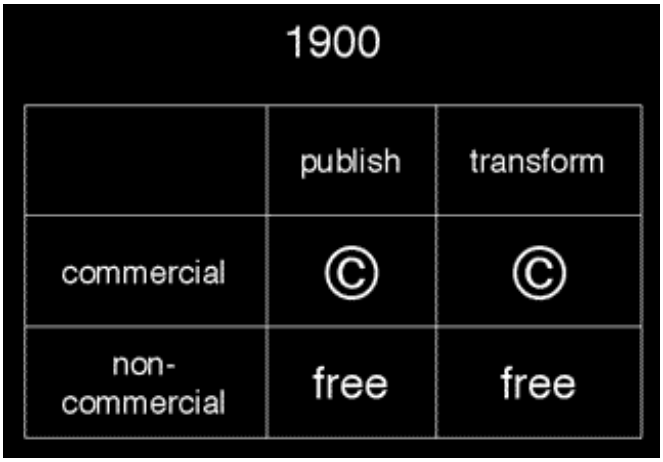


The point we should begin to recognize in this debate is how radically this map describes the changes of the law in just 200 years. When copyright law was born, all it regulated was the commercial publication of someone else's work.

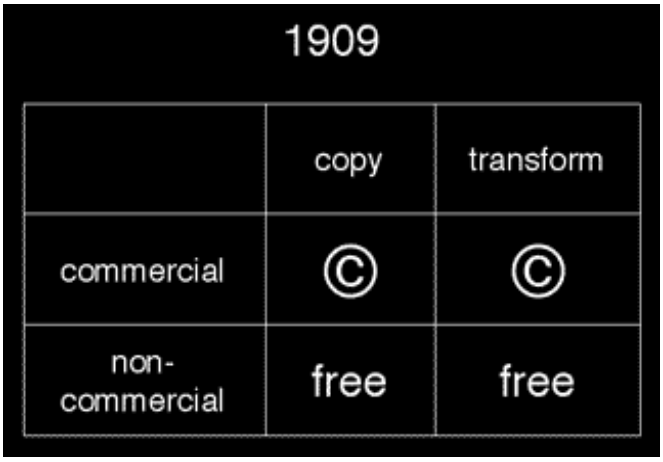


It left free the act of transforming someone's work, even for a commercial purpose. You could translate it, or abridge it, or take a novel and turn it into a play. Copyright had left free the non-commercial transformation of culture. You could sit around and criticize a story, retell the story differently, enact it in a way that made it sound different to you and your friends around you. And because copyright required an affirmative act before you got the benefit of the law's protection -- because you had to actually register your work and claim protection -- the vast majority of published work was never

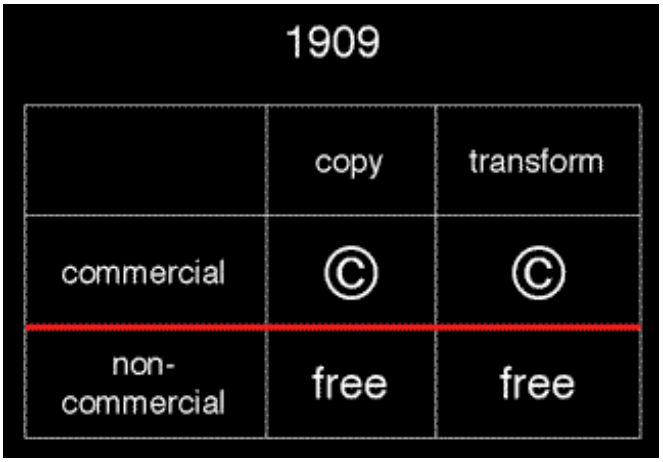
protected by copyright at all. In the first ten years, 1790-1800, ninety-five percent of published work did not enjoy the benefit of copyright protection. Which means that non-commercial publishing was still totally free from law's regulation. In the first hundred years of copyright, this map changes: the law is expanded to reach commercial transformation, but leaving free non-commercial transformation.



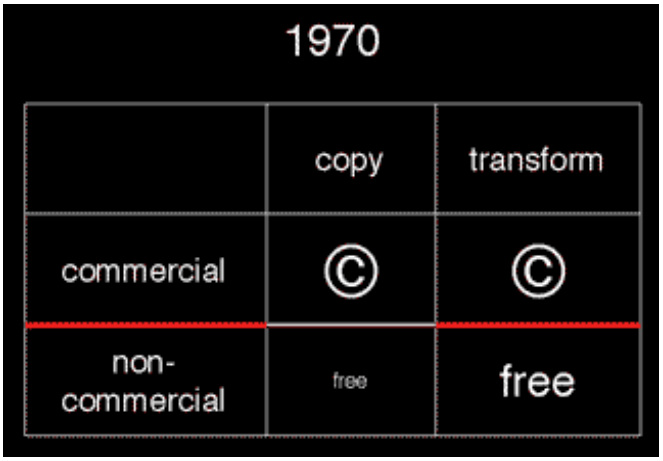
In 1909, an accident happens and the law is changed to refer not to publishing anymore, but to copying. It is an accident because copyright law would have used the word copy to refer to what you did to art -- you copied a painting or copied a statue. The law referred to what you did to the written word or a book as publishing. You didn't copy it, you published it. But the new law incorporated copying rather than publishing, and that had an unintended consequence-- that the scope of the law depended upon the technologies for copying.



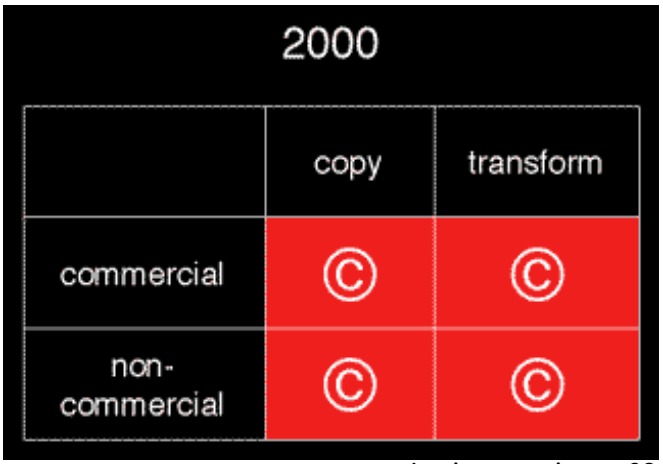
At first this didn't matter much because the only technologies for copying were big machines, and those machines were typically owned by publishers. The law regulated publishers and commercial activity primarily.



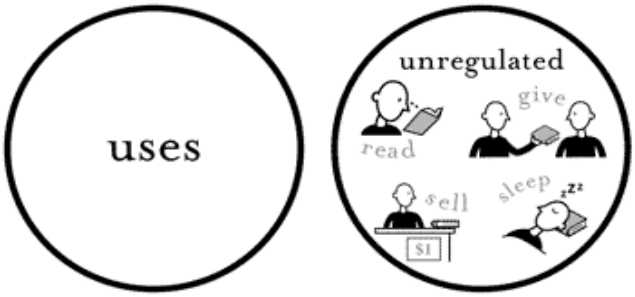
But the point is that as the technology of copying changes, so does the law. As the technology reaches more broadly, the law reaches more broadly. As the Xerox machine begins to be very dominant in 1970, you have a weakening of the line between copyrights regulation of commercial activity and non-commercial activity, since the law has to worry whether copying books on a Xerox machine interferes with commercial copying. The law expands.



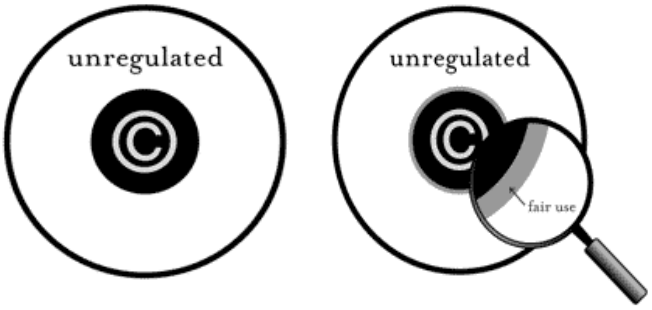
With the birth of the Internet, we have a very radical and unintended change. The law regulates everywhere because everything you do in the context of this technology produces a copy.



Let's make this absolutely clear and think about an example: a book before the Internet. Here are all the uses of a book.



Many of these uses are unregulated. They are not fair uses -- they are unregulated uses. For example, if you read a book, give somebody a book, sell a book, sleep on a book, it doesn't produce a copy -- it's unregulated by copyright law. These are uses of creative work that the law leaves free. At the core of these uses is a set of uses that is properly regulated by copyright law.



For example, if you publish a book, this is properly regulated by copyright law. You need permission to publish. Our tradition also recognized a thin sliver of exceptions called "fair use" -- uses that otherwise would have been regulated by copyright law, but must remain free according to the law. For example, if you quote my book in the process of critically reviewing it, negatively reviewing it, that is a bad idea. But you could do that whether you have my permission or not -- even if I say you are not allowed to do it. The law says that even though you are copying my book -- sections of it, to make the review stick -- I have no control over that copy because it is important for free speech reasons that copy occurs. This is a sliver of exceptions, but the point is to understand that these exceptions don't describe the full range of freedoms that we have with content. There were lots of uses which the law left unregulated.

Enter the Internet, where every act is a copy. It sounds absurd that the law would recognize this as a significant distinction, but the law is guilty of many more absurd things than this. Every act is a copy, which means this presumptively unregulated space becomes presumptively regulated. The very same uses that you were entitled to independent of the law's regulation before the Internet, you are now, in the context of the Internet, granted only if you can justify them through the thin sliver of fair uses.

This means that in an important and unintended way, the law has been bloated to give copyright owners -- or media companies that hold copyright -- a much larger claim over the creative process than they have ever had in the past. When you add that explosion of legal protection to the radical transformation that has occurred in the concentration of media, those two facts put together produce a conclusion that we have to put into the center of this debate. Never in our history have fewer exercised more control over the development of our culture than now. Not even at the time when copyrights were perpetual, because even then, they were just regulating a tiny aspect of copyrighted works used, namely publishing. The point is that, as the law has expanded and as media has become more concentrated, we live in a world where the ability to create increasingly depends upon getting the permission of somebody else. We move from a free society to a permission society. From a free culture where your ability to build on other people's works is defined by the limits of the law, to a futile culture where the law encompasses all of this property in a way that makes it extraordinarily hard for creators to build upon it.

When lawyers hear this story, their first response is to say, "Oh, what are you talking about? The law protects fair use. We don't have to worry about all of these changes, because the fair use provisions of the copyright law guarantee the freedom a democratic society needs. So, don't worry if the law presumptively reaches all this culture. You can always claim fair use in defense" -- a tiny sliver of an exception.

The problem with this claim -- that our fears are overblown, that the First Amendment fundamentally protects fair use -- is that it is a claim made by people, lawyers, who have no conception of the burden or costs that they impose on the process of creativity. It is a claim made by lawyers who don't recognize how bad and expensive the system of legal protection is in the United States right now.

John Ellis is one of the people who should have been able to rely upon fair use when he wanted to use three and a half seconds and was told he had to spend ten thousand dollars for that. He should have been able to invoke the law of fair use. In fact, when I wrote about this story, Judge Poshner responded with a very negative review of the account by saying, "Obviously, fair use protected John Ellis' use of that work, so there is no problem with copyright law. It should be a fair use defense."

So I asked Ellis, why didn't you rely on fair use? His response was, "*The Simpsons* fiasco was for me a great lesson in the gulf between what lawyers find irrelevant in some abstract sense and what is crushingly relevant in practice to those who actually are trying to make and broadcast documentaries." He had asked one of my colleagues at Stanford Law School whether this would be fair use and "he confirmed that Fox would depose me and litigate me to within an inch of my life, regardless of the merits of the claim. He made it clear that it would boil down to who had the bigger legal department and deeper pockets -- me or them."

The legal system is structured so that the fair use right is the right to hire a lawyer, and the right to hire a lawyer is a right to hire somebody who will say to you: "Well, you want to be able to use this content? Here is what you've got to do. Get permission." The fair use right turns into a machine to turn all users of content into people who, Oliver Twist-like, turn to the content owners and say, "Please, Sir, may I?" Yet, the definition of what fair use was supposed to be was a protection that guaranteed the right of people to use content without getting permission first.

The idea that fair use solves the problem is true in the La-La-Land of lawyers, but has no relevance to the actual way in which content gets created. In the real world, what happens in the face of a fair use claim is that publishers say, "I don't care about fair use. I just want you to guarantee I will never be sued."

Rather than embracing fair use as the solution to all of our problems, the first thing we have to do is to liberate ourselves from the image of fair use as our savior. Would the world be better if we had more lawyers defending our fair use rights? No, the world would be worse. We would have even more of a permission culture. Rather than relying on fair use, we should be evoking this simple idea: it's not fair use we should be appealing for, it's a stronger, more robustly defined right of free use of free culture. Not free use that says there is no copyright protection -- a free market is not a market where property doesn't exist. A free culture is a culture that has lots of property in it. The point is that the restrictions of that property are balanced by a deep sense of the importance of access to culture for the purpose of building and transforming that culture.

We need a way to build this appreciation, a way to build the idea that there has to be a balance between the extremism of property and the extremism of total piracy. A balance to this debate that doesn't exist right now. Right now, the way Washington views this issue is to think that it is a choice between property or piracy. And because they have a vision of piracy different from the example that I just showed you, they choose property. We need something in the middle between these two ideas. One idea of that something in the middle is the "Get Creative" flash video viewable at http://mirrors.creativecommons.org/getcreative

This isn't remaking the world by changing the law yet. It's about remaking the world through artists voluntarily signaling to others that they want a vision of copyright that is balanced -- more balanced -- through this voluntary expression of a commitment to opening their content up in certain ways. Feeding a space of free culture that other people can build upon, freely knowing that the permission here is granted beforehand -- meaning, you don't need a lawyer to get it.

This movement branches across the world. A project called the International Commons has taken these licenses and begun to port them into 40 countries. These will be released in the next six months, so that people from around the world can express the same freedoms using their own local law and this expression of freedom becomes enforceable across the world -- as a way of making content available and as a way of showing the importance of balance in a debate that has become so extreme that balance isn't recognized.

Since the first nine months of this project, over a million linkbacks to these licenses have been established on the Net. That is both an undercount and an overcount. An undercount because people will often put up a ton of content and link it all with one license. An overcount because many people have these licenses built into their blogs and although it might sound repetitive to have every single page of a blog licensed, it is a number.It's a pick up of people who are trying to participate in this expression. And an increasing number of people are doing it in the context of music.

My recent favorite was Loca Records (http://www.locarecords.com/index2.html) who released a bunch of their content all under a Creative Commons license (http://www.locarecords.com/downloads.html) embedded in the code, which will enable this content to be spread with MP3s that have Creative Commons licenses attached and the licenses will carry the permissions inside of MP3 readers so that people can identify the content that is available.

Now, this is just one idea. And while my brand is pessimism -- usually I don't think any idea will work -- here is one space to show people artists who have willingly made content available in terms other than the terms given to us by the RIAA and who believe in a tradition where you can take and build on content without the Viacom Legal Department backing you up.

People ask, "Is this going to be enough?" And they ask it especially in the context of other areas of this battle, which have been not as successful as this one. For example, the extraordinarily personal defeat that we had in the case of Eldridge v. Ashcroft in the Supreme Court -- attempting to get the Supreme Court to stand up for the principles of the founders of our Constitution who insisted that copyrights be limited and that Congress could grant a copyright for limited times. But conservatives on the Supreme Court most grotesquely looked at that claim as an appeal to original values and said, "No." Seven to two, the court refused to restrict Congress's bloating of copyright law.

In the middle of this personal frustration over the defeat, somebody said to me, "Tell me, when was the last time the court ruled for principle and against all the money in the world?" I thought about it. I'm one of the last naïve law professors believing that what the Supreme Court does is rule for principle. I asked myself, what are the important cases? When they ended segregation, it wasn't a bunch of rich racists on the other side but a bunch of poor Southerners who they were ruling against. So when was the last time the Supreme Court ruled in favor of principle against all the money in the world? I don't yet have an answer to that.

Except that this suggests an answer to how this campaign has to be waged. Not in the context of legal battles, not in

the context of ways to use law to get the world changed -- that strategy, I increasingly think, is hopeless. But instead, in a context where we get beyond the obliviousness of Republicans and the capturedness of Democrats to this issue. We need to get beyond the place of politics into a place where creators demonstrate how they think the field of creativity should be governed. Governed by a concept of what Richard Stallman repeatedly forces us to focus on -- freedom. Creators who want to show that freedom, want to give that freedom, and expect to get that freedom from others who would be part of this creative process.

This is the freedom that defines a free culture. A freedom that has been our tradition and yet is being taken from us. Not because of a revolution via the political process in favor of that retraction, but because the unintended effect of the law gives those with the most power in this debate the opportunity to say, "Defend us against the pirates or you will defeat the system we call property." We have to redefine piracy. We have to show people that the opportunity to build on our culture is what a free culture is about. And the people who do that will be creators, artists, who demonstrate by their actions the tradition that we have to reclaim! Thank you very much.

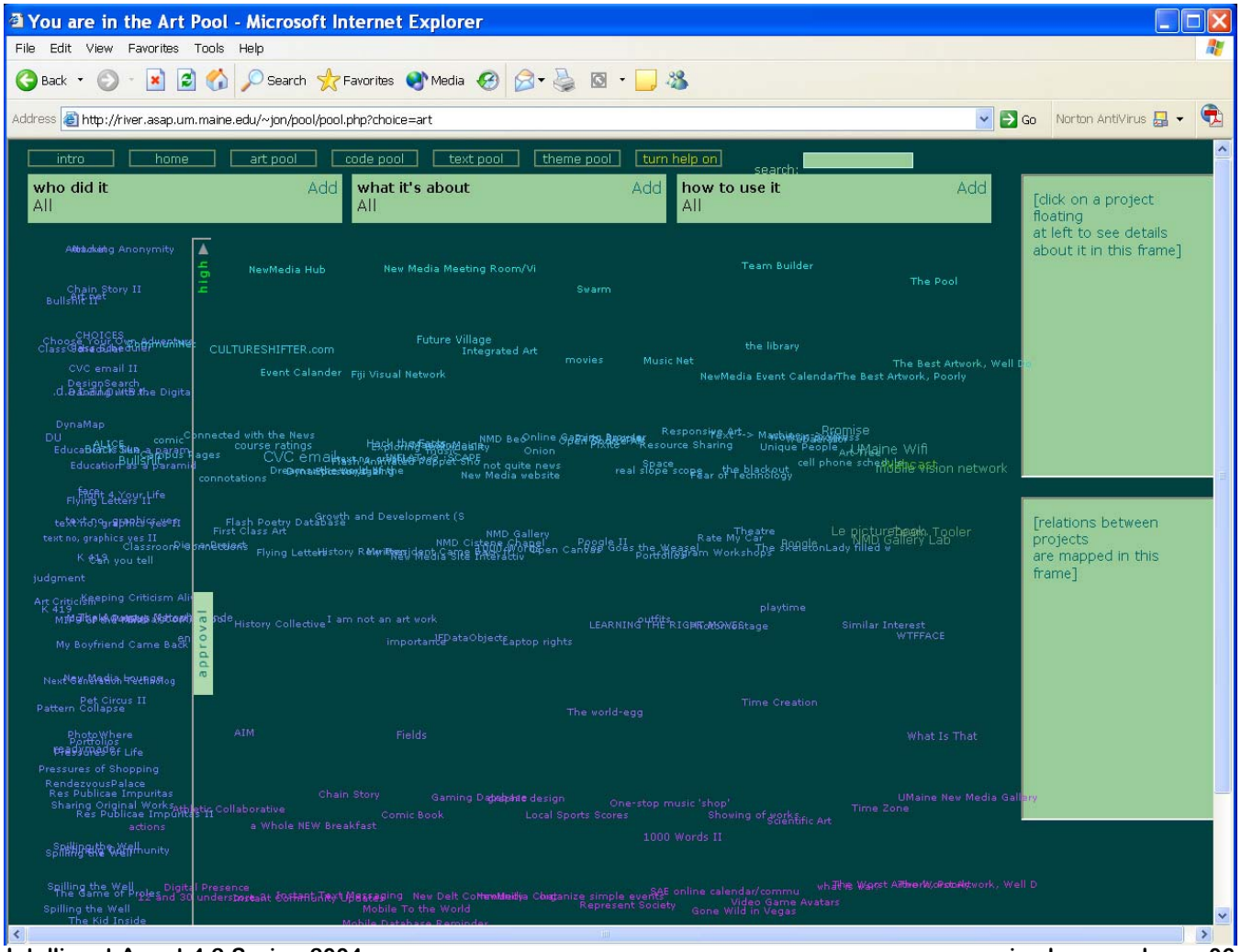
Jonah Peretti: Thank you. All the respondents on this panel are fighting to preserve free culture or promote free culture in their own way, particularly in the area of new media art. The respondents will present some projects they are involved with. With these projects, they are fighting against the corporate control of ideas and media and trying to figure out ways to promote new kinds of collaboration and creative expression.

At Eyebeam, we support dozens of engineers and artists in our residency program, we publish books, we have an online forum -- which also is presenting this panel -- and we have education programs where students are learning new media production and new media literacy. We are reaching a point now where we are trying to figure out, how should all of this work be licensed, how should it be distributed? What are the kind of strategies that might help us to support artists' creative work and help enrich the public domain? Some of the ideas that you suggest on this panel we might actually implement -- make sure that they are good!

The first speaker will be Joline Blais, who is the co-founder of the Stillwater Program at the University of Maine. She will present *The Pool*, an online environment that stimulates and documents collaborative art, text, and code.

Joline Blais: Thank you. I want to respond to the request of artists and of people who are not yet artists but may become artists, to build a free culture. I think that *The Pool* is one architecture that attempts to build that culture. What Larry presented to us were examples of the barriers to creativity that are legal. What I want to propose is that the barriers are not just legal, but ideological. I want to mention two types of ideological barriers to creativity.

The Pool



I think what *The Pool* does most accurately is show what is needed to redefine the paradigm of culture production. As I said before, the battle is not just a legal battle. What we are trying to do here is find a space and a way of working that brings more people into the process of creativity -- that connects them with each other, that allows them to contribute in different ways, and that allows a whole culture to be built upon different seed ideas and different iterations of a particular project.

-Joline Blais

The first is that we live in a culture that largely interpolates us as consumers, as opposed to producers. We are used to consuming culture produced by corporations that take our "public domain stories" and then repackage them and sell them to us. And second, we live in a culture that uses the paradigm of a star system of single artists, rather than the idea rooted in a tradition of people such as Homer, who is not a single author but an entire community that builds a story. I remember the sort of exam question that a student would respond to by saying, "Well, in *The Iliad*, Homer…" The Iliad was not written by Homer, but by a people of the same name. It wasn't written by a single person, but by an entire community of listeners and speakers and people who passed the story around from context to context, and actually built that story for us. The idea that culture comes from a single person who is a star and has some kind of specific skill they train their whole lives to bestow on the rest of us -- the broadcast model of producing culture -- is still pervasive.

We have designed, at the University of Maine, an architecture that tries to break that paradigm of the single artist and bring culture back to communities of people that can create together in different kinds of ways -- *The Pool*, which is an architecture for asynchronous and distributed creativity. I will describe the project and then talk about the implications. http://river.asap.um.maine.edu/~jon/pool/splash.html

There is an Art Pool, a Code Pool, a Text Pool, and a Theme Pool. In the Art Pool, you see floating, swimming texts or words on the left hand side -- these represent art projects. If I roll over a particular project, I see a description of it. Contributors to *The Pool* can contribute just a paragraph idea -- an "Intent," or paragraph description for what might be an artwork. Then they get attribution for that idea. Somebody else can pick up that idea, take off and say, "Well, you can implement this with PHP, with a database, and a little bit of a Flash interface," and that would be an example of an "Approach," or the next stage to this project. Then, a third person might come along and say, "Hey, I have a different approach. I think you should not use PHP, but you should use ASP, and so on." A fourth person comes along and says, "I'm going to build this and I'm going to do it this way." The person who actually builds it and makes it work is producing a "Release."

What we have here is a model of artwork that is done in stages: "Intent," a description of what it might be; an "Approach," an idea of how it could be implemented -- sometimes with visuals; and, finally, a "Release," which happens when you finally get the working artwork online, in public or however you want to distribute it. There is also a scaling system -- any project that is higher up on this list has been rated highly by people who came in as visitors. If the project appears on the right, it means that not only has it been rated highly, but it has been rated by a large number of people. So you get two different scales on which to rate the projects.

The projects that have been most recently placed in *The Pool* are swimming, they are moving around. The projects that are in larger type have a larger "artist stream," meaning there have been a number of Approaches and Releases and the project is very richly developed by a number of different people. Therefore, it comes up larger in text size.

If you scroll to the upper right hand corner you get more details about the artwork. You can get a description of the versions, you can get reviews of the project, you can get relationships to other projects in *The Pool*. These are all tagged by keywords, so you can get the subjects that are involved, as well as ratings. We have devised a rating system including overall rating, technical rating, perceptual rating.

If you scroll to bottom right corner, you'll get what we call the "artist stream." You can see how many approaches there are for an Intent and how many different releases for each approach. Each of these is tagged to a particular person who may have worked on that particular part of it. So, you could have a dozen different artists working on this at any different stage and all of them are credited.

This encourages people to come to this pool and do a number of different things. They can say, "Gee, I'm a Flash coder, I would like a project. I'm not sure what to work on but I notice that somebody has this Intent here that would be great to articulate with Flash. I'm going to write to that person or I'm going to pick up that idea, take it to the next step and submit it as an approach. Next, I'm going to find somebody else who does PHP. We're going to work together and produce a release for it." So, people can contribute different amounts at different stages. It's not necessarily a single person producing an entire piece, but a whole structured community of people working on the project over time.

One of the artworks in *The Pool* is "UMaine WiFi," which was produced by one of our students. It's an example of a project that actually got to the release stage. On a map of the University of Maine you can see where the WiFi access nodes are located. Little green points tell you what building you are at, and they give you information about what the WiFi network is like and whether or not you can get on. This

is an example of a project that made it all the way to a release stage. *The Pool* itself is open source, you can go there and look at the code, you could reproduce *The Pool*, and many of the projects in there are open source. Each person who makes a contribution can choose their own type of licenses -- attribution, non-commercial, share alike, etc. Licenses can be chosen within this particular structure

I think what *The Pool* does most accurately is show what is needed to redefine the paradigm of culture production. As I said before, the battle is not just a legal battle. What we are trying to do here is find a space and a way of working that brings more people into the process of creativity -- that connects them with each other, that allows them to contribute in different ways, and that allows a whole culture to be built upon different seed ideas and different iterations of a particular project. I'm very interested in finding out what the overlap might be between the legal battle and this other attempt to build a culture of production, with more producers and more artists with a different model of how art can be produced.

Jon Ippolito: I have a question for Larry in this context. I'm a big fan of Creative Commons and also worked on *The Pool*. We built in a "how to use it" filter, so you could actually throw out some of the Creative Commons-like terms to filter out projects that can be transformed, or can be combined, or can be commercialized. If you add that to the filter, you should get a particular subset of them. Given what Joline has shown about the idea of the "artist stream" and the fact that new media projects often have many collaborators, it seems that Creative Commons licenses, in contrast, right now seem geared primarily to one artist, one artwork, or perhaps one group / one artwork model. I'm just curious whether you have ideas about ways in which we can break that particular culture from the standpoint of new media?

Larry Lessig: First of all, the objective is exactly to enable this kind of collaborative process of creativity. The way to think about what Creative Commons is doing is that we're trying to get the law out of the way of the collaborative process of creativity. We believe that if you get the law out of the way, the technology and the opportunity, mixed with lots of creative people, will produce extraordinary creativity.

Part of the problem is that the law thinks of copyright in an individualistic way -- it's to the author. The structure of Share Alike in our licenses, for example, says that if you create -- if you take my content and you incorporate it into your content -- you must make your content as freely available as mine was. That is the kind of copyleft idea that the GPL was born out of. This concept essentially assures that it is a community that is building on top of the same work, and nobody can shut it down because it is always going to be open to the community. But, unfortunately, the way the law is structured right now, that is the most we can do. It is a hack of the law to enable it to facilitate this kind of collaborative construction.

Audience: I'm curious whether *The Pool* is limited to Internet-based artworks or if it is open to projects that aren't necessarily technical?

Joline Blais: As a portal, as a network through which people communicate, *The Pool* is Internet-based but that doesn't limit the fact that projects can be created outside this structure for different venues or distribution. We started building this with the University of Maine students; now we also have Berkeley students who are contributing and University of Maine students are commenting. We are developing a culture that we hope to build across the country, beginning with university students who are going to be, I hope, our next crop of creative people and bringing this back to our communities. We hope that they, in fact, teach us what is necessary as we build this.

Audience: I was just thinking that educators would love something like this to bounce curriculum ideas around in and that type of environment. I think it's awesome.

Jonah Peretti: I have a question for Larry. You gave the example of the Blair-Bush video as something that is illegal. Millions of people have seen it. It circulated really widely. People are e-mailing it to each other. So the fact that it was illegal didn't really matter in terms of the suppression of it. I think that there are instances where something is technically illegal but actually is being distributed freely.

Larry Lessig: I think it matters significantly that it's illegal. And the way in which it matters is that it makes it hard to build businesses around the ability to mix in this way. I mean businesses like CDS, I mean businesses by people who want to create content and share it or sell it according to what they think they need to do.

Negativland, for example, is an extraordinary enterprise of collage art construction, but they are constantly limited in their ability to do this in a way that is self-sustaining. Because if they sell what they produce, they lose the benefit of any fair use exception and become targets for litigation, which of course they suffered when they were sued by Casey Kasem for the use of U2 in one of their creations. (http://www.metroactive.com/cyber/neg.html)

You are right, there will always be art. It will be driven underground if it's rendered illegal, and it will maybe seem more sexy and exciting because it's illegal, and perhaps there will be cooler parties. But the question is whether we are creating an environment where a wide range of people can participate in the creative act without having to be a criminal. The world where you had to be a criminal to be a creator was the Soviet Union. And what is weird is that we have kind of recreated that environment here under the name of cultural control or intellectual property. This is totally unrelated to an important part of our past, which is to freely develop commercially and non-commercially however creators believe.

Jonah Peretti: I think that a lot of the people we work with at Eyebeam are not doing commercial work -- they are doing artwork. And often times the work will sell in galleries or be displayed in museums, even though it is clearly violating the law. And they don't feel like criminals. They do their art, they do their collage, and they sell it. This is also meant as a transition to our next speaker, Carrie McLaren, the Founder and Editor of *Stay Free* Magazine (http://stayfreemagazine.org), which will also be on sale. Carrie will talk about the "Illegal Art" exhibition (http://www.illegal-art.org/) that she curated.

Carrie McLaren: "Illegal Art" was a multimedia exhibit that opened in New York last year and traveled to different cities across the country. The idea of the exhibit was that all the work in it appropriated intellectual property in one way or another. Some of the artists had run into legal troubles, some of them hadn't. We wanted to try to get a mix to show

Our first case is defending the use of Peter Pan. A woman has written a brilliant version of Peter Pan, where the children are trying to convince Peter Pan that only Michael Jackson doesn't want to grow up. Growing up is really a great thing. Neverland is not a happy place. The owners of the Peter Pan copyright have threatened a lawsuit against her because she is using Peter Pan without their permission. The only problem is that a huge chunk of Peter Pan material is in the public domain. Their view, though, is that as long as any Peter Pan material is not in the public domain, none of it is in the public domain effectively. That is a completely outrageous claim. So we have affirmatively said, "Okay, we will sue the owner of the copyright and defend your fair use right."

We got six other cases where we made that same offer and in each of those cases, the author enters into a very rational calculus. We have to say, "You understand that if we sue them, they will counter sue you. If they counter sue you and we lose, that is your house -- it's gone." It's a very serious consequence if you lose a copyright case. We can't guarantee you are going to win, so you have to be willing to take that risk. Most sane people are not willing to do that. Fortunately, there are cases like Negativeland or this woman, Emily Soma, who are willing to take that risk, but it's going to be rare.

Jonah Peretti: Just a quick story. A few students at NYU developed a website called, "What is Victoria's Secret?" that parodied Victoria's Secret advertising. They were students in my course who used images from Victoria's Secret sites and images of bulimic models on their website. Within two weeks, they received a phone call from the Victoria's Secret lawyer who wanted us to take the site down but refused to send a cease-and-desist because she was afraid that it would add more publicity. There were students on the phone telling her, "send me a cease-and-desist and I'll take the site down." And she replied, "I'm not going to do that." She wouldn't return e-mail. She would only talk on the phone.

I have heard a lot of these stories. You see these weird situations where the PR is lined up just right and a project is getting attention. The lawyers are afraid to crush the little creator because they think it's going to spread virally on the Internet and create more problems for their brand. We saw it on a larger scale with Al Franken's book. So I think you need to figure out the best way to get sued if you're going to get sued.

Let's move on. The final respondent is Jon Ippolito, who is an Associate Curator of Media Arts at the Guggenheim Museum. He is going to present the Open Art Network (http://three.org/openart), an initiative that promotes open architectures for artists working with digital tools.

Jon Ippolito: I think you're right, it's up to us creators. I happen to be an artist in my spare time and it's up to us to step in where these lawyers have met us half way. They have staked reputations and careers to help us out and I think that it behooves us to step up to the plate and come up with some creative techniques of our own, as Jonah was saying.

Surprisingly, it wasn't computer scientists who came up with the concept of open source. It was artists. Consider this quote from John Cage in 1969, "Computers are bringing about a situation that's like the invention of harmony. Sub-routines are like chords. No one would think of keeping a chord to himself." A musical chord -- this is a composer talking. "You would give it away to anyone who wanted it. You would welcome alterations of it. Sub-routines are altered by a single punch." This was back when punch cards were hot -- which shows you how old this idea is. "We're getting music made by man himself, not just one man." And, excusing the sexist language, I think that translates very directly into a lot of things we are discussing here.

In 1970, Nam June Paik, a disciple of John Cage, came out with an article, "Global Groove and the Video Common Market," in which he proposed an open economy for sharing video and creating video. That was 1970! So artists have been open to this idea for a while and I think it's time that we revisit the situation.

Creative Commons licenses are great, they are a fabulous beginning. We as new media specialists, however, have to help the lawyers to get up to speed with some of the new technologies and techniques we use. The Open Art Network is an attempt to go to the artists and grassroots artist projects to do that.

One issue is attribution. How do you portray an entire author stream rather than just a single author? There is also the issues of what exactly are you making free? Right now most of the art projects licensed with Creative Commons licenses are an MP3, sometimes a DivX movie, sometimes text. These are great things for consuming, and sometimes for reusing but they are not the mother file. I love this term, the mother file. It was invented by Rick Reinhart, who is also a digital artist, and works at the Berkeley Art Museum and Pacific Film Archive.

He gives us a great story, where Pixar, who had just released *Toy Story*, show up to the Pacific Film Archive, speak to the director, one of the experts on film preservation, and say, "We want to save *Toy Story*, and we want your advice on how to do it." She launches into the usual rap about acetate versus celluloid, cold storage, all the things you need to know about film preservation. They respond, "No, we don't want to save the film -- we want to save the movie. The film print is fairly useless -- you can just make another one of those any time. We want to save the render files so that we can go back and make the scene from the back of Woody's head instead of the front of Woody's head." It dawned on them -- it's not about the final version. It's not about the MP3 that is posted there or the film print that goes in the canister. It's about the document or the artifact with the most potential, the most fertility to produce new variations in the future. And, by the way, be the most preservable, because it is the most able to translate from one medium to another when old media die.

This idea of a mother file is something I think we need to preserve in our licensing agreements, too. How do we keep available the thing that comes before the final product? We call this Recombinancy. It's a variation on open source in the sense of source code but it goes past source code.

For example, Flash files have a source format called FLA. That is not the same as the SWF -- if you try to import an SWF and mess with it, you have a limited amount of capabilities to modify that. Whereas if someone gives you the original mother file, the FLA file, you have lots of abilities to change just about every feature. Adjust tweens, motions,

morphs, text -- it is pretty extraordinary. We propose that people post the Flash file at the same place that they post the mother file for it.

The same with high resolution audio or image files. You might have a Fruity Loops file that makes your audio mix. You might have a PhotoShop file with lots of layers or an Illustrator file that produced a vector image or ended up being rastorized as a GIF. All this sounds very technical, but it basically means giving someone the toolbox instead of giving them the house with nails built into it that you can't pull apart.

We are somewhat familiar with this from the world of open code development. But the artists who are participating in this network are really trying to open up the paradigm so that you can see the work behind the scenes. To give you an example of some name brand artists who have been involved: the *Carnivore* project by Radical Software Group, RSG -- which sniffs networks and creates visualizations based on data passing around a local area network -- includes a number of artists who have already contributed source code behind the projects that they made. The attempt is not just to archive source code, but also develop a way to annotate it. I'll talk about that in a moment. There is a Flash visualization that Joshua Davis, probably the most famous Flash designer in the world, and some of his fellow programmers contributed. There is a Java client contributed by Mark Napier. A Director client by Mark Daggett. A Perl client by Alex Galloway. A sample for the creation of a Visual Basic client by John Klima.

Again, the idea is not just to have artists put their work out there, but also to create peer pressure. If we get these big names -- and there are more on the list that I can't show you yet because they are coming soon -- then it's similar to the Creative Commons licenses, the licenses that you find when you go to CreativeCommons.org. There is always a new person there, there's always a new band, a new writer, an author, someone who's posting things, to exert peer pressure. So when people say, "Oh, well, you know, you can't beat copyright." You say, "Cory Doctorow did, or John Klima did."

Let me give you another example -- a project by Mark Napier called Open Java. Now, Java is a compiled language. That is to say, unlike the HTML that gave rise to the World Wide Web in the first place -- where you just go up to view source in your browser, and boom, there it is; you can see it, you can modify it, you can learn it -- Java comes down to you in compiled format. Unless you reverse engineer it, there is no way to tell how it was made.

Mark Napier got the idea that we should build components, where you can not only see the code -- because that's already present in the GPL and comparable licenses for software -- but where you learn the code, learn how to build it in an environment that encourages that learning. I won't go into detail, but suffice it to say that Open Java is not a library. A library is what we are familiar with from open coding where a bunch of things can be pulled down and used for free or used under certain license terms. This is a set of standards or protocols by which code components can communicate with each other. By coding to this standard, programmers can independently build components that talk to other code.

It sounds like geeky stuff, but the point is that it is made by someone who is known as a new media artist. If you want to know how he works, he is not only giving you the code behind it with no annotation, which is common in open source projects, he is actually showing you how it was made in a sort of educational setting. There is an example of a kind of 3D engine that was made with this; he takes it apart and tells you how to build it. You can look at the source code if you want, but you can also just play with it and learn by the demo nature of it what can be done with Java in this type of 3D open environment.

As a kind of opening question for the new media artists in the audience and for us on the panel, I would ask, what things do we need? What kinds of tools and resources do we need to build our work? And how can we inform people like Larry and his colleagues to help us build a legal environment that nurtures those?

Jonah Peretti: Do you want to comment on the way Creative Commons could interface with this kind of system? You were talking about some of the differences between new media art and an MP3 or music. Have you had people trying to license works through Creative Commons that are difficult to license?

Larry Lessig: Absolutely right. And you have to show us how we can structure the license so it serves this purpose best. Enabling people to effectively take the source code of art and share that in a way that makes sense is great -- we would do it tomorrow, in a heartbeat. If you want to run the project, we will do it right now.

The reason why we have been slow in this area: it was very important that we didn't step on the free software movement's licensing of software. We didn't want to come in and start replacing GPL because despite Microsoft's fuss about it. I think GPL is a very important license, a part of the ecosystem, and it should be supported. So we wanted to step away from software initially.

The Flash problem is one we hit right away with our own code. We released our own Flash. What we are looking at is a way to marry these two projects. For example, we have the GPL as the legal layer of a license, but on top of it we put a human-readable version and a machine-readable version and call it a CCGPL license. So we are not touching the license, but we are enabling people to mark the content in a way that is machine-readable.

It's most important to me that we get to a world where you can say, "Show me all the Flash objects out there that have something to do with the Empire State Building and that I'm allowed to release in a non-commercial way," and bingo, the search engine pulls all that together. That is what the strategy of our licenses drives to. The way we would extend it would be in exactly this way.

Brazil, literally just before this meeting, announced that they were going to release all of their government code under GPL. But only with the understanding that their government code -- the code to run their government offices -- would be expressed in a machine-readable format, like a CC license. So, Brazil has already committed us to this process. If you participate in it, I promise that in three months we will have a license that will allow all of your source files to be made

available in exactly that way.

Joline Blais: It seems like right now the burden of fair use falls on individual artists, who pay a price for trying to exercise it. I wonder if there is a way of restructuring the legal code so that companies who go after people who are exercising fair use pay the penalty and the burden?

Larry Lessig: My first advice is not to ask for advice from a lawyer who loses as consistently as I do. Unfortunately, the American tradition -- it's actually a very complicated argument -- doesn't easily allow the burdens of the litigation to be shifted to the losing party. That's good in the context of civil rights; for example, if you had to sue GM for sexual harassment and you lost, GM could shift a million dollars in legal fees to you. You would never sue GM for sexual harassment. So, usually it is a good thing.

The problem here is that the penalties for copyright infringement are so severe that it stops people from trying to exercise their right. Hillary Rosen says, "What is the difference between going into a Tower Records and taking a CD off the shelf and walking out, versus downloading the same content off the Internet? It's both stealing." Well, one difference is that if you go into a Tower Records and steal a CD, you might be hit with a thousand dollar fine. That's the maximum the law in California would allow. But according to the RIAA, if you download ten songs from the Internet you are liable for $1.5 million in damages.

The difference is that, according to the law, it's really bad to download from the Internet and not so bad to steal from Tower Records. Now, that's just screwy. So here, too, the law is mixed up. The reality is that there is not going to be any easy way to handle it. The most we can do is create free legal services, which is what we are trying to do, and find more brave people to try to invoke that.

Joline Blais: I have another follow-up question regarding the problem of people losing their houses when they actually join your campaign to bring these suits. Cornelia Sollfrank and Female Extension (http://www.artwarez.org/femext/) found a great way for punitive artists to produce artwork -- there is no 'person' behind it. It is being produced by a machine. So, imagine an artwork that violates copyright but doesn't have a single person behind it that you can actually bring to court, and there is no house to lose behind it. There must be artistic or other kinds of interventions where people don't have to lose their house to bring these cases to the courts.

Larry Lessig: You have a dangerously clever mind, and it's good you stayed far away from law school. Regarding your question, we'd be happy to try to figure whether that's possible but, so far, the house is always there to be taken. In California it's pretty warm so it's not as bad as losing your house out here.

Jonah Peretti: Two things need to happen now. Larry Lessig needs to get on a plane and we'll open up for questions for the respondents.

Audience: I think we heard a good discussion about getting the law out of the way. I wonder about getting the money out of the way. It seems like -- especially in artistic production -- the idea of trying to earn a living by that production is a whole battle in itself. And I see, whether it is universities or museums, that there is some kind of sponsorship behind a lot of the discussion. What happens to artists who try to make a living by controlling the proliferation of their work? There are individuals, for example video artists, who don't want their work to be bootlegged and they create artificial scarcity by selling ten thousand-dollar videotapes because they certainly couldn't sell ten thousand one-dollar videotapes and keep making their work. Do you have any thoughts around how to actually make money and still make this work in this environment?

Well, one difference is that if you go into a Tower Records and steal a CD, you might be hit with a thousand dollar fine. That's the maximum the law in California would allow. But according to the RIAA, if you download ten songs from the Internet you are liable for $1.5 million in damages.

The difference is that, according to the law, it's really bad to download from the Internet and not so bad to steal from Tower Records. Now, that's just screwy...

- L. Lessig

Jon Ippolito: I think a lot of it depends on the personality of the artist. There are certain artists who are good at releasing content for free and having it spread, and they end up getting famous because of it. Then they are able to sell work for higher prices, and also sell things that are either objects or limited edition work. Other artists give away their code and everyone just takes it and copies it and forgets about them.

I think there are certain people who are good at saying, "Oh, I'm releasing code or I'm releasing work, but I'm still going to keep tabs on it and have good relationships with all the different people involved, and sort of manage it." I feel like it really varies between artists -- I have seen different artists' careers evolve and sometimes it works really well for them to have a more open approach and sometimes it doesn't. That's just an empirical observation.

The market is the way artists make a living. If I didn't have the presumption that "Oh, we're all going to make it with the market," I would have a more convincing case when I'm trying to argue for a really substantive kind of grant system -- healthcare or whatever you want to ascribe to artists. Okay, let's come up with some other ideas, just because neither of those options are particularly palatable.

Another one is for those artists who are known well enough to want to protect their software and not open the code and throw it out there or, in the case of video artists, who want to hold control of the master video. Bill Viola is an example. He is a technical perfectionist. He doesn't want anyone else to do the migrations of the master video. He wants to control it himself. Which would mean that when he editions his work in three, and the Guggenheim, MOMA and ZKM each get a

copy, they get a DVD. Well, that sucks. You scratch a DVD, it's gone. And it is poor compression quality, has very limited migratability and is protected by an encryption scheme -- all reasons to not store things for the future on DVD.

So what does Bill Viola do? He doesn't want to give out his master not just because other people would copy it and make money off it in theory but also because he wants to control how it gets transferred to high definition and the formats that will come in the future. I think what he does is deferred rights. He says, "I'm giving you a copy of my master. A perfect digital copy. But I'm also making you sign an agreement that says you won't copy it unless I'm dead or I give you permission." If his studio burns down and the master he has is gone with it, we didn't lose that work from culture. It's not just a bunch of crappy DVDs that museums have as a pale reflection of the original.

Artists or, I should say, programmers have done this before in certain commercial contexts -- they have put their source code on escrow with a third party. Let's say you were a business and you contract with someone to make a whole enterprise system, and that company goes out of business. Well, if it is closed code you are screwed -- you can't make a single change. But if the company goes out of business and you go to the escrow company and say, "I want the source code back. It says here in the contract that I can have it," okay, you're good to go. So the idea of deferred rights is another option for artists who don't want to release their work in an open way into the environment yet, but recognize that in the long term there may be a reason to keep it open for a cultural legacy.

The last example is to follow the model of Red Hat and other open code providers. Provide a service -- a service associated with the work. Put a free version out there like Eudora Light. And also make a more expensive professional version that one has to pay for. Now, that could be higher resolution, it could be fancier graphics, or it could simply be that you guarantee to maintain it because, especially when we are talking with new media, these formats go out of date on a monthly basis. A couple of web formats just went out of date since we started this panel.

If you want your work to stay alive or you want a work that you collected to stay there for the future -- whether you are a museum or an individual private collector -- you need to have some kind of maintenance agreement. Now, the artist can say, "Okay, I have all those copies out there. The technology lets you copy those freely so it doesn't really make sense for me to charge for that. But, if you want me to come in and fix it -- it worked for Netscape 4, now you want it to work for IE 6 -- my time is not infinitely copyable. So now I get paid for that in the same way that Red Hat Linux gets paid not for distributing Linux course code, which is essentially free, but for making the manuals and having someone on tech support to respond to it. So there you have four different models.

Audience: Joline, your many-to-many strategy, a kind of meme virus, to me really seems to get to the heart of what the real dilemma is -- that the net by nature is transformative and collaborative, and global. Everything else is based on a static, nation-oriented view. Even Larry Lessig says it's "the law," but he is talking about a very specific law and yet this language gets very rooted in culture. We live in a culture where company logos are basically almost like official words because they are so much out there in the public arena.

Then there is the question about time that just came up. The thing that I haven't heard anyone mention much -- only implicitly -- is the temporal relevance of something. Our world is dynamic, so time matters. The order in which things happen is crucial but I haven't heard this addressed yet in terms of how one is going to approach and handle temporality. I mean this in the sense of temporal indexing. The problem is the net -- you could take a snapshot of it, but everything about the process is dynamic. The relative order of things as well as some sort of absolute referential time are both relevant. You could say, "I did this at midnight on that date," but you could also say, "I just did it before him, but after them." It seems like that should be built into the solutions.

And then there is this: you have one-to-many, which is traditional publishing; many-to-one, which is production; and then many-to-many, which is what we are talking about. And all these laws just seem drastically out of sync -- the patent law and invention is out of sync with the times as badly as copyright is.

I'm just really curious what all your opinions are about many-to-many and time, and how one could address that, and also collaboration versus nationalism, which seems to be where we are heading.

Joline Blais: You mean, where is a contribution fitting in when it comes to time?

Audience: Yes. It should be built into the way one is approaching this, because it is as relevant as anything else. Maybe it doesn't matter that it was at midnight, but it really matters that I did it in conjunction with someone before another person.

What if everyone in a small town -- for example, my small town in Oreno, Maine -- decided for one month to drop their DSL connections and cable TV and not go see any broadcast medium, which is all one-to-many kind of culture, and we said, "We're going to take all of this money and we're going to support our local artists and teach them how to talk about who we are right here and preserve what we are right here and not get our culture from Hollywood or from repackaged stories that Hollywood took from us, but instead create our own culture."

Joline Blais: I think I have a different take on your sense of time but I would like to try to come back to the question of many-to-many. I also think I have a different concept of culture than has been articulated. I would like to free culture from both the legal system and the commercial system. I would like to bring culture back to the people to whom it belongs. I don't think of this as global, although I see that the tools we use are sometimes articulated in that kind of realm. I see culture as a very local phenomenon. I think that if you want culture to survive, then you have to rely on your particular community to support you. You produce culture within a community and that community supports you. It may be a local, geographic community, it may be an online community, like the open source community. You survive because you belong to this community.

Each community devises different ways to support its artists. What if everyone in a small town -- for example, my small town in Oreno, Maine -- decided for one month to drop their DSL connections and cable TV and not go see any broadcast medium, which is all one-to-many kind of culture, and we said, "We're going to take all of this money and we're going to support our local artists and teach them how to talk about who we are right here and preserve what we are right here and not get our culture from Hollywood or from repackaged stories that Hollywood took from us, but instead create our own culture."

A model that I come back to over and over again exists in Brittany. I spent about ten years there on a small island. One Christmas I got stranded there. We went to a party on Christmas Eve in an old barn. It was decorated with all these nautical things but it wasn't like a barn full of "nautical paraphernalia." These were fishing nets that had been broken and could no longer be used so they were put up on the wall.

Three months before, one of the people who used one of the nets drowned at sea. Everybody in the town knows that and they remember. The fishing net represents that. And the buoys that are there are from the various last catches -- they break and get put up there, too. All of the stuff in that barn is local and reminds people of their own local culture. They go there and they fiddle. They don't get Hollywood films or Disney films. They fiddle and they make their own music. And they may rip, mix, and burn, but they are doing it in the context of their own lives and their own culture, and they are supporting each other somehow.

I'm not sure what the answer is, but I think that when we stop buying our culture from big corporations and big media, we won't have to rely on them for our salary.

Audience: This question is for Jon. I like the idea of your project -- the open sourcing, new media artwork -- but, going back to the community, the server space and bandwidth isn't free. It also goes back to Lessig's idea about fair use being abstract. It's great and abstract to share the source file or a mother file, but a lot of us know who produces that stuff. The source or mother file often is exponentially larger than the product. Especially if you want to use everything you had like the high res source that went into the Flash movie, etc.

Are there any concrete steps that you are taking in Maine or at the Guggenheim to share some of this cost in an open way -- like having some server space and some bandwidth?

Jon Ippolito: Good question. Actually, the forum associated with this panel, Distributed Creativity, is hosted up in Maine so we do some creative hosting. I think one of the primary questions is -- if you are working in this mode, is it worth it to download a version that may take a long time, maybe as long as it takes to download the latest Disney trailer? Because when you have it, then you can manipulate it.

Now, again, you still have the issue with formats. Let's say that I get a PhotoShop document, a PSD, or I get a Flash, FLA file, download. Great, I have what the artist created, I can work with that, I can adjust it with the same amount of options that the artist had. It just takes a while to download. Moreover, it takes money to buy that application, right? Flash is around $800 now if you buy it off the shelf? Even Microsoft Word and so forth, these are not inherently open formats.

So, I have actually pushed really hard to use open formats whenever possible. What you are looking at here, *The Pool,* does rely on some server side stuff, but the server side components are My SQL and PHP, which are both open formats. What you are looking at as the interface is all DHTML. DHTML, as you know, is a wonderful environment with lots of interesting kinetic properties that is completely open. If you go into the View Source, you can find everything that is there. There is no fancy program you need besides a text editor, which comes free with just about every operating system.

If I look at, say, the Open Art Network -- thank you WiFi -- it says at the bottom, "Code used in this site." Boom, there it is. There is no special application you need in order to look at a Java script or a style sheet. It's right there, you can modify it tomorrow. In fact, it includes a sample of how to modify it. There are instructions how to call it from your HTML document. So, again, we are trying to make it as accessible as possible. And you are absolutely right, some of these closed formats take forever to download but we are trying to actually stimulate the use of client side open formats like DHTML.

Audience: If you do download a CD off the Internet, instead of going to Tower Records, isn't it stealing to just go and take work that someone labored on for two years and download it and not pay them for it?

Carrie McLaren: One thing I would throw out there is the cases of file sharing where people are getting music that you can't buy in the store -- at least if you don't live in New York. I think there is a lot of room for reasonable people to debate.

Jonah Peretti: You are looking at two extremes. On the one hand, you have the idea that all music and all media should be free. And on the other hand, you have the idea that music should not enter the public domain for 90 years and be controlled by a very narrow group of corporate interests. If you look at Creative Commons, for example, there are a bunch of different licenses that are in the middle, that aren't on either side of the extreme.

There is the Founder's Copyright, which is a Creative Commons license that covers the originally mandated 14 years, which is how long copyrights were when the founding fathers established copyright law. That means material would be protected for 14 years. But after 14 years, it would enter the public domain and could be used. There are other licens-

es that say people can use material for non-commercial purposes only. Maybe I'm downloading the latest 50-Cent album just for my own enjoyment, but maybe I'm downloading parts of it to use to create a new work. There are differences between those two things. Maybe some should be allowed and some shouldn't. Part of the issue is that there isn't any middle ground where people can specify these things.

Jon Ippolito: I think Jonah is absolutely right. Consider, for example, the ability to give. I can give Joline or Carrie a CD. I cannot give them an MP3. I cannot share it. If I bought it legally, I do not have the right to share it on a P2P system and that seems wrong to me. It gets back to the issue of copying -- the example that Professor Lessig gave about books, and the difference between a physical book and a digital copy.

Audience: I had a question about *The Pool*. It seems like a brilliant project but, playing the Devil's advocate, I would like to know how you deal with cherry-picking? People coming in, looking at projects, writing down all the information, and not admitting that they did it, not contributing. Is it a problem? Have you seen it? How do you deal with it?

Joline Blais: It actually is under hot debate right now how we will deal with that. One of the proposals is that we form a community. In other words, the price of admission is participation. If you contribute something then you may take something and that way you become a member. By having contributed something, you join a community. I think that one of the biggest discussions here is that we are not just interested in a bunch of things that people can take. We are actually interested in producing a community of people that works together.

One piece of the environment that you haven't seen articulated is the Discussion Board, where people who are playing, and swimming, and moving around in *The Pool* can talk to each other about what is happening and what should happen. It's a very grassroots kind of process. The people who are building it come up with questions like this all the time, and we have to deal with them.

Another possible approach is the kind of click-route, so that before you get into the site, you have to click something stating that, by default, any intent that is placed here is non-commercial and attributed. You always know who created the project and it's not commercial in the first iteration. You stop the poaching for commercial uses early in the stream. Those have been two possible ways of coping with this so far. I'm not sure that those are the only solutions. Once we see problems coming up, we will have to tackle them as we go.

Audience: Have you noticed that there is a certain type of artist that is willing to participate, and others who are more wary?

Joline Blais: Yes. In fact, I have one project in mind where a group of students whom I was working with produced a game idea. They were concerned that if they put this in *The Pool*, they couldn't market it afterwards and because they didn't want anyone else to take it, they wanted to be non-commercial. Does that tie their hands? With what restrictions? Can somebody else take off with a different version of it?

So, yes, there have been some concerns on that end. Do I contribute? Is someone else going to be able to rip it off and implement it before I do? I think those are questions for which we haven't necessarily found the answer yet but which we are tackling right now. These are excellent questions. If anybody has any suggestions or solutions we would be very glad to hear them.

Jon Ippolito: As a legal footnote: just because you have licensed something in an open way doesn't mean someone can't go to you and renegotiate the terms. It just means this is the default license. If you say all of these ideas are there with non-commercial use and Sony comes knocking on the door and says, "Oh, I want to make your game for Play Station 2 or 3," then you could say, "Okay, we'll negotiate a separate license." But the open licenses, such as Creative Commons and GPL, are just the default uses.

Audience: This is a question about the interface of *The Pool*. Is there ever a point where something expires in *The Pool*? I had a similar site, Art Mark, where people could submit projects and other people could collaborate -- it's a similar idea. At this point, many of the project sites are quite out of date. And when you try to talk to the people, they say, "That was two years ago, or that was last year. We're done. Or, we're not doing it anymore."

Joline Blais: Yes. The question is actually a bigger one -- it's a question of scalability. When there are more projects, how will you be able to see them all? And when there are so many, do you keep, let's say, ten years worth? One of the proposals for this is that projects fade over time. But when somebody picks up a fading project and adds a new approach or a new release, it then bumps back up to a very distinct text. Then over time we have an algorithm that fades the text out. You might be able to search for it, but it wouldn't be part of the major interface. So that has been one proposal.

Jon Ippolito: Nevertheless, one way to get a view of the community as a whole, when it gets really complicated, are the themes associated with each project, which are just subject keywords. What is the subject? You can actually search projects and filter everything that had to do with, for example, "community." That's one way of digging for relevant works.

It's a little buggy but we have been at work on a Theme Pool. The idea here is to spider through all those themes and see which are the biggest ones. What is everybody talking about right now? What is everybody working on? And, as you can see, "community," not surprisingly, is pretty big. It has a lot of contributors. John Bell, Matthew James, and Jamie Cox being the people who have contributed the most projects. "Network" is also big. "Story," and so forth. And "Mobility" has been rated highly because it is in the upper right corner but so far there have only been a few projects like that. Whereas "Star Trek" is not highly rated yet but maybe it will get there.

Jonah Peretti: I just want to thank all of our panelists for their insights. And also Beth Rosenberg, Eyebeam's Co-Director of the online forum. Lastly, I want to encourage everyone to participate in the ongoing online forum. You can go to Eyebeam's website, http://www.eyebeam.org, and look for the Distributed Creativity link. That will take you to the forum, which will be hosted by a variety of communities in the future.