

Brief for the Statutory Review of the Copyright Act

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I am a practicing artist, designer, and software developer. I have worked for Disney, mid-size companies, small start-ups and for myself making software, video games and digital art over the past 18 years. I went back and forth between industry work and pursuing my own artistic endeavours for many years and much of the time my artistic work focused on arts funding and the digital economy. I'm an artist whose main work and research is exploring how we can make digital technologies into tools for economic emancipation. Thus I've thought about copyright and how it pertains to digital technologies for years.

I would like to present to you the most important principles and ideas that I've discovered. It is important to keep in mind that these principles are for digital goods only, I leave it to others to focus on copyright for physical works. With that in mind, let's review why physical goods and digital goods are fundamentally different, because it is the nature of these differences that provide an opportunity to change copyright to improve outcomes for creators and audiences.

First, physical items are expensive to make copies of, and relatively cheap to move.

Digital items are extremely cheap to make copies and technically, can't be moved; instead you make a copy in the new location and then delete the one in the first location.

It is hard to document the process of how a physical good was created or who made it. Digital goods made with digital tools make it easy to record attribution and process. Literally every key-press and mouse click can be recorded and associated with a particular person and that information can be stored in incorruptible public ledgers. How something is made doesn't need to be recorded separately in an instruction manual or video, you can record the very act of creation a keypress at a time.

Theft of physical and digital good is completely different as well. Someone can steal your physical item by moving it out of your possession. No one can steal a digital good by copying it, instead it must be deleted (or encrypted), depriving you of your digital good. Thus the best way to prevent someone taking your digital good away from you is to make many copies, otherwise known as sharing or making backups, and then distribute those copies as widely as possible so if one copy is destroyed there are many more copies that you can access to regain your own copy.

So what does this have to do with copyright?

The purpose of copyright is to create a system that allows creators to benefit from their labour, trading the harm done by a temporary monopoly for the gain of allowing markets to develop around the exploitation of that monopoly. This works pretty well for physical creations. The difficulty making a duplicate physical item provided a good hook to build legislation around. Indeed, ideas themselves were not subject to copyright, as everyone knew the folly of doing so, including Thomas Jefferson, who famously said, "He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me."

Digital goods are more akin to ideas than physical goods. As more and more creative work becomes digital and is made with digital tools, we need to address this growing percentage of the work affected by copyright designed for physical goods, and plan for a time when the vast majority of all creative work is digital.

Back when the internet was becoming mainstream we were so accustomed to the old physical distribution system for books, film, and music that when digital networks became available the major

entertainment industries convinced us to treat digital goods as we did physical goods. They did this reflexively, without much thought, it was just the simplest approach. When programmers and scientists built technologies that acknowledged that true nature of digital goods such as peer-to-peer file sharing, those technologies quickly ran afoul of the industries that preferred lobbyists over changing their business models.

Now is probably the time to mention that I believe in libraries. I hope that you do too. Libraries are free access to knowledge and entertainment, access to our culture and other cultures. Libraries are the embodiment of the belief that free access is fundamentally important to the richness of our culture and the advancement of arts and science. Strangely, despite this, we limit the access that libraries can provide of their digital holdings. This is not a technical problem; four Swedes built the Pirate Bay website and peer-to-peer file-sharing search engine on a shoestring budget and it has provided digital goods at not cost to hundreds of millions of people around the world for years. If copyright helped libraries in their critical mission, we could easily afford to provide all digital goods, for free to all Canadians.

For a digital economy to achieve its full potential, digital goods must embrace their true nature: copies should be made freely and widely. It isn't until we exploit the ease of copying that we unlock the full economic benefits of digital goods.

Once we get over our shock at the surprising nature of digital goods, we can then start asking the more important question: how do we fund creators? There is no doubt that restricting copying and paying for access allows for creators to recoup their costs by selling digital copies that cost them nothing to "manufacture". It is also true that major changes in legislation are challenging and that good legislation creates a smooth transition from one system to another. But in the end, there is only one viable outcome – the digital economy must embrace it's true nature.

Let me illustrate with an thought experiment. Imagine that instead of a digital book or video game, we instead invented digital bread. Eating this bread was as nutritious as the real thing but copies could be made as easily as anything else digital. Furthermore, how the bread was made was embedded in the bread itself, providing a great starting point if you wanted to modify the bread and add some raisins. The bakeries around the world believe that bread should only be copied at a bakery; home copying and certainly sharing of home loaf copies must be made illegal. You have a tough choice: you could almost immediately solve world hunger by encouraging everyone to make bread copies but that would mean vast changes for a major industry. You will almost certainly be mistakenly blamed for the lost jobs, and you may rightfully be held morally responsible for anyone who dies of hunger. How long do you let people starve for the sake of the baker's current business model?

Digital creative work doesn't feed bellies, it feeds minds. People may not die because of a lack of brain food, but an economy based around digital goods will be poorer, meaner and less innovative when access is restricted; ask any scientist or historian about the importance of the free sharing of knowledge. Instead of solving world hunger with digital bread, you can dramatically increase the real wealth of everyone (by providing free access to digital content) – an immediate increase in their standard of living, essentially turning people into "digital billionaires". Furthermore, ideas do not spontaneously generate, they are end result of mixing all of the experiences everyone takes in each day. The richer those experiences, the richer the ideas, and the easier it is to share those ideas the more they can improve the ideas of others in a virtuous cycle.

The effect of this sort of free access is already demonstrated by the vast amount of free content currently available through the internet, albeit, generally with the hidden price of the loss of your privacy and an increasingly accurate and detailed mental profile of each person to be exploited by the world's best artificial intelligence to provide a pay-for-manipulation service – a dystopia [well described by Zeynep Tufekci](#).¹ Libraries are a far safer, saner and humane way to distribute the world's knowledge and culture.

Thus the real question is how to build a system that still encourages the creation of new digital goods and supports creators while providing free access to goods that have already been made. The system must guard the rights of both audiences and creators carefully to strongly encourage the transition from audience to creator. The answer to the real question is complicated, and goes beyond just copyright legislation and beyond the scope of this brief. I think it is likely that it requires creating legislation and infrastructure that supports crowd-funding-style systems like [Kickstarter](#)² to help fund the creation of specific projects and patronage-style systems like [Patreon](#)³ to help audiences support creators directly.

I urge you to think about the future and start making small but significant changes now. This includes continuing and improving support for libraries, fewer restrictions and penalties for personal and educational file sharing, strong protection for personal copies for backup purposes and format shifting, reducing the difficulties for obtaining rights for mash-ups and other transformative and artistic uses of copyrighted digital work, and initiating a process for the eventual reworking of copyright for digital goods. The long term goal needs to include more than just legislative action, including the development of government-run services for creators that minimize fees and maximize the sustainability of creative work, including funding systems for projects, patronage-systems for creators and a voluntary (“pay what you can”) payment system (with minimal or no fees) that integrates with a free to access digital distribution system. The government should be leading the eventual transition to a system where free access and full transparency of the process of creation is standard practice because creators need support during the transition and the marketplace tends towards solutions that exploit creators.

In the short term, when making changes to copyright I urge to take into consideration the following set of fundamental questions about the structure of an economy:

Who decides what gets made?

Who gets to make it? and

Who gets access to what has been made?

Every time the answers to those questions become more exclusionary you are making markets less free, less democratic and less uplifting. Instead, changing the answers to these questions to “everyone” gives the opportunity for economic emancipation to all.

Copyright reform may not be as hip as fighting climate change, but it is just as important to our economy. You have the opportunity to lead Canada into a future where our digital economy fully exploits the fundamental aspects of digital goods, including: ease of copying, modification, sharing, and transparency. The first economy to make the transition will attract the best artists and creators from around the world and empower them to change the world.

1 https://www.ted.com/talks/zeynep_tufekci_we_re_building_a_dystopia_just_to_make_people_click_on_ads

2 <https://www.kickstarter.com/>

3 <https://www.patreon.com/>