

RED HERRING

ARTICLES

FORUM

RESEARCH

NEWSLETTERS

EVENTS

Advanced Search

OPTIMIZED BY 

- ▷ Capital
- ▷ Industries
- ▷ Profiles
- ▷ Q&A
- ▷ Regions
- ▷ Special Reports
- ▷ Metrics

MARKETS

Copy cats and robotic dogs

What lawyers can learn from comic books.

January 10, 2003

Everyone knows that the Japanese are a bit obsessed with graphic novels, better known as comics. Forty percent of publications produced in Japan are comics, which provide 30 percent of Japanese publishing revenue. But the comics, or manga, market in Japan is divided into two types: one is purely (or as pure as one can get) original work; the other is "amateur" or copycat comics, which develop the work of original artists in different and unauthorized ways. This second kind of comic, called dojinshi [doh-GIN-she], is a huge and growing market in Japan. Dojinshi conventions are among Japan's largest mass gatherings, drawing more than 450,000 fans and 33,000 artists each year. And as comics move online, through the increasing penetration of online games, the dojinshi market is only expected to increase.

In an article published in the Rutgers Law Review this fall, Temple Law professor Salil Mehra puzzles over an aspect of the dojinshi market that would stump most copyright lawyers. Put most simply, dojinshi is illegal. Under United States law, this massive copycat market would plainly violate the original authors' copyright. Japanese law, Mr. Mehra shows, is not much different. So what is it that accounts for this massive "theft" of the creative work of original manga artists? Why is this "invasion" of the "rights of creators" allowed?

Mr. Mehra's article is a brilliant effort to bridge a gap between two very different perspectives on copyright and the content industry: the perspective of lawyers and the perspective of business. Lawyers look at copyrights as if they were ends in themselves; "violating" a copyright is an unalloyed evil; the law should therefore stop such violations wherever it can.

But Mr. Mehra, a University of Chicago-educated lawyer, looks at the question from the perspective of business. For it seems clear, as Mr. Mehra demonstrates, that this copycat market fuels for original manga art demand that otherwise would not exist. The "use" of this copyrighted content therefore benefits the original author.

The reasons are clear enough: in an attention economy, the key is to capture customers and keep them focused. The dojinshi market does exactly that. Fans obsess; obsessions work to the benefit of the original artist. Thus, were the law to ban dojinshi, lawyers may sleep better, but the market for comics generally would be hurt. Manga publishers in Japan recognize this. They understand how "theft" can benefit the "victim," even if lawyers are trained to make the thought inconceivable.

There's a lesson in this example that executives in the content industry should think about before they sign away their businesses to lawyers. The law is a rough-edged tool. It was not crafted by geniuses of economics. How it affects new and different markets is uncertain. A smart business therefore asks not whether the use of its content is "theft," but whether the use of its content will (eventually at least) benefit it. The business of business is to make business, not to purify the world of copyright violations.

Lawyers (save those from Chicago) are not typically trained to think about the business consequence of their legal advice. To many, business is beneath the law.

ADVERTISEMENT

MANAGED HOSTING PROVIDER



When a Sony lawyer threatened a fan of the company's Aibo robotic dog, who had posted a hack online to teach the dog to dance to jazz, he or she no doubt never thought to ask exactly how making the Aibo dog more valuable to customers could possibly harm Sony. Harm was not the issue, a violation of the Digital Millennium Copyright Act was: consumers should be banned from hacking Sony dogs, whether or not it was to Sony's benefit.

Management should begin to demand a business justification for copyright litigation. How does this legal action advance the bottom line? How will it grow markets or increase consumer demand for our products? Will calling our customers criminals increase consumer loyalty?

The point is obvious once you see it, but it's humbling how long it takes to see. At a dinner in Tokyo at the end of October, I described Mr. Mehra's puzzle to Xerox PARC's chief scientist, John Seely Brown. He and I both have written extensively about the content industry, and have both applied Clay Christensen's "Innovator's Dilemma" to understand its slowness to adopt new technologies. "But this may not be an innovator's dilemma at all," Mr. Brown told me. As Susan Haviland, an architect and Mr. Brown's wife, said to him that morning, it is more likely a blinkered-lawyers syndrome: businesses that have forgotten their business, and have instead been taken over by their lawyers.

It is a great point--that sadly takes a nonlawyer to see.

Lawrence Lessig is a professor at Stanford Law School.

Send a letter to the [Editor](#).

RED HERRING Sponsors



[ABOUT US](#) | [TERMS OF SERVICE](#) | [ETHICS POLICY](#) | [PRIVACY POLICY](#) | [CONTACT US](#)
© 1993-2003 Red Herring, Inc.
www.redherring.com