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# Book Review: Remix: Making Art and Commerce Thrive in the Hybrid Economy by Lawrence Lessig

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BOOK REVIEW

REMIX: MAKING ART AND COMMERCE THRIVE IN THE  
HYBRID ECONOMY BY LAWRENCE LESSIG (NEW YORK: THE  
PENGUIN PRESS, 2008) 352 PAGES.

CATHERINE LOVRICS<sup>♦\*</sup>

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Lawrence Lessig's latest book, *[Remix: Making Art and Commerce Thrive in the Hybrid Economy](#)*<sup>1</sup> was inspired by concerns about the reach of copyright law in the United States, and the generation of "pirates" that it has criminalized:

In a world in which technology begs all of us to create and spread creative work differently from how it was created and spread before, what kind of moral platform will sustain our kids, when their ordinary behavior is deemed criminal? ...Criminalizing an entire generation is too high a price to pay for almost any end. It is certainly too high a price to pay for a copyright system crafted more than a generation ago.<sup>2</sup>

Lessig draws on culture and economics in the digital and Internet age to argue that current copyright laws in the U.S. are outdated, inefficient and impractical, and that reform is both desirable and viable. His legislative reform proposal is thought-provoking, even if out-of-step with international obligations under the *Berne Convention*<sup>3</sup> and *TRIPS*.<sup>4</sup> Nevertheless, at a time when Canadian

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<sup>♦</sup> © 2008 Catherine Lovrics.

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<sup>1</sup> Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy* (New York: The Penguin Press, 2008) [Lessig, *Remix*].

<sup>2</sup> Lessig, *Remix supra* note 1 at xviii.

<sup>3</sup> *Berne Convention for the Protection of Literary and Artistic Works*, Sept. 9, 1886; revised July 24, 1971 and amended 1979, 1 B.D.I.E.L. 715 [*Berne Convention*].

<sup>4</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, 33 I.L.M. 1197 [*TRIPS*].

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copyright reform is on the government's agenda, or at least on its radar, Lessig's book is an interesting read.

Lessig describes the re-emergence of a democratic and participatory culture – with the Internet and digital technologies, audiences are now also “amateur” creators. Using the analogy of permissions on digital files, Lessig describes the shift from “RO” (read only) culture to “RW” (read and write) culture. In an RW environment, Lessig's concern with copyright is its vast reach (regulating everyone with a computer) and its bias against RW media. Lessig then points to successful commercial and sharing economic models on the Internet to lead into a discussion of what he considers the key to future Internet successes - the hybrid economy. After setting a detailed stage, with many persuasive real-life examples and entertaining anecdotes, Lessig introduces his five proposals for copyright reform. These proposals attempt to encourage creativity and collaboration enabled by the Internet (especially by amateurs), while providing adequate protections and remuneration for copyright owners (in professional and commercial contexts).

Lessig aims to balance cultural and economic realities with copyright law. His goal is to reform copyright, not to abolish it. Lessig's war is for “free culture”, not to be confused with “all culture being free”. With few exceptions, Lessig argues in favour of legalizing amateur creation of RW works (including RW works that incorporate RO media), but does not defend the outright copying or sharing of RO works without compensation to the owner. When commercially exploited, under Lessig's proposal, RO owners should be able to capture payment for the incorporation of their works in RW media.

#### LESSIG ON CULTURE

Before the player piano, gramophone, and radio, local performances by amateurs defined popular culture. Popular culture in these times was largely RW. Then, the player piano, LPs and CDs delivered professionally produced mass media, passively consumed by its audience. RO media dominated because it was impractical for the individual to participate (technology was neither accessible nor affordable). People became consumers of professional culture (couch-potatoes), and not producers of amateur culture.

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The pendulum swung with personal computers, digital technologies and the Internet. Audiences that had almost exclusively passively consumed culture were responding to culture, incorporating it in their own works, and creating. It wasn't that there was RW "permission" *per se*, but barriers to access were removed. Technology allowed people to create where before only professionals could, and to share in ways never even conceived of before.

Lessig sees value in both RO (generally professional) and RW (generally amateur) culture flourishing on the Internet. This valuation of amateur culture stands in contrast to other accounts, like those of Andrew Keen in [\*The Cult of the Amateur: How Blogs, MySpace, Youtube, and the Rest of Today's User-generated Media are Destroying Our Economy\*](#).<sup>5</sup>

#### LESSIG ON ECONOMY

Lessig describes three successes from the Internet's commercial economy - [Netflix](#), [Amazon](#), and [Google](#), and identifies three keys to their success – The Long Tail, Little Brother, and LEGO-ized innovation. The Long Tail principle is basically widely and efficiently selling less of more (Chris Anderson details this phenomenon in his book [\*The Long Tail: Why The Future of Business is Selling Less of More\*](#)).<sup>6</sup> The less it costs for inventory, and the lower the transaction cost, the greater the range and diversity of inventory that can be provided. The Little Brother helps to efficiently deliver what the consumer wants from the diverse range of inventory that is made available by the Long Tail. The Little (not "big") Brother gets better at meeting demand by gathering customer data. The consumer will tolerate relatively unobtrusive data gathering, provided there is a clear return. The final key is LEGO-ized innovation. Here, functionality, invention and building are democratized, and shared

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<sup>5</sup> Andrew Keen, *The Cult of the Amateur: How Blogs, MySpace, Youtube, and the Rest of Today's User-generated Media are Destroying Our Economy* (New York: The Doubleday Publishing Group, 2007) : For Lessig's blog on Keen's book see Lawrence Lessig, "Keen's 'The Cult of the Amateur': BRILLIANT!" *Lessig 2.0* (31 May 2007), online: Lessig 2.0

<[http://www.lessig.org/blog/2007/05/keens\\_the\\_cult\\_of\\_the\\_amateur.html](http://www.lessig.org/blog/2007/05/keens_the_cult_of_the_amateur.html)>.

<sup>6</sup> Chris Anderson, *The Long Tail: Why the Future of Business is Selling Less of More* (New York: Hyperion, 2006).

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among different and diverse entities and/or individuals (for example, [Google APIs](#)).

Lessig then describes sharing Internet economies, where people contribute for reasons or motivations other than money. Lessig gives several examples of online sharing economies, from Wikipedia to open source software to the Internet Archive. The paradigm, [Wikipedia](#), was built for free, remains free, and has not gone “commercial” (e.g., no ads are served through the site despite massive potential revenue). Lessig places the (loose) concept of “community” at the center of the sharing economy.

Finally, Lessig describes the emergence of the “hybrid” Internet economy – a mix of traditional commerce and the sharing community. In this economy, members of a community are given what they want in a manner that also gives the community something it needs. Lessig provides examples of three types of hybrid economies: 1) community spaces ([Dogster](#), [Craigslist](#), [Flickr](#), and [YouTube](#)); 2) collaboration spaces ([Declan](#), [Slashdot](#), [Last.fm](#), [Microsoft](#), [Yahoo! Answers](#), [Wikia](#), and examples from Hollywood, like Warner Bros. [supporting the Harry Potter fandom](#)); and 3) communities ([Second Life](#)). These examples have elements of user-generated content and/or community-based production accompanied by commercial services and/or advertising. Commercial and shared community aspects commingle in the hybrid model. Principles of “wkinomics” govern – openness and sharing in a vibrant interactive community space, with community members innovating in ways that benefit the host/provider (as expounded in [Wkinomics: How Mass Collaboration Changes Everything](#)).<sup>7</sup>

The key to the hybrid’s sustainability is yet to be determined. Lessig sets out a few observations (or lessons):

- Parallel economies are possible and often profitable – sharing economies can coexist with commercial economies, and crossovers are feasible (for example, a song can be licensed commercially and non-commercially for different uses). Participating in one economy doesn’t disqualify you from participating in another.

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<sup>7</sup> Don Tapscott & Anthony Williams, *Wkinomics: How Mass Collaboration Changes Everything* (New York: The Penguin Group, 2006).

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- Tools exist (like copyright notices and Creative Commons noncommercial licences) that allow creators to “tag” their works for a particular economy.
  - Commercial entities will increasingly turn to hybrid models to produce value for their customers (community).
  - A fine balance is required to maintain perceptions of fairness for participants in hybrid economies. As Lessig puts it: “It is hard for many to see how a ‘culture of generosity’ can coexist with an ethic of profit ... Every company building a hybrid will face exactly the same challenge: how to frame its work, and the profit it expects in a way that doesn’t frighten away the community. ‘Mutual free riding’ will be the mantra.”

Lessig notes that striking a balance requires commercial and sharing economies to validate one another. He describes and calls out “sharecropping” as a practice that is unlikely to survive. “Sharecropping” is when user-generated, usually derivative work, is encouraged, but the fine print grants exclusive ownership to the encourager, not the creator. Lessig notes that users that generate work may be prepared to agree not to profit from it, but that is not to say that they agree with it being owned by another.

Finally, and perhaps most importantly, Lessig takes the position that the hybrid model can help the U.S. to decriminalize youth.

#### LESSIG ON LAW

Having described Internet and digital culture and economics, Lessig suggests five measures to reform U.S. copyright law.

The first measure is to deregulate amateur creativity: “We need to restore a copyright law that leaves ‘amateur creativity’ free from regulation”. “Perversely,” Lessig says, “the law today says the amateur work is illegal, but grants YouTube immunity for indirectly profiting from the work an artist has remixed. That is just backwards, and legal reform to reverse it is appropriate.” His “most simple” solution is to exempt “noncommercial” uses from the scope of the rights granted by copyright. Lessig acknowledges that the line between noncommercial and commercial uses is hard to draw and sets

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out a matrix to assist with the line-drawing exercise. The matrix differentiates type of reproduction and author - “copies” and remix on one side of the matrix,<sup>8</sup> and professional and amateur authors on the other. Copies of professional work would continue to be regulated in the traditional manner, and remain in the exclusive control of the copyright holder, subject to fair use exceptions. “Professional remix” and “amateur distribution” would be more complicated. For commercial uses of remixed works, some compensation would be due. Here Lessig suggests the use of compulsory licences – or some other “cheap and simple” way to secure payment for commercial use. Lessig highlights a silver lining of deregulating noncommercial uses from the RO content owner’s perspective: if misuse is beyond the control of the owner, the owner is not responsible for the misuse, and profits would result from a more interactive fan base.

His second reform measure is directed at hurdles with copyright permissions and ownership (clear and clearing title). Lessig identifies hurdles in clearing title – for example, when a creator cannot be identified or contacted, or when it is impractical to clear title given the purpose for which the work is intended (think classroom uses). The least destructive change, in Lessig’s view, would create a maintenance obligation for copyright owners after an initial term of automatic protection. After the term of automatic protection (for example, 14 years), a copyright owner then would be required to register his or her works, or the work would rise to the public domain. He compares copyright to other property rights systems, which characteristically have some form of registry. In Lessig’s view, if it is not worth it for a copyright owner to take some minimal step to protect his or her work, then it should not be worth it for the government to threaten criminal prosecution to protect the same property. Notably, how a maintenance obligation could be reconciled with international obligations is not addressed.

Simplifying the law is the third proposed measure. Since copyright regulates everyone – it should be clear and easily understandable. This need for simplicity and clarity is, in Lessig’s view, amplified by copyright regulating speech. The complicated U.S.

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<sup>8</sup> “Copies” means the effort is not to change the original work but to make it more accessible. “Remix” means transformative work.

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“fair use” doctrine is held-out as an example – people shouldn’t have to retain a lawyer to know when they are fairly using a copyrighted work in their day-to-day lives.

Decriminalizing the “copy” is Lessig’s fourth proposed reform measure. In Lessig’s view, the law shouldn’t regulate “copies”, but should regulate “uses”. This is, in part, because the concept of “copy” is itself difficult with digital media. Again, how this could be reconciled with international obligations is not addressed.

Decriminalizing file sharing, and finding another way to capture revenue from shared use is Lessig’s fifth proposal. In Lessig’s view, file-sharing is here to stay, and the question that should be asked is what strategy is most likely to assure compensation to artists, and minimize criminalization of youth. He suggests that a collective system to capture sharing may be possible, especially since there are many ways to tag and trace particular uses of copyrighted material. Examples of alternatives include authorizing (noncommercial) file sharing with taxes to cover a reasonable royalty to the artist, and a blanket licence procedure, where people pay a flat fee to freely file share.

Lessig’s latest book is thought-provoking, especially when Canadian copyright law is ripe for reform, and in need of updating for the digital and Internet age. An overhaul such as the one Lessig proposes won’t likely be seen in Canada’s next copyright reform Bill. Some of his proposals don’t quite fit the Canadian (*Berne Convention* or *TRIPS*) model, but perhaps some of the concepts around amateur non-commercial use will be considered. That said, possibly more than a legal reform lesson, the book is an Internet culture and economy lesson about where and how copyright can best serve its owner. True to his professional calling (a law professor), Lessig’s economics lesson is intended for the lawyer, and legislator, for the benefit of his/her clients and the public.<sup>9</sup>

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<sup>9</sup> See Lessig, *Remix supra* note 1 at 248. Lessig writes:

*To the lawyers who drafted the (sharecropping) agreements I’m criticizing (for I’m sure George Lucas, who is an important contributor to education had nothing to do with selecting these terms) my concerns will seem bizarre. They spent their whole career striking deals just like this. The agreements between media companies, or media companies and artists, are not love letters. They do not express mutual respect. A lawyer’s job (at least in the*

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*commercial economy) is to get everything he can. He is to maximize the value for his client. Social justice is not within his ken.*

*But these lawyers are the most likely to fail in this new environment. They have developed none of the instincts or sensibilities necessary to build loyalty and respect with those in the sharing economy that their clients depend upon. Like the lawyers working for union busters at the start of the twentieth century, they're proud precisely of the behaviour that will cause the most harm to their clients.*

*Others will teach them – not through lectures or exams, but through the success of the market others will have, and that they (or more accurately their clients) won't have. Competitive markets will reward right behaviour. Too bad for their clients, but lawyers know little of competitive markets.*