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Book Note

MORAL PANICS AND THE COPYRIGHT WARS,
by William Patry¹

SOLOMAN LAM

IN *MORAL PANICS AND THE COPYRIGHT WARS*, William Patry argues that knee-jerk reactions from copyright owners to new media technologies have led to an unjustified expansion of American copyright law. While consumers can now access and share copyrightable content in ways unimaginable twenty years ago, copyright owners have responded by pushing for more stringent laws, suing consumers, and suppressing innovation. They have also been making “emotionally laden appeals ... designed to demonize opponents and to create the impression that there is an existential threat to society.”² This rhetoric has diverted the copyright debate from the real issue of how the legislative regime should best promote scientific and artistic progress.

Moral Panics examines how copyright owners, in advocating for stronger protections of their work, have exploited certain metaphors that have become norms in thinking about copyright. They have perpetuated the belief that authors are “parents” of their content and that this intimate relationship deserves protection. As Patry points out, copyright is more often treated as a commodity, belying any notion of a maternal connection between an author and her work. Patry also challenges the idea that copyright owners are “sowers” of their work who should have exclusive right to reap the rewards of their labour. Because copyright’s constitutional purpose is to promote social progress rather than compensate authors or copyright owners, protection should extend no further than what is adequate to encourage the creation of new content.

Patry then discusses the portrayal of unauthorized users as thieves, trespassers, pirates, or parasites. He writes: “The current [anti-]piracy campaign is

1. (Toronto: Oxford University Press, 2009) 266 pages [*Moral Panics*].

2. *Ibid.* at xv.

intended to create a negative association with all acts not authorized by copyright owners, including uses that are clearly fair use and, therefore, lawful, such as noncommercial copying for personal use.”³ The metaphor of unauthorized users as pirates is premised on an assumption that copyright is a natural property right exercisable against all other individuals. This is an ahistorical view of copyright, which has always been a regulated privilege extending insofar as it benefits the public. Copyright is better conceived not as property, but as a limited monopoly, an exception to normal practices in a capitalist society.

Patry argues that the panic created around the unauthorized use of copyrighted works has drawn attention away from copyright owners’ own collective failure to embrace innovation and harness technological potential. Rather than give consumers what they want—such as transferable digital content on demand—copyright owners have lobbied for laws that limit consumers’ ability to access, manipulate, or transfer the material that they legally purchase. They have clung to failing business models based on top-down control of content distribution. These actions are “a fruitless effort to resist, to the end, the very nature of capitalism, which is its dynamic, creative force by which new innovations and business models replace old ones.”⁴

Patry is especially critical of the *Digital Millennium Copyright Act*,⁵ which prohibits the use and distribution of technology that circumvents digital copyright controls. This effectively gives copyright owners control over how third parties design and distribute technologies. The current American copyright regime stifles the dissemination of cultural works, hinders scientific progress, and limits consumer choice—all antithetical to the purpose of copyright. Patry argues for a reassessment of current copyright law, guided by the principle of promoting learning and social advancement. He posits that only by embracing innovation and abandoning litigation and consumer control as a business model will copyright owners survive in the information age.

3. *Ibid.* at 94.

4. *Ibid.* at 189.

5. 17 U.S.C. §§ 1201(a).