



LEADERSHIP ACUMEN

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COPYRIGHT – A Cornerstone of Civil Society or Agent of Western Imperialism?

Today's globalization trends are moving us closer together than ever before. However, it is also highlighting many differences in beliefs, values and assumptions of what 'is right'. Religion and terrorism notwithstanding, the concept of copyright is becoming one of the most provocative international leadership topics, which engenders both passion and position in conversation – usually at the expenses of reason and common objectives.

At the end of August 2003, the World Trade Organization (WTO) confirmed new policies for generic drug manufacturing in needy countries. The month of July 2003, saw the launch of a public relations initiative by US motion picture studios against pirated movie exchange. Reverse engineering and corporate espionage have been a component of the business world for decades, while the new label of "technology transfer" in Asia, Middle East, and South America flirts with many of the same issues.

With ever increasing recognition that intellectual capital is the real engine of competitive advantage and future potential – for individuals, organizations, and countries – copyright issues are increasingly testing our school systems, business practices, NGO's, national laws, and international relations.

**Banff Executive Leadership Inc. announces its 2003
Leadership Essay Competition
See Left side-bar for further details.**

Values & Emotion

There is this wrist watch in front of me – shiny and heavy. It says "Rolex" on it, and it looks in every way like the real thing. But for US\$50 or less it could be mine. How do you feel about Chinese copy watches? Does it matter that few who buy these copy watches will ever be able to afford a real Rolex?

How do you feel about the \$2 bootleg CD/DVD or the freely swapped MP3 files being used by youngsters? What if that young person comes from a country where he/she earns less than \$2/day for their work? What if that youngster is your son or daughter?

How do you feel about generic drugs? What if that generic drug is breaking the copyright of a multinational name-brand company? What if that generic drug is needed to help one of the millions of dying AIDS patients in Africa that have been waiting for over 5 years to find a way of getting availability to the life-saving elixir that they or their country can afford?

How do you feel about the "knock-off" fashion straight from the Paris runways to your local discount department store?

How do you feel about reverse engineering a "first world" electronic invention, vehicle, or industrial machine by a developing country in order to advance their standard of living? What if they then re-sell their product into your domestic or offshore markets undermining your profits?

How do you feel about hiring a bright young professional – part of a team that developed a new application, or with an established client base – away from your competitor?

How do you feel about the latest Harry Potter Book or Harvard Business Review selling for a fraction of the main language price, in another language version that is unapproved?

I could go on. Our lives are surrounded by these examples of the copyright issues. The first step in Leadership is to clarify our own values and beliefs, yet remain open to and appreciate other frames-of-reference regarding the issue.

In the Blue Corner – Inventors, Originators (often from Western Europe or Americas)

On one side of these arguments are those who believe they are the inventors, claiming copyright laws and international conventions as a basis to stop unauthorized duplication or use. What are the motivations behind their position? Economic gain? Quality of product/experience? Pride of authorship? Global market capture? Re-investment in continued innovation? All reasonable reasons actually, for the establishment of copyright in the first place.

Clearly, anyone who has expended considerable amount of time and resources to develop a product – be that intellectual or tangible – is due a fair return for that investment plus additional economic benefit to support the continued “hit and miss” development process of creating the next generation of product. This ensures sustainability of the innovation process at many levels.

Proper attention to ownership of property (physical or intangible), it is argued, is the basis of civilized society. Without some security over property rights, social systems would collapse. “Ownership” is an important basis of motivation and aspiration. Few could argue against this fundamental position – especially those of us who have worked hard to improve our position in life, saved for or developed our own property, and developed “value” for our personal work.

Of course, few things are black and white. Many inventors have used ideas and inspiration from others in the process. Should the rich and powerful be able to use these principles to buy up all the assets, leaving little common property or potential for property gain by others? The US Copyright Office recognizes the need for balance it in its own legislation, and states:

“In no case does copyright protection for original authorship extend to any idea, procedure, process, system, method of operation, concept, principle or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.”

And so, even in the middle of copyright law and international convention, we are left with “grey areas” and the need to balance individual return with common societal benefit.

Today’s advancing world of intangible value, comprised of formal knowledge, experiential knowledge, shared knowledge and experience – all necessary for enhanced innovation and insight from a larger network – make claims for original authorship very difficult indeed to adjudicate. Physical products, music, etc. are a little more clear-cut; however, here again advancing technology is also changing the concept of ownership.

In the Red Corner – Users, Abusers, Those in Need

For consumers in developed societies or more wealthy social strata, we are used to seeing and purchasing brand-named products (no-stick fry pans, electronics, vehicles, even soap), with the belief that these inventions are worth the extra money. To some extent we also buy brand name goods for the social standing or recognition that

comes from their ownership. Past generations have often successfully established a well ingrained sense of honour and practice around “the real things”. (Excuse the unauthorized use of this term!)

Not so in every country or even every social strata in our own countries. Indeed there is a rising backlash in Western society and their younger generations, in Asia, the Middle East and Eastern Europe against global brands. These groups argue quite loudly against the ‘imperialism’ of the mega corporations and their wealthy march towards world-domination and ownership. Shocking statistics collected recently further their arguments.

In the “State of the World 2001” publication by the WorldWatch organization, it was identified that the top 100 corporations of the world owned some 65% of the world’s assets: real estate, mineral deposits, oil & gas reserves, even pure water sources, and yet employed only 3% of the global workforce. These kinds of statistics would suggest that we are out of balance in the world of “ownership”.

Today, the realm of copyright from a user’s perspective is evolving more towards a sense of fair exchange for value as opposed to a black and white ownership definition.

Our music industry and technology are gripped by this issue at the moment. Steven Jobs of Apple Computer Corp. grasped this changing sea of societal value when he launched Apple’s “iTunes”, \$0.99 MP3 music download service. He has further convinced many musicians and music corporations that a large volume of “fair value exchange” is a more sustainable enterprise than clinging to outdated legal concepts of a by-gone era that played by different rules.

In fact, over the past 150, 50, 5 years, there has been a continuous evolution in the view of copyright and concepts of fair use in general. From a beginning of total ownership in the hands of the originator, we started to create exceptions such as “educational use”. We further balanced off broader social good with individual control by recognizing universal principles, concepts, discoveries, etc. should be useable by anyone to further advance society. Currently we allow individual photocopying or copying off websites for personal use. Technology and educated citizenry are pushing these modifications. Today we still struggle however between those who operate from a frame-of-reference of “Scarcity”, and those who operate from a frame-of-reference of “Abundance”.

Those in “Scarcity” mode operate from a more traditional view of copyright wherein users should pay for the privilege of access to that which we own.

Those in the “Abundance” mode operate from the concept that broadly sharing of ideas, products and services and/or “recognition” of authorship and/or fair exchange of value, is more important than a strict control and remuneration approach. Further, they recognize that enhanced value comes from their personal application of the knowledge or ideas directly with their clients/consumers.

Unfortunately, abusers at both ends of the spectrum polarize the issue. Those who are flat-out abusers of copyright, who steal from others to advance their own benefit (vs. common benefit) and actually try to end-run the originator(s) competing for economic advantage cause the frame of “Abundance” to be given a short hearing. Those who steadfastly restrict access and seek economic domination from this restriction generate anger and retaliation from those looking for reasonableness and common benefit enhancement.

Finally there are those at the lower end of the economic spectrum that simply need the benefit of the basic abundance principle for survival. To withhold such basic benefit raises a whole different ethical and moral copyright argument of huge dimension – as in the AIDS drugs and African/Chinese AIDS epidemic.

In the Middle – Complexity, “Fair Use” & The Referee!

In reality, the copyright issue is facing pressures similar to other aspects of modern life. Globalization, technology, increased social insight and education has become much more pervasive. Our ability to do more

things has outstripped our capacity to exert good judgment about how best to do it. Our speed and ability to replicate things threatens the very sources of knowledge and/or tangible resources needed to produce products and innovations in a sustainable manner.

So we appeal to referee bodies – legislative, industrial, social and religious – to provide guidance. In their absence or inability to respond in a timely manner, we are forced to appeal to our own sense of what is right or wrong.

What is Fair Use? What is Fair Restriction? What is Fair Value Exchange?

The University of Texas has developed its “4-Factor Fair Use Test” as a guideline for its professors, students and others in the use of copyrighted elements. This might serve us well in a broader sense and broader application.

The University of Texas Four Fair Use Factors:

- 1. What is the character of the use?**
- 2. What is the nature of the work to be used?**
- 3. How much of the work will you use?**
- 4. What effect would this use have on the market for the original or for permissions if the use were widespread?**

FACTOR 1: What is the character of the use?

- Nonprofit
- Educational
- Personal
- Criticism
- Commentary
- Newsreporting
- Parody
- Otherwise
"transformative" use
- Commercial

Uses on the left tend to tip the balance in favor of fair use. The use on the right tends to tip the balance in favor of the copyright owner - in favor of seeking permission. The uses in the middle, if they apply, are very beneficial: they add weight to the tipping force of uses on the left; they subtract weight from the tipping force of a use on the right.

FACTOR 2: What is the nature of the work to be used?

- Fact
- Published
- A mixture of fact
and imaginative
- Imaginative
- Unpublished

Again, uses on the left tip the balance in favor of fair use. Uses on the right tip the balance in favor of seeking permission. But here, uses in the middle tend to have little effect on the balance.

FACTOR 3: How much of the work will you use?

- Small amount
- More than a small amount

FACTOR 4: If this kind of use were widespread, what effect would it have on the market for the original or for permissions?

- After evaluation of the first three factors, the proposed use is tipping towards fair use
- Original is out of print or otherwise unavailable
- No ready market for permission
- Copyright owner is unidentifiable
- Competes with (takes away sales from) the original
- Avoids payment for permission (royalties) in an established permissions market

This factor is a chameleon. Under some circumstances, it weighs more than all the others put together. Under other circumstances, it weighs nothing! It depends on what happened with the first three factors.

For more detail on this Fair Use test, click on the web-link in the Exploring the Web section below to University of Texas.

Copyright and Leadership

Amidst clouds of ambiguity, conflicting signals and competing interests, once again leadership is called for.

Leadership in corporate, government, NGO, and personal copyright realms must sift through the evolving environment and chart a course forward. This course forward either for an organization or individual increasingly must pass the community “smell” test more so than a legal one.

With our legal and legislative jurisdictions moving hopelessly slower than technology and other global realities, it is now our social bodies: peer groups, professional bodies, funders, clients, trading marketplaces and community members that will render more important judgments. They will test our integrity – our ability to act consistently, predictably and honourably over the course of multiple decisions. Our community expectations are now out ahead of existing law, and will threaten everything from public disgrace through the media, to consumer revolt and activism - proving to be more damaging than legal penalty.

Finally this issue is testing our societal leaders to establish frameworks that will address ownership and use for larger sustained benefit of the global community.

Exploring The Web!

This month, the connections take you to sites with more perspectives on the issues surrounding copyright.

<http://www.copyright.gov/circs/circ1.html>

USA Copyright Office, Copyright Legislation Summary.

<http://www.accesscopyright.ca/>

Access Copyright (Cancopy) – The Canadian Institution to provide more effective access to copyright materials, and collect copyright dues on behalf of its author/originator members.

<http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm>

University of Texas, Copyright Guidelines for students, faculty and others.

<http://www.worldwatch.org/>

Worldwatch Institute – An excellent source of continuous research and commentary about elements that affect the state of the world.

<http://www.apple.com/itunes/>

Apple Computer's i-tunes download site.

http://www.wto.org/english/news_e/pres03_e/pr350_e.htm

WTO Announcement of generic drugs copyright policy

<http://www.cio-asia.com/pcio.nsf/0/9BC25FA64E4F25CD48256D95002504BC?OpenDocument>

CIO – Asia Magazine September 2003: The Great Debate over Software Patents

http://www.deaconslaw.com/eng/knowledge/knowledge_139.htm

Hong Kong's New Copyright Legislation Summary

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