



*The Politics of Media,  
Technology & Culture*

A USC Annenberg Colloquium co-sponsored by

The USC Center for Law History & Culture

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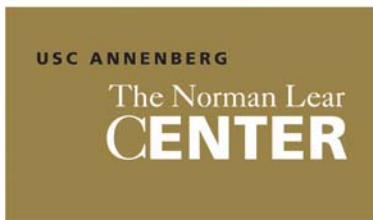
The Norman Lear

**CENTERTAINMENT**

Exploring Implications of the Convergence of Entertainment, Commerce, and Society

### *The Norman Lear Center*

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### *Participants*

**David Bollier**, senior fellow at the Norman Lear Center and co-founder of [Public Knowledge](#), a new advocacy group dedicated to defending the commons of the Internet, science and culture.

**Robert McChesney**, research professor in the Institute of Communications Research at UIUC, with joint appointments in library and information science and media studies.

**Jonathan Aronson**, is a USC Annenberg professor studying international political economy, with special attention to trade negotiations, trade in services, comparative regulation, international strategic alliances and international telecommunications.

## PARTICIPANT BIOGRAPHIES



David Bollier is a Senior Fellow at the Norman Lear Center and co-founder of Public Knowledge, a new advocacy group dedicated to defending the commons of the Internet, science and culture. Since 1984, he has been a collaborator with television writer/producer Norman Lear on a wide variety of projects. Bollier also works as an independent strategist and journalist specializing in issues of progressive public policy, digital media and democratic culture.

Bollier's recent work has focused on developing a new vocabulary for reclaiming "the commons." The commons refers to the diverse array of publicly owned assets, gift-economies and natural systems that are available to everyone as a civic or human right. Bollier's critique of the commons is set forth in his 2002 book, *Silent Theft: The Private Plunder of Our Common Wealth* (Routledge), and in a number of essays and reports. He has developed the notion of the information commons as a new paradigm for understanding the public interest in the digital, networked environment.

Bollier's 2005 book, *Brand Name Bullies: The Quest to Own and Control Culture*, is a darkly amusing look at how corporations misuse copyright and trademark law to stifle creativity and free speech. Described as "hilarious and appalling" by Publishers Weekly, *Brand Name Bullies* includes stories about ASCAP's battle with the Girl Scouts, the Chiffon's case against George Harrison, and the Here's Johnny! toilet fiasco.

Bollier consults with a number of nonprofit organizations and foundations, and has served as a rapporteur for the Aspen Institute's Communications and Society Program for many years. He is the author of six books which explore such subjects as social innovation in American business, the civilizing effects of health and safety regulation, and the legal aftermath of the Hartford circus fire of 1944. Educated at Amherst College (B.A.) and Yale Law School (M.S.L.), Bollier lives in Amherst, Massachusetts. His blog is [www.onthecommons.org](http://www.onthecommons.org).



### **Robert McChesney**

**Robert W. McChesney** is Research Professor in the Institute of Communications Research at the University of Illinois at Urbana-Champaign and holds joint appointments in Library and Information Science and Media Studies. He is also a Senior Research Scientist in the National Center for Supercomputing Applications at UIUC. Professor McChesney's primary research interests are: history of communication, political economy of communication, media policy, and international communication. In 2002 he co-founded, with Dan Schiller, the Illinois Initiative on Global Information and

Communication Policy. In 2003, with John Nichols and Josh Silver, he co-founded Free Press, a national media reform organization. Professor McChesney has written or edited eight books including the award-winning *Telecommunications, Mass Media, and Democracy: The Battle for the Control of U.S. Broadcasting, 1928-1935* (Oxford University Press, 1993), *Corporate Media and the Threat to Democracy* (Seven Stories Press, 1997), and, with Edward S. Herman, *The Global Media: The New Missionaries of Corporate Capitalism* (Cassell, 1997). McChesney's most recent books are the multiple award-winning *Rich Media, Poor Democracy: Communication Politics in Dubious Times* (New Press, 2000) and, with John Nichols, *Our Media, Not Theirs: The Democratic Struggle Against Corporate Media* (Seven Stories Press, 2002). Professor McChesney is presently at work on his ninth and tenth books: with John Bellamy Foster, *The Big Picture: Understanding Media Through Political Economy*, to be published in 2003 by Monthly Review Press; with Ben Scott, he is editing a book to be published by the New Press in 2003 titled: *Journalism and U.S. Democracy: The Critical Tradition*. In 2001 *Adbusters* Magazine named him one of the Nine Pioneers of Mental Environmentalism. McChesney co-edits, with John Nerone, "The History of Communication" Series for the University of Illinois Press.



### **Jonathan Aronson**

Jonathan Aronson is a USC Annenberg professor studying international political economy with special attention to trade negotiations, trade in services, comparative regulation, international strategic alliances and international telecommunications. His most recent book, *Managing the World Economy: The Consequences of Corporate Alliances*, considers how changes in the way the world economy works will force governments to find new ways to conduct their international economic relations after the Uruguay Round of multilateral trade negotiations. He also studies how the globalization of telecommunications networks is influenced by intellectual property, standard setting, and competition policy issues and the implications of these changes for regulation, privacy and the digital divide.

## *The Politics of Media, Technology & Culture*

Jonathan Aronson: I'm Jonathan Aronson, a professor here at the Annenberg School, and I would like to welcome you to our first colloquium of the new year. We've decided to have two speakers today, who discovered that while they had talked, they hadn't, in fact, met. So this will be an exciting opportunity.

I'm pleased to welcome David Bollier and Robert McChesney, two of the more interesting writers working today in this realm of the politics of media, technology and culture. David, who is a senior fellow at the Norman Lear Center and an activist author, is going to speak first. I suspect he'll promo his new book, *Brand Names*.

David Bollier: It's just two weeks old.

Jonathan Aronson: Two weeks old! *Brand Name Bullies, The Quest to Control Culture*. I suspect we'll get some vignettes from that.

Robert McChesney is a well-known communications scholar at the University Of Illinois at Urbana-Champaign. He will also speak. We're going to get them in a bit of a back and forth, and see how this works. Without further ado, I'm happy to introduce David Bollier.

David Bollier: Thank you. It's a pleasure to be here. I find myself in the unlikely position of taking a layman's tour of the forbidding precincts of intellectual property law. It's an area that has been too long the preserve of the professional mandarins and the lawyers. As somebody who came out of the Washington activist policy world, I thought it deserved some focus and attention. I first came to learn about this when I went to a May, 2000 conference that Yochai Benkler, the Yale

law professor and brilliant theoretician of the commons, convened. There were about 50 intellectual property attorneys there.

I was thunderstruck about what I learned about the expansion of the intellectual property law, copyright, and trademark law, particularly the expansion of these issues that have taken up the public domain to diminish fair use in the digital realm. This process is eroding consumer rights, as shrink-wrap and click-through licenses are giving sellers vast new powers. And they are ultimately limiting creative expression, curbing democracy, and stopping all sorts of innovation and dialogue.



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As a result of that revelation, I started Public Knowledge with two colleagues: Gigi Sohn, a media activist at the Ford Foundation, and Laurie Racine, from the Center For The Public Domain, a foundation started by RedHat, a Linux vendor. Public Knowledge is an advocacy group that deals with the public's rights, intellectual property and the Internet, and other digital technologies. We work in much the same space as the Electronic Frontier Foundation, but more on the policy and legislative end of things in Washington. The EFF, of course, is in San Francisco.

As I got into this, I found that one of the biggest problems was how do you begin to talk about intellectual property to people who are not lawyers, people who might not care, who don't understand? How do I tell my mother what's going on in a way that she could understand? I came to realize – in part, also, because I work for master storyteller Norman Lear in his non-television life – that stories are an immensely powerful way to communicate something in its richer complexity. As someone with a smattering of legal training – I had attended a one-year program for journalists at Yale Law School – the more I got into it, the

more I thought, "There's a rich mine of stories in the straight-up legal literature that deserves to be told to the layperson." So I brought together stories to supplement the case law in this area, and assembled them in this book, *Brand Name Bullies, The Quest To Own And Control Culture*.

In some ways, this is a companion piece to my previous book, *Silent Theft*, which is about what I call the modern enclosure movement, the privatization and marketization of resources that we own in common: biotech companies are patenting the human genome; broadcasters are using the airwaves that we all own for free, as a subsidy to commercial speech; multinational companies are acquiring rights to fresh-water shipping to the southern countries; federally funded drug research is being taken over by the drug companies and on, and on.

I found that intellectual property was becoming another instance of the enclosure of the cultural commons, where resources and tangibles, images, sounds and the rest, things that we all have taken for granted, things we all have had access to and should be able to share, are suddenly not sharable. Just today, I was in Beverly Hills. I walked past a hotel, and there was a conceptual art piece, neon words that said, "Visual spaces essentially can't be owned." I thought it was a stunning phrase because, as I've discovered, everything else is trying to be owned, no matter how intangible.

So let's get to the stories, they communicate in a certain emotional way, and suggest that perhaps the law might not be the way it should be. I have four categories of stories: arts and culture, the trademark in public life, the role of copyright and the stifling of free speech and democratic dialogue. There's also a whole section on absurd frontiers of control,

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which includes actual case law, as well as the avant-garde spoofs that a number of artists are creating – it's sometimes very hard to distinguish which is a spoof and which is deadly serious.

I would just say before I start that there are fundamental political questions that these stories all address: do we assign property rights to information, creativity and culture? Does free speech in culture really belong to all of us, as a civic entitlement? Or is it something that really, only commercial entities ought to be able to have the ability to own, while having a whole phalanx of lawyers to enforce those rights?



**Do we assign property rights to information, creativity and culture? Does free speech belong to all of us, as a civic entitlement? Or should commercial entities own these rights?**



Another starter, I should stress at the outset, is I'm not anti-copyright or anti-trademark. I think both bodies of law serve very important functions. But the problem is that the balance that historically has been struck between them has been seriously out of whack. And the triumph of property talk has eclipsed lots of public rights that historically have been there, such as fair use, the public domain, first-sale doctrine, and other concepts like that. Property talk and properties are often a very inappropriate metaphor for the intangible creations of a culture. Because, after all, a culture is about interdependence, and sharing, not simply metering usage through the market with permissions and payments.

I start my book out by talking about a story that I found especially appalling: in the mid '90s, ASCAP, the performing rights society, which collects fees for the performance of music, went after several hundred summer camps that were using copyrighted songs like "Puff The Magic Dragon," and "This Land Is Your Land." They figured that they get a performance license for restaurants, in jukeboxes, in funeral homes, and



so forth. Why shouldn't kids performing around the campfire need a performance right, for which a fee should be charged?

ASCAP approached the American Camping Association, and tried to get fees ranging from, well, the average is about \$1,200 per season for the right to sing copyrighted songs at summer camps – after all, summer camps sort of resemble resorts, and as resorts would have to pay for these rights, why not these kids? The ASCAP C.O.O. was quoted in the press as saying, "The camps buy paper, twine, glue for the crafts, they can pay for the music, too!" Well, when it was discovered that the Girl Scouts were among the commercial camps, there was a huge firestorm in the press! ASCAP got totally singed, and they backed down. Notably, they still retain their legal prerogative to charge for the public performance license if they'd like to.

The lesson that I learned from this which permeates many of my stories is that creativity is, in fact, a socially collaborative, an intergenerational phenomena, as much as an individual one, something that the Ready To Share Conference a couple of weeks ago here at the Lear Center was all about. But the problem is that copyright is chiefly an individual product alone. So you get some extreme cultural collisions of the sort that occurred with ASCAP.

The ASCAP example also shows how much value is socially-created value. "Puff The Magic Dragon" probably wouldn't have much commercial value if you didn't have one generation after another of campers singing it, keeping it alive. It would slip into obscurity, if there were not this socially-created value. And so therefore, why shouldn't the public that creates that music or that art, have some entitlements as well? To this effect, I have a story to tell about rap and hip-hop.

The genre got started with the promiscuous appropriation of sounds; it was a very vibrant new genre of artistic creation for precisely that reason, like the tradition of the blues. Muddy Waters said when he heard that Eric Clapton was using some of his riffs, "Well, if you're going to steal, steal with taste!" Those blues performers understood that the originality was in the performance, not in the composition *per se*. And who could perform like either of those two performers? So, you know, he wasn't too concerned.

Rap and hip-hop encompassed that same tradition. But now, we've gotten to the point where sampling is illegal, even if it's an unrecognizable clip of a half-second: the Circuit Court declared last year that you have to have a license for even the smallest sample. Which essentially means that you have to be a rich artist in order to sample, that the whole vitality of sampling, which was democratic and bottom-up, has started to be cut off at the knees, because of the over-expansion of the market.



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So while intellectual property is repressing creativity, it's really not entirely repressing it, it's pushing it underground. That's why you have phenomena like the "Grey Album," in which Danger Mouse mixed The Beatles' "White Album" and J-Z's "Black Album." It was celebrated as one of the best albums of the year by legitimate rock critics. It just goes to show that creativity's going to happen – the question is can we integrate it adequately or not?

Let me get to some images here. I talked a little bit about music, but painting and visual images are also an example.

This is an image by Barry Kite, who is an appropriationist, an artist. He took Seurat's famous painting, "Sunday Afternoon on The Island of La Grande Jatte," and he did "Sunday Afternoon Looking For My Car." He has dozens of these kinds of art pieces, where he takes familiar images and gives them a modern twist. He's gotten many cease-and-desist letters, and has ignored them. Fortunately, they haven't pursued him. They've considered him too much of a small fry.

For example, the Bridgeman Art Gallery in London went after him for doing the "Sistine Bowl-Off," in which he had Michelangelo people bowling balls like this. They're hilarious, but sometimes also make a trenchant political or cultural point. His epiphany came when somebody ripped off one of his images. And his attorney said, "Well, should I send him a letter?" And he said, "Well, you can send him a letter, and then there'll be two of us paying attorneys!" And the whole point was it's sort of a racket for the attorneys, ultimately. Or it's a show of who's got the bigger army of attorneys to intimidate. Because usually these things don't get litigated to the death, they get settled.

Two years ago, there was an exhibit called "The Illegal Art Exhibit," where Brewster Kahle, who works for the Internet Archive, and Carrie McLaren, who runs an anti-commercialization magazine called *Stay Free*, produced this exhibit of forbidden images. I'm going to show you a forbidden image.

This, of course, is Matt Groening's Binky the Rabbit punching out the Trix rabbit, which I think is hilarious. Now this is from the 'zine, it reads, "Bunnyhop." Matt Groening, who arguably built his career on the masterful appropriation of other people's cultural imagery in *The Simpsons* sent a cease-and-desist to Noel Tolentino, the author of this image, who was forced to destroy all the copies of this artwork. When I asked Tolentino if I could have a copy, he said, no, I can't supply you with one, for legal reasons.

This came from the Website of "The Illegal Art Exhibit." I don't know where they got it. I have a section in my book about Andy Warhol. He's a singular artist for having to been able to navigate a lot of these issues. Because he was of sufficient stature, he was actually able to get Disney to let him do a Mickey Mouse; Disney and the Warhol estate own joint rights of Warhol's Mickey.

But that's if you want to do Mickey. Otherwise, the chances are you couldn't, you probably wouldn't be able to – Warhol had to deal with such things, he wanted to do Aunt Jemima for a series of images called "American Myths," or the Myth Series. And Quaker Oats refused to let him do Aunt Jemima. So he approached this jazz singer, Sylvia Williams, who was performing in the

Village, and he explained the situation. And she was outraged that any company would presume to own her black heritage, portraits of "Mammy." She agreed to pose for Warhol. Initially, he wanted to call his work "Aunt Jemima," but he called his image "Mammy" instead.

There's an example of how a corporation can limit the circulation and flow of an image that is part of our heritage. Had Coca-Cola trademarked its famous Santa Claus image of the '30s, which we know to be an archetype for the Santa Claus we know and love, we wouldn't be able to circulate it the way we do now. There's an example of something that's a part of our folk culture that would be owned by Coca-Cola.



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Another bully in the "Trademark and the Public Life" chapter of *Brand Name Bullies* is Mattel, because it's in the business of protecting the image and meaning of such things as Barbie. It doesn't just simply want to prevent consumer confusion, it wants to protect the singular meaning of her image. So it has prevented a book called *Adios, Barbie: Young Women Write About Body Image And Identity*. The editor had to change the name to *Body Outlaws*, because it was unacceptable for Barbie to be mentioned.

Now who knows, if they went to court, would that hold up? A small publisher in Seattle, CLPress was against Mattel. Who's going to win that one in the litigation? Whoever can throw more lawyers at it! Mattel has even gone after adult collectors magazines that feature Barbie, because it didn't like some of their news features: they were saying they were using Barbie's images without authorization.

An artist named Mark Napier did a series of photographs called "Distorted Barbie," where he made a Down Syndrome Barbie, and an Ugly Barbie, and a Fat Barbie. And that was shut down by Mattel. And then, a few years ago, a photographer named Tom Forsythe did this image called "Enchilada Barbie," which is a series of 78 photographs of Barbie in the kitchen with food, appliances, a blender, in sexual positions. He spent about \$5,000 making it, not very much. But he lost money. And he also created some publicity postcards for his book to try to get more business.



**Now trademark law is used to prevent "dilution:" essentially, if you use an image that's not authorized, you're diluting it, as in the case of Barbie. It's about the cultural control of meaning.**



Mattel got wind of this – you know, no nook or cranny of our cultural life can't be penetrated by the Disney or Mattel lawyers – and they found him and started to sue him. He went to the ACLU of Southern California who said, "You know, we can't do an intellectual property case." So he found a law firm in San Francisco that agreed to represent him *pro bono*. The next few years, they spent a total of \$1.6 million dollars defending him. The case went from the Federal Court to the Circuit Court.

Last year, a major victory was achieved at the Circuit Court level – they reprimanded Mattel for its groundless and unreasonable "trademark dilution claim." Trademark dilution is this expansion of trademark law. Previously, trademark was simply to prevent consumer confusion, or deception, or fraud, a perfectly legitimate goal. But now trademark law is used to prevent "dilution," a very poorly defined word, but essentially, if you use an image that's not authorized, you're diluting Barbie's image. Trademark dilution is really the attempt at the cultural control of meaning.

Another example of this sort of public-versus-private property battle is over Mickey Mouse. This piece was done by a group of hippie artists in the late '60s and early '70s named the Air Pirates. As you can see, it's a vulgar version of Mickey Mouse, they scraped together about \$1,000 to print this, and they smuggled it into the Disney boardroom; they wanted to provoke Disney. And they quickly got their lawsuit! Eventually, this found its way to the Circuit Court, where they ruled that the comics were not protected parodies; this character was not fair use because while it's okay to use a recognizable character, "excessive copying precludes fair use." Essentially that means that the Air Pirates were too good, the likeness was too good of a likeness, they took too much of Mickey Mouse to be permissible.



**Groucho Marx had this hilarious set of correspondence with the Warner Brothers' attorneys. He said, "Professionally, we Marx Brothers were brothers long before you were."**



I also have in my book a section called "The Corporate Privatization Of Words," and there are several examples of this. Of course, there's the famous example from history where the Warner Brothers went after Groucho Marx because he wanted to name his movie *A Night In Casablanca*, which, of course, might be confused with *Casablanca*. Groucho had this hilarious set of correspondence with the Warner Brothers' attorneys, making fun of them. He said, "Professionally, we Marx Brothers were brothers long before you were." He pointed out that even before the Marx Brothers, there was the Smith Brothers, the Brothers Karamazov, Detroit Tigers outfielder Dan Brothers and "Brother, Can You Spare A Dime?" which Marx asserted was originally plural, but this was spreading the dime pretty thin, so they threw out one brother. Marx asked Jack Warner if he was the first Jack, citing Jack The Ripper as a possible precursor. So when I read this, I thought, "What would Groucho say today?" It's sort of like us, today, in some of these stories.

Here's an example – DaveZilla.com. There's a Japanese company that owns the trademark to Godzilla. And they make a business of going after anybody who uses "zilla." They notified Dave, the gentleman who runs this Website.

Another great example in this vein of the corporate privatization of words is, of course, Al Franken, who used the words "fair and balanced" in his book title, "Lies and the Lying Liars Who Tell Them: A Fair and Balanced Look at the Right." Allegedly, Bill O'Reilly of Fox News claimed that it owned the trademark to the phrase, "fair and balanced," that this was diluting, if not causing consumer confusion, despite, of course, the lies right across it all in the title. So they were, with a straight face, arguing to the court that this, "fair and balanced" representation was confusing consumers in the marketplace. Well, they were laughed out of court, fortunately, but they were lucky that the publisher, Dutton was willing to hire Floyd Abrams to pursue the case for them, and make a big stink. But of course, if you're not Al Franken, you may not be likely to prevail against Bill O'Reilly.



**The Online Library Consumer Library Center sent around cease-and-desist letters saying, "If you're going to use "Dewey Decimal" in your library, you need to pay us a license.**



A similar, but lesser-known story is about the Dewey Decimal System. Here is a cartoon making fun of portions of it. The Online Consumer Library Center, the OCLC, owns the trademark to the phrase "Dewey Decimal Classification System." They sent around cease-and-desist letters to many libraries saying, "If you're going to use "Dewey Decimal" in your library, you need to pay us a license for it." The claim that the library system updated, refreshed, and renewed the system over time, and had since the 1870s, ever since the classification system was named for founder Melville Dewey, didn't count for anything because the OCLC had bought the rights to the trademark. This obviously is, shall we say, chilling? It has had some chilling affects on public life.

Another story we don't hear often deals with an aspect of copyrighting: West Publishing claims that they own the copyright and the page numbers of Federal Court cases. This case was really important because if you're a lawyer, you have to use the page numbers as citations. Therefore, West Publishing had this perpetual monopoly on access to the law because nobody else could use their citations without violating their copyright. Fortunately, that case was thrown out in the late '90s, however, they still remain the main copyright and page number provider due to their decades of dominance.

There actually was a case of a Texas building code that the Trade Association had developed that was passed by the legislature. In it, the Trade Association claimed a copyright of the building code. And they actually prosecuted a man who put the code on his Website because he figured, you know, anybody should be able to see the building code, it's the law. He had to actually pursue this through litigation to the Circuit Court level before he was vindicated. So building code law remains in the public domain. But this does give you an idea of how precarious our public access is to things that we thought belonged to all of us.

Here's something that belongs to all of us, the "I Have A Dream" speech. This is actually private property: it's owned by the estate of Martin Luther King, Jr., Coretta Scott King, and her four children. They have gone after both companies and individuals for using the speech or the image without appropriate payment or permission. I personally find it odious that something and someone we have a national holiday for are still considered private property. Meanwhile, the King estate has licensed the use of this speech to Alcatel and Cingular for advertising campaigns. So this shows, in stark clarity again, the collision of marketplace values and some really coarse civic and democratic values.

Finally, I'm going to talk about intellectual property going over the top. There are instances where, if you could meter singing in the shower in some way, and enforce it adequately, the songs would likely be considered private property, and not usable. A more stunning example of this is pursued as a joke, but actually became part of the law. This is a certificate to University of Iowa Professor



Kembrew McCloud, who got the trademark on the expression "freedom of expression." It is actually his private property!

He had a chance to vindicate his rights when AT&T developed a marketing plan called "Freedom of Expression" for college students. And he sent them a cease-and-desist letter, and was promptly ignored; they didn't even send a reply. And of course, he had no legal resources to pursue a case against AT&T, but his point was made.



**One man got a trademark on the frownie emoticon. He wrote a press release saying he was going to sue the 7 million Internet users who use it!**



My other favorite trademark story is of a gentleman with a spoof corporate inspiration merchandise company called Despair, Inc: he got a trademark on the frownie emoticon. So he wrote a press release in which he announced that he was going sue the 7 million Internet users who used the frownie emoticon! He said he was going to use the FBI Carnivore software program to track them all down. And in a phrase that I found stunningly similar to Jack Valenti, he said, "We don't care if you're the *Time* 'Man Of The Year' or a momma's boy, we're going to chase you down, and give you something to frownie emoticon about!"

I found a number of stories in which these spoof artists would create spoofs that a lawyer might pursue – spoofs that I, at first blush, would not be able to distinguish from the real thing. Larry Lessig posted on his blog that two patrons of Starbucks Coffee in North Carolina had snapped snapshots of each other in a Starbucks establishment; they'd come together after not seeing each other for many years. A manager rushed up to them and said, "You can't take pictures of each other in a Starbucks!" He didn't fully explain why they couldn't, but the supposition was that their interior design involves carefully designed trade dress.

Well, Larry posted this on his site and within days, got dozens of people saying, "You know, I was in Hong Kong, that happened to me!" "I was in Texas!" "I was in, etc.!" And it was an apparent corporate policy. Neither he nor I were able to verify this when I contacted the Starbucks p.r. department, and they didn't get back to me after several inquiries. But the supposition is that their trade dress ought to be protected, that even casual photographs would violate their rights.

I've got many more stories I could tell – they're fun to tell and they're good for a laugh. But they add up to a larger picture, which is that there's a tighter lockdown on culture than previously. This has been achieved both through the law, and through the technology itself – lots of encryption and digital rights management systems. The folk culture, the bottom-up culture, especially that represented by the Internet, is being privatized.

Disney, of course, is another story in itself. It's an empire in many ways built upon the backs of folk stories and literary classics that arguably, they created the value of the franchise on. Elsewhere out there are broad trademark claims on certain words, attempts to own facts through database legislation, litigation to squelch parodies, broad protection for celebrity persona.

I could go into that, how you can't call your portable toilet company, "Here's Johnny!" because Johnny Carson's personal rights would be violated. You can't evoke the image of Vanna White's letter-turning by using a female robot – she got \$400,00 from Samsung for violating her rights. There's many enclosures of the public domain, enclosures of facts, laws, news. There are claims to own letters, silence, smells, even yoga postures: Bikram Choudhury of Bikram Yoga is claiming copyright control over his sequence of yoga postures. So there's a rough overview of all this.

I consider the intellectual property aspect of this one major manifestation of a phenomena that actually effects many other aspects of media policy and concentration. Bob McChesney's going to talk a little bit more about some of the reform efforts that are underway to deal with this. So with that, I'll turn you over to him.

Robert McChesney: Thank you, that was a terrific talk! David, I can tell you right now you're going to sell 300 copies of that book to me! I'm going to use it in my undergraduate course in the fall. It's very timely, and extraordinarily important, and it really illustrates the central significance of policy-making – all of this takes place because of policies. There's nothing free-market about any of this. In fact, all that intellectual property law is, is an interference with free markets.

Intellectual property law creates monopoly privileges to prevent there being competitive markets. And like David, I share the importance of copyrights, they have a very important role. But what he describes, and what Larry Lessig has described, is simply an outrage. As I'm about to discuss, this situation owes to extraordinarily corrupt policy-making in this country. And if we right that process, issues like this will get the fair hearing they deserve, and we'll eventually have intellectual property and copyright laws that'll reflect all our interests, not simply those that the media content holders want.

But before I start my talk, I want to thank you all for coming, and to thank the USC faculty. I've had the privilege of meeting a lot of you over the past few years, but most especially this weekend, we've met and talked about a number of issues. I want to thank my friend Larry Gross, who has really been central in getting me connected to USC, ever since he's come out here. I've been working closely with him on a lot of projects, and looking forward to doing a lot more work in the years to come on all these issues.

Some of you might be familiar with my work, some of you might not be. I've been examining the history of our media system, and the institutional pressures that have generated certain types of content, and discouraged certain other types of content, and how those have been related to the structures of different industries. More importantly, I've been researching the policy-making processes, and the policy fights that have created those structures, how those policies were derived, and how this has determined our media system.

The conclusion that comes from my research is that it's inaccurate to think of our media system as a natural, free-market system. It's inaccurate to think of the system that we have today as being

something that was ordained by the founding fathers, by Moses, by the Constitution, by Adam Smith – those people have nothing to do with what exists today, no relationship whatsoever. In fact, in the first chapter of my last book, *The Problem Of The Media*, I did a detailed analysis of our founders and their understanding of the freedom of the press, and included the policies that they put into place to create a free-press system in this country: extraordinarily lavish postal subsidies to spawn a much richer print media than the market would have ever permitted.

It's clear that no one in the first 100 years of this country's history, not a single person, could have conceived that the idea of freedom of the press would now mean simply letting wealthy media folk make as much money as possible, and letting the chips fall where they may. That was an absolutely unthinkable idea. Freedom of the press was a right that all free men and women had in a self-governing society. It wasn't just a right for wealthy individuals to make money, without government interference.

Moreover and even more strikingly, if you look at our largest media companies, without exception today, they're all premised upon enormous gifts of government monopoly licenses, subsidies and privileges: there's not a free-market player in the group. There's nothing free-market about these guys. What are these privileges I'm talking about? Radio and TV licenses, grants for free monopoly privileges, and monopoly protection by the government to radio and TV slots; cable franchises, monopoly franchises given by municipalities – that's very lucrative, at a nominal expense, I dare say; satellite system franchises – there's only so much spectrum for a couple of satellite systems to serve this country. You get one of those chunks, you're sitting very pretty.



**Our largest media companies are all premised upon enormous gifts of government monopoly licenses, subsidies and privileges: there's not a free-market player in the group.**



And then most importantly, the largest privilege of all, one that's rarely talked about, is about copyright. I asked Larry Lessig, "Larry, how much is copyright worth, these monopoly privileges that we give to these companies, these media companies?" And he said, "No one knows because no one's calculated it." There are, however, occasionally lawsuits that come out over copyright, and the value of copyright protection between different parties. When they sue, people wonder, "Will they estimate the amount?"

There was one suit by the A.A. Milne estate for *Winnie The Pooh*. There was also a famous lawsuit in the '90s, this one was just a small-potatoes thing that Disney claimed they had copyrights for, and they were fighting whomever the Milne family had sold the rights to, because you can sell copyright privileges.

In the suit, they calculated over a billion dollars a year by the courts just for the copyright value for *Winnie The Pooh* for Disney. So you can just imagine what the value of that monopoly subsidy is, that copyright protection, which is the foundation of these companies. But by Larry's estimation, that's a minimum of hundreds of billions of dollars annually in subsidies that we give these companies, in effect, maybe even more.

So this system is not a free-market system. That's why this trend absolutely makes my skin crawl. Deregulation. Have you guys ever heard that term? Like the choice in media policy and our media system is regulation versus deregulation. Government bureaucrats nosing around, poking around, versus freedom and liberty. But this media system has nothing to do with deregulation versus regulation, the question isn't whether someone's going to be regulated or not regulated. The question is always, "What sort of regulation you're going to have, and in whose interest is the regulation being done?"

We're told today, for example, that the radio broadcasting industry has been deregulated. In 1996, the ownership cap was lifted on radio, so that a single company could own as many monopoly licenses to radio stations in this country as they could afford to buy – up to eight in a

single market! That was the deregulation of radio. Test out the deregulation hypothesis, if you want to kill some time one afternoon. Go out, locate a Clear Channel station in your community, it won't be hard – they own 1,400 stations! Locate when you start broadcasting on their frequency! Say, "Hey, you're deregulated, now it's my turn!" See what happens! After your 20th year in Leavenworth, you'll say, "Gee, I guess it still is regulated! It's just not regulated for me: it's regulated for them."



**Whenever you see the term "deregulation," substitute the expression, "Regulation purely to serve private corporate interests."**



Whenever you see the term "deregulation," substitute the expression, "regulation purely to serve private corporate interests." If you see the term "deregulation" in media debates, insert that term, and you will understand what is almost always going on – the real debate is over who the regulation will serve, and how those regulations are going to be determined.

As I said, from the very beginning of the Republic, Jefferson and Madison put enormous amounts of energy into the notion of a free press: how to build one, how to have one. Because they understood that the Republican experiment was unthinkable, self-government was unthinkable without a viable press system. Since then, and to this day, our media system's been built on policies, and at crucial points – particularly when new technologies emerge – there have been policy debates, struggles, fights over how these policies could best be deployed to serve the people of this country, going back to the telegraph, the post office before that, radio, films, television, satellite, cable through to the Internet.

The debates have sometimes been intense, as they were over the telegraph and radio broadcasting. Sometimes they've been mild because

they've been unknown to the general public and behind closed doors, as they were with television, satellite and cable. But they've always existed, and they're unavoidable. I mean, there's no natural way to set up a media system for society. Even if one were a free-market fanatic, even if one slept with a copy of *The Wealth Of Nations* under their pillow every night, and said, "I believe in free-market economics for media," one would still need aggressive government regulation to create a free market. It just doesn't happen naturally. It's impossible.

The problem we face today goes directly to what David was talking about: we know our system's filled with policies, and we know the rate of policy debate. If we have a bad system, a system that's deeply flawed, then it's based on bad policies. Then where do the policies come from? Probably from some sort of bad debate. But even if you think you've got good policies and a good system, the policy debate's probably the capital good that produces the consumer good. It's the nucleus of the atom of the press system.

You have to understand how those policies are determined – in this country, we've had varying degrees of policy-making: the debate in the early Republic was extraordinarily rich, with public involvement on the topic of postal subsidies. The terms they fought for were clearly about democracy. The leaders of the movement tried to expand postal subsidies to make it easier to distribute newspapers. This went back to abolitionists who understood their newspapers to be the first ones to be shot down if they had to pay full amount for their postage. They actually got free postage for weekly newspaper distribution within their counties by the 1840s, as a result of their abolitionist activity.

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**Even if one were a free-market fanatic, even if one slept with a copy of *The Wealth of Nations* under their pillow, one would still need aggressive government regulation to create a free market.**

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But in recent years, most of our debates have grown incredibly corrupt. They're done behind closed doors with absolutely no public involvement. And so, you get the media system we've got. There are a small number of firms lining their pockets and hiring p.r. firms to tell us they're giving us what we want, that's the system we have.

The way I like to describe the media policy-making process in the United States, is with the following illustration. It's absolutely the perfect example to bring up in Los Angeles, near Hollywood. It's from the 1974 Oscar-winning film, *The Godfather: Part II*. There's a classic scene about halfway through the film that takes place in Havana. Hyman Roth and Michael Corleone and all the American gangsters are assembled on a patio; this is back when Batista was running Cuba, before the revolution.

And they're dividing up Cuba amongst themselves. You know, like, "Frankie from Chicago, you get the casinos. Louie, you get the prostitutes." The island's theirs, they own it, they get it. And just so we get the hint of what's going on here, it's Hyman Roth's 67th birthday, he's carving up his birthday cake, and giving a slice to each gangster, as he tells them what they're getting. And that cake, of course, says Cuba on the outline, so they're getting a slice of Cuba. And while Hyman Roth is doing this, he's saying, "Isn't it great to be in a country with a government that respects private enterprise?"

That is exactly how media and communication policies have been created in this country for the most part, for the last 50 years – extraordinarily powerful lobbies carving up a cake, giving away all sorts of government goodies, monopoly licenses and privileges, benefiting from them richly. And then going out and saying, "This is free market, this is private enterprise!" When it is the most corrupt crony capitalism imaginable, and an affront to any notion of genuine free-market capitalism. The analogy continues a bit further, because if you remember the movie *The Godfather: Part II*, you know that Hyman Roth and Michael Corleone weren't in cahoots together. The movie was about their contest to each get the biggest slice of the cake.



That's what it is with these guys who are carving up the cake, the telecom companies, the cable companies, the movie studios, the networks, the conglomerates – they're fighting each other for the largest slice of the cake. They have huge lobbying arsenals, I regret to say, not because of us, not because they're concerned about the general public, but more so because they're fighting each other. That's why they have their nuclear warheads, their lobbyists: that's the major fight they have.



**The copyright should be a temporary thing, after which the copyrighted work should go into the public domain, where it would become our common, cultural heritage.**



But the one thing they all agree upon is that it's their cake: no one else gets a slice, no one else gets to know about these debates, they aren't going to cover them. We're supposed to assume it's a natural system, and God meant for them to run it, God meant for us to just shut up and shop. That's supposed to be the way the system works.

And no area of policy-making has been more corrupted than copyrighting and intellectual property. In this process, the Hyman Roths and the Michael Corleones have gone unabated – the terms of the copyright have been extended 11 times over the last 40 years: they can now be traded as a commercial privilege and a property right, which is in complete violation of the principal on which copyright's founded. A copyright was meant to be and should be a tax on knowledge. There's a necessary evil that we should allow creators to have, to give them incentive to create, but the copyright should be a temporary thing, after which the copyrighted work should go into the public domain, where it would become our common, cultural heritage. It's obvious that's what the copyright is supposed to be, that's why it's in the Constitution. And that's how it worked for the first 120 years of the Republic.

And the copyright's been destroyed because of the Hyman Roths and the Michael Corleones, because of corrupt policy-making. Now if you understand our policy-making that way, then you understand what the solution is: the solution is to energize people to be aware of these debates and to participate in copyright forums. The core principle is the more informed popular involvement there is, the more likely we are going to have policies that serve our interest, not just their interest. I don't know exactly what those policies would be. I'm willing to take a chance and find out. But I do know what they're going to be if we don't participate: we're seeing them! They're going to be policies which suit Hyman Roth and Michael Corleone, not us!

If I had given this talk about two-and-a-half years ago, it would have sounded very hypothetical and theoretical. "Oh, yeah, sure – you're going to challenge those guys who control the debate! They're the most powerful lobby in Washington, they're enormously strong! They own the politicians from both sides of the aisle. And they control the news media, so how much press do you think you're getting on this one? It's hopeless! What we do is we'll change the world on every other issue, and once we've solved every other issue, it will finally drag media up: we might have a prayer of getting the media in 2812. But it's a hopeless issue to try to organize them." That was the conventional wisdom.

I understood the argument. And I've done enough historical research to show the power of this lobby, so it's difficult to argue with that sentiment completely. But I also knew, from my own experience, the deep trouble that so many Americans have had with media. And when people understood that the media systems were not a given, like the Rocky Mountain Range, but that there was something that could actually change, that these policies were made in their name, that there would be a change, there'd be an uprising of sorts.

I think we've seen the beginning of that in the last two years. The changes have been primarily launched by the media ownership fight of 2003 when the Federal Communications Commission announced it was going to review its core media ownership regulations with a clear eye to eliminating them altogether, or at least relaxing them. Three of the five members of the FCC are Republicans, they're handpicked by industry. Michael Powell, the chair of the FCC gets criticized

oftentimes for being a stooge of industry. He's the best of the three, he's the most public service-minded of the Republicans on the FCC, in my opinion.

When we talk about politicians being in the pocket of industry – the Bush Administration's been in the underpants of industry! They've been completely read to by the needs of these firms. So any sort of reform on this matter looked hopeless: it looked like they were going to lose three votes on this issue no matter what happened. The three members said, "We don't care what data comes up, we're going to vote to get rid of these rules."

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**The three members of the FCC said, "We don't care what data comes up, we're going to vote to get rid of these regulation rules."**

Before there were even hearings, they made their points clear. They were on scale to get rid of this regulation. And Congress, with both Houses being controlled by the Republicans, had made it clear they were going to make sure the FCC went through with it, especially because of the Bush Administration's being completely gung-ho to advance the interest of their supporters in the corporate media community.

Despite that, we still have this uprising that is working to stop these interests across the political spectrum. Once you get off Wall Street and outside of the Beltway, even conservatives don't like the idea of having their children's brains marinated in advertising. Everyone was outraged at the corruption of this policy-making process – it's absolutely indefensible, unless you're a shareholder in Clear Channel, or Sinclair, or one of these companies. And the uprising was like a prairie fire: once people understood the system's a result of policies that can be affected, it was like a switch went on.

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Suddenly everything changed: three million people contacted Congress and the FCC over the course of 2003. We had several votes in Congress to overturn elements of what the FCC had done, after they voted in June 2003, to relax the ownership rules. Finally, the courts threw it out, and now it looks like it will not be appealed in the Supreme Court, the media industry might push it. But it's going to come back to Congress again and the FCC again, later this year.

This year, they're going to meet a welcoming committee. This year they will not be operating on that patio in Havana. This year they're going to meet hundreds of thousands, millions of people who have organized to work on this issue. Much of that work's going to be done by a group that I helped co-found called Free Press, I think a lot of you are familiar with it. We began just two years ago with one staff member, Josh Silver, who's hiding over there on the floor. Josh, who's our executive director, had been the person who organized the campaign to get free elections in, what's the exact term of it in Arizona?

Josh Silver: Public funding.

Robert McChesney: Public funding for elections in Arizona. Increasingly, Josh came to realize that every issue he was concerned about went through a mediation process – as long as there was no journalism, no press coverage, he wasn't going to solve anything. So we had to fix the media problem in this country, make that mandatory, a high priority. Josh came to me and my friend, John Nichols, whom I've written with at length, and said, "Let's start this group." Two years ago, Josh was alone, working out of someone else's office.

Today, we have 13 full-time organizers, a Website, [www.FreePress.net](http://www.FreePress.net), and three people in our Washington office. This movement is exploding in a way that simply was unthinkable two years ago, because that light switch is going on. People understand that this is an issue we can change, if we organize.

To get some sense of how far it's come – and I'll conclude on this note – just in the last three months, [www.moveOn.org](http://www.moveOn.org) and True Majority, two groups that have Internet lists and memberships in the millions did surveys of their members. They asked "What are the issues we should work on? What should we put our most energy and resources into for the next few years, after the Bush election – the Iraqi war, the environment, civil liberties, civil rights, what are the issues we should put our most energy in? In each of their surveys, the second-ranked issue was media reform, ahead of the war, ahead of the environment. I'm telling you, five years ago, media reform wouldn't have made the top 10.



**In each of the surveys of Move On and True Majority, the second-ranked issue was media reform, ahead of the war, ahead of the environment.**



What's the media? What is that? Is it, "What show are we going to watch?" We've come a long way, but we have a very long way to go. I think for those of you who are students and researchers, you do understand that there is a central role for hard scholarship here, real analysis, real historical research to help inform policy-makers, help citizens, draw them into these debates to be meaningful participants. The exciting thing here is that it's wide open.

We're in what I think, historically, we would call a window of opportunity now to change things in a way that hasn't been the case in our lifetimes, and it's been brought on, on the one hand, by the collapse of the current regime, and the new technologies and the policy issues that have emerged with these technologies on the other – copyright, digital rights management, spectrum, ownership access, and on and on. They're all going to be settled, most of them in core ways in the next three, five, ten years in the United States, and globally. What's going to happen with regards to them is in our hands, so let's all work together on them! Thank you.

Jonathan Aronson: The floor's open for questions.

Unidentified Participant #1: This is not exactly a question, it's a quick comment, which was that I was at a retreat a week or so ago put on by the SCIU. It was to bring together Move On, Hip-Hop Summit, and Rock The Vote, and to ask all the young people, "Where do we go from here?" At one point, I suggested that the three issues that would make more difference than any were campaign finance, media, and elections. And there was pretty sound agreement that those three, together, which have all shown movement in the last years, are the ones that really are leverage points for just about everything else, anything that anyone at that table cared about.

Robert McChesney: Yeah, I agree. I will say this about campaign financing: Josh and I have talked a lot about this, we're seeing a lot of people and volunteers in campaign finance moving over to media, because campaign finance reform is kind of hopeless. It's not a great issue. Though it's more important than ever, no one talks about it anymore. The last election was by far the most money-drenched election ever. But we hear a lot less talk about it since than we did in 2002 because people have given up.

And the reason why they've given up, knowing the short term, is that in campaign finance, unless you win everything, unless you get fully publicly-funded elections, with no error, no holes, you can't win. So if you leave the slightest crack, they're going to drive a billion dollar truck through it at a 100 miles an hour, and destroy whatever the spirit of the reform. It happens every time.

Josh can speak for himself, if he wants to, on this. But I think that what a lot of people have discovered with campaign finances is that when you try to do any campaign finance reform in Washington, you find out, number one, "Do you know who you're fighting?" The media. They are campaign finance! For example, the NRA is all about gun control. Where does all their money go? It goes to about six or seven companies that own all the TV stations, the same companies that collect literally billions of dollars from political ads, and then do absolutely no local journalism

covering candidates, as we know. So we organize around campaign finance reform through organizing around media reform.

Unidentified Participant #2: Are you seeing very many TV license challenges doing this the current way? The telecommunications industry actively opened this window for a little while, and then, it was slammed shut again.



**Look to the record: if license owners have not served the community like the law says they're supposed to, take their license! Lots of other people can use it, give it to one of them!**



Robert McChesney: That's a great question. You know, believe it or not, the licenses that broadcasters get, they didn't inherit. They aren't seized for them by Jesus! Theoretically, they don't pay for them, unlike cell phone companies that pay for theirs. Because theoretically, they aren't currently commercial concerns, they are something of a public interest – that's the justification. They are not having to pay for their chunk of spectrum, unlike other users of spectrum.

It's a farce, of course. It's never worked that way, and it's gotten worse and worse and worse, largely because, for that system to work, you've got to withdraw licenses periodically. You've got to say, "Okay, you blew it." License owners don't see challenges to their licenses. You've got to base a license on necessity. Look to their record: if they have not served the community like the law says they're supposed to, take their license! Lots of other people can use it, give it to one of them! If you do that a few times, then you're going to start seeing some reactions.

Since that's never been the case in the United States, broadcasters don't fear it, so they don't have to do anything. I think because we're working to make it possible to raise hell on these sorts of issues. And it's a great

way for communities to come together, talk about what they want from their local media, and really get to know each other and start working together on these issues.

David Bollier: An interesting contradiction that we run into in our work is this tension between a deep desire to work in reforming the media culture and policy, and the necessity for artists to actually be able to participate in the commercial exploitation of their work, in order to be able to continue being artists. And so there's a big debate going on within the artistic community about the value of trademark and copyright. That tension is extremely difficult to work through. I think that's because for the most part, musicians and many other artists are caught between the middle, they're pawns in a larger battle. But I also think that there is a divided soul among artists.

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**There's a big debate going on within the artistic community about the value of trademark and copyright; there is a divided soul among artists.**

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Robert McChesney: Yes.

David Bollier: Pete Seeger had a small conference in November of folk singers, performers, and so forth, called "Music, the Public Domain and the Cultural Commons." Yet there's a surprising number of people whose very livelihoods as folk performers are dependent upon the legacy of the past, and a community of people who pass around songs. And they want to be strict property controllers of their work.

Robert McChesney: Right.

David Bollier: I think that's an inherent tension in the current system. I think we're in an interregnum where we're going to have to develop new market structures whereby artists can more directly control and benefit from their artistic creations. Because right now, that's just not



possible, they just don't have the market power. I think it's a poignant dilemma that artists face. But I don't see an easy solution until new market structures, at least, particularly in the music business right now, are developed.

Robert McChesney: Yeah.

Jonathan Aronson: David?

David Bollier: Yes, Jon.

Jonathan Aronson: I think we have to go back to Bob's monopoly rents issue here. Because if you look at it from the artist's point of view, in the music business, for instance, if the artist gets seven to eight percent of the selling price of what is sold, and there are people who are extracting the monopoly rents for controlling the three record companies that still exist in the world, that's a tension. Artists have to understand that as long as they continually give in to that system, most of the value will be carved off the top by the guys who control the monopoly rents. And then when we get into the network neutrality issue of whether the four big broadband providers in the world will carve a huge amount selling an artist's music, that will be another issue: the artist will get even less. So that's where the battles come to be fought.

Unidentified Participant #3: There are a number of people talking about alternative compensation systems in the last few years. They're usually centered around some form of blanket licensing. Can you comment on that?

David Bollier: I think that things are in great flux. People who are more knowledgeable than I, like Jonathan, can talk about that. I think that it's imperative that we develop bypasses that more directly benefit the creators, that's the chief problem. It helps to understand that you contract the way your copyright rights have access to the market. In some ways, this is not an intellectual property issue, it's a contractual market power issue in which copyright's simply the facilitating vehicle. I've heard of many experiments going on that are trying to figure out the best way for

artists to reclaim the power that ought to belong to them. More power to them! But I can't talk specifically about them with individual proposals. Think you can?

Robert McChesney: Not really. I mean, being a professor, I'll talk about it! Larry Lessig has called for a new form of copyright – after a certain period of time, after 14 or 28 years, copyright would automatically go into public domain, unless the holder pays a dollar to keep it. So at least 99 percent of stuff that was of no commercial value automatically goes into public domain. That way, we don't have to hire lawyers to put together compilations of books and articles that are out of print. I do think the point you're getting at, and the point this all gets to, is the incompatibility of this entire digital technology with the traditional economic models. We've got to come up with a new system.

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**There is an incompatibility of this entire digital technology with the traditional economic models. We've got to come up with a new system.**  
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The problem we face is the new system is going to come up with Hyman Roth and Michael Corleone – we know what sort of system it's going to be. It's going to be a system where we're paying a lot more money than we should, and the public's going to get screwed. How do we restructure this economic model? I know there have been a few books. But I think it's something we have to think hard about.

One economist whom I like named Dean Baker wrote a book with Mark Weisbrot called *Social Security* a couple of years ago. He works in a think tank in Washington. He came up with a great idea – granted he came up with it before George W. Bush ballooned these deficits – he came up with it in the late '90s when we had surpluses of the Federal Budget. He said, "The key thing we ought to do is let every American take \$100 or \$200 off of their taxes, and divert it to any non-profit medium of their choice." So there'd be a mass of public subsidy, but

not controlled by the government, controlled by individuals. And it would be a tax credit. So you could pay the government, or you can pay it to any IRS-recognized non-profit media.

Let's say the community wanted a local newspaper: you could get 200 of your neighbors to chip in. You could get enough money to hire someone, put up a Website, use reporters as a resource extension to cover your neighborhood, something like that. And the genius part of it, the part I think you'd like, David, is that anything produced with this money automatically goes into public domain, no copyright credentials. It's a way that we can take advantage of technology. Now there's simply barbed wire all over cyberspace. Let's blast it up, pave the front end and then make it free, rather than try to pay to put these fences to work! I'm not saying that's the solution, but that's the sort of thinking we need. That's the sort of policy-making we've got to start conceiving, developing, debating and working toward.

Jonathan Aronson: François?

François Bar: I'm curious to know what do you think was the trigger that created the mass movement of the media mission? And second question for David, what do you think we need to do to make the process of copyrighting better, more workable?

Robert McChesney: Well, these issues go together: we're only going to win copyright victories from the people who care about commercialism and media, public broadcasting, campaign finance, all those things. We'll have to draw them together and marshal all of them. That's the only way we're going to win.

David Bollier: Actually, I see this issue as being very near that of convergence, with the static electricity of the traditional media reform movement being between them, acting as the intellectual property component of it, along with what I call the participatory media, the blog world, and these new bottom-up genres, where there's a pro-active non-policy solution. I think that they all have a lot to say to each other, and that will be a political, critical mass once these hydraulics get arranged.

There's a widespread perception that a lot of the top-down media are culturally sterile, not interesting or satisfying or intelligent, and we can amass a kind of blogging firepower to help create new culturally authentic media. I think that there's a real rich moment that we're approaching, but there's a lot of creative work to be done.

Robert McChesney: One thing that's been crucial to building the success of the movement was having those two members of the FCC who were supporting us, especially Cox. I mean, you can't exaggerate how important this has been. So since these guys are important, what they're saying should be taken seriously. They've been willing to go round the country, to places like here, to hold public hearings. In certain instances like in Seattle, over a thousand people came and gave testimony.

The grassroots of these public hearings have really built the basis of this movement. Free Press has organized several hearings for FCC Commissioner Jonathan Adelstein since then. When Adelstein came out, and heard people talk about media, and their concerns about localism, commercialism, and journalism in their communities, and then went back to Washington – his phone was ringing off the hook!

Jonathan Aronson: Let me ask the last question. Both of you have talked predominantly about copyright in the United States, about how bad the extension of copyright is here. Obviously, we've seen enough practices outside of the United States that we might take it to be the same thing there.

Robert McChesney: Oh, it's not the same thing everywhere, but there are the same issues everywhere. Right now, so many of the policy issues that are going to effect us are at the global level. No matter what we do



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in the U.S., if we're not cognizant of participating in these issues at the global level, we're going to be screwed.

Free Press and the entirety of the domestic media activist movement have got an important job. Right now, the General Agreement on Trade in Services at the World Trade Organization is considering proposals, maybe eight people on earth know about this, it's not been formally announced. These will include putting audio-visual materials under the World Trade Organization's statutes, which would make it much more difficult to have ownership limits of video, which would basically undercut the ability of any national power to have any sort of regulation over media, audio-visual materials.

Now, in these deliberations, the U.S. Government acts as the sworn agent of the big media companies – Republican or Democrat, it doesn't matter. That's how it works. We have to open up a domestic front in the United States that says to the media workers in this country, the citizens, the scholars, "This is not the case. The interests of Disney, and Time Warner, and General Electric are not the interests of the people of this country." We have to participate in these debates. Free Press actually sent someone to UNESCO last week to participate in these discussions, offering this perspective.

Historically, the international arena has been used by media companies as a back door to get what they want on the global side of intellectual property transfer, without having to finesse American policy. That's been really pernicious, and I think the public interest has been underrepresented.



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But what's really interesting is that the developing countries are starting to get their act together. There's the World Intellectual Property Organization: Argentina and Brazil successfully got them to entertain a debate on the development of this agenda, which would then be beneficial to developing countries. So, in some ways, if the developing countries can get organized, we can do our own back-door influence on U.S. policy by organizing them to confront U.S. media interests. I think that a lot of that is happening.

But one thing we would like to do on the home front is to have it so that any issue that's considered by Congress, and includes something to do with the media, has to be voted on separately, can't be snuck into some bill, or get by without a genuine debate. We have folks marshalling people on the Hill now. Because we don't think this sort of stuff can survive if it's out in the open, none of this stuff can. That's why they the big media companies and the government try to keep it all under wraps, in private.

Jonathan Aronson: Well, with that, I want to thank you all for coming!